# MENACES TO SOCIETY: A POSTHUMANIST RETHINKING OF CANINE CAPITAL PUNISHMENT IN ONTARIO

DANIEL W. DYLAN*

*This article presents a critical analysis of Ontario's* Dog Owners' Liability Act *(*DOLA*), focusing on its ethical and legal shortcomings. First, it highlights that* DOLA *permits courts to order the destruction of dogs deemed dangerous, a practice compared to capital punishment — which is something that has been abolished for humans in Canada. Second, it contends that dogs are often punished for actions that stem from human negligence, lack of training, or provocation, yet receive no legal representation or procedural fairness. Third, the critique underscores the speciesism inherent in the law, which treats dogs as property rather than as sentient beings. Finally, it proposes reform through alternatives such as provincially funded rehabilitation sanctuaries, aiming to promote a more compassionate and just legal framework.*

## TABLE OF CONTENTS



With every cell of my being and with every fiber of my memory I oppose the death penalty in all forms. I do not believe any civilized society should be at the service of death. I don't think it's human to become an agent of the angel of death.

— Eli Wiesel[1]

If a beast of draught or other animal cause homicide, except in the case when the deed is done by a beast competing in one of the public sports, the kinsman shall institute proceedings for homicide against the

* LLM, LLB (Canada), JD (United States), BA (Hons), Associate Professor, Bora Laskin Faculty of Law, Thunder Bay, Ontario, Canada. I am grateful for the research assistance provided by Caitlin Costello, Bora Laskin Faculty of Law JD (2025). This article was presented at the Canadian Animal Law Conference in September 2024 and to the Canadian Animal Law Study Group in November 2024.

1 Michael Zoosman, "'Death is Not the Answer.' – Elie Wiesel" (8 January 2023), online (blog): [perma.cc/V7LG-VAB9].

> slayer; the case shall be heard by such and as many of the Rural Commissioners as the next of kin may appoint; on conviction, the beast shall be put to death and cast out beyond the frontier.
>
> — Plato[2]

## I. INTRODUCTION

Recently in Ontario (and elsewhere[3]), stories of dogs viciously attacking other dogs or human persons have seemingly become more frequent.[4] Calls for these dogs to be "destroyed," a euphemism for *killing*, and for their guardians or caregivers to be responsible have abounded,[5] with the City of Toronto, for example, even creating a "dangerous dog" registry to inventory such incidents.[6] Such responses are not unusual, as the volume and severity of dog bite or attack incidents are usually overblown or sensationalized based on incidents in the United States or elsewhere[7] and may, in some situations, be distorted.[8] Despite the absence of more complete documentation,[9] there were, on average, for example, one to two deaths per year from dog bites in Canada between 1990 and 2007,[10] although Toronto, the country's

---

2 Plato, *The Laws of Plato*, translated by AE Taylor (London, UK: JM Dent & Sons, 1934) at 260.

3 See e.g. Meghan Grant, "Owner of Killer Pit Bulls Charged After Police Discover New Dogs Despite Pet Ban," *CBC News* (21 October 2024), online: [perma.cc/4VDT-U849]; *Kirby v R*, 2024 NBCA 32.

4 Sonja Puzic, "Woman Charged in Toronto Dog Attack Previously Deemed 'Irresponsible' Pet Owner," *Canadian Press* (28 March 2024), online: [perma.cc/QWN5-TBQM]; Kiana Ferreira, "Off-Leash Dog Attack Kills Dog, Injures Owner in Hamilton," *CHCH News* (28 July 2024), online: [perma.cc/86X9-4KT6]; Don Mitchell "Victim of Burlington, Ont. Dog Attack Dies in Hospital: Police," *Global News* (22 June 2023), online: [perma.cc/9CAN-HJ6Q]; "Boy, 14, Seriously Injured in Off-Leash Dog Attack in Toronto School Yard," *CBC News* (17 May 2023), online: [perma.cc/4ESP-GAAE]; Dominik Kurek, "Canada Post Mail Carriers, Dogs, Bites and Unwanted Interactions Across Canada: What the Company Asks Owners to Keep in Mind," *Guelph Mercury Tribune* (27 August 2024), online: [perma.cc/HJ9D-EC83]; Rachel Watts, "Quebec Woman Mauled in Dog Attack Wins $460K Civil Case Against Small Town and Owner," *CBC News* (17 May 2024), online: [perma.cc/L34E-MK5K].

5 Gary Rinne, "Owner of Dog Involved in Biting Incident Gets Ticketed," *TB NewsWatch* (9 September 2024), online: [perma.cc/ZV5J-HQCV] ("[a] court application has also been made for an order requiring greater control of the animal, or its destruction").

6 Jane Stevenson, "City Moves to Create 'Dangerous Dog' List After Vicious Attacks," *Toronto Sun* (20 February 2024), online: [perma.cc/6E7X-PD4N]; Ben Spurr, "Which Toronto Neighbourhoods Have the Most Dangerous Dogs? Newly Published Stats Shed Light on Problem Canines," *Toronto Star* (24 April 2024), online: [perma.cc/6VK6-C73V].

7 Lynn A Epstein, "There Are Not Bad Dogs, Only Bad Owners: Replacing Strict Liability with a Negligence Standard in Dog Bite Cases" (2006) 13:1 Animal L 129 at 129. See also Canadian Hospitals Injury Reporting and Prevention Program, *CHIRPP Injury Brief: Injuries Associated with … Non-Fatal Dog Bites: 1990–2003, All Ages* (Ottawa: Public Health Agency of Canada, Health Surveillance and Epidemiology Division, 2005) at 2, online: [perma.cc/63QX-FPHU] (where "17,747 injuries associated with dog contact were identified, of which 13,921 (78.4%) were bites," meaning that over a 13-year period there was an average of 1,070 dog bites per year across Canada). See also Canadian Hospitals Injury Reporting and Prevention Program, "Injuries Associated with… Dog Bites and Dog Attacks," online: [perma.cc/7EL4-LECL]; Safia Gray Hussain, "Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won't Solve the Dangerous-Dog Dilemma" (2006) 74:5 Fordham L Rev 2847 at 2847–48; Claire Parkinson, Lara Herring & David Gould, *Public Perceptions of Dangerous Dogs and Dog Risk* (Ormskirk: Edge Hill University, 2023).

8 Valli-Laurente Fraser-Celin & Melanie J Rock, "One Health and Reconciliation: Media Portrayals of Dogs and Indigenous Communities in Canada" (2022) 37:2 Health Promotion Intl.

9 Statistics on dog bites in Ontario are difficult to come by: see e.g. Kathryn Copeland, "12 Canadian Dog Bite Statistics 2025: Breeds, Incidents, Deaths & FAQ," *Dogster* (18 September 2024), online: [perma.cc/A44C-59D8].

10 Malathi Raghavan, "Fatal Dog Attacks in Canada, 1990–2007" (2008) 49:6 Can Veterinary J 577 at 578.

largest city, currently has 354 dogs listed in its newly formed registry.[11] Nevertheless, it might seem counterintuitive to refer to such human persons as "guardians" or "caregivers" in such contexts, but, these terms are more apposite overall, in my view, than dog "owner" (as they are referred to in Ontario law) because non-human animals are improperly, inaccurately, and inappropriately conceived of and treated as *property* by the law instead of as conscious, sentient, and autonomous moral beings deserving of greater moral consideration than that which they are currently given.[12]

In these cases, nevertheless, and in those that occurred in the past in Ontario and elsewhere, responsibility for the impugned dog's aggressive, biting, or attacking behaviour most often should be laid at the feet of the human caregiver rather than on the dog, or, perhaps more appropriately, at their paws.[13] More often than not, in such cases, the dog is intentionally or inadvertently provoked, the human guardian or caregiver has trained the dog to be aggressive, to attack, or to bite, has been negligent in constraining the dog in situations where it is known the dog will act unpredictably or predictably aggressively, has been negligent in giving the dog proper care, training, and socialization, or has failed to take other measures to ensure the dog's overall well-being.[14] In some cases, just living among humans and the noise they produce may be too much for some dogs to bear.[15] In most contexts, absent any valid legal defence, justification, or excuse, and at the risk of oversimplifying a complex issue, it makes sense to hold the human caregivers liable for permitting these situations to occur and those consequences which derive from them.[16] There are, in other words, more bad dog *owners*, than bad *dogs*.[17]

Yet, we find in Ontario in section 4(3) of the *Dog Owners' Liability Act*, once known as the *Vicious Dogs Act*,[18] a provision which permits a court to order the *destruction* of biting and attacking dogs and those which the court considers a menace to society.[19] Section 4(3) of

---

[11] City of Toronto, "Dangerous Dog Orders Map," online: [perma.cc/9S7M-VAH9].

[12] *Dog Owners' Liability Act*, RSO 1990, c D.16, s 1 [*DOLA*] (vaguely defines "owner" as "a person who possesses or harbours the dog and, where the owner is a minor, the person responsible for the custody of the minor"). See also *Public Safety Related to Dogs Statute Law Amendment Act, 2005*, SO 2005, c 2; V Victoria Shroff, *Canadian Animal Law* (Toronto: LexisNexis Canada, 2021) at 136–38.

[13] L Epstein, *supra* note 7 at 131.

[14] See e.g. James H Bandow, "Will Breed-Specific Legislation Reduce Dog Bites?" (1996) 37:8 Can Veterinary J 478 at 479:

> There are three main reasons why dogs bite people:
>
> 1. The dog is intentionally or inadvertently provoked;
> 2. the dog is owned by someone who is ignorant about the characteristics and behavior of the dog breed and has done nothing to familiarize [themselves] with the breed; or
> 3. the dog is not properly confined, controlled or socialized.

Danielle Stephens-Lewis et al, "Understanding Canine 'Reactivity': Species-Specific Behaviour or Human Inconvenience?" (2022) 27:3 J Applied Animal Welfare Science 546 at 547.

[15] Emma K Grigg et al, "Stress-Related Behaviors in Companion Dogs Exposed to Common Household Noises, and Owners' Interpretations of Their Dogs' Behaviors" (2021) 8 Frontiers in Veterinary Science 1.

[16] *DOLA*, *supra* note 12, s 2.

[17] L Epstein, *supra* note 7 at 145.

[18] *Vicious Dogs Act*, RSO 1970, c 482 (as repealed by *Dog Owners' Liability Act,* RSO 1980, c 65); *R v Soper*, [1971] 1 OR 506 (SC) [*Soper*]; *Somerville v Malloy*, [1999] OJ No 4208 (SC) [*Somerville*].

