

What Happened When the Ontario Society for the Prevention of Cruelty to Animals (OSPCA) Raided the Toronto Humane Society (THS)?

Craig McFarlane
Department of Law
Carleton University
craig@theoria.ca

Thinking About Animals
Brock University
March 31–April 1, 2011

Introduction

On November 29, 2009, the Ontario Society for the Prevention of Cruelty to Animals (OSPCA) undertook a raid of the Toronto Humane Society (THS). This was just the latest and most acrimonious event in a decades long rivalry between the two organizations. Contrary to the representation of the event in the media, this was not a case of radical animal rights activists against the sensible advocates of animal welfare in Ontario: this was a bitter war over the meaning and purpose of animal sheltering in Ontario, if not the entire country. Most specifically, what was at issue was the legitimacy of a policy of aggressive killing to manage pet populations versus a policy of only euthanizing animals for medical reasons. For most of the animal welfare industry in Ontario—and I use the term “industry” purposively because there is a lot of money at stake, both in terms of charitable donations and in terms of animal control contracts with municipalities—it is given that an animal is not owed a life; an animal is not even owed a good life, however defined; the only obligation a human has to an animal is to alleviate any actual or potential suffering. Hence, while contrite statements are routinely made about the horror of killing animals due to a lack of space, killing animals—misleadingly called “euthanasia”—is a standard practice in Ontario and is, if not the official policy, at the very least the de facto

policy of the OSPCA and most humane societies. That animals are routinely killed for no good reason and killed at unfathomable rates is an open secret in Ontario. It is widely believed that the kill rate in Ontario shelters is 70%, overwhelmingly affecting cats. But the real numbers aren't known because no one publicizes them. Humane societies are happy to announce how many animals enter their doors each year, but none will publicly state the adoption rate or the killing rate at the shelter. Unlike most humane societies in Ontario, the THS attempted to keep its euthanasia levels as low as possible trying to operating on, albeit it would seem without any coherent plan, the so-called "no kill" model. The norm in Ontario is the "open admission" model wherein few animals are turned away, but once in the "care" of the humane societies, no guarantee is given that the animal will ever be put up for adoption.¹ I note in passing that we must clearly distinguish between euthanasia and killing. Euthanasia is always done in the best interest of the animal (or human) being put to death. Killing has no such claim and is usually a selfish act.

This brings us back to the war between the OSPCA and the THS. As with most wars, both organizations emerged out of the struggle in a comparatively worse position: while none of the criminal or provincial charges were upheld against the THS, there was significant employee turnover and an entirely new Board of Directors. What should have been a massive victory for the OSPCA resulted in significant embarrassment. The Crown Attorney dropped all charges, under both the provincial OSPCA Act and the federal Criminal Code, against the various directors, veterinarians, and managers at the THS. Following this announcement, Rob Godfrey, the Chair of the Board of Directors of the OSPCA, held an ill-tempered press conference—complete with an unhappy and uncomfortable kitten dangling from his arms—which led many to wonder if the OSPCA was as poorly managed as the THS.² Unbelievably, Rob Godfrey attempted to present the OSPCA, in distinction to the THS, as a haven for animals, saying, in reference to uncomfortable kitten, "This is Hope and she is eight weeks old. She was found abandoned by the side of the road and she had a better chance of survival at the side of the ride than she would have had at the Toronto

1. The only major exception to this terrain in Canada is found in the Calgary Animal Services, which is both an open admission and no kill facility. Despite the successes of Calgary Animal Services, there have been no attempts that I am aware of to bring the model to Ontario.

2. Rob Godfrey is the son of Paul Godfrey, most famous for bringing the Blue Jays to Toronto and the construction of the Skydome. Paul Godfrey is an establishment conservative figure, who has managed many conservative newspapers and newspaper chains in Canada. The press conference was held in the hotel adjacent to the Skydome. The symbolic dimensions of a son having a temper tantrum in his father's house because he lost an argument are overwhelming. Rob is generally viewed in the conservative establishment as significantly less skilled than his father and only holding most of his positions by virtue of nepotism.

