

## NCC Animal Regulations

### Issue

This brief will show that the National Capital Commission's Animal Regulations<sup>1</sup> (ARs) and their accompanying Regulatory Impact Assessment Statement (RIAS) failed to meet statutory and policy requirements, as follows:

1. the RIAS misled the Governor-in-Council and its advisors, including the Clerk of the Privy Council and the Deputy Minister of Justice. Consequently, these officials were unable to assess correctly whether the Animal Regulations complied with sub-sections 3.(2)(a), (b) and (c) of the Statutory Instruments Act;
2. the ARs exceed the remit of section 20.1 of the National Capital Act; and
3. the NCC RIAS failed to meet the Regulatory Process Management Standards (Treasury Board, 1999).

Note: Readers may refer to the Aide-mémoire at Appendix "A" for excerpts from the pertinent legislation and regulations. Appendices "B" and "C" provide observations additional to those below on specific Animal Regulations and on RIAS' statements, respectively. For the sake of brevity, not all challengeable Regulations nor statements in the RIAS will receive analysis and comment.

### Impact of the NCC Animal Regulations

In summary, the ARs prohibit domestic animals (i.e., cats and dogs) from all NCC properties, unless the regulations expressly permit their presence. Where permitted, dogs must be on leash at all times, except where the Commission provides specific exemptions in its sole discretion.

In addition, some of the Animal Regulations deal with human and animal health, and with environmental protection.

**Major Changes.** These restrictions represent a major change in the customary usage of upwards of 30 Ontario and 11 Quebec urban parklands or open lands like the Green Belt. Five Ontario "urban lands" have been more or less left as off-leash parks: two in Rockcliffe, one in New Edinburg and two former gravel pits. These exemptions, reported but unexplained in the RIAS, seemingly came about through vigorous lobbying and personal contacts.

Prior to the current regulations and with a section in its Transportation and Property Regulations, the NCC reaffirmed the rules of the municipality in which the parkland was located. This meant that in some municipalities, such as Ottawa, dogs could run off-leash in NCC urban parklands, except in the immediate vicinity of wading pools and the like, again in accordance with municipal by-laws.<sup>2</sup>

Other municipalities required dogs to remain on-leash in parks or forbade their presence there altogether. Whether the latter restrictions were honoured mostly in the breach in NCC or the affected municipal parks, can be left to personal conjecture. Gatineau Park, which contains a mix of recreational sites and forest, was and should remain a separate case, although the NCC seems not to recognize that reality.

### Regulatory Process Management Standards (RPMS)

The RPMS state clear directions to federal government entities that propose regulations. For example, regulators "*must have evidence that a problem has arisen, that government intervention is required and that new regulatory requirements are necessary*" (See Appendix "A", *aide mémoire*).

In the case of NCC urban parklands, Gatineau Park and the Greenbelt, there is probably 50 or more years of experience for many of the holdings within Schedule 1. For example, Patterson Creek Park (formerly part of Central Park) in the Glebe dates back to 1907.<sup>3</sup> So it seems reasonable to expect that the NCC and its predecessors should have acquired much, well documented experience to explain the need for such a drastic change as the new Animal Regulations require, namely, the prohibition of dogs or, alternatively, the ubiquitous on-leash restrictions.

The RIAS stated the following on the subject:

... conflicts between domestic animals and their owners and other users of Commission property were mounting, due to the increase in numbers of domestic animals in the NCR. As well, more and more people were bringing their domestic animals onto Commission property because many of the municipalities in the NCR were making their by-laws more restrictive, especially the by-laws governing parks. An indication of the number and types of incidents involving domestic animals on Commission property can be drawn from the reports prepared by Conservation Officers employed by the Commission and from calls to the Commission's Capital Call Centre. These incidents include complaints about animal excrement, reports of domestic animals biting or attacking people or other domestic animals or chasing wildlife, and concerns with respect to persons having domestic animals off leash in areas where domestic animals are permitted only on leash or having domestic animals in areas where domestic animals are not permitted.

