

# After the Berger Blanc: A Comparative Approach to the Utilitarian Regulation of Municipal Animal Control

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Article abstract

In April 2011, Radio-Canada aired an investigative report exposing the cruel treatment of domestic animals by workers at one of Montreal's largest animal shelters. A private business, the Berger Blanc held the majority of municipal contracts for animal control services throughout Montreal. Following the widely-watched exposé, the regulation of domestic animal welfare rose to the top of the agenda both at Montreal's City Hall and Quebec's National Assembly, as citizens demanded a response to the jarring images of cruelty and neglect. The province responded, adopting a regulation to strengthen the legal protection of dogs and cats under *Quebec's Animal Health Protection Act*—a regulation which has been criticized as ineffective and inadequate by animal welfare groups throughout the province. Similarly, Montreal's City Hall announced steps to launch a municipal animal control service. And yet, progress is slow and many Montreal boroughs continue to renew their contracts with the Berger Blanc. This paper will review the theoretical, political and legal context surrounding the issue of domestic animals, and employ an animal welfarist (utilitarian) approach to examine the three traditional municipal animal control service models, namely the private for-profit model, the private non-profit model and the public model. In doing so, the paper will suggest that despite the municipal government's stated financial priorities, the only solution to Montreal's domestic animal situation—one which properly takes the equal interests of domestic animals into account—lies in a publicly-funded, municipally-run animal services department, similar to the model currently employed by the City of Calgary.

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# After the Berger Blanc: A Comparative Approach to the Utilitarian Regulation of Municipal Animal Control

JODI LAZARE\*

## ABSTRACT

*In April 2011, Radio-Canada aired an investigative report exposing the cruel treatment of domestic animals by workers at one of Montreal's largest animal shelters. A private business, the Berger Blanc held the majority of municipal contracts for animal control services throughout Montreal. Following the widely-watched exposé, the regulation of domestic animal welfare rose to the top of the agenda both at Montreal's City Hall and Quebec's National Assembly, as citizens demanded a response to the jarring images of cruelty and neglect. The province responded, adopting a regulation to strengthen the legal protection of dogs and*

## RÉSUMÉ

*En avril 2011, Radio-Canada diffusait une enquête exposant le traitement cruel des animaux domestiques par des travailleurs dans une des plus grosses fourrières à Montréal : une compagnie privée, le Berger Blanc, détenant la majorité des contrats de services animaliers dans la ville. À la suite de la popularité du reportage, la réglementation du bien-être des animaux domestiques s'éleva en tête de l'ordre du jour de l'hôtel de ville de Montréal, ainsi que de l'Assemblée nationale du Québec, pendant que les citoyens exigeaient une réponse aux images stupéfiantes de cruauté et de négligence. Le gouvernement*

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*cats under Quebec's Animal Health Protection Act—a regulation which has been criticized as ineffective and inadequate by animal welfare groups throughout the province. Similarly, Montreal's City Hall announced steps to launch a municipal animal control service. And yet, progress is slow and many Montreal boroughs continue to renew their contracts with the Berger Blanc. This paper will review the theoretical, political and legal context surrounding the issue of domestic animals, and employ an animal welfarist (utilitarian) approach to examine the three traditional municipal animal control service models, namely the private for-profit model, the private non-profit model and the public model. In doing so, the paper will suggest that despite the municipal government's stated financial priorities, the only solution to Montreal's domestic animal situation—one which properly takes the equal interests of domestic animals into account—lies in a publicly-funded, municipally-run animal services department, similar to the model currently employed by the City of Calgary.*

*provincial répondit en adoptant un règlement pour renforcer la protection juridique des chiens et des chats en vertu de la Loi sur la protection sanitaire des animaux — un règlement critiqué pour son inefficacité et son insuffisance par des groupes promouvant le bien-être des animaux partout au Québec. De la même façon, la Ville de Montréal annonça des mesures pour établir un service municipal de contrôle animalier. Or, les progrès sont lents et plusieurs arrondissements continuent à renouveler leurs contrats avec le Berger Blanc. Cet article étudiera le contexte théorique, politique et juridique entourant la question des animaux domestiques, et fera appel à une approche fondée sur le bien-être animalier (utilitaire) pour examiner les trois modèles traditionnels du contrôle animalier municipal, à savoir, le modèle privé à but lucratif, le modèle privé à but non lucratif et le modèle public. Ce faisant, l'article suggérera que, malgré les priorités financières déclarées par le gouvernement municipal, la seule solution à la problématique des animaux domestiques à Montréal — une solution qui*

*prend adéquatement en compte les intérêts égaux des animaux domestiques — se trouve dans un service animalier dirigé par la ville et financé par les fonds publics, ressemblant au modèle adopté par la Ville de Calgary.*

**Key-words :** *Animal law, animal welfare, animal control, cruelty to animals, municipal law, municipal regulation.*

**Mots-clés :** *Droit animal, bien-être animalier, contrôle animal, cruauté envers les animaux, droit municipal, réglementation municipale.*

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It is the height of human arrogance to sacrifice the welfare of existing animals because the political system will not give complete and immediate satisfaction.<sup>1</sup>

## INTRODUCTION

In April 2011, Radio-Canada aired an investigative report exposing the cruel treatment of companion animals by workers at one of Montreal's largest animal shelters.<sup>2</sup> A private company, the Berger Blanc, held the majority of municipal contracts for animal control throughout Montreal. At the time of the report, more than half of Montreal's 19 boroughs had contracts with the Berger Blanc for their animal control services.<sup>3</sup> This is a meaningful role in a city where recent estimates place the number of pets who die in shelters at approximately 400 per day, with the Berger Blanc taking in about 30,000 abandoned, stray and unwanted pets per year.<sup>4</sup> In the aftermath of the widely-watched exposé, the regulation of domestic animal welfare rose to the top of the agenda both at Montreal's City Hall and Quebec's National Assembly, as citizens and media organizations alike demanded a political response to the jarring images of cruelty and neglect. Montreal's City Hall responded announcing steps to launch a municipal animal control service.<sup>5</sup> And yet, progress is slow.

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1. David FAVRE, "Integrating Animal Interests Into Our Legal System," (2004) 10 *Animal L.* 87, 90.

2. Josée DUPUIS (journalist) and Pier GAGNÉ (producer), "Le Mauvais Berger," *Enquête*, Radio-Canada (April 21, 2011), online: <<http://www.radio-canada.ca/emissions/enquete/2010-2011/Reportage.asp?idDoc=148572>> (consulted November 19, 2012) ["*Mauvais Berger*"].

3. CBC News, "Montreal Animal Shelter Practices Raise Alarm," *CBC News Montreal* (April 20, 2011), online: <<http://www.cbc.ca/news/canada/montreal/story/2011/04/20/montreal-animal-pound-euthanasia.html>> (consulted November 19, 2012).

4. Henry AUBIN, "City's Animal-Care Plan Still Needs Some Work: Sterilization Costs Are Central to Controlling Montreal's Pet Population," *The Gazette* (December 19, 2011), online: <<http://www.montrealgazette.com>> (consulted November 19, 2012).

5. Max HARROLD, "City to Toughen Animal Control System: Plan Could Make Licences, Sterilization Mandatory," *The Gazette* (December 15, 2011), online: <<http://www.montrealgazette.com>> (consulted November 19, 2012) ["City to Toughen Animal Control"]; Max HARROLD, "Super-Pound Seen as Solution to Pet Problem: Animal Rights Advocates Like Idea; Centralized Facility Would Offer Affordable Sterilization, Microchip IDs, Licences," *The Gazette* (December 16, 2011), online: <<http://www.montrealgazette.com>> (consulted November 19, 2012) ["Super-Pound"].

In the meantime, many Montreal boroughs continue to renew their contracts with the Berger Blanc.

This paper will begin with a short explanation of its analytical approach, that of animal welfare. This brief description of the animal welfare framework should provide some theoretical context to readers unfamiliar with animal law theory. Following this, the paper will canvass the current political and legislative framework for the regulation of animal control in Quebec, and will employ an animal welfare approach to examine the three traditional municipal animal control models. First, the private for-profit model, currently used through contracts with the Berger Blanc, will be examined, followed by the private non-profit model, as exemplified by the work of the Canadian Society for the Prevention of Cruelty to Animals (the Montreal SPCA) and its involvement in animal control services. Lastly, the paper will review the public, or municipally-run model of animal control, as currently in place in Calgary. In reviewing the various models, this paper will aim to demonstrate that despite the municipal government's stated financial priorities, the only solution to Montreal's companion animal situation—one which properly takes into account the equal interests of companion animals and tax-paying citizens alike—lies in a publicly-funded, city-run animal services department. As will be established, this is the only animal control model which satisfies the utilitarian requirements of animal welfarism. The municipally-sponsored suffering of animals captured on video at the Berger Blanc, and the relatively low cost of implementing a public system, are simply not outweighed by the city's political and financial priorities.

Methodologically, this paper relies heavily on non-legal sources (largely media) and academic writings, placing less weight on jurisprudence.<sup>6</sup> The reason for this is that relatively speaking, animal law, and particularly questions of animal control, have to date garnered little attention from the courts. Further, the relative lack of judicial attention in Canada also explains the heavier reliance on American case

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6. Note that all online references to non-legal sources were accessed between March and November 2012.

law, dealing with issues relative to which Canadian examples are limited, and on Canadian case law from outside Quebec, where Quebec examples are not available.

## 1. THE ANIMAL WELFARE APPROACH

Before situating the issue of animal control in Montreal in its current political and legal context, it is useful to explain what exactly is meant by the animal welfare approach that this paper takes. The animal welfare movement is perhaps best understood in opposition to the theory of animal rights, which advocates for the abolition of any and all use of animals, regardless of whether animals are well-treated during the course of their use.<sup>7</sup> Drawing on the works of Tom Regan<sup>8</sup> and Bernard Rollin,<sup>9</sup> proponents of the animal rights movement advance arguments to demonstrate that the exploitation of animals must be stopped and that animals should not be treated as the property of humans.<sup>10</sup> To borrow Gary Francione's example, someone who works in the meat industry and encourages consumers to eat meat from humanely raised animals, could never purport to support animal rights, regardless of the good treatment of the animals in question.<sup>11</sup> This is in contrast with the animal welfare movement, also known as animal protectionism, which, rather than advocating for the complete abolition of animal exploitation, argues for the regulation of the use of animals<sup>12</sup> and seeks to ensure that animals are treated humanely in whatever capacity they are used by humans. It does so by adopting an "anthrocentric" or human-centred approach to the treatment of animals and by not challenging the idea of animals as

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7. Gary L. FRANCIONE and Robert GARNER, *The Animal Rights Debate: Abolition or Regulation?* New York, Columbia University Press, 2010, p. 1. See also Gary L. FRANCIONE, "Animal Rights and Animal Welfare," (1996) 48 *Rutgers L. Rev.* 397.