Humane Society.”³In addition to these symbolic defeats and strategic blunders, the OSPCA came out of the struggle with an entirely new problem: they ordered the destruction of all the animals in their care at their York Region branch, which was also the site of the headquarters for the entire organization, due to an outbreak of what they were calling “an especially virulent strain of ringworm.” Ringworm, in essence, is what humans call athlete’s foot. The massive execution of animals for a treatable condition met protests as strong as those that greeted the THS six months earlier. A year later, the York Region branch remains closed.

While I’d like to present a complete analysis of what took place, the most I can do in this presentation is outline what happened and point out interesting divisions within the animal welfare industry in Ontario.

Background

The animal welfare system in Ontario remains firmly entrenched in its late nineteenth century origins. In this way, it falls into the various social hygiene and purity movements of the Victorian era which were largely concerned with sources of moral disorder, such as urban poverty, alcohol (temperance), and single working women (white slavery). The animal welfare system is primarily concerned with animals kept as pets and legislation exempts agriculture from its purview through the familiar common farming exception: that is, if the practice is common, it cannot by definition be deemed inhumane and, thus, it is necessarily in accord with animal welfare standards. In effect, the OSPCA polices pet owners, especially the poor and those suffering from psychiatric conditions. Meanwhile, humane societies clean up after irresponsible pet owners, mostly by killing unwanted animals.⁴ There are, of course, exceptions to this general system—the most notable, in Ontario, being the THS, which did its best not to kill animals except in the case of absolute necessity. That is, a practice of actual euthanasia. Euthanasia, of course, is when death is given as a gift in order to alleviate incurable and fatal suffering; that is, when it is done in the interest of the subject being killed. It is a misnomer to claim that animals are “euthanized” due to a lack of space, for instance: this constitutes straight-up killing.

The precursors to the current OSPCA had their origin in 1873. Like many nineteenth

3. Rob Lamberti and Kevin Connor, “‘Too much evidence’ to drop charges: OSPCA,” 2010, <http://www.torontosun.com/news/torontoandgta/2010/08/16/15039966.html>.

4. Note: the current incarnation of the Ontario SPCA Act gives the OSPCA exclusive control of the phrase “humane society.” This was a point of especially acute tension between THS and the OSPCA when the bill was before provincial parliament.

century organizations of this sort, it was concerned with both cruelty to animals and children. Over time, this organization split into the current OSPCA and the current Children's Aid Society of Ontario. In 1887, the OSPCA managed to have the first public officer appointed for the investigation of cruelty against animals. However, those powers were largely limited to the animal cruelty provisions in the Criminal Code of Canada. Finally, in 1919, the first provincial animal welfare act was passed, allowing the OSPCA to appoint its own agents and conduct its own investigations. The act was amended in 1955 to give the OSPCA police powers, such as the power to enter property and seize animals in distress. The act was amended again in 2008, greatly expanding the scope of penalties for animal cruelty offences such that the OSPCA now brags that the OSPCA Act in its current form is the strongest animal protection legislation in Canada—this in itself is an indictment of the state of animal protection in Canada. Technically, any peace officer in Ontario is empowered to enforce the OSPCA Act. However, in reality, the OSPCA Act is only enforced by the agents and investigators employed by the OSPCA. The OSPCA is not a government agency, but a privately run and funded charitable organization. To the best of my knowledge, animal welfare is the only area of law in Canada that is privately policed. The raid on the THS constituted the first major attempt to use the new powers granted to the OSPCA under the 2008 amendment. There are presently 20 branches, two veterinary hospitals, and one wildlife centre run by the OSPCA. Additionally, there are 30 affiliates of the OSPCA, which is a special status for a local human society granting it the power to hire an OSPCA agent to enforce the Act. Of the affiliates, the THS—whose status as an affiliate is constantly in limbo—and the Ottawa Humane Society (OHS) are by far the largest, both in terms of the number of animals that come through their doors and in terms of the charitable money at stake. For the OSPCA itself, the THS, and the OHS, there is constant struggle for limited animal welfare charity dollars and, in many ways, these organizations run themselves as major charities: a significant portion of their overhead goes to raising money which in turn is used to raise more money with the result being that the well-to-do in each city have quarterly black-tie affairs where they can dine on veal and foie gras at \$500 a plate.

