

CANADA'S ROLE IN PIT BULL POLITICS:
UNRAVELLING BSL AS CONDEMNING THE
WRONG SIDE OF THE LEASH

An Analysis of the Ineffectiveness and Inappropriateness of both
Provincial and Municipal BSL

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Dogs are the heartbeat of many Canadian homes. Most consider their dog to be a cherished member of their family, receiving daily walks, grooming appointments, annual medical care, and even birthday presents.¹ There are currently 6.4 million dogs in Canada, with 34% of all households owning a dog.² This deep rooted affection towards dogs has a long and rich history in Canada. Yet some dogs have been afforded less affection than others, such as the pit bull. The pit bull is notorious for its vicious reputation; its history with dog fighting and its association with other criminal elements. Sensationalized media portrayals have resulted in misinformation, public hysteria and impulsive political reaction towards the dog. One such reaction is the enactment of Breed Specific Legislation (BSL); the banning or restricting of a certain type of dog, solely based on breed.³

In 1990, Winnipeg became the first Canadian city to ban pit bull type dogs through BSL. Many other municipal jurisdictions throughout Canada followed suit.⁴ In 2005, the Ontario government, under the guise of Attorney General Michael Bryant, passed Canada's first and only provincial wide pit bull ban, through its amendments to the *Dog Owners' Liability Act*⁵ (DOLA). But is it working to curb dog bite reports? This question is explored through an analysis of Ontario's pit bull ban and the case law that has ensued as a result of its enactment. My research

¹ Sarah Oliveira, "Canadian Pet Market Outlook, 2014." (Alberta Agriculture and Forestry, 2014) at 4. The report indicates 86% of Canadian dog owners consider their pet to be apart of the family."

² Colin Siren, "Latest Canadian Pet Population Figures Released." (Guelph: Canadian Annual Health Institute, 2015) at 30.

³ Niki Rae Huitson, *An exploratory analysis of the emergence and implications of breed specific legislation: knee-jerk reaction or warranted response?* (MA Thesis, Simon Fraser University, School of Criminology: 2005) at 4 [Niki Rae Huitson].

⁴ For example- Ontario: Kitchener and Waterloo, Quebec: Sherbrooke and Saint-Jean-sur- Richilieu, Nova Scotia: Clarks Harbor, Newfoundland: North West River, Prince Edward Island: Montague.

⁵ *Dog Owners' Liability Act*, RSO 1990, c D16 [DOLA].

is supported by Canadian health and animal control statistics, BSL studies and a comparative analysis of the City of Winnipeg's BSL and Calgary's alternative approach.

Ultimately, it is very difficult to isolate BSL's effectiveness for a number of reasons. There is no unified dog bite reporting system for all Canadian municipalities to follow. Public safety campaigns typically accompany BSL which helps to educate the public and consequently reduce dog bite statistics. And finally, pit bull misidentification is a common occurrence. What is known about BSL, is that it addresses the dogs of the irresponsible owners as inherently dangerous.⁶ This classification not only demonizes dogs without any signs of aggression, but also does little to address the poor behaviours of irresponsible owners. This is why I advocate abandoning BSL in Canada and adopting a more responsible dog ownership model.

What is a pit bull and why is it banned?

Before an analysis of the pit bull ban can be completed, it is important to define what the term pit bull encompasses and provide a brief history as to why it has been selected as Canada's "have-not" dog.

A "pit bull" type dog is not a breed. The term pit bull is often used to describe dogs encompassing the "bully breeds," such as American Pit Bull Terriers, American Staffordshire Terriers and Staffordshire Bull Terriers.⁷ Yet some definitions, such as the one set out in the *DOLA*, also include the Pit Bull Terrier. Neither the United, American, nor the Canadian Kennel Club recognize the Pit Bull Terrier as an official breed. To further complicate matters, both the

⁶ Karen Delise. *The Pit Bull Placebo: The Media, Myths, and Politics of Canine Aggression*. Ramsey, (Ramsey, NJ, Anubis Publishing: 20007) [Delise].

⁷ *Ibid* at 95.

American and Canadian Kennel Club's do not recognize the American Pit Bull Terrier as an official breed, whereas the United Kennel Club does.⁸ Without official breed designation, there are no standards by which the breed can be classified. This leads to confusion over the acceptability of a clear definition of what constitutes a pit bull. Many animal groups opposed to BSL have created online games, such as StubbyDog's "*Pick the Pit*"⁹ in order to illuminate the challenges of visually identifying pit bulls. Therefore, at the very least, a pit bull is an umbrella term loosely used to describe all dogs with similar traits and characteristics, often known by the public as pit bulls.

Its ancestry can be traced back to the bull-and-terrier breed, developed in England in the early nineteenth century for the sport of bull-baiting.¹⁰ When bull-baiting became illegal, pit bulls transitioned into the dog of choice for the blood sport of dog fighting. In addition to dog fighting, pit bulls imported to North America began to be used to protect "property, children and to wrangle cattle and hogs."¹¹ By the early twentieth century, pit bulls transitioned into household pets and were particularly noted for their good temperament with children, as is seen in *The Little Rascals* through the character of "Pete".¹²

But by the 1980's, a "pit bull panic" emerged after high profile new stories regarding dog fighting began to surface.¹³ While the media honed in on the growing subculture of drugs, gambling and dog fighting, those who were attracted to the dog's aggressive reputation began

⁸ Canadian Kennel Club, "Registration", (12 September 2015) at 4.3, online: <<http://www.ckc.ca/CanadianKennelClub/files/64/64936931-4934-4541-ac54-4076fb104d86.pdf>>

⁹ StubbyDog, "Pick the Pit", (3 December 2015) online: <<http://www.pickthepit.com>>

¹⁰ Bethany Gibson, *Demonizing the Pit Bull: Breed-Specific Legislation and the Circuit of Communication*, (MA Thesis, University of Maryland, College Park: 2009) at 14 [Gibson].

¹¹ Niki Rae Huitson, *supra* note 3 at 10.

¹² Gibson, *supra* note 10 at 16.

