



Law Society
of Ontario

Barreau
de l'Ontario

Animals and the Law 2024

CHAIR

Jennifer Friedman
Canada's Animal Lawyer

May 9, 2024





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of Ontario

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Animals and the Law 2024

CHAIR: **Jennifer Friedman, *Canada's Animal Lawyer***

May 9, 2024

9:00 a.m. to 12:00 p.m.

CPD Hours = 2h 30 m Substantive + 30 m Professionalism 

Law Society of Ontario

SKU CLE24-00504

Agenda

9:00 a.m. – 9:05 a.m.

Welcome and Opening Remarks

Jennifer Friedman, Canada's Animal Lawyer

9:05 a.m. – 9:20 a.m.

Dogs on Death Row: The Plight of 'Dangerous Dogs'

Rebeka Breder, Breder Law (Vancouver, BC)

9:20 a.m. – 9:35 a.m.

Green Washing and Humane Washing

Kaitlyn Mitchell, Director of Legal Advocacy, Animal Justice

9:35 a.m. – 9:50 a.m.

**Adjudication under the *Provincial Animal Welfare Services Act*:
Jurisdiction of the Animal Care Review Board**

Jennifer Friedman, Canada's Animal Lawyer

- 9:50 a.m. – 9:55 a.m.** **Question & Answer Period**
- 9:55 a.m. – 10:10 a.m.** **Break**
- 10:10 a.m. – 10:25 a.m.** **Challenging Canadian AG GAG Laws**
Camille Labchuk, Executive Director, *Animal Justice*
- 10:25 a.m. – 10:40 a.m.** **Family Members or Chattels? The Intersections Between Property Law, Family Law, and Animal Law**
Jennifer Friedman, *Canada's Animal Lawyer*
- 10:40 a.m. – 10:55 a.m.** **The Regulation of Horse Racing in Canada**
Paul McKenna, *McKenna Law Office* (Calgary)
- 10:55 a.m. – 11:10 a.m.** **Special Topic in Veterinary Law**
Jeffrey Pang, *Borden Ladner Gervais LLP*
- 11:10 a.m. – 11:40 a.m.** **The Nuances of Non-Human Animals as 'Clients': Managing Human Client Expectations (30 m **)
- Moderator: Jennifer Friedman, *Canada's Animal Lawyer*
- Panelists: Rebeka Breder, *Breder Law*
Paul McKenna, *McKenna Law Office*
Jeffrey Pang, *Borden Ladner Gervais LLP*

11:40 a.m. – 12:05 p.m.

Animal Law in 2025 and Beyond

Moderator:

Jennifer Friedman, *Canada's Animal Lawyer*

Panelists:

Rebeka Breder, *Breder Law*

Camille Labchuk, Executive Director, *Animal Justice*

Kaitlyn Mitchell, Director of Legal Advocacy, *Animal Justice*

12:05 p.m. – 12:10 p.m.

Question & Answer Period

12:10 p.m.

Program Ends

Animals and the Law 2024

May 9, 2024

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TAB 1

Animals and the Law 2024

Dogs on death row – plight of “dangerous dogs” (PPT)

Rebeka Breder
Breder Law

May 9, 2024



Dogs on death row – plight of “dangerous dogs”

REBEKA BREDER – ANIMAL LAW LAWYER
WWW.BREDERLAW.COM

ONTARIO LAW SOCIETY – MAY 9, 2024



OVERVIEW

- ▶ Introduction
- ▶ S. 49/s. 324.1
- ▶ Relevant provisions
- ▶ Case law pre 2019
- ▶ Current case law

I. Introduction

- Why I take on these cases & types of clients
 - *dogs need rep/d.o.s need rep – unfair system – responsible owners*
 - I take on only responsible dog guardians!

II. s. 49/s. 324.1

- ▶ S.49(10), *Community Charter*, SBC 2003, c.26;
and
- ▶ s. 324.1(10), *Vancouver Charter*, SBC 1953,
c.55

III. Relevant Provisions

- ▶ A “**dangerous dog**” is a dog that
 - ▶ (a) has killed or seriously injured a person,
 - ▶ (b) has killed or seriously injured a domestic animal, while in a public place or while on private property, other than property owned or occupied by the person responsible for the dog, or
 - ▶ (c) an animal control officer has reasonable grounds to believe is likely to kill or seriously injure a person.
- S. 10: “...if an ACO has reasonable grounds to believe that a dog is a dangerous dog, the officer may apply to the Provincial Court for an order that the dog be destroyed in the manner specified in the order”.
- *(nothing re procedure - what court can/can't do)*

IV. Case law before August, 2019

- 2-part test (*Smith*, 2013)
 - 1: “dangerous”?
 - 2: Wide discretion: Conditional orders allowed (*see next page re what are Cos*)
- About balancing the rights of dog owners & public safety

IV. Case law before August, 2019 (cont'd)

▶ What Are Conditional Orders - Court Order Requiring:

- Working with an appointed animal behaviourist pursuant to a management and/or treatment plan created by the animal behaviourist and approved by the court;
- Muzzling and leashing the dog in public spaces;
- Vet care
- Further dog training with a professional dog trainer recommended by the appointed animal behaviourist;
- Changes in a dog's diet;
- Upgrades to the dog owner's home, such as fencing and door requirements; and
- Other conditions directed at the management and care of the dog.
- **Animal behaviour expert is key! (versus veterinary opinion)**

IV. Case law before August, 2019 (cont'd)

▶ Benefits of Conditional Orders

- Dog gets to live!
- Welfare is improved (ie: diet, better training/management)
- Long term public safety is ensured v. euthanasia just because “dangerous”
- Worked for 15 years, and worked well: public safety, welfare of dogs and dog owners

IV. Case law before August, 2019 (cont'd)

- Hard work to put together. Not routine.
- *Vancouver (City) v. Atterbury*, Vancouver Court File No. 32168 (2010) (unreported)
- *Burnaby (City) Nagra*, 2010 BCPC 34
- *City of Vancouver v. Jafarizadeh* – (2012);
- *Smith v. Central Okanagan (Regional District)*, 2013 BCSC 228
- *Burnaby (City) v. Williamson*, 2016 BCPC 411
- *Port Coquitlam (City) v. Lambert*, Port Coquitlam, File No. 97914 (2018)
- *City of Campbell River v. Dodge* (2019)

V. Current case law

- *City of Vancouver v. Santics*: Almost *entire* decision turned on question of jurisdiction: ie: whether conditional orders are allowed...no longer allowed.
 - Reversed 15 years of judicial practice: conditional orders no longer allowed.
- Overarching question on an application for destruction is whether the dog poses an unacceptable risk to the public; that is whether dog is likely, on a BOP, and on the totality of evidence, to kill or seriously injure in the future. (para 66)
- Will see if it's still a 2-part test, ie:
 - “dangerous”
 - does dog pose unacceptable risk to the public?