As with the OSPCA, the THS was founded in the late nineteenth century, 1887 to be specific, and took on a roll of encouraging generally humane behaviour, initially to animals (especially horses) and subsequently to children. Over time, the THS became largely concerned with domestic pets and it lost its focus on working and agricultural animals and children. The THS is now the largest humane society in the largest city of Canada. Through the 1990s and 2000s, the THS became increasingly concerned with developing an approximation of a no kill facility, largely through an

ideological war with Toronto Animal Services, which is the municipal animal control department. As with most animal control facilities, animals are more often than not killed after the holding period clears, which is seventy-two hours in Ontario.

Through a variety of factors that are not well understood, the precursor to the OSPCA increasingly set its focus on Ontario as a whole while the THS remained concerned with Toronto exclusively. Over time, the OSPCA transformed itself into the animal police and also ran sheltering and animal control services on the side. The THS remained true to its purpose and focused its efforts, until comparatively recently, on managing the unwanted pet population in Toronto. At no point did either organization become particularly interested in other uses of animals, for instance, as scientific test subjects or in agriculture. Indeed, the THS, once automobiles had definitely replaced horses on the streets of Toronto, became exclusively concerned with pets.

The Search Warrant and the Charges

At the centre of the OSPCA raid on the THS was a very long search warrant, written by lead investigator Kevin Strooband. As with all Criminal Code search warrants, it outlines the places to be searched, the items to be searched for, the alleged offences which will be substantiated by the search, and the grounds for belief. I'll return to the specific charges in a moment. The warrant specified that three locations were to be searched: the buildings and grounds of the THS, the residence of THS President Tim Trow and his own personal vehicle. The warrant sought access to an extensive range of items, including "all animals," veterinary records, any statistical records, adoption records, inventory and financial records, nearly any and all communications, and all the food on site.

Fortuitously, Kevin Strooband was not only the lead investigator on the case, but he is also the executive director of the Lincoln County Humane Society (LCHS), an OSPCA affiliate, located right here in Saint Catharines. Strooband is clearly proud of his accomplishments and those of the LCHS as he spends a significant amount of time talking about them in his affidavit. Most interesting is paragraph six, which unexpectedly and unintentional reveals what is at stake in the investigation:

The LCHS deals with over 5000 animals each year, including 3066 cats in 2008. Of those 3066 cats, 1940 were strays. Of those strays, 1476 were euthanized, primarily due to a lack of space and illness. My research has indicated that our rates of euthanasia are consistent with those across

the country.

Because most of us do not have calculators in our brains, I'll help out with the math: 48% of cats admitted to the LCHS are killed “primarily due to lack of space and illness.” The fate of a stray cat (defined, presumably, as a cat whose ownership is not easily determined or is not determined during the 72 hour animal control holding period) is even worse: 76% of them are killed. We should note a couple of things here. First, Strooband does not differentiate between killing due to a lack of space and killing for medical reasons—he collapses these two categories into one. Second, Strooband admits that animals are killed for reasons in addition to a lack of space or illness. He says as much when he writes, “*primarily* due to lack of space and illness.” What are the other reasons? The animals look at him the wrong way? Error? Whim? It is all very troubling. Finally, Strooband defends his massacre on the basis that everyone else does it. While more or less true, this is hardly inspiring moral leadership. Such horrible statistics are routinely praised in the Ontario animal welfare industry. For instance, the OHS brags that it “cares” for over 11,000 animals each year. The OHS, like many animal welfare organizations, has both sheltering facilities and an animal control contract with the local municipality. In 2007–8, the most recent numbers given on the OHS website, they brag that 3,768 animals found homes; a rate of roughly 35%. One wonders what happened to the other 7,232 animals. The point here is that a stray cat has a greater life expectancy on the street than it does in the “care” of an animal shelter in Ontario.

