

First Nation Dog Issues in Ontario: Why is there a Problem?

May 16, 2010

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Disclaimer

This short brief was written to bring to light underlying reasons for dog control problems in Ontario First Nation communities. It is written in a format using numbered paragraphs but was not prepared through legal counsel. Should you wish to use this brief, or any part of it, in any manner, seek legal advice. We do not accept civil or criminal responsibility for individual, group, or corporate use of information contained within this document.

Definitions

1. “Minister” is used to denote the federal Minister of Indian & Northern Development, and Federal Interlocutor for Métis and Non-Status Indians.
2. “INAC” is used to denote the federal Department of Indian and Northern Affairs Canada.

Background

3. The early colonization of Canada began as a tripartite relationship between the colonizing state (France then Britain), the colonists and First Nations.
4. In 1860, the British Parliament passed the *Indian and Indian Lands Act*¹ which transferred control of First Nations and their lands to the colonists.
5. At Confederation, the *Constitution Act (1867)*² transferred control of Indian and Indian Lands to the new federal government under s.91 (24).
6. With the 1867 transfer, a new tripartite relationship was created between the British, federal and provincial governments.³ This new relationship did not recognize First Nations, unilaterally broke treaties signed before 1867, and “legally” removed Aboriginal rights from all First Nations in Canada.
7. Treaties that were not brought into force by an act of parliament after Confederation have, except for intent, been broken.⁴
8. The first *Indian Act* was passed in 1876. It created a consolidated regulatory framework from legislated laws that empowered First Nation displacement and assimilation. The current writing of the

¹ Indian and Indian Lands Act (1860). <http://caid.ca/IndLanAct1860.pdf>

² Constitution Act (1867) <http://caid.ca/BNAAct1867040308.pdf>

³ (1996) Report of the Royal Commission on Aboriginal Peoples. Volume 1: Looking Forward Looking Back. Part Two: False Assumptions and a Failed Relationship. Chapter 9, The Indian Act; 6. End of the Tripartite Imperial System. Canada Communication Group — Publishing, Ottawa, Ontario K1A 0S9. <http://caid.ca/RRCAP1.9.pdf>

⁴ (1996) Report of the Royal Commission on Aboriginal Peoples. Volume 1: Looking Forward, Looking Back. Part One: The Relationship in Historical Perspective. Chapter 6, Stage Three: Displacement and Assimilation; 6. Nonfulfillment of Treaties. Canada Communication Group — Publishing, Ottawa, Ontario K1A 0S9. <http://caid.ca/RRCAP1.6.pdf>

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Indian Act came into force in 1985⁵ and remains essentially unchanged.⁶

9. In 1982, a new *Constitution Act*⁷ was passed. Under s. 35, pre-existing Aboriginal and Treaty rights were recognized for the first time in Canada.

10. Canada recognized Aboriginal rights in s. 35 but did not include Aboriginal rights into federal or provincial legislation. In fact, legislation in Canada, for the most part, has not changed to include Aboriginal rights since the coming into force of the 1982 *Constitution Act*.⁸

11. Most First Nations currently have dog control problems in their communities.

12. Dog control problems in First Nation communities result in the dog mauling deaths of children at a rate 180 times (180x) above that seen in non-Aboriginal Canadian communities.⁹

13. This disproportion in child mauling deaths is caused by out-of-control dog populations.

14. Out-of control dog populations are the result of a lack of functioning dog control programs.

15. The lack of First Nation dog control programs is in turn caused by the lack of community infrastructure services that are necessary for dog control programs to function.

16. These needed community infrastructure services are defined in non-Aboriginal communities as veterinary, by-law, by-law enforcement and public education services.¹⁰ Collectively, we refer to these four support services, when culturally corrected for First Nations, as a First Nation veterinary infrastructure.

