

Prince Edward Island Legislation Considered:

Animal Health and Protection Act, RSPEI 1988, c A-11.1 (“**AHPA**”)

Child Protection Act, RSPEI 1988, c C-5.1 (“**CPA**”)

Companion Animal Protection Act, RSPEI 1998, c C-14.1 (“**CAPA**”)

Dog Act, RSPEI 1988, c D-13 (“**DA**”)

Slaughter House Regulations, PEI Reg EC478/62 (“**SHR**”)

Rental of Residential Property Act, RSPEI 1988, c R-13.1 (“**RRPA**”)

Victims of Family Violence Act, RSPEI 1988, c V-3.2 (“**VFVA**”)

Animal Justice Canada Recommendations:

A. Jurisdiction

Animal Justice Canada (“**Animal Justice**”) recommends that responsibility for animal welfare be placed under the authority of the Minister of Community Services and Seniors (the “**Ministry**”). The Ministry should appoint a Director of Animal Protection to work in consultation with the Director of Child Protection. Animal Justice also recommends that the Ministry consider incorporating protection and services for animals where applicable in the *CPA* and the *VFVA*, and also include animals in protection orders.

This recommendation is based on the fact that the responsibility for animal welfare currently rests with the Department of Agriculture and Forestry (“**DOAF**”). The DOAF’s mandate is to promote the economic success of agriculture whereas the objective of animal welfare legislation is the protection of animals that are often the source of such economic success. This presents a stark conflict of interest that has the potential to influence the allocation of resources, affect inspectors’ use of discretion and willingness to enforce legislation, and compromise the department’s ability to uphold animal welfare legislation more broadly. It also creates a perceived bias amongst the public.

B. Chief Veterinary Officer

Animal Justice recommends that the province appoint a Chief Veterinary Officer.

Chief Veterinary Officers normally work with other ministries, as well as other provincial, territorial and federal agencies to protect the health and welfare of animals. Their duties include enforcing animal welfare legislation, ensuring that animal welfare establishments meet standards and regulations, and ensuring that their jurisdictions are provided with the most current

information on animal welfare. Prince Edward Island remains the only jurisdiction in Canada without a Chief Veterinary Officer.

C. Definitions – “Distress” “Abuse” “Neglect” and “Agricultural Purposes”

Animal Justice recommends that animal protection legislation clearly define “distress.” *CAPA* and *AHPA* use vague and incomplete terminology in defining how animals are protected. *CAPA* and *AHPA* identify “distress” as “abuse” or “neglect” but these terms are not defined. At a minimum, the definition should include an absence of any of the Farm Animal Welfare Council’s Five Freedoms.¹

- “Abuse” should be defined, and types of abuse must be identified, i.e. physical, emotional, psychological and sexual.
- “Neglect” should be defined, and types of neglect identified, i.e. hoarding, chaining and tethering, abandonment, and leaving in acute weather conditions either outdoors or in cars.

Animal Justice also recommends that *AHPA* define “agricultural purposes” and ensure that all animals that do not fall under this definition are included under *CAPA*. Currently, “livestock,” as defined by *AHPA* includes certain animals kept for “agricultural purposes.” Without a definition of “agricultural purposes” there is a lack of clarity as to what animals fall under the definition of “livestock.”

D. Standards of Care

1. The Codes of Practice and manuals identified in PEI’s animal protection legislation are significantly out of date. The current legislation does not identify codes and manuals as the minimum required standard of care.

Animal Justice recommends that the most current version of any code, manual or guideline serving as a standard of care be required and identified as a minimum standard of care. It is recommended that all inspectors, officers, establishments and owners be required to ensure that the most current version is followed, and identified in any order issued. The Ministry should consider maintaining an updated list of all Codes of Practice.

¹ The Farm Animal Welfare Council’s Five Freedoms may be found at <http://www.fawc.org.uk/freedoms.htm>. They are recognized by the PEIVMA as the generally accepted guidelines for the physical and mental well-being of all animals. See http://peivma.com/sites/default/files/AnimalWelfareforPEIVMA_0.pdf.

2. Currently, there are no legislated minimum requirements for any certified programme in the province that involves animals, such as the PEI Certified Beef Producer Programme.

