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Official Report of Debates (Hansard)

Monday 10 December 2001

Journal des débats (Hansard)

Lundi 10 décembre 2001

**Standing committee on
general government**

Ontario Society
for the Prevention
of Cruelty to Animals
Amendment Act, 2001

**Comité permanent des
affaires gouvernementales**

Loi de 2001 modifiant la Loi
sur la Société de protection
des animaux de l'Ontario

Chair: Steve Gilchrist
Clerk: Anne Stokes

Président : Steve Gilchrist
Greffière : Anne Stokes

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Monday 10 December 2001

Lundi 10 décembre 2001

The committee met at 1609 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr Steve Gilchrist): I call the committee to order for clause-by-clause consideration of Bill 129, An Act to amend the Ontario Society for the Prevention of Cruelty to Animals Act.

Starting off with section 1, are there any amendments? I beg your pardon—the report of the subcommittee.

Mr Dave Levac (Brant): The standing committee on general government report of the subcommittee on committee business:

Your subcommittee met to consider the method of proceeding on Bill 129, An Act to amend the Ontario Society for the Prevention of Cruelty to Animals Act, and recommends the following:

(1) That the committee schedule clause-by-clause consideration of Bill 129 on Monday afternoon, December 10, 2001.

(2) That any proposed amendments should be filed with the clerk of the committee by 1 pm on Monday afternoon, December 10, 2001. So submitted.

The Chair: Will you move its adoption?

Mr Levac: I move that it be adopted.

The Chair: All those in favour? Opposed? The report is carried.

ONTARIO SOCIETY
FOR THE PREVENTION
OF CRUELTY TO ANIMALS
AMENDMENT ACT, 2001

LOI DE 2001 MODIFIANT LA LOI
SUR LA SOCIÉTÉ DE PROTECTION
DES ANIMAUX DE L'ONTARIO

Consideration of Bill 129, An Act to amend the Ontario Society for the Prevention of Cruelty to Animals Act / Projet de loi 129, Loi modifiant la Loi sur la Société de protection des animaux de l'Ontario.

The Chair: Now, section 1 of the act: are there any amendments or debate to section 1? Seeing none, I'll put the question. Shall section 1 carry? Section 1 is carried.

Section 2: Mr Colle?

Mr Mike Colle (Eglinton-Lawrence): I move that section 2 of the bill be amended by adding the following section:

“Offence of cruelty to animals, etc by breeders

“15.2(1) Every person involved in any way in the breeding of animals for sale who treats an animal with cruelty, abuses an animal, subjects an animal to undue or unnecessary hardship, privation or neglect or otherwise fails to treat an animal humanely or who encourages, consents to or acquiesces in any such treatment is guilty of an offence and on conviction is liable to a fine of not less than \$10,000 and not more than \$50,000 or to a term of imprisonment of not more than two years less a day, or to both.

“Offence by pet store owners, etc

“(2) Every owner or operator of a pet store or other retail outlet who offers for sale or sells an animal that the owner or operator knew or ought reasonably to have known was treated with cruelty, abused, subjected to undue or unnecessary hardship, privation or neglect or otherwise treated inhumanely is guilty of an offence and on conviction is liable to a fine of not less than \$10,000 and not more than \$50,000 or to a term of imprisonment of not more than two years less a day.”

The Chair: Do you wish to speak to the motion?

Mr Colle: Yes, just briefly, Mr Chairman. What we're trying to do here with these amendments is, first of all, include this bill to not only deal with cats and dogs but, as has been the tradition with the SPCA since 1919, for this to apply to all domesticated animals, all pets that are domesticated. So that's what (1) would be inclusive of. Then (2) basically deals with reducing the demand for animals from puppy mills by fining owners or operators of pet stores who willingly sell animals that are a product of puppy mills.

Those are the two reasons for these two parts of this amendment, to strengthen the bill to ensure that all animals that are domesticated as pets be included, as has been the tradition of the SPCA since 1919, and second, that pet store owners are prohibited and fined if they knowingly and willingly sell animals, pets, from pet mills.

The Chair: Further debate?

Mrs Julia Munro (York North): Yes, thank you, Mr Chair. I just want to speak briefly to the first part, in the first line, where it's in the breeding of animals. This bill is specifically designed to deal with a very specific issue, and that is the breeding of cats and dogs for sale and for breeding that doesn't meet standards of care.

While I appreciate the fact that within the context of the SPCA and their activities it is part of their responsibility to go beyond that, this amendment is specifically designed to deal with the issue of dogs and cats, puppies and kittens. That also means, then, with regard to part two, that it again is dealing with those people who are raising the animals and not meeting those standards of care.