¹³ Niki Rae Huitson, *supra* note 11.

acquiring them. Pit bulls became synonymous with illegal activity, stigmatizing and deterring viable owners from owning the dog.¹⁴ In Bethany Gibson's 2009 paper, on the media's demonization of pit bulls, she outlines that media outlets ignored legitimate dog aggression factors in crafting their stories to portray pit bulls as inherently dangerous:

“With little to no knowledge of or attention to factors which have been recognized for centuries as having the potential to contribute to canine aggression...media reports singled out the pit bull breed to stand as different than the rest, as a breed with malicious intent toward humans instead of a breed reacting as would any other breed to mistreatment and abuse.”¹⁵

This pit bull hysteria carried over into the 1990s and early 2000s with hundreds of news outlets covering vicious pit bull attacks at an alarming rate. From August-October 2004, there were 16 media reports in Ontario alone documenting pit bull attacks.¹⁶ However, the media frequently reported dog bite incidents as "pit bull attacks" when the dog's breed was unknown, only to clarify the mistake days later.¹⁷ Through repeated media attention and the over reporting and misrepresentation of pit bull attacks, the general public normalized pit bull attacks as a common occurrence and put pressure on government officials to take action. On October 26, 2004, Attorney General of Ontario Michael Bryant, proposed Bill 132¹⁸ to amend its *Dog Owners' Liability Act*.

¹⁴ Gibson, *supra* note 10 at 17.

¹⁵ Gibson, *supra* note 10 at 18.

¹⁶ Ontario, Legislative Assembly, *Second Reading of Bill 132 (Hansard)*, 40th Leg, 2nd Sess, (4 November 2004) at 1600 (Hon Michael Bryant) [*Second Reading*].

¹⁷ Niki Rae Huitson, *supra* note 3 at 6. See also: K Scott, “Report for March 19, 2012, Community Services Committee: Potential for Restricting Dogs by Breed”, (Community Services 2012CST003: 2012) at 2 [Scott]. In 2011 two Edmonton citizen complaints of Pit Bull attacks, were later found to be carried out by a Border Collie and a Boxer.

¹⁸ Bill 112, *Public Safety Related to Dogs Statute Law Amendment Act*, 2nd Sess, 40th Leg, Ontario, 2013.

The inception and crafting of Bill 132

During the First Reading of the Bill on October 26, 2004, Michael Bryant proposed the ban as an action responding to “the growing alarm of Ontarians over the aggressiveness and danger of [pit bulls].”¹⁹ He stated the municipal patchwork approach to the pit bull issue needed to be remedied by a provincial wide ban. It was criticized as “politically charged,” unenforceable due to the vague definition of the term “pit bull,” and too lenient on negligent dog owners.²⁰ Yet it was presented on November 4, 2004 for its Second Reading.

Every party agreed that a new approach was needed to address the issue of increased dog bite reports throughout Ontario, but not through the means of BSL. Peter Kormos, the MP for the Niagara Centre, was a vocal opponent to the proposed Bill. He rejected BSL and consulted with the Ontario Veterinary Medical Association and proposed, “[t]he solution lies in a combination of effective animal control measures, reputable breeders, responsible owners [and] public education.”²¹ While other proponents of the Bill, such as MP Jerry Ouellette, continued to perpetuate the misguided presumption that only “criminals” own pit bulls. He joked: “First of all, let me point out, would I own a pit bull? Would I own that breed? I'm from Oshawa and I don't drive a Ford. No, I would not own that breed.”

The Bill was recommended for Public Hearings where over 100 experts, consisting of animal groups, safety commissions and veterinarians presented their evidence and expressed their professional opinions. Of the 103 presenters, 81 strongly rejected the proposed ban.²² Yet

¹⁹ Ontario, Legislative Assembly, *First Reading of Bill 132 (Hansard)*, 40th Leg, 2nd Sess, (26 October 2004) at 1350 (Hon Michael Bryant) [*First Reading*].

²⁰ *Ibid* at 1400 (Joseph N Tascona).

²¹ *Second Reading*, *supra* note 16 at 1650.

²² Ontario, Legislative Assembly, *Third Reading of Bill 132 (Hansard)*, 40th Leg, 2nd Sess, (28 January 2005)

on February 28, 2005 the Bill entered into its Third Reading. To say the Bill was highly contentious would be an understatement. Before it's passing, Michael Bryant stated:

“I think this Bill probably got more days of public hearings, more days of debate in the Legislature and more consultation than any other Bill on the subject of dogs in the history of the Commonwealth.”²³

Despite the months of debates in the Legislature, varied consultations, and days of public hearings, Bill 132 was passed by the Legislative Assembly, after a highly contentious debate, on March 1, 2005 as the *Public Safety Related to Dogs Statute Law Amendment Act, 2005*²⁴. Regulations made under the *DOLA*, came into effect on August 29, 2005. Through these amendments, Canada's first provincial BSL was born.

In 2009, MPP Cheri DiNovo introduced a private members bill in an attempt to repeal Ontario's pit bull ban.²⁵ The bill passed first reading but when parliament was prorogued on March 4, 2010, the bill was not carried forward. By 2011, the bill was re-introduced as Hershey's Bill 16²⁶, a Tri-Party private members bill. Bill 16 passed second reading on February 23, 2012 and on May 9, was ordered for Third Reading. During that second reading, MPP Julia Munro criticized the enactment of Ontario's BSL stating, “[t]housands of dogs were euthanized” and, “[t]his had nothing to do with dangerous dogs...[and] everything to do with a political agenda.”²⁷ However, once again parliament was prorogued in 2012 and the bill was not carried forward.²⁸

at 1600 (Norm Miller).

²³ *Ibid* at 1450 (Hon Michael Bryant).

²⁴ *Public Safety Related to Dogs Statute Law Amendment Act, 2005*, SO 2005, c 2.

²⁵ Bill 222, *Public Safety Related to Dogs Statute Law Amendment Act*, 1st Sess, 39th Parl, Ontario, 2009.

²⁶ Bill 16, *Public Safety Related to Dogs Statute Law Amendment Act*, 1st Sess, 40th Parl, Ontario, 2012.

²⁷ Ontario, Legislative Assembly, *Second Reading of Bill 16 (Hansard)*, 40th Parl, 1st Sess, (23 February 2012) at 1520.

²⁸ Support Hershey's Bill, “Bill 132 & Beyond” (2015).

