

New Directions for Animal Welfare in Ontario

A discussion paper

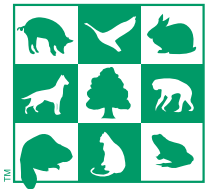
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Zoocheck is a Canadian-based international wildlife protection charity established in 1984 to promote and protect the interests and well-being of wild animals.



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OF CANADA**

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Animal Alliance of Canada is a federally incorporated non-profit organization dedicated to the protection of all animals and the environment through electoral politics, legislative advocacy, education and rescue.

Purpose of this Report

New Directions for Animal Welfare in Ontario is intended to assist the Ministry of Community Safety and Correctional Services (MCSCS) in modernizing and improving Ontario's animal welfare system.

This document is not a comprehensive review or analysis of the challenges and issues associated with Ontario's current animal welfare system, the Ontario SPCA Act or the Ontario SPCA. Numerous reports and other materials have already examined those topics and provided analysis and commentary (see appendix 1).

New Directions for Animal Welfare in Ontario focuses instead on providing recommendations for improving aspects of Ontario's current animal welfare system to mitigate some of the immediate, existing issues, and for replacement of the Ontario SPCA Act with a new animal welfare act.

Table of Contents

Introduction	1
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Executive Summary	2
Guiding Principles	2
Purpose, Focus and Scope	2
General Findings	3
Recommendations	3

How Ontario's animal welfare law enforcement system works now	5
About the OSPCA	5
The OSPCA Act	5
Who Does What	7

Commentary on the Ontario animal welfare system	8
Who Funds the System?	9

Several key issues	11
Oversight and accountability	11
Conflict of Interest	12
Animal Protection	12
Adequate Funding	14

Recommendations Commentary	16
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Primary Recommendation Summary	20
Final Summary	20

Appendix 1 - Bibliography	22
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Introduction

For many years Zoocheck and Animal Alliance of Canada have attempted to address a variety of important animal welfare and protection issues by working within the context of the existing Ontario animal welfare system. While significant steps forward have been achieved on some issues, the system itself has been cumbersome and difficult due to its inherent challenges and deficiencies.

Throughout the years, there have been numerous attempts from within government itself to address the state of the Ontario animal welfare system. They have included study groups, private members' bills and government bills, some that were focused on specific issues (such as wildlife in captivity) and others that dealt with broader, systemic animal protection issues.

To this day however, many of the challenges and deficiencies in the system remain unaddressed. Key among them is the fact that Ontario's primary piece of animal welfare legislation, the *Ontario Society for the Prevention of Cruelty to Animals Act* (OSPCA Act), explicitly excludes most animals in the province from protection. In addition, there is no actual requirement for the Act to be enforced. There are also specific issues regarding lack of oversight, transparency and public accountability in the current enforcement system.

It is our hope that this report generates discussion and debate about how to move forward to improve the Ontario animal welfare system. Some of its recommendations are new, while others have been made before in other documents and reports, such as in the 1992 *Final Report of the Animal Welfare Review Committee*. They provide a potential road map for the Ontario government to use as it works toward improving and making more effective the province's animal welfare system.

Clearly, the Ontario animal welfare system needs improvement and modernization and changes are decades overdue. While many other jurisdictions in Canada and around the world have moved ahead, Ontario has not. It is now time to make meaningful change. The citizens of Ontario expect it and the animals deserve it.

Executive Summary

Guiding Principles

- The people of Ontario care about animals.
- The overall welfare of animals is important including their protection from neglect, abuse and harm, ensuring their health, well-being and quality of life, and facilitating their positive coexistence with people, other animals and the environment.
- All animals throughout the province deserve protection under the law including pets, agricultural animals, wildlife (both in the wild and in captivity) and animals in research.
- The enforcement of animal welfare legislation should be effective, equitable, practical, transparent and accountable to the public and there should be absolute clarity as to the roles and responsibilities of those involved in the system.
- Any changes to the animal welfare system should – where possible – take advantage of existing structures, roles and processes, and be adequately supported by appropriate and sustainable funding sources.

Purpose, Focus and Scope

This report is intended to assist the Ministry of Community Safety and Correctional Services (MCSCS) in modernizing and improving Ontario's animal welfare system.

This report presents a number of general conclusions and recommendations for improvements to Ontario's animal welfare system.

In terms of legislation, the focus will be Ontario's primary animal welfare law, the OSPCA Act, as well as a recommendation for its replacement with a new Provincial Animal Welfare Act.

The federal Criminal Code of Canada (CCC) will not be dealt with, since it is beyond the purview of the provincial legislature and the protection of animals in Ontario is predominantly addressed through enforcement of the provincial legislation.

This document is not a comprehensive review or analysis of the challenges on issues associated with Ontario's current animal welfare system, the Ontario SPCA Act or the Ontario SPCA. Numerous reports and other materials have already examined those topics and provided analysis and commentary (see appendix 1). The priority at this time is to recommend major improvements to the broader animal welfare law enforcement system.