[19] In *Halton Hills (Regional Municipality) v Sciberras*, 2018 ONCJ 555 at para 56 [*Halton Hills*], defence counsel argued that "destruction orders are generally limited to circumstances where there has been a flagrant breach of an order, including any interim order, or, where owners have demonstrated indifference to risk."

Ontario's *DOLA* provides that in the event a dog has (a) "bitten or attacked a person or domestic animal"; or (b) the dog and their behaviour is a menace to the safety of humans or domestic animals, an Ontario court *may* — provided the court is satisfied that such an order is "necessary for the protection of the public" — order that the dog be "destroyed."[20] In other words, section 4(3) permits the dog's life to taken away from them by the court essentially because a human animal(s) has, in most cases, failed them. There is no corresponding power of the court to order the human caregiver's "destruction" found in section 4(3), even though most of the blame for the impugned dog's behaviour typically rests with, or is attributable to them.[21] At most, the owner may be issued a $10,000 fine and/or imprisoned for a six-month maximum sentence under *DOLA*.[22]

From a posthumanist perspective, I argue that this judicial destruction order power granted in section 4(3) is, in effect, tantamount to the historical judicial power to impose capital punishment, a practice outlawed against even the most vicious, heinous, and violent human animals in Canada since 1976.[23] I use the term posthumanist, however, cautiously and with little concern to defining human personhood precisely or as a way to exacerbate problematic distinctions between human animals (humans) and non-human animals (animals),[24] and more as a term which denotes and aspires to a heterogeneous cluster of rights which might manifest and be exercised differently by a variety of moral beings.[25]

Additionally, the section 4(3) destruction order power deserves to be normatively rethought because, despite what liminal orders the court may impose respecting an impugned dog prior to finally ordering the dog destroyed, the provision, as contemplated and written, is speciesist and, because it provides *too much* discretion to the court to issue such a destruction order, is overbroad. Moreover, in a peculiar historical result, irrespective of what common law and statutory protections exist for the impugned dog's human guardian, caregiver, or "owner," dogs subject to destruction orders under section 4(3) are afforded far *less* procedural and substantive legal protections than were provided to non-human animals in earlier times reaching even as far back as the medieval era.[26]

---

20 *DOLA*, *supra* note 12, s 4(3).

21 See e.g. Carri Westgarth et al, "The Responsible Dog Owner: The Construction of Responsibility" (2019) 32:5 Anthrozoös 631.

22 *DOLA*, *supra* note 12, s 18(1).

23 See generally Library of Parliament, *Capital Punishment in Canada*, by Helen McKenzie (Ottawa: Library of Parliament, 1987), online: [perma.cc/F979-X22V].

24 Maneesha Deckha, "Animal Justice, Cultural Justice: A Posthumanist Response to Cultural Rights in Animals" (2007) 2 J Animal L & Ethics 189 at 193–97; Nicholas Gane "When We Have Never Been Human, What Is to Be Done?: Interview with Donna Haraway" (2006) 23:7/8 Theory, Culture & Society 135 at 140; Federica Timeto, "Becoming-with in a Compost Society: Haraway Beyond Posthumanism" (2021) 41:3/4 Intl J Sociology & Soc Pol'y 315 at 326.

25 David N Cassuto, "Bred Meat: The Cultural Foundation of the Factory Farm" (2007) 70 L & Contemporary Problems 59 at 85–86.

26 See generally Walter Woodburn Hyde, "The Prosecution and Punishment of Animals and Lifeless Things in the Middle Ages and Modern Times" (1916) 64:7 U Pa L Rev 696 at 696. See also *Kuypers v Langley (Township)*, 1992 CanLII 8582 at paras 4–5 (BCSC):

> No line-up, photo or otherwise for Robbie, no charge, no dramatic readings of the Canine Charter of Rights and Freedoms, no plea, no trial, no application of the ancient and historic presumption of innocence, no appeal to the majesty of the Court of Appeal: guilt or innocence undetermined, Robbie faced the ignominy of almost immediate oblivion.

In fact, it might even be said, the *dog* subject to a section 4(3) proceeding or order is afforded *no* procedural or substantive legal protection(s) whatsoever. The absence of legal standing for dogs under *DOLA* (and for *all* animals in our legal system) should be a worry not only to Ontario dog caregivers, who in most cases probably care very deeply for their dogs, but to all persons living in Ontario and in jurisdictions with similar legislation. Indeed, it remains a reality that a court in Ontario retains the power to order a dog killed even if the dog is merely deemed to be a *threat* to the safety of others. If, however, in the absence of capital punishment, human persons who are threats to the safety of others can be designated "not criminally responsible" (NCR) in criminal proceedings or as "dangerous offenders" (instead of being executed as they might have been before), then surely so too can dogs be similarly designated in proceedings under an amended or entirely revamped *DOLA*, possibilities which are partially, but feebly, reflected in *DOLA* section 4(4).[27]

The provision found in section 4(3), nevertheless (and in conjunction with section 4(4)), needs to at least to be normatively recontemplated and rewritten — if not eliminated — to provide more specificity and to articulate the limitations when and under which *extreme* circumstances a court *might* have the jurisdiction to order that a dog be executed. Given that capital punishment of humans was abandoned in Canada years ago, I further argue that a more humane, defensible, normative, and deontologically posthumanist solution to dealing with biting, attacking, or menacing dogs subject to a section 4(3) destruction order is for a court to order, under a revised iteration of *DOLA*, the dog's placement in a provincially created, funded, and regulated canine sanctuary funded, in part, by increased victim fines levied against impugned dogs' human owners in proceedings under *DOLA*, by owners voluntarily paying sanctuary rehabilitation, training, and boarding costs, and from the Ontario Victims' Justice Fund.[28]

Despite not currently having any legal rights, such an outcome avoids imposing a disproportionately extreme sentence on an otherwise innocent moral being who may have been malevolently (or negligently) trained to behave poorly or who had little to no control over their upbringing, training, and disposition prior to attacking or biting a human or other animal. It also permits the dog to maintain their bodily integrity and liberty,[29] to be potentially rehabilitated and rehomed to live a reprieved happy and natural life, normatively moves dogs and other animals to a higher degree of status under Ontario law, and ensures that Ontarian society remains a fair, compassionate, merciful, just, and non-speciesist one.[30] In short, the position which I take is that if it is morally and normatively wrong to execute humans, then it must be morally and normatively wrong to execute moral beings such as dogs; to hold

---

> Thus, Robbie was taken to the Langley pound which, in the eyes of some, at least Robbie, is a far cry from the warmth, solicitude and understanding of home and hearth and which to him was indeed the equivalent of a canine Gulaag.

27 *Supra* note 12, s 4(4).

28 Ministry of the Attorney General, "Victim Services in Ontario," online: [perma.cc/S5HC-U8LT] [MAG, "Victim Services"].

29 Steven M Wise, "Dismantling the Barriers to Legal Rights for Nonhuman Animals" (2001) 7:9 Animal L 9 at 11–12, 14 [Wise, "Dismantling"]; Laurence H Tribe, "Ten Lessons Our Constitutional Experience Can Teach Us about the Puzzle of Animal Rights: The Work of Steven M. Wise" (2001) 7 Animal L 1 at 2.

30 See generally Stephen RL Clark, *The Moral Status of Animals* (Oxford: Oxford University Press, 1977); Cora Diamond, *The Realistic Spirit: Wittgenstein, Philosophy, and the Mind* (Cambridge, Mass: MIT Press, 2001).

otherwise is an untenable form of speciesism. Part II concisely explains the ethical and legal framework through which the ensuing analysis is completed. Part III then comprehensively discusses Ontario's dog owner liability regime. Parts IV and V, respectively, discuss the history of punishing animals and briefly deal with carceral logics as they affect humans. Part IV discusses human punishment and discipline with a specific focus on capital punishment, NCR designations, and dangerous offender designations to illustrate the ethical and legal viability and merit of some of the suggestions offered in Part VII — namely, dog sanctuaries.

## II. LEGAL AND THEORETICAL FRAMEWORK

Although this article is not about animal rights per se, the analysis conducted here ultimately or eventually envisages and terminates in a posthumanistic legal regime in which animals normatively enjoy *some* common law and statutory legal rights in the same way that humans enjoy legal rights, even if such animal rights exist in absence of fully recognized legal personhood.[31] While I do not offer a comprehensive theory or philosophy of animal rights nor explicitly make the case for animal rights in this article, the deontological premise from which I operate is that dogs, like other animals, may not yet enjoy legal personhood and legal rights but are *at least* entitled to *moral consideration* given that they are what philosopher Tom Regan termed "subjects-of-a-life."[32]

Regan posited that all individuals who possess a subjective and sentient experience of the world are "subjects-of-a-life."[33] This concept departs from human exceptionalism and emphasizes the *inherent value* of beings who have unique experiences and interests, irrespective of their cognitive abilities, capacities, or species membership. Being a "subject-of-a-life," according to Regan, inures moral significance to an individual, as they have inherent moral worth and therefore have moral rights that should be respected by others in society. The most fundamental of these are the rights to respectful treatment, to not be harmed, and the right to live one's life.[34] Regan included dogs (and other animals, of course) in this notion of "subjects-of-a-life," because dogs, like humans, have consciousness, sentience, personal welfare considerations, preferences, desires, physiological unity and identity, and inherent value as autonomous moral beings independent of their utility or value to others.[35]

---

[31] Will Kymlicka & Sue Donaldson, "Locating Animals in Political Philosophy" (2016) 11:11 Philosophy Compass 692 at 698 [Kymlicka & Donaldson, "Locating"]:

> In our own work … we … start … from the social membership model, with its commitment to enable all members of society to participate in processes of self-governing. On this approach, political membership tracks social membership, full stop. All those engaged in intersubjective relations, and all those who participate in rule-governed schemes of social cooperation, are members of the demos and have a right to a say, a right to be consulted, and a right to have the expression of their subjective good shape collective decisions.

[32] Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983) at 243–48 [Regan, *The Case*]. See also Jonathan Birch, "The Place of Animals in Kantian Ethics," Book Review of *Fellow Creatures: Our Obligations to the Other Animals* by Christine M Korsgaard, (2020) 35 Biology & Philosophy 8 at 9.

[33] Regan, *The Case*, *ibid* at 243–48.