The Chair: Further debate?

Mr Michael Prue (Beaches-East York): While I appreciate the fact that this is to deal with dogs and cats, surely the domestic pet industry is really large. Ferrets are now becoming quite popular household pets; they're warm-blooded mammalian creatures. There are enormous numbers of birds that are bred in captivity in Canada, everything from macaws and parrots, and you've got other less warm-blooded animals—iguanas are huge—lizards, fish, all manner of reptiles that are pets. Surely to harm or to treat them in inhumane ways is no less despicable. I'm just wondering and I cannot understand why it would be all right to treat a ferret or any other mammalian warm-blooded creature in a despicable way, but dogs and cats would somehow be separated from that. I really do have difficulty, and perhaps the honourable member could tell me why it's all right to treat some creatures with disrespect and cruelty, but not dogs and cats. Why are they singled out?

The Chair: Further debate?

Mrs Munro: Yes. I would just draw your attention to two things: one is that this proposed bill would be an addition to the current SPCA act, and it obviously then does afford the kind of protection for all animals. There is absolutely no question in my mind in terms of the question of animal protection in that broader context that you suggest. But the issue that many people have struggled with is the issue of animals, that is, dogs and cats, simply because of their popularity, being produced in a manner which does not meet standards of care. Certainly the SPCA has talked about, according to their records, there being as many as 400 of these in the province. It would seem to me that there's a greater urgency with regard to the protection of dogs and cats in these situations than others. They're already covered under the SPCA act.

Mr Joseph N. Tascona (Barrie-Simcoe-Bradford): I understand from what the member opposite indicated with respect to the intent was for it to apply to all domesticated animals. The Ontario SPCA Act has a specific definition for "animal" which states under section 1 that "'animal' includes a domestic fowl or a bird that is kept as a pet." So the act has already clearly indicated what is meant by "animal." That's what we're dealing with, with respect to what kind of creature or animal is already covered and is already codified with respect to the SPCA, so the member's amendment wouldn't do anything to change that. Also, the member opposite for the third party may not be aware of it, but that's what the definition of "animal" does cover at this moment in terms of what is deemed to be protected under this act.

Mr Levac: The thing I noticed, Mr Chairman, as I read—and I will plead ignorance to the complete order of law of the Ontario Society for the Prevention of Cruelty to Animals Act—I did notice in 15.1 the mention of penalty. With regard to penalty, it seems that there is no minimum, and unless that's covered off in the other part of the act—and if I'm misreading this I'd like to be corrected—with no minimum, it could be a fine of \$5 or whatever the case may be in terms of somebody being caught for the first time being cruel to an animal. Inside the amendment, it does indicate of "not less than" versus "as much as," and I think your act indicates a \$60,000 maximum but with no minimums. Is there a justification for the lack of a minimum standard? Because I realize that most laws now seem to be indicating quite clearly that there would be minimum fines to act as the deterrent in terms of the explanation given to me as to why people put minimums in now.

Mrs Munro: I just wanted to speak to that issue because I did look into it, and it was suggested to me that it's highly unusual, actually, although you do mention that there are some examples; but it is unusual to do it. There is the danger that it might be considered to be encroaching, certainly, on the power of the judiciary, on their ability to make those decisions. Even the issue of having a minimum of \$10,000, for instance, might limit the judiciary in a given situation.

I appreciate the fact that many of us privately might think that there are times when we've seen fines and penalties that appear to be too lenient, but in terms of putting it actually in legislation, it is certainly problematic.

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Mr Levac: Just on that issue, you mentioned one sentence in there: when you looked at it, it seemed that it wasn't a standard practice to put a minimum in, that you discovered that it was not typical?

Mrs Munro: That is correct.

Mr Levac: OK, and that means because of the respect for the flexibility of the judiciary versus the SPCA itself?

Mrs Munro: That's right.

Mr Levac: OK. I appreciate that.

Mr Colle: I'd just like to read into the record and for the edification of the committee what the SPCA has forwarded to all of us as an analysis of this bill. In terms of their comments, they say in "Proposed amendment of section 15(1): standards of care," in their document:

"The Ontario SPCA does not support proposed section 15.1(1) as currently drafted. Since its inception in 1919, the Ontario SPCA Act has protected all animals, not merely domesticated animals. The Ontario SPCA supports the standards of care as identified in proposed 1-5, but these standards, which deal with dogs and cats kept for breeding purposes and sale, should apply to all animals, not merely to cats and dogs used for breeding."

They go on to say, "The society favours a standards of care section, but only one that places general duties on all owners or custodians of all animals, not particular species of animal. Anything else would be inconsistent with the

Ontario SPCA Act.” So I don’t know if the member realizes that, by doing this, she’s being inconsistent with the SPCA act.