V. Current case law (cont'd)

- Considerations re “unacceptable risk”:
- Perform a “contextual and prospective” analysis
 - Contextual: -whether dog was preventing an unlawful act or doing law enforcement work (s.324.1(3) (para 67)
 - Prospective: (para 68)
 - dog’s past & current temperament
 - Note: hard to prove current temperament if no access to dog!
 - any extenuating circumstances that would make a future attack unlikely (***court silent on expert evidence***)

V. Current case law (cont'd)

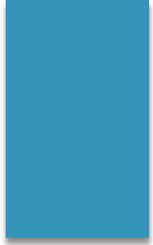
- *City of Victoria v. Bonora*, October, 2021 (re Bronx)
 - Original dog guardian transferred ownership to new person
 - Court: Bronx is “dangerous” but no longer poses an unacceptable risk to the public
 - Favoured new owner’s expert and not city’s who used decoys to assess
 - Animal control must try to rehabilitate dog first, and exhaust options to save dog’s life before seeking “destruction”

V. Current case law (cont'd)

- In *Aubie* case: Applicability of *Smith*. Judge found 3 features of “Reasonable Opinion” of ACO:
 - Likely future events
 - Only likelihood of killing or seriously injuring a person that matters
 - ACO’s opinion must be reasonable (consider disposition of dog and whether aggressive toward people, and consider dog owner)

VI. A few words re “aggressive” or “dangerous” designation – municipal level

- ▶ It is not a “decision” that is reviewable – it is only the “opinion of an animal control officer” (R. v. Lee, 2002 BCSC 240)



Thank you

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TAB 2

Animals and the Law 2024

Animals and the Law: Green Washing and
Humane Washing (PPT)

Kaitlyn Mitchell, Director of Legal Advocacy
Animal Justice

May 9, 2024



ANIMALS AND THE LAW: GREEN WASHING AND HUMANE WASHING

Kaitlyn Mitchell

Director of Legal Advocacy, Animal Justice

May 9, 2024

GREEN WASHING

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NOW SUSTAINABLY
SOURCED.*



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REMOVED

HUMANE WASHING

Can you spot the difference between conventional battery cages & enriched battery cages?

Battery Cages



Enriched Battery Cages



Green
Greener Living



 Gift this article

In this Article

DANISH CROWN A/S
Private Company

Europe's Biggest Pork Producer Loses in Greenwashing Case

- Court says Danish Crown can't label pork 'climate-controlled'
- Case against food giant is the first of its kind in Denmark

By [Sanne Wass](#)

March 1, 2024 at 3:57 AM CST

Updated on March 1, 2024 at 5:34 AM CST

 Save

 Listen 2:10

A high court in Denmark ruled that Europe's biggest pork producer misled consumers by advertising its meat as "climate-controlled" in what is the Nordic country's first greenwashing verdict.

A group of nonprofit organizations had alleged Danish Crown A/S misrepresented its climate footprint in a marketing campaign from 2020, which they said gave the false impression that eating pork is good for the climate.

Delta Air Lines faces lawsuit over \$1bn carbon neutrality claim

US airline pledged to go carbon neutral but plaintiffs say it is relying on offsets that do almost nothing to mitigate global heating



📌 The case argues that there is a market premium for green products and that Delta has profited from a misleading environmental claim. Photograph: Jetlinerimages/Getty Images

Delta Air Lines is facing a lawsuit over its \$1bn carbon neutrality claim which plaintiffs say is “false and misleading” as it relies on offsets that do little to mitigate global heating.

In February 2020, the **US airline announced plans to go carbon neutral**, pledging \$1bn to mitigate all greenhouse gas emissions from its business

Landmarks in law: McLibel and the longest trial in British legal history

Helen Steel and David Morris took on the US fast food giant in a lengthy David v Goliath battle in court



📌 Helen Steel and David Morris, after winning their case in the European Court of Human Rights. Photograph: Martin Argles/The Guardian

Public concern over the ethical practices of large corporates is growing: protestors have recently found themselves at the sharp end of the law, with **Extinction Rebellion protestors arrested** and other campaigners slapped with injunctions. But in the 1990s, the actions of a small group of environmentalists gave rise to what became the longest-running trial in British legal history.

CANADIAN LAWS

- Consumer class actions
- *Competition Act* – prohibits “knowingly or recklessly” making a public representation “that is false or misleading in a material respect” in the course of promoting, directly or indirectly, a product (s 52)
 - Offence does not require proof that any person has in fact been deceived or misled
- *Food and Drugs Act* – prohibits advertising food in a manner that is “false, misleading or deceptive or is likely to create an erroneous impression regarding its character...” (s 5)
- See also: Competition Bureau & Canadian Standards Association, “Environmental claims: A guide for industry and advertisers” (2008)



ANIMAL JUSTICE

Leading the legal fight for animal protection

Kaitlyn Mitchell

kmitchell@animaljustice.ca

TAB 3

Animals and the Law 2024

Adjudication under the Provincial Animal Welfare
Services Act: Jurisdiction of the Animal Care Review Board
("ACRB") (PPT)

Jennifer Friedman
Canada's Animal Lawyer

May 9, 2024



Adjudication under the *Provincial Animal Welfare Services Act*: Jurisdiction of the Animal Care Review Board (“ACRB”)

- ✓ As of 2019, responsibility for animal enforcement shifted from OSPCA to Solicitor General
- ✓ “Distress” in Provincial Animal Welfare Services Act (“PAWS”) means the state of being,
 - (a) in need of proper care, water, food or shelter,
 - (b) injured, sick, in pain or suffering, or
 - (c) abused or subject to undue physical or psychological hardship, privation or neglect
- ✓ ACRB adjudicates animal welfare matters between custodians/owners of animals in Ontario and the Chief Animal Welfare Inspector (Solicitor General)
- ✓ Jurisdiction of ACRB to convene for Hearing triggered by appeal under section 38 of PAWS: re: Compliance Order, Removal Order, Order to Keep in Care, Statement of Account
- ✓ “Board” in PAWS means ACRB
- ✓ Appeal does not operate as a stay
- ✓ Hearing by at least 1 member
- ✓ SPPA applies but also the Common Rules of the ACRB
- ✓ Truncated period for launching appeal (10 days)
- ✓ Powers on appeal: confirm, revoke, or modify Order/s
- ✓ Transitioned to virtual Hearings and those continue in 2024



Jennifer Friedman 3-1
Canada's Animal Lawyer™
Animals and the Law 2024
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TAB 4

Animals and the Law 2024

Cruelty Cover-Up: The Rise and Fall of Canadian AG Gag Laws (PPT)

**Animal Justice et al v Attorney General (Ontario)
2024 ONSC 1753 (PPT)**

**Animal Justice
Leading the legal fight for animal protection (PPT)**

Camille Labchuk, Executive Director
Animal Justice

May 9, 2024



CRUELTY COVER-UP: THE RISE AND FALL OF CANADIAN AG GAG LAWS

Camille Labchuk, Barrister & Solicitor
Executive Director, Animal Justice
May 9, 2024



ANIMAL JUSTICE
Leading the legal fight for animal protection

Better Farming

Ontario's livestock industry no fan of 'ag-gag' laws

© AgMedia Inc.