General Findings

- Animal welfare law enforcement should become a function of the public sector.
- Ontario's current system of animal welfare law enforcement lacks oversight, transparency and accountability.
- The OSPCA Act legislates an inherent conflict of interest by mandating the OSPCA's enforcement function without independent oversight of the OSPCA.
- Most animals in Ontario are explicitly excluded from the auspices of the OSPCA Act due to exceptions from the most important duties and offences in the Act for activities involving agriculture, wildlife and animals in research and veterinary situations.
- Some OSPCA Act Regulation 60/09 Standards of Care and Administrative Standards are not being enforced in some cases, including when violations have been documented and referred to the OSPCA.

Improvements are required for:

- Wildlife kept in captivity for exhibition, entertainment or education (e.g., zoos, aquariums, menageries, mobile live animal programs, circuses).
- Wild animal (exotic) pets who have specialized housing, husbandry and/or other requirements and/or that pose a risk to human health and safety and/or that pose a risk to native wildlife and the environment.
- Wildlife who are sick or injured or in conflict situations.
- Animals in remote communities that are geographically isolated and that lack access to animal welfare law enforcement, veterinary and other services.
- Agriculture animals, wildlife and animals in research and veterinary situations.

Recommendations

Principle Recommendation

- Repeal the OSPCA Act and replace it with a new Provincial Animal Welfare (PAW) Act.

Short-term Recommendations for OSPCA Act

Amend the OSPCA Act:

- To include more detailed guiding principles of animal welfare, such as the Five Freedoms of Animal Welfare or a similar set of animal welfare guiding principles;
- To make enforcement of the Act subject to timely, independent public complaints and accountability process delivered through MCSCS;
- By requiring the annual submission to MCSCS of operational and enforcement statistics and reports;

- To make the OSPCA subject to provincial Freedom of Information and Protection of Privacy legislation;
- To include the Ontario SPCA within the Ontario Ombudsman’s jurisdiction;
- To enable willing, suitably equipped and resourced municipalities to enforce the Act;
- To allow for other humane societies, organizations and agencies to enforce the Act;
- To allow for private prosecutions under the Act;
- By excising the exceptions and exemption for agricultural animals, wildlife, animals in research and veterinary situations that effectively remove most of Ontario’s animals from the protections of the OSPCA Act;
- To establish a provincial Positive List of animal species (both domesticated and non-domesticated) suitable to be kept as pets.

Medium Term Recommendations

- Establish a comprehensive licensing scheme for wildlife in captivity, including both administrative and animal housing, husbandry and welfare requirements and a mechanism for the revocation of licenses, the closure of facilities and/or the removal of the animals.
- Amend the *Animals for Research Act* to allow for the investigation of animal welfare complaints in research and supply facilities.
- Amend the City of Toronto Act to authorize Toronto to enforce provincial animal welfare legislation.

Long-Term Recommendations for PAW Act

Note: Short term and middle term recommendations should be carried forward and incorporated into the PAW Act.

- Repeal the OSPCA Act and replace with new Provincial Animal Welfare (PAW) Act that brings animal welfare law enforcement into the public sector.
- Establish a new provincial body called the Provincial Animal Welfare (PAW) Commission to oversee and coordinate the new animal welfare system, including its administrative, inspectorate training, transparency and accountability mechanisms.
- Establish a program called the Provincial Animal Welfare (PAW) Trust to provide a central point through which public donations and other revenue would flow, including a proposed 2% surcharge on the sale of non-medical pet supplies in Ontario, to fund the new PAW Act and structure.

How Ontario's animal welfare law enforcement system works now

About the OSPCA

The OSPCA is the charity authorized to enforce animal welfare-related laws in Ontario.

The OSPCA used to deliver its law enforcement services via a network of directly operated branches and independently operated humane societies known as "affiliates" that (until recently) were affiliated with the OSPCA primarily for the purpose of enforcing the OSPCA Act.

The OSPCA's branches are located primarily in smaller, less densely populated parts of the province while the affiliates are located primarily in urban areas. Each branch and affiliate has an area of jurisdiction determined by the OSPCA.

Ontario is unique in Canada in its two-tiered system of a central body (the OSPCA) with directly operated branches, and affiliated but operationally independent humane societies.

Until recently, the OSPCA was governed by a 12-person board of directors elected by OSPCA affiliates at the organization's Annual General Meeting (AGM). In November 2016, the OSPCA board eliminated future AGMs and board elections, becoming a permanent board with any future changes to its membership to be made by the board itself.

Funding is largely provided through private fundraising and donations with additional income from activities such as contracts for municipal bylaw enforcement, augmented by some government funding. Since 2013, the OSPCA has received \$5.5 million in annual funding from the provincial government for enforcement.

The OSPCA Act

The OSPCA Act, administered by the Ministry of Community Safety and Correctional Services (MCSCS) is Ontario's primary animal welfare legislation. This also makes MCSCS the lead ministry for matters pertaining to animal welfare.