8. See e.g. Tom REGAN, *The Case for Animal Rights: Updated with a New Preface*, Berkeley, University of California Press, 2004; Tom REGAN, "Progress Without Pain: The Argument for Humane Treatment of Research Animals," (1987) 31 *St. Louis U.L.J.* 513.

9. See e.g. Bernard E. ROLLIN, *Animal Rights & Human Morality*, 3rd ed., Amherst, Prometheus Books, 2006.

10. G. L. FRANCIONE and R. GARNER, *supra*, note 7.

11. *Id.*, p. 2.

12. *Id.*



property and the object human benefit.<sup>13</sup> As such, while animal welfarism is aimed at the “prevention of unjustified cruelty against animals,” its proponents are not necessarily opposed to culturally accepted uses of animals for “human pleasure, benefit or profit,” such as hunting and eating meat, even where those activities involve inflicting pain or death upon animals.<sup>14</sup> Similarly, if we accept the status of animals as human property, animal welfarists would not be opposed to the humane regulation of domestic animal control, which will sometimes involve euthanizing companion animals.

The animal welfare movement, as popularized by Peter Singer in the 1970’s, is based not on a theory of rights, but on a utilitarian view of morality, where the equal consideration of interests is not limited to humans.<sup>15</sup> Drawing on the writings of Jeremy Bentham, Singer reasoned that because animals can suffer, they necessarily have an interest in avoiding suffering.<sup>16</sup> Thus, although some suffering might be inevitable, humans should ensure that the suffering of animals is kept at a minimum, and only tolerated when unavoidable. Accordingly, the gratuitous suffering of animals, which provides little benefit to humans and which could be eliminated at a similarly small cost, is morally reprehensible and plainly wrong. Simply put, the animal welfare model has been judicially defined as “based on the concept that humans have a moral and ethical obligation to treat animals humanely.”<sup>17</sup>

The question of which side should prevail in this ongoing debate goes far beyond the scope of this paper, which will not weigh in on the moral and intellectual soundness of

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13. Tony BOGDANOSKI, “Towards an Animal-Friendly Family Law: Recognising the Welfare of Family Law’s Forgotten Family Members,” (2010) 19 *Griffith L.R.* 197, 210.

14. *Id.*, 212.

15. Peter SINGER, *Practical Ethics*, 2nd ed., New York, Cambridge University Press, 1993, p. 55 [“*Practical Ethics*”]. See also Peter SINGER, *Animal Liberation*, New York, HarperCollins Publishers Inc., 2002, first published in 1975.

16. P. SINGER, *Practical Ethics*, *id.*, p. 57.

17. *Reece v. Edmonton (City)*, 2011 ABCA 238, par. 42, Fraser CJA, dissenting, leave to appeal to SCC refused 34454 (April 26, 2012). Reece represents one of the sole instances of Canadian appellate case law dealing directly with the relationship between humans and animals and the question of animal welfare. See also: Katie SYKES and Vaughan BLACK, “Don’t Think About Elephants: *Reece v. City of Edmonton*,” (2012) 63 *U.N.B.L.J.* 145.



either abolitionism or protectionism. But the debate is nevertheless relevant to this discussion, insofar as it situates the question of the municipal regulation of animal control, which necessarily implies that animals are an issue to be regulated. Nor will this paper discuss how we have arrived at a situation for domestic animals which makes regulation a necessity. Rather, assuming without deciding that animal welfare is a morally and intellectually sound approach, it is sufficient to understand that for the purposes of uncovering the best method of addressing the municipal animal control question, a theoretical framework aimed at promoting the well-being of companion animals is appropriate. This is particularly true given the incremental nature of the animal welfare movement, which maintains that incremental reform is the most realistic and practical way of reducing the ill-treatment of animals.<sup>18</sup> This incremental approach is useful in a situation where, as will be seen below, the abhorrent treatment of animals by Montreal's delegated authorities and the municipal government's unenthusiastic response demonstrate that the city is a long way away from recognizing rights for non-human animals. Thus, this paper will demonstrate that from a utilitarian understanding of morality, the benefits of a public form of municipal animal control, which ultimately boils down to the prevention of the unnecessary suffering of companion animals, far outweigh the relatively low costs associated with the establishment and operation of a publicly-funded municipal animal shelter.

## 2. THE CONTEXT: THE POLITICS OF MUNICIPAL ANIMAL LAW

### 2.1 POLITICAL CONTEXT

#### 2.1.1 "*Mauvais Berger*"

When "*Mauvais Berger*," Radio-Canada's investigative report, aired on April 21, 2011, the Berger Blanc was the largest private pound in Canada, boasting extremely lucrative

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18. Gary L. FRANCIONE, "Animal Rights Theory and Utilitarianism: Relative Normative Guidance," (1997) 3 *Animal L.* 75, 75 and 76.

animal control contracts with ten Montreal boroughs and four surrounding cities.<sup>19</sup> After being approached by a Plateau-Mont-Royal resident, who had undertaken an investigation of her own upon hearing stories of the unacceptable conduct of the Berger Blanc, Radio-Canada decided to pursue its own investigation.<sup>20</sup> Through her request for access to information, the Plateau resident had discovered that in its yearly tenders to the City of Montreal for animal control service contracts, the Berger Blanc stated that it had three branches, with one located in the western part of Montreal, to better serve the city's population. Upon a visit to the west-end location, Radio-Canada learned that the Berger Blanc had not operated at that address for five years. This, along with a Facebook page devoted to exposing the misconduct of the private pound<sup>21</sup> and a petition calling for cities to require that the pound meet its moral and contractual obligations,<sup>22</sup> spurred journalist Josée Dupuis to look further into the allegations of enormously expensive contracts and other gross misconduct by the Berger Blanc.<sup>23</sup> What the reporter and her colleagues discovered was far worse than anyone had suspected.

Since 2008, the Montreal SPCA no longer submits tenders for animal control contracts with the City of Montreal. This makes the Berger Blanc—a for-profit entity—the only party to tender for the contract. The result has been described as an explosion in costs to the city, with exponential increases of 50, 60 and even 155 per cent annually, totalling hundreds of thousands of dollars paid by Montrealers.<sup>24</sup> However, as

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19. J. DUPUIS and P. GAGNÉ, *supra*, note 2.

20. "Cruel Berger Blanc," *Radio-Canada* (April 20, 2011), online: <[http://www.radio-canada.ca/emissions/24\\_heures\\_en60\\_minutes/2010-2011/Reportage.asp?idDoc=148657#leplayer](http://www.radio-canada.ca/emissions/24_heures_en60_minutes/2010-2011/Reportage.asp?idDoc=148657#leplayer)> (consulted November 19, 2012).

21. "The Truth About Berger Blanc," online: <<https://www.facebook.com/#!/thetruthaboutbergerblanc>> (consulted November 19, 2012).

22. "Pétition Berger Blanc," *Petitions24.net*, online: <[http://www.petitions24.net/petition\\_berger\\_blanc](http://www.petitions24.net/petition_berger_blanc)> (consulted November 19, 2012).

23. J. DUPUIS and P. GAGNÉ, *supra*, note 2.

24. *Id.* See also Anne-Laure FAVEREAUX, "L'arrondissement renouvelle son contrat avec le Berger Blanc," *Progrès Villeray-Parc Extension* (April 5, 2012), online: <<http://www.leprogresvilleray.com/Actualites/Vos-nouvelles/2012-04-05/article-2947726/Larrondissement-renouvelle-son-contrat-avec-le-Berger-Blanc/1>> (consulted November 19, 2012), placing the current price of a contract with the Berger Blanc at \$131,000 per year.

Radio-Canada discovered, the increased operating costs to the Berger Blanc as the numbers of animals impounded steadily rises do not justify the explosion in the cost of municipal contracts, especially in light of the poor quality of service uncovered by the investigation. For example, the Berger Blanc's tender stated that it has a microchip reader—a device used to read a pet's microchip containing information on how to contact its owner, often implanted when a pet is first acquired. Upon a visit, however, a Radio-Canada employee learned that the microchip reader at the Berger Blanc was 15 years old and non-functioning. Moreover, at the time of the investigation, the pound's website was neither organized nor up-to-date for the purposes of posting photos of lost or stray animals in the hopes of reuniting them with their owners. An employee was recorded on camera saying that the lost animals page was in fact never updated. This helps to explain why the rate of return for lost cats in Montreal is practically zero.<sup>25</sup> And all of this, despite the exceedingly high price paid by the municipalities that contract with the Berger Blanc for its services.

Attempts have been made by the Berger Blanc to justify the rising costs based on the increased need for additional employees and veterinarians (required to perform humane euthanasia) due to the rising numbers of animals that the pound takes in. The images of the euthanasia practices actually employed, however, tell a very different story. For the purposes of its investigation, Radio-Canada collaborated with what Dupuis describes as an "SPA sympathizer" (SPA as distinct from the SPCA),<sup>26</sup> who became employed at the Berger Blanc so as to uncover more about the organization's practices. It is significant to note here that upon a telephone call to the Berger Blanc to inquire about euthanizing her elderly cat, a Radio-Canada employee was assured that all lethal injections are administered by a qualified veterinarian and that the animals do not suffer. Armed with a hidden camera, however, the SPA sympathizer witnessed an alarmingly different practice, whereby, contrary to the requirements of

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25. J. DUPUIS and P. GAGNÉ, *supra*, note 2.

26. SOCIETY FOR THE PROTECTION OF ANIMALS CANADA, online: <<http://www.spacanada.org>> (consulted November 19, 2012).

the *Ordre des médecins vétérinaires du Québec* (OMVQ), the Quebec professional association for veterinarians, animals are not euthanized by a trained veterinarian, but rather, by an employee with no qualifications other than on-the-job training. The OMVQ states that the intracardiac injection employed by the Berger Blanc is not the preferred method for humane euthanasia as it causes intense stress and significant pain while forestalling the animal's death.<sup>27</sup> Accordingly, this method should be administered while the animal is under tranquilizers, heavy sedation or general anaesthesia<sup>28</sup> and should be reserved for aggressive or difficult animals.<sup>29</sup> And yet the images captured show haphazard injections, animals being injected while being held up by their scruff and some animals requiring repeated injections before dying. The animals injected on camera subsequently agonized in cages and writhed in pain until they died, while animals awaiting their turn looked on.<sup>30</sup>

The images captured are a far cry from the painless death promised to the Radio-Canada employee worried about her cat's suffering and suggest that the increased costs of contracts with the Berger Blanc were not being used to ensure adherence to humane protocols and procedures and ultimately the respect of animal lives. While the Berger Blanc denied that this was normal practice, the traumatic footage is nevertheless distressing given that 72 per cent of owner surrenders to the Berger Blanc are for the purposes of humane euthanasia. Even if this type of practice were infrequent, it is nevertheless extremely troubling, given that the organization kills hundreds of animals every day.

