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Three Levels of Government: Who Has the Authority?

Canada's Constitution, together with federal and provincial legislation, establish which level of government (federal, provincial or municipal) has the jurisdiction to pass laws in respect of particular subjects. Human safety is a subject with which all levels of government concern themselves. When it comes to animals, who are regarded as property in Canada and elsewhere, the Constitution gives provinces the authority to pass legislation regarding property rights. Provinces may in turn pass some of their powers on to municipal governments. Depending on the province, it is either the municipal or provincial government that has the authority to pass laws prohibiting the keeping of exotic animals.

Ontario's Municipal Government Has the Authority: Court of Appeal Did Not Change That

In 1993, Ontario's Court of Appeal considered an amendment to a City of Toronto by-law which prohibited the keeping of certain wild animals used in live, public entertainment in the city. The Court ultimately concluded that the prohibition was beyond the legislative authority of the City. The case has since been referred to by some who support the use of wild animals in circuses as proof that any such by-law is unlawful. This is incorrect.

In 1992, when the City of Toronto passed the amended by-law, Toronto had two levels of government; the City of Toronto and the Municipality of Metropolitan Toronto, each with different legislative powers. The city passed the amended by-law under section 210 of the Municipal Act, and the Court found that the by-law should have been passed under s. 236(7), which fell under the jurisdiction of the municipality. Therefore, the by-law was found to be beyond the specific and narrow legislative authority of the City of Toronto for these very specific jurisdictional reasons.

Ontario's New Municipal Act is Even Broader

In January 2003, a new Municipal Act came into force in Ontario. The provisions that are now relevant to the question of who has jurisdiction to prohibit wild/exotic animals in the city are quite different from their predecessors. New laws require new interpretations. This



means that the Court of Appeal's comments interpreting the former legislation are of limited value now.

Section 11(1)(9) of the new Act, allowing a municipality to pass by-laws respecting animals, replaces section 210 and its wording is much broader, so its scope is much increased. In fact, s. 9(1) of the new Act specifically provides that s. 11 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues. Their power to pass by-laws specifically

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Prohibiting Wild and Exotic Animal Acts

Ontario's New Municipal Act is Even Broader [continued]

includes the power to regulate or prohibit respecting the matter, and to impose conditions as a requirement of approval of the activity.

Alternatively, s. 150 of the new Act is the successor to the old s. 236(7). It gives municipalities authority to govern businesses carried on within the municipality (including exhibitions, concerts, festivals and other organized public amusements) for any of three purposes: health and safety, nuisance control or con-

sumer protection. Finally, the new s. 126 gives municipalities the authority to regulate "cultural, recreational and educational events including public fairs".

It is clear, in Ontario at least, that municipalities have the authority to pass by-laws which would prohibit the keeping of wild and exotic animals within city limits.

	Zoocheck Canada Inc. 2646 St. Clair Avenue East Toronto, Ontario, M4B 3M1 phone: 416.285.1744, web: www.zoocheck.com
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