

Animal Protection Act (APA) Questionnaire

**Submitted
Sept 13, 2004**

Respondent's Information:

Name (optional): Alberta Farm Animal Care Association - AFAC

Industry Municipality Humane Society Other _____

1. Definition of Animal Distress (Section 4.1)

Question: Should the definition of distress be changed, and if so, what should be added to the definition and why?

Comments:

Yes.

AFAC recommends the definition of distress should be expanded to include reference to conditions that, if not immediately alleviated, will over time, result in death or significantly impair or result in rapid deterioration of the health of the animal.

This would enable the Peace Officer (Alberta SPCA) to deal more effectively with animals that are obviously going to lose condition, given the state of feed, water and shelter currently available. As it is, the Alberta SPCA tend to wait and observe animals going into distress, before taking appropriate action in the interests of the well-being of the animal, even though it may be evident that the animal is losing condition rapidly. Usually other standards of care are not being met either.

This expanded definition would also help in dealing with animal abandonment.

Any reference to mental distress in the definition should not be included as measurement is too subjective, at this time.

AFAC believes that generally accepted industry practices and standard of husbandry are humane and are in the long term best interest of the health and well-being of the animal. AFAC welcomes change driven by research (ie. the development, replacement and refinement) that would reduce the need for some practices that may cause short-term pain.

AFAC recommends the word 'distress' or suffering be decoupled from the phrase 'generally accepted' industry practices/standards or accepted activities. This applies to Section 2(1) of the APA. Also, AFAC recommends applicable codes of practice or other standards (eg. Canadian Council of Animal Care guidelines, etc.) be referenced in Regulations.

Wording in this public document should not directly link 'distress' with these acceptable animal care practices. Public misinterpretation is a concern.

2. Animal Distress (Section 4.2)

Questions: Should this section of the *Act* be changed to include any person whether or not they are the owner or person ordinarily in charge of the animal?

If so, how and why should the *Act* be changed?

Comments:

Yes.

AFAC recommends the APA be applicable to any person who shall cause or permit an animal to continue to be in distress.

3. Seizure of Animals by a Peace Officer (Section 4.3)

Questions: Should Peace Officers be allowed to seize an animal whether or not an owner or person ordinarily in charge can be found or whether those persons are prepared to take immediate action?

If they should, under what circumstances?

Comments:

AFAC recommends that if an animal is in distress and seizure is warranted to relieve its distress, then a Peace Officer, with agreement from an independent or third party, such as a veterinarian should be able to do so.

This is especially applicable to extreme or obvious evidence of long time distress.

AFAC recognizes that in some circumstances (e.g. location, confinement, animals unable to withstand rigors of transport), seizure to alleviate distress must occur on site. AFAC recommends the APA enable this.

AFAC recognizes owners must be given the chance to turn things around. However, AFAC recommends the owner should have to agree to third party supervision and provide a corrective action plan in writing rather than just 'saying' they will fix the problem.

AFAC recognizes that the person causing the distress may euthanize and dispose of the animal(s) in question to destroy evidence. AFAC recommends the APA be corrected so this is avoided.

The Manitoba Animal Care Act states Duties of Owner 2(1). AFAC has reviewed this and agrees with its inclusion. Note, Alberta Livestock Transportation Regs include "Duties of Operator".

4. Authority to Enter Premises (Section 4.4)

Questions: Should Peace Officers, under reasonable and probable grounds, be allowed to enter any land, vehicle or place, other than a private dwelling, without the need for a warrant?

If they should, under what circumstances?

Comments:

PART A:

Technically, the APA currently does not allow the Peace Officer, under reasonable and probable grounds, to enter land, a vehicle or place other than a private dwelling, to determine if animals are in distress without a warrant (*“unless it is not practical”*).

This is not practical. And, in fact, the Alberta SPCA does not get a warrant to determine if an animal is in distress. Nor, does the Alberta SPCA get a warrant to deal with (i.e. euthanize) those animals that need immediate attention.

AFAC recommends the APA be reworded to enable Peace Officers to determine distress and immediately alleviate distress, without the need of a warrant. But, given disease transference concerns, adherence to industry bio-security protocols must be followed diligently by Peace Officers. This needs to be addressed.

