Investigation and Prosecution of Animal Cruelty and Neglect

An Introduction

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Levels of Government

• Federal
  Criminal Code of Canada (Sections 444 to 447 and 264(1))
  Other: Animal Pedigree Act
          Health of Animals Act and Regulations

• Provincial
  • Animals are considered property in the eyes of the law
  • BC Prevention of Cruelty to Animals Act
  • Other: Wildlife Act

• Municipal
  • Delegated authority only; various bylaws
Provincial Legislation Governing Animal Welfare

• Provinces and territories have their own pieces of legislation that deal with animal cruelty

• The legislation varies from province to province and territory, with protection ranging from the high end of including a positive duty to protect animals and provide a certain standard or care to the very basic that deal with situations of cruelty.

• Prosecutions are regulatory offences and thus subject to a lower burden of proof

• Penalties also vary, and can include fines, imprisonment and bans on owning animals
Enforcement

• In most provinces and territories, enforcement lies primarily with the local Society for the Prevention of Cruelty to Animals, with additional enforcement appointed by the Minister (typically this falls under the Ministry of Agriculture.) Some provinces delegate investigation power veterinarians.

• Police and RCMP are also able to enforce provincial animal cruelty legislation.

• Funding for enforcement varies between the provinces, ranging from zero dollars in BC to 5 million per annum in Ontario
Cruelty Investigations Department

• In general, the primary role of an animal cruelty investigations department is to investigate reports of cruelty against animals and take the necessary steps to alleviate that animal’s distress

• Training and background vary – can include veterinarians, animal health techs, retired RCMP/Police, shelter workers – but each province has a set of qualifications to become an investigator

• In some provinces, the legislation requires that this person be appointed under a police act as a special provincial constable
Two Objectives to Every Investigation

• Primary Objective is to assist the animal and relieve it of distress

• Secondary Objective is to decrease the likelihood of repeated abuse through:
  • Education
  • Cooperation
  • Deterrence
Initial Complaint received

Valid
- Animals found in Distress
  Order Issued
  - compliance on recheck
  - end of investigation

Not Valid
- end of investigation
  Order Issued
  - non-compliance on recheck
  (may issue new orders or provide additional time)

Obtain Warrant
- attend at property

Owner relieves animals of Distress
- animals not seized
- situation monitored

Animals are Seized
- owner unable/not willing to relieve distress
  Disposition of Animals
  - not returned to owner

Animals Returned to owner pursuant to a Care Agreement
Initial Complaint

• The initial complaint is generally received by the organization or body that has the power to investigate under the provincial legislation, however, it may be received by a stakeholder agency that should pass on that call.

• Calls come in from the public, Police/RCMP, veterinarians and other agencies such as mental Health professionals

Don’t be a bystander.
Report animal cruelty!

1-855-622-7722

BCSPCA
SPREADING THE MESSAGE
Veterinarian Duty to Report

In some provinces, there is a positive duty on the veterinarian to report suspected cases of animal cruelty.

Eg in BC:

Section 22.1 - A registered veterinarian who believes on reasonable grounds that a person responsible for an animal is, or is likely, causing or permitting the animal to be in distress in contravention of this Act must promptly report, to the best of the registered veterinarian’s knowledge and belief, all of the following in information to an authorized agent:

a) the reason for believing that an animal is in distress;
b) sufficient information to contact the person responsible for the animal, including the person’s name and address;
c) sufficient information to identify the animal.
Attendance at the Property

• In order to enter private property, a person must have the right to be there. This right will either be by:
  • Consent of the owner;
  • A right of inquiry;
  • Upon observing an animal in critical distress (as defined by the Act, and does not apply to entry into a “dwelling house”);
  • By search warrant; or
  • Right of inspection
Is the Animal in Distress?

• This is the main question that an investigator must be able to answer

• The definition of what constitutes distress varies from province to province and it is important to look and understand the definition

• Some provinces have specific standards of care prescribed in the legislation to help define distress
Five Freedoms:

• Freedom from hunger or thirst
• Freedom from discomfort
• Freedom from pain, injury or disease
• Freedom to express normal behaviour
• Freedom from fear and distress
Definition of Distress:

**Ontario**: distress” means 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; (“détresse”)

**British Columbia (Alberta very similar)**:

For the purposes of this Act, an animal is in distress if it is

(a) deprived of adequate food, water, shelter, ventilation, space, care or veterinary treatment;

(a.1) kept in conditions that are unsanitary,

(a.2) not protected from excessive heat or cold,

(b) injured, sick, in pain or suffering, or

(c) abused, or neglected.
Examples of Distress:

Deprived of adequate “water”

• Is it clean, potable drinking water?
• Or maybe it’s absent
Examples of Distress:

- Deprived of adequate “shelter”.
- “Kept in conditions that are unsanitary”.
- “Neglect”
- Protected from “excessive heat or cold”?
Examples of Distress:

- “Neglect” and lack of “Care”
- In need of “veterinary treatment”

It’s necessary to provide foot, nails, hoof, horn, or beak “care”.
Opportunity to Relieve Distress

- Goal is to provide the owner with the information and tools to relieve the animal of distress and ensure the continued well being of the animal

- In most provinces, either within the legislation or as a result of policy of the investigating agency, an animal owner is given an opportunity to relieve the distress of their animal
Non - Compliance: What’s next?