Mr Norm Miller (Parry Sound-Muskoka): I’d just like to comment about the part that I have a problem with, with these amendments. It is the fine of not less than \$10,000, the setting of the minimum. I certainly think that it should be up to the judge to look at the merits of the case and decide on a minimum fine. Certainly we see that the maximum is \$60,000, which is quite substantial, but I think it should be up to the judge to decide what the appropriate fine is. I do have a problem with it being a stated minimum amount.

Ms Marilyn Mushinski (Scarborough Centre): I guess I concur with what Mr Miller is saying in that I did a lot of research when I brought my private member’s bill, the Judicial Accountability Act. I think what it found was that where there are specified minimums and maximums, there was more of a tendency to lean on the specified minimum rather than the maximum. I believe, and I think evidence would show, that’s fairly prevalent within the Canadian justice system. Clearly there needs to be some very loud and clear messages with respect to abuse against animals. The fine of \$50,000 or a term of imprisonment to me is much more punitive than specifying a minimum of \$10,000 or both. My understanding also is that the Criminal Code is about to be amended to reflect increases in, I guess, discretion with respect to criminal activity and abuse against animals. So I think combined with those two, it would be far stronger to specify the maximum fine than to specify the minimum, because I do believe that courts will tend toward the lower rather than the higher amount.

Mr Levac: So judicial flexibility and freedom.

Ms Mushinski: Judicial accountability. Now that’s an issue that still needs to be discussed.

Mr Tascona: I’m just looking at subsection 15.2(2). I understand the intent of what the member of the opposition party is trying to accomplish. When you look at the language, “owner or operator,” it may very well be that the owner or operator is an absentee owner or may not be the one who is operating that part of the pet store or the retail outlet. It may just be a mere employee who is dealing with it and that’s certainly not going to catch the person who is involved in this type of operation.

The owner may never even be there, the operator may never even be there or may not even be hands-on for those particular operations because I know there are some pet stores that are fairly big franchise operations. Who’s the owner? Is it the 40% shareholder? Is it the person who has the financial stake in the company? What do you mean by “operator”?

Those terms really have to be defined and, quite frankly, they may be far too restrictive in terms of catching who’s going to be involved in that type of activity. It may be, just as I say, the mere employee who is basically operating that particular section of the pet store. That for a fact is how some of them do operate. You may not catch anybody under that provision. That’s

an unbelievable loophole in terms of driving through that particular section, “owner or operator.” It may not even be applicable to whom we’re trying to deal with if it’s a franchise operator.

The other part of it, “knew or ought reasonably to have known,” I think from a judicial point of view is a tremendously high standard for anyone to have to satisfy in terms of convicting anybody. I think the courts have had very great difficulty in dealing with that type of—no one’s going to outright admit, “Yes, I admit that I was cruel to that animal.” To try to build a case in saying, “Well, you ought reasonably to have known,” I can just see one legal expert after another legal expert saying, “The animal wasn’t cruelly treated.”

Who’s to say there was any cruelty? You have to have an eyewitness in terms of whether there was any cruelty. If you look at an animal, how are you going to tell whether there was cruelty? You may be able to find abuse, you may be able to see that there is injury to that particular animal. Can you connect that causal connection, saying, “That animal was injured,” to abuse or to cruelty without hard evidence in saying, “That actually happened”? I think that’s a bit of a leap of faith in terms of saying that there was a connection between an animal that was perhaps injured or didn’t look very well, and saying that there was a connection or that animal, because it doesn’t look well, has actually been cruelly treated or has been abused.

Let’s be fair to the people you’re trying to prosecute here for up to \$50,000. You’re going to have to have some kind of legal evidence to show there’s a connection between the condition of the animal and the fact that they’ve been treated cruelly and abused. If you’re not looking for a connection and you’re expecting the judge or whoever is going to decide that case, a JP, to say, “Well, the condition of the animal just has to cry out for the fact that that animal was abused,” I think it’s going to be very difficult. I think it’s reviewable, easily reviewed by another level of court.

I think what we’re looking at here, “knew or ought reasonably to have known,” is a tremendously high judicial standard for anyone who wants to prosecute that to meet. I think you’re creating a real problem, other than the loophole you can drive a truck through with respect to “owner or operator.” That’s not going to catch the person who’s operating that particular part of the pet store operation because there are all kinds of departments, as you know, in terms of dealing with the sizeable operators who are out there today, because they are getting bigger.

The Chair: Mr Colle?