Therefore the *DOLA* remains in full force and effect in Ontario today and its controversial provisions remain intact.

Ontario's Dog Owner's Liability Act

A few contentious amendments made to the *DOLA* with specific regards to pit bulls include:

- *The DOLA* defines a “pit bull” as including Pit Bull Terriers, Staffordshire Bull Terriers, American Staffordshire Terriers, American Pit Bull Terriers, or dogs with substantially similar appearances and physical characteristics as the mentioned breeds.²⁹
- All licensed pit bulls owned in Ontario before August 29, 2005, are deemed “restricted pit bulls”, who must be muzzled and leashed.³⁰
- Other than those restricted pit bulls, Ontario’s citizens are prohibited from owning, breeding, transferring, importing or abandoning pit bulls.³¹
- In determining the identification of a pit bull, a letter from an Ontario Veterinarian will act as proof, in the absence of evidence to the contrary, that the dog is a pit bull.³²
- If a pit bull is found to have bitten, attacked or behaved in a menacing manner towards a person or domestic animal, an order for the dog’s destruction must be made.³³

These amendments have been legally challenged through various actions brought by Ontario citizens. A sample of the case law is provided below.

²⁹ *DOLA*, supra note 5 at s 1(1).

³⁰ *Ibid* at s 7.

³¹ *Ibid* at s 6.

³² *Ibid* at s 19(1).

³³ *Ibid* at s 4(8).

Ontario's Contentious Pit Bull Case Law

a. *Cochrane v Ontario (AG)*, 2007 (ON SC)

Although the Court's decision was not rendered until 2007, *Cochrane*³⁴ brought the first constitutional challenge to the 2005 pit bull amendments of the *DOLA*. On May 15, 16 and 17 of 2006 the Superior Court of Justice heard the case of Ms. Cochrane. Under the representation of Clayton Ruby, Ms. Cochrane sought a declaration that the provisions violated ss. 7 and 11(d) of the *Charter* and were *ultra vires* the provincial government.

The court stated that although there is no *Charter* right to own or breed a dog, s. 7 of the *Charter* is triggered because a contravention of the *DOLA* could result in a term of imprisonment. Therefore its provisions must conform to the principles of fundamental justice.³⁵ In this case, those principles included overbreadth and vagueness.

i. Overbreadth & Vagueness

The Court dismissed the overbreadth argument, that all pit bulls, even those with proven temperaments were being negatively affected by the *DOLA* amendments. The Court found that the law was not disproportionate to the public safety objectives sought. The evidence on pit bull temperament, though conflicting and inconclusive, established a "reasoned apprehension of

³⁴ *Cochrane v Ontario (AG)*, 2007 CanLII 9231 (ON SC) [*Cochrane*, 2007].

³⁵ *Ibid* at para 23.

harm,"³⁶ and "it was open to the legislature to choose the more cautious approach" where public safety is concerned.³⁷

The principle of vagueness was applied to s.1 of the *DOLA*'s definition of what constitutes a "pit bull." Because of its reference to unregistered breeds and physical characteristics appearing substantially similar to such breeds, Ms. Cochrane contested the definition was far too vague to provide any valid guidance. That provision reads:

"s.1(1) In this Act,

"pit bull" includes,

- a) a pit bull terrier,
- b) a Staffordshire bull terrier,
- c) an American Staffordshire terrier,
- d) an American pit bull terrier,
- e) a dog that has an appearance and physical characteristics that are substantially similar to those of dogs referred to in any of clauses (a) to (d)"

The Court concluded that "the legal standard that the definition has to meet in order to be constitutional is not precision."³⁸ The inclusion of Staffordshire bull terriers, American Staffordshire terriers, and American pit bull terriers within the definition "provide[d] sufficient guidance to identify dogs that are substantially similar to the three breeds."³⁹

The Court did however find that the phrases "pit bull includes" and "pit bull terrier" did not include sufficient guidance "to individuals who have to comply with the law, to those who

³⁶ *Ibid* at para 84.

³⁷ *Ibid* at para 79.

³⁸ *Ibid* at para 178.

³⁹ *Ibid*.

have to enforce it and to courts that have to interpret it.”⁴⁰ Those terms were found to be unconstitutionally vague and stricken from the definition.

ii. Identification of "Pit Bull" by Veterinarian Letter

Ms. Cochrane put forth the argument that the s.11(d) Charter presumption of innocence was offended by s.19(1) of the *DOLA*, making a veterinarian's letter attesting that a dog is a pit bull, proof of that fact absent evidence to the contrary. The Court found that this provision could be interpreted fairly by allowing the Court to use its discretion, allowing a defendant to cross-examine the veterinarian. The Court stated “the absence of an express right to cross-examine... [did] not contravene the right to trial fairness.”⁴¹ But, in requiring the defendant to summon evidence to rebut the assumption of pit bull, the Crown unfairly placed a logistical burden on the defendant to defend against the mandatory presumption. The Court therefore concluded:

“the practical effect of placing the burden on the defendant to present evidence to the contrary is to transfer the burden of calling evidence from the Crown to the defendant. This, in my opinion, cannot be justified.”⁴²

The provision violated s.11(d) and was not saved under s.1 of the Charter. The constitutional remedy granted was to strike all of s.19 of the *DOLA*.

⁴⁰ *Ibid* at para 186.

⁴¹ *Ibid* at para 216.

⁴² *Ibid* at para 245.

iii. Legislation *Ultra Vires* the Province

Ms. Cochrane's final argument was that the *DOLA* breed identification scheme frustrated the federal *Animal Pedigree Act*, which provided a scheme for identification of breeds.⁴³ The Court concluded that the purposes of the two schemes were quite different and that there was no functional conflict between them.

b. The Appeal: *Cochrane v Ontario (AG)*, 2008 (ONCA)

In 2008, both the Attorney General, Michael Bryant, and Clayton Ruby, appealed different aspects of the decision.⁴⁴ With regards to the **overbreadth** claim, the Court of Appeal agreed with the lower court judge in finding the legislature had acted on a reasonable apprehension of harm. In doing so, the Court concluded: "[e]vidence of the unpredictable risk of severe harm is sufficient to allow the legislature reasonably to conclude that pit bulls as a group are dangerous because of the risk they pose."⁴⁵

The Court went on to further validate the governments blanket ban of pit bulls, by comparing their "risk" level to that of firearms:

"Legislatures frequently enact blanket prohibitions on things or activities that may be used or conducted safely because of the risk that severe harm can result from misuse or misconduct. The prohibition and regulation of certain firearms provides an example."⁴⁶

⁴³ *Ibid* at para 251.