The public funding of cruelty does not end there. The report tells of the SPA sympathizer's discovery of a still breathing animal in the receptacle where cadavers were

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27. ORDRE DES MÉDECINS VÉTÉRINAIRES DU QUÉBEC, Press Release, "L'Ordre des médecins vétérinaires du Québec s'indigne et dénonce les pratiques de la fourrière Le Berger Blanc," (April 22, 2011), online: <[http://www.omvq.qc.ca/pdf/Communiqué\\_Berger\\_Blanc\\_OMVQ.pdf](http://www.omvq.qc.ca/pdf/Communiqué_Berger_Blanc_OMVQ.pdf)> (consulted November 19, 2012).

28. *Id.*

29. J. DUPUIS and P. GAGNÉ, *supra*, note 2.

30. *Id.*

temporarily stored between scheduled pick-ups. Whereas euthanasia regularly takes place in the morning, the still-breathing cat was discovered during the employee's night-time shift.<sup>31</sup> A similar discovery, as well as the general state of the cadavers removed from the Berger Blanc, was the subject of a 2009 complaint by a veterinarian from the Canadian Food Inspection Agency, which uses the cadavers to perform public health research related to rabies, to Anima-Quebec,<sup>32</sup> the organization responsible for enforcing Quebec's *Animal Health Protection Act*.<sup>33</sup> The discoveries raised the issue of the storage of cadavers before their removal from the premises.

In its attempt to justify the rising costs of its services, the Berger Blanc explained that after being euthanized, animal cadavers were being stored in a freezer dedicated to this purpose, after being placed in sealed waterproof bags. Once the footage had been captured, however, the Berger Blanc did not deny that for the purposes of disposal, animal cadavers were dragged along the ground and then piled into ten plastic receptacles, resembling household recycling bins. The bins were stored in a small, unrefrigerated building outside of the facility, until the cadavers were picked up by an independent contractor three times a week. The cadavers were not taken to be incinerated, as stated by the Berger Blanc. Instead, they were being relocated to another pound to await their final transport to a landfill in nearby Lachute. There, they were being dumped in the same trenches as regular household waste, despite the content of the Berger Blanc's tender and the attempt to justify the high cost to municipalities. This was also not denied by the head of the Berger Blanc, although he stated that the Berger Blanc pays for the digging of a separate trench for the cadavers.

The following September, Radio-Canada aired a follow-up piece on the Berger Blanc. Called "*Berger sous haute surveillance*," French for "Berger Under High Surveillance," the report looked at whether six months after the airing of "*Mauvais Berger*" practices at the private pound had

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31. *Id.*

32. ANIMA-QUEBEC, online : <<http://www.animaquebec.com>> (consulted November 19, 2012).

33. *Animal Health Protection Act*, R.S.Q. c. P-42 [the Act].

changed.<sup>34</sup> While the City of Montreal initially cooperated with Dupuis and her colleagues, when it came time to filming the follow-up story, the city would not facilitate Dupuis' entrance to the Berger Blanc, stating that as a private company, the pound was entitled to its privacy. Still, the city claimed to have placed the company under high surveillance, requiring daily reports, keeping barbiturates under lock and key, which only veterinarians could access, and ensuring the presence of a city representative every time an animal is euthanized.

Upon visiting the facility, however, Radio-Canada learned that the security guard placed at the Berger Blanc by the city was not actually in the building, but rather, was stationed outside, recording the entrances of a veterinarian.<sup>35</sup> Moreover, the Berger Blanc continued to defend its practices, saying that the cruel euthanasia practices caught on tape were an isolated incident. This was contradicted, however, by three former employees who came forward and spoke to Radio-Canada after the April story aired, saying that euthanasia is routinely performed by untrained employees and not veterinarians.<sup>36</sup> And despite the installation of security cameras by the city, Radio-Canada could not gain access to the footage, which, according to the city, belongs to the Berger Blanc. Dupuis and her team did manage to ascertain that while new cameras had indeed been installed throughout the facility, none had been placed in the euthanasia room. The city felt that it was only fair to give the Berger Blanc the opportunity to rectify the situation.<sup>37</sup>

Despite this, "*Mauvais Berger*" did have some of its intended effects. The pound lost at least three of its municipal contracts between April and September 2011 and the City of Laval launched a new call for tenders. Again, however, the Berger Blanc was the only party to participate, despite the abandonment of its Laval facility, which in September 2011

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34. Josée DUPUIS (journalist) and Pier GAGNÉ (producer), "Berger sous haute surveillance," *Enquête*, Radio-Canada (September 29, 2011), online: <<http://www.radio-canada.ca/emissions/enquete/2011-2012/Reportage.asp?idDoc=176101>> (consulted November 19, 2012).

35. *Id.*

36. *Id.*

37. *Id.*

stood empty and boarded up, leaving local business owners to take in and care for the animals still abandoned there regularly.<sup>38</sup> In February 2012, Laval announced the creation of a new non-profit organization to deal with the city's animal control.<sup>39</sup> But the organization, called Le Campus, will not be in full operation for another year. In the meantime, Laval continues to use the Berger Blanc for basic services.<sup>40</sup>

At the level of customer service, positive changes were made. Although the website was still under construction in September 2011, the lost animals page was being maintained, with photographs and the place of origin of all lost pets. The adoptions section of the website was still non-functioning.<sup>41</sup> Lastly, the Berger Blanc appeared to be fulfilling its contractual obligation to have all cadavers incinerated, as per its public tender. According to the transport company representative interviewed, an enormous number of animals are refrigerated in plastic bags while they await their weekly pick up by the incineration company.<sup>42</sup>

### 2.1.2 The Public and Political Response

*"Mauvais Berger"* resulted in an immense public outcry. According to the September report, the number of signatures on the online petition against the Berger Blanc quickly rose from 2,768 to more than 50,000.<sup>43</sup> And the response was not limited to cyberspace; in the year following the airing of *"Mauvais Berger,"* Montrealers participated in at least five

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38. *Id.*

39. Ghislain PLOURDE, "Un nouvel OBNL pour la gestion animalière à Laval," *L'Écho de Laval* (February 27, 2012), online : <<http://www.hebdosregionaux.ca/laval/2012/02/27/un-nouvel-obnl-pour-la-gestion-animaliere-a-laval>> (consulted November 19, 2012).

40. *Id.* Also see : VILLE DE LAVAL, online : <<http://www.ville.laval.qc.ca/wlav3/index.php?pid=2994>> (consulted November 19, 2012).

41. At the time of writing, the adoptions page appeared to be up and running, though in comparison with the Montreal SPCA and similar groups promoting adoption, the information provided on each animal is minimal, listing the animal's date of arrival, an approximation of the animal's breed, an estimated age and sex.

42. J. DUPUIS and P. GAGNÉ, *supra*, note 34.

43. *Id.*



peaceful protests outside Montreal's City Hall aimed at convincing the city to sever its ties with the Berger Blanc.<sup>44</sup> Nor was the public expression of outrage limited to ordinary citizens. Some local businesses have since stopped dealing with the Berger Blanc,<sup>45</sup> and animal welfare organizations, including Humane Society International and the Montreal SPCA, have come down hard on the private pound, calling for an "urgent transition away from for-profit pounds" in Montreal and its boroughs.<sup>46</sup> Similarly, SPA Canada responded to "*Mauvais Berger*" by launching a boycott on the purchase of municipal dog licenses, the proceeds of which go toward the financing of Montreal's contracts with the Berger Blanc.<sup>47</sup>

The province, which, having delegated the responsibility to municipal governments, is not directly responsible for dealing with local animal control, also condemned the content of the report. Following the April report, Quebec's Ministry of Agriculture, Fisheries and Food (MAPAQ) ordered measures to supervise the Berger Blanc, including the required presence of a veterinarian during euthanasia and large enough cages for the animals to spread out.<sup>48</sup> Animal welfare groups like SPA Canada, however, were dismayed that MAPAQ did not immediately close the Berger Blanc and offer a stronger condemnation of the reported acts of cruelty.<sup>49</sup> The province's lax response, however, seems in line with its general approach to the regulation of animal welfare, discussed below. For their

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44. "Fight the Berger Blanc in Montreal (Petitions/Protest Info)," *Montreal Dog Blog*, online: <<http://www.montrealdogblog.com/7097/fight-berger-blanc-montreal/>> (consulted November 19, 2012).

45. See SPA CANADA, Press Release, "SPA Canada Forces Pet Products Retailer Mondou to Break Its Ties with Berger Blanc" (January 31, 2012), online: <[http://www.spacanada.org/pdf/Mondou\\_January\\_31\\_2012.pdf](http://www.spacanada.org/pdf/Mondou_January_31_2012.pdf)> (consulted November 19, 2012).

46. HUMANE SOCIETY INTERNATIONAL/CANADA [HSI Canada], Press Release, "Regroupement pour la protection des animaux du Québec (R-PAQ) Calls for Urgent Transition Away from For-Profit Pounds in Montreal" (May 12, 2011), online: <[http://www.hsi.org/world/canada/news/releases/2011/05/montreal\\_pounds\\_051211.html](http://www.hsi.org/world/canada/news/releases/2011/05/montreal_pounds_051211.html)> (consulted November 19, 2012).

47. Lise BERGERON, "Cruauté animale: 'Il faut fermer les fourrières à but lucratif'," *Protégez-vous.ca* (May 12, 2011), online: <<http://www.protegez-vous.ca/affaires-et-societe/berger-blanc-cruaute-animale.html>> (consulted November 19, 2012).

48. *Id.*

49. *Id.*

part, individual boroughs have also made significant changes. Following the example of Toronto and Richmond, British Columbia, Rosemont–La Petite-Patrie has since banned the sale of animals in pet shops in an effort to increase responsible pet ownership and decrease the number of abandoned animals ending up at places like the Berger Blanc.<sup>50</sup> The borough also plans to pass a bylaw requiring the sterilization of dogs and cats,<sup>51</sup> thus reducing pet overpopulation and the number of stray animals in the city.

Of fundamental importance is the reaction of the municipal government, which is ultimately responsible for the regulation and control of Montreal's domestic animals. But despite its claims of additional surveillance of the Berger Blanc,<sup>52</sup> in the aftermath of the April report, the city was slow to commit to any concrete changes to its animal control model. In a press release issued on the same day that "*Mauvais Berger*" first aired, the city stated that it takes the images presented in the report seriously and that it condemns any acts of cruelty to animals.<sup>53</sup> Moreover, the city requires that animals are treated with respect and dignity.<sup>54</sup> The day before the report was scheduled to air, the city received an action plan from the Berger Blanc, wherein the pound undertook to take all necessary measures to ensure the well-being of the animals it receives. Still, the city stated that it would increase its number of unannounced visits to the Berger Blanc and require regular meetings between the pound's administration and city and borough representatives.<sup>55</sup> It is significant to note, however, that after having viewed excerpts of "*Mauvais Berger*," the city maintained that

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50. Linda GYULAI, "Rosemont–La Petite-Patrie Bans Sales of Pets," *The Gazette* (December 8, 2011), online : <<http://www.globalmontreal.com/rosemont-la-petite-patrie/bans+sales+of+pets/6442538017/story.html>> (consulted November 19, 2012).