17. A First Nation veterinary infrastructure does not exist to protect First Nation children.

18. An equivalent veterinary infrastructure is available to non-Aboriginal communities.

Federal

19. Veterinary services fall under provincial jurisdiction for non-Aboriginal communities. First Nation

⁵ Indian Act (1985) <http://caid.ca/IndAct010208.pdf>

⁶ (1996) Report of the Royal Commission on Aboriginal Peoples. Volume 1: Looking Forward Looking Back. Part Two: False Assumptions and a Failed Relationship. Chapter 9, The Indian Act; 8. The Indian Act and Indians: Children of the State. Canada Communication Group — Publishing, Ottawa, Ontario K1A 0S9. <http://caid.ca/RRCAP1.9.pdf>

⁷ Constitution Act (1982). <http://caid.ca/ConstAct010208.pdf>

⁸ (2009) Herbert, R. G., Meaningful Consultation in Canada: The Alternative to Forced Aboriginal Assimilation. 1. Introduction, e. Selective Funding; p 8-9. <http://caid.ca/MeaCon092409.pdf>

⁹ (2006) Herbert, R. G., Animal-Related Public Health Crises in First Nation Communities. <http://caid.ca/GenPub010108.pdf>

¹⁰ (2005) Herbert, R. G., First Nation Dog Control Infrastructure Introduction: First Nation Veterinary Infrastructure Program. <http://caid.ca/DogCon010708.pdf>

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communities have their veterinary services fall under federal jurisdiction:

a. In *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010¹¹, at paragraph 181, it was shown that s. 91(24) of the *Constitutional Act* (1867) protects a core of federal jurisdiction over First Nations from provincial laws of general application through the operation of the doctrine of interjurisdictional immunity. Provincial veterinary legislation does not apply to First Nation communities; and,

b. The *Indian Act* (1985) applies to all lands set apart for the use and benefit of a First Nation band, including the land upon which a First Nation community is situated, s. 36. Under s. 81 (1) (e) the First Nation band council has the authority to pass by-laws to protect citizens from domestic animals and to establish dog pounds, appoint pound-keepers, regulate pound-keepers and provide for pound-keeper's fees and charges. In s. 88, when a band council by-law comes into effect, it supercedes any applicable pre-existing provincial law, placing that by-law under the federal jurisdiction of the *Indian Act*; including First Nation dog control and veterinary services.

20. The Crown's fiduciary obligation to First Nations is *suis generis* in nature.¹² It is called into existence to facilitate supervision of the high degree of discretionary control gradually assumed by the Crown over the lives of Aboriginal peoples.¹³

21. The Crown has a fiduciary duty to facilitate and fund the development of First Nation dog control and its veterinary infrastructure:

a. Through the use of Indian agents (wardship), the creation of Indian reserves, forced community relocations, Indian residential schooling and the *Indian Act*, the Government of Canada created a land-based community environment in which the Crown had complete control.¹⁴ In doing so, the Crown clearly established a fiduciary duty to develop and manage First Nation community infrastructure;

b. Since the inclusion of Aboriginal and Treaty rights into the Constitution Act (1982), Canada has encouraged First Nations to start the process of rebuilding and managing their communities. Canada has created an Aboriginal community health infrastructure and is undertaking the building of some community water, wastewater and education infrastructures. With the creation of Aboriginal community infrastructures, the large disparity that exists between First Nation and non-Aboriginal citizens caused by the lack of that infrastructure disappears;

c. There currently exists a tremendous disparity (180x) regarding dog mauling deaths of

¹¹ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010. <http://caid.ca/DelDec1997.pdf>

¹² *Guerin v. Canada*, [1984] 2 S.C.R. 335. <http://caid.ca/GueDec1984.pdf>

¹³ *Wewaykum Indian Band v. Canada* [2002] 4 S.C.R. 245, 2002 SCC 79 <http://caid.ca/WewDec2002.pdf>

¹⁴ (1996) Report of the Royal Commission on Aboriginal Peoples. Volume 1: Looking Forward, Looking Back. Canada Communication Group — Publishing, Ottawa, Ontario K1A 0S9. <http://caid.ca/RepRoyCommAborigPple.html>