Animal Justice recommends that legislation require any certified programme in the province that involves animals to include a standard for animal welfare, such as the BC SPCA Certified Program.²

3. Standards of care for companion animals, other than dogs and cats, are provided under the Pet Industry's Animal Husbandry Manual.

Animal Justice recommends that the Pet Industry's Animal Husbandry Manual be replaced with a more appropriate standard of care for companion animals other than dogs and cats, equivalent to the Canadian Veterinary Medical Association's *Code of Practice for Canadian Cattery Operations*³, and *Code of Practice for Canadian Kennel Operations*.⁴

4. *SHR*'s do not include violation of animal welfare legislation as grounds for revocation or suspension of a slaughterhouse license.

Animal Justice recommends that the appropriate ministry legislate that a license shall be suspended or revoked if a slaughterhouse or the operation thereof is in violation of the *AHPA*, *AHPA* Regulations, or any other relevant animal protection legislation.

5. *SHR*'s do not require slaughterhouse operators or employees to have training in animal welfare, or require that a veterinarian be present, or inspections to be conducted.

Animal Justice recommends that the appropriate ministry require animal welfare training for all slaughterhouse operators and employees, and that regular inspections with veterinarians be conducted.

6. *CAPA* and *AHPA* do not provide for emergency evacuation and housing for animals.

Animal Justice recommends that legislation provide emergency evacuation procedures and housing, and require animal establishments and other places where animals are housed to have evacuation plans.

² See <http://www.sPCA.bc.ca/welfare/farm-animal-welfare/spca-certified/>.

³ See <http://www.canadianveterinarians.net/documents/a-code-of-practice-for-canadian-cattery-operations>.

⁴ See <http://www.canadianveterinarians.net/documents/Code-of-Practice-for-Canadian-Kennel-Operations>.

E. Appointment and Training of Inspectors and Officers

CAPA and *AHPA* authorise regulations to be made respecting qualifications, identification, and codes of conduct for officers and inspectors. There are currently no regulations respecting qualifications, identification or Codes of Conduct. The current legislation does not require training of inspectors or officers.

Animal Justice recommends that regulations be created that require all inspectors and officers to complete training that includes instruction provided by professionals with expertise in animal welfare, before receiving a certificate of appointment. It is also recommended that completion of ongoing training be required for annual renewal of certification. Animal Justice recommends that the Ministry provide a training manual and guidelines and that a Code of Conduct be created. The Code of Conduct should include a requirement for any inspector or officer to declare any conflict of interest in the course of an investigation or inspection.

F. Powers and Duties of Officers and Inspectors: Investigations, Inspection & Orders

1. *CAPA* and *AHPA* do not provide a mechanism for members of the public to make complaints of suspected distress, abuse or neglect. Legislation does not require inspectors, officers or the Society to respond to complaints from the public, to conduct investigations as a result of complaints, or to inform complainants that an investigation has been conducted.

Animal Justice recommends that legislation require inspectors, officers and the Society to respond to complaints and conduct investigations based on complaints. This is to be completed within a specified period of time and a full and complete report is to be submitted to the Director of Animal Protection. The complainant of the investigation is to be informed of the findings and the remedial actions to be taken.

2. *CAPA* and *AHPA* do not authorise an inspector or officer to enter a place, provide relief or otherwise act where an animal is in danger of becoming in distress. Consequently, no action can be taken until an animal reaches the point of suffering.

Animal Justice recommends that legislation identify criteria for determining the potential for an animal to become in distress, and to authorise inspectors and officers to take action when those criteria are met. Animal Justice also recommends that legislation allow for a justice to issue a warrant where there are grounds to believe that an animal is in danger of becoming in distress.

3. *CAPA* and *AHPA* authorise, but do not require an inspector or officer to enter or inspect a place where they believe an animal to be in distress.

Animal Justice recommends that legislation **require** an inspector or officer to enter a place where they believe an animal to be in distress, or to be in danger of becoming in distress, and to conduct an inspection.

4. *CAPA* requires an inspector or officer to take reasonable steps to find an owner before entering a place or vehicle and obtain consent to entry but does not define “reasonable.”

Animal Justice recommends that legislation provide a limit after which an inspector or officer shall enter a place or vehicle in order to relieve distress or potential distress.

5. *CAPA* and *AHPA* authorise but do not require inspectors, officers or veterinarians to provide food, water or immediate care to animals in distress or in danger of becoming in distress, or emergency care to animals in distress.

