

# Challenges & Realities of Exotic Pet Legislation



## Exotic Animals and The Law

Many Canadians assume that all animals, including exotic wild animals in the pet trade and in private homes, are legally protected from abuse, neglect and suffering. Unfortunately, Canadian law ignores the interests of exotic animals in a myriad of ways.

The truth is, many of the laws that are supposed to protect animals are very limited and only apply to a narrow extent to some animals. When it comes to exotic wild animals, not only are legal standards often insufficient to ensure their well-being, but tens or hundreds of thousands of animals are kept in situations, such as private homes, that are largely hidden from public view and meaningful oversight in the first place. Canadian laws do not specifically and comprehensively address the many problems that are unique to exotic wild animals.

## Overview of Legislation

There are two main types of Canadian legislation that enforcement agencies can use when the question of the welfare or suffering of exotic animals arises. The first is the Criminal Code of Canada, which contains the criminal laws that apply across the country. Sections 445.1-447.1 of the Criminal Code set out the laws regarding cruelty to animals. Generally, it is an offense to willfully cause unnecessary suffering to animals. It is also an offence to abandon captive wild animals in distress, or willfully neglect them.

The second kind of legislation that addresses animal welfare or suffering is provincial/territorial legislation (often called provincial animal protection, animal welfare or SPCA Acts) which may regulate the keeping of some exotic animals in a province or territory, including some aspects of how they are supposed to be treated. The strength and comprehensiveness of these laws varies from province to province. Generally, provincial/territorial laws prohibit people from causing distress to an animal, and some set out more specific standards for how captive animals are supposed to be treated. Some provinces use licensing and permitting schemes for zoos, aquariums, or the keeping of exotic animals by private individuals, while other provinces/territories have failed to implement any regulation whatsoever.

Occasionally, municipal bylaws also address animal suffering, but typically, municipal laws are more focused on prohibiting certain types of animals from being kept within a municipality for public safety reasons.

Unfortunately, both the Criminal Code and the various provincial/territorial laws are primarily punitive in nature, meaning that they only kick in after animal suffering has occurred. Criminal and provincial/territorial animal cruelty laws often do little to prevent the wide range of physical and psychological suffering that captive animals are subject to nor do they ensure anyone keeping exotic animals does so in a safe and secure manner that protects the public.

There are many other problems with these laws and their enforcement that prevent exotic animals from receiving the legal protections they deserve. In addition to the lack of focus on preventing suffering from occurring in the first place, offenses are often limited, and punishments can be minimal, especially in the case of commercial operations. In fact, a commercial enterprise that is fined upon conviction of cruelty to animals will often simply treat the fine as a cost of doing business.

One of the best ways the law can protect exotic animals from suffering is by prohibiting people from keeping them in the first place. The most efficient method for doing this is through implementation of a Positive List which lists only those animals that are allowed to be kept. Negative or prohibited lists can also be employed but they tend to be more cumbersome to manage.

It should be noted that there is an absence of comprehensive federal and provincial laws that prohibit exotic animals (although most provinces do have laws prohibiting some species), so individual municipalities have often been left to make their own rules. The result is a confusing patchwork of provincial and municipal laws across the country, often leaving many species of exotic animals with very few protections from neglect, abuse and suffering.

*In most jurisdictions, native wildlife species are prohibited from keeping by private individuals as pets, although laws and regulations about the private keeping of wildlife in captivity to vary to some degree from place to place.*

## The Criminal Code

The Criminal Code contains most of Canada's criminal laws, including sections 445.1-447.1 that are meant to address cruelty to animals. For example, it's a criminal offense to willfully cause unnecessary pain, suffering or injury to an animal and to abandon captive wild animals in distress or willfully neglect them. The animal cruelty laws in the Code date from 1892 and have not been meaningfully updated since the 1950s.