In 1999, the year in which the Commission initially presented its proposal with respect to animal control on Commission property, there were 595 incidents involving domestic animals on Commission property observed by or reported to the Conservation Officers, or called into the Capital Call Centre. In addition, the Conservation Officers issued 230 warnings to persons who had domestic animals on the Rideau Canal Skateway. Note that these are only the reported incidents. It is likely that many incidents go unreported.<sup>4</sup>

The first paragraph above neglects to mention numbers or detailed examples of various "incidents", whether those about being off-leash or the relatively much more serious ones such as dog bites. The number and contents of the "reports" and "calls" mentioned above in the RIAS remained unknown. The second paragraph gives one number for one year only, 1999, that encompass all the urban parklands, the Green Belt and Gatineau Park.

**Magnitude of Perceived Problem.** The RIAS provided no analysis of these "incidents" involving domestic animals". It mentioned only for 1999 a total of 595

incidents on "commission lands" and 230 "warnings" given on the Rideau Canal Skateway.

The question left unasked and certainly unanswered is whether the 595 incidents, indicate the existence of recurring serious problems in relation to the extensive and diverse holdings of the NCC.

In the first nine months of 2002, the City of Ottawa reported 8,003 animal-related "calls for service"<sup>5</sup>. These statistics are not comparable in duration, or area served, or types of animals to the above 595 "incidents"; the City data, for example, include feral animal problems. Nonetheless, the City's numbers do indicate that the magnitude of the NCC's perceived problem pales to insignificance.

Perhaps that's the motivation for the reference in the last sentences to unreported problems. The implication is that the Government should enact punitive regulation on the basis of speculation!

### **Conclusion One.**

**The NCC's RIAS failed to provide evidence of recurring serious problems.**

*Measurement of Perceived Problem.* The NCC, however, did provide elsewhere, directly or indirectly, some numerical data in two reports, the first in an appendix in a Delcan report<sup>6</sup> and the second in an annex to its Public Consultation Report.<sup>7</sup>

The statistical variances in the source tables suggest a lack of rigor in the NCC's collection and maintenance of this data. However, such as they are, the NCC released these data, which apparently constitute the only empirical evidence to sustain development of the Animal Regulations.

With the information contained in these tables, it was possible to calculate annual averages of "incidents" per parkland and, therefore, to assess the magnitude of the problem. The table below, **Dog Incidents on NCC "Urban Lands" 1994-1998**, omits data for the Greenbelt and for Gatineau Park because they require a different analytical approach. Nevertheless, this table provides a measure of the problem that the National Capital Commission seemingly overlooked or chose to ignore.

Dog Incidents on NCC "Urban Lands" 1994-1998

Year	Incident Type	Ontario 35	Annual Average per 'Land'	Quebec. 11	Annual Average per 'Land'	25 Nov 02 Remarks
1994	General	58		~		Note: The public consultation report numbered Ont. Lands to 39 but omitted #s 15, 16, 21, & 25.
	No leash	1		~		
	Rec Site	~	~	~		
1994	Total	59	1.7	~		
1995	General	85		3		Note: curiously, serious incidents, if any, would fall into the residual category of "General".
	No leash	~		18		
	Rec Site	~		4		
1995	Total	85	2.4	25	2.3	
1996	General	31		0		
	No leash	~		3		
	Rec Site	~		3		
1996	Total	31	0.9	6	0.5	
1997	General	25		2		Que. "No leash" figure had incredible increase. Ditto for Ont. in 1998
	No leash	7		72		
	Rec Site	1		7		
1997	Total	33	0.9	81	7.2	
1998	General	94		4		* Total included 230 Rideau Canal (ice rink) warnings. Oddly, the 2001 Report also reported 230 Rideau Canal warnings for 1999.
	No leash	210		35		
	Rec Site	11		6		
1998	Total	315*		45	4.1	
Corrected Total		85	2.4			
Five year Totals and Averages		293	1.7	157	3.6	

