

# EXOTIC ANIMALS AND THE LAW IN BC/CANADA

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# I. OVERVIEW

- ▶ Definitions
- ▶ Federal Laws
- ▶ Provincial Laws
- ▶ Municipal Laws
- ▶ Conclusion



## II. DEFINITION – “EXOTIC ANIMAL”

- ▶ “A pet that is neither a cat or dog” (**Canadian Veterinary Medical Association**)
  - ▶ The CVMA also states “In some cases, exotic animals can become excellent pets. To avoid mistakes that could have serious consequences, make sure you and other family caregivers have a thorough knowledge of the subject before acquiring such a **pet**.”
  - ▶ (assumes an exotic animal can be, and should be considered, a pet).

## II. DEFINITION – “EXOTIC ANIMAL”

- ▶ “Species that are non-domesticated, non-indigenous wild animals, whether captured from the wild or captive-bred.” (BC SPCA)
  - ▶ The BC SPCA states that it “is opposed to the breeding and keeping of exotic or wild animals, including their hybrids, as companion animals, and to the importation and commercial trade in exotic or wild animals destined for the pet market.”
- ▶ “Any undomesticated animal, including all undomesticated birds, snakes, terrapins, caimans, marsupials and primates.” (RSPCA)

## III. FEDERAL LAW

- ▶ **1. Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act, SC 1992, C.5**
- ▶ Implements CITES, creates import/export permit system for threatened species.
- ▶ Does not address conditions an animal must be kept in once she enters Canada.
- ▶ Captive-bred animals are largely exempt.

## III. FEDERAL LAW

### Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (cont'd)

- ▶ **Penalty, individuals:**
  - ▶ 1<sup>st</sup> offence: \$15,000 to \$1 million and/or 5 years in prison;
  - ▶ 2<sup>nd</sup> or subsequent offence: \$30,000 to \$2 million and/or 5 years in prison, much less if it's summary offence.

## III. FEDERAL LAW

### Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (cont'd)

- ▶ Penalty, (other than individual or corporation referred below): **other persons**
  - ▶ 1st offence: \$500,000 to \$6 million;
  - ▶ 2<sup>nd</sup> or subsequent offence: \$1 million to \$12 million (a lot less if Summary conviction);
- ▶ Penalty, **small revenue corporations**: 1<sup>st</sup> offence: \$75,000 to \$4 million; 2<sup>nd</sup> or subsequent offence: \$150,000 to \$8 million (a lot less if Summary conviction).

## III. FEDERAL LAW

### 2. Species at Risk Act, SC 2002, c.29

- ▶ Protects some Canadian wildlife species that are endangered or threatened.
- ▶ Prohibits the capture of wild animals from protected species.
- ▶ Captive-bred animals are largely exempt.



## III. FEDERAL LAW

### 3. Criminal Code: Sections 445.1-447.1 (animal cruelty provisions)

- ▶ **Section 445.1:** Every one commits an offence who wilfully causes or permits **unnecessary pain**, suffering or injury to an animal or a bird.
  - ▶ **Offence:** Up to 5 years in prison or \$10,000 fine and/or up to 18 months in prison
- ▶ **Section 446:** It is an offence to abandon captive wild animals in distress, or wilfully neglect them.
  - ▶ **Offence:** Up to 2 years in prison or \$5,000 and/or up to 6 months in prison.

## III. FEDERAL LAW

- ▶ **Problems with the Criminal Code Animal Cruelty Provisions:**
  - ▶ provisions are from 1892 and have not been meaningfully updated since 1950s!
  - ▶ Punitive in nature (does not prevent the actual harm).
  - ▶ Punishment minimal, given that this business is lucrative – mainly a cost of doing business.
  - ▶ Harm must be “unnecessary” and “willful” – difficult to prove, especially if part of a “generally accepted practice.”

## III. FEDERAL LAW

- ▶ **Problems with the Criminal Code Animal Cruelty Provisions (cont'd):**
  - ▶ If wait longer than 18 months for trial date, charges will likely be dismissed.
  - ▶ Animals are “property.” Generally given less serious consideration, someone initially needs to witness or report crime.
  - ▶ Private prosecutions?

## III. FEDERAL LAW

### Criminal Code, Not SO Bad – An Evolving (and different) Approach

- ▶ (CC can be improved (ie: include power to inspect, seize, amend wording to include negligence instead of “unnecessary” and “willful.”).
- ▶ **BUT** CC can be very helpful with the right expert.
  - ▶ ***Forensic Use of the Five Domains Model for Assessing Suffering in Cases of Animal Cruelty*** – By: Rebecca Ledger and David Mellor, *Animals*, 2018, Volume 8, Issue 7.

## III. FEDERAL LAW

### Criminal Code, Not SO Bad – An Evolving (and different) Approach (cont'd)

- ▶ In the past: only about evidence re: physical injury/harm.
  - ▶ Notions of psychological harm were considered anthropomorphic speculation about “pain.”
- ▶ Science has evolved:
  - ▶ Can now show that specific brain processes are associated with the generation of particular affects (“Affective State”).
    - ▶ (ie: an animal’s observed activity/inactivity, vocalisation/silence, demeanour, and appearance) > animal welfare understanding is changing (drastically?).