[34] *Ibid* at 286–87.

[35] Tom Regan, "The Case for Animal Rights," in MW Fox & LD Mickley, eds, *Advances in Animal Welfare Science* (Washington, DC: The Humane Society, 1986/87) at 186.

Put simply, my position is that dogs (and other animals or sentient beings[36]) as "subjects-of-a-life" are normatively entitled to moral consideration which *at least* promotes their overall welfare and well-being and should preclude them from judicially sanctioned destruction orders. *DOLA* — although it is a statute aimed at dog owners and establishes legal liability for the actions of their dogs — largely, if not completely, morally and legally fails dogs in this respect. Thus, not needing to commit myself to reconciling the differences between animal welfare and animal rights advocacy approaches more generally,[37] it is sufficient here to recognize and accept that freedom from human-caused death or killing *is* an animal welfare issue in itself.[38] Stated differently, one cannot divorce human-caused deaths of animals or simply an interest in staying alive from animals' welfare considerations.[39] Furthermore, though sentient, dogs do not necessarily need to be persons the way humans are to enjoy a basic cluster of rights which protects their basic interests.[40]

The fact, however, that dogs are sentient, subjects-of-a-life, and deserving of a higher degree of moral consideration is only one part of understanding *DOLA*'s failings and its speciesist imposition of canine capital punishment.[41] An equally important secondary part of understanding *DOLA*'s failings toward dogs is, indeed, the speciesism beyond merely destroying dogs that is firmly embedded in the statute.

"Speciesism" was a term coined by British psychologist Richard Ryder in 1970, who used it to describe the widespread discrimination against animals based solely on their species membership — that is, not being human.[42] Ryder analogized speciesism to other forms of unjust, insidious, arbitrary, and indefensible forms of human discrimination, such as racism, sexism, and colonialism and called for humans to reassess their views about and treatment of animals.[43] Anti-speciesism, here, therefore recognizes the inherent moral value of dogs, and normatively sees them as *something more* than merely property, rather, as subjects-of-a-life or as legal subjects[44] deserving of recognition as conscious, sentient, and autonomous moral beings capable of being viewed through and by the same or a similar moral and philosophical lens as by which humans are viewed and treated.[45] Will Kymlicka and Sue Donaldson put it this way: the "exercise of state power over animals is [not] in the interests of the animals

---

[36] See e.g. Joan Dunayer, "The Rights of Sentient Beings: Moving Beyond Old and New Speciesism" in Raymond Corbey & Annette Lanjouw, eds, *The Politics of Species: Reshaping Our Relationships with Other Animals* (Cambridge: Cambridge University Press, 2013) 27.

[37] Angela Fernandez, "Not Quite Property, Not Quite Persons: A 'Quasi' Approach for Nonhuman Animals" (2019) 5 Can J Comparative & Contemporary L 155 at 228.

[38] James W Yeates, "Death is a Welfare Issue" (2010) 23 J Agricultural & Envtl Ethics 229 at 240. See also TJ Kasperbauer & Peter Sandøe, "Killing as a Welfare Issue" in Tatjana Višak & Robert Garner, eds, *The Ethics of Killing Animals* (New York: Oxford University Press, 2016) 17.

[39] Gary L Francione, "Animal Welfare and the Moral Value of Nonhuman Animals" (2009) 6:1 L Culture & Humanities 24 at 32 [Francione, "Moral Value"].

[40] Cassuto, *supra* note 25 at 85–86.

[41] *Brampton (City) v Khela*, 2019 ONCJ 526 at paras 24–26, 32, 36 (Justice Duncan refers to a destruction order under section 4 of *DOLA* as "capital punishment").

[42] Richard D Ryder, *Animal Revolution: Changing Attitudes Toward Speciesism* (Oxford: Basil Blackwell, 1989); Richard D Ryder, "Speciesism Again: The Original Leaflet" (2010), online (pdf): [perma.cc/LUL9-E5Q7].

[43] Richard D Ryder "Speciesism in the Laboratory" in Peter Singer, ed, *In Defense of Animals: The Second Wave* (Malden, Mass: Blackwell, 2006) 87 at 87–89; Francione, "Moral Value," *supra* note 39 at 35–36.

[44] Maneesha Deckha, "Unsettling Anthropocentric Legal Systems: Reconciliation, Indigenous Laws, and Animal Personhood" (2020) 41:1 J Intercultural Studies 77 at 91.

[45] Fernandez, *supra* note 37.

being governed, and no mechanisms exist to ensure that power is exercised in ways that track *their interests*."[46]

In his influential work *Animal Liberation*, first published in 1975, Peter Singer, another seminal scholar in animal advocacy, popularized Ryder's concept of speciesism, further developed it, and argued against speciesist practices.[47] Contemporarily, however, speciesism is a term used to conceptually (what humans do) describe the practice of arbitrarily giving and normatively (what humans should not do) giving preferential moral and legal treatment to individuals based on their human species membership, which results in discrimination against *all* animals.[48] Conceptually, speciesism, therefore, involves denying *equal consideration* of interests to animals, even when their interests are similar to those of humans, the most common example being the interest in avoiding pain and suffering and behaving — yes, anthropomorphically speaking — *rationally* to do so.[49]

In that sense, it is *precisely* because we have relationships with dogs and other animals that we understand the nature of pain and suffering, their capacity to experience both, and normatively take legal and other measures to protect them from human acts of cruelty.[50] Other more insidious examples of speciesism include using animals in industrial agriculture as food sources, for scientific experimentation, keeping them in captivity, or using them for entertainment purposes when humans are obviously not subject to the same fates.[51] Speciesist practices continually challenge — or should challenge — society to rethink its ethical, moral, and legal obligations toward animals and to keep their capacity for the avoidance of pain and suffering and their own well-being paramount in decision-making, if not in normatively considering the interests of all sentient beings *equally*.[52] In other words, if animals cannot be given equal consideration, then they should at least be given *greater* moral consideration than, as I argue here, *DOLA* currently provides to canines. Thus, if it is morally and normatively wrong to impose capital punishment on humans, it is morally and normatively wrong to impose it on dogs.[53] As noted earlier, to hold otherwise is an indefensible form of speciesism.

---

46 Kymlicka & Donaldson, "Locating," *supra* note 31 at 693 [emphasis added].

47 Peter Singer, *Animal Liberation: The Definitive Classic of the Animal Movement*, 40th Anniversary ed (London: Penguin Random House, 2015) [Singer, *Liberation*].

48 François Jaquet, "Is Speciesism Wrong by Definition?" (2019) 32:3 J Agricultural & Envtl Ethics 447 at 448, 456; François Jaquet, "What's Wrong with Speciesism" (2022) 56:3 J Value Inquiry 395 at 395; Lucius Caviola, Jim AC Everett & Nadira S Faber "The Moral Standing of Animals: Towards a Psychology of Speciesism" (2019) 116:6 J Personality & Soc Psychology 1011 at 1011; Oscar Horta "What is Speciesism?" (2010) 23 J Agricultural & Envtl Ethics 243–66; Oscar Horta, "Speciesism," *Oxford Public Philosophy*, online: [perma.cc/43NK-54T7]; Emer O'Hagan, "Animals, Agency, and Obligation in Kantian Ethics" (2009) 35:4 Soc Theory & Practice 531 at 533, 554.

49 Allen W Wood & Onora O'Neill, "Kant on Duties Regarding Nonrational Nature" (1998) 72 Proceedings Aristotelian Society 189. See also Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Mass: Belknap Press, 2006).

50 Elizabeth Anderson, "Animal Rights and the Values of Nonhuman Life" in Cass R Sunstein and Martha C Nussbaum, eds, *Animal Rights: Current Debates and New Directions* (Oxford: Oxford University Press, 2004) 277 at 289.

51 See generally Lyne Létourneau, "Toward Animal Liberation? The New Anti-Cruelty Provisions in Canada and Their Impact on the Status of Animals" (2003) 40:4 Alta L Rev 1041.

52 Gary L Francione, "Animal Welfare and Society: Part 1, The Viewpoints of a Philosopher" (2022) 12:1 Animal Frontiers 43 at 46; Francione "Moral Value," *supra* note 39 at 26; Singer, *Liberation*, *supra* note 47 at 1–23.

53 Sarah Schindler, "Pardoning Dogs" (2020) 21:1 Nevada LJ 117 at 153.

By permitting the destruction of dogs — the functional equivalent of capital punishment — *DOLA*, unfortunately, perpetuates speciesism.

## III. DOG OWNER LIABILITY IN ONTARIO

Section 5.1 of *DOLA* requires every Ontario dog owner (normatively "guardian" or "caregiver" in my preferred nomenclature, but I will use "owner" here as necessary) to exercise reasonable precautions to prevent the dog for which they provide care from biting or attacking a human or domestic animal, or from behaving in a manner that poses a menace to the safety of humans or domestic animals.[54] *DOLA* defines an "owner" as someone who "possesses or harbours [a] dog."[55] Possession is not the same as ownership in the common law; however, for example, a human who earns income by walking other humans' dogs is considered an "owner" if and when the dog bites or attacks when being walked by them because they are in "possession" of the dog.[56] In a 1994 Ontario case, "harbouring" was held to require "some degree of care and intentional control … over the dog," meaning, for example, a motel owner who boards a human guest who is accompanied by their dog is not "harbouring" the dog in the event the dog bites or attacks.[57]

Ontarians are also prohibited from: owning pit bulls, except for restricted pit bulls (namely, those which were owned before the ban was imposed); breeding pit bulls; transferring pit bulls (whether by sale, gift, or otherwise); abandoning pit bulls other than to approved facilities; allowing pit bulls in their possession to stray; importing pit bulls into Ontario; or training pit bulls to fight.[58] Section 13(2) empowers a justice of the peace in Ontario to issue a warrant "authorizing a peace officer named in the warrant to enter any building, receptacle or place, including a dwelling house, to search for and seize [a] dog and any muzzle, collar or other equipment for [a] dog" and in "exigent circumstances" a peace officer may do the same without a warrant and in each case *with as much force is as necessary* to effect the seizure.[59] Leaving aside arguments that use of assistive or guide dogs is a form of animal exploitation and speciesism, these provisions may impose particularly acute repercussions for persons living with disabilities who may depend on and cannot be deprived of their assistive or guide dogs, not to mention that seizures executed *with as much force is as necessary* could present serious to lethal outcomes for both the seized dog and their concerned caregiver(s).[60]

Section 15 permits a seizure to occur in a public place where a peace officer believes on reasonable grounds that:

> (a) the dog has on one or more occasions bitten or attacked a [human] or domestic animal;
> (b) the dog has on one or more occasions behaved in a manner that poses a menace to the safety of [humans] or domestic animals;

---

54 *DOLA*, *supra* note 12, s 5.1.
55 *Ibid*, s 1(1).
56 *Wilk v Arbour*, 2017 ONCA 21 at para 36.
57 Paul Perell, "A Bit about Bites: Liability for Damages Caused by a Dog" (2006) 31:3 Adv Q 347 at 350. See also *Purcell v Taylor*, 1994 CanLII 7514 (ONSC).
58 *DOLA*, *supra* note 12, s 6. See also *R v Robert et al*, 2016 ONCJ 697 [*Robert*].
59 *DOLA*, *ibid*, ss 13(2), 14(1)–(2), 16.
60 Barbara Hanson, "Dog-Focused Law's Impact on Disability Rights: Ontario's Pit Bull Legislation as a Case in Point" (2006) 12:2 Animal L Rev 217 at 238.

