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## **RESPONSE OF THE OTTAWA AMPHIBIAN AND REPTILE ASSOCIATION TO THE PROPOSED ANIMAL CARE AND CONTROL BY-LAW**

### **SUMMARY**

The Ottawa Amphibian and Reptile Association (OARA) supports prohibitions on venomous reptiles, giant snakes and lizards, and crocodylians. We are nevertheless concerned that the proposed provisions, *as currently worded*, could have results above and beyond what the City intends. These results would have the impact of leaving vulnerable to charges people who keep small and perfectly harmless animals that the City may not have intended to prohibit and for which there is no justification to prohibit. This document sets out in detail our concerns, the reasons for our concerns, and our recommended solutions.

### **OBJECTIONS AND RECOMMENDATIONS**

- 1. The proposed By-law requires provincial authorization to keep indigenous wildlife, but the province does not require a licence or authorization for every indigenous wildlife species. (Recommendation IV-8.a)**

It's a classic catch-22: the City requires a person to have an authorization from the province, but the person cannot get an authorization from the province because the province says that the person doesn't need one. Under Recommendation IV-8.a, a person keeping indigenous wildlife could face charges not for the protected animals kept under a provincial licence, but for the common, unregulated animals for which no licence is required.

*The Fish and Wildlife Conservation Act, 1997* (S.O. 1997, c. 41) regulates game wildlife and specially protected wildlife, which are listed in Schedules 2 to 11 of the Act. A licence to keep game wildlife and specially protected wildlife in captivity is required under section 40; a licence to rehabilitate such wildlife is required under section 44; a licence to propagate such wildlife is required under section 45; and a licence to buy or sell such wildlife is required under section 48. In each case, the requirement is in respect of game wildlife and specially protected wildlife only. There is no provision that sets out any requirement for a licence for indigenous wildlife that is not game wildlife or specially protected wildlife.

Insofar as reptiles and amphibians are concerned, five species of snake, seven species of frog and toad, and one species of salamander fall into this category (i.e., neither game nor specially protected). Many are just the sort of thing a child might bring home; several are kept by members of our Association to be used in our public educational displays (incidentally, our members have licences for those animals which require them).

***Recommendation:***

*Amend Recommendation IV-8.a to read that authorization from the province is required if the province requires authorization in respect of that species.*

**2. Prohibiting the keeping of indigenous wildlife without provincial authorization is redundant. (Recommendation IV-8.a)**

Recommendation IV-8.a essentially makes it an offence under the By-law to commit an offence under the *Fish and Wildlife Conservation Act, 1997*. We suggest that this entire provision may be unnecessary. Police officers are deemed to be conservation officers under subsection 87(2) of the Act and can enforce its provisions. Section 102 of the Act provides penalties of \$25,000 and up to one year's imprisonment per offence, or even more under certain circumstances. It is difficult to see how a fine under a municipal by-law would serve as a deterrent if the penalties under the FWCA are insufficient to deter the offender.

***Recommendation:***

*Delete Recommendation IV-8.a altogether.*

**3. The language prohibiting venomous snakes is unclear and may lead to harmless snakes being included inadvertently. (Item 11 of Schedule A)**

We have some concerns that listing venomous snakes by family runs the risk of omitting a family of venomous snakes or leaving some people with the mistaken impression that some venomous snakes are legal when taxonomic revisions occur. Both the City of Toronto (By-law 28-1999) and the Province of Quebec (*Regulation Respecting Animals in Captivity*, Schedule II) simply prohibit venomous and/or poisonous animals, without specifying the taxonomic category. This is equally clear: it is just as easy to prove, for example, that a snake is venomous as it is to prove that a snake is a member of the Atractaspididae family.

But our primary concern is with the language regarding rear- and mid-fanged colubrids:

All venomous, mid- or rear-fanged, Duvernoy-glanded members of the family Colubridae, even if devenomized;

The wording of this passage leaves it unclear whether it is only *venomous* snakes that *happen* to have rear fangs or Duvernoy's glands that are prohibited, or whether rear-fanged and Duvernoy's-glanded snakes, regardless of their venomosity and danger (or lack thereof), are prohibited. The latter interpretation is problematic for two reasons:

- (1) A Duvernoy's gland is not an indicator of whether a snake is venomous or not. Many harmless snakes, such as garter snakes, red-bellied snakes and water snakes, have Duvernoy's glands, but their bites are absolutely harmless.
- (2) While rear-fanged snakes are generally venomous and some are very dangerous, many have venom so weak that it is incapable of harming a human being—a bee's sting is far more toxic.