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Aboriginal children living in Aboriginal communities versus non-Aboriginal communities. This is caused by the lack of dog control programs and the four-service veterinary infrastructure that supports dog control in First Nation communities. First Nations lack these necessary veterinary infrastructure services as a direct consequence of the Crown-controlled community environment created by the Government of Canada. Like other community infrastructures Canada is helping First Nations rebuild, the dog control program's veterinary infrastructure needs to be rebuilt. The Minister has a fiduciary duty to assist and fund in the rebuilding of community infrastructure services that facilitate First Nations building dog control programs;

d. Canada exercised full authority over First Nation dog control when Indian agents controlled First Nation communities. The Crown obviously did not devolve infrastructure services needed for community dog control to First Nations in fulfillment of its fiduciary duty; First Nation children are dying at 180x the rate of non-Aboriginal children in communities devoid of dog control and with no access to veterinary infrastructure services. The Crown simply stopped providing dog control to First Nations; and,

e. Child dog mauling deaths at a 180x increased rate in Aboriginal communities created by the Government of Canada is sufficient to trigger the Crown's fiduciary duty towards its Aboriginal peoples.

22. The Minister is the Privy Council's Governor in Council over Indians and Indian lands in Canada.

23. As the Governor in Council, the Minister has a legal obligation to oversee and facilitate First Nation citizens and communities the Government of Canada provided for them.

24. This legal obligation is administered by INAC and includes the funding of First Nation veterinary infrastructure services necessary to support community dog control programs:

a. The Minister received legal authority over Indians and Indian lands from the *Constitution Act* (1867) s. 91 (24);

b. The Minister's authority is detailed in *Indian Act* (1985) legislation. The *Indian Act* details, among other things, the Minister's legal authority over First Nation community infrastructure;

c. The Minister's legal obligation to oversee and facilitate First Nation communities is given force by the authority given to the Minister over First Nation community infrastructure in the *Indian Act*;

d. The *Indian Act* (s. 36) applies to all lands set apart for the use and benefit of a First Nation band, including the land upon which a First Nation community is situated. In s. 73 (1) (d) of the *Indian Act*, the Minister is given legal authority to control and destroy dogs on lands governed by the *Indian Act*. The Minister has a legal obligation to control dogs in First Nation communities; and,

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e. Section 81 (1) (e) of the *Indian Act* gives the First Nation band council the authority to create by-laws for dog control. But, s. 82 (2) gives authority to approve or disallow by-laws made by First Nation band councils to the Minister. The Minister has a legal obligation to ensure dog control by-laws function to control dogs in First Nation communities.

f. To control dogs in First Nation communities, communities need dog control programs. Dog control programs are supported by a First Nation veterinary infrastructure which in turn is comprised of four services. Dog control by-laws created under the *Indian Act* are only one component of veterinary infrastructure. First Nation band council by-laws cannot function to control dogs without the other three components.

g. The Minister cannot meet the legal obligation to ensure band council dog control by-laws function to control dogs without also providing First Nations access to a complete First Nation veterinary infrastructure.

25. First Nations have very limited financial resources available through Band Support Funding to allocate to the dog control issue:

a. Band Support Funding is earmarked to assist band councils to meet costs of local government and the administration of INAC funded services.¹⁵

b. Funds for dog control and First Nation veterinary infrastructure services are not included within the Band Support Funding's INAC funded services.

26. Only limited veterinary infrastructure services are available to First Nation communities through the Canadian Food Inspection Agency to depopulate communities' unvaccinated dogs in the event of a verified rabies virus outbreak.

Provincial

27. As described early in paragraph 19, veterinary services fall under provincial jurisdiction for non-Aboriginal communities and federal jurisdiction for First Nation communities.

28. The jurisdictional disparity for veterinary services creates a void into which non-existent First Nation veterinary infrastructure services fall:

a. In Ontario, the *Veterinarians Act*¹⁶ (1990) Part V, s. 43. 4. c and e read that only a veterinarian can employ another veterinarian except in the cases where a humane society owns a veterinary hospital and a municipality owns a spay/neuter clinic. First Nations are not a humane society or a municipality. They are therefore excluded from owning a veterinary hospital or spay/neuter clinic.