⁴⁴ *Cochrane v Ontario (AG)*, 2008 ONCA 718 (CanLII) [*Cochrane*, 2008].

⁴⁵ *Ibid* at para 34.

⁴⁶ *Ibid*.

This inappropriate comparative example suggests pit bull type dogs are as dangerous to public safety as certain firearms. Although dogs obtain temperament and behavioural assessments, they still fall within the category of “things or activities” within the view of the courts. Where the lower court refrained from classifying pit bull type dogs as inherently dangerous due to conflicting studies and expert evidence, the Court of Appeal subtly implanted its opinion on the matter by its firearm comparison.

With regards to the vagueness claim and decision of the lower court to amend s.1 of the *DOLA*, the Court of Appeal reversed the order. When read in the context of “a more comprehensive definition,” the Court of Appeal stated the phrasing “a pit bull terrier” was “sufficiently precise.”⁴⁷ The Court also stated the test for vagueness is “unintelligibility, not redundancy” and the inclusion of the term “pit bull terrier” was simply repetitive, not confusing.⁴⁸ Unfortunately this reasoning failed to address the illegitimacy of the term as it has almost no identifying features. Its continued inclusion in the definition of “pit bull” in s.1 of the *DOLA*, serves to further frustrate the understanding of the term pit bull and promote any and all applications of the term.

Finally, on the trial unfairness claim, regarding the government’s ability to introduce a veterinarian’s certificate certifying pit bull lineage, the Court of Appeal reversed the lower court’s decision to strike out s.19 of the *DOLA*. The Court stated s.19 is simply an enabling provision “[affording] the prosecution a more expedient method of proving a fact.”⁴⁹ Although it is suggestive of a reverse onus provision, it is saved by ss. 19(3) which “requires the Crown to prove the guilt of the accused beyond a reasonable

⁴⁷ *Ibid* at para 51.

⁴⁸ *Ibid*.

⁴⁹ *Ibid* at para 58.

doubt.”⁵⁰ Yet where the definition of a pit bull remains unclear and pit bull identification remains a highly subjective matter, a Veterinarian’s opinion is fundamentally the only expert evidence a Court receives to help in its determination. In providing the government with an expedient fact finding mechanism, the defendant is consequently disadvantaged. It is difficult to rationalize why this does not amount to trial unfairness.

In April 2009, Clayton Rudy appealed the Court of Appeal’s decision to the Supreme Court, but it was rejected in June 2009.⁵¹

c. *R v Kirby*, 2006 (Ont Ct J)

In the 2006 Ontario Court of Justice case of *R v Kirby*, Mr. Kirby was facing charges for possessing an unlicensed dog that was not being restrained by a leash in the city of Sarnia. The court was tasked with determining whether the dog was a pit bull as defined by the *DOLA*. In her opening remarks, the Justice of the Peace stated:

“This legislation is either so cut and dry - I think it's vague in that it doesn't give a lot of direction. It's difficult by its very nature because it isolates one breed or a collection of a breed and asks the courts to destroy that breed if the leash isn't a certain length, if the dog isn't muzzled ...and that the dog must be neutered.”⁵²

The prosecution introduced a letter from a veterinarian in evidence stating that, “[i]n my opinion, this dog does have some pit bull similarities.”⁵³ The defense however called another veterinarian, Dr. Sandy Taylor, who testified that she could not say whether the dog was a pit

⁵⁰ *Ibid* at para 67.

⁵¹ Dan Shouldice, *Who Let the Dogs Out? Supreme Court Dismisses Leave-to-Appeal Applications from Aggrieved Pit Bull Owner*. (Edmonton: The University of Alberta’s Centre for Constitutional Studies, 2009).

⁵² *R v Kirby*, 2006 ONCJ 181, at para 1, 69 WCB (2d) 525.

⁵³ *Ibid* at para 4.

bull or a Staffordshire terrier “without knowing its parentage or lineage.”⁵⁴ Although it had some tendencies of the bull terrier, it also had similarities to the bulldog and the Dogue de Bordeaux. The court concluded that the dog did not meet the legal definition of a pit bull.

Unlike the Court of Appeals’ decision in *Cochrane*, the trial judge in *Kirby* heard conflicting evidence from veterinarians and was called to determine which expert was more credible. This was made particularly difficult, as the dog in question was not a pure-bred, its lineage was unknown and the dog was not licensed or registered with a designated Kennel Club. The trial judge concluded that the dog did not meet the definition as outlined in s.1 of the *DOLA*. As *Cochrane* viewed the definition of pit bull in the *DOLA* as repetitive but sufficiently clear, the court in *Kirby* acknowledged the difficulties the definition presents.

d. *R v Huggins*, 2010 (Ont CA)

In the more recent 2010 Ontario Court of Appeal decision of *R v Huggins*⁵⁵, it was determined that a pit bull found to have bitten or attacked a person or domestic animal, must be destroyed pursuant to s. 4(8) of the *DOLA*, regardless of provocation or self defence.

This ruling rejected Justice Hogan of the Ontario Court of Justice’s finding that mandatory destruction orders “could lead to an absurd result”⁵⁶ especially in circumstances “where the dog had no culpability whatsoever.”⁵⁷ The lower court engaged in the hypothetical of a person breaking into the home of a pit bull and being subsequently bitten as a result of the dog

⁵⁴ *Ibid* at para 9.

⁵⁵ *R. v Huggins*, 2010 ONCA 746, 326 DLR (4th) 720 [*Huggins*, 2010]

⁵⁶ *R v Huggins*, 2009 ONCJ 155, at para 10, 83 WCB (2d) 10.

⁵⁷ *Ibid* at para 3.

defending its property and owner. In this circumstance, the court found that it would be absurd to have the dog destroyed.