The OSPCA Act creates the OSPCA and the position of the OSPCA Chief Inspector. The Act authorizes the Chief Inspector to appoint investigators (known in the Act as agents and inspectors). The powers of these investigators are set out in Section 11(1) of the Act:

Powers of police officer (OSPCA Act)

For the purposes of the enforcement of this Act or any other law in force in Ontario pertaining to the welfare of or the prevention of cruelty to animals, every inspector and agent of the Society has and may exercise any of the powers of a police officer.

Under the OSPCA Act, investigators and agents have equal authority. Operationally, Inspectors are more senior investigators, often with supervisory roles or other additional responsibilities.

The OSPCA Act's Provisions Include:

- Standards of care with special standards for dogs kept outdoors, wildlife, marine mammals and primates in captivity.
- Provincial offences include failure to meet standards of care, cause or permit distress, permitting fighting or possession of related equipment, harming a law enforcement animal.
- Substantial penalties for animal abuse-related convictions including: maximum fine of \$60,000, two years in jail, ownership ban, and/or restitution for animal care costs. Sentencing can also include an order to undergo counselling or training.
- Ability for OSPCA inspectors and agents to write orders requiring owners to take action to relieve an animal of distress or, in some situations, at their discretion they can seize animals that are in distress.
- Inspection authority for premises where animals are kept for entertainment, exhibit, boarding, hire or sale (e.g. zoos, kennels etc.).
- Veterinarians required to report suspected abuse or neglect and are protected from personal liability for doing so.

Exceptions to the OSPCA Act

The exceptions, for all intents and purposes, remove most of Ontario's animals from the protections of the OSPCA Act.

Agricultural exception: There are automatic exemptions from compliance with the most important parts of the Act which create offences for causing/permitting distress and for failing to comply with standards of care for: an activity carried on in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry and prescribed classes of animals; "generally accepted practices" are not prescribed by law.

Wildlife exception: There is an exemption from compliance for any activity permitted under the *Fish and Wildlife Conservation Act, 1997* related to wildlife in the wild or the federal Fisheries Act in relation to fish.

Veterinary exception: There are exceptions to the offences of causing or permitting distress and for failing to comply with standards of care for any activities carried on in accordance with the Veterinarians Act.

Research exemption: The *Animals for Research Act* explicitly says that the OSPCA Act does not apply to animals in the possession of an operator of a registered research facility or a licenced operator of a supply facility.

Who Does What

The OSPCA

Under the OSPCA Act, the OSPCA's Chief Inspector may appoint investigators, each of whom has "the powers of a police officer" to enforce the OSPCA Act and "or any other law in force in Ontario pertaining to the welfare of or the prevention of cruelty to animals." This means OSPCA-appointed investigators may enforce federal, provincial and municipal laws.

OSPCA investigators tend to pursue provincial rather than federal charges and will usually enforce a municipal bylaw only if it affords greater animal protection than the other laws, or it deals with a situation that is not addressed by the other laws.

Provincial charges are preferred because they are easier to process and prosecute and, in many circumstances, carry similar or greater potential penalties than the Criminal Code of Canada (CCC) or other federal laws. In 2015, the OSPCA laid 334 provincial charges and 21 CCC charges.

The OSPCA Act recognizes that an OSPCA-appointed investigator may be employed by the OSPCA or one of its affiliates. For the purpose of law enforcement, all investigators report to the OSPCA Chief Inspector.

The Police

Police have authority to enforce the Act, however, it is unusual for the police to involve themselves in matters of animal welfare.

While more police support would be beneficial in some circumstances, the police are not the solution to animal welfare issues in the province. They have neither the time or the expertise required to address the wide range of animals in or the wide range of circumstances in which their welfare is compromised.

Municipal Bylaws: Where a municipal bylaw affords greater animal protection, it may be enforced by the OSPCA rather than the pertinent OSPCA Act provision. For example, if a municipality has a bylaw that prohibits circuses with live animal acts, the OSPCA may enforce that prohibition rather than exercising their authority under the OSPCA Act to inspect the circus animal conditions.

There are no other entities currently authorized to enforce the OSPCA Act.

Commentary on the Ontario Animal Welfare System

In the early 2000s, Ontario's animal welfare system was often characterized as out of date and ineffective. While there were many reasons for this perception, among the most notable was the fact that the province's primary animal welfare law, the OSPCA Act, had not been comprehensively revised since its inception in 1919. Additionally, Ontario had fallen behind many other provinces in some basic and important elements and functions of the law. Most of the other provinces had strengthened their provincial animal protection laws while Ontario had not.

In 2009, the first comprehensive revisions to the OSPCA Act were completed. Some of these changes made the animal protection components of the OSPCA Act stronger and improved the Act. Others, such as the new exceptions for agricultural animals and wildlife and a complete exemption for research animals, effectively excluded the majority of animals in the province from the protections the Act provided.

The changes to the Act dealt primarily with the law's animal protection components and did so in a way intended to enable the OSPCA to carry on more efficiently and effectively. For example, the new provincial offense for causing or permitting distress to an animal would be easier to enforce and process than relying on the antiquated animal cruelty provisions in the federal Criminal Code. At the same time, government funding to the OSPCA increased to \$5.5 million annually.