## III. FEDERAL LAW

### Criminal Code, Not SO Bad – An Evolving (and different) Approach (cont'd)

- ▶ Expert opinions of this type have been applied in over 30 cases across Canada since 2014. Resulted in:
  - ▶ warrants to seize the animal(s) being approved or charges being laid in 31 of these cases.
    - ▶ Of these, the accused was found guilty of causing an animal or animals unnecessary suffering in 15 cases,
    - ▶ 6 cases are still awaiting trial - and in the remaining 10 cases, charges were dropped for reasons unrelated to the Affective State content of the expert opinions (*R.A. Ledger, unpublished records*).

## III. FEDERAL LAW

### Criminal Code, Not SO Bad – An Evolving (and different) Approach (cont'd)

- ▶ le: of successful animal cruelty prosecutions where Affective State information was relied on:
  - ▶ *R. vs Paulsen (2015)*:
    - ▶ The accused left 6 dogs in a parked vehicle in air temperatures of about 27 °C.
    - ▶ All 6 dogs died from hyperthermia.
    - ▶ The Prosecution argued that all of the dogs would have experienced significant emotional suffering and distress as a direct result of the heat in the enclosed canopy of the pickup truck—specifically, anxiety, panic, nausea, and thermal and physical discomfort.
    - ▶ This affective analysis was considered as fact in the Court's decision. In finding Paulsen guilty of causing all 6 dogs **unnecessary suffering**, the nature and manner in which the dogs died was considered an aggravating factor in Paulsen's sentencing, which included a 6-month prison sentence.

## III. FEDERAL LAW

### Criminal Code, Not SO Bad – An Evolving (and different) Approach (cont'd)

#### ➤ *R. vs Hague (2015)* :

- The accused was observed inside an elevator, kicking a Doberman puppy and jerking her by the leash.
- The BC SPCA seized the dog > detailed examination revealed no physical signs of abuse.
- The case proceeded based on the circumstances of the incident (being kicked and jerked) and the behavioural response of the dog, which indicated she experienced fear and pain during the abusive act. The accused pled guilty to causing an animal unnecessary emotional distress and was sentenced to a \$5000 fine and a 3 years prohibition order.



## III. FEDERAL LAW

### Criminal Code, Not SO Bad – An Evolving (and different) Approach (cont'd)

#### ➤ *BC SPCA vs Viitre (2016)*:

- The accused was observed leaving his German shepherd dog confined inside a vehicle for prolonged periods, and of striking the dog harshly across the head.
- The BC SPCA seized the dog from the accused > detailed examination by a veterinarian determined that the dog had no signs of physical injury.
- The accused subsequently appealed the BC SPCA's decision to seize his dog, requesting that his dog be returned to him. The FIRB upheld the BC SPCA's decision, denying the accused the return of his dog, citing the negative emotional impact that this would likely have on the dog.

### III. FEDERAL LAW

#### Criminal Code, Not SO Bad – An Evolving (and different) Approach (cont'd)

- ▶ **Moral of the Story:** While the CC provisions can be improved, they currently provide enough guidance to prosecute animal cruelty, based on *emotional/psychological* harm, instead of being based on only physical evidence.
- ▶ This can (and should) apply to cruelty inflicted on exotic animals
- ▶ Find your good expert!



## IV. PROVINCIAL LAW

- 1. The Controlled Alien Species Regulation (under the Wildlife Act, RSBC 1996, c.488)**
  - ▶ Passed in 2009, after a captive tiger reached through his cage and sliced a woman's leg in 2007 (she bled to death as her three children, including one of her own, watched).
  - ▶ controls the possession, breeding, shipping and releasing of exotic animals (not native to B.C.).
  - ▶ One of the most restrictive laws in Canada regarding the private keeping of exotic animals.
  - ▶ Over 1,000 types of exotic animals are prohibited or restricted.

## IV. PROVINCIAL LAW

### The Controlled Alien Species Regulation (cont'd)

- ▶ **prohibits** a number of species, including:
  - ▶ primates (chimpanzees, monkeys, gorillas), except for humans – elephants - racoon-dogs – Hippopotamus – Rhinoceros - Bears (except for black and grizzly) – Lions – tigers – panthers - Some birds - Some amphibians - Some reptiles.
- ▶ (some size restrictions: can't be more than 3 metres or more in length when measured from the front of the snout to the tip of the tail while the animal is fully extended;
  - ▶ in other words, if smaller animal, then allowed.
- ▶ Prohibited animals allowed with permit

## IV. PROVINCIAL LAW

### The Controlled Alien Species Regulation (cont'd)

- ▶ **Breeding** of prohibited animals allowed for certain reasons (zoo, aquaria, “certified educational institutions,” “certified research institutions”).
- ▶ **Offences:**
  - ▶ For keeping a prohibited animal:
    - ▶ 1<sup>st</sup> conviction: fine up to \$100 000, and/or jail up to 1 year;
    - ▶ 2<sup>nd</sup> (and subsequent) conviction: \$2,000-\$200,000, and/or jail up to 2 years.
  - ▶ Other amounts for breeding offences

## IV. PROVINCIAL LAW

### The Controlled Alien Species Regulation (cont'd)

- ▶ **Reasons animals are prohibited:**

- ▶ *Wildlife Act* says that animals can be prohibited because of risks to:
  - ▶ the health or safety of people and/or their property; and/or
  - ▶ wildlife and/or wildlife habitat.