(c) an owner of the dog has on one or more occasions failed to exercise reasonable precautions to prevent the dog from,
    (i) biting or attacking a [human] or domestic animal,
    (ii) behaving in a manner that poses a menace to the safety of [humans] or domestic animals;
(d) the dog is a restricted pit bull and an owner of the dog has on one or more occasions failed to comply with one or more of the requirements of [*DOLA*] or [its] regulations respecting restricted pit bulls;
(e) the dog is a pit bull other than a restricted pit bull; or
(f) there is reason to believe that the dog may cause harm to a [human] or domestic animal.[61]

Once again, in seizures conducted in public places, a peace officer may use *as much force as is necessary* in the exercise of authority given to them by *DOLA*,[62] potentially leaving answers to questions of *excessive* and *lethal* force muddled.[63]

That a peace officer might be able to kill a dog in the immediate interests of public safety or for some other reason with little to no oversight is also highly problematic when critiquing the court's section 4(3) destruction order power; however, despite mirroring the main issue addressed here, comprehensive discussion of this problem must be left for another time. Also left for discussion elsewhere is the preferential treatment given to law enforcement animals who bite or attack and are *trained* to do so.[64] Similarly, another instance of speciesism is found in the *Ontario Protection of Livestock and Poultry from Dogs Act* which permits dogs to be killed by *anyone* where they are "straying" and "not under proper control" in areas where livestock are kept — indicating that the lives of income-producing species are worth more (exchange value) than those of dogs (inherent value) — must be left for discussion another time.[65]

The terms "bite," "attack," "menace," "safety," or "public safety" are nowhere defined in *DOLA*, leaving these terms open to broad judicial interpretation.[66] Also, evidencing its speciesism, the casualty of a bite or an attack may only be a human or a *domestic* animal (although domestic animal is also not defined in *DOLA*, it presumably means an animal typical kept as a companion animal or "pet"), thereby presumably excluding wild, feral, and abandoned animals, and even perhaps exotic species from the meagre "protections" *DOLA* contemplates in establishing a dog owner liability regime.[67] Altogether, the Ontario *Provincial Animal Welfare Services Act* (*PAWS Act*) does not inspire a high degree of confidence in animal anti-cruelty protections either.[68]

---

61 *DOLA*, *supra* note 12, s 15.
62 *Ibid*, s 16.
63 Jennifer La Grassa, "Windsor Woman in Disbelief after Police Shoot, Kill Dog in Her Backyard," *CBC* News (18 March 2021), online: [perma.cc/YE9N-9ZLM]; CBC News, "Windsor Police Say an Officer Shot, Killed 'Aggressive' Dog in Owner's Backyard Out of Fear for Their Safety," *CBC News* (20 March 2021), online: [perma.cc/JER3-VERT].
64 Yasmine Ghania, "Judge Awards B.C. Man $60K Over Police Dog Bite," *CBC News* (6 September 2024), online: [perma.cc/DRU7-A34V].
65 *Protection of Livestock and Poultry from Dogs Act*, RSO 1990, c L.24, s 2. See also Cassuto, *supra* note 25 at 69.
66 *Bolen v Regina (City)*, 2004 SKQB 263 [*Bolen*].
67 See e.g. Sarah Gradidge et al, "Farmyard Animal or Best Friend? Exploring Predictors of Dog vs. Pig Pet Speciesism" (2022) 5:1 People & Animals (for more on how interspecies speciesism occurs).
68 *Provincial Animal Welfare Services Act, 2019*, SO 2019, c 13 [*PAWS Act*].

Section 2 of *DOLA* provides that dog owners are civilly liable for damages resulting from the bite or attack by their dogs on a human or domestic animal and that such liability does not depend upon the owners' fault, negligence, or knowledge of the dog's propensities.[69] However, a plaintiff's contribution to the injury suffered may be considered by the court in the computation of damages.[70] Additionally, a dog owner who is held by the court civilly liable to pay damages "is entitled to recover contribution and indemnity from any other person in proportion to the degree to which the other person's fault or negligence caused or contributed to the damages."[71] Section 2(2) also provides that where a dog is owned by more than one human, the humans are jointly and severally liable.[72] *DOLA* provides that an individual who contravenes *DOLA*, regulations made pursuant to *DOLA*, or a court order made under *DOLA* or its regulations is guilty of an offence and liable on conviction to a fine of not more than $10,000 (in the case of corporations, $60,000), or to imprisonment for a term of not more than six months, or both.[73] (Corporations are not subject to imprisonment under *DOLA*.)

Section 3, however, exempts dogs kept as security personnel or as personal protection dogs and identified as such from *DOLA*'s operation, unless the dog is kept as such "unreasonably."[74] In other words, in limited circumstances a dog may bite or attack a human in service of "reasonably" protecting the owner's personal or real property.[75] It is not clear, however, what happens when such a dog bites or attacks a human or domestic animal when not performing in service of their owner. Although not the same as personal protection dogs, there was no discussion, for example, of destroying a police dog which seriously injured a man after the dog was sicced on him by police in British Columbia during the investigation of a domestic violence complaint.[76]

Nevertheless, section 4(1) provides that civil proceedings may be commenced against dog owners on the allegation(s) that a dog has bitten or attacked a human or domestic animal or has behaved in a manner that poses a menace to the safety of humans or domestic animals. Further, such proceedings may be commenced where it is alleged that the dog owner did not exercise reasonable precautions to prevent the dog from (a) biting or attacking a human or domestic animal, or (b) behaving in a manner that poses a menace to the safety of humans or domestic animals.[77]

In any such proceedings, findings of fact need only reach the standard of a balance of probabilities,[78] but section 18 (dealing with offences) "does not remove the onus on the prosecution to prove its case beyond a reasonable doubt."[79] Reconciled, these provisions likely mean that evidentiary burdens are adjudicated upon on a balance of probabilities standard and that persuasive burdens remain on a beyond a reasonable doubt standard, but it

---

69 *DOLA*, *supra* note 12, s 2.
70 *Ibid*.
71 *Ibid*, s 2(4).
72 *Ibid*, s 2(2).
73 *Ibid*, s 18.
74 *Ibid*, s 3.
75 *Ibid*, s 3(2).
76 Ghania, *supra* note 64.
77 *DOLA*, *supra* note 12, s 4.
78 *Ibid*, ss 4(1), 4(1.3).
79 *Ibid*, s 18(3).

is not entirely clear.[80] It is nonetheless clear that *DOLA* therefore imposes civil liability, one might say *vicariously*, for the actions dog owners' dogs may take upon humans or domestic animals.[81] A dog owner is liable for the dogs' actions by way of "ownership," however, not by way of "fault" as that term is traditionally understood in law.[82] It also, as I argue here, has the potential to unfairly, cruelly, and immorally impose mortal liability upon the dog. In this sense, dogs are held liable for their social and legal transgressions thus making the human liability provisions of *DOLA* something of a speciesist fiction.

Section 4(2) provides that where a determination of whether a *final* order should issue respecting the dog in proceedings taken under section 4(1) or in an appeal of a final order already issued, the court may issue an *interim* order requiring the dog owner to take specified measures to ensure more effective control of their dog.[83] As noted earlier, where the court finds that the owner's dog has bitten or attacked a human or domestic animal or that the dog's behaviour is a menace to the safety of humans and other domestic animals, and the court is satisfied that an order is necessary for the protection of the public, the court may issue a *final* order requiring: (a) that the owner's dog be *destroyed* in a manner specified by the court (a destruction order); or (b) that the dog owner take measures specified by the court to take more effective control of the dog or for purposes of public safety (a control order), but it *need not* issue the latter before issuing the former.[84] Examples of such measures include but are not limited to: confining the dog to the owner's property, restraining the dog by means of a leash or a muzzle, and posting warning signs.[85] These measures are thus, in some sense, penultimate options before a court finally orders the dog's destruction, but may in themselves be imposed cruelly or unusually.[86]

Ostensibly, however, such a provision contemplates, as a default, that every dog caregiver in Ontario owns or occupies property — presumably fenced property — to which the dog can be confined (without risking the dog's natural health and basic necessities) and such that warning signs may be posted for others to see, when many Ontarians live in apartments, condominiums, assisted living facilities, shared accommodations, other special communities, or are unhoused, making compliance with such measures likely difficult to attain.[87] Moreover, *DOLA* — not just this provision — entirely fails to consider how its provisions impact human persons living with disabilities. For example, those who may not be able read warning signs because of vision impairment or who — again, arguably exploitatively — depend on assistive

---

80 *Halton Hills*, *supra* note 19 at paras 77–78; *Clarington (Municipality) v Carleton*, 2023 ONCJ 496 at para 74 [*Clarington*].

81 *R v Solomon*, 2005 ONCJ 353 at para 5 [*Solomon*]; Perell, *supra* note 57 at 352.

82 L Epstein, *supra* note 7 at 130.

83 *DOLA*, *supra* note 12, s 4(2).

84 *Ibid*, s 4(3); *Clarington*, *supra* note 80.

85 *DOLA*, *supra* note 12, s 4(4).

86 *Bolen*, *supra* note 66 at paras 6–7 ("the dog … is sentenced without hope of parole to wearing a muzzle whenever he leaves the owner's lot, which he does daily. He is a large dog and he runs with his owners around Wascana Lake. It is a life sentence brought on by chasing, once, a tethered cat across a front lawn. Such a determination seems cruel and unusual").