In 2015, additional changes were made to the OSPCA Act and associated regulations, including a prohibition on the keeping of orcas in the province, new administrative requirements and regulations for the keeping of marine mammals in captivity. Unfortunately, those regulations seemed to remain largely unenforced and the changes did little to quell public concern about animal welfare in the province overall.

Today, Ontario's animal welfare system still faces a number of substantial issues and challenges that need to be addressed including issues of effectiveness, openness, transparency, accountability and governance of the only organization responsible for enforcement.

The lack of publicly available information and accountability has undermined confidence in Ontario's animal welfare system. This omission makes it difficult, if not impossible, for anyone to assess how rigorously and effectively the Act is being applied.

For example, members of the public who report instances of cruelty or neglect may continue to see the same animals in the same situations weeks or months later. There is no way for them to find out what actions, if any, have been taken to protect those animals, or if there is a legitimate reason why no charges have been laid. Similarly, when wildlife is kept for entertainment and exhibition purposes in zoos and aquariums

and no changes are in evidence after detailed, expert complaints have been made, the complainants are left wondering what happened. When queried, the OSPCA routinely refuses to provide any information to members of the public.

In addition, at present there is no convenient mechanism for an individual person to participate in the governance (and, therefore, policymaking and other relevant decisions) of the OSPCA. Indeed, the OSPCA's affiliates who, until recently, were the organization's only voting members, have been disenfranchised. The governance of the OSPCA is now centralized, privatized and not open to public awareness, let alone public scrutiny.

There does not seem to be any mechanism for those outside of the OSPCA to speak to operational or policy issues at a higher organizational level (i.e., board), nor does there seem to be a willingness to encourage active public participation in its governance. In contrast, some other provincial and local humane societies actively encourage members of the public to become involved in the operation and governance of their organizations.

Also, since 2013, the OSPCA has received \$5.5 million annually in provincial funding, yet reasonable expectations of openness and accountability regarding the use of taxpayer dollars are not being met, and neither the Ontario government nor the OSPCA has yet addressed these issues. For example, the lack of access to information from the OSPCA via Freedom of Information and Protection of Privacy (FOIPP) legislation is something that could be easily resolved. The OSPCA is unique in Ontario as a charity with law enforcement authority and it is disconcerting that, as a charity, the OSPCA is also unique as a law enforcement entity that is not subject to some form of FOIPP legislation. Although the OSPCA could and should be added to the list of entities covered by this legislation, it is not clear that this change, on its own, would satisfy public expectations and provide the kind of transparency and accountability many people believe an entity receiving public funds should provide.

Who Funds the System?

In 1919, the provincial government authorized the OSPCA to enforce the law to protect animals, but it did so on the condition that funding would be provided not by the general population but through fundraising and donations from the people who care about animals most. That should not be the case a century later, in 2017.

Even though animal protection is supported by the majority of Ontarians and benefits society as a whole, government is often reluctant to fund animal protection through general tax revenues. This is an anachronistic approach that should be changed. However, there is also another option.

Ontarians already spend billions of dollars on pet supplies annually. A modest 2% surcharge on those purchases to create and operate a new, accountable, effective, province-wide animal welfare law enforcement system should be viewed as a real bargain.

The proposed pet supplies surcharge would create a new separate, protected, dedicated revenue stream that should be palatable to government, pet guardians and even pet industry members. Major players in the pet supply industry have already demonstrated their support for animal welfare through their ongoing financial and in-kind donations to service providers as well as other supports such as in-store adoption events.

Several Key Issues

Upon review of the current animal welfare system in Ontario, the following findings and conclusions are presented:

Oversight and Public Accountability

Ontario's system of animal welfare law enforcement lacks appropriate oversight and accountability. The daily operations and animal welfare law enforcement activities of the OSPCA are not monitored or reviewed by the Ontario government or any other external oversight body or accountability mechanism. The only exception is the Animal Care Review Board (ACRB) which hears appeals from individuals whose animals have been seized or who have been issued orders by the OSPCA.

These long-standing issues have made it almost impossible for interested Ontarians to know the degree to which animal welfare is being protected in Ontario. Private complainants cannot obtain explanations regarding how the OSPCA makes crucial decisions, formulates enforcement policies, deals with individual complaints prior to and during investigations or what the outcomes are.

For example, concerns about certain zoos and aquariums have been brought to the OSPCA's attention (e.g. by Zoocheck and by individuals who in turn bring their complaints and frustrations to Zoocheck) with no discernible enforcement outcomes or any related explanations. In some cases, concerns have been brought to the OSPCA repeatedly over lengthy periods of time. The information provided to the OSPCA has included expert commentary, written reports, photographs and other materials citing certain provisions of the OSPCA Act (notably the standards of care) that do not seem to be enforced seriously, adequately or at all.

In accountability terms, while it's understood that even if the OSPCA were covered by FOIPP legislation, requests for investigation-specific information might have limited results due to normal law enforcement-related FOIPP exceptions, access through FOIPP should still provide information in respect of law enforcement cases at appropriate times, and they could provide other important information, such as what investigative policies are in place and why certain situations and sections of the OSPCA Act are enforced or not. Additionally, the OSPCA is not within the jurisdiction of the Ontario Ombudsman's office. If it were, there would be one additional accountability mechanism available to members of the public.