# CUTENESS BREAK

## IV. PROVINCIAL LAW

### 2. PREVENTION OF CRUELTY TO ANIMALS ACT, RSBC 1996, c.372 (“PCA”)

- ▶ One of the strongest animal cruelty laws in Canada
- ▶ No one is allowed to cause or permit an animal to be in “distress”
- ▶ “Distress” means:
  - ▶ deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
  - ▶ kept in conditions that are unsanitary,
  - ▶ not protected from excessive heat or cold,
  - ▶ injured, sick, in **pain or suffering**, or
  - ▶ **abused or neglected**



## IV. PROVINCIAL LAW

### PCA (cont'd)

- ▶ Exceptions for distress being caused by:
  - ▶ a regulated activity,
  - ▶ or results from an activity that is carried out in accordance with reasonable and generally accepted practices of **animal management that apply to the activity in which the person is engaged.**
- ▶ **Offence:** \$75,000 and/or 2 years in prison.

## IV. PROVINCIAL LAW

### PCA (cont'd)

#### ▶ **Challenges with Provincial Law:**

- ▶ leaves many smaller exotics available through the pet trade, legal and illegal;
  - ▶ Applies only to BC.
  - ▶ if harm is found to be part of a “generally accepted practice”, then difficult to prosecute.
- ▶ **However, evidence of psychological harm can be used**, similar to the Criminal Code provisions.

## V. MUNICIPAL LAWS

- ▶ patchwork of municipal bylaws in BC dealing with exotic companion animal ownership/sales.
  - ▶ Some prohibit a list of exotics for sale and ownership;
  - ▶ some just prohibit a list for sale; and
  - ▶ some have no exotic pet bylaws.

## V. MUNICIPAL LAWS

- ▶ Vancouver, Coquitlam
  - ▶ Prohibit the keeping of certain exotic animals (coyotes, foxes, wolves, certain reptiles. Very limited list)
  - ▶ Exceptions are aquaria, zoos, BC SPCA shelter, city shelters, and other exceptions.
  - ▶ Offence: \$250-\$10,000. No jail time.
  - ▶ Coquitlam has registration forms for the keeping of wild/exotic forms (for those grandfathered).

## V. MUNICIPAL LAWS

### ▶ **Challenges With Municipal Laws**

- ▶ Provincial law supersedes municipal laws. Adds to confusion re what animals may or may not be allowed.
  - ▶ Municipalities are allowed to “regulate, prohibit and impose requirements” in relation to animals.
- ▶ Nominal penalty for offence.

## V. MUNICIPAL LAWS

### Challenges With Municipal Laws (cont'd)

- ▶ Hard to catch sellers (bylaw focusses on “keeping” not “selling” of an animal).
  - ▶ Fewer exotic animals in pet stores, but online purchases can still be easily made > hard to enforce.
  - ▶ Roadside attractions with kangaroos, zebras and other non-prohibited exotics are unfortunately still legal in B.C.
- ▶ Financial burden and practical burden of moving, housing and caring for exotic animals.

## VI. CONCLUSION

- ▶ Bad laws or Poor Enforcement?
  - ▶ Enforcement is challenging because:
    - ▶ of private nature of keeping these animals inside homes/properties.
    - ▶ Lack of expertise.
    - ▶ Lack of resources.

## VI. CONCLUSION

### Recommendations:

- ▶ At federal and provincial level (in cruelty cases):
  - ▶ Use experts for determining cruelty (including psychological) – don't assume law will not help you!
  - ▶ For prosecutions: push for orders re ban on ownership and/or selling and/or keeping of *any* animals.



## VI. CONCLUSION

### Recommendations (cont'd)

- ▶ At municipal level:
  - ▶ Use bylaws that allow entry for inspection to ensure compliance with local bylaws (tricky!)
  - ▶ Use positive (permitted) lists instead of negative (prohibited) lists:
    - ▶ Provide better guidance to residents and retailers, municipal employees, including enforcement officers (ie: just need to look at list and see if the animal is allowed);
    - ▶ Easier to amend
  - ▶ Use registration forms for those who are grandfathered
    - ▶ Similar to cat registration? Effectiveness?

## VI. CONCLUSION

### Recommendations (cont'd)

- ▶ Outright ban of the keeping and selling of exotic animals:
  - ▶ Most Effective.
  - ▶ Easy.
  - ▶ Best for animals and people.



Thank you



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