87 Zanna Shafer, "Home is Where the Dog is: A Discussion of Homeless People and Their Pets" (2016) 23:1 Animal L Rev 141.

or guide dogs for mobility, security, and other reasons.[88] In much the same way that speciesism is embedded in the statute, so too is ableism.[89]

Furthermore, *DOLA* also *requires* the destruction of pit bulls, specifically, where the court finds that the pit bull has bitten or attacked a human or domestic animal, or has behaved in a manner that poses a menace to the safety of humans or domestic animals, and does *not* permit the court to specify measures for the owner's more effective control of the dog.[90] The problematic and speciesist nature of the destruction order power in section 4(3) therefore *most significantly* affects pit bulls.

*DOLA* defines a "pit bull" as a pit bull terrier, Staffordshire bull terrier, American Staffordshire terrier, American pit bull terrier, or a dog that has the *appearance* and physical characteristics that are substantially similar to the preceding dog breeds.[91] Additionally, if a dog owner asserts that the dog to whom they are providing care is *not* a pit bull, the onus and evidentiary burden of proving so to the court rests on them.[92] Section 1(2) nebulously provides that in determining whether a dog is a pit bull within the meaning of *DOLA*, "a court may *have regard* to the breed standards established for Staffordshire Bull Terriers, American Staffordshire Terriers or American Pit Bull Terriers by the Canadian Kennel Club, the United Kennel Club, the American Kennel Club or the American Dog Breeders Association."[93]

Section 19(1) provides that "[a] document purporting to be signed by a member of the College of Veterinarians of Ontario stating that a dog is a pit bull is receivable in evidence" in *DOLA* prosecutions as "proof, and in the absence of evidence to the contrary, that the dog is a pit bull," even *without proof* of the signature and *without proof* that the signatory is a member of the College of Veterinarians of Ontario.[94] As one scholar noted, these provisions "impl[y] a presumption that the owner is guilty, in that the process begins with the assumption that all dogs are pit bulls. Providing evidence that a dog is *not* a pit bull is, therefore, the equivalent of rebutting a presumption."[95] The Court of Appeal for Ontario, however, upheld the constitutional validity of section 19(1) on the basis that the onus of proving a case beyond a reasonable doubt still rested on the prosecution under *DOLA*.[96]

Before making a *final* order that a dog *other than* a pit bull be destroyed, the court *may* consider the following: the dog's past and present temperament and behaviour, the seriousness of the injuries caused by the biting or attack, unusual contributing circumstances tending to justify the dog's action, the improbability that a similar attack will be repeated, the dog's physical potential for inflicting harm, precautions taken by the owner to preclude similar attacks in the future, and any other circumstances that the court considers to be relevant.[97] As a subspecies of dogs, pit bulls are most certainly discriminated against by

---

88 Hanson, *supra* note 60 at 219–20, 231, 235.
89 *Cf* Michael Lundblad, "Disanimality: Disability Studies and Animal Advocacy" (2020) 51:4 New Literary History 765.
90 *DOLA*, *supra* note 12, s 4(8). See also *R v Huggins*, 2010 ONCA 746 [*Huggins*].
91 *DOLA*, *ibid*, s 1(1) [emphasis added].
92 *Ibid*, s 4(10).
93 *Ibid*, s 1(2) [emphasis added].
94 *Ibid*, s 19(1).
95 Hanson, *supra* note 60 at 235.
96 *Cochrane v Ontario (Attorney General)*, 2008 ONCA 718 at paras 69–70 [*Cochrane*].
97 *DOLA*, *supra* note 12, s 4(6).

*DOLA*, but other breeds subject to a destruction order are not much better off.[98] A 1993 Manitoba case found that breed-specific legislation which prohibited pit bull "ownership" (similar to *DOLA*) was not vague nor uncertain nor impermissibly discriminatory and had a focus which was "clear and precise."[99] In a 2008 case, the Court of Appeal for Ontario found the same.[100] Animal Justice (Canada's leading animal advocacy organization), the Toronto Humane Society, and the Ontario Veterinary Medical Association have all expressed their opposition to the breed-specific legislation based on its speciesism and ineffectiveness at preventing dog bites and attacks.[101]

*DOLA* is a relatively short statute with an easily discernable purpose or focus. However, it fails in several respects including that it permits dogs, especially pit bulls, to be "destroyed" and to be "destroyed" with — despite the liminal orders courts may make or considerations they may take before ordering destruction — little to no procedural fairness given to the impugned dog. Although *DOLA* loosely contemplates exemptions for security dogs identified as such, the *undefined* provisions in *DOLA* regarding issues of biting, attacking, or menacing as the impetus for proceedings are problematic for two additional reasons: (1) there is apparently little consideration for whether a bite or attack was provoked (meaning that proceedings can be started against dogs who are acting in self-defence or in protection of their owners, but courts might consider or equate such events with "unusual contributing circumstances tending to justify the dog's action" or as contributory behaviour); and, (2) there is no direct mention of bite or attack severity (although courts might consider or equate "severity and provocation" with "the seriousness of the injuries caused by the biting or attack" as factors and when making orders under *DOLA*)[102] as, for example, on the Dunbar scale which is an "objective, systematic assessment tool for measuring aggression in dogs."[103]

Furthermore, there is no direct right of appeal for court orders provided for in *DOLA*, although a general right of appeal presumably exists given the language which permits the court to make an interim order pending an appeal of a final order[104] and presumably under the *Provincial Offences Act*.[105] In the context of this paper, it is important to note that *DOLA*'s speciesism is also evidenced by the fact that a domesticated animal who suffers a bite or

---

98 Shannon Nickerson, "Ontario May Soon Lift its Pit Bull Breed Ban" (23 January 2020), online (blog): [perma.cc/96W2-9QZ3] ("[i]n 2012, Ontario Veterinary Medical Association blamed breed bans for the wrongful killing of over 1,000 dogs and puppies with zero history of violent behaviour").

99 *Manitoba Association of Dog Owners Inc v Winnipeg (City) et al*, 1993 CanLII 15120 at paras 11, 23 (MBKB). See also Bandow, *supra* note 14 at 480–81.

100 *Cochrane*, *supra* note 96.

101 Toronto Humane Society, "Breed-Specific Legislation (BSL)" (2021), online (pdf): [perma.cc/2UCG-3FMB]; Nickerson, *supra* note 98; Letter from the President of the OVMA to the Premier of Ontario, Leader of Official Opposition, and Leader of the New Democratic Party (21 May 2012), online: [perma.cc/7GGG-N78J]. See also Alexa Hammond et al, "Comparison of Behavioural Tendencies Between 'Dangerous Dogs' and Other Domestic Dog Breeds: Evolutionary Context and Practical Implications" (2022) 15 Evolutionary Applications 1806.

102 Hanson, *supra* note 60 at 233; *Huggins*, *supra* note 90 at para 9.

103 Niamh Caffrey et al, "Insights about the Epidemiology of Dog Bites in a Canadian City Using a Dog Aggression Scale and Administrative Data" (2019) 9:6 Animals 1 at 4. See also Laura A Reese & Joshua J Vertalka, "Understanding Dog Bites: The Important Role of Human Behavior" (2021) 24:4 J Applied Animal Welfare Science 331.

104 *Soper*, *supra* note 18. See also *City of Vancouver v Santics*, 2018 BCPC 381; *Santics v Vancouver (City) Animal Control Officer*, 2019 BCCA 401; Joseph P McNamara, "Animal Prisoner at the Bar" (1927) 3:1 Notre Dame L Rev 30 at 31 (a chimpanzee was convicted for smoking a cigarette as a part of a show, despite "that it was not one whit capable of harboring malicious or criminal intent").

105 RSO 1990, c P 33 [*POA*]. See also *Solomon*, *supra* note 81.

attack has no legal redress of their own and instead depends on their owner to seek a legal remedy under *DOLA*.[106] Despite recent changes to British Columbia's *Family Law Act* which no longer recognizes companion animals as chattels, such an observation is without surprise given that dogs and other animals lack legal standing in all aspects of Ontario and Canadian law.[107]

In summary, while ostensibly aiming to protect public safety and society, and to establish a liability regime for injurious dog behaviour, *DOLA* ultimately fails to recognize dogs as moral beings and to provide proper moral consideration to dogs who are subject to its destruction-ordering powers. While section 4(6) lists several factors a court *may* take into consideration before ordering a dog's destruction, they are *not mandatory* and in themselves may only delay a biting or attacking dog's ultimate destruction by court order. Section 4(3) still, therefore, provides too much discretion in a statute replete with undefined terms, vague provisions, contradictions, and little to no procedural fairness for the dogs themselves, to be destroyed — or, as I would prefer to put it, to still kill sentient and autonomous moral beings deserving of moral consideration when viable alternatives to execution exist.

## IV. HISTORY OF ANIMAL TRIALS AND PUNISHMENT

Granting natural justice and procedural fairness — as those terms are understood in Canadian law — to dogs who are subject to section 4 *DOLA* proceedings and destruction orders may seem a laughable notion but is nevertheless a somewhat amorphous and curious contemporary result in the development of western common law given that even as far back as medieval Europe (perhaps even as far Ancient Greece and the Book of Exodus[108]), dogs and other animals were given full-scale legal trials that determined their guilt and punishment for the crimes of which they were accused. In one sense, animals were held as liable as humans were for their criminal acts and torts.[109] Furthermore, animal trials were not just confined to Judaeo-Christian expanses and occurred in various cultures and periods throughout history.[110]

Today, however, it is seen as largely incomprehensible to hold dogs or other animals who injure humans or other animals *legally* accountable for their actions. There is even a benevolent strain to the thought, because in our criminal system animals lack the necessary *mens rea* to be convicted of malum prohibitum offences and, likely, malum in se offences.[111] However, courts have not always seen it this way. For example, the Ontario Court of Justice issued a destruction order in response to what Justice De Morais described as an "*insidious* attack" by a dog.[112] In another Ontario case, a destruction order was issued because there was

---

106 Shroff, *supra* note 12 at 138; David Favre, "Twenty Years and Change" (2013) 20 Animal L 7 at 15–17.

107 *Family Law Act*, SBC 2011, c 25. See also Amy Fitzgerald et al, "Intersecting Abuse of People and Animals in Practice: Implications of the Connection Between Intimate Partner Violence and Animal Abuse for Family Justice Professionals" (2025) 36:1 Can J Fam L 1.