While being subject to FOIPP legislation and/or the Ombudsman's office would be helpful, on their own these measures are not sufficient to address the lack oversight and accountability, since the information may be heavily redacted and/or obtaining it may be subject to long delays. When a member of the public registers a complaint about an animal in distress, such as a dog being left outside in winter weather, they may want to know in a timely fashion what has or has not been done and why, especially the dog continues in the same circumstances.

In contrast, there is an ability for anyone who has had the OSPCA seize their animals or who has been issued OSPCA orders to contest them. They have the option of appealing those orders to the Animal Care Review Board which is part of the Safety, Licensing Appeals and Standards Tribunal Ontario.

Whether the OSCPA Act is retained and amended, or the proposed PAW legislation is implemented, there should be provisions that allow for private prosecutions, which have long been permitted in respect of federal anti-cruelty laws. While this is not technically an accountability mechanism, it does serve as an additional vehicle for individuals to pursue resolution of specific issues.

Under the proposed new PAW Act, the PAW Commission would serve as an appeals body to which complaints and concerns could be made about enforcement effectiveness, conduct and policies.

Conflict of Interest

Conflict of interest is inherent to the OSPCA Act. It gives the OSPCA the exclusive authority (with the exception of police) to enforce animal cruelty laws while at the same time, it also conducts sheltering services. Yet, the organization is not subject to any kind of independent oversight. The investigative/enforcement and sheltering functions of the OSPCA should be separated. The OSPCA should not be in the position of being its own oversight body or investigating its own activities.

Animal Protection

Inadequate enforcement

Numerous provisions in *OSPCA Act Regulation 60/09 Standards of Care and Administrative Standards* do not seem to be enforced. For example, unequivocal provisions for wildlife in captivity, such as "6) Every animal must be provided with adequate and appropriate, (a) space to enable the animal to move naturally and to exercise" and "(2) A pen or other enclosed structure or area for wildlife kept in captivity must have, (a) features and furnishings that facilitate and stimulate the natural movement and behaviour of each animal in the pen or other enclosed structure or area" are not being met in many zoos. If the OSCPA lacks its own expertise in respect of the wide range of animals that are currently allowed to be kept in captivity, it should have a duty to acquire that expertise, or to rely on the expertise available to it. On many occasions over the years, Zoocheck has provided very detailed reports from recognized experts showing exactly which of the standards are not being met. It is unacceptable that facilities are not required to comply with the regulations.

Other types of animals who require improved protection under the current system

Other than domesticated companion animals and certain other animals in specific situations (e.g., wildlife in zoos), most of Ontario's animals are explicitly denied the protection of the OSPCA Act. There are exceptions to certain offenses in the Act for activities involving agriculture, wildlife and research animals, and animals in veterinary situations, and these have the effect of removing most of Ontario's animals from direct protection under this legislation. This approach makes a mockery of the protections set out in the legislation and must be re-examined if Ontario is serious about animal welfare.

To exempt all behaviour that occurs in the context of a given practice or industry, and thereby ignore all of the individual acts that might occur in and around those activities, gives a free pass to countless individuals to flout the law and treat animals however they please. Unlawful acts can occur in the course of otherwise lawful behaviour. For example, most therapists do not sexually abuse their patients, but government would never exempt all activities that occur in the course of therapy from laws against sexual assault. In taking this approach to animal welfare, government abdicates its responsibility to the vulnerable animals it purports to protect.

For animals in agriculture, the Act contains very broad exceptions to the offenses for causing or permitting distress to an animal and for failure to comply with the standards of care for reasonable and accepted practices in the agriculture industry. OSPCA Act provision 11.2 (6) states that causing or permitting distress "does not apply in respect to, "(c) an activity carried on in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry."

Wildlife is governed by the Ministry of Natural Resources and Forests (MNRF) through the *Fish and Wildlife Conservation Act* (FWCA). The OSPCA Act provides a blanket exception to the offence for causing or permitting distress to an animal for all activities which are permitted under the FWCA. OSPCA Act provision 11.2 (6) states that causing or permitting distress "does not apply in respect to, "(a) an activity permitted under the *Fish and Wildlife Conservation Act, 1997* in relation to wildlife in the wild; (b) an activity permitted under the *Fish and Wildlife Conservation Act, 1997* or the *Fisheries Act (Canada)* in relation to fish."

Similarly, for research facilities which are regulated by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) *Animals for Research Act* (ARA), Section 1.1(1) "Non-application of the *Ontario Society for the Prevention of Cruelty to Animals Act*" specifically prohibits the application of the OSPCA Act: "Subject to subsection (2), [orcas] the *Ontario Society for the Prevention of Cruelty to Animals Act* does not apply in respect of an animal in the possession of the operator of a registered research facility or of a licensed operator of a supply facility. 2015, c. 10, s. 9."