• If the owner has failed to comply with the terms of the order and the animals are still in distress, an SPC has the power under the PCA Act to apply for a search warrant

• Two key elements must be present before a search warrant can be issued:
  • Reasonable grounds; and
  • Animal is in distress
Taking Custody of an Animal

• Primary reasons why we would take custody of an animal:
  • Where the animal owner, after being given a reasonable time to do so, has failed to relieve the distress of the animal;
  • Where it is the environment itself which is causing the distress and the removal is required to alleviate that distress; or
  • Where critical distress is present and immediate action is necessary to save the animal’s life.
Cross Reporting

• Unfortunately, many of our cases not only involve situations where animals are in need of help but where people may also need assistance

• In addition, there are cases where animal investigators may have reason to believe that other crimes are being committed by the animal owners

• It is important for animal investigation agencies to have protocols and practices in place to address these situations (and vice versa)

This is why we are here at this conference!
Prosecution of Animal Crimes

• There are both Federal and Provincial offences for crimes against animals
• Depending on the province, either the investigating body (eg. in Ontario) or Crown Counsel (eg. in BC) have the power to charge an individual with animal cruelty under Provincial and/or Federal legislation
Criminal Code of Canada
Sections 444- 447.1

• Applicable throughout Canada
• The legislation is housed in the “property” section of the Criminal Code
• There is a distinction between cattle and other animals
• Key elements of willfulness; without lawful excuse; unnecessary; cause or permit; and failure to exercise reasonable care
• Indictable and summary conviction offences (indictable – max 5 years imprisonment; summary max 18 months imprisonment and/or $10,000 fine); up to lifetime ban on owning animals
Charge Assessment

1. Substantial Likelihood of Conviction
   • See “Elements of Offences” and “Common Defences”
   • Generally very easy charges to prove and few viable defences
2. Public Interest

• Factors Weighing in Favour of Prosecution
  Vulnerable victims — animals have been compared to children or elderly
  Relationship of trust and/or dependence
  Substantial penalties
  Need for conditions that cannot be achieved through alternative measures (e.g. ban on animals)
  Link to domestic and child abuse and future risk of violence
  High risk of re-offending
Charge Assessment

Public Interest (con’t)
Factors Weighing Against Prosecution

• Trials can be lengthy due to defence case (can be minimized by insisting on pre-trial conference)
• Often dealing with difficult self-represented accused or “interesting” defence counsel
• Expense of expert witnesses
To Charge Criminal Code or Provincial Statute

• Consider charging either *Provincial legislation*, *Criminal Code*, or both – often multiple charges are appropriate

• *Provincial legislation* alone should be reserved for very minor cases

• Both should be charged when you might want to resolve the matter with a plea to *Provincial legislation*

• Only *Criminal Code* should be charged when the matter is serious (e.g. act of violence)
Elements of Offences: Criminal Code

- **Mens Rea:**
  - PCA Act is strict liability, no *mens rea* element to prove
  - Criminal Code offences include the term “wilfully”
  - “Wilfully” includes recklessness
  - Crown does not have to prove malice or that the accused knew the animal was suffering or that the accused intended for the animal to suffer,
  - Objective foreseeability and “reasonable person” standard applies
  - Cruelty is a consequence, similar to bodily harm
Elements of Offences

• Actus Reus:
  • *Criminal Code* sections are varied with respect to *actus reus*
  • s. 445(1) requires proof that the accused killed, maimed, wounded, poisoned or injured an animal and does not apply to owners
  • s. 445.1(1)(a) requires proof of unnecessary pain, suffering or injury to animal
  • s. 445.1(1)(b) requires proof of administering poison or noxious substance, most often applied to leaving antifreeze out to poison neighboring animals
  • s. 446(1)(b) includes neglect, or failing to provide suitable and adequate food, water, shelter and care
Common Defences

• “I couldn’t afford proper food, vet care, etc.”
  This is not a defence
  The accused has a responsibility to either provide proper care for their animals, or find alternative arrangements for them
Common Defences

• “I didn’t mean to hurt my beloved animals”
  This is not a defence

  Crown does not have to prove the accused intended to cause suffering to the animal, only that they are responsible for the act or omission that led to the suffering and that the consequences were foreseeable
Common Defences

• “I beat that dog to death with a shovel because it was growling at me and looked really menacing”

  The force used to repel an attack must be reasonable, see *R. v. Greeley* [2001] N.J. No. 207

  Further, even if a person has a lawful excuse to kill an animal, it must be done in a way that does not cause unnecessary suffering, see *R. v. Stuart* Vancouver Registry File #196079-1, January 29, 2008 (transcript available upon request)
Sentencing

• There remains a vast range of sentences in this area of law
• Denunciation and deterrence have been found to be important factors in animal cruelty sentencing
• Many of the sentencing authorities pre-date the amendments to both the \textit{PCA Act} and the \textit{Criminal Code} provisions in 2008 increasing the maximum penalties
• Courts have found that the clear Legislative intent in raising maximum penalties indicates the whole range of sentences should shift upwards, see \textit{R. v. Connors}, 2011 BCPC 0024
• In any case where there is a specific act of cruelty, neglect of a large number of animals, or the animal involved dies, the starting point should be jail even if the accused has no record
Sentencing

• Things to consider:
  • Ban on animals
  • Exceptions for a reasonable number of animals may be considered (e.g. for hoarders) but should be accompanied by a “without notice” inspection clause
  • Restitution to the SPCA for costs incurred for care of seized animals
  • Both of these types of orders are the Registry’s responsibility to prepare and I have precedents that I can share upon request
Questions?