108 Paul Schiff Berman, "Rats, Pigs, and Statues on Trial: The Creation of Cultural Narratives in the Prosecution of Animals and Inanimate Objects" (1994) 69:2 NYU L Rev 288 at 289–90.

109 *Ibid* at 299–300; McNamara, *supra* note 104 at 32.

110 Esther Cohen, "Law, Folklore and Animal Lore" (1986) 110 Past & Present 6 at 17–18, 22.

111 Jen Girgen, "The Historical and Contemporary Prosecution and Punishment of Animals" (2003) 9 Animal L 97 at 111; *Huggins*, *supra* note 90 at paras 16–17; Bandow, *supra* note 14 at 481.

112 *R v Calero*, 2005 ONCJ 381 at para D.3 [emphasis added].

"nothing to justify [the] dogs' actions in *indiscriminately* attacking passers-by on the street on their way home."[113] A US Court even contemplated whether a *dog's* behaviour could be considered "reasonable."[114] All of these words used by courts are obviously used mostly, if not entirely, anthropocentrically. In a 2010 case, however, the Court of Appeal for Ontario left aside the question of whether "canine culpability" could be considered under *DOLA*, reversed the decision of Justice Hogan of the Ontario Court of Justice, and issued a destruction order in respect of a pit bull.[115]

In most cases, the social, political, and legal response to the infliction of serious injuries or death today is basically to seek to destroy — to *kill* — the animal, just as *DOLA* contemplates under its section 4 proceedings. This conclusion is even more palpable when observing social, political, and sometimes legal reactions to *wild* animals. For example, when swimmers on a beach are "attacked" by a shark (which happens rarely) who is merely looking for sustenance, the response is usually to hunt down and kill the shark.[116] The movie *Jaws* and its sequels in which the Brody family is terrorized by anthropomorphic great white sharks are entirely based on this premise.[117] When a bear invades a campsite in the middle of a national or provincial park looking for food and "attacks" the humans there or "attacks" them when they come too close to the bear's cubs during a hike, the response is similarly to sensationalize the incident and usually to hunt down and kill the bear.[118] When an alligator "attacks" a child who has come too close to the alligator's nest in the swamp or leans in too near for a closer look at the zoo, or even for a nuisance alligator, the response is once again to hunt down and kill the alligator.[119] In some cases, individuals may simply summarily execute the animal themselves — and if the dog is one which they "own," provided there is no unnecessary pain or suffering, doing so is usually not unlawful in Ontario.[120] In each of these situations and other examples like them, despite the fact that warnings may have been given to humans as to the dangers of these activities in these contexts, the "attacking" animal pays with their life for doing only what comes naturally to them when humans intrude upon their native habitats.

Ultimately, the situation is scarcely different when it comes to dogs who are subject to *DOLA* section 4 proceedings. While the dog owner may be granted natural justice or procedural fairness, the impugned dog may be killed without any sort of trial of their own and with their own life, pays the price for their caregiver's legal missteps. In a way, contrary to what is claimed or what might have served as the inspiration for placing liability on dog

---

113 *R v Brenhouse*, 2003 CarswellOnt 4938 at 7 (ONCJ) [emphasis added].

114 *Kirkham v Will*, 724 NE (2d) 1062 (Ill 5th Dist Cir Ct App 2000). See also L Epstein, *supra* note 7 at 136–37.

115 *Huggins*, *supra* note 90 at paras 16–17.

116 See e.g. Adrian Peace, "Shark Attack!: A Cultural Approach" (2015) 31 Anthropology Today 3; Christine McCagh, Joanne Sneddon & Dominque Blache, "Killing Sharks: The Media's Role in Public and Political Response to Fatal Human–Shark Interactions" (2015) 62 Marine Pol'y 271.

117 See e.g. Beryl Francis, "Before and after *Jaws*: Changing Representations of Shark Attacks" (2012) 34:2 Great Circle 44.

118 See e.g. Courtney Hughes et al, "From Human Invaders to Problem Bears: A Media Content Analysis of Grizzly Bear Conservation" (2020) Conservation Science & Practice 1.

119 See e.g. Daniel Janes, "A Review of Nuisance Alligator Management in the Southeastern United States" (Paper delivered at the 4th International Urban Wildlife Symposium, University of Arizona, 2004).

120 *Criminal Code*, RSC 1985, c C-46, s 445(1)(a) ("[e]very one commits an offence who, wilfully and *without lawful excuse*, (a) kills, maims, wounds, poisons or injures dogs, birds or animals that [are not cattle and] are kept for a lawful purpose" [emphasis added]).

owners under *DOLA*, the dog is still very much indeed held *legally* accountable for their actions *without* a trial and without legal representation. This is where the legal status of animals as mere property once again rears its ugly head: these dogs are "destroyed" in the same way as an inanimate chattel might be.

While there is speculation that the first prosecutions and trials of animals were held in Ancient Greece,[121] which ostensibly had as their primary purpose, as it did with inanimate objects (like an errantly thrown javelin), ridding the society of "pollution that, because of the crime, had 'contaminated' the community,"[122] the most fertile source of historical animal trials is found in medieval Europe, where animals were tried by ecclesiastical courts or secular courts.[123] The best known and most widely accepted account of this history is found in E.P. Evans' classic work *The Criminal Prosecution and Capital Punishment of Animals*,[124] in which he catalogued, though not exhaustively, approximately 200 animal prosecutions between the ninth and sixteenth centuries.[125] Perhaps the most famous of these cases involves Bartholomew/Bartolomée Chassenée's 1522 defence of rats who were summoned to court respecting allegations of crop destruction but failed to appear because fear of the town's cats prevented their safe passage to the courthouse.[126] The court ordered the cats to issue bonds that they would not injure the rats upon the journey to the courthouse, and, upon the cats' failure to do so, the case against the rats was dismissed.[127] In other cases, Chassenée argued successfully for the animal's excommunication in place of the animal's death. Esther Cohen also identifies a "hybrid" type of court which emerged in fifteenth-century Switzerland and suggests that ecclesiastical animal trials were even held in Canada.[128]

Ecclesiastical courts, like the one in which Chassenée's rats featured, typically exercised jurisdiction over issues involving public nuisances, such as crop destruction by wild animals, insects, or "vermin" and dealt with "supernatural" matters, while secular courts typically exercised jurisdiction over cases involving personal injury or death by domesticated animals.[129] Both courts, however, took their proceedings earnestly being "sticklers for legality [where] animals were always granted due process of law."[130] One scholar described these courts this way:

> In spite of their nontraditional defendants, both the ecclesiastical and secular courts took these proceedings very seriously and strictly adhered to the legal customs and formal procedural rules that had been established for human criminal defendants. The community, *at its own expense*, provided the accused animals with defense counsel, and these lawyers raised complex legal arguments on behalf of the animal defendants. In criminal trials, animal defendants were sometimes detained in jail alongside human prisoners. Evidence was weighed and judgment decreed as though the defendant were human. Finally, in the secular court, when the

---

121 Plato, *supra* note 2.
122 Girgen, *supra* note 111 at 105; Berman, *supra* note 108 at 295–96.
123 Girgen, *ibid* at 110. See also Hampton L Carson, "The Trial of Animals and Insects. A Little Known Chapter of Mediæval Jurisprudence" (1917) 56:5 Proceedings Am Philosophical Society 410 at 411–14.
124 EP Evans, *The Criminal Prosecution and Capital Punishment of Animals* (New York: EP Dutton, 1906).
125 Girgen, *supra* note 111 at 106; McNamara, *supra* note 104 at 30; Berman, *supra* note 108 at 298.
126 McNamara, *ibid* at 34; Girgen, *ibid* at 102; Berman, *ibid* at 288–89.
127 McNamara, *ibid* at 34.
128 Cohen, *supra* note 110 at 13, 33–34; Berman, *supra* note 108 at 298.
129 Girgen, *supra* note 111 at 100. See also Peter T Leeson, "Vermin Trials" (2013) 56:3 JL & Econ 811.
130 McNamara, *supra* note 104 at 33.

> time came to carry out the punishment (usually lethal), the court procured the services of a professional hangman, who was paid in a like manner as for the other, more traditional, executions he performed.[131]

Because this article is focused on the kinds of issues that the medieval secular courts would have adjudicated upon in modern society, the examples of these medieval secular courts' procedures are the main source of historical reference and comparison here.[132] In these secular trials, upon receipt of a formal complaint alleging harm, the impugned animal was arrested and brought before the court where a public prosecutor presented a formal charge, and the judge assigned defence counsel to assist the accused animal to respond to the charge.[133] At trial, witnesses were examined, evidence was presented, and the court's decision was rendered according to common law precedents as though the accused animal were a human.[134]

Animals accused of and tried for crimes in these secular courts were usually found guilty and sentenced to death, and sometimes defence counsel appealed decisions finding them so to higher courts, but on occasion, secular judges ruled in their favour, strongly suggesting that these animal trials "were *not* merely for show."[135] In Chassenée's rat case, one writer opined in 1927 that the trial "was held with the greatest dignity and the participants were as serious as those in the most important cases that we have on the dockets today."[136] As Cohen put it more generally, the courts "that saw [themselves] as possessing the God-given right to try all living creatures, human and otherwise, had to grant all of them justice."[137] Paul Berman adds that "[a]ll of these trials evince a scrupulous concern for ensuring procedural justice to the animals."[138]

While the punishments meted out to these convicted animals were largely similar, both in form and content, to those meted out to convicted humans (burned at the stake, burned in effigy, dragged through the streets, or racked[139]), not all punishments were lethal and sometimes upon the entreaties of defence counsel the convicted animal's life was spared whether by confiscation, excommunication, or even a pardon.[140] While these practices which spared convicted animals' lives help to inform and may guide a reformation of section 4 of *DOLA*, the reason(s) *why* these animal trials were held in the first place and their universality endured remains to be addressed.