Further, veterinary activities, are regulated pursuant to the *Veterinarians Act*, administered by OMAFRA and operated (including inspections and enforcement) by the College of Veterinarians of Ontario. No protocol exists that requires veterinary activities and facilities to be investigated under the OSPCA Act for causing distress or failing to comply with the standards of veterinary care under the *Veterinarians Act*.

Proper resources and enforcement authority for OMAFRA and MNRF employees under the proposed PAW Act would enhance animal protection and could help address related concerns raised by those involved in those sectors.

As previously noted, any legislative changes should include provisions that provide protection to:

- Wildlife kept in captivity for exhibition, entertainment or education (e.g., zoos, aquariums, menageries, mobile live animal programs, circuses);
- Wild animal (exotic) pets that have specialized housing, husbandry and/or other requirements and/or that pose a risk to human health and safety and/or that pose a risk to native wildlife and the environment;
- Wildlife who are sick or injured or in conflict situations;
- Animals in remote communities that are geographically isolated and that lack access to animal welfare law enforcement, veterinary and other services;
- Agriculture animals, wildlife and animals in research and veterinary situations where they are under the care and control of a veterinarian.

Adequate Funding

Ontarians care about animals and are prepared to support financially their good welfare whether that is through responsible animal guardianship (i.e. the purchase of pet supplies and other costs such as veterinary care) or through donations and fundraising in support of animal welfare-related charities.

Some sources estimate that approximately 60-70% of Ontario households include pets. This is not a niche market. These numbers explain the enormous amount of money spent on pet supplies in Ontario annually and the potential for that activity to produce a reliable, dedicated funding source for animal welfare services.

Current pet industry statistics indicate that by 2019, Ontarians will be spending approximately \$3.5 billion on non-medical pet supplies annually. This fact presents a unique opportunity for the funding of animal welfare law enforcement in Ontario.

The current animal welfare law enforcement system costs approximately \$20 million annually to operate. Even tripling this figure to \$60 million to account for higher operating costs in the public sector as well as needed improvements (including assistance to rescue groups, shelters and others involved in the system) and the operation of a provincially administered central authority, this figure can be met or

exceeded by applying a 2% provincial surcharge to all non-medical pet supplies and by attracting public donations to the PAW Trust directly.

Statistics compiled by the Pet Industry Joint Advisory Committee in 2012 indicated that Canadians spent \$6.5 billion annually on pet supplies and reported “the number is growing”. With Ontario’s 38.5% of the country’s population, that would represent \$2.5 billion spent in Ontario of which 2% would be approximately \$50 million.

Based on the 2015 Canadian Pet Market Outlook Report produced by PetfoodIndustry.com, the Canadian pet supplies market will grow to approximately \$9.2 billion by 2019. This would result in a projected \$70 million annually in support of animal welfare through collection of the proposed 2% surcharge.

Public Support for the PAW Trust

The PAW Trust could take a leadership role by ensuring donors supportive of animal welfare have an opportunity to contribute directly to animal welfare law enforcement services in the province.

Revenues from the surcharge and donations to the PAW Trust would be collected by the province and redistributed to municipalities and other service providers as well as used to support the administration of the PAW Commission and its central services. The cost to municipalities to provide additional local animal protection would be offset by receiving their portion of the pet supplies surcharge as directed animal welfare law enforcement funding.

Immediate transition costs could be covered by one-time provincial funding as well as by diverting some existing funding to the PAW Commission and other aspects of the animal welfare system. Long term, ongoing costs in these areas could potentially be supported by some form of surcharge applied in the agriculture and wildlife-related industries.

Recommendations Commentary

The primary recommendation of this report is that the OSPCA Act should be repealed and a new Provincial Animal Welfare (PAW) Act implemented that brings animal welfare law enforcement into the public sector.

The new law would be administered provincially by a new central oversight body called the Provincial Animal Welfare (PAW) Commission whose primary responsibility would be to coordinate animal welfare law enforcement in Ontario. The new law would be delivered by a combination of existing non-governmental, municipal and provincial departments, agencies and organizations and others designated by the Minister of MCSCS. The PAW Commission would also develop a centralized training program for enforcement personnel, hire special investigators employed by the province and create a major case management team.

The new law would maintain the basic animal welfare elements of the current Act (with some specific needed improvements) but recast who is responsible for enforcement, enhance the oversight role of government and create public accountability.

Those authorized to enforce the new law and who would be accountable to the PAW Commission would make up an extended enforcement pool. It would include:

- **Municipal bylaw enforcement officers**
- **Ministry of Natural Resources Conservation officers**
- **Ministry of Agriculture, Food and Rural Affairs inspectors and veterinarians**
- **Police officers** - With general and back-up responsibilities including situations where public safety is at risk and a specified responsibility to assist other enforcement entities where those are not present, when needed or upon request. Police would be the backup to the other enforcement entities, especially in remote parts of the province, but would be able to enforce the law without restriction, whenever required (i.e. the OSPCA Act currently says police have the same authority as OSPCA investigators where the OSPCA does not function).
- **Non-governmental organizations, including, but not limited to, humane societies and suitably resourced animal rescue groups approved by the Minister of MCSCS** - A municipality could have the option – as they do now for animal control - of contracting for animal welfare services. This would enable current OSPCA affiliates and other humane societies to continue animal welfare law enforcement if an agreement was reached with the municipality. Any such agreement would have to support the same standards of accountability as if the service were being delivered directly by the municipality.
- **Others designated by the Minister of MCSCS.**

The PAW Act would also include a provision that allows for private prosecutions under the Act, which have long been permitted in respect of federal anti-cruelty laws.

