

What is the legal effect of the new DFO-OSPCA agreement? There is none.

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It was recently announced that the DFO reached an agreement with the OSPCA regarding investigations and complaints respecting dairy farms. Although the DFO should be commended for negotiating such a deal – because the law does not require the OSPCA to consult with any group, whether that be a livestock group or even OMAFRA – the new agreement does nothing to truly protect farmers from actions of the OSCPA. Such an agreement does not establish any legal rights, nor does it have any legal effect. If an investigation of a livestock farm failed to follow the protocol set out in such an agreement, it would have absolutely no bearing on any charges, orders or other consequences that might follow.

It should be noted that the DFO and the OSCPA have reached similar agreements in the past – only to have the OSCPA unilaterally cancel it without notice to anyone – including the DFO. An earlier OSPCA standing order, compelling agents and investigators to work with the DFO before entering upon a dairy farm, was unilaterally cancelled in May of 2009 without notice. There is now a dairy farm case before the Courts which involves an investigation conducted while there was no agreement in place – and, at the time, the DFO was unaware that their agreement had been cancelled.

The root of the OSCPA problem lies with the legislation itself – the *Ontario Society for the Prevention of Cruelty to Animals Act* [*OSCPA Act*]. It needs to be fixed. According to the *Act*, the definition of “distress” is extremely broad, and includes anything deemed to be “undue or unnecessary hardship” (section 1). The *Act* also authorizes OSCPA agents and inspectors to Order farmers to “take such action as may, in the opinion of the inspector or agent, be necessary to relieve the animal of its distress [a.k.a. undue or unnecessary hardship]” (section 13 – note: this section provides no exception for normal farm practices). Failure to comply with an OSCPA Order is an offence under the law and punishable by fines and /or jail time (section 18). If you couple these provisions together, the *OSCPA Act* provides the OSCPA with powers to dictate how livestock farms operate. It is that simple.

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Although these provisions are very concerning, the *most* concerning element of the legislation, from a ‘principles of fundamental justice’ perspective, involves the fact that OSCPA agents and inspectors are given “powers of a police officer” (section 11). The OSCPA is a private organization. It receives absolutely no government oversight or control, and there is no mechanism available, through our elected officials, to influence OSCPA policy or protocol.

The OSCPA does not fall under the jurisdiction of the MNR or any other ministry. There is no government power to appoint the Chief Inspector – as it does, for example, with the OPP commissioner and Chiefs of Police. The OSCPA is also not subject to any complaint review board – as are the police. Nor are they subject to any “access to information” legislation, so you cannot obtain any information or record that the OSCPA may be keeping on you – again, unlike the police. They are a private police force with nothing in place to hold them accountable.

Structurally, the OSCPA operates as a private charity. It is governed by a privately appointed Board of Directors, and it operates pursuant to its own privately enacted by-laws. OSCPA Directors are elected by a vote of its ‘vote-eligible’ members. In the case of the OSCPA, vote-eligible members are composed of “Affiliated Local Societies” – a.k.a. local OSCPA detachments. Voting rights of members are weighted by members’ revenues – in other words, the more revenue a member brings in, the greater the voting power. OSCPA revenues include monies generated by selling seized animals and charging fees for care of animals seized. Revenues also include public donations, which are inspired, at least in part, by the number of complaints investigated, charges laid, orders issued and animals seized (such statistics are promoted in the OSCPA’s annual report).

Not only do OSCPA revenues directly impact upon the leadership and policy of the OSCPA, such revenues also provide for the salaries and the operating budget of the OSCPA investigations wing. 100% of the OSCPA’s investigations budget is comprised of the OSCPA’s own ‘fund-raising’ efforts – it receives no government financial support. It is here that you have the most obvious and disturbing conflict of interest produced by the law. I ask you: can an investigator, whose salary and resources are tied to the outcome or product of an investigation, be sufficiently unbiased when carrying out the investigation?

In addition, because the OSCPA is a private institution with no governments oversight, there is nothing to prevent the OSCPA from being influenced (or even infiltrated) by special interest

groups (i.e. animal rights groups). It is like having Greenpeace trusted to police our environmental legislation.

And for anyone who thinks that the some peoples' OSCPA problems will never affect them, please think again. Right now, the OSCPA is enforcing livestock farming's 'best practices' as a minimum standard. Will they someday deem tie-stall barns and battery cages as causing "undue or unnecessary hardship"? Or how about with respect to intensive livestock farming in general? The OSCPA's *Animal Welfare Position Statement* regarding Farm and Agricultural Animals already deplores "close confinement, also known as factory farming" practices. Ironically, at the same time the OSCPA expressly opposes large intensive operations, they are cracking down on small-scale low-tech operations that do not feature all of the costly, and esthetically pleasing, benefits of a modern livestock operation. If they are against both large and small scale operations, what kinds of livestock operations are acceptable? I'll let you draw your own conclusions.

In summary, yes it is a good thing that the DFO managed to strike this deal. It might help. But in the end, it is like treating tuberculosis with cough syrup. The problem that needs to be fixed is the law itself. The OSPCA's investigative wing is a product of bad law. We need a major legislative overhaul of the *OSCPA Act* – not just a tinkering – to fix the problem.