### **Findings**

1. Based on the five years 1994 - 1998, the average number of dog-related incidents per urban parkland was, **annually, 1.7** and **3.6** in Ontario and Québec respectively.
2. The highest one-year average of incidents was 2.4 and 7.2, respectively. The data, on which the latter figure depends, seems very suspect. The total number of Quebec complaints in 1997 is 1350% of the 1996 total!
3. With respect to Gatineau Park and the Greenbelt, the relatively low numbers there indicate an equally weak case.
4. In light of this information, it is clear that the NCC has advanced a case without merit. The Governor-in-Council has unnecessarily enacted punitive regulation

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### **Conclusion Two.**

**The trivial annual average number per park of dog-related "incidents" in NCC urban parklands destroys the case for the regulations as proposed and enacted.**

### **Statutory Instruments Act**

Sub-section 3.(2)(c) of the SIA states that each regulation must "not trespass unduly on existing rights and freedoms." If people have enjoyed the freedom of walking or playing with their dogs off leash in NCC parks for many years, then it seems reasonable, if not imperative, to acknowledge that that freedom exists. Its termination, on the basis of almost zero annual average incidents per park, shattered the safeguard of "not trespass unduly."

### **Conclusion Three.**

**Sections 6 and 7 of the NCC Animal Regulations contravened sub-section 3.(2)(c) of the Statutory Instruments Act.**

### **National Capital Act**

The lack of solid evidence of substantial problems also argues forcefully that the general prohibition of dogs, or the ubiquitous on-leash requirement for dogs at all times, exceeds the regulatory authority in the National Capital Act. Section, 20.(1) provides that the Governor-in-Council can enact regulations for just the following reasons:

- protection of the Commission's property;
- preserving order; or
- preventing accidents.

The exceptionally low level of dog-related incidents per park, the details of which remain unknown, have obviously **not** resulted in damaged property, outbreaks of disorder, nor a rash of preventable accidents.

**Dogs, Environment and Health.** The National Capital Act makes no mention of an authority to make environmental or health regulations. Does the Animal

Regulation's requirement<sup>9</sup> that dogs (a) not go into rivers and lakes; (b) not to drink from them; and, (c) in fact, approach no closer than three metres to them, arise from such considerations? [

According to the NCC website it does, as follows:

**"8. Why can't my pet get in water that is next to NCC land, or get any closer to the shore than three metres?"**

To protect the environment by preventing shore erosion and negative impacts on plants and animals.<sup>10</sup>

"Infractions relating to public health"<sup>11</sup>

This approach strongly indicates that the NCC believes that all private and public property owners who permit pets to get into the water abutting their properties are failing to prevent "shore erosion and negative impacts on plants and animals". A patent absurdity!

Other examples of environmental or health regulations within the AR's are:

1. **Section 14 and subsection 15.(3)**. These admonish persons from leaving pets in cars when excessive temperatures may injure the health of the animal. This is perfectly sound but such regulations fall outside the scope of the National Capital Act. They are also redundant in that provincial and municipal laws, which are enforceable on NCC properties, cover this matter already.
2. **Subsection 6.(2)(d)** prohibits domestic animals from being in the area of "a picnic area, food concession area or outdoor restaurant". Again, it would seem that provincial or municipal laws would cover this matter adequately. In any case, such regulations go beyond the scope of subsection 20.1 (National Capital Act).

The RIAS offers no evidence, scientific or otherwise, of shore erosion, or negative impacts on plants and animals associated with the activities of "domestic animals" in its varied and various "lands". Even if the NCC did offer credible evidence in a particular situation, the National Capital Act confers no authority to regulate for health or environmental reasons. To the extent there is a need for such regulation, would not other federal, provincial and municipal legislation and regulations already provide adequate protection?

#### **Conclusion Four**

The Animal Regulations contain environmental and public health regulations that the National Capital Act cannot authorize and thus such regulations are *ultra vires*. This also means that the ARs breach subsection 3.(2)(a) and quite possibly 3.(2)(b) of the Statutory Instruments Act (in addition to subsection 3.(2)(c) as noted above).