The Court of Appeal, however, stated “the clear wording of a statute must be given effect even if it may lead to an absurdity.”⁵⁸ The Court gave significant deference to the legislature’s decision to classify pit bulls as “inherently dangerous animals that pose a risk to public safety.”⁵⁹ In doing so, the court determined that s. 4(8) of the *DOLA* is “clear and unambiguous about what is to happen when a pit bull contravenes its provisions, and must be given effect.”⁶⁰

This ruling is consistent with the Court of Appeals 2008 decision in *Cochrane*. In continuing to give significant deference to the legislatures drafting of the *DOLA*, the Appeal Court repeatedly describes pit bulls as inherently dangerous and analogous to firearms, which endorses the Ontario government’s use of BSL to promote public safety. But does it? There is very little provincial evidence available to determine the effects of Ontario’s pit bull ban.

Are Pit Bulls a risk in Canada?

a) Non-Fatal Dog Bites in Canada

In 1998, the Canadian Hospital Injury Reporting and Prevention Program (CHIRPP) published the results of an extensive study of dog bite reports in Canada in 1996.⁶¹ The report included 1,237 total dog bite injury records, which represented 1% of all reported injuries in

⁵⁸ *Huggins*, 2010, *supra* note 55 at para 17.

⁵⁹ *R v Huggins*, 2010 ONCA 746, 326 DLR (4th) 720 at 30.

⁶⁰ *Ibid.*

⁶¹ James O’Heare, *Aggressive Behaviour in Dogs: A Comprehensive Technical Manual for Professionals*, 2nd ed (Ottawa: Behave Tech Publishing, 2014) at 19.

Canada for 1996.⁶² Dr. Tim Zaharchuk, of the Ontario Veterinary Medical Association stated that of the 1% of dog attacks, most common offending breeds were German Shepherds, Cocker Spaniels, Rottweiler's and Golden Retrievers.⁶³

James H Bandow, the General Manager of Animal Control Services in Toronto, conducted a study on animal bites (with human victims) reported to the Toronto Department of Public Health. He analyzed the 626 reported bites of 1993.⁶⁴ His study found that pit bull terriers accounted for only 4% of reported dog bites in Toronto, ranking ninth on the list of identified breeds.⁶⁵

Based on the results of his study, he concluded that banning certain breeds of dogs through breed specific legislation would have three basic weaknesses: vagueness and over and under inclusiveness. In classifying pit bulls, some owners like to refer to their dog as a pit bull although it has no characteristics that would suggest a relationship to the common pit bull-like breeds. Other owners classify their pit bull as bulldogs out of preference. To this, Bandow states:

“We need to accept, whether a dog has been correctly identified or not, the fact that a dog anatomically resembles any of the breeds or crossbreeds referred to as pit bulls, is not a predictor of its behaviour.”⁶⁶

Dog aggression indicators should not solely be based on breed identification, as “a dog's personality is derived from a combination of genetics, treatment, training and socialization.”⁶⁷

⁶² *Ibid.*

⁶³ *Cochrane, 2007, supra note 34 at para 40.*

⁶⁴ James H Bandow, “Will breed specific legislation reduce dog bites?” (1996) 37:4 *Canadian Vet J* 478.

⁶⁵ *Ibid* at 480.

⁶⁶ *Ibid* at 481.

⁶⁷ *Ibid.*

A vast body of American literature on the subject of dog aggression, further rejects the use of breed identification as a means of indicating aggrieved behavioural patterns in dogs. In 2000, the American Veterinary Medical Association published an article concluding there are several interacting factors that affect a dog's propensity to bite, including "...heredity, sex, early experience, socialization and training, health (medical and behavioral), reproductive status, quality of ownership and supervision, and victim behavior."⁶⁸ This is supported by Dr. Irene Sommerfeld-Stur's opinion that, "the danger of an individual dog is, in large measure, a product of that dog's environment."⁶⁹ In Dr. Lockwood's, *The ethology and epidemiology of canine aggression*, he further indicates that the multiplicity of factors involved in dog bites "...makes it difficult and often meaningless to base predictions of a particular animal's aggressive behaviour on a single characteristic, such as breed."⁷⁰

Therefore, dog aggression indicators are affected by the environmental factors in which a dog is raised in, rather than its breed affiliation. In its banning of pit bulls, the Ontario government is targeting the symptoms of poor dog ownership, represented through a single breed, rather than punishing neglectful behaviours of all owners alike. BLS appears to make even less sense after reviewing the incidents of fatal dog attacks in Canada as they relate to pit bulls.

⁶⁸ Jeffrey J Sacks et al, "Breeds of dogs involved in fatal human attacks in the United States between 1979 and 1998" (2000) 217:6 *Journal of the AVMA* 836 at 839 [Sacks].

⁶⁹ *Cochrane, 2007*, supra note 34 at para 36.

⁷⁰ Randall Lockwood, "The ethology and epidemiology of canine aggression" in James Serpell, ed, *The domestic dog: its evolution, behaviour, and interactions with people* (New York: Cambridge University Press: 1996) 131 at 134.

b) Fatal dog attacks in Canada

With regards to fatal dog attacks in Canada, Dr. Raghavan, a epidemiologist at University of Manitoba, conducted a study from 1990 to 2007, and found that of the 28 reported fatal dog attacks in all Canadian jurisdictions, only 1 death could be attributed to a pit bull type dog.⁷¹ Both Rottweiler and Husky breeds were responsible for 3 deaths respectively and “sled dogs” were responsible for a total of 4 deaths.⁷²

This fails in comparison to a United States study from 1979-1998, which found that pit bull-type dogs and Rottweiler breeds were involved in more than half of 238 reported dog-attack fatalities.⁷³ Yet, the author’s believe BSL is not an appropriate legislative response. This is in part because of difficulties inherent in determining a dog’s breed with certainty and the issues of constitutionality of breed-specific enforcement.⁷⁴ In Canada, public debates on dog attacks are predominantly influenced by studies from the United States due to a lack of comprehensive Canadian studies.⁷⁵ On average, only 1 to 2 human deaths a year in Canada are attributed to dog attacks whereas the United States has a much higher annual average of 15 deaths per year.⁷⁶ Therefore, it is important to analyze specifically Canadian statistics when reviewing dog related bites/fatalities.