October 29, 2013

"While we appreciate the sentiment of these laws, the concept behind them is not good," says Mackay. "The Canadian agriculture sector is strongly committed to opening the barn door, not closing it, and 'ag-gag' laws like those seen in parts of the United States would contradict that commitment."

Kitchener-Waterloo

Hybrid Turkeys pleads guilty to animal cruelty

New regulations introduced to protect B.C. dairy cows from cruelty

Chilliwack dairy farm pleads guilty to animal abuse

BY LAURA KANE - THE CANADIAN PRESS

B.C. company facing several charges in 2017 chicken abuse case

CFIA investigation leads to 38 charges against Elite Farm Services and Ontario-based Sofina Foods

Toronto

Bowmanville Zoo owner faces animal cruelty charges

CRIME

Dozens of charges laid in 'absolutely sickening' Chilliwack chicken abuse case

Canadian egg farmers to abandon battery cages by 2036

One Quebec Man Charged In Veal Cruelty Case

Globe & Mail
May 2017

Judge acquits woman who gave water to pigs headed to slaughter



Source: Jo-Anne McArthur / We Animals

Calgary

Five turkeys spared after 'liberation lockdown' descends on commercial farm in southern Alberta

CBC News

September 2, 2019



OPINION

Why are animal activists trespassing on farms? Because the industry polices itself

JESSICA SCOTT-REID

CONTRIBUTED TO THE GLOBE AND MAIL

PUBLISHED APRIL 9, 2019

“ In Canada, where the treatment of animals on farms is not regulated by law nor overseen by government, this type of activism is likely to continue. ”

Alberta: Bill 27, Trespass Statutes (Protecting Law-Abiding Property Owners) Amendment Act

Passed November 29, 2019

- No entry onto property without permission – not just farms
- “a person who obtains by **false pretences** permission to enter on land from the owner or occupier of the land is deemed to have entered on the land without permission.”
- Penalties:
 - Up to \$25,000 for a person, \$200,000 for a corporation

Huffington Post

POLITICS

Maple Leaf Foods Lobbied For ‘Anti-Whistleblower’ Law That Could Keep Out Activists

The company has faced allegations of animal mistreatment in the past.

By Emma Sandri

06/24/2020 03:49pm EDT | Updated June 26, 2020

TORONTO — A meat processing and packaging company that has been accused of animal mistreatment in the past, lobbied the Ontario government for a bill which could prevent undercover journalists and activists from investigating it.

Maple Leaf Foods Inc. is on the provincial [lobbyist registration](#) in “support” for [Bill 156](#), also known as the Security from Trespass and Protecting Food Safety Act. The legislation, which passed on June 17, enhances protections for farms and meat processing facilities from trespassers and people who interfere with animals, imposing a maximum \$15,000 fine for first-time offences and \$25,000 for subsequent violations. It also allows for the owners or occupiers of these facilities to arrest trespassers themselves.

The bill has been labelled as an “ag-gag” law by critics, because it prohibits anyone from entering a farm or slaughterhouse without the consent of its owner, which cannot be given under false pretenses.

Ontario: Bill 156, Security from Trespass and Protecting Food Safety Act, 2020

Introduced December 2, 2019, passed June 17, 2020

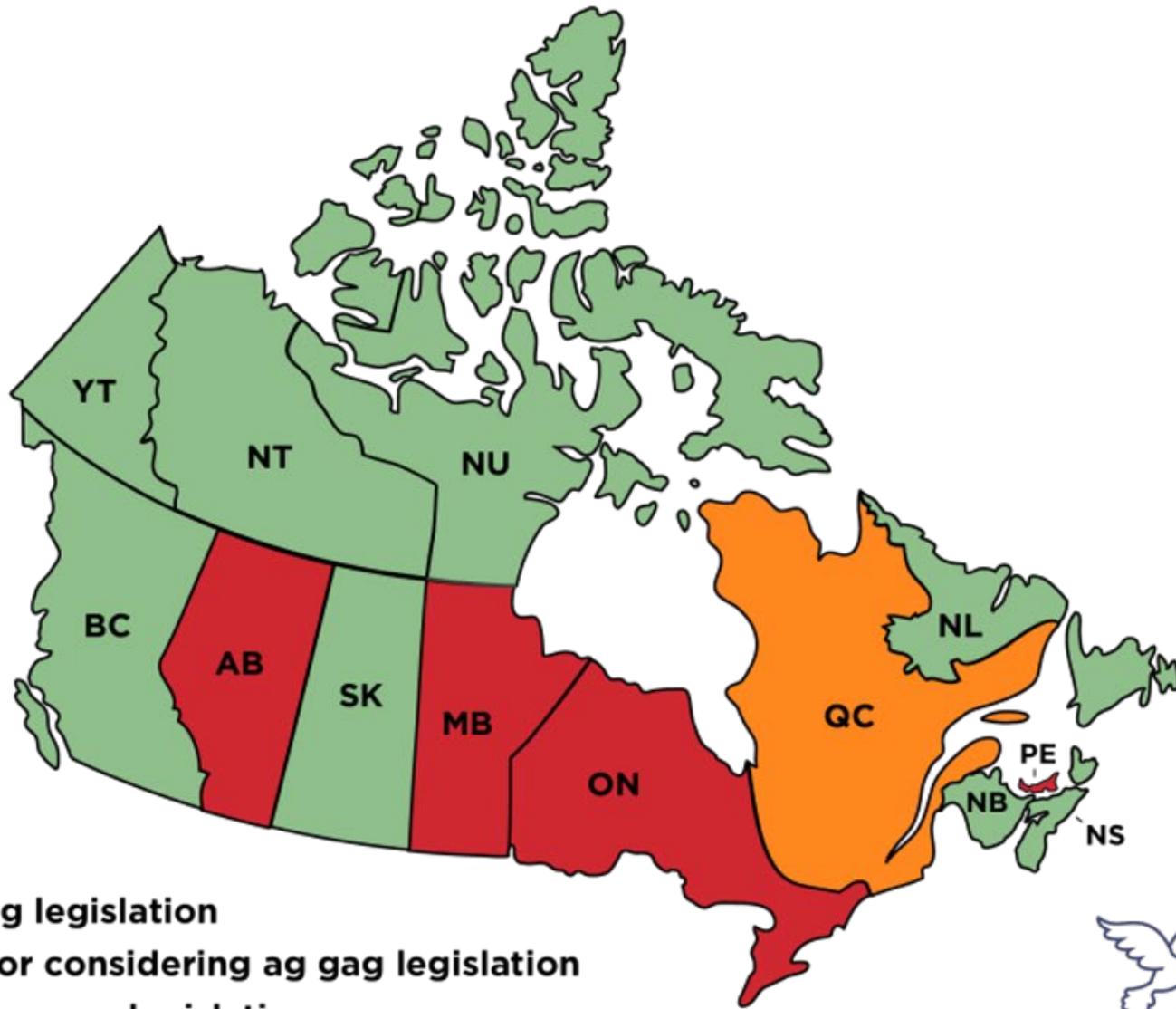
“The Bill is intended to protect farm animals, the food supply, farmers and others from risks that are created when trespassers enter places where farm animals are kept or when persons engage in unauthorized interactions with farm animals. The risks include the **risk of exposing farm animals to disease and stress**, as well as the risk of **introducing contaminants into the food supply.**”