### Summary List of Conclusions and Recommendation

1. The NCC's RIAS failed to provide evidence of recurring serious problems.
2. The trivial annual average number per park of dog-related "incidents" in NCC urban parklands destroys the case for the regulations as proposed and enacted.
3. Sections 6 and 7 and other sections or subsections of the NCC Animal Regulations contravened sub-section 3.(2)(c) of the Statutory Instruments Act.
4. The Animal Regulations contain environmental and public health regulations that the National Capital Act cannot authorize and thus such regulations are ultra vires. This also means that the ARs breach subsection 3.(2)(a) and quite possibly 3.(2)(b) of the Statutory Instruments Act {in addition to subsection 3.(2)(c) as noted above}.

Consequently, this brief:

1. petitions the Governor-in-Council to revoke the Animal Regulations; or, as a lesser alternative,
2. requests the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice, to utilize, if feasible, section 15 of the Statutory Instruments Act's to obtain revision of the Animal Regulations so that they will comply, at least, with the National Capital Act and the Statutory Instruments Act.

### A Closing Note

Some people dislike cats and dogs. Others fear dogs, some to the point of panic. Others believe, wrongly, that pet cats and dogs are inherently unhygienic. Still, is it sound to impose punitive regulations on other people and their pets in order to placate or please those with these dislikes or phobias or wrong beliefs?<sup>12</sup>

An analogy could be made to traffic regulation. Some drivers exceed the speed limit. If drivers were owners and cars were dogs, the NCC would have opted to insist on **all** car engines being equipped with speed governors.

*Regulatory authorities proposing new regulatory requirements or regulatory changes must have evidence that a problem has arisen, that government intervention is required and that new regulatory requirements are necessary.*<sup>13</sup>

**Amen!**

## Appendix "A"

## Aide-mémoire

The following will recall the essential points of the legislation, regulations and policies mentioned above, as follows:

*Appendix "B", Regulatory Process Management Standards* to the Government of Canada Regulatory Policy<sup>14</sup> (extracts - emphasis added):

- Federal regulatory authorities must meet the Regulatory Process Management Standards..
- Regulatory authorities proposing new regulatory requirements or regulatory changes must have evidence that a problem has arisen, that government intervention is required and that new regulatory requirements are necessary..
- The problem must be described and documented in clear, concise terms. The problem must be analyzed..
- (the) Regulatory Impact Analysis Statement .. document must
  - ❖ describe the problem and explain why regulation is **required**;
  - ❖ provide a clear and concise description of the regulatory proposal;
  - ❖ outline the alternatives considered and the reasons for choosing to regulate;
  - ❖ describe the major anticipated impacts;
  - ❖ summarize the consultations undertaken; and
  - ❖ explain the procedures and resources that will be used for compliance and enforcement.

*Sub-sections 3.(2)(a), (b) and (c), Statutory Instruments Act*<sup>15</sup> impose obligations on the Clerk of the Privy Council and the Deputy-Minister of Justice as follows :

(2) On receipt by the Clerk of the Privy Council of copies of a proposed regulation pursuant to subsection (1), the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice, shall examine the proposed regulation to ensure that

- (a) it is authorized by the statute pursuant to which it is to be made;
- (b) it does not constitute an unusual or unexpected use of the authority pursuant to which it is to be made;
- (c) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*;...

*Section 15* authorizes the Clerk of the Privy Council, after consultation with the Deputy Minister of Justice, to request from a " the regulation-making authority "<sup>16</sup> revision of particular regulations and, if there is a failure to comply, the Governor-in-Council may direct that the request be completed by a specific date:

15. (1) Where the Clerk of the Privy Council, after consultation with the Deputy Minister of Justice, is of the opinion that any particular regulations should be revised or consolidated, he may request the regulation-making authority or any person acting on behalf of such authority to prepare a revision or consolidation of those regulations.



(2) Where any authority or person referred to in subsection (1) fails to comply within a reasonable time with a request made pursuant to that subsection, the Governor in Council may, by order, direct that authority or person to comply with the request within such period of time as he may specify in the order.

*Section 19 of the SIA* refers regulations automatically to Parliament "for the purpose of reviewing and scrutiny." The Joint Standing Committee for the Scrutiny of Regulations undertakes this task.