Jen Girgen discounts rehabilitation of the offending animals as the purpose or goal of (medieval European) animal trials because execution resulted in death.[141] Economic reasons are similarly discounted because execution was expensive,[142] just as the trials themselves

---

131 Girgen, *supra* note 111 at 99 [emphasis added].
132 See also Jesse Arseneault & Rosemary-Claire Collard, "Crimes Against Reproduction: Domesticating Life in the Animal Trials" (2023) 14:1 Humanimalia 1.
133 *Ibid* at 109; Berman, *supra* note 108 at 300.
134 Girgen, *supra* note 111 at 109.
135 *Ibid* at 109–10 [emphasis added].
136 McNamara, *supra* note 104 at 34. See also Steven M Wise, "Hardly a Revolution: The Eligibility of Nonhuman Animals for Dignity-Rights in a Liberal Democracy" (1998) 22:4 Vt L Rev 793.
137 Cohen, *supra* note 110 at 14.
138 Berman, *supra* note 108 at 302.
139 *Ibid* at 301–302.
140 Girgen, *supra* note 111 at 112; McNamara, *supra* note *104* at 32–33; Schindler, *supra* note 53.
141 Girgen, *ibid* at 117.
142 *Ibid* at 117.

were.[143] Incapacitation, which removed the threat from the community, seems a more plausible explanation, as did deterrence by warning humans of the consequences which might flow from their animal's behaviour.[144] Recognizing that many of these trials span time, cultures, and geography and no explanation for them is universal, Girgen and others suggest, however, that the most plausible explanation for these trials was the desire to "establish cognitive control over [the] world," in the quest to create "order" in the human world if only in a stratified sense.[145] Berman adds that "[u]ltimately, the trials allowed the community to apply its notions of justice to the animal kingdom by constructing a narrative that could harmonize the needs of the society with the natural forces it could not control…. [A]s an attempt by a community to apply its own moral scheme to the natural world and create an integrated universal sense of justice."[146]

In other words, given the historical view that humans were divinely created as the highest of species in a hierarchical universe, punishing animals for the crimes they had committed maintained and restored the already naturally established celestial balance among the deity, humans, and "beasts."[147] For JJ Finkelstein, animal trials were thus "a specific cultural manifestation of a mentality that placed [humans] above animal in the hierarchy of creation and therefore felt obliged to stamp out any infringement of this order, such as the killing of a human being by a lower creature."[148] Cartesian inspired and other early modern philosophy which held that animals lack sentience, speech, and reason,[149] or were demonic or the devil's emissaries only contributed and reinforced these notions of an impassible boundary between humans and animals.[150] Contemporary philosophy and discourse in large measure until only recently mostly ignored animals in its thought and, more broadly, society's views of animals — though changing — continues to demonstrate existential "estrangement" from them.[151]

Finally, another more plausible explanation for the holding of these trials is that they were motivated by retribution; that is, the desire to satisfy a primal desire for revenge in which the injured party could exact the maxims of "an eye for an eye" or "a tooth for a tooth" upon the animal, or have the court do so.[152] As Berman put it: "[F]atal accidents were reconceptualized as crimes through these proceedings, thereby creating both a guilty party and a societal ritual for expiating the death…. By integrating animals within a human scheme of justice, these trials allowed the community to affirm a rational order and assign a role for animals within the hierarchy of creation."[153] In contemporary society, dog bites or attacks are, generously viewed, mostly accidents, but as it relates to *dogs*, *DOLA* continues to *de facto* treat them as if they were punishable crimes or offences.

---

143 Berman, *supra* note 108 at 290.
144 Girgen, *supra* note 111 at 118.
145 Girgen, *ibid* at 119 [citations and emphasis omitted]; Cohen, *supra* note 110 at 9–10.
146 Berman, *supra* note 108 at 309, 321. See also Arsenault & Collard, *supra* note 132.
147 Girgen, *supra* note 111 at 120; Berman, *ibid* at 304.
148 Cohen, *supra* note 110 at 17, citing JJ Finkelstein "The Ox That Gored" (1981) 71:2 Transactions Am Philosophical Society 1 at 48–72.
149 Francione "Moral Value," *supra* note 39 at 25–31.
150 Cohen, *supra* note 110 at 16, 21; Berman, *supra* note 108 at 306, 310; Hub Zwart "What is an Animal? A Philosophical Reflection on the Possibility of a Moral Relationship with Animals" (1997) 6:4 Envtl Values 377 at 380.
151 Zwart, *ibid* at 378; Kymlicka & Donaldson, "Locating," *supra* note 31 at 692, 694–695.
152 Girgen, *supra* note 111 at 120–21.
153 Berman, *supra* note 108 at 291.

Eventually, however, these animal trials began to wane, purportedly because of the ascension of human rationality and humanity's passage into the age of reason and enlightenment,[154] but others discount this explanation because animal trials peaked in the nineteenth century when human engagement with science was at its pinnacle.[155] In 1912, for example, animal trials were held in the US states of Kentucky and Tennessee, and as late as 1924, the Governor of the State of Pennsylvania summarily tried a dog for killing his cat, and sentenced the dog to life imprisonment in a state facility where the dog died six years later.[156] In 1994, the Governor of New Jersey issued a "pardon" to a dog, even though it was technically — because dogs are property in the US as well — a forfeiture order.[157]

From this brief historical account, fast forward to the twenty-first century and manifested in *DOLA* is nearly exactly the same motivation or desire to make animals, in this case dogs, legally and mortally responsible for their "offences." While it is true that the dog *owner* is actually the one held civilly (and perhaps quasi-criminally) liable, the ultimate punishment on the finding of such liability is not only to perhaps fine and imprison the dog owner, but to *execute*, to *kill*, to *destroy* the impugned dog.

If the medieval animal trial proceedings ultimately constructed a narrative asserting the universality of human justice which incorporated inexplicable acts of irrational actors within each society's moral scheme,[158] there must, therefore, in the absence of modern-day animal trials or animal rights in Ontarian or Canadian society, be some better explanation which situates the enduring practice of executing animals without any sort of trial, specifically dogs under *DOLA*, in our cultural narrative.[159] Animal trials, as opposed to simply summarily killing or "destroying" animals, at least were rituals with fidelity to procedural norms that lent themselves to a community's healing.[160]

Further, if, as a legal principle, killing is morally and normatively wrong, then destroying dogs merely as instrumental, utilitarian, or symbolic ways to metaphorically shield Ontarians against "terror"[161] is, in my view, not a sufficient explanation in contemporary Ontarian society. Stated differently, if a single unified account of the rationales (rather than seeing them as independent of one another) for the human imposition of punishment include retribution, deterrence, and rehabilitation, in my view, greater emphasis needs to be placed on *rehabilitation* — that is, the *operant conditioning* of the dog once "sentenced" — rather than on mortal retribution that is provided for in *DOLA* section 4 proceedings.[162] With little fidelity

---

154 Girgen, *supra* note 111 at 120; Cohen, *supra* note 110 at 17; Finkelstein, *supra* note 148 at 81.

155 Girgen, *ibid* at 121.

156 *Ibid* at 122.

157 Schindler, *supra* note 53 at 120, 128–30, 154.

158 Berman, *supra* note 108 at 316.

159 David I Kertzer, *Ritual, Politics, and Power* (New Haven, Conn: Yale University Press, 1988) at 4; Wise, "Dismantling," *supra* note 29 at 1:

> The most common sources from which we quarry our law are the legal rules of earlier times. But when we borrow past law, we borrow the past. Legal rules that may have made good sense when they were fashioned may make good sense no longer. Raised by age to the status of self-evident truths, they may instead perpetrate ancient ignorance, ancient prejudices, and ancient injustices that may once have been less unjust because we knew no better.

160 Berman, *supra* note 108 at 322.

161 Kertzer, *supra* note 159 at 4.

162 Jon Garthoff, "Animal Punishment and the Conditions of Responsibility" (2020) 49:1 Philosophical Papers 69 at 73, 81–82, 89–90, 100. See also Marian Stamp Dawkins, "Behavioural Deprivation: A

to procedural norms for dogs, no genuine — or perhaps only marginal — healing can occur from the destruction of the dog under the current *DOLA*. Converting these dogs to Foucauldian "docile bodies" might be a nominal price to pay to ensure that they are spared death, maintain bodily integrity and liberty, and might live happy lives.

Ultimately then, in section 4(3), *DOLA* permits the dispensation of summary justice: no formal charges are laid against the dog, no legal counsel is provided to the dog (or their owner, except perhaps through Legal Aid), and no public hearing is held to ensure that at least some procedural fairness is afforded to the dog.[163] Instead of providing legal standing and at least some procedural fairness (the dog owner *cannot* always be expected to be an agent, advocate, or to act with the dog's best interests in mind when they are subject to section 4 *DOLA* proceedings or even in general), cloaked behind statutory judicial powers and grounded in the pretext of ensuring human safety, the exaction of vengeance and a desire to maintain or restore a sense of order which keeps humans at the apex of species and other animals under their dominion, the speciesism in *DOLA* is plainly revealed.[164]

Moreover, these practices are justified on the basis that humans have the innate right to engage them.[165] In *Regina v. Menard*, a 1978 case, Justice Antonio Lamer of the Court of Appeal of Quebec (as he then was) held:

> Within the hierarchy of our planet the animal occupies a place which, if it does not give rights to the animal, at least prompts us, being animals who claim to be rational beings, to impose on ourselves behaviour which will reflect in our relations with them those virtues we seek to promote in our relations among humans. On the other hand, the animal is inferior to man, and takes its place within a hierarchy which is the hierarchy of the animals, and above all is a part of nature with all its "racial and natural" selections. The animal is subordinate to nature and to man. It will often be in the interests of man to kill and mutilate wild or domestic animals, to subjugate them and, to this end, to tame them with all the painful consequences this may entail for them and, if they are too old, or too numerous, or abandoned, to kill them. This is why, in setting standards for the behaviour of men towards animals, we have taken into account our privileged position in nature and have been obliged to take into account at the outset the purpose sought.[166]

Years later, some of Justice Lamer's words still read very troublingly. In *Reece v. Edmonton (City)*, a 2011 case, Chief Justice Catherine Fraser of the Court of Appeal of Alberta held:

> Society's treatment of animals today bears no relationship to what was tolerated, indeed widely accepted, centuries ago. The past 250 years have seen a significant evolution in the law relating to animals, though admittedly not as far as many might consider warranted. We have moved from a highly exploitive era in which humans had the right to do with animals as they saw fit to the present where some protection is accorded under laws based on an animal welfare model.
>
> …

---

Central Problem in Animal Welfare" (1988) 20:3/4 Applied Animal Behaviour Science 209; Shroff, *supra* note 12 at 141–42.

163 Girgen, *supra* note 111.

164 *Ibid* at 129–30.

