

Dear Mayor and Members of Council:

I've had an opportunity to review the City of London's recent 10 December 2018 staff report for the Community and Protective Services Committee on the issue of zoos and mobile zoos. The passage that attracted my attention was at the start of the conclusion, it said that: "The welfare of animals does not constitute a municipal purpose."

As someone who was familiar with this area of law, I was taken aback, as that statement is entirely incorrect. With the amendments to the Municipal Act, 2001 the act was amended expressly to allow municipalities to regulate and prohibit activities with "animals". As for the specific topic of 'animal welfare', the municipal amendments when passed were considered so broad that their encompassing of animal welfare was assumed. That's why the OSPCA Act ***further*** extends both a municipality's and the province's jurisdiction over animal welfare and cruelty as follows:

OSPCA

21. In the event of a conflict between a provision of this Act or of a regulation made under this Act and of a municipal by-law pertaining to the welfare of or the prevention of cruelty to animals, the provision that affords the greater protection to animals shall prevail.

It's very clear that for a decade or more that animal welfare has been within a municipality's jurisdiction, as are many other animal issues.

Of the two cases cited by the report for this conclusion the first, Xentel, was argued over law before the broad animal jurisdiction amendments were in place, and so is of no use for the report's proposition that Ontario municipalities don't have jurisdiction over animal welfare.

In the second, Eng, the City of Toronto didn't advance it's animal welfare jurisdiction in defence of their shark fin ban by-law, and so it wasn't argued in defence. In any event, the court decided that shark fins were parts of 'dead animals', and so not 'animals' (go figure), and dismissed the issue at that point. As zoos and mobile zoos do not presumably go around showing off 'dead animals' to the public, so Eng is no authority for municipalities not having animal welfare jurisdiction.

It is plain, contrary to the report's conclusion, that the City of London has jurisdiction to make by-laws respecting animal welfare, indeed cruelty. If the City is going to save itself from the prospect of future litigation, this report needs to be reevaluated and corrected.

Thank you for considering this correspondence.

Sincerely,

Simon Shields LLB

(Retired) Lawyer