Ontario: Bill 156, Security from Trespass and Protecting Food Safety Act, 2020

- **No entry** into “animal protection zones” in farms, slaughterhouses, or other prescribed facilities without consent
- **No interaction with animals** in animal protection zone without consent
- **No stopping** or interfering with a vehicle shipping farmed animals, or **interacting with the animals** without consent
- Consent is invalid if it is obtained under **false pretences**

Ontario: Bill 156, Security from Trespass and Protecting Food Safety Act, 2020

- Sweeping arrest / private prosecution powers granted to farmers, truckers
- Penalties:
 - Up to \$25,000
 - Restitution
 - Cost recovery for private prosecution



- No ag gag legislation
- Pending or considering ag gag legislation
- Enacted ag gag legislation



Federal: Bill C-275

- Bill C-275, *An Act to Amend the Health of Animals Act (Biosecurity on Farms)*, was (re)introduced on May 30, 2022 by MP John Barlow.
- Uses biosecurity (i.e., minimizing disease risk on farms) as an excuse to crack down on animal advocates
- Offence to enter farm property without permission if doing so “**could reasonably expose animals to a disease or toxic substance that is capable of affecting or contaminating them.**”
- Supported LPC, CPC, Bloc in House of Commons soon to be debated in the Senate

Animal Justice et al v Attorney General (Ontario) 2024 ONSC 1753

- Applicants
 - Animal Justice, journalist Jessica Scott-Reid, Toronto Cow Save activist Louise Jorgensen
- Charter challenge to
 - Prohibition on undercover investigations – voids consent to be on property if obtained under false pretenses as per Regulation – s 2(b)
 - Prohibition on interacting with a farmed animal without consent – ss 2(b), 2(c)
 - Prohibition on providing false info in response to a farmer's request for identification - s 2(b)
 - Warrantless arrests – ss 7, 9
 - Reverse onus - accused must prove permission to be on property – s 11(d)

Animal Justice et al v Attorney General (Ontario) 2024 ONSC 1753

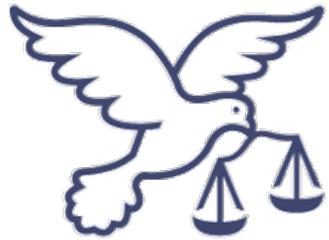
- Ban on undercover investigations violates s 2(b) of the Charter – invalidated parts of the Regulation
 - Restricts free expression in purpose and effect
 - “their expression is aimed at truth seeking and promoting social and political dialogue about a matter of public policy.” (para 118)
 - Misrepresentations are constitutionally protected speech
 - “if lies can amount to protected speech in a context as odious as Holocaust denial, they should be equally protected when someone denied having a university degree or being affiliated with an animal rights group”
 - Value of the communications is high - misrepresentation to gain access is made in order to communicate what the person sees on the premise.
 - “Publicizing the way in which animals are treated is an issue of interest to at least some members of the public” and public is entitled to be informed and decide whether they find conditions on farms acceptable (para 161)
- Not saved under s 1 of the Charter
 - Pressing and substantial objective - yes
 - Rational connection – in part
 - Minimal impairment – restrictions not reasonably tailored to objectives and further the impact on freedom of expression
 - Ontario’s evidence focused on trespassers, not undercover workers
 - Forcing whistleblowers to report cruelty as soon as they witness it is compelled speech
 - Journalistic exception is too narrow
 - Proportionality – disproportionate impact on expression
 - Restrictions have no bearing on biosecurity or animal safety – undercover work can expose biosecurity hazards rather than create them
 - Targeting truthful communication is disproportionate, even if farmers don’t like it
 - Penalizing truthful statements (or videos depicting cruelty) because they might harm farmers’ economic interests seems to “strike at the very heart of freedom of expression” (para 181)

Animal Justice et al v Attorney General (Ontario) 2024 ONSC 1753

- Important discussion of standard farm practices – paras 37-39

“By way of example, “piglet thumping” arose as a practice in one of the videos before me. **It is unclear on the record before me whether it is deemed to be an acceptable practice.** In theory, it involves euthanizing a sick piglet by striking its head against a concrete surface. One can envisage circumstances in which that may be humane if it is carried out to ensure that death is instant and that the animal feels no pain. One can also envisage a myriad of circumstances in which it is inhumane and causes needless suffering. How, for example, does one ensure that an unskilled worker carries out the practice so the point of impact is precisely where it leads to instant death? How does one ensure that repeated efforts are not required to euthanize a particular animal? The video of “piglet thumping” in the record shows a piglet being picked up and thrown repeatedly onto a concrete floor without any effort to ensure that the point of contact leads to instant death.

It may well be that the practices to which the applicants object are acceptable general practices. Whether that is the case ultimately depends on social consensus around the issue. The applicants argue that freedom of speech is designed to bring issues like this into the open so that social consensus can develop and evolve.”



ANIMAL JUSTICE

Leading the legal fight for animal protection

Camille Labchuk, Barrister & Solicitor
Executive Director, Animal Justice Canada

camille@animaljustice.ca

Animal Justice et al. v A.G of Ontario, 2024 ONSC 1753 (CanLII)

CITATION: Animal Justice et al. v A.G of Ontario 2024 ONSC 1753

COURT FILE NO.: CV-21-658393-0000

DATE: 20240402

Please go to: <https://canlii.ca/t/k3thm>



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TAB 5

Animals and the Law 2024

Family Members or Chattels? The Intersections Between
Property Law, Family Law, and Animal Law (PPT)

Jennifer Friedman
Canada's Animal Lawyer

May 9, 2024



Family Members or Chattels? The Intersections Between Property Law, Family Law, and Animal Law

DOGGIE BAG...