Animal Justice recommends that legislation require inspectors, officers and veterinarians to provide food, water, immediate care or emergency care to an animal in distress or in danger of becoming in distress.

6. *AHPA* authorises an inspector to sell or otherwise dispose of an animal where the owner does not pay an account for costs.

Animal Justice recommends that legislation clarify the term “otherwise dispose of.”

7. The *DA* authorises a police officer, security police officer or enforcement officer to catch and impound any dog at large. The *DA* also legislates that any impounded dog shall be destroyed by the person impounding the dog after a prescribed time if not claimed.

Animal Justice recommends that the relevant sections be **repealed**. It is recommended that any animal seized be given into the care of the Society. If the animal is not claimed, that animal shall be assessed for adoption.

8. The *DA* authorises a justice to order that a dog may be destroyed by an enforcement officer where a license fee has not or will not be paid. The *DA* authorises an enforcement officer to enter premises with a warrant and search for and destroy an unlicensed dog.

Animal Justice recommends that the relevant sections be **repealed**. It is recommended that where a license fee has not or will not be paid by an owner, a justice may order that the dog be given into the care of the Society and assessed for adoption.

9. The *DA* authorises but does not require a peace officer executing a warrant to be accompanied by a veterinarian or animal control personnel when attempting to seize a potentially dangerous dog under ss. 16.3(3) and 16.4(1)(b).

Animal Justice recommends that the Act require the presence of a veterinarian, or animal control officer of the Society, or both.

Inspections

1. *CAPA* authorises regulations to be made concerning the inspection of companion animal establishments. Currently no such regulations exist. Legislation does not establish clear and consistent requirements for conducting inspections.

Animal Justice recommends that legislation require inspections to be conducted in accordance with the training and criteria set out by the Ministry.

2. *CAPA* authorises but does not require an establishment to be inspected before being issued a license.

Animal Justice recommends that all establishments be required to undergo a full pre-licensing inspection conducted by an inspector and the Chief Veterinary Officer before being issued a license.

3. *CAPA* does not require an establishment to be inspected before a license is renewed.

Animal Justice recommends that inspection by an inspector and a veterinarian is required before a license is renewed.

4. *CAPA* authorises but does not require an inspector or officer to inspect establishments without a warrant or consent.

Animal Justice recommends that random inspections without notice of establishments by an inspector or officer be required between license renewals.

Orders

1. *CAPA* and *AHPA* authorise but do not require an inspector or officer to issue an order to an owner of an animal believed to be in distress. Legislation does not require an order to be issued where an animal is in danger of becoming in distress.

Animal Justice recommends that legislation require an inspector or officer to issue an order to an owner where an animal is in distress or is in danger of becoming in distress.

2. *CAPA* authorises regulations to be made setting out circumstances for immediate life-threatening distress under which officers may issue an order to a companion animal establishment. Regulations do not currently exist.

Animal Justice recommends that regulations be created to set out the above circumstances.

3. *CAPA* and *AHPA* do not require that an animal be examined by a veterinarian before an inspector determines that an order has been complied with.

Animal Justice recommends that where relevant, an order shall remain in force until the animal has been examined and his or her condition approved by a veterinarian.

4. *CAPA* and *AHPA* do not currently require that orders be publicly posted.

Animal Justice recommends that any order issued to a companion animal establishment or place other than a dwelling be posted publicly until it has been complied with.

G. Protection

1. Current legislation allows landlords to refuse tenants who have pets.

Animal Justice recommends that the appropriate ministry amend the *RRPA* to ensure provisions in tenancy agreements prohibiting the presence of animals in rental complexes are void, and make such amendments that allow seniors' residences to accommodate pets, in order to reduce the number of animals abandoned or surrendered to the Society.

2. The current threshold for causing distress, and inflicting pain, suffering or injury is too high, and contradictory; specifically:

- a) *CAPA* s 3(1) prohibits persons from wilfully causing a companion animal unnecessary pain, suffering or injury, while s. 3(3) provides an exemption where that pain, suffering or injury is inflicted in the course of an accepted activity. By definition there is no accepted activity where “unnecessary” pain, suffering or injury can be wilfully inflicted.

Animal Justice recommends that the word “wilfully” be deleted from *CAPA* s. 3(1) and that “necessary,” “unnecessary,” and “accepted activities” be clearly defined.