Mr Colle: Yes, if I could speak to that. As you know, in the province of Ontario right now there is basically no prohibition to sell animals that are products of puppy mills. This is an attempt to stop the wholesale selling of puppies or other domesticated pets that are from mills and that are sold openly across Ontario. So right now there is basically no prohibition. It’s a free-for-all out there. In fact, 90% of all puppy mill products or animals

are sold in these pet stores, right under the government's nose, and the government's refusing to take action. So this is an attempt to act as a preventive initiative, to say, "You can't do this." Then it is an attempt to tell the owners and operators very clearly, "You can't do this."

1630

I'm more worried about protecting the animals than worrying about the legal niceties of protecting the so-called operators of these pet stores who knowingly and willingly sell these animals. It's a matter of leaving it up to a judge and the judge can decide whether that person is the legitimate operator-owner of that pet store. If we see that there is no documentation, or documentation that shows that this pet store has been knowingly and willingly selling these pets for years under the nose of the government, let that owner-operator prove in court that he or she is not selling these pets that are from puppy mills.

This is a reasoned attempt to put the onus on these people who profit from puppy mills and make them pay a heavy fine if they knowingly and willingly—and certainly you can find all kinds of excuses for people who do this and are doing it right now, or do we try to do something? This is a legitimate attempt to tell them, "You can't do this," and, "Prove that you've not selling animals from puppy mills."

I think this is a way of cutting down on these pet stores that are doing this across the province without taking any care of where the animals come from. They are the ones who are helping the puppy mill operators to profit. These pet stores have an obligation to the public because not only are they fostering this puppy mill industry, but also the purchasers of these pets are going to these pet stores and buying animals that are sick, that have been maltreated and will be a great burden to the family who buys that pet and will have increased costs in terms of pet costs.

Right now there are no restrictions on these pet stores that are part of the puppy mill industry. Let us send a strong message that they cannot hide behind legal technicalities, that they should make it their job to ensure that they are buying their pets from notable breeders and not just any puppy mill, which they are doing today. Let's take at least the first step to send a strong message to these people who are partners in the puppy mill industry.

Mr Tascona: No one's disputing that it's a legitimate attempt. Let's make it a sound step toward dealing with this. The fact of the matter is the only thing that this section would catch would be a sole proprietor operating their own pet store, and they are actively being the person who is dealing with the animals. That's the only way this would catch anything. Quite frankly, that's not reality in the real world today, if you go to a pet store operation where they're franchised out and where you're going to see the huge volumes that are going to be caught.

I understand the member's making an attempt here. Let's make it a realistic attempt. That amendment's not going to solve anything.

Mr Colle: It's pretty obvious. If you are the owner or the franchisee of a pet store and you sell pets on a regular basis, you, as the owner or the operator for someone else, have a responsibility. You're saying, "Don't try it because there's no way you're going to catch them." I say there should be a responsibility on that owner, on that proprietor, to have some kind of way of ensuring that he or she is not selling animals from puppy mills.

I think it's pretty obvious who owns a pet store and who operates it and if you hold that franchise. For you to tell me that's impossible to do in this day and age in the province of Ontario, I think you're living in a different province. These people are registered as owners, franchise holders, and in some cases they've been in business for decades. If that person is the recognized owner or operator or franchise holder, they should be brought to prove that they didn't know it was going on.

Let the owner come before a judge and say that they were not aware that for 10 years they've been selling pets from puppy mills. I say, put the onus on the operator to prove that they are not doing it, rather than giving him all kinds of legal bureaucratic excuses of why they shouldn't be brought before a judge if they are a known profiteer of puppy mills.

Again, it is an attempt to make sure that those who profit by the puppy mill operations, by selling them knowingly and willingly, should be at least told that it's illegal in the province of Ontario. Right now in the province there are no laws prohibiting that. Anyone can sell puppy mill animals right now because there's nothing on the books. At least this is something that initiates a responsibility on the part of these partners in the puppy mill industry to be responsible, and that they might be taken to court and have to prove that they did this practice without any kind of responsibility.

Mr Tascona: We live in a society where you're innocent until you're proven guilty. The fact of the matter is it's going to be for the person who's going to prosecute this case to prove that the owner or the operator had actual knowledge. The fact of the matter is, this is not a reverse onus provision where you have to prove you're innocent before you're proven to be guilty. All I'm saying is, the way it's drafted, if the person is a franchise owner who's not even near the operation of the franchise, holds about a 50% stake, doesn't know anything that's going on with that operation, this isn't going to catch him in terms of whether they had knowledge or not. That's the bottom line.

