

ITEM	10
MANAGER'S REPORT NO.	68
COUNCIL MEETING	1978 10 02

RE: LETTER FROM THE ASSOCIATION FOR THE PROTECTION OF
FUR-BEARING ANIMALS WHICH APPEARED ON THE AGENDA
FOR THE 1978 SEPTEMBER 25 MEETING OF COUNCIL (ITEM 4h)
LEG-HOLD TRAPS

Appearing on last week's agenda was a letter from Mrs. Bunty Clements, president of the Association for the Protection of Fur-Bearing Animals, regarding the use of leg-hold traps to capture animals.

Since the municipality does not set traps or permit the setting of traps on its property, it is the opinion of the Municipal Solicitor that there is little likelihood of the municipality being found liable for injuries suffered by children, adults or domestic animals that might become caught in such traps.

In the opinion of staff, there is some question about the validity of the By-law which was enacted by the Corporation of the District of Powell River. It purports to be passed pursuant to Section 870(s) of the Municipal Act which provides that Council may by By-law "prohibit cruelty to animals". The Criminal Code also in Section 402 makes cruelty to animals an offence and the By-law for that reason may be ultra vires. Further, the Municipal Act empowers Council to "prohibit cruelty to animals". The Powell River By-law, however, prohibits not cruelty to animals but the use of a leg-hold trap. The By-law simply makes the assertion in a preamble that leg-hold traps cause cruel and agonizing death to animals. Whether any Council has the authority to make that assumption may be a moot point.

If Burnaby were to adopt the Powell River By-law, a successful prosecution would require proof that the defendant used a leg-hold trap. Practically every case would require catching the defendant in the act.

Mrs. Clements refers in her letter to the opinion of Mr. D. J. Robinson, Acting Director for the Fish and Wildlife Branch, that "it appears that if a pet or child is injured in a trap, and depending upon the precautions taken, the municipality, if negligent, could legally be held responsible for the injury". We do not know on what authority that statement is based or even if Mr. Robinson is correctly reported. In any event, the key phrase is "if negligent". If the municipality is negligent in the legal sense it would, not "could" be liable.

Mrs. Clements correctly points out that the S.P.C.A. in Burnaby has initiated a charge of cruelty to an animal. This charge involves permanent injury to a cat and was laid pursuant to the Criminal Code. The charge alleges use of a leg-hold type trap which, incidentally, was set and activated on private property. The S.P.C.A. advises that similar complaints have been attended to but lack of evidence has prevented the implication of charges.

The S.P.C.A. advises that the type of trap used by them and approved for use by other persons to catch small or wild domestic animals is termed a humane box trap. The animal is usually enticed into the cage-like container by placing bait in it. The animal must pass over a device that releases a spring loaded door to get to the bait that has been placed within the cage. The animal must completely enter it before the door is activated. The animal is then completely confined but is not held by any device that may injure it.

In summary, there is a consensus among staff that there is no need in Burnaby for the type of By-law that has been enacted by Powell River. Notwithstanding the question of the By-law's validity, there is authority in the Criminal Code under which municipalities can initiate legal action against persons who use leg-hold traps which injure or subject an animal to a form of suffering that may be considered to be cruel or inhumane. This is a clearly recognized legal process as indicated above where reference is made to a charge that has been laid by the Burnaby S.P.C.A. pursuant to the Code.

RECOMMENDATION:

1. THAT a copy of this report be sent to the Association for the Protection of Fur-Bearing Animals, 1316 East 12th Avenue, Vancouver, B.C. V5N 1Z9.

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