- ✓ Be mindful of current status as chattels
- ✓ Traditional versus contemporary approaches to ownership disputes
- ✓ Agreement (pre or post relationship)
- ✓ Mediation (at the time of breakdown)
- ✓ Unless your dispute is in British Columbia, it is risky to leave decision to Judge



***Jennifer Friedman
Canada's Animal Lawyer™
Animals and the Law 2024
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TAB 6

Animals and the Law 2024

The Regulation of Horse Racing in Canada
(Drug Positive Tests)

Appendix “A”
Equine Drugs, Medications, and Performance
Altering Substances: Their Performance
Effects, Detection, and Regulation

Paul McKenna
McKenna Law Office

May 9, 2024



April 17, 2024

**The Regulation of Horse Racing in Canada
(Drug Positive Tests)**

Paul B. McKenna
McKenna Law Office (Calgary)

The Regulatory Regime (a broad overview)

- Federal - Pari-Mutuel Betting Supervision Regulations (under the Criminal Code)
 - The Canadian Pari-Mutuel Agency (CPMA)

- Provincial - Ontario: Alcohol and Gaming Commission (AGCO)
 - *AGCO Rules of Racing*
 - Horse Racing Appeal Panel

- Alberta: Horse Racing Alberta (HRA)
 - HRA Rules of Racing
 - Horse Racing Alberta Appeal Tribunal

Drug Testing (and the Penalty Determination) - the Referees

The Canadian Pari-Mutuel Agency (“**CPMA**”) operates an Equine Drug Control Program. CPMA tests for drugs. The applicable provincial regulatory body (for example: Alcohol and Gaming Commission - Ontario; Horse Racing Alberta) determines the penalty when a drug is detected in a horse.

Under the Equine Drug Control Program, CPMA publishes drug Elimination Guidelines. The Elimination Guidelines are suggestions (for trainers) which are based on CPMA research. The Elimination Guidelines contain a list of drugs. The Elimination Guidelines list has suggested drug dosages and “cut-off” times (for the administration of a drug).

CPMA collects and analyzes urine or blood samples from horses before or after a horse race.

CPMA determines whether a drug has been detected in a horse (ie whether there has been a “**Positive Test**”).

The CPMA test depends on the drug. The CPMA test is either on a qualitative basis (ie the drug was detected) or is on a quantitative basis (ie the drug was detected at a level above a particular concentration).

If there is a Positive Test, then CPMA reports the Positive Test to the applicable provincial regulatory body (for example: Alcohol and Gaming Commission - Ontario; Horse Racing Alberta). The CPMA report is a Certificate of Positive Analysis.

Next, the provincial regulatory body determines the applicable penalty for a violation of the racing rules. The penalty is loss of the race prize money (for the horse owner) and is a suspension and fine (for the trainer). The suspension (length) and the fine (amount) depends on many factors (such as whether there have been previous Positive Tests as well as the drug's classification).

Drug Classification

Drugs have varying potential (from high to low) to affect the performance of a horse.

Drugs can also have therapeutic value. Therapeutic medications are substances used to maintain the health and welfare of horses.

Below is a summary of the drug classifications:

- Class 1 Stimulant and depressant drugs with highest potential to affect performance and that have no therapeutic value in the racing horse. Many are drugs that affect the central nervous system. For example, opiates and amphetamines.

- Class 2 Drugs that have a high potential to affect performance, but less of a potential than drugs in Class 1. These drugs are 1) not generally accepted as therapeutic agents in racing horses, or 2) they are therapeutic agents that have a high potential for abuse.

- Class 3 Drugs that may or may not have therapeutic value in the racing horse, but the pharmacology of which suggests less potential to affect performance than drugs in Class 2. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems.

- Class 4 or 5 Primarily therapeutic medications routinely used in racehorses. These may influence performance, but generally have a more limited ability to do so. Drugs in this category are therapeutic medications that have very localized actions only, such as anti-ulcer drugs, and certain antiallergic drugs.

For example, the drug Ractopamine (a class 2 drug) has no therapeutic value in a race horse and has a high potential to affect the performance of the race horse.

For example, the drug Ostarine (a class 2 drug) has no therapeutic value in a race horse and has a high potential to affect the performance of the race horse. The drug Ostarine is classified under the AGCO Penalty Guidelines as a "Non-therapeutic" drug.

For example, the drug Dantrolene (a class 4 drug) has therapeutic value in a race horse and has limited potential to affect the performance of the race horse.

In a 2023 Ontario race, the CPMA report detected the presence of a class 2 drug (Ractopamine) in a horse. The trainer was suspended (1 year) and fined (\$10,000).

In a 2022 Ontario race, the CPMA reports (3) detected the presence of a class 2 drug (Ostarine) in horses. The trainer was suspended (20 years) and fined (\$100,000).

In a 2023 Alberta case, the CPMA reports (3) detected the presence of a class 4 drug (Dantrolene) in a horses. The trainer was suspended (6 months) and fined (\$3,000).

Racing Rules (drug Positive Test is an Absolute Liability Offence)

A trainer is responsible for the condition of his/her horse. A trainer is responsible for the results of the analysis of samples from any horse in his/her charge. [Ontario Racing Rule 26.02.01; Alberta Racing Rule 139].

The absolute liability offence Rules (with emphasis by this author) are:

[Ontario Rule]

- 26.02.03 Notwithstanding 26.02.01 [Ie the trainer is responsible at all times for the condition of all horses trained by him/her], the Commission and all delegated officials shall consider **the following to be absolute liability violations:**
- a. Any trainer whose **horse(s) tests positive** for any substances determined to be non-therapeutic;
 - b. Any trainer whose horse(s) tests positive resulting from the out-of-competition program, including a violation of Rule 6.53, Rule 6.54.01, or 6.54.02;
 - c. Any trainer whose **horse(s) tests positive** resulting from testing in accordance with or under the Pari-Mutuel Betting Supervision Regulations;
 - d. Any trainer whose horse(s) level of TC02 equals or exceeds the levels set out in Rule 22.38;

[Alberta Rule]

264 g Detection of drugs, medication, or foreign substances is prima facie evidence

The **detection of a drug**, medication, or foreign substance in a sample taken from a race horse **constitutes prima facie evidence that the performance of the horse was affected by the drug**, medication, or foreign substance, and that it was administered by the trainer and any other person or persons having care and custody of that horse

In Shakes v. Ontario Racing Commission, 2013 ONSC 4229 (CanLII), <<https://canlii.ca/t/g0544>> Justice Swinton summarized the absolute liability rule as follows:

- [35] In my view, the absolute liability rule, while harsh, is reasonably justified in the public interest to protect horse racing for the reasons set out in the Commission’s decision. As the Court of Appeal noted in *Sudbury Downs* at para. 49, the Commission, when acting in the public interest, considers the interest of horse racing generally.
- [36] The Commission took into account the negative impact of drug use on the racing industry, the difficulties of preventing drug abuse through a strict liability regime, and the need for prevention of such abuse. It also took into account the interests of trainers by its consideration of due diligence at the penalty stage – for example, by limiting the penalty for those who establish due diligence to a fine, described as “non-oppressive” in amount, and no suspension. Therefore, I would not give effect to the applicant’s argument that the rule was not authorized by the Act.