⁷¹ Malathi Raghavan, “Fatal dog attacks in Canada, 1990–2007” (2007) 49:6 Canadian Vet J 577 at 578 [*Raghavan*].

⁷² *Ibid* at 579. It is important to note that all of these breeds were represented in larger numbers than the pit bull type breeds.

⁷³ *Sacks, supra* note 68 at 836.

⁷⁴ *Ibid*.

⁷⁵ *Raghavan, supra* note 71 at 577.

⁷⁶ *Ibid*.

In conclusion, it is important to analyze specifically Canadian statistics in order to review dog bite factors unique to Canada, such as local and provincial dog legislation, hospitalization reports, predominant breeds and bite circumstances, in efforts to prevent dog attacks. These efforts should include required reporting of all dog bites or attacks to local officials. The report should detail the circumstances of the bite, the dog's breed, sex, reproductive status and history of prior aggression.

One such body of reporting should be the Canadian Hospitals Injury Reporting and Prevention Program (CHIRPP). The CHIRPP is an injury surveillance system that operates in 10 pediatric and six general hospitals in Canada.⁷⁷ Although it currently collects data with regards to dog injuries, factors such as breed, age, sex and reproductive status of the dog are not reported. Improved monitoring mechanisms would allow for more impactful and accurate data collection for prevention efforts with regards to fatal and non-fatal dog bites.

BLS in other Canadian Municipal Jurisdictions

Where very little data has been collected from all of Ontario's municipalities and compiled then analyzed, it is difficult to review the effectiveness or appropriateness of BSL as a provincial legislative response. On a municipal level, there are various cities and towns throughout Canada who have instituted BLS, and some have already begun to repeal such provisions.

In 2005 the city of Vancouver abandoned its breed specific bylaw that was in place since 1984. In rewriting the bylaw, the City instead instituted higher penalties for all dog owners who

⁷⁷ Public Health "Agency of Canada, Canadian Hospitals Injury Reporting and Prevention Program (CHIRPP)" (24 November 2015), online: <http://www.phac-aspc.gc.ca/injury-bles/chirpp/index-eng.php>>.

contravened the bylaw, and established education initiatives to promote responsible dog ownership.⁷⁸ In 2012, the city of Edmonton took Vancouver’s lead and eliminated its breed-specific provisions within its animal control bylaw. The rewriting of the bylaw came after a report completed by the Community Services Committee in 2012. The report concluded, “[b]ylaws that are breed neutral and ensure that aggressive dogs (regardless of breed) are not a continued threat to public safety, are the most consistent and fair approach.”⁷⁹

Those cities that have not repealed their BSL include Winnipeg, Manitoba, where others such as Calgary, Alberta have no plans on instituting BSL at all. In reviewing and contrasting the municipal responses of both Winnipeg and Calgary some light can be shed on this issue.

A Comparative Analysis of Winnipeg’s & Calgary’s Animal Bylaw

a) The City of Winnipeg’s *Responsible Pet Ownership By-law*

Winnipeg, Manitoba was the first Canadian city to introduce BSL by banning pit-bull type dogs in 1990⁸⁰ by enacting its *Responsible Pet Ownership By-law*.⁸¹ This came as a response to Winnipeg’s recorded 214 dog bites in 1989, 28 of which were attributed to pit bulls, and 275 bites in 1990 (11 attributed to pit bulls)⁸².

⁷⁸ Nancy Margaret Clarke, *A Survey of urban Canadian Animal Control Practices: The Effect of Enforcement and Resourcing on the Reported Dog Bite Rate* (MA Thesis, University of British Columbia, Animal Science: 2009) at 3 [Clarke].

⁷⁹ Scott, supra note 17 at 1.

⁸⁰ Malathi Raghavan et al, “Effectiveness of breed-specific legislation in decreasing the incidence of dog-bite injury hospitalisations in people in the Canadian province of Manitoba” (2013) 19:3 Injury Prevention 177 [Raghavan, 2013].

⁸¹ City of Winnipeg, by-law No 92/2013, *Responsible Pet Ownership By-law* [Winnipeg].

⁸² Clarke, supra note 78 at 45.

Ontario's *DOLA* adopted many of Winnipeg's provisions, including its classification of what constitutes a 'pit-bull'.⁸³ Winnipeg's bylaw was similarly challenged for its vague definition, but the Manitoba Court of Appeal dismissed this argument stating the bylaw provided "reasonable benchmarks for the determination of the breed."⁸⁴ Although in 2014, the term "pit bull terrier" was removed from its definition.⁸⁵

The bylaw includes a veterinarian identification provision, but unlike the *DOLA*, a reverse onus is not placed on the dog owners due to the crafting of its language. Ss. 7(2) of the *Responsible Pet Ownership By-law* reads:

"...Where the veterinarian concludes that a dog does not meet the criteria established in subsection (1), such a statement is conclusive proof that the dog is not prohibited under subsection (1) and no prosecution or enforcement action under subsection (1) may be undertaken with respect to the dog."

Where the *DOLA* allows the Crown to obtain a veterinarian's letter to conclusively establish proof of the dog's identification, the *Responsible Pet Ownership By-law* simply defers that privilege to the dog owner. In theory this makes the Crown's burden of proving beyond a reasonable doubt more difficult, opposed to the *DOLA*'s scheme which lessens the Crown's burden. It is difficult to understand why Ontario's legislature chose to reword the section, which ultimately made it more susceptible to constitutional scrutiny (as was debated in *Cochrane*).

But unlike the *DOLA*, Winnipeg's bylaw does not make destruction orders mandatory after a 'pit bull' determination is made. Instead, the Chief Operating Officer may issue a special permit authorizing the dog to be in the City for a temporary period of time under certain

⁸³ Winnipeg, supra note 81 at ss 7(1).

⁸⁴ *Manitoba Assn of Dog Owners Inc v Winnipeg (City)*, [1994] MJ No 643, at para 3, 102 Man R (2d) 1.

⁸⁵ City of Winnipeg, by-law No 77/2014, *By-law to amend the Responsible Pet Ownership By-law 92/2013* (26 June 2014) s 1.

conditions.⁸⁶ This allows for individual discretion on behalf of the Officer, which is better than the *DOLA*'s blanket ban and extermination. If a person is found to be keeping or harboring a prohibited animal (such as a "pit bull"), they are liable to a \$1,500 as set out in Schedule B, s.33(1).

i. But is it working?