A new Provincial Animal Welfare (PAW) Commission would be established to oversee the new system. The role of the PAW Commission would be formalized in the new law.

The PAW Commission would consist of provincial appointees with relevant backgrounds and expertise in animal protection and welfare, veterinary science, policing, legal (potentially including an animal welfare provincial special prosecutor), as well as others who care about animal welfare but who have more general backgrounds.

The PAW Commission must not be dominated by industry members or those whose profits are earned by animal use and at least 50% or more of its members must represent the animal welfare sector.

The PAW Commission could directly employ special investigators including training officers and, potentially, a major case management team.

The Commission should maintain a database of relevant enforcement information, including court orders and sentencing provisions, available to law enforcement and the public.

A training program could be developed and administered by the PAW Commission. The transfer of investigator training responsibilities from the OSPCA to the PAW Commission could include the OSPCA continuing as the service provider on either an interim or longer term contractual basis. This proposal would not preclude the OSPCA from also delivering specific investigator training programs approved by the Commission as part of a larger training framework.

The Provincial Animal Welfare (PAW) Trust should be established to provide a central point through which revenues would flow including the proposed 2% surcharge on all non-medical pet supplies, and through which public donations could be made. This revenue would provide a stable financial base for the new system.

The Trust would be administered by the PAW Commission and would redistribute revenue to municipalities and other service providers on an equitable and as-needed basis, as well as supporting central services.

A comprehensive public education program should be launched and managed on an ongoing basis. The primary components of the public education program would include how the new law works and who does what, how the PAW Trust operates, and how individuals and groups can participate through donations and other activities.

The key outstanding recommendations from the October 2012 Animal Welfare Task Force report should be implemented including an addition to the Standards of Care regulation under the OSPCA Act to require preventive veterinary care in shelters, and comprehensive review and revisions to the Animals for Research Act (ARA).

The new legislation should include changes that improve protection for all animals, including:

- Wildlife kept in captivity for exhibition, entertainment or education (e.g., zoos, aquariums, menageries, mobile live animal programs, circuses);
- Wild animal (exotic) pets that have specialized housing, husbandry and/or other requirements and/or that pose a risk to human health and safety and/or that pose a risk to native wildlife and the environment;
- Wildlife who are sick or injured or in conflict situations;
- Animals in remote communities that are geographically isolated and that lack access to animal welfare law enforcement, veterinary and other services;
- Animals in facilities governed by the *Animals for Research Act*, which includes supply facilities and registered research facilities;
- Animals in veterinary facilities, when it is determined activities have taken place that are not consistent with the *Veterinarians Act*.

Wildlife kept in captivity for exhibition, entertainment or education (e.g., zoos, aquariums, menageries, mobile live animal programs, circuses) - A licensing regime for zoos, aquariums and any other businesses that keep animals for similar purposes should be established under the new law, and would include new standards to address animal welfare, human health and safety and other issues.

Wild animal (exotic) pets who have specialized housing, husbandry and/or other requirements and/or who pose a risk to human health and safety and/or that pose a risk to native wildlife and the environment. A provincial Positive List of animals suitable to be kept as pets by anyone should be established. Non-listed species would be prohibited from being kept as pets. A periodic review would allow species to be added or removed from the list based on a rigorous vetting process.

Wildlife: Wild animals who are sick, injured or in conflict situations. Injured wildlife should be addressed by a specific section of the law and their treatment should be the responsibility of the first service provider on the scene.

Animals in remote communities. The issue of animal welfare in remote communities should be pursued as a priority item by the Commission.