Drug Testing/Detection (drugs have “half lifes” & have “concentrations”)

Pharmacology 101 [with thanks to Dr. Thomas Tobin, Veterinarian 1964 Dublin; Pharmacologist 1970 Toronto; University of Kentucky 2024; www.thomastobin.com]

Thomas Tobin, MVB, MSc, PhD, MRCVS, DABT, 85-15
Prof of Vet. Science & Prof. Department of Toxicology and Cancer Research.
Room 128C, Maxwell H. Gluck Equine Research Center

For a short primer understanding (useful albeit simplistic) about the pharmacological effect of a drug, consider the taking a pain reliever. An Aspirin starts to work (in say 30 minutes) and addresses headache pain for sometime (say 4 hours) and eventually stops addressing the headache pain. The drug concentration of the Aspirin increased and then decreased. When the Aspirin stopped addressing the headache pain, the reason is the drug's concentration had dropped below a level that was pharmacologically effective.

Every drug has a "half-life". A drug's "half-life" is the time by which 50% of a drug has been processed in a horse/body. Each drug has a different "half-lives"; some drugs are processed faster than other drugs.

An example of the "half-life" and concentrations for the drug phenylbutazone (a class 4 drug), see the second paragraph in Appendix "A" to this presentation.

As a drug is processed in a horse (or body), the drug breaks down into the drug's metabolites.

The CPMA Drug Elimination Guidelines reflect drugs have half-lives (as well reflects drugs have concentration levels). The CPMA Drug Elimination Guidelines (for drugs tested on a qualitative basis) reflect an estimate of when a drug can usually be expected to have been eliminated from a horse. The CPMA Drug Elimination Guidelines (for drugs tested on a quantitative basis) reflect when the drug concentration level can be expected to have declined to a lower level (which could not have affected the performance of a horse).

The Regulatory Problem

The problem is testing for a therapeutic drug; the CPMA drug test for a therapeutic drug is on a qualitative basis. On a qualitative basis, a positive test is declared by CPMA when the drug was detected in the horse's system. On a quantitative basis, a positive test is declared by CPMA when the drug was detected in the horse's system (above some particular concentration level).

This author's understanding is CPMA utilizes drug concentrations (called "thresholds") for declaring whether a therapeutic medication has been detected by CPMA. This is part of a gate-keeping process by CPMA (so CPMA is not having to declare a trace presence of a therapeutic drug in all tests). The CPMA thresholds levels are not disclosed by CPMA.

The problem is summarized in a paper by Dr. Tobin (in one of his many papers). The paper was based on a 2005 presentation to the Equine Law section of the Kentucky Bar Association. An excerpt from the paper is attached as Appendix "A" to this presentation. Dr. Tobin's paper refers to the drug phenylbutazone (a class 4 drug) and that drug's "half-life" and concentrations.

Therapeutic medications are substances used to maintain the health and welfare of horses. Detection of a therapeutic medication (on a qualitative basis) leads to a CPMA report (a Certificate of Positive

Analysis). The detection of therapeutic medications (which are at a low concentration) is evidence that the therapeutic medications were used in caring for the horse. The presence of therapeutic medications (which are at a low concentration) were not at a pharmacological amount so as to affect the performance of a horse (on the day of the race).

The issuance of CPMA report puts the provincial regulator in a difficult position regarding the regulator's objectives. The legislated objectives of the provincial regulator (generally speaking) are to:

1. govern, direct, control, regulate, manage, and promote horse racing;
2. protect the health, safety, and welfare of racehorses and the safety and welfare of racing participants and racing officials.
3. safeguard the interests of the general public in horse racing.

The provincial regulator must penalize the trainer (who has used therapeutic medications to maintain the health and welfare of horses). The penalization of a trainer (just using medications to maintain the health and welfare of horses) tarnishes the appearance of the racing industry to the public.

Equine Drugs, Medications, and Performance Altering Substances: Their Performance Effects, Detection, and Regulation

“Zero Tolerance” testing is not testing down to "Zero" molecules, which no analytical chemist can yet accomplish, but rather testing to the Limit of Detection (LOD) of the best available technology. While this may be an entirely appropriate analytical approach to the regulation of performance altering substances which have no place in racing, it is absolutely not considered appropriate for therapeutic medications. Therapeutic medications are substances used to maintain the health and welfare of horses, and to arbitrarily change the sensitivity of testing for these substances depending on either the whim of the chemist or today's availability of improved testing technologies, is entirely inappropriate, as we will see from review of the following basic mathematics of drug/medication dosing and drug elimination.

“When you administer a dose of phenylbutazone to a horse, you administer about the same number of phenylbutazone molecules as there are stars in the known universe, that is about 6 followed by 21 zeros molecules. This is a very large number of molecules indeed.

“The horse will eliminate the bulk of this dose of phenylbutazone quite rapidly. If phenylbutazone in the horse has a 7.22 hour half-life, 50% of the drug will be eliminated by 7.22 hours after dosing, 75% by 14.44 hours post dosing, 87.5 by about 21 hours post dosing, and 90% by 24 hours after dosing. At the end of day 1, when 90% of the drug is eliminated, the pharmacological effect of the drug is, for all practical purposes, gone, but there is still present in the horse the not inconsiderable number of 6 followed by 20 zeros worth of phenylbutazone molecules. Every day another 90% of the drug in the body of the horse will be eliminated, and other zero drops off.

“ However, if the chemist really wants to look, with current technology he or she can easily find traces of the phenylbutazone or its metabolites for 14 days or more after administration, a time post-administration that even the most conservative chemists and regulators generally do not wish to pursue a medication identification. However, the question now arises of when, precisely, should the chemist stop pursuing these traces? Or at what trace concentration should racing regulators cease being concerned?