Canadian criminal law is geared at punishing crimes – typically specific incidents of aberrant behaviour – after they happen. But when it comes to exotic animals, particularly those in trade and kept by private citizens, the suffering these animals experience is not limited to one or two isolated incidents of cruelty that could easily be prosecuted under existing law. Instead, the suffering endured by exotic animals tends to be institutionalized, cumulative and systemic. Criminal law does not regulate lawful industries and cannot really modify practices that are widespread within an industry, including in the trade and keeping of exotic (wild) animals as pets. The tragedy of the exotic animal industry is not that one particular animal might be abused by his or her "owner." For many animals, the problem is the entire way of life that is imposed on them, from birth in captivity or capture from the wild until death.

## Problems with the Criminal Code

- The Code is punitive and not preventative.
- The Code might theoretically address specific incidents of animal suffering, but it does not regulate animals' daily lives or overall welfare
- To be considered criminal, a specific incident or act must be done with intent, and some of the animal cruelty offences have an additional requirement that the inflicted harm was done willfully.
- Pain, suffering and/or injury must be found to be "unnecessary". But because Canadian law assumes that animals are property that their human owners are entitled to use as they see fit, the end result of a prosecution may actually justify the infliction of pain, suffering and/or injury.
- Animal victims of abuse, neglect or suffering cannot report crimes against them. For there to be a charge, somebody must witness the crime, report it, and be willing to be a witness in any proceeding. The humane society, police or other authority must have the training, time, will and resources to investigate, and has to be able to gather sufficient evidence, that would hold up in court, to prove that a crime was committed. Additionally, the Crown attorney has to be willing to prosecute.
- Criminal actions may face lengthy court delays.
- It is not the function of the criminal law to regulate lawful industries, so the Code contains no animal housing, management or care standards.

- The Code does not provide for inspections.
- The Code does not provide any powers of confiscation.
- Even if a crime is reported, investigated and prosecuted, some Courts are reluctant to attach the stigma that comes with a criminal conviction when the victim was an animal.

## Provincial Laws

Provincial animal protection legislation does not effectively address the problems related to the trade and keeping of exotic (wild) animals as pets either.

One significant deficiency is that provincial animal protection laws typically do not contain comprehensive exotic animal husbandry standards, such as species-specific requirements for space, environmental conditions, shelter, enrichment, nutrition and safety, to name just a few. Even in provinces that do have standards in place, they are often minimal, vague and undefined making them subject to interpretation and very difficult to enforce. For example, instead of requiring that animals have a specified amount of living space, some laws require only that they have “adequate” or “sufficient” space.

Provincial legislation also often contains exemptions for practices that are considered “generally accepted” within an animal-using industry. This can result in, if lots of people hurt animals in the same way within a given industry, exemptions within the law that actually protect, rather than discourage, that harm. This means that industry gets to write its own rules when it comes to the treatment of animals.

Additionally, some provincial laws incorporate lists of prohibited, restricted or permitted animals, while others do not. For example, in Ontario, ownership of exotic wild animals is unregulated, so there are no lists of any kind. Private citizens in Ontario are able to keep a broad range of wild animals for personal amusement or other purposes. No license or permit is required, and no specific husbandry or safety standards must be met.

## Enforcement

Both the Criminal Code and provincial laws can be very difficult to enforce, especially if exotic animals are kept in private residences as enforcement personnel (e.g., animal control officers, humane society inspectors) typically have no legal authority to enter private residences to investigate the conditions under which animals are kept. Usually, a detailed, first-hand complaint from a person who has witnessed serious abuse or neglect is required prior to an enforcement official approaching a judge for a warrant to inspect and/or seize a mistreated animal. Making this situation more difficult is that private pet situations and many businesses, operating out of private residences, are not open to public scrutiny, so the likelihood that neglect, abuse or poor conditions will be witnessed in the first place is low, making it virtually impossible for law enforcement to effectively oversee privately-owned exotic animals. Even if there was access to privately kept animals, there could be no meaningful enforcement without a sufficient number of inspectors who are both available to respond and sufficiently trained to recognize signs of suffering in a wide range of exotic animals. These resources are woefully inadequate right across the country.