If you wanted to do something constructive, you would have defined what an owner is, you would have defined what an operator is. But if you think that an owner and operator has to go to court and prove their innocence, the bottom line is it's the other way around, and you're not going to accomplish anything by this. This is not a reverse onus provision where I have to prove my innocence first. So the bottom line is you're not going to catch anything. I'm not disputing your intent here; what I'm disputing is this isn't going to catch flies.

Mr Prue: I guess I'm just like a trout rising to the bait. I've heard this, but this is a law of civil jurisdiction.

It's on the balance of probabilities. It's not on the Criminal Code where it's beyond a reasonable doubt; it's on the balance of probabilities. If, on the balance of probabilities, a person, whether they are a franchisee or an owner, ought to have known because they've had eight or 10 puppies in the past year that have had broken limbs or things wrong with them, then surely a judge or a justice of the peace properly within his or her jurisdiction would look at that kind of evidence and think that they ought reasonably to have known. It is not saying, "We proved it beyond a shadow of a doubt that you knew," it's only saying that on the balance of probabilities, a reasonable person, having seen five puppies with broken legs this year, should have thought that maybe something is a little amiss here. And that's, I think, all that's being suggested.

I don't think that this is onerous. I don't think it's difficult. I don't think that trying to dance around the legal niceties of what a court or a judge would do, so instructed, is where we should be at. You will never know whether these laws are successful, ever, ever, until they're tested in the court. I would agree with you, it may be a difficult one. But you will never know whether Mr Colle is right or wrong until you get a couple of judgments in under the belt and everybody understands then whether this was the way to proceed.

Quite frankly, it's my belief that we should be coming at this as hard as is humanly possible in order to give every single opportunity for judges and society to react to the circumstances in which these animals are finding themselves. I don't know what the reluctance is on the part of anyone to give the best possible legislation, the best possible hook that a justice of the peace could hang his or her hat on, including the provision that it be known or might reasonably be expected to know. You find that in many, many pieces of legislation, in civil proceeding; not too many in criminal, but in civil proceeding it's quite common. I don't see anything wrong. I will definitely be supporting it.

The Chair: Further debate? Seeing none, I'll put the question.

Mr Colle: Recorded vote, please.

The Chair: All those in favour of Mr Colle's amendment?

Ayes

Colle, Levac, Prue.

Nays

Miller, Munro, Mushinski, Tascona.

The Chair: That amendment is lost.

The next amendment is also yours, Mr Colle.

Mr Colle: I move that section 2 of the bill be amended by adding the following section:

"Offences—general

"15.3 Every person is guilty of an offence and on conviction is liable to a fine of not less than \$10,000 and

not more than \$50,000 or to a term of imprisonment of not more than two years less a day who,

"(a) causes or assists in causing an animal to be in distress;

"(b) trains or assists in training an animal to fight another animal; or

"(c) fails to comply with an order made by an inspector or an agent of the society under section 13."

1640

One of the main targets here is basically to put a halt to people who are in the business of breeding animals as what they term "fighting dogs." It's susceptible to certain breeds and again it's something that's widespread across the province. It's something the SPCA has been asking for for years, that the SPCA act be amended to prohibit this practice because, again, right now there is no restriction on people breeding these animals that are bred for the sole purpose of fighting.

The others, (a) and (c), help to define specific actions to be taken to fine people who do not help animals in distress. Specifically in some cases, one of the problems has been that people who operate puppy mills do not comply with orders of inspectors from the SPCA. This is pretty habitual. In the case of the Miseners, they've been failing to comply for about 25 years. So this would give them more strict support in letting the person who is operating the puppy mill know that they must comply with the order of the society under section 13.

Those are my comments, Mr Chair.

The Chair: Thank you very much. Further debate?

Mrs Munro: I want to speak to the issues that are raised in clauses (a), (b) and (c). Certainly, the question of distress is dealt with in the current act, so I think it's already covered in the current act.

The question of "trains or assists in training an animal to fight another," I think all of us would agree that this certainly doesn't belong, according to the mores of our society, but there is the question of it being within the Criminal Code, but also it's certainly outside the purview of this bill.

As far as clause (c) is concerned, the question of section 13, this part of the current act is obviously not impacted in any way by the proposed bill that we have here.

The Chair: Further debate?

Mr Colle: Just a comment. This bill talks about a standard of care in terms of the breeding of animals. Certainly most people would not think that breeding animals to fight each other and to be cruel to each other should be part of the standard of care, that it would not be acceptable in that standard of care. That's why I think it very well fits the parameters of this act or the SPCA act, where it's very specific that this practice, which has become more popular since this act was last amended in 1969, is a real and present danger, not only to pets, but it's a very serious danger to ordinary citizens across Ontario who are sometimes subject to these cruel breeding practices. I think it's very appropriate to put this in part of the standard of care where anyone who does

this—and it's not done in a haphazard fashion. These are sometimes mills that specialize in training animals to fight each other. So I think this is an appropriate way of at least putting an end to that perhaps, and warning them they can't do it without being fined.