Law Society
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TAB 7

Animals and the Law 2024

Veterinary Regulation in Ontario (PPT)

Jeffrey Pang

Borden Ladner Gervais LLP

May 9, 2024

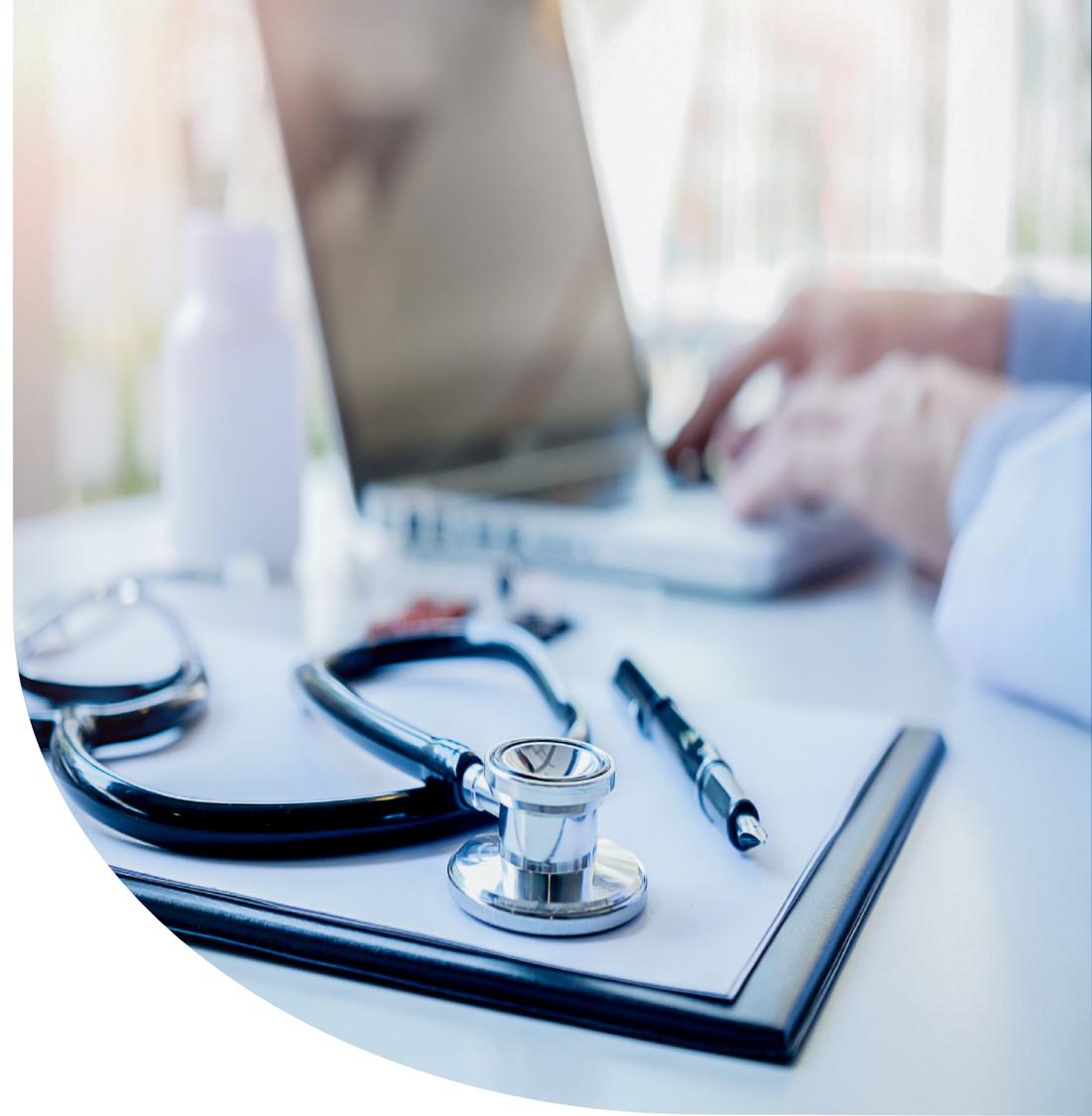


Veterinary Regulation in Ontario

Borden Ladner Gervais LLP | Canada's Law Firm

May 9, 2024

Jeffrey Pang



BLG

Introduction



Jeffrey Pang
Partner

Agenda

- 1. Regulation of Veterinarians in Ontario**
- 2. Discipline Process**
- 3. Negligence Claims**
- 4. Evolution of Damages Awarded**
- 5. Questions**

PART I:

Regulation of Veterinarians in Ontario

Provincial

In Canada, veterinary medicine is provincially regulated.

The College of Veterinarians of Ontario (CVO) regulates veterinary medicine in Ontario.



CVO
College of
Veterinarians
of Ontario

Provincial

CVO legislation includes:

- *Veterinarians Act*
- Regulations to the *Veterinarians Act*
- CVO By-Laws
- Minimum Standards for Veterinary Facilities
- Professional Practice Standards



CVO
College of
Veterinarians
of Ontario

Federal

Laws of general application remain applicable to veterinarians and their clinics:

- *Food and Drugs Act*
- *The Health of Animals Act*



Governing Body – Recent Updates

Modernization of the Act

Bill 171 Enhancing Professional Care for Animals Act, 2024

If passed, the *Veterinarian Act* will be repealed and replaced with the *Veterinary Professionals Act, 2024*.

Governing Body – Proposed Changes



Scope of Practice and Delivery of Care

- Recognize the roles of both veterinarians and veterinary technicians
- Define a broad scope of practice for veterinary technicians that reflects their skills
- Provide a list of authorized activities that describe the activities in the practice of veterinary medicine



Governance

- Greater diversity on the governing council of the regulatory college
- Updating the name of the regulatory college to the College of Veterinary Professionals of Ontario from the current College of Veterinarians of Ontario to reflect its new role in overseeing two categories of veterinary professionals within a single veterinary profession



Complaints and Resolution

- Streamlined complaints and resolution process
- Updated procedures for investigations and addressing professional misconduct
- Increased penalties in reflection of the seriousness of actions harming animals.



PART II:

Discipline Process

Complaints

Complaints against veterinarians can be brought before the CVO.

Structure and Process

- 1** A complaint is submitted to the CVO by a member of the public
- 2** Complaints Committee or Executive Committee review the case
- 3** If there are concerns with the veterinarian's actions or conduct, case is referred to the Discipline Committee
- 4** The Discipline Committee holds public hearings during which they consider allegations of professional misconduct or serious neglect

Discipline Hearing

Panels of three to five members are appointed to hear the matter

Generally open to the public and the outcomes are summarized and available on the CVO's website

Discipline Panel can direct that all or part of a hearing be held in private to protect confidential matters.