In 2006, 16 years following the introduction of BSL, Winnipeg's dog bite rate was reduced from 4.3 per 10,000 people in 1991 to 2 per 10,000 people.⁸⁷ More recently, in 2012, Dr. Raghavan completed a comprehensive analysis of the effectiveness of all of Manitoba's municipalities with BSL. The study found that Manitoba's overall provincial rate of bite-related hospitalizations dropped significantly from 3.5% (pre-BSL) to 2.8% (post-BSL) per 100,000 people.⁸⁸ Yet there were no significant differences in incidence of bite-related hospitalizations between pre-BSL and post-BSL implementation.⁸⁹ Furthermore, the report was unable to determine the number of bite-related hospitalizations that could be attributed to pit bull type breeds.⁹⁰

An article in the *Canadian Veterinarian Journal*, brings to light that, at the time of the bylaw's enactment, "Winnipeg simultaneously embarked on a \$70,000-\$90,000 per annum education and advertising campaign to increase public awareness about dog bites and promote

⁸⁶ *Winnipeg*, *supra* note 81 at ss7(3)

⁸⁷ *Clarke*, *supra* note 78 at 46.

⁸⁸ *Raghavan, 2013*, *supra* note 80.

⁸⁹ *Ibid* at 179.

⁹⁰ *Ibid* at 182.

responsible dog ownership.”⁹¹ Consequently, it is difficult to isolate the extent to which BSL has solely contributed to the reduction of dog bites in Winnipeg.

In conclusion, although Winnipeg has seen a modest decrease in its rate of dog-bite related hospitalizations since the enactment of BSL in 1990, due to other factors, such as public awareness campaigns, it’s effectiveness is still inconclusive. Winnipeg has one of the lowest dog licensing compliance rates in Canada, with an estimated 40% of dogs licensed in the city.⁹² This is in contrast to Calgary, Alberta’s extremely high rate of compliance, as a result of the “Calgary Model”.

b. The City of Calgary’s *Responsible Pet Ownership By-law*

In responding to the City’s increased dog bite reporting, Calgary chose a different approach than Winnipeg in establishing its model to tackle its public safety issue. The City began in 1984 by introducing tougher animal control by-laws which reflected the expectation that all dog owners would be accountable for their pets’ behaviour. This combined with increased fines and ticketing, stricter licensing requirements, and on-going public safety campaigns resulted in what is commonly referred to as the “Calgary Model”.⁹³

In 2006, Calgary enacted its *Responsible Pet Ownership By-law*⁹⁴, which has been able to successfully reduce dog bites, without enacting breed specific legislation. In fact, Calgary’s Animal & Bylaw Services does not advocate breed specific legislation, as it is their stance that

⁹¹ Rebecca A Ledger et al, “Breed specific legislation: Considerations for evaluating its effectiveness and recommendations for alternatives” (2005) 46 Can Vet J 735 at 736.

⁹²“Winnipeg declares dog license amnesty”, *CBC News* (16 May 2011), online: <<http://www.cbc.ca/news/canada/manitoba/winnipeg-declares-dog-license-amnesty-1.998743>> .

⁹³ *Clarke*, supra note 78 at 45.

⁹⁴ City of Calgary, by-law No 23M2006, *Responsible Pet Ownership Bylaw* [Calgary].

“poor animal behaviour results from a failed relationship between pet and owner.”⁹⁵ Bill Bruce, the Director of Animal & Bylaw Services from 2000-2012 and driving force for the Bylaw’s enactment, believes the responsabilization of the owner is paramount in curbing aggressive dog incidents and promoting public safety. He is quoted stating:

“In North America, we don’t really have an animal problem: we’ve got a people problem. I think that’s the first realization you’ve got to come to. It’s not about the animal, it’s about the people.”⁹⁶

The Bylaw is based on five principles of responsible pet ownership: (1) the importance of licensing, (2) spaying/neutering, (3) proper training, socialization, diet and medical care, (4) not allowing companion dogs to become a threat, and (5) ethical dog procurement.⁹⁷ The Calgary by-law includes clear definitions for what constitutes an “attack”⁹⁸, “bite”⁹⁹, “severe injury”¹⁰⁰ and “vicious animal”¹⁰¹. It not only makes licensing of the dog mandatory, but the dogs’ breed, age, gender and reproductive status must also be recorded.¹⁰² Section 15 of the by-law identifies prohibited areas that dogs may not enter such as school grounds, play grounds or any other area prohibited by posted signs. Dogs alleged to be “vicious” must be surrendered to Animal &

⁹⁵ The City of Calgary, “The Responsible Pet Ownership Bylaw”, Animal & By-law services, online: <<http://www.calgary.ca/CSPPS/ABS/Pages/Animal-Services/Responsible-pet-ownership-bylaw.aspx>>. [City of Calgary Website].

⁹⁶ “A Community Model for Responsible Pet Ownership: Calgary, Alberta”, (National Canine Research Council: 2012) updated 11 February 2013.

⁹⁷ The City of Calgary Animal & Bylaw Services, “Responsible Pet Ownership” (2013) Brochure, online: <http://www.calgary.ca/CSPPS/ABS/Documents/Animal-Services/Responsible-Pet-Ownership-Bylaw/responsible_dog_ownership.pdf>.

⁹⁸ *Winnipeg*, *supra* note 81 at ss 2(1)(c).

⁹⁹ *Ibid* at ss 2(1)(d).

¹⁰⁰ *Ibid* at ss 2(1)(w).

¹⁰¹ *Ibid* at ss 2(1)(y).

¹⁰² *Ibid* at s 6.

Bylaw Services where the dog is held pending the outcome of the Hearing and any Appeals.¹⁰³ Regardless of the dog's breed, the Justice will take into consideration the dog's history and circumstances before making a determination as to whether the dog is deemed vicious or destroyed, or both.¹⁰⁴

Ss.49(2) outlines the general penalty provisions of the by-law, which indicate that any person convicted of an offence is liable on summary conviction to a fine not exceeding \$10,000.00, and to imprisonment for not more than six months¹⁰⁵. The by-law's various schedules refer to the licensing and offence penalty fees imposed upon owners.

i. But is it working?