51. *Id.*

52. J. DUPUIS and P. GAGNÉ, *supra*, note 34.

53. VILLE DE MONTRÉAL, News Release, "La Ville de Montréal condamne la cruauté faite aux animaux," (April 21, 2011), online : <[http://ville.montreal.qc.ca/portal/page?\\_pageid=5798,42657625&\\_dad=portal&\\_schema=PORTAL&id=16321&ret=http://ville.montreal.qc.ca/pls/portal/url/page/prt\\_vdm\\_fr/rep-annonces\\_ville/rep\\_communiquees/communiques](http://ville.montreal.qc.ca/portal/page?_pageid=5798,42657625&_dad=portal&_schema=PORTAL&id=16321&ret=http://ville.montreal.qc.ca/pls/portal/url/page/prt_vdm_fr/rep-annonces_ville/rep_communiquees/communiques)> (consulted November 19, 2012).

54. *Id.*

55. *Id.*

none of its visits to the Berger Blanc to date revealed any irregularity.<sup>56</sup> Still, it promised to act with the required diligence in handling the alleged complaints against the pound.<sup>57</sup>

In June 2011, Montreal announced the creation of a committee aimed at finding ways to “revamp Montreal’s system of animal care.”<sup>58</sup> By December of that year, the city was ready to announce its plan for improving animal control, which would include an “incentive-based pet licensing system and public access to ‘high-volume, low-cost’ pet sterilizations.”<sup>59</sup> Following this, Montreal officially released its plan to create an “island-wide municipal super-pound” to deal with the issue of animal control.<sup>60</sup> When the news was released in December 2011, however, few details were known, such as the cost of the proposed plan, whether the city would work with partners like the Montreal SPCA, whether it would run one facility or several and whether the service would extend to the city’s demerged boroughs, which are currently responsible for animal control.<sup>61</sup> It is also worth emphasizing that when the announcement was made, Montreal’s mayor at the time continued to maintain that while the city planned to take animal welfare seriously, he also had important concerns about homelessness and poverty.<sup>62</sup> While he did not state that these issues take precedence over the well-being of the city’s animals, it is significant that these statements were made in the context of the animal control issue. At the time of publication, more than one year has gone since the city’s

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56. *Id.*

57. *Id.*

58. “Abandoned Animals Overload Montreal Shelters,” *CBC News* (June 29, 2011), online: <<http://www.cbc.ca/news/canada/montreal/story/2011/06/29/mtl-abandoned-animals.html>> (consulted November 19, 2012).

59. M. HARROLD, “City to Toughen Animal Control,” *supra*, note 5.

60. M. HARROLD, “Super-Pound,” *supra*, note 5.

61. H. AUBIN, *supra*, note 4. It is useful to note that Montreal’s municipal structure divides the city into 19 individual boroughs, each with their own municipal council and each responsible for local services such as road maintenance and animal control, and which rely on the City of Montreal for major services such as public transportation and police services. See: “Official City Portal—Ville de Montreal,” online: <[http://www.ville.montreal.qc.ca/portal/page?\\_pageid=5977,88849571&\\_dad=portal&\\_schema=PORTAL](http://www.ville.montreal.qc.ca/portal/page?_pageid=5977,88849571&_dad=portal&_schema=PORTAL)> (consulted November 19, 2012). Presumably, under the proposed plan, independent boroughs would have to opt in to the agglomerated, or centralized, service.

62. H. AUBIN, *supra*, note 4.

announcement and little more is known about the plan. The city has seemingly begun to respond to the calls of both the public and opposition politicians to take control of the situation of Montreal's companion animals. What this control will look like and how long will it take to come to fruition remains to be seen. In the meantime, some boroughs continue to contract with the Berger Blanc—calling it their only viable option<sup>63</sup>—and the protesters continue to take their message to the streets.<sup>64</sup>

## 2.2 LEGAL CONTEXT

In order to understand the legal background against which the practices of the Berger Blanc came to light, it is useful to examine the federal and provincial legislation aimed at protecting animals. Moreover, insight into both the statutory and jurisprudential handling of the animal issue demonstrates that the answer for Montreal's animals must come at the local political level.

### 2.2.1 The *Criminal Code*

Canada's current anti-cruelty legislation looks very similar to that contained in the first *Criminal Code*, adopted in 1892.<sup>65</sup> Despite some changes along the way,<sup>66</sup> as well as an increase in sentences in 2008 after several reincarnations of the same bill in Parliament,<sup>67</sup> the general wording of the provisions dates back more than a century. This type of antiquated legislation cannot possibly reflect the current attitudes of the majority of Canadians toward the treatments of animals. Located in the section of the *Criminal Code* dealing with

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63. A. L. FAVEREAUX, *supra*, note 24.

64. SPA CANADA, Protests, "Demonstration Against Berger Blanc: April 23, 2011," online: <[http://www.bergerblancrueaute.com/pdf/Manif\\_BB\\_23\\_Avril\\_2011.pdf](http://www.bergerblancrueaute.com/pdf/Manif_BB_23_Avril_2011.pdf)> (consulted November 19, 2012).

65. *Criminal Code*, 1982, 55 & 56 Victoria, c. 29, s. 512.

66. See *Criminal Code*, S.C. 1953-54, c. C-51, s. 387.

67. See *Criminal Code*, R.S.C. 1985, c. C-46, s. 445 (2) and 445.1 (2) [*Criminal Code*]. For a review of the Parliamentary bills proposed see "Criminal Code Amendments," *Canadian Federation of Humane Societies*, online: <[http://cfhs.ca/law/history\\_of\\_the\\_amendments/](http://cfhs.ca/law/history_of_the_amendments/)> (consulted November 19, 2012).

property offences, the law divides offences into two categories: "Cattle and Other Animals"<sup>68</sup> and the more general "Cruelty to Animals."<sup>69</sup>

Pursuant to section 445 (1) (a) Cr.C., any person who, "wilfully and without lawful excuse [...] kills, maims, wounds, poisons or injures dogs, birds or animals that are not cattle [...]" can be charged with an indictable offence punishable by up to five years' imprisonment or a summary conviction punishable by a maximum fine of \$10,000 or a maximum eighteen-month prison sentence, or both.<sup>70</sup> The sub-title to this section is "Injuring or endangering other animals." Prior to 2008, the section did not include a sentence, instead merely classifying the offence as either indictable or punishable on summary conviction. Section 445.1 Cr.C., called "Cruelty to Animals" and beginning with the sub-heading "Causing unnecessary suffering," carries the same sentence. This offence also requires wilfulness or permission on the part of the animal's owner.<sup>71</sup> Section 446 covers damage or injury caused, again, by wilful neglect, which includes abandoning an animal in distress or failing to provide "[...] suitable and adequate food, water, shelter and care [...]"<sup>72</sup> This too carries the same sentencing options. Lastly, since 2008, a court can prohibit an offender from owning another animal for a period of time it sees fit or a minimum of five years for a second or subsequent offence.<sup>73</sup> The court may also order an offender to reimburse an organization that has cared for an animal as a result of an offence.<sup>74</sup>

The sentencing amendments would be well and good, provided they were applied by the courts. But to date, no one in Canada has received the maximum sentence for cruelty to domestic animals under the *Criminal Code*. A few examples merit attention. In 2002, a Toronto man videotaped his actions as he hung a healthy domestic cat by its neck, cut its throat, stabbed it with a knife, kicked it and then finally skinned the

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68. S. 444 and 445 Cr.C.

69. S. 445.1–447.1 Cr.C.

70. S. 445 Cr.C.

71. S. 445.1 Cr.C.

72. S. 446 Cr.C.

73. S. 447.1 (1) Cr.C.

74. *Id.*

animal “while it was still twitching.”<sup>75</sup> The accused and his accomplices then cut one of the cat’s ears off and removed one of its eyes with dental instruments. Because of his outstanding character, general intelligence and the fact that he did not intend that the cat suffer, but rather wanted to make an artistic point about eating meat, the offender was sentenced to 90 days in prison, to be served intermittently, followed by an eighteen-month conditional sentence and three years’ probation with community service, “as a substitute for real jail.”<sup>76</sup> Although the judge in the case described the sentence as a five-year term,<sup>77</sup> the offender received 16 weekends of incarceration. Despite public outrage and a packed courtroom both on sentencing and appeal, the sentence was confirmed by the Ontario Court of Appeal, which explained that in combination with a mischief charge to which the accused pleaded guilty, the offender received an appropriate three and a half month sentence on the cruelty charges.<sup>78</sup> Even before the 2008 amendments, this constituted half of the available sentence.

More recently, a Quebec man pleaded guilty to the amended provisions, after he shot six puppies and their mother in the heads with a nail gun, subsequently abandoning them in a frozen ditch on the side of a country road.<sup>79</sup> He had first tried unsuccessfully to gas the dogs to death.<sup>80</sup> Based on the case law and the man’s emotional state at the time—he was in the midst of an emotional meltdown following serious personal and financial troubles—the offender was sentenced to two years’ probation and 150 hours of community work and ordered to pay \$2,000 to his local humane society.<sup>81</sup> He was also forbidden to have animals for

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75. *R. v. Power*, 2002 WL 31976162 (ONCJ), 2002 CarswellOnt 5397, par. 1–7.

76. *Id.*, par. 150.

77. *Id.*, par. 151.

78. *R. v. Power* (2003), 176 C.C.C. (3d) 209 (Ont. C.A.), 174 OAC 222, 2003 CanLII 20379 (ON CA), par. 13.

79. “Culprits Sought in Shocking Animal Cruelty Case,” *CBC News* (January 7, 2011), online : <<http://www.cbc.ca/news/canada/montreal/story/2011/01/07/animal-cruelty-quebec.html>> (consulted November 19, 2012).

80. Sue MONTGOMERY, “Man Who Shot Dogs with Nail Gun Gets 2 Years Probation,” *The Gazette* (February 29, 2012), online : <<http://www.montrealgazette.com>> (consulted November 19, 2012).

81. *Id.*

three years.<sup>82</sup> The sentence was in part based on the fact that despite the man's wilful intent to kill the dogs, there was an element of cruelty missing, which had been present in other cases, including the *Power* case described above, where the offenders nevertheless received very light sentences.<sup>83</sup>

What this situation makes obvious is that the *Criminal Code* alone is simply not enough to protect companion animals. Given this brief glimpse into the case law on cruelty to animals, it is not surprising that there was never any talk of criminal charges against the Berger Blanc employee caught on camera, or his superiors, for committing unbearable acts of cruelty while euthanizing dogs and cats. But the lack of enforcement and a legal culture which virtually ignores the suffering of companion animals is not the only problem with the federal law. The requirement of wilfulness written into the *Criminal Code* provisions perpetuates the problem by making it very difficult to charge and convict perpetrators of animal cruelty.<sup>84</sup> Few people will readily admit that their actions were purposeful and not a mere oversight. And negligence simply does not make the cut according to the wording of the statute. This might explain why the International Fund for Animal Welfare has ranked Canada last compared with other countries' animal cruelty legislation.<sup>85</sup> With regard to municipal regulation, then, it is obvious that the welfare of Montreal's companion animals must rely on something other than the *Criminal Code*.<sup>86</sup>

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82. *Id.*

83. *Id.*

84. Interview with Alanna DEVINE, Director of Animal Advocacy, *Canadian SPCA* (March 8, 2012), notes on file with author.