As a result, the intent of the provision—to prohibit *venomous* snakes, whatever the source of their venom—may be obscured, and there exists a risk that the provision could be used to seize snakes as innocuous as garter snakes or hognose snakes, both of which are commonly kept as pets. The provision thus needs clearer language.

The issue is not where a snake's fangs are, or whether it has a Duvernoy's gland, or even whether it is nominally venomous—even human saliva, after all, has some toxic properties—but rather whether a snake has venom strong enough to cause a human being significant harm. Accordingly, we propose the following:

***Recommendations:***

*Replace all items respecting venomous snakes with language similar to the following:*

Venomous snakes capable of causing medically significant harm to a human being;

*Conversely, if it is deemed desirable that families of venomous snakes be listed explicitly, make the following two changes:*

(a) *Replace “All Viperidae (viper, pit viper);” with the following:*

All Crotalidae (rattlesnakes, other pit vipers);  
All Viperidae (adders, asps, vipers);

(b) *Replace “All venomous, mid- or rear-fanged, Duvernoy-glanded members of the family Colubridae, even if devenomized;” with language similar to the following:*

Rear- or mid-fanged members of the family Colubridae that have a venom capable of causing medically significant harm to a human being;

- 4. Prohibiting all Boidae, Pythonidae, Iguanidae, Teiidae and Varanidae in addition to snakes longer than three metres and lizards longer than two metres only prohibits small and harmless animals common in the pet trade and the City, and generates enforcement headaches for the City. (Item 11 of Schedule A)**

The examples given in Schedule A just happen to be the largest of each family; most members of these families are as small as members of other families of snake and lizard. Snakes longer than three metres and lizards longer than two metres are the *exception* rather than the rule for these families, though you wouldn't know it from the examples given in the Schedule, which are unrepresentative.

In fact, most of the animals given as examples would already be prohibited under the provision that bans snakes longer than three metres and lizards longer than two metres. When venomous snakes, boas and pythons, iguanids, teiids and varanids are excluded, there are virtually no snakes longer than three metres or lizards longer than two metres left: each provision makes the other redundant.

We therefore favour deleting the provisions referring to snake and lizard families and retaining the provisions prohibiting snakes longer than three metres and lizards longer than two metres.

A large number of species that are widely kept in the City of Ottawa and that are of a relatively small size would fall under this prohibition. Here are a few examples.

**Boidae** includes snakes that rarely exceed a metre in length, such as rubber boas, sand boas and rosy boas, as well as snakes that would be hard pressed to exceed two metres in length, such as Pacific boas, tree boas and rainbow boas. Sand boas in particular have been sold in Ottawa-area pet stores for years and are undoubtedly numerous in the City, and rosy boas are among the best pet snakes around. Only female boa constrictors and green anacondas reliably exceed a length of three metres; banning any other boa, particularly the small ones, would be absurd on its face. (Incidentally, the only thing a boa can hybridize with is another boa, so the reference to “hybrid offspring” is puzzling.)

**Pythonidae** also includes snakes that do not exceed a metre in length, such as spotted and Children’s pythons, as well as snakes that rarely exceed two metres in length, such as carpet pythons and ball pythons. Ball pythons in particular are commonly kept as pets, and the practice should not be discouraged: these gentle, reasonably sized and easy to care for snakes are infinitely preferable to a giant python. Only three python species (plus possibly one or two more recently discovered species in Australia) regularly achieve lengths greater than three metres: the reticulated python, the Indian (Burmese) python, and the African rock python. The rest pose absolutely no danger to their keepers or the public.

**Iguanidae** certainly includes green iguanas, about which we have more to say below—but the family also contains numerous other species, like North American desert iguanas or chuckwallas, do not present nearly the same problems of care, aggression or abandonment that green iguanas do.

**Teiidae** includes tegus, but it also includes a number of small New World lizards as well, including dwarf tegus, caiman lizards and ameivas—all common pet-trade lizards—and racerunners, North American lizards that reach a grand total of 20 cm or so in length.

While many of the better-known members of **Varanidae** are larger than two metres, there are several species, such as the ridge-tailed monitor and Storr's monitor that stay very small in size—60 cm and 30 cm, respectively—and have good temperaments. They are being bred in increasing numbers in Canada and their captive care ought to be encouraged as an alternative to larger monitors. There are also a large number of savanna monitors kept in Ottawa: while larger, they are generally well-behaved and do not exceed two metres in length, and do not present a threat to the public. Only monitors longer than two metres are a problem.