PART B:

The need for a warrant to seize and to gather evidence is another issue. Currently, the Alberta SPCA must go before a judge or Justice of the Peace at a bail hearing office to get a warrant. Faxed warrants are not available for summary convictions and the Alberta SPCA does not have access to tele-warrants.

The problem is the time delay to get a warrant to gather evidence that in some cases is destroyed before the Peace Officer can return to the site. The time delay is due to the tremendously long distances involved. In some cases it might be six hours of driving to the site and back, not even counting the time it takes to make an assessment while there. So in the day it takes to get a warrant, animals may suffer, die or evidence be destroyed. The suffering of the animal must always be the first consideration.

AFAC recommends maintaining the need for a warrant to gather evidence but that this process or the wording in the APA be changed to improve the time delay problems.

Despite the fact that the APA states a Peace Office can carry out his duties *“and that obtaining a warrant is not practical in the circumstances”*, the courts have dismissed evidence gathered without a warrant. This needs to be corrected. Peace Officers need the tools to do the job.

AFAC recommends AAFRD delve into the process used by Brand Inspectors and Wildlife Officers to gather evidence without a warrant.

AFAC also recommends other means of issuing a penalty and corrective action, that do not need a warrant or court action, be examined.

5. Sale or Gift of Animal (Section 4.5)

Questions: Should a Peace Officer be able to direct a humane society or caretaker to keep an animal until the circumstances that lead to the distress have been addressed even though the owner has paid the expenses?

If so, under what circumstances?

Should a Peace Officer be able to direct a humane society or caretaker to sell or give away an animal to a new owner if the circumstances that lead to the distress have not been addressed even though the owner has paid the expenses?

If so, under what circumstances?

Comments:

PART 1:

The issue in this situation is not directing a society or caretaker to keep an animal after an owner has paid expenses. Rather, the issue is the law currently allows animals be returned to an owner, if expenses are paid – even though the owner has done nothing to improve the conditions from which the animals were seized.

AFAC recommends allowance must be made for required improvements to take place prior to the return of the animals. We recommend this be in the form of a corrective action contract with third party supervision.

Here is another example where ‘Duties of Owner’ should be added to the APA.

PART 2:

The same applies as in Part 1.

6. Inspection: Standards (Act 10(1))

Questions: Should Peace Officers be able to enter any premise, other than private dwellings, where animals are kept for sale, hire or exhibition to inspect the animals or vehicles used to transport them without requiring reasonable and probable grounds that there is an animal in distress?

If so, under what circumstances?

Comments:

Yes.

It is the industry's understanding that the Alberta SPCA has been given the authority to 'inspect' livestock in public venues only (sale, hire or exhibition). AFAC recommends wording in the APA should maintain this function in a clear way to avoid challenges of not having a specific complaint.

The concern the industry has is – which agency is given this authority? AFAC wants to ensure only qualified, trained livestock protection service officers (Alberta SPCA) perform this function at livestock venues.

For this reason, AFAC recommends defining companion animals and commercial animals and defining more clearly who has authority and in what jurisdiction. We assume that currently any Peace Officer named under the APA (e.g. Calgary Humane Society, Cochrane By-Law officers) could 'inspect' at livestock venues.

Currently the Calgary and Edmonton Humane Societies inspect rodeos, circuses, agricultural shows in urban centers, race tracks etc.

Duties are not specific to an agency.

AFAC recommends that appropriate training for duties performed is essential.

Attention to biosecurity concerns is essential.

7. Animal Welfare Provisions under the *Livestock Market and Livestock Assembly Station Regulation* (Section 4.7)

Questions: Should the animal welfare provisions within the *Livestock Market and Livestock Assembly Station Regulation* be moved under the APA?

If so, what provisions should be moved and why?

Comments:

Yes.

AFAC recommends only those provisions that apply to animal well-being should be included.

If moving the relevant ‘animal care’ words from the Livestock Market and Livestock Assembly Station Regulations to the APA enables action to be taken if animals are in distress, then they should be moved.