85. Johanna WEIDNER, "Dog Walking Event to Rally for Animal Cruelty Law Reform," *The Record (Kitchener-Waterloo)* (March 11, 2011), online: <<http://www.therecord.com/news/local/article/500500--dog-walking-event-to-rally-for-animal-cruelty-law-reform>> (consulted November 19, 2012).

86. Since the time of writing, in October 2012, a Court of Quebec judge handed down the harshest sentence ever recorded in Quebec history. The accused, who pleaded guilty to five counts of animal cruelty following the severe beating and stabbing of two of his dogs, was sentenced to six months in prison and two years' probation, fined \$4,000 and prohibited from owning an animal 25 years. The Montreal SPCA called the sentence a "momentous moment in history." See SPCA MONTREAL, Press Release, "Key Moment in Legal History for Animal Cruelty Sentencing in Quebec," (October 29, 2012), online: <<http://www.sPCA.com/?p=2995&lang=en>>



## 2.2.2 Quebec's *Animal Health Protection Act*

The exposure of the cruel practices of the Berger Blanc took place against a backdrop of political indecision and legislative change at the provincial level. In 2005, Quebec was the one of last Canadian provinces to enact provincial animal welfare legislation,<sup>87</sup> what is now called the *Animal Health Protection Act*.<sup>88</sup> The *Act* is enforced by Quebec's Minister of Agriculture, Fisheries and Food,<sup>89</sup> who has delegated some of those powers to the Montreal SPCA.<sup>90</sup> But the *Act* has been heavily criticized for the little attention it pays to the situation of companion animals and its very mild sentences. Moreover, the law does not set a minimum standard for animal welfare, instead leaving it up to the Minister to come up with appropriate standards.<sup>91</sup> And, as is the case with the *Criminal Code*, the courts are extremely reluctant to intervene, leaving the government to exercise its discretion, despite documented evidence of abhorrent acts of animal cruelty in puppy mills throughout the province.<sup>92</sup>

In 2011 the provincial government responded to the public demand for better standards of care for companion animals and adopted a new regulation under the *Act*, the *Regulation Respecting the Safety and Welfare of Dogs and Cats*.<sup>93</sup> The regulation, in force since June 2012,<sup>94</sup> was a sober disappointment to animal welfare organizations throughout the province, which had condemned the draft regulation (containing more severe provisions than the one adopted) as

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(consulted November 19, 2012). While the case suggests a positive step toward change, it remains an anomaly in the judicial enforcement of the *Criminal Code* provisions.

87. Cheryl CORNACCHIA, "Building a More Humane Society," *The Gazette* (April 11, 2005), online : <<http://www.montrealgazette.com>> (consulted November 19, 2012).

88. *Animal Health Protection Act*, *supra*, note 33.

89. *Id.*, s. 1.

90. A. DEVINE, *supra*, note 84.

91. See *Teja's Animal Refuge v. Quebec (Attorney General)*, 2009 QCCA 2310.

92. *Id.*, where the Quebec Court of Appeal unanimously refused to pronounce on the Quebec government's failure to enforce the *Act* and create minimum standards for welfare, stating that the question is purely political in nature.

93. O.C. 1188-2011, December 14, 2011, (2011) 143 G.O.Q. II, 3658.

94. c. P-42, r. 10.1.

essentially toothless, calling it “one of the least restrictive legislation of all industrialized countries.”<sup>95</sup> Specifically, the draft regulation (and the one adopted) did not require that cities manage their own shelters so as to eliminate for-profit pounds like the Berger Blanc.<sup>96</sup> Nor does the regulation adopted include appropriate euthanasia methods, which could have had the effect of outlawing the practices recorded at the Berger Blanc.<sup>97</sup> Lastly, neither the new regulation nor the *Act* itself provide deterrent sentences; prison is not available under the *Act*, even for repeat animal offences, making it unique among Canadian provinces.<sup>98</sup>

This brief description should make clear that neither the federal or provincial levels of government can adequately promote the betterment of the situation of Montreal’s companion animals with respect to animal control. A lacklustre, ill-enforced criminal law, combined with an unresponsive provincial government cannot prevent the type of cruelty that took place at the Berger Blanc from happening again. The responsibility for preventing the unnecessary suffering of Montreal’s companion animals at the hands of for-profit pounds must therefore rest upon the municipal authorities.

### 3. ANIMAL CONTROL MODELS

The privatization of animal control services in Quebec to a for-profit entity is an anomaly in Canada, where animal services are normally provided either by municipal governments or in collaboration with non-profit organizations like the SPCA. Whereas many denounce Montreal’s collaboration

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95. See SPA CANADA, Press Release, “Major Disappointment for SPA Canada and for Quebec Pets,” (December 14, 2011), online : <<http://www.spacanada.org/en/media-spa-canada.html>> (consulted November 19, 2012).

96. *Id.*

97. SPCA MONTREAL, Press Release, “HSI Canada and CSPCA Call on Quebec Government to Strengthen Animal Protection Laws,” (January 14, 2012), online : <<http://www.sPCA.com/?p=419&lang=en>> (consulted November 19, 2012).

98. Alanna DEVINE, Lauren SCOTT and Johanne TASSÉ, “Comments on Draft Regulation for the Animal Health Protection Act Division IV.1.1,” Montreal SPCA, Humane Society International, Centre d’adoption d’animaux de compagnie du Québec, Presented to MAPAQ, online : <[http://www.hsi.org/assets/pdfs/comments\\_on\\_draft\\_regulations\\_1.pdf](http://www.hsi.org/assets/pdfs/comments_on_draft_regulations_1.pdf)> (consulted November 19, 2012).

with the Berger Blanc, calling instead for a non-profit organization or a city-run animal service, it is important to distinguish between the use of a private company which stands to profit from its work, and one which does not, such as the SPCA or the proposed Le Campus, set to open in Laval.<sup>99</sup> Moreover, both of these models are distinct from the municipally-run, publicly-funded model, which this paper argues should be adopted and which Montreal has announced plans to implement. The following sections will briefly canvass each model, so as to suggest that a commitment to the well-being of the city's animals requires Montreal to adopt a public system for the management of companion animals.

### 3.1 PRIVATE FOR-PROFIT—THE BERGER BLANC

While the (for-profit) privatization of animal control services is not the norm in Canada,<sup>100</sup> the private provision of public services is common in some sectors, perhaps the most common being the Canadian prison system.<sup>101</sup> In the United States, this phenomenon extends to the largely private health care industry as well, where it is not uncommon to hear claims of the resultant reduction in levels of care and quality of service.<sup>102</sup> This is plainly analogous to the documented poor levels of service and quality provided by the Berger Blanc. Moreover, non-state prison operators as well as those who provide them with services, clearly stand to benefit from crime control and the increases in incarceration that that phenomenon implies.<sup>103</sup>

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99. G. PLOURDE, *supra*, note 39.

100. Note that there are some instances of private, for-profit management of animal control in the United States: see e.g. Jeffrey A. WARE, "Clarke v. Tri-Cities Animal Care & Control Shelter: How Did Private Businesses Become Government 'Agencies' Under the Washington Public Records Act?" (2010) 33 *Seattle U.L. Rev.* 741.

101. See e.g. John GANDY and Lorna HURL, "Private Sector Involvement in Prison Industries: Options and Issues," (1987) 29 *Can. J. Crim.* 185.

102. Lawrence APPLEBY, "Privatization: Government Abandons Its Citizens," (1997) 54 *Guild Prac.* 65, 66.

103. Richard V. ERICSON, Maeve W. MCMAHON and Donald G. EVANS, "Punishing for Profit: Reflections on the Revival of Privatization in Corrections," (1987) 29 *Can. J. Crim.* 355, 360.

This situation can be likened to that of the Berger Blanc, the owners of which have no incentive to lower pet overpopulation and the associated high rates of euthanasia. Rather, the oversaturation of unwanted and stray animals in Montreal, without which the Berger Blanc would lose its *raison-d'être* and profitability, can be seen as favourable to the interests of the for-profit pound.<sup>104</sup> Nor do private pounds have any reason to employ more humane practices with respect to both euthanasia and general operations such as reuniting lost pets with families, which cost more than their reported methods and which would thus lower profitability. The Berger Blanc also has no incentive to sterilize dogs and cats before rehoming them, the most essential step toward lowering pet overpopulation; the owner of the Berger Blanc simply does not believe that sterilization is their job.<sup>105</sup> Given that animal welfare is based on the avoidance of unnecessary suffering, the private, for-profit model currently employed in Montreal, which appears to privilege its bottom line over the quality of services and the prevention of cruelty, is completely unsuited to the task of delivering humane municipal animal control services.

The private, for-profit model also raises questions regarding the appropriateness of the maintenance of public data—euthanasia records, for example—by private companies. Access to public information was precisely what led to Radio-Canada's investigation of the Berger Blanc in early 2011. And although the Plateau-Mont-Royal resident who initiated the investigation was successful in obtaining the information she sought, there is reason to believe that a request aimed at different information might not be acceded to. The information she sought had a direct connection with municipal spending, which would not be the case with respect to access to operating costs or euthanasia rates. In Washington State, for example, private citizens have faced resistance to their requests for access to the euthanasia records belonging to a private company responsible for local animal control.<sup>106</sup>

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104. HUMAN SOCIETY INTERNATIONAL/CANADA, *supra*, note 46.

105. Rachel GRANOFKY, "Pet Heaven's Waiting Room," *Montreal Mirror* (March 24, 2011), online : <<http://www.montrealmirror.com>> (consulted November 19, 2012).

106. J. A. WARE, *supra*, note 100.

Although the Washington Court of Appeals held that the for-profit corporation in that case was subject to the *Washington Public Records Act*,<sup>107</sup> and thus had to disclose the information, the decision has been criticized for the potential invasions of privacy of private corporations which could consequently ensue.<sup>108</sup>

No stretch of the imagination is required to contemplate a similar situation in Canada. It is easy to conceive of a private pound citing privacy interests in order to shield its practices from public view. In fact, this was precisely the case with the video footage which Radio-Canada could not gain access to, as it belongs to the Berger Blanc.<sup>109</sup> This potential for conflict between public awareness and private interests, as well as the financial bottom line of companies like the Berger Blanc, both demonstrate that the use of a private, for-profit animal control service serves the interests of neither the animal nor the human population of Montreal.