Mr Tascona: Just to deal with training or assisting in training an animal to fight another animal, I understand that Bill C-15, which is the Criminal Law Amendment Act, 2001, which is federal legislation, is proposing a section with respect to criminal liability with respect to fighting or baiting of animals, including training an animal to fight another animal. It's going to set out penalties. The penalties are going to range to a maximum punishment of five years' imprisonment when the crown proceeds by indictment or a maximum of 18 months' imprisonment where the crown proceeds by way of summary conviction. So quite frankly, the type of conduct that we're dealing with here certainly is being dealt with by the federal government. The type of conduct you're looking at is prison time, in terms of dealing with that type of activity. I wouldn't want to see an overlap in this, but the federal government appears to be dealing with it through Bill C-15.

Mr Colle: I just think this is a specific opportunity under the powers of the Ontario government. It's very clear they can do that. By sending a strong signal that this will not be tolerated in Ontario—whatever the federal government does is added protection on top of that. So for us to fail to act on this I think is a dereliction of duty. This is a present practice that's prolific across the province, so for us to not even refer to this in terms of a standard of care, in terms of breeding practice, is an omission of a serious part of the mistreatment of animals that causes undue harm to them right from birth, almost, because this training for aggression and for fighting is done from the earliest of days. Again, it's common, and there are no laws in the province of Ontario to stop that. So let the federal government do what they're going to do, and I hope it's strong legislation, but we have the power under the Ontario SPCA Act to do that. So I'm attempting to also stop these puppy mill breeders who engage in this type of horrific business practice, as far as they're concerned, to say it's not allowed in Ontario.

Mr Prue: The problem I have, and I thank you for bringing up Bill C-15, is that it's not law, and the current Criminal Code quite specifically has prohibitions against the likes of cockfighting, dogfighting, bear-baiting, terriers killing rats and every other kind of disgusting—I don't know what else to call it—display the human mind might think up. But it does not—unless C-15 is proclaimed into law, and not until such time as it is tested in the courts—provide the protection that you're talking about. I can understand we're both talking about it at the same time, but again I don't have any real problem with this particular section. I'm not so concerned about (a) and (c), because I think it has been dealt with primarily at other places in the act, but (b), the training or the assisting in training, is a novel and new idea which has not been in legislation before and may not be in legislation

unless the federal bill makes its way all through Parliament and through the Senate and is proclaimed, and all the other things that parliamentarians know only too well. The fact that it's being discussed doesn't necessarily mean it's going to happen. To err on the side of safety, it's better to proceed with it. It can always be withdrawn later on if the federal bill is seen to cover all of the same angles.

I don't have any difficulty with the provision that people who train or assist in the training of animals to kill or maim other animals should have a penalty, and we simply do not have a penalty in the province of Ontario at this time, nor do we have a penalty in Canada at this time.

It goes far beyond the normal thing. I know people don't generally consider anything can be cruel to fish, but people breed Siamese fighting fish with the sole purpose of feeding one so the other gets jealous and then they remove a piece of glass so the starved one will attack the one that has been well-fed and of course the starved one always loses—I mean, it's just to watch a hopeless display of an animal, a fish, that has been mistreated. I no more liken that to sport or to fun or to anything else—and I think anyone who breeds those should be subject to penalty, and they do it on purpose, because there's no other purpose for having Siamese fighting fish except to have them fight.

Mr Miller: I have a question for Mr Colle in terms of this definition of “trains or assists in training an animal to fight another animal.” Would that capture, for example, hunting with a bird dog, like a Labrador retriever, which is fairly common practice in Ontario, to go partridge hunting or pheasant hunting? In the situation where that occurs, the dogs sometimes do just grab the bird before it has flown, for example, and the dogs have to be trained to find the birds to flush them out. What would be your interpretation of this? Would those animals be captured under this?

1650

Mr Colle: No, that in no way would be the concern of the law, I would hope, because what we're really talking about here, Mr Miller, is people who breed pit bulls. From the earliest days, they teach them total aggression against other dogs. So it's dog-to-dog aggression and it's systematic aggression that's inbred and basically all the behaviour patterns of the animals are relating to aggression. So it in no way, I think, equates to that practice, which I don't think is really under the purview of the SPCA act or us here today. What we're talking about is this vicious training of dogs for the sole purpose of attacking other animals, especially other dogs.