## Municipal Bylaws

In the absence of effective, comprehensive federal or provincial/territorial legislation to protect exotic animals kept by private citizens, municipalities across the country have been left to deal with the fallout. Sometimes, municipal bylaws are enacted in response to community concern over a high-profile incident in a town or city. For example, Toronto first enacted some prohibitions on the keeping of exotic animals after residents expressed concerns that a tiger had been chained on a public street outside a club. When Toronto’s City Council learned that Ontario had never banned the

keeping of tigers or other dangerous cats, and that no provincial laws prevented the club owners from keeping a tiger on a public street, the city stepped in to prohibit keeping tigers and many other exotic animals within its jurisdiction.

However, municipalities that have never had to deal with a high-profile exotic animal incident often have no exotic animal bylaws whatsoever. And even considering the municipalities that do have exotic animal bylaws, there is often little or no consistency from one jurisdiction to the next. An animal that is prohibited in one city might be permitted in a municipality next door. For example, Darwin, also known as the IKEA monkey, was seized from his former owner after he was found wandering in a parking lot in Toronto, a city in which private keeping of monkeys is banned. His former owner later relocated to Kawartha Lakes, Ontario, where at that time no animals were prohibited, and purchased two new monkeys.

Another problem is that many municipalities that do prohibit some exotic animals still have broad exemptions for various commercial uses of these animals. For example, there is a common tendency to allow mobile zoo and animal presentation businesses, circuses, and other exhibitors to continue using exotic animals, even though animals used this way suffer the effects of captivity and exploitation, are vulnerable to violence and neglect, and may pose a public health and safety risk.

### **Traveling Zoos and Animal Businesses**

In many areas of Canada, traveling zoo exhibits and “educational” presentation businesses are on the rise. Instead of displaying animals in one location, they put animals in cages, crates and boxes and move them by vehicle to off-site locations, including to places such as daycares, schools, libraries senior’s homes, shopping malls, consumer shows, corporate and community events, and private parties. While a controlled zoo environment usually involves minimal, if any, direct interaction between animals and visitors, traveling businesses are often heavily focused on physical contact between animals and spectators.

These activities can pose risks to both animal welfare and human health and safety. Exotic animals can experience severe fear, anxiety, stress, discomfort, other negative emotional states and suffering in their living conditions, in their regular transport to unfamiliar environments and in their regular interactions with human handlers and spectators. They may be subject to inappropriate handling, substantial periods of severe confinement that restrict or eliminate opportunities to engage in normal movements and behaviours, and improper environmental conditions.

Human handlers and spectators may also be put at risk. Many animals frequently used by traveling businesses are considered dangerous because they are large, powerful, possess physical attributes, such as claws or teeth, that can cause significant injury, or have other potentially harmful attributes. While the risk of physical attacks might be mitigated to some degree, there are some animals, such as big cats, who should always be considered problematic in public settings, especially when contact is allowed.

Additionally, most exotic animals are potential conduits for transmission of disease (i.e., zoonoses) or parasites to humans, especially to members of the public known to be particularly vulnerable to falling ill from such diseases, such as small children and senior citizens. Particularly problematic are animals, including reptiles, amphibians, birds and young ruminants, who are known to shed proportionately more pathogenic organisms than other animals.

To date, most provinces and municipalities have not yet addressed the health and safety risks posed by exotic wild animals in any meaningful way.

## CAZA Accreditation

Some municipalities exempt facilities that are accredited members of Canada's Accredited Zoos and Aquariums (CAZA), a private zoo industry association. These exemptions give CAZA members considerable opportunity to engage in offsite uses of animals that would otherwise be prohibited. In past years, CAZA members have used animals in a broad range of offsite commercial uses, including film and television productions, parades, weddings, circuses, corporate events, consumer shows, presentations in senior's homes, schools, daycares, etc. Providing exemptions based on membership in one specific private association whose interest is the promotion and protection of zoos, does not mean that the interests of animals are protected. It also fails to acknowledge other accrediting bodies that might be seen as less self-interested, such as the Global Federation of Animal Sanctuaries, and it therefore creates an uneven playing field. Additionally CAZA does not inspect the offsite use of animals and while they have standards for the home bases of these animals, these standards are not extended to offsite activities.