*Section 20, National Capital Act* is the only section within this Act that provides a regulatory power and then only to, or by, the Governor-in-Council, as follows:

20. (1) The Governor in Council may make regulations for the protection of any property of the Commission and for preserving order or preventing accidents on any property of the Commission.
- (2) The Governor in Council may by regulation prescribe the punishment that may be imposed on summary conviction for the contravention of any regulation made under subsection (1), but the punishment so prescribed shall not exceed a fine of five hundred dollars or imprisonment for a term of six months or both.<sup>17</sup>

The *NCC Animal Regulations*<sup>18</sup>, passed under the authority of NCA section 20.(1), include the following :

6. (1) Subject to subsection (2), no person shall have a domestic animal on unleased land except in the locations set out in Schedule 1.
- (2) In the locations set out in Schedule 1, no person shall have a domestic animal in any of the following areas:
  - (a) a beach and its immediate environs, the boundaries of which are clearly identified by signs;
  - (b) a building;
  - (c) the campground located at LeBreton Flats;
  - (d) a picnic area, food concession area or outdoor restaurant;
  - (e) a play structure area;
  - (f) subject to subsection (3), within three metres of the shoreline of a body of water of a permanent nature; [Note: except Queen Elizabeth Driveway and Colonel By Corridor {section 6.(3)}]
  - (g) an area in which an organized event is being held; or
  - (h) any area of unleased land that is marked, in accordance with subsection 27(1), by signs as an area where domestic animals are prohibited.
27. (1) In locations on unleased land where domestic animals are otherwise permitted under these Regulations, the Commission may, by signs, mark an area where domestic animals are prohibited, if such a prohibition is necessary for reasons of public safety or for protection of property of the Commission.
7. (1) No person shall have a domestic animal on unleased land where domestic animals are permitted unless the animal is restrained in one of the following ways:
  - (a) subject to subsection (2), it is restrained on a leash or by the handle of a

harness

- (i) that is held by a person, or is securely attached to an object that cannot be displaced by the animal, and
  - (ii) that is not more than two metres (6.5 feet) long;
  - (b) it is in a container from which it cannot escape; or
  - (c) it is in a vehicle.
- (2) No person shall, on unleased land,
- (a) ski, rollerskate or rollerblade while having a domestic animal on a leash; or
  - (b) ride a bicycle, scooter or any other non-motorized vehicle -- other than a wheelchair -- while having a domestic animal on a leash or while having a domestic animal attached in some manner to the vehicle.
8. Every keeper of a domestic animal shall immediately pick up any fecal matter deposited by the animal and shall remove the matter from unleased land.
9. (1) Despite any other provision of these Regulations, the keeper of a domestic animal may allow the animal to run free on a portion of unleased land that the Commission has marked by signs as an off-leash area.
- (2) The keeper of a domestic animal shall have the animal under control within the off-leash area.
- (3) For the purposes of subsection (2), the keeper of a domestic animal is considered to have the animal under control if the animal, following a voice command or hand signal given by the keeper, obeys immediately and, as the case may be,
- (a) stops attacking or chasing another animal or a person;
  - (b) stops any display of aggression toward another animal or a person;
  - (c) stops any behaviour toward a person that a reasonable person would find harassing or disturbing; and
  - (d) comes to and stays with the keeper.<sup>19</sup>

**Note:** *Schedule 1* is a long list of different kinds or classes of NCC properties; they include paved courtyards in the Byward Market area, conventional urban parklands, the Greenbelt, and Gatineau Park.

13. The keeper of a domestic animal shall not allow the animal, while on unleased land, to
- (a) chase, attack, bite or injure a person or another animal or fight with another animal;
14. The keeper of a domestic animal shall not, on unleased land, leave the animal unattended in a vehicle or container in excessive heat or cold that could endanger the health of the animal.
15. (1) No lessee shall have an animal other than a domestic animal on leased land.
- (2) The keeper of a domestic animal shall not allow the animal, while on leased land, to
- (a) chase, attack, bite or injure a person or another animal or fight with another animal;
  - (b) damage property of the Commission; or
  - (c) enter any body of water of a permanent nature surrounded by Commission

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land or drink from that body of water.