- b) *AHPA* prohibits owners from causing or permitting an animal to be in, or continue to be in distress. The Act defines distress as deprivation, sickness, pain, suffering, injury, abuse, cruelty or neglect. However, the Act allows deprivation, pain, suffering, injury, abuse, neglect and other distress if caused in the course of “generally accepted practices of animal management, husbandry or slaughter,” and in the course of an activity exempted by the regulations. The Act does not define “generally accepted” or identify generally accepted practices.

Animal Justice recommends that “generally accepted” be defined and that “generally accepted practices” be identified.

- c) *AHPA* prohibits a person from causing an animal unnecessary pain, suffering or injury. It does not define “unnecessary” or distinguish this from “generally accepted.”

Animal Justice recommends that “necessary” and “unnecessary” be clearly defined, and distinguished from “generally accepted.”

- d) *AHPA* requires peace officers to assist inspectors in the enforcement of this or any other enactment relating to the prevention of cruelty to animals.

Animal Justice recommends that it be clarified whether a peace officer can assist in any other circumstances. This is not included in *CAPA*.

- e) The *DA* authorises a peace officer to commence proceedings against an owner of a dog considered to be dangerous. The *DA* does not specify how such assessments are to be made. Under the Act, the Provincial Court may order the dog to be destroyed.

Animal Justice recommends that any officer wishing to commence proceedings must have the dog assessed by a professional qualified to assess animal behaviour, such as a veterinarian or employee of the Society. Where a professional concludes that the dog was provoked, that the dog’s behaviour is likely to be improved through humane training, that

the dog can be re-homed, or, that in the professional's opinion, the dog is not otherwise dangerous, the veterinarian shall advise that the dog is not dangerous. The results of the assessment shall be required on the Commencement of Proceeding Form. It is also recommended that any intact dog seized on the grounds that he or she may be dangerous may be spayed or neutered.

- f) The *DA* authorises an owner of livestock or enforcement officer to kill a dog that is killing or injuring the owner's livestock on the owner's property, and releases the owner or enforcement officer from liability. The owner of the dog is liable for damages caused to livestock. The owner of livestock is not required to prove that the dog was vicious or accustomed to worry livestock.

Animal Justice recommends that these sections be **repealed**. It is recommended that any requirements or consequences resulting from contact between dogs and livestock be consistent with requirements or consequences resulting from contact between dogs and domestic animals, and dogs and humans identified elsewhere in the Act.

- g) *AHPA* authorises an inspector to order an owner to destroy an animal in the course of assessing a named disease.

Animal Justice recommends that *AHPA* require that any animal euthanized be euthanized by a veterinarian.

- h) *AHPA* authorises an inspector to destroy an animal where a veterinarian has examined the animal and determined that the animal cannot live without suffering. *AHPA* also authorises that inspector to destroy the animal if the animal is suffering severe distress and a veterinarian cannot provide an opinion in reasonable time.

Animal Justice recommends that an inspector shall comply with the directions of a veterinarian. It is also recommended that legislation clarify how an animal is to be euthanized in the absence of a veterinarian.

H. Included Animals

There are a number of animals that are not specifically identified in the legislation. As a result they have no or inconsistent protection.

Specifically, Animal Justice recommends that *CAPA* define “feral cat,” and provide protections for them. Regulations should be created that address the specific needs of feral cats. It is also recommended that the term “at large” be more clearly specified, and be consistent with the *DA*.

I. Excluded Animals

There are a significant number of animals that are currently excluded from protection under *CAPA*.

Animal Justice recommends that legislation consolidate protections for companion animals, livestock and poultry. It is also recommended that the Ministry consider replacing *CAPA* and *AHPA* with a single and comprehensive *Animal Welfare Act*.

It is recommended that the Ministry consider improved protection for wildlife.

Animal Justice recommends that fish be included in animal welfare protections.

J. Included Establishments

1. Some establishments are included in the legislation that, while still in existence require regulation, but which the Ministry should eliminate.

Animal Justice recommends that the Ministry move towards prohibiting zoos, aquariums, circuses and other entertainment that includes animals, both permanent and travelling. It is also recommended that the province require that any other permanent or travelling event or business that involves animals be approved and supervised by the province’s Chief Veterinary Officer and the Society.