### 3.2 PRIVATE NON-PROFIT—THE SPCA

The contracting out of animal control services to private, non-profit organizations like the SPCA is a very common means of the municipal management of companion animals, both in Canada and the United States.<sup>110</sup> In Montreal, at the time of writing, the SPCA held animal control service contracts with 14 boroughs and municipalities.<sup>111</sup> The SPCA does not, however, participate in municipal calls for tender and will only contract with municipalities that approach the organization for its services and only under strict contractual requirements.<sup>112</sup> For example, the municipality must agree

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107. *Id.* citing *Clarke v. Tri-Cities Animal Care & Control Shelter*, 144 Wash. App. 185, 181 P.3d 881 (2008).

108. J. A. WARE, *supra*, note 100.

109. J. DUPUIS and P. GAGNÉ, *supra*, note 34.

110. For the United States see e.g. Rebecca J. HUSS, "Rescue Me: Legislating Cooperation Between Animal Control Authorities and Rescue Organizations," (2007) 39 *Conn. L. Rev.* 2059.

111. "Lost & Found FAQ," *Canadian SPCA*, online: <[http://www.sPCA.com/?page\\_id=62&lang=en](http://www.sPCA.com/?page_id=62&lang=en)> (consulted November 19, 2012).

112. A. DEVINE, *supra*, note 84. This corresponds with J. DUPUIS and P. GAGNÉ, *supra*, note 2, which reported that in many cases, the Berger Blanc is the only organization to tender for these lucrative contracts.

that the SPCA will not release an unsterilized animal from its shelter, even where that animal will be immediately returned to its family.<sup>113</sup> Moreover, the municipalities must be willing to pay the high costs associated with these essential services, costs which can total more than \$100,000 annually, and which do not even cover the true cost of providing animal control services.<sup>114</sup> Perhaps most significantly, these services do not correspond with the mission of the SPCA, which is not to perform municipal animal control services, but rather, is to “protect animals against negligence, abuse and exploitation; represent their interests and ensure their well-being; [and] raise public awareness and help develop compassion for all living beings.”<sup>115</sup> Nor is the organization shy about publicizing its priorities. Alanna Devine, Director of Animal Advocacy for the SPCA, has emphatically stated that the SPCA would like get out of the business of animal control.<sup>116</sup>

The SPCA's provision of animal control services, as well as the enforcement of criminal regulations which that role often entails, also raises public law issues relative to the delegation of powers and the private enforcement of public laws. While the SPCA receives what it considers a fair amount when it seizes animals under the *Animal Health Protection Act*, enforcement and prosecution under the *Criminal Code* is hardly compensated.<sup>117</sup> Because the provincial law only applies to dogs and cats, the SPCA receives virtually no funding when it deals with cruelty against other domesticated animals, such as pigs and horses, which, although a rare occurrence, has been known to happen. Moreover, where the SPCA can prove intent to harm an animal, thus triggering the application of the *Criminal Code*, it must fund its own operations, which can sometimes mean housing, maintaining and, where necessary, providing veterinary care for

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113. Sample SPCA Animal Services Contract, provided by Alanna Devine, Director of Animal Advocacy, Canadian SPCA, on file with author.

114. A. DEVINE, *supra*, note 84.

115. “Mission: Giving Animals a Voice,” *Canadian SPCA*, online: <[http://www.sPCA.com/?page\\_id=18&lang=en](http://www.sPCA.com/?page_id=18&lang=en)> (consulted November 19, 2012).

116. M. HARROLD, “Super-Pound,” *supra*, note 5.

117. A. DEVINE, *supra*, note 84.

one or several animals during the months it can take for a case to make its way through the courts.<sup>118</sup> The SPCA, a privately-funded organization, the existence of which depends on the benevolence of private donors, simply cannot afford to operate in these circumstances.<sup>119</sup>

The private funding of local SPCA operations is precisely what led an Ontario provincial court judge to dismiss charges of animal cruelty and neglect under the *Criminal Code*. In *R. v. Pauliuk*,<sup>120</sup> Zuraw J. was unable to overcome the potential bias resulting from the fact that the primary witness in the case—the veterinarian who boarded the ten horses seized by the Hamilton-Burlington SPCA—was also a member of the SPCA's Board of Directors, and therefore stood to gain, in the form of publicity and potential resulting donations, from a conviction. The trial judge was struck by the fact that the organization, pursuant to its statutory powers, “hires its own agents and inspectors, determines the parameters of their employment, and using [...] police powers, enters property, seizes animals as in this case (without warrant or judicial intervention) and lays charges—all the while attending to its own need to fund raise.”<sup>121</sup> Noting that this type of publicity is essential to the survival of the private charity, Zuraw J. found that the situation could “foster the perception in reasonable, open-minded people, that bias may exist and that conflicts will result.”<sup>122</sup> Accordingly, and in the presence of conflicting evidence as to whether the animals were in fact neglected, he felt compelled to dismiss the case.

With regard to the delegation of criminal enforcement powers, the American courts have also taken issue with the exercise of criminal law powers by private citizens. In New Jersey, for example, similar questions have been raised as to the propriety of law enforcement powers, which often involve

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118. *Id.*

119. *Id.*

120. 2005 ONCJ 119.

121. *Id.*, par. 28.

122. *Id.*, par. 29.



the use of force or violence, conferred on private citizens.<sup>123</sup> *Gerofsky v. Passaic County SPCA*, in the Superior Court of New Jersey, Appellate Division, dealt with the constitutionality and statutory authority of a county prosecutor's supervision of the law enforcement carried out by private organizations like the SPCA. While the Court confirmed the legality of the impugned supervision, it relied on a task force appointed by the governor to investigate the current operations of the State's SPCAs and make recommendations for either the repeal or modification of the statutes conferring law enforcement powers on the organizations.<sup>124</sup> Citing the report, the recommendations of which the State failed to follow, the Court wrote :

[T]he SPCAs represent a rudimentary system that has not kept pace with the State's advancements in law enforcement or its interest in the welfare of animals. Against the backdrop of a highly stratified and professional law enforcement system, it is an anomaly that the State continues to empower organizations of private citizens to carry weapons, investigate criminal and civil conduct, enforce laws, issue summonses, effect arrests and obtain and execute search warrants. The issue is no longer whether or how to fix this errant group of self-appointed, self-directed and uncontrolled entities, but whether to eliminate the archaic system entirely. [...] <sup>125</sup>

Save for the statutory ability to carry weapons, the same situation is present where private organizations, the mandate of which is not to enforce either criminal law or municipal regulations, are responsible for animal control services in Montreal. The fact that this statement was made in the United States does not detract from its aptness to the current circumstances, where, as in New Jersey, virtually no other

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123. See e.g. *Gerofsky v. Passaic County SPCA*, 870 A2d 704, 710 (2005) cited in R. J. HUSS, *supra*, note 110. See also William GRADY, "Doubts Overshadow Dupage County Plan to Privatize Animal Control: Official Questions Legal, Financial Feasibility," *The Chicago Tribune* (June 28, 1995), online : <[http://articles.chicagotribune.com/1995-06-28/news/9506280119\\_1\\_animal-control-privatization-law-enforcement-duties](http://articles.chicagotribune.com/1995-06-28/news/9506280119_1_animal-control-privatization-law-enforcement-duties)> (consulted November 19, 2012), cited by L. APPLEBY, *supra*, note 102.

124. *Gerofsky v. Passaic County SPCA*, *id.*

125. *Id.*, 4.

governmental powers are delegated exclusively to private, non-profit organizations.<sup>126</sup>

The SPCA has neither the financial means nor the physical resources to provide animal control services for the City of Montreal. With its current contracts, it is functioning at full capacity, having taken in approximately 14,000 animals in 2011. In terms of physical space alone, the organization simply could not handle any more contracts.<sup>127</sup> Given the demands placed on any animal control service in a city with extremely high rates of abandonment of companion animals and intake by animal control authorities, the private, non-profit model is manifestly unsustainable, especially given the increasing public momentum to move away from models like the Berger Blanc and the increased pressure this will place on the SPCA. An animal welfare approach to municipal animal services must employ a sustainable system, which can afford the cost of humane animal control and which has the physical resources to do so. An organization geared toward prevention and education—one which lacks the organizational will to provide animal control services—is clearly not the answer.

### 3.3 PUBLIC—THE CALGARY MODEL

As seen, neither the private, for-profit, nor the private, non-profit model is sufficient to meet an animal welfare standard of municipal animal control in Montreal. That leaves the public model, whereby animal control services are provided by a city-run, publicly-funded municipal body. The public model is the usual method by which large Canadian cities manage companion animals control; Halifax, Toronto and

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126. Research into this question seems to confirm that no other area of public life is governed exclusively by a private entity. Although some child protection agencies are private in nature, they generally receive public funding for the carrying out of public services. See e.g. "In Pursuit of Excellence: Annual Management Report," *Batshaw Youth and Family Centres (2010–2011)*, online: <[http://www.batshaw.qc.ca/sites/default/files/RapportAN2011%20FINAL\\_0.pdf](http://www.batshaw.qc.ca/sites/default/files/RapportAN2011%20FINAL_0.pdf)> (consulted November 19, 2012). This is not the case for the SPCA when dealing with criminal matters.

127. A. DEVINE, *supra*, note 84.

Vancouver all employ this type of model.<sup>128</sup> But by far the most lauded model for the public provision of animal control services comes from Calgary, Alberta.

Calgary's Bill Bruce, Director of Animal & Bylaw Services, has turned the city into an international example by dramatically reducing its euthanasia rates and drastically increasing the number of lost dogs and cats returned to their owners.<sup>129</sup> This is not an understatement. In 1991, of the approximately 1,400 cats impounded in Calgary, about 650, or slightly less than half, were euthanized.<sup>130</sup> In 2010, less than 900 cats were impounded; less than 200 of those cats were euthanized, more than 200 adopted into new homes and the remainder reunited with their families.<sup>131</sup> The numbers on dogs are equally revealing. In 1985, of the more than 4,000 dogs taken in, almost half were euthanized. In 2010, about the same number of dogs was impounded, but less than 100 were euthanized while approximately 3,500, or a staggering 87 per cent, were reunited.<sup>132</sup> The rest were adopted. It is significant to note as well that while the number of impounded dogs has remained relatively constant (with a major dip in the early 1990's), the human population of Calgary has been growing steadily, with a 12.6 per cent increase between 2006 and 2011 alone, to reach a current population of 1.1 million, more than doubling the Canadian

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128. HALIFAX REGIONAL MUNICIPALITY ANIMAL SERVICES, online: <<http://www.halifax.ca/animalservices/>> (consulted November 19, 2012); TORONTO ANIMAL SERVICES, online: <[http://www.toronto.ca/animal\\_services](http://www.toronto.ca/animal_services)> (consulted November 19, 2012); CITY OF VANCOUVER ANIMAL CONTROL, online: <<http://vancouver.ca/home-property-development/animal-control.aspx>> (consulted November 19, 2012).