Calgary has seen a fivefold reduction in recorded dog bites from 10 per 10,000 people in 1986 to 2 per 10,000 people in 2006.¹⁰⁶ I contacted the city's Animal & Bylaw Services for its most recent statistics, and in 2014, there were a total of 252 confirmed dogs bites, roughly equal to 2.5 bites per 10,000 people. Of the 2014 statistics, 16% of all bites could be attributed to pit bull type dogs.¹⁰⁷

Calgary's by-law was recently praised in the November 10, 2015 Action Report of Toronto's Licensing and Standard Committee.¹⁰⁸ Calgary has more than 90% compliance rate of

¹⁰³ *Ibid* at ss 28(2).

¹⁰⁴ *Ibid* at s 29.

¹⁰⁵ It is specified that the imprisonment of up to six months is as a result of the default of payment of a fine.

¹⁰⁶ *Clarke*, supra note 78 at 46.

¹⁰⁷ Interview of Tara Lowes the Manager of Calgary's Animal & Bylaw Services (8 December 2015) by personal communication through email.

¹⁰⁸ Tracey Cook, "Status Report on the Results of Consultation for Responsible Dog Ownership", (Toronto, Licensing and Standards Committee: 2015).

dogs licensed within the City (compared to Toronto's estimated 30% licensing rate), making it a leader in licensing compliance in North America. Furthermore, because of its successful licensing regime, Calgary also has one of the highest return to owner and lowest euthanization rates in North America.¹⁰⁹

Although the City has been successful with regards to its reduced dog bite and licensing rates, in its 2011 *Annual Animal & Bylaw Services Report*, the total number of aggressive dog incidents in the City were found to be slightly increasing.¹¹⁰ This could be due to a range of factors including Calgary's increased population and the higher rate of public reporting as a result of public education campaigns.

In responding to the City's increased dog bite reporting, Calgary chose a different approach than Winnipeg in establishing its model to tackle its public safety issue. The City began in 1984 by introducing tougher animal control by-laws which reflected the expectation that all dog owners would be accountable for their pets' behaviour. This combined with increased fines and ticketing, stricter licensing requirements, and on-going public safety campaigns resulted in what is commonly referred to as the Calgary Model.¹¹¹

c. Winnipeg vs Calgary and the lessons we can learn

It is evident that both cities have seen a reduction in bite incidents. The animal agencies of both cities have established public education funds and campaigns. Their respective websites both claim to promote responsible pet ownership. In Calgary, 16% of all bites in 2014 can be

¹⁰⁹ The City of Calgary, "Animal & Bylaw Services Annual Report 2011", (Calgary, CPS2012-0230 Community Services & Protective Services: 2011) at 4.5.

¹¹⁰ *Ibid.*

¹¹¹ *Clarke*, supra note 78 at 45.

attributed to pit bulls, but this information cannot be found in Winnipeg due to the ban. The most apparent difference in Winnipeg's BSL and Calgary's Model is the gap between their dog owner's licensing compliance rate. Where Winnipeg has an estimated 40% of dogs licensed in the city, Calgary boasts a more than 90% rate of licensing compliance.

Licensing and ticketing are important and correlated elements of effective animal control.¹¹² Licensing offers a means of identifying those individuals who assume responsibility for dogs, as their owners. When they do not comply with their city's by-law, ticketing is an effective means of deterring negligence, which results in fewer dog attacks. This is supported by a study of 36 Canadian municipalities, which concluded that the communities with the highest rates of ticketing for animal control violations had the lowest rates of reported dog bites.¹¹³

Establishing this accountability enables the enforcement agency to issue increased tickets to dog owners who are not in compliance with the by-law. As outlined in the *Responsible Pet Ownership By-law*, tickets carry fines and/or require court appearances, deterring dog owners from ignoring the by-law's provisions. In addition to acting as a deterrent mechanism, all fees collected for licensing and by-law infractions in Calgary, go directly into the city's public education programs, by-law enforcement and the funding of emergency services at veterinarian clinics.¹¹⁴ Therefore, Calgary's approach to responsible dog ownership opposed to BSL not only increases compliance and licensing rates, it also has proven to diminish the amount of dog bites the City experiences.

¹¹² *Ibid* at 46-47. (Nancy Margaret Clarke)

¹¹³ Janis Bradley, *Dog Bites: Problems and Solutions (Revised 2014)- Policy Paper* (Michigan: Animals & Society Institute: 2014) at 21.

¹¹⁴ *City of Calgary Website*, supra note 95.

Conclusion

It has been over a decade since the Ontario government passed its province wide ban of pit bulls. Although the sighting of pit bulls in the province has become a rarity, both the advocates and protesters of the *DOLA* amendments have not yielded their passionate positions. Although the amendments have been challenged since their enactment, there has been a refusal of the Ontario Court of Appeal to uphold any of the lower court judgments to amend the *DOLA*; as seen through *Cochrane* and *Huggins*. In continuing to give deference to the legislatures' drafting of the *DOLA*, the Appeal Court has created a body of restrictive precedent.

Further impeding a movement away from the use of BSL in Canada, is the lack of comprehensive Canadian data collected to determine the effects of BSL. Where authorities either rely too heavily on US studies or media reporting, inaccurate representations of the pit bull population in Canada are being reinforced. It is important for municipalities throughout all of Canada to obtain improved monitoring mechanisms, such as through the CHIRPP, for more impactful and accurate data collection.

With regards to dog licensing compliance, the Calgary Model has proven effective in promoting licensing and bylaw compliance without resorting to BSL. In keeping ownership responsabilization schemes within the municipal governments grasps, Canadian cities can profit from licensing fees collected to further stimulate dog safety educational programs. These programs, combined with proper bylaw enforcement and ticketing, will be the most effective means of reducing dog bites in all municipalities.

Ultimately, effective municipal oversight over animal control should not include BSL tactics. Under BSL legislative schemes, irresponsible pit bull owners can continue to neglectfully abuse their dogs, while at the same time label pit bulls as inherently dangerous. This

inadvertently continues to demonize pit bulls in Canada, while allowing irresponsible dog owners to continue with their practice. Educational programs need to train those on the other end of the leash to be responsible, safe and humane.