In short, prohibiting rosy boas and Storr's monitors in order to prevent people from keeping anacondas and Komodo dragons is the logical equivalent of banning all Felidae, *domestic cats included*, in order to prevent people from keeping lions and tigers.

In addition to the fact that small, harmless animals currently kept in Ottawa would fall under the ban, the current wording of item 11 of Schedule A in respect of large reptiles has the following problems:

**Taxonomic uncertainty.** Animals are moved from one family to another all the time: Boidae was split into several families in recent memory, as was Iguanidae. While case law in respect of statutory interpretation suggests that the consensus understood at the time the by-law is enacted would be the one given legal force, there is not always a consensus at a given time—taxonomy is always subject to debate among systematists—and people trying to stay in compliance with the bylaw may not be completely sure, depending on which book they consult, whether their green anole is a member of the legal family Polychrotidae, or the prohibited family Iguanidae (in which it once resided).

**Large number of people keeping prohibited animals.** The proposals would prohibit animals that have been readily available in the City for years. Based on what we know and on what has been available in pet stores recently, it is certain that more than a few Kenyan sand boas, green iguanas, jewelled ameivas, dwarf tegus, and savanna monitors are found in the City. The number of people who would have to register them would be not insubstantial—easily in the hundreds, if not more.

**Attitudes.** If the By-law prohibits small and harmless animals along with large and dangerous animals, it will not command respect among reptile and amphibian keepers. Nor would the by-law be able to make a useful social distinction between safe and dangerous, as the prohibitions would appear arbitrary. Voluntary compliance would likely be an issue.

**Cost of enforcement.** Who among City staff can tell whether a lizard is an agamid or an iguanid? The City does not at present have the staff with the expertise to identify exotic reptiles and amphibians; to date, the City and its antecedents have relied upon private individuals—members of our Association—to identify reptiles and amphibians on behalf of Animal Control. In-house expertise would almost certainly have to be developed. In contrast, prohibiting snakes and lizards by their length only requires an ability to use a measuring tape. Additionally, City resources would be better spent on animals that actually pose a risk to human safety, rather than a larger pool of animals that have the bad luck to be distantly related to something big and dangerous.

***Recommendations:***

*Remove all provisions relating to the prohibition of members of Boidae, Pythonidae, Iguanidae, Teiidae, and Varanidae.*

*Rely on the prohibition of snakes greater than three metres in length and lizards greater than two metres in length to accomplish your goals.*

**5. Prohibiting all iguanas would cause a nightmare for iguana adoption efforts. (Item 11 of Schedule A)**

Under the current proposal, iguanas are prohibited but current owners who register with the City may have their iguanas grandfathered. However, some current owners have grown tired with their pets and want to find new homes for them. Those new homes would be unable to keep an iguana legally, thus making iguana adoption programs impossible.

While we don't approve of owners who want to get rid of their animals after realizing and experiencing their adult size and behaviour, nevertheless we do what we can to find new homes for the iguanas when asked to do so. The scope of this problem should not be underestimated: Reptile Rescue in Burlington, Ontario has

processed hundreds of iguanas over the past few years. For the reptile community, the effort to adopt out iguanas is on a par with the problem with red-eared slider turtles, and far greater than the problem with large pythons or crocodilians (these are the only reptiles with significant adoption and abandonment numbers). Preventing adoption programs would essentially mean a lot of abandoned and dumped—and eventually, dead—iguanas.

Additionally, we want the sale of baby iguanas prohibited, so that the flow of new iguanas can be stemmed, but the keeping and exchange of adult iguanas needs to be maintained.

***Recommendation:***

*Prevent the sale of baby iguanas in pet stores by prohibiting green iguanas (Iguana iguana) less than 75 cm in length, but do not prohibit iguanas in general (see above).*

**ABOUT THE ASSOCIATION**

OARA is a club of approximately fifty reptile and amphibian enthusiasts. Our membership includes passionate pet keepers and dedicated field naturalists, and ranges from beginners to serious reptile breeders and professional herpetologists. Since 1983 our members have volunteered for research and conservation projects and set up educational displays. Our public displays have been featured at the National Capital Wildlife Festival, the Great Animal Adventure, the Central Canada Exhibition, and Environment Week.

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