## Circuses & Traveling Shows

Numerous jurisdictions around the world, including many Canadian municipalities, have restricted or prohibited the use of exotic wild animals in circuses and traveling shows or implemented other restrictions; some municipalities have prohibited the use of the ankus, a fireplace poker-like implement that can be used abusively to train or control elephants. Despite a number of legal challenges initiated by industry members, the number of laws across the continent has grown resulting in the circus industry gradually phasing out a significant number of animals. In recent years, the Ringling Bros. and Barnum and Bailey Circus operation closed for good and many current iterations of the Shrine Circus no longer feature wild animal performances. Today, the aggressive challenges that the circus industry mounted in the past to block bylaws from restricting their use of wild exotic animals, has largely vanished.

## Difficulties with Municipal Bylaws

Inadequate regulation of exotic wild animals at the provincial/territorial level leaves municipalities to deal with exotic animal issues and problems. This can be a financial burden on municipalities, as staff must be trained, equipped and supported to carry out enforcement duties. It can be difficult for municipalities to provide this kind of service. Additionally, if exotic animals are present in a jurisdiction, there may be some potential for seizure of illegal, mistreated, abandoned, escaped and/or nuisance animals by municipal authorities or other agencies. In some cases, municipalities may be faced with the practical and financial burden of moving, housing and caring for exotic animals. There may also be substantive municipal resources attached to the prosecution of violators or defending lawsuits brought by individuals who disagree with decisions to seize animals in their possession.

## Prohibited (negative) vs. Permitted (positive) Lists

A large number of municipalities and most provinces in Canada prohibit the possession of certain species of exotic animals. In drafting these laws, governments usually start from the premise, "Which animals do we want to keep out of our jurisdiction?" Traditionally, the result has been a list of animal species that pose a potential danger to public safety, either because a physical attack could seriously injure a human (e.g., tigers), or because the animals are known to carry diseases or parasites that could harm human health (e.g., monkeys), or, in some cases, because animals pose significant "nuisance" issues (e.g., pot-bellied pigs). As a consequence, most jurisdictions create a prohibited list: a specific list of animals that cannot not be kept. Any animal not on the prohibited list can, by default, be legally kept by any resident.

In contrast, the other premise from which to start is, "Which animals can be kept safely and without serious risk to the public and the animals' welfare?" When this question is asked, the result is typically a list of animal species that are acceptable to keep in a jurisdiction, or a permitted (positive) list.

Generally speaking, permitted (positive) lists are much clearer, shorter, and easier to maintain, administer and enforce than prohibited lists. Permitted (positive) lists also provide better guidance both to residents, retailers, municipal employees and law enforcement officials as to which animals can be legally sold and kept. To know whether an animal species is allowed, a resident or law enforcement official simply has to look at the list of permitted animals to see whether the animal species in question is listed. In most cases, minimal or no expertise is required.

In contrast, with prohibited lists, a resident or law enforcement official must study this list and try to determine whether an animal is a prohibited animal. This can be a formidable task for non-expert personnel if they are faced with identifying specific small mammal, bird, reptile or amphibian species. In addition, prohibited lists are often very lengthy and take much longer to digest, while permitted (positive) lists are typically shorter and easier to understand and apply.

Permitted (positive) lists are also easier to amend. If, for example, new scientific research determines that a species of animal is proven safe or appropriate for captivity, it can simply be added to the permitted list. Conversely, it is difficult to add an animal to a prohibited list, because up until the animal is removed, it was legal for residents to possess that animal. Residents with existing animals of a species that becomes prohibited have been known to lobby vigorously against any expansion of prohibited lists, even if their own animals are exempt (i.e., grandparented) in the amended law. As well grandparenting has the potential to compound difficulties faced by law enforcement officials when trying to identify whether individual animals are allowed or prohibited after amendments have been made.