¹⁵ Band Support Funding Policy. <http://caid.ca/INACBanSupPol.pdf>

¹⁶ Veterinarians Act (1990) http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_901093_e.htm

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29. A similar legislative void affecting First Nation veterinary infrastructure exists with First Nation dog public health education and by-law enforcement services created provincially through the *Ontario Society for the Prevention of Cruelty to Animals Act*¹⁷ (1990).

30. Other legislative voids affecting veterinary infrastructure services occur with the *Pharmacy Act*¹⁸ (1991), *Regulated Health Professionals Act*¹⁹ (1991) and the *Research for Animals Act*²⁰ (1990).

31. The absence of federal First Nation veterinary infrastructure-related legislation and the exclusion of First Nations from provincial veterinary infrastructure-related legislation prevents First Nation compliance with, and interferes with the application of, federal regulations on animal cruelty and health found in Part XI of the *Criminal Code of Canada*²¹ and the *Health of Animals Act*²² (1990).

Closing

32. The lack of functioning dog control programs in First Nations has its origin in colonization and Canada's Indian policies.

33. First Nations have the authority to create and manage dog control programs but to do this they need access to services supplied by a First Nation veterinary infrastructure. A First Nation veterinary infrastructure does not currently exist in Ontario.

34. First Nation band councils, for the most part, cannot create functioning dog control programs because their communities lack veterinary infrastructure services needed to support these programs. Most First Nation communities also do not have access to funds to develop the necessary First Nation veterinary infrastructure to save their children.

35. First Nations lack veterinary infrastructure services because these services fall into a legislative void that exists between First Nations, federal and provincial governments.

36. Dog control by-laws created by band councils under the *Indian Act* represent only one of the four component services of veterinary infrastructure needed to support dog control programs. Dog control programs will not function to save First Nation children from mauling deaths unless all four component services of a veterinary infrastructure are present/available to a community.

¹⁷ Ontario Society for the Prevention of Cruelty to Animals Act (1990). http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90o36_e.htm

¹⁸ The Pharmacy Act (1991). http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_91p36_e.htm

¹⁹ The Regulated Health Professionals Act (1991). http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_91r18_e.htm

²⁰ Animals for Research Act (1990). http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90a22_e.htm

²¹ Criminal Code of Canada. <http://laws.justice.gc.ca/en/C-46/>

²² Health of Animals Act (1990). <http://laws.justice.gc.ca/eng/H-3.3/20100516/page-0.html?rp2=HOME&rp3=SI&rp1=health%20of%20animals%20act&rp4=all&rp9=cs&rp10=L&rp13=50#idhit1>

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37. First Nation veterinary infrastructure currently falls under federal jurisdiction.

38. The Minister cannot fulfill the Crown's fiduciary duty to step in and stop dog mauling deaths without funding the development of a First Nation veterinary infrastructure to enable band council dog control programs.

39. The Minister can also not fulfill his legal obligation to ensure dog control by-laws function to control dogs without funding the development of First Nation veterinary infrastructure services.

40. The Minister already funds, in part, the by-law development service component of the First Nation veterinary infrastructure through the By-laws Advisory Services Unit.

41. There can only be three reasons why the Minister has not funded a First Nation veterinary infrastructure: One, there is no need for the infrastructure; two, no one has asked for funding; or three, there has been a deliberate choice to withhold funding:

a. First Nation children are dying violent deaths in Canada; there is a need.

b. Professionals²³ have submitted multiple funding requests to the Minister and INAC for a First Nation infrastructure since August of 2004; someone is asking.

c. The Minister, INAC and other federal Ministers and their bureaucratic departments are not providing funds for the First Nation veterinary infrastructure development necessary to create dog control programs in First Nation communities; there is a Government of Canada policy to withhold funding.

42. First Nation children will continue to be targeted by government policy and die so long as the Minister and the Conservative Government of Canada continue to withhold funding for a First Nation veterinary infrastructure.

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²³ (2006) Herbert, R. G., First Nation Veterinary Infrastructure Model Program: A Brief Overview.
<http://caid.ca/VetInfoBrief010910.pdf>

²⁴ Dr. Richard G. Herbert. <http://caid.ca/RickCV010308.pdf>