

ANIMAL WELFARE WATCH - ONTARIO (AWWO)
ONE STRONG VOICE FOR ANIMALS

POSITION PAPER

ISSUE:

- The January 2, 2019 ruling of the Ontario Superior Court and the Government of Ontario's subsequent appeal of that decision.

AWWO Position:

- None of the ongoing court proceedings are relevant to the issues that really matter:
 - the immediate and ongoing protection of animals, and,
 - the establishment of a new animal welfare system in Ontario.
- There is nothing about the ongoing court proceedings that prevents the government from moving forward to implement a new animal welfare system that is effective and accountable with service delivery by the public sector. This should happen anyway and it should start now.

SUMMARY:

- On January 2, 2019 the Ontario Superior Court found that the law enforcement authority of the Ontario Society for the Prevention of Cruelty to Animals (OSPCA) is unconstitutional. This finding was based on a newly established principle of justice contained in the decision that a law enforcement agency should be "subject to reasonable standards of transparency and accountability". The decision stated that the OSPCA, as a private organization, does not meet that test, so its policing authority was deemed unconstitutional. The decision also allowed for a year before taking effect in order for the provincial government to implement a new animal welfare system. During that one year "grace period", the OSPCA maintains its law enforcement authority.
- On January 24, 2019 a lawyer for the OSPCA mentioned during a television panel discussion show that he'd been informed the provincial government would be appealing the OSC decision to the Ontario Court of Appeal (OCA). AWWO understands that this appeal will likely take an estimated one to two years before the OCA renders a decision during which time the OSC decision does not take effect. If the appeal is successful, it would void the January 2 OSC decision, and the OSPCA would retain its law enforcement authority. If the appeal is rejected, the OSC decision stands and would take effect one year from then. Either side could then seek leave to appeal the OCA decision to the Supreme Court of Canada.

Details of the AWWO analysis and position:

What really matters: animal protection and a new animal welfare system

- None of the ongoing court proceedings are relevant to the issues that really matter: the immediate and ongoing protection of animals and the establishment of a new animal welfare system in Ontario that is effective and accountable with service delivery by the public sector. This will remain AWWO's focus regardless of the OSC decision, the outcome of the provincial government's appeal and any additional court action.

The court proceedings are ultimately a distraction regardless of their length or outcome

- AWWO and anyone who actually cares about animals should not be distracted by these courtroom games. Let the lawyers fight it out for as long as they want. Those involved in that process seem oblivious to the challenges faced right now by the people who really care about animal welfare or those actually involved in animal protection at field level. It is not acceptable for the government to use the court proceedings as an excuse for delay or inaction. The government's focus should be on the future of animal welfare, not on the future of legal proceedings that could drag on for years.
- Regardless of any court proceedings, the provincial government should immediately establish measures to ensure animals in Ontario are protected now and during the transition to a new animal welfare system. This should happen anyway and it should start now.
- The Ministry of the Attorney General (MAG) is, in effect, "the government's lawyer" and has the lead in the appeal of the January 2 court decision. The Ministry of Community Safety and Correctional Services (MCSCS) administers the OSPCA Act and has the lead for animal welfare. AWWO will continue to urge MCSCS to implement the transition to a new animal welfare system regardless of what MAG is doing.

The OSPCA is still ineffective and unaccountable and is deteriorating rapidly

- AWWO and others had ample proof that the OSPCA has become ineffective and unaccountable well before the OSC decision. Any lingering doubt that the OSPCA has any legitimate role to play in animal welfare was laid to rest by their further cutbacks in service and personnel since that decision was rendered.

Public funds should go to support the transition to a new effective and accountable system

- The Transfer Payment Agreement between MCSCS and the OSPCA is almost at the end of its two-year term. The final \$5.75 million of the TPA is due to be paid by March 31, 2019. It is not good business practise to leave the payment of this funding until so late in the fiscal year but it was what MCSCS also did in in the previous fiscal year as well; the first year of the TPA. Making the payment to the OSPCA this close to the end of the government's fiscal year makes it difficult to build in effective accountability measures and the OSPCA's poor performance is proof that due diligence has not been exercised.
- AWWO contends that the OSPCA should not receive that money under the current terms and conditions in the TPA, which OSPCA has consistently failed to live up to. The TPA can be changed at any time by MCSCS and AWWO contends that it should be revised so the funding flows through the OSPCA to fund a transition strategy for the new animal welfare system. It might be too late to change to whom the cheque is issued but the TPA could be adjusted to require the OSPCA to appoint investigators from among staff of provincial ministries and municipalities, and to use the provincial funding for in-service training and compensation to the ministries and municipalities involved. Ministries and municipalities could also hire current or former departed OSPCA investigators or others, and these hires could be supported by the funding from MCSCS. Ministries and municipalities can, in this way, quickly begin protecting animals and help pilot the AWWO-recommended model for a new effective and accountable provincial animal welfare system."

The Minister of MCSCS should still annul the current OSPCA operating bylaw

- In 2016, the OSPCA passed an operating bylaw that eliminated annual general members meetings (AGMs), board elections and the requirement for a ministry representative to attend board meetings. This leaves the OSPCA essentially unaccountable to anyone but its own self-appointed board. Section 7(3) of the OSPCA enables the Minister of MCSCS (via Lieutenant Governor in Council) to annul OSPCA bylaws. AWWO contends the Minister should annul the OSPCA 's operating bylaw and require that – at a minimum -- a new bylaw, to be acceptable, will restore AGMs, board elections and a ministry representative at board meetings. The new operating bylaw should also establish overall support for the transition strategy to a new animal welfare system including the appointment and training of new OSPCA-appointed investigators from among staff of provincial ministries and municipalities.

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