129. "Animal Related Statistics," *City of Calgary Animal & Bylaw Services*, online: <<http://www.calgary.ca/CSPS/ABS/Pages/Animal-Services/Animal-statistics.aspx>> (consulted November 19, 2012). See also Katie TURNER, "Calgary's Pet Model Admired," *Metro Calgary* (December 23, 2011), online: <<http://metronews.ca/news/calgary/40465/calgarys-pet-model-admired>> (consulted November 19, 2012); Francis BATTISTA, "The Canadian Cure for Homeless Pets," Best Friends Animal Society, *The Best Friends Blog* (April 8, 2011), online: <<http://blogs.bestfriends.org/index.php/2011/04/08/the-canadian-care-for-homeless-pets/>> (consulted November 19, 2012); "Frequently Asked Questions About the SL County Responsible Pet Ownership Initiative and Recent Ordinance Changes," *Salt Lake County Animal Services*, online: <<http://animalservices.slco.org/html/FAQShtml>> (consulted November 19, 2012).

130. "Animal Related Statistics," *id.*

131. *Id.*

132. *Id.*

national growth rate.<sup>133</sup> When comparing these numbers with Montreal's dismal statistics—where 400 animals are euthanized every day,<sup>134</sup> for a grim total of more than 140,000 per year—one cannot help wonder what Montreal is missing.

The answer is surprisingly simple. The Calgary model is essentially based on the enforcement of licensing requirements along with an aggressive campaign aimed at public education on responsible pet ownership and the cooperation of city residents.<sup>135</sup> All of this is outlined in Calgary's *Responsible Pet Ownership Bylaw*,<sup>136</sup> which establishes the framework for the city's public animal control service, run by the city's Animal & Bylaw Services. At the heart of the bylaw is a licensing requirement for both cats and dogs. For Bruce, licensing and the permanent identification of pets is the first principle of responsible pet ownership.<sup>137</sup> Licences are issued at differential rates, depending whether an animal is spayed or neutered. The annual cost of licensing a male or female unaltered dog is \$58.00, compared with \$36.00, or 38 per cent less, for a spayed or neutered dog.<sup>138</sup> Similarly, the \$30.00 cost to licence an unaltered cat is halved for a sterilized cat.<sup>139</sup> This type of differential licensing depending on the reproductive state of the animal is not uncommon and has been called a "critical step to eliminating overpopulation and

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133. THE CANADIAN PRESS, "Calgary Population Growth More than Double National Average," *Metro Calgary* (February 8, 2012), online : <<http://www.metronews.ca/calgary/37245/calgary-population-growth-more-than-double-national-average/>> (consulted November 19, 2012).

134. H. AUBIN, *supra*, note 4.

135. F. BATTISTA, *supra*, note 129.

136. CITY OF CALGARY, revised by-law No. 23M2006, *Responsible Pet Ownership Bylaw*, online : <<http://www.calgary.ca/CA/city-clerks/Documents/Legislative-services/Bylaws/23M2006-ResponsiblePetOwnership.pdf>> (consulted November 19, 2012).

137. Bill BRUCE, "The City of Calgary Animal & Bylaw Services," (Presentation delivered at the CAACQ Conference, Montreal, October 28, 2011) [unpublished]. Note that Bruce has given the same presentation in various locations in Canada and the United States, including California and Salt Lake City, Utah, which subsequently adopted the Calgary Model. See "Frequently Asked Questions About the *SL County Responsible Pet Ownership* Initiative and Recent Ordinance Changes," *supra*, note 129.

138. CITY OF CALGARY, *supra*, note 136, Schedule "A".

139. *Id.*

the resulting burdens imposed on municipalities.”<sup>140</sup> The rationale is simple: when licences cost more for unsterilized animals, owners are motivated to have their pets spayed and neutered and the number of unwanted animals is thereby reduced.<sup>141</sup> In Calgary, this uncomplicated concept is coupled with a no-cost spay and neuter program for low-income pet owners who qualify, which includes post-operative care and a pet licence valid for six months.<sup>142</sup> Moreover, licensing a pet is easy; licences can be obtained online, in person, by phone and by mail.<sup>143</sup>

The Calgary model boasts additional incentives for purchasing licences. In addition to the obvious advantages of widespread pet licensing and the associated rate of return of lost animals, residents who purchase licences are rewarded through the “I Heart My Pet Rewards Program.” Along with their licence, residents receive a loyalty card which gives discounts “on a variety of products and services at more than 60 partnering vendors.”<sup>144</sup> Thus, in a short amount of time, owners can recuperate the cost of licensing their pet while saving on the same purchases they would have ordinarily made. Rewards under the program are not limited to pet-related products and services, although these are also available; restaurants, entertainment and travel accommodations are also featured.<sup>145</sup>

Lastly, licence regulations are strictly enforced. Although Bruce considers penal sanctions a last resort, the Calgary

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140. Phyllis COLEMAN, Heather VELEANU and Sandra K. WOLKOV, “It’s Raining Cats and Dogs... Government Lawyers Take Note: Differential Licensing Laws Generate Revenues, Reduce Costs, Protect Citizens, and Save Lives,” (2011) 40 *Stetson L. Rev.* 393, 394 and 395.

141. *Id.*, 395.

142. “No Cost Spay/Neuter Program,” *City of Calgary Animal & Bylaw Services*, online: <<http://www.calgary.ca/CSPS/ABS/Pages/Animal-Services/No-cost-spay-neuter-program.aspx>> (consulted November 19, 2012).

143. “Obtaining a New Cat or Dog Licence,” *City of Calgary Animal & Bylaw Services*, online: <<http://www.calgary.ca/CSPS/ABS/Pages/Animal-Services/Obtaining-new-licence.aspx>> (consulted November 19, 2012).

144. “I Heart My Pet Rewards Program,” *City of Calgary Animal & Bylaw Services*, online: <<http://www.calgary.ca/CSPS/ABS/Pages/Animal-Services/I-heart-my-pet-program.aspx>> (consulted November 19, 2012).

145. “I Heart My Pet Rewards Program,” *id.*

model recognizes and reinforces the deterrent value of the cost of non-compliance.<sup>146</sup> The penalties, annexed to the bylaw, are severe; an unlicensed dog or cat can cost its owner at least \$100 and usually \$250.<sup>147</sup> Moreover, the penalties are enforced pursuant to a zero tolerance policy by 24 trained animal control officers mandated to respond to and investigate complaints under the bylaw as well as Alberta's animal welfare legislation.<sup>148</sup> More than enforcement, however, Bruce believes that public education is the key to changing public behaviours. To this effect, the city has launched a public education campaign, which includes visits to elementary schools featuring interactive classroom presentations aimed at correcting myths and removing misconceptions.<sup>149</sup> This is said to be the key to citizen compliance.<sup>150</sup>

There is little doubt that the Calgary model is an exceptional one with respect to the interests of the city's companion animals. And yet, all of the above-described features pale in comparison with what is arguably its most remarkable attribute and the one which shields it from a common criticism with respect to public services, the issue of financing. The Calgary model is self-sustaining. The program's annual operating budget of \$5.4 million is generated exclusively from licence and penalty revenue and not tax dollars.<sup>151</sup> The same is true of the construction of the city's Animal Services Centre, the municipal shelter, which can hold up to 88 cats and 84 dogs.<sup>152</sup> Its \$3.5 million price tag<sup>153</sup> is approximately the same amount as three years' worth of contracts with the Berger Blanc for 10 Montreal boroughs.<sup>154</sup>

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146. B. BRUCE, *supra*, note 137.

147. CITY OF CALGARY, *supra*, note 136, Schedule "D"; B. BRUCE, *id.*

148. *Id.*; *Animal Protection Act*, R.S.A. 2000, c. A-41.

149. B. BRUCE, *supra*, note 137.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. See e.g. A. L. FAVEREUX, *supra*, note 24.

#### 4. UTILITARIANISM APPLIED: WHY MONTREAL NEEDS A PUBLIC ANIMAL CONTROL SERVICE

A truly utilitarian approach to municipal animal control would ascribe equal consideration to the equivalent interests of people and animals. To be fair, animal welfarism does not demand the abolition of all animal suffering. When the human interest being served outweighs the equal interest of the animals in question, where, for example, the loss of one, or even a dozen animals in a medical experiment would save thousands of people,<sup>155</sup> some minimal amount of suffering may be morally justifiable. But when the animal interest at stake is the avoidance of the kind of suffering which has been shown to take place at the Berger Blanc, the human interest being balanced must necessarily be of real significance.

As the following paragraphs will suggest, other than the financial interests of the owners of the Berger Blanc, there is no overriding human interest being served by Montreal's reliance on the private, for-profit animal control model. In fact, given the economic costs alone of dealing with a for-profit contractor, it is difficult to see how the private model benefits the citizens of Montreal in economic terms, let alone justifies the inhumane treatment of their companion animals. This is particularly true when one considers Montreal's stated financial and political priorities, described below. Similarly, while the private, non-profit model is far less detrimental to the interests of companion animals, the benefits to citizens relative to the costs of these contracts and the institutional disconnect between the SPCA's stated mandate and its animal control responsibilities mean that the private, non-profit model is not nearly as beneficial to people or animals as a public animal control service.

Aside from the economic dimension, examined below, the potential for the maximization of good inherent in a public system is not limited to the good of animals. Despite ongoing debate over their status as property and the apparent gap in the enforcement of laws aimed at their protection, there is nevertheless little controversy in the idea that companion

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155. P. SINGER, *Practical Ethics*, *supra*, note 15, 67.



animals hold an invaluable place in human society.<sup>156</sup> In the United States alone, owners of companion animals spend approximately \$39 billion per year on their care.<sup>157</sup> Moreover, few would deny the proven benefits that well cared for companion animals can bring to people. The World Health Organization has endorsed the causal links between owning a dog and cat and the associated improvements in general psychological well-being.<sup>158</sup> Even the physical health of a person can be improved by the presence of a companion animal in his or her life; owners of companion animals on average make fewer trips to the doctor and take less medication than those without pets.<sup>159</sup> Relationships with companion animals have been shown to result in increased resistance to viruses, reduction in stress, increased self-esteem in children, increased quality of life of the elderly, and strengthened bonds between humans.<sup>160</sup> The courts have also acknowledged the predominant role that companion animals play in the lives of their owners, and confirmed the therapeutic benefits of sharing one's life with a pet.<sup>161</sup>

Considering that a number of the animals who end up at the Berger Blanc were not necessarily abandoned, but rather, have otherwise become separated from their human families, who anxiously hope for their return, it is easy to envision how Montreal could benefit from a public animal control service. A public service like the Calgary model, which respects the place of animals in human lives by attempting to ensure their return home, and which reduces the suffering of companion animals to an absolute minimum, would not only enhance the lives of the city's animals, but those of Montreal residents as well. And while not all of the animals impounded by animal control services have homes, those that are not individually loved and valued by human owners are similar enough to the

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156. Lesley-Anne PETRIE, "Companion Animals: Valuation and Treatment in Human Society," in Peter SANKOFF and Steven WHITE (eds.), *Animal Law in Australasia: A New Dialogue*, Sydney, Federation Press, 2009, 57, p. 67 and 68.