- (3) The keeper of a domestic animal shall not, on leased land, leave the animal unattended in a vehicle or container in excessive heat or cold that could endanger the health of the animal.
- (4) The keeper of a domestic animal shall not, on leased land, have the animal within three metres of the shoreline of any body of water of a permanent nature.

## Appendix "B"

### Observations on Other Sections of the Animal Regulations

**Observation.** "6. (2)(a) a beach and its immediate environs.." The NCC's thinking behind this prohibition seems to be health related. On its website is the following: "Infractions relating to public health, the environment and damage to public property: \$150. Examples include: a pet at a beach, .."As explained above, the National Capital Act lacks the power to authorize health and environmental regulations. However, the presence of many dogs on a crowded public beach would intensify the problem of surveillance necessary to prevent (water) accidents. So the prohibition of pets on a beach to prevent accidents shows reasonable prudence.

If the beach were deserted or nearly so, then the mere presence of supervised pets ceases to be much of a problem. Thus a reasonable approach could be to ban pets during the busy hours of the swimming season, both of which will be well known locally.

**Observation.** "6.(2)(b) a building;" Why would the NCC want a blanket prohibition on dogs in all its buildings, at all times?

**Observation.** "6.(2)(c) the campground located at LeBreton Flats" Why would the NCC want a blanket prohibition on campers' pets in a campground?

**Observation.** "6.(2)(g) an area in which an organized event is being held" Again, this blanket prohibition makes little sense when the events are outside.

**Observation.** "9. Every keeper of a domestic animal shall immediately pick up any fecal matter deposited by the animal and shall remove the matter from unleased land." The first part of this regulation is sensible, common practice, aided and sometimes informally enforced by dog walkers all over Ottawa; and it falls within the "protection of property" power. What lacks that increasingly rare element of common sense is the removal requirement. There are some experiments in the works for special containers for the removal of bagged "poop" to a more suitable disposal site. In the meantime, why can't tourists and residents alike deposit their bags in containers, which probably hold a variety of organic and inorganic materials? The NCC would do well to recall Voltaire's dictum -- the best is the enemy of the good -- and act accordingly. In any case, it's hard to understand how depositing neatly bagged organic material into a refuse container would damage property or would cause disorder or accidents.

**Observation.** "13. The keeper of a domestic animal shall not allow the animal .. to (a) chase, attack, bite or injure a person or another animal or fight with another animal.." Overall, this seems sensible as good accident prevention. But it contains an absurdity -- it forbids a dog to chase another dog. Dogs do that in play. Sometimes, they even chase squirrels. Ninety-nine per cent of the time, the squirrels escape. Squirrels are not an endangered species. Quite the contrary.

**Observation.** "9.(1)(c) stops any behaviour toward a person that a reasonable person

would find harassing or disturbing." Two or more reasonable persons can disagree on anything and remain reasonable persons. This is a badly drafted regulation.

Appendix "C"

Miscellaneous Observations on the RIAS

The Regulatory Impact Assessment Statement (RIAS) stated, on its first page, the following:

*Some general rules apply to all Commission land, leased and unleased. For example, on any Commission land to which the regulations apply, no animals other than domestic animals are permitted, domestic animals would not be permitted in bodies of water surrounded by Commission land and on the shorelines of other bodies of water..*<sup>20</sup>

**Observation.** The following phrase, extracted from the above, is astonishingly ridiculous: "*on any Commission land to which the regulations apply, no animals other than domestic animals are permitted,..*" Just why would the Commission want to - **or think it could** - expel from its lands all squirrels, raccoons, beavers, muskrats, skunks, deer, bears, etc., that inhabit its domains? Is it any wonder that there is so much criticism and incredulity about the thinking that went into the NCC Animal Regulations?

**Observation.** The following also is incredible: "*domestic animals would not be permitted in bodies of water surrounded by Commission land and on the shorelines of other bodies of water..*" The City of Ottawa, which monitors fecal pollution levels of water off beaches on the Rideau and Ottawa rivers, does not point to swimming dogs as a source of fecal pollution. What, therefore, is the proven, scientific justification for these prohibitions?