This point is worth dwelling on. In their Frequently Asked Questions section about the THS raid, the OSPCA describes euthanasia as follows:

- The decision to euthanize any animal is made on a case-by-case basis based on the medical expertise of a team of veterinarians.
- It's a difficult decision to make, and nobody likes to make it. But to do nothing—to allow animals to suffer—is worse and constitutes cruelty.
- To let a dying or terminally ill animal suffer in pain is widely recognized as cruelty.
- Again, this is a decision that is made by a licensed veterinarian.⁵

5. Ontario Society for the Prevention of Cruelty to Animals, *Answers to General Questions from the Public and Donors*, 2009, http://www.ontariospca.ca/press_releases/2009/09_dec02.html.

While the OSPCA consistently refers to euthanasia as a medical decision in its public statements, it is clear that this is used to cover-up killing animals for non-medical reasons. After all, if people found out that nearly 70% of animals admitted to the care of a humane society in Ontario end up dead within three days, donations would rapidly dry up. Thus, it is rather surprising that the OSPCA would make the raid on the THS a matter of the improper use of euthanasia—in the case of the THS, not killing animals at a rate of 70% (the THS usually had a kill rate of less than 10%). In OSPCA CEO Kate MacDonald's deposition, it was her view that only 265 animals out of 1,100 animals held by the THS were adoptable. I note that MacDonald is a professional fundraiser and has no veterinary experience. In other words, it was her view that the THS should adopt a kill rate comparable to other humane societies in Ontario: in this particular case, a kill rate of roughly 75%.

The charges against management and directors at the THS were extensive, comprising both federal Criminal Code charges and provincial offences under the OSPCA Act. It is significant that these people were charged under both acts. I'll return to that significance in a minute.

- Tim Trow, President, THS: two counts of Conspiracy to Commit an Indictable Offense, two counts of Cruelty to Animals, and three counts of Obstruction of a Peace Officer.
- Gary McCracken, General Manager, THS: two counts of Conspiracy to Commit an Indictable Offense, one count of Cruelty to Animals, and three counts of Obstruction of a Peace Officer.
- Dr. Steve Sheridan, Head Veterinarian, THS: one count each of Conspiracy to Commit an Indictable Offense and Cruelty to Animals.
- Andy Bechtel: two counts of Conspiracy to Commit an Indictable Offense, one count of Cruelty to Animals, and three counts of Obstruction of a Peace Officer.
- Romeo Bernadino: two counts of Conspiracy to Commit an Indictable Offense, one count of Cruelty to Animals, and three counts of Obstruction of a Peace Officer.
- Additionally, all of the above, as well as all members of the Board of Directors of the THS, were charged with five counts of animal cruelty under the OSPCA Act. Later, another thirty-eight charges of animal cruelty were added against the Board of Directors.

Two more people were charged well into the investigation:

- Trevor “Tre” Smith, a former OSPCA agent employed by the THS, was charged with two counts of Personating a Peace Officer and one count of Perjury. The substance of the charge was that Smith acted as an OSPCA agent after THS had its enforcement privileges suspended.
- Mark Beauchamp, an agent with the OSPCA, was charged with one count of Obstruction of a Peace Officer, alleged for informing the THS that the OSPCA was going to inspect its facilities.

Finally,

- Vijay Kumar, a former supervisor at the THS, was charged with two counts of animal cruelty.