157. R. J. HUSS, *supra*, note 110, 2062.

158. L. A. PETRIE, *supra*, note 156, p. 68.

159. *Id.*, p. 69.

160. *Id.*, p. 69 and 70.

161. See e.g. *Gélinas v. Berger Blanc inc.*, 2010 QCCQ 3573; *Chalifoux v. Major*, 2006 QCCQ 6906.

companion animals that share the homes of the Montrealers who must bear witness to the city's half-hearted response to "*Mauvais Berger*." Citizens, whether or not they share their lives with companion animals, should not and will not be satisfied with an unconcerned and indifferent municipal government, one which places financial priorities before the well-being of the city's animals, especially given the place of those animals in the lives of many.

Adopting the Calgary model could also increase the non-economic benefits to humans by increasing the well-being of shelter workers. Assuming that the Calgary model would indeed result in lower euthanasia rates, this would subsequently decrease the levels of psychological stress suffered by shelter workers required to witness or perform euthanasia as a regular part of their job.<sup>162</sup> It is not surprising that someone who has chosen to work with animals would find the requirement of killing them "deeply disturbing and counter-instinctive."<sup>163</sup> Still, this "moral stress" is a documented reality of animal shelter staff,<sup>164</sup> who have been known to suffer from a variety of psychological, emotional and physical ailments, including high blood pressure, depression and substance abuse.<sup>165</sup> It thus becomes clear that any steps which could reduce the rates at which companion animals are euthanized would have concrete non-economic benefits to both humans and non-humans. From a utilitarian perspective, these benefits weigh heavily in favour of implementing a public model of animal control.

The lower euthanasia rates which would result from the implementation of a public animal control service would have real economic benefits as well. Euthanasia does not come

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162. R. J. HUSS, *supra*, note 110, 2065 citing Charlie L. REEVE et al., "Employee Reactions and Adjustment to Euthanasia-Related Work: Identifying Turning Point Events Through Retrospective Narratives," (2004) 7 *J. Applied Animal Welfare Sc.* 1; Charlie L. REEVE et al., "The Caring-Killing Paradox: Euthanasia-Related Strain Among Animal-Shelter Workers," (2005) 35 *J. Applied Soc. Psychol.* 119. See also Bernard E. ROLLIN and Michael D. H. ROLLIN, "Dogmatisms and Catechisms—Ethics and Companion Animals," (2001) 14 *Anthrozoös* 4.

163. Arnold ARLUKE, *Just a Dog: Understanding Animal Cruelty and Ourselves*, Philadelphia, Temple University Press, 2006, p. 116.

164. *Id.*

165. P. COLEMAN, H. VELEANU and S. K. WOLKOV, *supra*, note 140, 401.

cheap. As seen, the elevated costs associated with high rates of euthanasia were one of the Berger Blanc's stated justifications for the inflated price of its public tender. While dollar amounts are difficult to come by in Canada, research into cost-effective solutions to pet overpopulation in the United States has concluded that there is a high economic cost to the widespread killing of unwanted domestic animals.<sup>166</sup> Moreover, it is common for taxpayers, who absorb the ultimate financial burden of animal control, to absorb these costs as well. And incineration, considered the more respectful means of disposing of animal carcasses, is far more costly than disposal in a landfill.<sup>167</sup>

The financial cost of euthanasia, of course, is not the only consideration when looking at the economic benefits of a public system. In fact, lowering the frequency of euthanasia is just a small part of the financial advantages to implementing the Calgary model, which, as seen, is a self-sustaining system, costing the taxpayer nothing and benefiting humans and animals alike. Even the relatively low, \$3.5 million price tag on the construction of the city's main shelter was financed by the sale of licenses. In a city like Montreal, with nearly double the population of Calgary and a presumably similar high number of companion animals, it is easy to envision the success of a similar plan. What is more, if the Calgary model can employ effective licensing in order to successfully reduce the number of animals that make it to the pound, the costs of running a municipal facility will only go down.

The benefits of a municipally-run public animal service are clear. The only remaining question is whether Montreal is willing to place the interest of companion animals in avoiding suffering and cruel treatment on equal footing with the interests of its human residents. This is also where the issues become less clear-cut, as the city's financial priorities do not

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166. See e.g. Joshua FRANK, "An Interactive Model of Human and Companion Animal Dynamics: The Ecology and Economics of Dog Overpopulation and the Human Costs of Addressing the Problem," (2004) 32 *Journal of Human Ecology* 107.

167. Jared HUNT, "Euthanized Animal Discovery Puts Spotlight on Animal Shelter Policies," *The Jackson Star-News* (January 14, 2010), online: <<http://www.jacksonnewspapers.com/article/20100114/NEWS/301149982/0/SEARCH>> (consulted November 19, 2012) cited in P. COLEMAN, H. VELEANU and S. K. WOLKOV, *supra*, note 140.

appear to privilege finding a humane solution to the animal control issue. To mention just a few examples, Montreal recently spent \$37 million to bail out the financially unstable Public Bike System Corporation, which runs the Bixi rent-a-bike network across the island of Montreal.<sup>168</sup> It also guaranteed the company an additional \$71 million in loans, to help it develop its system abroad.<sup>169</sup> Without discounting the convenience to humans and the environmental benefits of the bicycle rental system, a utilitarian approach which equates animal and human interests would surely require the city to privilege an end to the suffering of animals, which comes at a much lower economic cost, over the provision of expensive assistance to a company experiencing financial difficulties. Ironically, the former president of Bixi could not justify the idea that Montreal taxpayers should foot the bill for the failing company; instead of accepting the money, he resigned from his position.<sup>170</sup> Around the same time as the Bixi bailout, Montreal announced its plan to build an urban beach in the city's Old Port.<sup>171</sup> The beach, modeled after similar city beaches in Europe, is part of a "waterfront revitalization project" that will cost Montrealers \$180 million.<sup>172</sup> This too demonstrates that at present, Montreal has a long way to go before it can be said to be taking the equal interests of animals seriously.

The point in these examples is not to criticize Montreal's spending priorities, but rather to demonstrate that from an animal welfare perspective, the city simply does not place

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168. "Bixi to Get Loan Bailout from Montreal," *CTV News* (May 13, 2011), online: <<http://montreal.ctv.ca/bixi-to-get-loan-bailout-from-Montreal-1.642831>> (consulted November 19, 2012). Alongside the city's wide network of public bus and metro lines, the Bixi system enables Montrealers to rent a bicycle from one location and deposit it at one of several drop-off points throughout the city, thus encouraging people to find alternatives to driving. See BIXI MONTREAL, online: <<http://montreal.bixi.com>> (consulted November 19, 2012).

169. *Id.*

170. "Bixi's President Resigns: Roger Plamondon Blames the Province for Bixi's Financial Woes," *CBC News* (November 12, 2011), online: <<http://www.cbc.ca/news/canada/montreal/story/2011/11/12/bixi-head-quits.html>> (consulted November 19, 2012).

171. "Montreal to Build Waterfront Beach," *CBC News* (May 25, 2011), online: <<http://www.cbc.ca/news/canada/montreal/story/2011/05/25/montreal-waterfront-beach.html>> (consulted November 19, 2012).

172. *Id.*

the interests of animals on an equivalent level as those of its human residents. The Calgary model offers a simple, straightforward and self-sustaining solution to the disorder and cruelty which currently characterize Montreal's management of animal control. A publicly-funded municipal model would unequivocally decrease the level of callous treatment of the city's dogs and cats and would also satisfy the interests of Montrealers, who, as demonstrated, stand to benefit from the humane treatment of the city's domestic animals. As long as Montreal continues to privilege the city's financial and human interests over the very basic interest of companion animals in avoiding unnecessary pain, the animal welfare standard will never be met.

## CONCLUSION

The aim of this paper is to make obvious that the most direct route to promoting the interests and ending the suffering of Montreal's companion animals lies in the adoption of a public, municipally-funded and managed animal control service. While public education will also help, scholars and activists alike agree that education and enlightenment are simply not enough. Rather, the answer must come from the legal system.<sup>173</sup> And where, as is the case in Montreal, neither the federal nor the provincial legislation effectively deals with a documented problem, the municipal government must step in, particularly when the service in question is local in nature and municipalities have the statutory authority to do so.

There are important differences between Montreal and Calgary which cannot be ignored. For example, Montreal's municipal structure means that in adopting a public system of animal management, the centralized government will have to rely on the independent boroughs for cooperation and financial collaboration. Moreover, the fact that Quebec landlords can legally prohibit tenants from having pets contributes to the abandonment issue in a way not present

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173. A. DEVINE, L. SCOTT and J. TASSÉ, *supra*, note 98; D. FAVRE, *supra*, note 1, 89.

in Alberta.<sup>174</sup> Another issue is the earmarking of licence revenue—when licenses are purchased at the SPCA, Montreal's pet licensing income is not dedicated to animal control, as is the case in Calgary.<sup>175</sup> These issues, however, are hurdles, not obstacles. They have not prevented the Verdun borough of Montreal from adopting a variant of the licensing-based Calgary model in collaboration with the Montreal SPCA.<sup>176</sup> And they must not stand as political justifications for the municipal failure to take control of the urgent situation for Montreal's animals.

Montreal does not need a carbon copy of the Calgary model, although this paper strongly encourages the city to draw on Calgary's success. What is required, rather, is that Montreal adopt a system which promotes the well-being of companion animals in the same way that it promotes the interests of its human population. Humane animal control should therefore be seen as a necessity and should provide high-quality, efficient and cost-effective service, while promoting the dignified treatment of animals. Ultimately, Montreal's pets and their owners must be given the respect that an animal welfare approach to municipal animal control requires.

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174. SPCA MONTREAL, News Release, "Tenants' Rights Concerning Pet Ownership: The Régie du Logement Is Asked To Intervene," (March 7, 2012), online: <<http://www.spcamontreal.com/?p=1029&lang=en>> (consulted November 19, 2012).

175. A. DEVINE, *supra*, note 84.

176. VILLE DE MONTRÉAL, Arrondissement de Verdun, by-law No. RCA11 210001 *Règlement sur les animaux* (May 3, 2011), online: <[http://ville.montreal.qc.ca/pis/portal/docs/PAGE/ARR\\_VER\\_FR/MEDIA/DOCUMENTS/RCA11\\_2100011.PDF](http://ville.montreal.qc.ca/pis/portal/docs/PAGE/ARR_VER_FR/MEDIA/DOCUMENTS/RCA11_2100011.PDF)> (consulted November 19, 2012).