**Observation.** The RIAS stated: "*In addition, the Conservation Officers issued 230 warnings to persons who had domestic animals on the Rideau Canal Skateway. The 230 warnings in 1999 are the same as recorded for 1998 (see attached "Appendix A"). What a coincidence!*"

**Observation on Enforcement.** The RIAS stated:

*These Regulations will be enforced by the RCMP, by members of the municipal police services in the National Capital Region, and by Conservation Officers employed by the Commission.*

*A person who contravenes the regulations would be liable, on summary conviction, to a fine of \$500, imprisonment for six months, or both penalties.*<sup>21</sup>

To begin with, informal contacts has revealed neither the Ottawa nor the R.C.M. Police want to deploy their officers and resources to enforce these regulations. The NCC has no compensation agreements with these two police forces, or with any other as far is known, to enforce these regulations. Such agreements will not come cheaply, if at all.

That leaves the 11 NCC Conservation Officers, who may be sworn as special constables under the RCMP Act, to enforce them. Will they become known as the National Capital Constabulary?

**Observation.** The RIAS goes to some length to describe the public consultation. It consisted of two open houses in November 1999. Sixty persons attended the open house in Hull and **1000** persons attended in Ottawa. NCC staff handed out brochures and questionnaires for completion. Yet, It was well over a year later when the NCC finally issued its report (see above) on this activity. Would not most of the interested public, after such a lengthy period, have deemed the proposals a dead issue?

**Observation.** People with political experience will very quickly appreciate that, when a 1000 people turn up on a miserable November evening, the proposal before the public is hotly (and predictably) controversial and may well merit careful reconsideration. Both of these points remain true today. Those with successful public consultation experience would also point out that what was clearly lacking, and perhaps evaded, was a public meeting in which, as would be customary, members of the public could receive answers from and express their views to commissioners and senior officials.

Moreover, there would be a need for a second such public meeting to discuss a proposal, revised in light of the first meeting and well-publicized in advance. There were other critical elements missing too.

As a result, the necessary public consensus has failed to develop. Consequently, many of the regulations will prove unenforceable and attempts to enforce them may embarrass the Commission and the government.

**Observation.** The Public Consultation Report stated that the "NCC initiated continuing dialogue with input from representatives of the pro off-leash groups .. balanced with input from representatives .. (with) other viewpoints to ensure a solution that would satisfy as many stakeholders as possible *without compromising the NCC's initial objectives and guiding principles.*"<sup>22</sup>.

These formulaic phrases provoked justifiable cynicism. Moreover, they underline that the Commission or its staff held its *initial objectives and guiding principles* sacrosanct, whatever the interested public might say.

**Observation.** Some of the guiding principles are appropriate and some reflect an anti-pet bias or are inane. For example: "*Domestic animals would have no, or only minimal, impact on human health, human safety, visitor experience and the environment.*"<sup>23</sup>

That, of course, is demonstrably silly because pets' inoculations and medical check-ups are usually up to date and the impact of pets on their human companions' and many other persons' experience is very positive and seldom negative. This phrasing indicates an ingrained negative attitude and uninformed mind(s) prejudicial to sound regulation.

**Observation.** The negative NCC bias against "domestic animals" also came out plainly in the following two sentences:

- "*Fencing off-leash areas meets the needs of users who do not own domestic animals by providing a safe and healthy environment in which these users may enjoy recreational activities.*"<sup>24</sup>. Did this mean that owners of "domestic animals" do not require or merit "a safe and healthy environment"? Or did it mean

that the presence of "domestic animals" will necessarily jeopardize "a safe and healthy environment"? And

➤ *"..would do nothing to respond to the concerns of persons who object to domestic animals because they are made uncomfortable by the animals.."*<sup>25</sup> The vast majority of dogs and cats (and their owners) do **not** seek to make anybody "uncomfortable". To encounter a muskrat, a skunk or a raccoon in an **urban** park is a cause for caution and perhaps fear in light of recent rabies alarms. However, unless a particular wild animal is dangerous and actually attacks someone, do the authorities take action? The most common fault of a dog is being too friendly and the vast majority of owners bring their dog away from people who do not welcome canine attention. Hence, the basic question comes down to this: does an individual's irrational fear of, or animosity towards, pet dogs or cats form a sound basis for federal government intervention and punitive regulation?