Mr Miller: I certainly understand your intent, but when a bird dog grabs a bird, is that not attacking it, is that not fighting with it?

Mr Colle: No, that's not my understanding of it. I'm talking about dog-versus-dog aggression. Some people use this to make money. They sell tickets to these events. They basically have an underground gambling business

where they bet on dogs that fight. So we're talking about something completely different.

The Chair: Further debate? Then I'll put the question.

Mr Colle: A recorded vote, please.

Ayes

Colle, Levac, Prue.

Nays

Miller, Munro, Mushinski, Tascona.

The Chair: That amendment is lost.

Mr Colle.

Mr Colle: I move that section 2 of the bill be amended by adding the following section:

“Cease and desist order

“15.4(1) Where, in carrying out his or her duties under this act, an inspector or agent of the society becomes aware or has reasonable grounds for believing that an animal is in distress or in immediate danger of being in distress in any place where the breeding of animals for sale is carried on, the inspector or agent may order the owner or custodian or, if the owner or custodian is not present, any other person present in the place to immediately cease all of the activities relating to such breeding and all other activities causing or contributing to the distress of an animal.

“Form of order

“(2) The order under subsection (1) may be made orally or in writing, may be made without prior notice and is effective immediately.

“Timeliness of written order

“(3) An order under subsection (1) that is given orally shall be provided in writing as soon as practicable in the circumstances and in no case later than seven days after the oral order is given.”

It's just an attempt to ensure that when a society officer comes to a scene where there are unsanitary conditions or abusive breeding practices taking place at one of these puppy mills and there's an immediate danger for the animals, the officer may on the spot essentially tell them to cease and desist. Right now that is not possible. The officer would have to go through a legal process in getting a warrant and it goes back and forth. This would give the officer attending the site, seeing that the danger is there and it's relevant to the health of the animals, the right to tell the person on-site to cease and desist. That's the essential direction here and I think it would help the SPCA in carrying out its duties right now without going through all kinds of red tape and bureaucracy to get the job done to protect these animals.

The Chair: Further debate? Seeing none, I'll put the question.

Mr Colle: A recorded vote, please.

Ayes

Colle, Levac, Prue.

Nays

Miller, Munro, Mushinski, Tascona.

The Chair: That amendment is lost.

Over to you again, Mr Colle.

Mr Colle: I move that section 2 of the bill be amended by adding the following section:

“Seizure of animals

“15.5(1) Where a charge has been laid under section 15.1, 15.2 or 15.3, an inspector or agent of the society may, if he or she has reasonable grounds for believing that it would be in the best interests of the animals to do so, remove any or all of the animals from the care or custody of the person being charged and hand them over to the custody of the society.

“Return

“(2) Subject to subsection 14(2), the society shall return the animals taken under subsection (1) to the care or custody of the person from whom they were taken only if the person is not found guilty of any of the charges described in subsection (1).”

What this allows for, which is very cumbersome at this time, is for an SPCA officer to in essence remove the injured pets/animals from the site and from the custody of that animal breeder or puppy mill breeder and bring them to safety, put them in the custody of the society and only return them if they're proven not guilty. Right now that can't take place, so the animals are subject to delays and court proceedings etc. This is a speedy way of protecting animals and taking them out of the custody of the abusers.

The Chair: Further debate?

Mr Prue: I have a question, Mr Chair. Since sections 15.2, 15.3, 15.4 and 15.5 have all been defeated in committee, I need to know what I'm voting on.

The Chair: The current amendment would have an editorial comment made by legislative counsel deleting references to 15.2 and 15.3, but since 15.1 is still a valid section of the act, this amendment is in order.

Mr Prue: OK, but this clearly says, “Sections 15.2, 15.3, 15.4 and 15.5 do not apply ...”

The Chair: I think you're on the next amendment, Mr Prue.

Mr Prue: Oh, am I on the next one? Sorry. I must have flipped the page. I'm sorry, I did; excuse me.

The Chair: Any other debate?

Mrs Munro: I would just draw to the attention of other members that the current act, under section 13, does read:

“Where an inspector or an agent of the society has reasonable grounds for believing that an animal is in distress and the owner or custodian of the animal is present or may be found promptly, the inspector or agent may order the owner or custodian to,

“(a) take such action as may, in the opinion of the inspector or agent, be necessary to relieve the animal of its distress; or

“(b) have the animal examined and treated by a veterinarian at the expense of the owner or custodian.”

I think the intent of this amendment is covered by the current part of section 13, which does mean that there is that timeliness that is part of the intent in this proposed amendment.