In all, there were 33 Criminal Code charges, including 6 charges of animal cruelty. Additionally, a grand total of 602 provincial animal cruelty charges were laid under the OSPCA Act. The significant difference between Criminal Code animal cruelty and OSPCA Act animal cruelty is that under the Criminal Code, that act of cruelty must be knowingly and intention conducted. Thus, to use a simple example, failing to feed an animal because you didn’t know it needed to eat in order to survive is not Criminal Code animal cruelty; not feeding an animal even though you know it needs to eat in order to survive is Criminal Code animal cruelty. It is exceptionally rare to make Criminal Code animal cruelty charges for the simple reason that it is considered an acceptable defense to say, “I didn’t know you had to feed an animal” or “I didn’t know that a dog with a broken leg needs medical treatment.” Under the OSPCA Act, the intention to cause suffering need not be present. The Act imposes a duty of care upon everyone with custody of an animal: if you have an animal, then you must meet certain minimum standards of care; if you fail to meet these minimum standards of care, then you have committed an act of animal cruelty.

Now, what is absolutely amazing is that the Crown dropped *all* charges. To make this clear: the Crown Attorney dropped 33 Criminal Code charges and 602 OSPCA Act charges. In her statement to the court, Crown Attorney Christine McGooey said, “After careful assessment of the material available to us and the applicable legal principles, the Crown has determined that all of the charges before the court today should be withdrawn.” She outlined her reasons for withdrawing the charges over an incredible ten pages of text. The Crown cited problems with the original search warrant; to wit, the lack of limitations with respect to duration and times of the search warrant; for using a Criminal Code search warrant rather than an

OSPCA Act search warrant; over breadth of the warrant and seizures; inviting the media to participate in the search; the use of unauthorized civilians in conducting the search; and failure to address the likely presence of client/attorney protected communications. In the Crown's estimations, these problems with the warrant rendered it useless and liable to rejection in court on constitutional grounds. Unfortunately, all the evidence obtained through the warrant was useless and would be inadmissible.

The Aftermath

The result of the Crown's withdrawal of all of the charges was significant. First, it demonstrated what can only be described as incompetence on the part of lead investigator Kevin Strooband and senior management at the OSPCA, including CEO Kate MacDonald and Chief Inspector Connie Mallory. In their eagerness to destroy senior management at the THS, the OSPCA, through an unprecedented media campaign, ended up ruining their own case—including 608 credible charges of provincial and Criminal Code animal cruelty. Second, the complete failure to bring these charges to court led a number of people, most notably Toronto Sun columnist Peter Worthington, to call for the investigative and sheltering functions of the OSPCA to be split. It was suggested that the Attorney General should take over investigative and enforcement functions while the OSPCA only be allowed to continue its sheltering operations at their branches. Finally, in May 2010, a few months before the Crown dropped all the charges against the THS, the OSPCA found itself embroiled in a new controversy: the OSPCA had announced that its York Region Branch, located at the same facility as their provincial headquarters, had an outbreak of ringworm, an easily treatable fungal infection. Within twenty-four hours of announcing the outbreak, 99 animals had been, in their words, "euthanized." Another 91 cats and 23 dogs were awaiting medical decisions on whether they too should be killed. The OSPCA also complained that 15 animals were stolen by employees. It was widely understood that the vast majority of the animals—possibly upwards of 350—were expected to be killed. Due to public outcry, including having the issue debated in provincial parliament, the massacre was limited to only 102 casualties, raising the question why only 102 were killed out of the original 350 animals given that the OSPCA claims that euthanasia is limited only to medical cases. In all, both the sheltering and the enforcement functions of the OSPCA have come into serious question.

Notwithstanding the deaths of many animals during the occupation of the THS by the OSPCA and a significant degree of staff, management, and director turnover, the THS has managed to weather the storm comparatively well. While not promising a

no kill facility, the new THS has begun to implement low-cost, high-value spay and neuter services and has revisited all of its sheltering and medical protocols.