1. P.C. 2002 - 621 (SOR/2002-164) Apr 25, 2002, Canada Gazette, Part II, 8 May 02
  2. <http://canada.gc.ca/gazette/part2/pdf/g2-13610.pdf>
  3. "By 1907 the layout of Central Park was complete" The Story of the Glebe from 1800 to 2000; John Leaning; <http://www.ncf.ca/ottawahistory/>
  4. <http://canada.gc.ca/gazette/part2/pdf/g2-13610.pdf>
  5. By-law Services, Emergency and Protective Services, City of Ottawa. Internal Memo, 21 Oct 02
  6. Appendix A, Statistics - Dog Incidences [sic] 1994 -1998, Proposed Domestic Animal Regulation, Phase 1; Delcan Consultants, Draft Final Report, October 1999 and Final Report, July 2000. Appendix A was identical in both versions.
  7. Annex 1, Public Consultation Report, Proposed National Capital Commission Animal Regulations, Spring 2001. Released in August 2001 by the NCC.
  8. The NCC, according to its website, envisages a heavily punitive approach as follows:
    - \* *Minor infractions: \$100. Examples include: more than two pets per person at a time; a pet in a no-pet area; too long a leash or harness; walking a pet while on in-line skates, a bicycle or skis; not picking up a pet's waste; an animal that is not under control; etc.*
    - \* *Infractions relating to public health, the environment and damage to public property: \$150 Examples include: a pet at a beach, a campground or a picnic area; a pet less than three metres from the shore or in water that is next to NCC land; damage to NCC property; refusal to obey a conservation officer; etc.*
    - \* *Serious infractions causing injury to a person or other animal: \$300 Examples include: a pet biting, attacking, chasing or injuring of a person or animal; a pet left unattended in a vehicle when it is very hot or cold out; etc.*
- Source: [http://www.nationalcapitalcommission.gc.ca/corporate/aboutthence/animal\\_regulation\\_e.asp#fines](http://www.nationalcapitalcommission.gc.ca/corporate/aboutthence/animal_regulation_e.asp#fines)
9. ARs' Subsections 6.(2)(c) and 15.(2)(c)
  10. [http://www.nationalcapitalcommission.gc.ca/corporate/aboutthence/animal\\_regulation\\_e.asp#faq8](http://www.nationalcapitalcommission.gc.ca/corporate/aboutthence/animal_regulation_e.asp#faq8)
  11. [http://www.nationalcapitalcommission.gc.ca/corporate/aboutthence/animal\\_regulation\\_e.asp#faq10](http://www.nationalcapitalcommission.gc.ca/corporate/aboutthence/animal_regulation_e.asp#faq10)
  12. See Appendix "C". The RIAS indicated that the NCC answered this question affirmatively.
  13. From Regulatory Process Management Standards - see Appendix "A"
  14. <http://www.pco-bcp.gc.ca/raoics-srdc/default.asp?Language=E&page=publications&sub=governmentofcanadaregula#b>
  15. <http://laws.justice.gc.ca/en/s-22/text.html>
  16. It is unclear whether the NCC fits the definition of a regulation making authority as defined in the Act.



17. <http://laws.justice.gc.ca/en/N-4/80672.html>
18. <http://www.canada.gc.ca/gazette/part2/pdf/g2-13610.pdf#page=27>
19. <http://www.canada.gc.ca/gazette/part2/pdf/g2-13610.pdf#page=27>
20. <http://www.canada.gc.ca/gazette/part2/pdf/g2-13610.pdf#page=27>
21. Ibid
22. My emphasis and italics
23. Public Consultation Report, page 7. My emphasis and italics.
24. Ibid, p20
25. Canada Gazette citation, page 1053