Mr Colle: I think this amendment, for instance, is one of the amendments that the SPCA has been asking for and if it was already in the legislation, I don't know why the SPCA would be asking for it to specifically be an amendment.

My understanding of the situation right now is it's very difficult for the SPCA to take custody of these animals. A case in point is the Miseners. You're not dealing with the Boy Scouts of America here; you're dealing with ruthless people who have habitually broken the law since 1964. In fact, as we speak, the Miseners, according to reports, are still selling these abused animals today and the SPCA cannot under present legislation even go there and remove these animals because there are so many roadblocks.

This is an attempt, again, to ask for the speedy removal of these abused animals from the custody of the abusers and it's something the SPCA would like because the present act is not strong enough.

Mr Levac: The quoted section of the act that Mrs Munro indicated, if I heard correctly, did not indicate whether they can be removed. It indicated quite clearly that they could have a veterinarian come in and give service or ask the owner-operator to make changes for the pets on site. It did not say “remove.” This amendment makes it very specific what the SPCA is asking for, and that is the removal of the animals from the site, and if the operator-owner are not found guilty then the animals come back to the owner-operator in a better condition, probably, than when they left. So I'm making it clear that the quoted section of the act did not indicate removal.

1700

The Chair: Further debate?

Mr Colle: Recorded vote.

Ayes

Colle, Levac, Prue.

Nays

Miller, Munro, Mushinski, Tascona.

The Chair: That amendment is lost.

Mr Prue: Now?

The Chair: Now, Mr Prue; you don't even have to ask the question. The next amendment would be out of order because it relates to sections that have already been defeated.

I believe Mrs Munro has an amendment and I think it has been circulated. One second; legislative counsel is just redrafting something.

Mrs Munro: Yes, I do have the motion.

The Chair: All right. Amendments are in order from the floor. In the absence of any time allocation motion they're always in order.

Mrs Munro: I move that section 15.1 of the act, as set out in section 2 of the bill, be amended by striking out “five years” in subsection (3) and in subsection (5) and by substituting in each case “two years.”

Ms Mushinski: Less a day.

Mrs Munro: Legislative counsel suggests “two years” is fine.

The Chair: Any debate?

Mr Colle: Is there any explanation of that amendment? And could I have it in writing, please?

Mrs Munro: Yes. As an explanation, it is designed to be more consistent with other provincial offences.

The Chair: The Chair is getting those photocopied.

Ms Mushinski: Do offences over two years less a day apply to the Criminal Code?

Mr Colle: That's all right.

Mr Levac: Can we hear one more time if you think that's appropriate?

Ms Susan Klein: It is fine.

Mr Colle: It's provincial offences that are two years less a day.

Mr Levac: OK, I just wanted to hear it.

Mr Prue: I just wanted to hear from legislative counsel: is there any provincial legislation that has more than two years less a day?

Ms Klein: There are. Actually, as I searched I found a few offences that had three-year jail terms; I found a couple with five-year jail terms, but it's very uncommon. The most common is two years.

Mr Prue: I realize it's uncommon. Those ones that are three years and five years, can you, just off the top of your head, tell me what they are? Because I consider this quite serious. I think most people in this society think this is more than your run-of-the-mill provincial offence, like going through a red light.

Ms Klein: I have a bunch here. I'm not quite sure I can describe the offences properly. There's an offence in the Child and Family Services Act; it seems to be with respect to publication of identifying information. That's three years.

I haven't brought with me what the offences are. I have the penalty sections, but there are a couple in the Child and Family Services Act. Let me see if I can identify any more.

Mr Prue: And those penalties haven't been ruled unconstitutional or improper by any courts?

Ms Klein: Not as far as I know. But they are very rare.

Mr Prue: They are the exception to the rule.

Ms Klein: They're very, very rare.

Mr Prue: OK, thank you.

Ms Mushinski: If the Criminal Code is amended—as is being proposed, it's my understanding, by the federal government—will that in any way change or could it in any way change the provincial code section that applies to a maximum sentence of two years less a day?

Ms Klein: I'm not sure what Criminal Code amendments you're talking about.

Ms Mushinski: OK, that's fine.

The Chair: Any further debate? Seeing none, I'll put the question.

All those in favour of the amendment? Opposed, if any? The amendment is carried.

Shall section 2, as amended, carry? It is carried.

Are there any amendments or debate on sections 3 and 4?

Seeing none, shall sections 3 and 4 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 129, as amended, carry? Carried.

Shall I report this bill, as amended, to the House? Agreed. I shall do that tomorrow.

Thank you, all committee members, for your attendance and deliberations today. The committee stands adjourned.

The committee adjourned at 1705.

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