However, AFAC supports any other process recommended by legal counsel that would remedy the current situation of two different agencies responsible for the two acts, yet animal welfare concerns are not properly being addressed.

Obviously, if inspection of public venues where animals are for sale, hire or exhibition is included in the APA, but a Peace Officer is unable to enforce, then change is needed.

In summary, ensure:

- **distress is alleviated;**
- **unnecessary wording is eliminated;**
- **jurisdictional concerns are eliminated.**

8. Animal Welfare Provisions in the *Livestock Transportation Regulation*
(Section 4.8)

Questions: Should the animal welfare provisions within the *Livestock Transportation Regulation* be moved under the APA?

If so, what provisions should be moved and why?

Comments:

Yes.

AFAC recommends provisions that apply to animal welfare should be incorporated in the APA. The Alberta SPCA is currently named under these regulations and enforces them.

Of note:

- 1) The Manitoba Animal Care Act does not include specific ‘transportation regulations’. Instead, reference to accepted activities and the current Transportation Code of Practice and other species specific Codes are referenced in the ACT. This approach should be examined.**
- 2) The current Transportation Regulations and the Livestock Markets and Livestock Assembly Station regulations contradict each other regarding the loading and unloading of unfit livestock. The livestock industry in Alberta does not support the loading and unloading of downer livestock, for humane reasons. Consistency and avoidance of duplication is imperative.**
- 3) Jurisdictional concerns with the federal act (Health of Animals, Part XII) and CFIA should be examined.**

9. *Tariff of Expenses Regulation* (Section 4.9)

Questions: Should the fees in this Regulation be amended?

If so, which expenses and to what levels?

Comments:

Yes.

AFAC recommends the tariff of expenses should be changed to reflect current industry standards and there be separate schedules for companion and commercial animals. Reference standards should be named; for example the provincial publication on agriculture custom rates.

Concern for how to deal with diseased animals must be acknowledged.

10. Compliance Tools (Section 4.10)

Questions: Should a Peace Officer have the authority to impose penalties without having to go through the Court System?

If so, under what circumstances and to what penalty levels?

Comments:

Yes.

AFAC recommends that Peace Officers have the ability to issue specified penalties (Common Offense Notices) outside the court system, for dealing with minor infractions that do not warrant the protracted process of charging and court appearances; and that do not warrant the media attention that court proceedings and a possible \$20,000 fine attract.

The ultimate objective is to improve animal welfare so any fining must also be tied to corrective action.

AFAC has reviewed the Regulations and Common Offense Notice schedule used in Manitoba and refers the AAFRD to this.

AFAC strongly recommends that should this ability to fine proceed, the fine schedule for livestock be developed in consultation with the livestock industry.

There should be separate fine schedules in the Regulations for commercial vs companion animals.

11. Abandonment (Section 4.11)

Questions: Should the APA include a definition of an abandoned animal and have provisions to deal with abandoned animals that are not in distress?

If so, what would define an animal as being abandoned and under what circumstances could it be seized by a Peace Officer?

Comments:

Yes. The AVMA has given considerable thought to the issues of animals abandoned to a third party that are not in distress. Currently the Livery Stables Act applies. Change is needed to deal with these animals more appropriately. We refer you to AVMA's position on this matter.

AFAC also recommends that the definition of distress be expanded and Duties of Owner be included to help deal with the concern of abandoned animals.

AFAC's recommended change to the definition of distress would give the ability to seize abandoned animals and not have to wait until they are starving, dehydrated, frozen, or heat-stroked.

12. Other

Questions: Are there any other amendments to the *Animal Protection Act* that should be considered?

If so, what are they and why?

Comments:

AFAC recommends:

- a) Including Duties of Owner in the APA and referencing the Recommended Codes of Practice for Care and Handling (all species and transportation) plus any other industry developed standards that exceed the Codes. These are living documents that are used as reference in court and are updated regularly on a national basis.**
- b) Segregating companion and commercial animals and to acknowledge the livestock industry's desire that those Peace Officers dealing with livestock are well trained regarding all livestock species.**
- c) Portions of the Livestock Industry Diversification Act (LIDA) specific to animal care should be included (or referenced) in the APA, if necessary for the purposes of enforcement.**