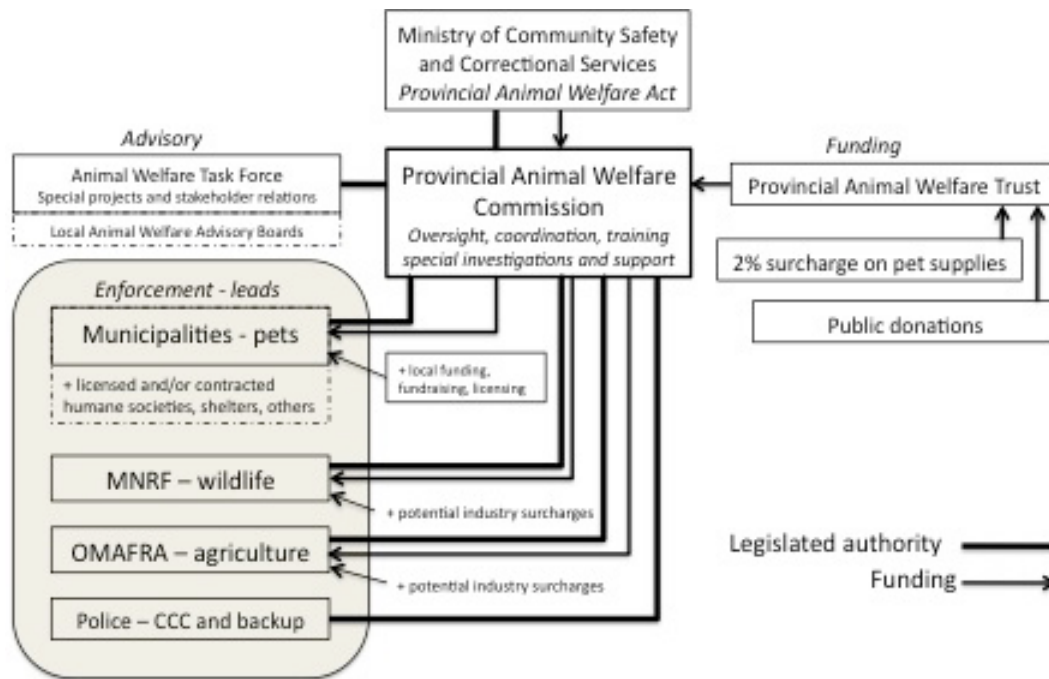
Animals impounded through enforcement of municipal bylaws and animals used in research. The *Animals for Research Act* needs to be amended to allow PAW to investigate animal welfare complaints in research and supply facilities. A regulation should be created that requires an investigation under the new Act where there are

violations of the *Animals for Research Act*, which governs those facilities and which is administered by OMAFRA.

Animals in veterinary facilities: A regulation should be implemented that requires an investigation under the new Act if activities occur that do not meet the test for the veterinary-related exceptions to offences for cause/permit distress and compliance with standards of care.

Primary recommendation Summary

The following organizational chart illustrates the proposed new system:



Final Summary

The proposed new system satisfies the requirements set out in the Guiding Principles at the beginning of this report, including:

- service delivery that is effective, equitable, practical, and accountable to the public;
- absolute clarity as to the roles and responsibilities of those involved in the system;
- building – where possible – on existing roles and processes;
- adequately supported by appropriate and sustainable funding sources; and,
- improved protection for animals

This approach incorporates some of the best of the recommendations of the 1992 provincial *Final Report of the Animal Welfare Committee*, including:

- bringing animal welfare law enforcement into the public sector; and
- ensuring consistency and public accountability by creating a provincial body (the Provincial Animal Welfare Commission) to implement, coordinate and oversee the new system.

The proposed new Provincial Animal Welfare Trust would administer the 2% provincial pet supplies surcharge, coordinate donated funds and distribute the proceeds to the participants in the system and support central services.

Advantages of the Proposed PAW Act

It ensures accountability of the system, including bringing the enforcement entities under provincial and municipal Freedom of Information and Protection of Privacy (FOIPP) legislation and the new central authority – the PAW Commission – under the jurisdiction of the Ombudsman of Ontario.

It enables the law to be enforced equitably across the province.

It makes use of existing enforcement entities (e.g., MLEOs, Police, COs, OMAFRA and MNRF employees, humane societies, humane society employees) and the particular expertise of each.

It enables current humane societies, rescue groups and shelters to participate in the system by providing shelter services and other supports.

It enables Ontarians to have a say in how animal welfare law enforcement services are provided by incorporating local advisory Animal Welfare Advisory Boards into the structure.

It enables Ontarians – especially those who have animals - to help financially support the system and ensure it continues to benefit from the public's proven desire to provide that support for animal protection.

Appendix 1 - Bibliography

Many of the points raised in this review of Ontario's animal welfare system have been articulated in other reviews and reports dating back as far as 1992. Various materials, including but not limited to those listed below, were examined during the preparation of this document. They include, but are not limited to:

- *2016 Canadian Animal Protection Laws Rankings*, Animal Legal Defense Fund (2016)
- *Ontario Transfer Payment Agreement between Her Majesty the Queen in right of Ontario as represented by the Minister of Community Safety and Correctional Services and The Ontario Society for the Prevention of Cruelty to Animals* (2015)
- *Ontario Transfer Payment Agreement between Her Majesty the Queen in right of Ontario as represented by the Minister of Community Safety and Correctional Services and The Ontario Society for the Prevention of Cruelty to Animals* (2013)
- *OSPCA ACT: A Better Way Forward, A Report on the Ontario Society for the Prevention of Cruelty to Animals Act*, Animal Justice Canada (2013)
- *Animal Welfare Task Force Report*, Government of Ontario (October, 2012)
- *Independent Review of Events in May 2010 At The York Region Branch Of The Ontario Society For The Prevention of Cruelty to Animal*, Alan H. Meek & Patrick J. LeSage (2011)
- *A Review of Zoos in Ontario, Has Anything Changed?*, Zoocheck (2010)
- *Grant Thornton Report*, Ontario SPCA (2007)
- *Final Review of the Animal Welfare Review Committee*, Government of Ontario (1992)