Permitted (positive) lists also accord more closely with the way the Canadian regulatory system works, which is designed to protect society. For example, new pharmaceuticals must be proven safe before they are permitted for sale and use, in a “permitted (positive)” approach. It would be foolish to simply allow all new pharmaceuticals to be used, and only ban one after a drug causes death or disability.

## **Enforcement Challenges**

Successfully enforcing criminal, provincial, and municipal laws pertaining to animals is often challenging. Complaint-based enforcement regimes mean that a high degree of exotic animal suffering can go unreported and undetected. But there are also additional challenges.

A significant issue is the lack of appropriate expertise in enforcement personnel. Few municipal animal control officials or humane society inspectors have any expertise in exotic animal housing, management, handling, safety, recognizing physical or behavioural indicators of stress, discomfort or suffering or even recognizing or identifying species they can encounter

Additionally, most inspection agencies favour a compliance approach to enforcing animal protection laws, meaning that unless there is serious, ongoing harm, the enforcement agency will require the custodian of the animal to make changes to better address the animal’s needs instead of laying charges for the suffering or distress the animal has experienced.

## **Seizures**

In most provinces, provincial law enforcement bodies have some authority in certain cases to seize exotic animals that are prohibited within their jurisdiction, or animals who are suffering or in distress due to mistreatment. Seizing animals poses its own challenges, because a seized animal will typically have to be kept temporarily in an appropriate facility, often pending the outcome of a trial, and depending on the outcome of the trial being rehomed to a permanent facility.

Some types of exotic animals are particularly hard to place and relocate. Although there are many excellent specialized animal sanctuaries and rescue organizations, these organizations often find themselves at capacity due to the high

number of illegal, unwanted, or abused exotic animals who are in need of homes. And sometimes there are no appropriate facilities for specific kinds of animals. For instance, Canada has no bona fide sanctuaries for reptiles.

To complicate matters, some law enforcement agencies have been transferring seized exotic animals to private zoos or members of the pet trade, thus subsidizing the very businesses that are causing the problems.

## Penalties

In many cases, the penalty for mistreating an animal is minimal. The highest penalties tend to be found in the Criminal Code, where an individual might be sentenced to time in jail for sadistic animal cruelty that involves serious suffering or death. However, individuals engaged in activities, such as the psychologically abusive practice of keeping a highly social bird, such as a parrot, in permanent social isolation, would not even be charged and therefore would not be subject to a penalty of any kind. Corporations are rarely charged under the criminal law, and if a corporation is charged and convicted of a criminal offense, penalties tend to skew toward fines and probation.

Under provincial regulatory laws, jail tends to be a more remote possibility, and penalties tend to be a fine. As with the case with corporations convicted of criminal offences, a corporation convicted of a provincial offence will likely face a fine. Unfortunately, corporations are perfectly capable of treating fines merely as a cost of doing business, and even a moderate fine is unlikely to have a significant deterrent effect on a corporate, profit-making entity.

One potentially effective penalty available pursuant to the Criminal Code and some provincial animal welfare laws is a "prohibition order" which allows a court to order that a person who has been convicted of an offence can be prohibited from owning, having custody of or residing with an animal for the length of time the court finds appropriate. However, courts are reluctant to issue an order that would prevent someone from earning their living (i.e., if their living is in the exotic animal trade).

Municipally, fines for illegal possession of a prohibited exotic animal tend to be minimal, typically in the range of up to a couple of hundred dollars.

To be effective in deterring exotic animal mistreatment and to encourage compliance with laws and regulations, monetary penalties should be meaningful and, in the case of commercial enterprises, high enough to prevent them from being a minor inconvenience and/or a cost of doing business. Prohibition orders should be made where justified and they should be enforced.

Ultimately however, the reality is that once exotic animals are in the hands of private individuals in their homes, it is highly unlikely, except in the most extreme circumstances of cruelty or where potentially problematic or dangerous exotic animals are being kept, that their owners would ever be discovered causing harm, investigated, charged, convicted and penalized.

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