Penalties

- If a veterinarian is found guilty of professional misconduct, the Discipline Committee will also rule on an appropriate penalty which may include the following:
 - Recorded Reprimand
 - Monetary Fine
 - Suspension of License
 - Revocation of License
 - *“moral turpitude”*
 - Suspended penalties
 - *When high regard for rehabilitation*

PART III:

Civil Action: Negligence Claims

Negligence

Complaints against veterinarians can also be brought as a civil claim

Negligence is a basis for liability in tort and allows a plaintiff to recover from a defendant when the defendant's actions fall below a standard of reasonableness and result in harm to the plaintiff

Negligence – Elements

Duty of Care

The defendant owed a duty of care to the plaintiff

Standard of Care

The defendant breached duty of care by failing to meet standard of care

Causation

The breach caused loss or injury

Negligence – Duty of Care

Duty of care owed by medical professionals is established under Canadian tort law and arises as soon as the relationship comes into existence

Extension of this duty to veterinary-client relationships is recognized by Canadian courts in various cases.



Negligence – Duty of Care

Duty of care in veterinarian-client relationships is also recognized across provincial governing bodies.

College of Veterinarians of British Columbia:

“When a veterinarian-client-patient relationship is established, a registrant must uphold the duties pertaining to such a relationship, including but not limited to those set out in the Code.”



Negligence – Duty of Care

A similar obligation exists under the CVO, stating that veterinarians must act professionally and demonstrate continuing competence



CVO

College of
Veterinarians
of Ontario



Negligence – Standard of Care

Reasonableness

Standard of care has been contemplated extensively by the courts in the medical context

Physicians have a duty to conduct their practice in accordance with the conduct of a normal and prudent practitioner in the same circumstances

Negligence – Standard of Care

Reasonableness

Principles of veterinary standard of care has not received much attention

The courts have applied the reasonableness standard of care for veterinarians

Negligence – Standard of Care

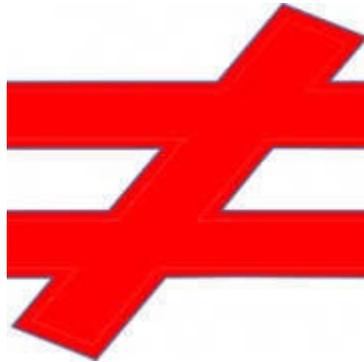
Richard v. 2464597 Ontario Inc., 2019:

“Conduct is negligent if it creates an **objectively** unreasonable risk of harm. To avoid liability, a person must exercise the standard of care that would be expected of an **ordinary, reasonable and prudent person** in the **same circumstances**. The measure of what is reasonable depends on the facts of each case, including the likelihood of a known or foreseeable harm, the gravity of that harm, and the burden or cost which would be incurred to prevent the injury. In addition, one may look to external indicators of reasonable conduct, such as custom, industry practice, and statutory or regulatory standards.” [emphasis added]

Negligence – Standard of Care

Brettell v Main West Animal Hospital Ltd, 1992:

Reasonableness



Expert

Negligence – Standard of Care

CVO also provides guidance on expected standard of care

In a recent CVO summary of disciplinary hearing, the failure to provide follow-up communication and care was held to be a failure in maintaining standards of practice of the profession.

Failure to meet this standard is considered a professional misconduct

Negligence – Informed Consent Standard

Informed consent is heavily featured in veterinarianian malpractice and disciplinary hearings

Captures a positive duty to disclosure of full nature of the proposed treatment and procedure

Negligence – Informed Consent Standard

According to the CVO, consent may be implied or explicit, written or verbal, and is not a one-time activity

Failure to meet the standard of informed consent will likely result in negligence



CVO
College of
Veterinarians
of Ontario

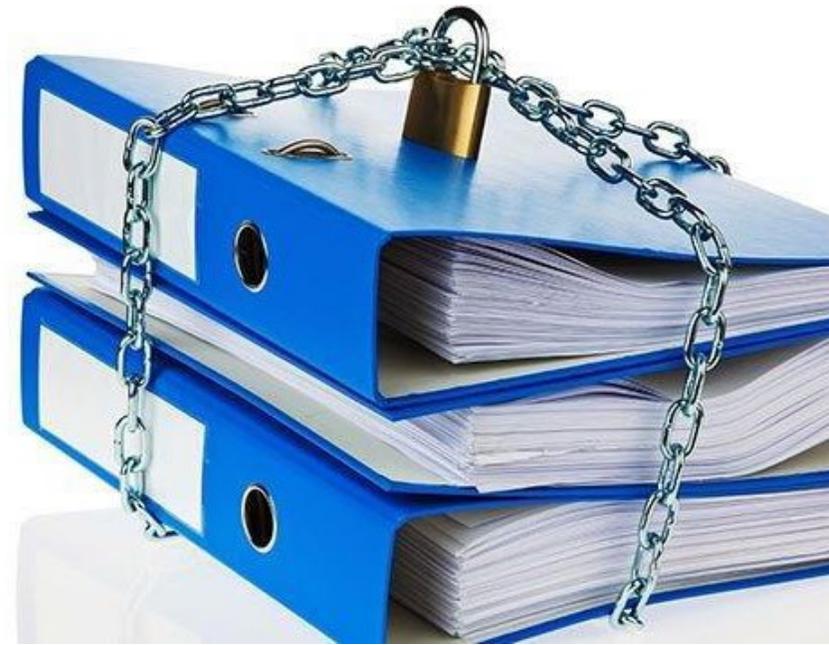
Negligence – Causation

Factual Causation

- Plaintiff must prove, as a matter of fact, the injuries or losses were caused by the negligent act
- “But for” test

Legal Causation

- Plaintiff must also establish the damage was legally caused by the defendant
- Loss must be foreseeable



Defences

01
**Evidence that
Duty of Care
Was Met**

02
**Informed
Consent**

03
**Maintenance of
Medical Records**

PART IV:

Damages



Limited case law on veterinarian malpractice leads to rare findings on damages awards

Pets are viewed as property under Canadian law therefore, damages awards are generally compensatory in nature and limited to the value of the pet at the time of loss or injury

Evolution of Damages Awarded

Limited monetary damages in veterinary malpractice cases is a deterrent to bringing negligent lawsuits

Trend toward protection and recognition of the relationship between pet and owner

Ferguson v. Birchmount Boarding Kennels Ltd.

First Canadian decision to award mental distress damages associated with the loss of an animal

Mental distress caused by the loss of a pet, if proven, may be found compensable

What's Next?

Recent developments signal a clear need for legislative reform and advancement of the legal status of animals under Canadian laws.



Questions?

Thank You

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