Animal Justice recommends that pet stores be prohibited from selling animals, and instead be encouraged to assist in the Society’s adoption efforts.

Animal Justice recommends that establishments operated by the Society be removed from the definition of “pet store” in *CAPA* Regulations 1(f).

2. Some establishments are not specifically identified in the legislation. As a result, these animals have minimal, no or inconsistent protection.

Animal Justice recommends the prohibition of the commercial sale of animals over the Internet and that all licensed establishments have a physical location open to inspectors and the public.

K. Excluded Establishments

1. *CAPA* identifies a kennel as defined by the *DA* as an excluded establishment. The *DA* does not define “kennel.” Previous versions of the *DA* defined “kennel” as “a shelter for three or more dogs” (repealed 2005).

Animal Justice recommends that the Ministry re-introduce a minimum number of animals of any species that a person may sell or attempt to sell by any means to any person or establishment, beyond which they must be licensed and inspected.

2. *CAPA* identifies a licensed veterinary clinic as an excluded establishment.

Animal Justice recommends that *CAPA* identify the relevant legislation, bylaw or other authority that regulates standards and other matters related to animal welfare in veterinary clinics.

L. Powers and Duties of Veterinarians

1. *CAPA* and *AHPA* authorise but do not require a veterinarian who has entered a place or vehicle to inspect an animal where that animal is believed to be in distress.

Animal Justice recommends that legislation require a veterinarian who has entered a place, vehicle or dwelling to examine an animal and determine if that animal is in distress or in danger of becoming in distress.

2. *CAPA* and *AHPA* do not require that a veterinarian accompany an inspector or officer to a dwelling place entered under a warrant. Veterinarians are not required to conduct an examination.

Animal Justice recommends that legislation require any inspector or officer who enters a dwelling place authorised by a warrant to be accompanied by a veterinarian, and that the veterinarian conduct an examination.

3. *CAPA* and *AHPA* authorise but do not require an inspector or officer to provide care, remove an animal or provide euthanasia in order to relieve distress where a veterinarian has advised to do so.

Animal Justice recommends that the results of any veterinary examination be recognised as an order rather than a recommendation, and that an inspector or officer be required to comply.

4. Legislation does not require veterinarians to report suspected cases of abuse or neglect.

Animal Justice recommends that legislation require veterinarians to report suspected cases of abuse or neglect.

5. *CAPA* authorises regulations to be made prohibiting specific practices. No regulations currently exist.

Animal Justice recommends that prohibitions of specific practices identified in the bylaws of the Prince Edward Island Veterinary Medical Association, such as cosmetic surgery, be given legislative force.

M. The Society

The rights and obligations of the Society regarding investigations and inspections are unclear. Legislation does not identify where the Society may and may not enter.

Animal Justice recommends that legislation introduce sections that cover the role, rights and obligations of the Society. It is also recommended that legislation identify where the Society may enter, specifically identifying locations that have traditionally been in dispute, such as native reserves. The Society should have authority or permission to enter areas such as native reserves and it should be obliged to do so when requested.

N. Other Animal Welfare Organisations

1. Animal Justice recommends that legislation recognise the role of animal welfare organisations such as rescue groups and sanctuaries, and the importance of preventative services such as low cost spay/neuter, and trap-neuter-return programmes.
2. *DA* Regulations prescribes licensing fees for spayed and neutered dogs at five dollars, and fees for intact dogs at ten dollars.

Animal Justice recommends that the license fee for intact dogs be significantly increased, and that the dog of any qualifying license applicant be approved for subsidised spay or neuter surgery. Animal Justice also recommends that the province direct licensing fees towards this service.

O. Liability

CAPA and *AHPA* excludes the Minister and authorities responsible for enforcing the Acts from liability for anything done or not done in good faith under the Acts.

Animal Justice recommends that a body, such as an ombudsman, be created in order for the public to file complaints in the event that the Acts and Regulations are not enforced by the Minister and other relevant authorities.

P. Penalties

Penalties for offences under current animal welfare legislation include fines that are not consistent between species, and do not reflect the seriousness of the offence:

AHPA: \$500 - \$15,000

DA: \$100 - \$5,000

CAPA: \$200 – \$5,000

Animal Justice recommends that fines be increased and made consistent between Acts, that penalties include psychological evaluation and that the Ministry create an Animal Abuse Register.