165 *Ibid* at 130.

166 1978 CanLII 2355 at 464 (QCCA).

> [I]n examining the arc of history and the relationship between humans and animals, it is clear that the development of the law has been influenced, and will continue to be, by mankind's deepened understanding of our place in the universe. Humans may be at the top of the evolutionary chain. But with rights come responsibilities and one of them is that we are stewards of the environment. That stewardship is reflected in the legal obligations we have assumed not only to the physical biosphere but also to the animals with whom we share the Earth. Should moral, ethical or spiritual considerations not serve as adequate motivation in shaping those legal obligations, then the fact that this also happens to be in humanity's own collective enlightened self-interest ought to suffice. Indeed, all evidently have.[167]

If Chief Justice Fraser is correct — and she is correct — that humans and their laws have truly evolved over the last 250 years, and we recognize that we share the earth with other animals and to them owe legal obligations, there is no need to kill dogs when their owners are held civilly liable or convicted in quasi-criminal proceedings for their dogs' actions. The simple fact is that they have not evolved *enough*. Beyond the specified measures that are contemplated in *DOLA* or devised by the court in a control order, alternatives exist to killing biting, attacking, and menacing dogs — they have just not been sufficiently contemplated or established, and it is the purpose of this article to demonstrate the deontological reasons for and normative merits of doing so. While the problem of destroying dogs is the main issue with which this article is concerned, it is important, however, to also note that the context in which dogs are destroyed by court order is intimately bound up with human carceral logics.

## V. HUMAN CARCERAL LOGICS

Legal scholars Justin Marceau and Lori Gruen, among others, have deftly illustrated and assembled some of the problems which exist at the nexus of human and animal carceral logics.[168] In short, this scholarship shows that incarcerating humans for animal cruelty and similar offences often does little to improve the overall status of animals in society, while making life sometimes unnecessarily more punitive for offenders, unnecessarily expanding the reach of police powers, and unnecessarily increasing the magnitude of the carceral state. Outside of isolated or anomalous incidents (which typically tend to be the impetus for "getting tough on crime" or "improved" animal legislation) in which animals are tortured or injured by those engaging in aggressive, violent, and anti-social behaviour(s) toward all, not just animals,[169] and unregulated situations like puppy or kitten mills (which Ontario's *PAWS Act* was recently amended to address[170]), in many cases the reasons that dog owners may be incarcerated is because of poverty, poor living conditions, lack of access to dog training or education, racism, ableism, old age, ability, social exclusion, and sometimes negligence rather than strictly malevolent behaviour toward dogs or other animals.[171] Animal anti-cruelty legislation tends to disproportionally punish marginalized members of society more than

---

167 *Reece v Edmonton (City)*, 2011 ABCA 238 at paras 54, 58 [footnotes omitted].

168 Lori Gruen & Justin Marceau, eds, *Carceral Logics: Human Incarceration and Animal Captivity* (Cambridge: Cambridge University Press, 2022).

169 Eleonora Gullone, "An Evaluative Review of Theories Related to Animal Cruelty" (2014) 4:1 J Animal Ethics 37 at 52–53.

170 *Preventing Unethical Puppy Sales Act, 2024*, SO 2024, c 14.

171 Gruen & Marceau, *supra* note 168 at 8–10.

others,[172] and is often class-driven.[173] As well, the dogs to whom these humans provide care may be living in similar conditions which obviously affects their own well-being and welfare, perhaps leading to aggressive or problematic incidents.[174] Other commentators, however, take the view that incarceration remains the most fitting punishment for animal cruelty offences and other similar offences irrespective of the context, and, overall, that imprisonment serves as the most efficient deterrent to future cases and offenders.[175]

As noted earlier, upon conviction for a *DOLA* offence, humans may be subject to a fine up to $10,000, six months' imprisonment, or both. Such a penalty is, of course, directed toward the dog owner, not the dog, and may do little to generally prevent future incidents of a similar nature by that particular dog owner or by others. In *DOLA* section 4 proceedings, however, where the court finds that the dog has bitten or attacked a human or domestic animal or that the dog is a menace to the safety of persons or domestic animals, the court has the power to prohibit the dog owner from owning another dog for a specified period of time.[176] One presumes that a prohibition order can be issued for an indeterminate amount of time — in other words, permanently.

In response to increased calls for dog owners to be held responsible for their dogs, *DOLA* therefore already has the mechanisms by which to hold owners civilly and criminally (*quasi*-criminally, really, under the *Provincial Offences Act*[177]) liable for the actions of the dogs to whom they provide care. While it is not my aim to discuss the legal efficacy of *DOLA* in the context of human and animal carceral logics, these issues are important to note. More importantly, here I advocate that dogs who may have bitten or attacked, or are deemed "menaces" to society, should not be punished for what amounts to the transgressions of their owners (or caregivers), and instead should be normatively treated in the same way that serious human offenders are treated in our legal system. Instead, being treated much the way the worst human criminal offenders *used to be* treated in our society, these dogs pay with their lives, a decidedly speciesist practice in my view. Stated differently, the dog is punished for their owner having transgressed mores, laws, and social order, but also for *simply being a dog*.[178]

## VI. HUMAN PUNISHMENT AND DISCIPLINE

The imposition of punishment is a complex neurobiological response among a variety of species, not just in human animals.[179] The meting out of punishment may be selfish or

---

172 Sloane M Hawes, Tess Hupe & Kevin N Morris, "Punishment to Support: The Need to Align Animal Control Enforcement with the Human Social Justice Movement" (2020) 10 Animals 1902.

173 Daniel McCarthy, "Dangerous Dogs, Dangerous Owners and the Waste Management of an 'Irredeemable Species'" (2016) 50:3 Sociology 560.

174 The Farley Foundation, "Together, We Can Change Lives," online: [perma.cc/266N-TQN9] (which "supports the relationship between pets and people by generating and allocating resources to subsidize veterinary care for Ontario families in need").

175 Ashley N Beck, "Giving a Voice to the Voiceless: A Prosecutor's Efforts to Combat Animal Cruelty" in Lori Gruen & Justin Marceau, eds, *Carceral Logics: Human Incarceration and Animal Captivity* (Cambridge: Cambridge University Press, 2022) 53 at 53–69.

176 *DOLA*, *supra* note 12, s 5.

177 *Supra* note 105.

178 *Houdek v R*, 2008 SKQB 434 [*Houdek*]. See also Schindler, *supra* note 53.

179 Ben Seymour, Tania Singer & Ray Dolan, "The Neurobiology of Punishment" (2007) 8 Nature 300 at 308.

altruistic and may be used by humans to establish or enforce cultural norms.[180] Notions of what constitutes punishment, however, varies widely across academia and societies.[181] In discussing *punishment* here, I am not preoccupied by linguistics and use the term in the ordinary penal sense that holds entities responsible for their behaviour by imprisoning them,[182] rather than in some other ways that it might be used; for example, reprimanding an employee, ignoring a co-worker, refusing to perform a favour for an acquaintance, making a teenager clean their room, or in a Foucauldian disciplinary sense which produces "docile bodies."[183] I also do not use punishment here to refer to keeping animals in industrial agriculture settings, zoos, and waterparks against their will, withholding food from dogs in training exercises, or crating them when they defecate indoors, even though those are all activities which impose discipline and punishment upon animals and to a large degree turns them into "docile bodies."[184]

Similar to the way Richard Epstein did regarding animal suffering,[185] Jon Garthoff argues that many nonhuman animals' psychological capacities suffice for them to be appropriate objects of punishment, categorizes them by these capacities, considers whether punishment is appropriate, and comments on the appropriate form of punishment in each category.[186] The categories he develops are: (1) merely perceiving animals; (2) exercising inferential judgment animals (but lacking critical reasoning); and, (3) critically reasoning animals.[187] Important to his analysis is *consciousness* — rocks, for example, do not have consciousness and are thus not appropriate objects of punishment because they do not *behave*.[188] Like others before him, Garthoff opines that "consciousness is the best candidate for the boundary between those with ethical standing and those without" and he recognizes that humans are uniquely endowed with critical reasoning abilities, unlike most animals, meaning humans' mental capacity warrants a different category and manner of punishment.[189] He concludes that human punishment for wrongdoing is best understood as in the service of moral education.[190] But he recognizes that while his analysis provides no discussion of the legal practices and institutions that constitute the usual milieu for discussing human punishment, the main purpose of punishment in general is proper animal training, a claim that is difficult to assess in legal contexts because nonhuman animals have no legal responsibilities.[191] Nevertheless, his discussion of animal consciousness helps to normatively bring dogs (and other nonhuman animals) within the ambit of ethical standing, away from canine capital punishment, and closer to better legal treatment under *DOLA* and other laws in Ontario.

---

180 *Ibid* at 306, 307.
181 Garthoff, *supra* note 162 at 74.
182 *Ibid* at 74.
183 Michel Foucault, *Discipline and Punish: The Birth of the Prison*, translated by Alan Sheridan (New York: Vintage Books, 1977) at 135–69.
184 Garthoff, *supra* note 162 at 96–97. See also Chlöe Taylor, "Foucault and Critical Animal Studies: Genealogies of Agricultural Power" (2013) 8:6 Philosophy Compass 539.
185 Richard A Epstein, "Animals as Objects, or Subjects, of Rights" (2002) John M Olin Law & Economics Working Paper No 171 at 21, 25–26.
186 Garthoff, *supra* note 162 at 69–74.
187 *Ibid* at 85–86 ("[c]ritically rational animals can think about and reflect on reasons, and they can guide their actions by these thoughts and reflections. Accordingly they can attempt to justify actions to themselves and to others, and they can demand or request justifications from others").
188 *Ibid* at 76.
189 *Ibid* at 78–79, 81.
190 *Ibid* at 94, 100–101.
191 *Ibid* at 102.

### A. CAPITAL PUNISHMENT

Unlike dogs, humans are critically rational beings and have legal responsibilities — as Christine Korsgaard might also put it: humans have "normativity."[192] Up until 1976, when it was abolished by a narrow margin in a Parliamentary vote, capital punishment (or the "death penalty") was the punishment for the most serious crime in which humans contravened their legal responsibilities to other members of Canadian society, namely, capital murder (now first-degree murder and punishable by life imprisonment, that is, 25 years).[193] However, prior to 1976 — specifically, in 1961 — Canadian law distinguished between capital and non-capital murder.[194] Generally speaking, capital murder involved the *intentional*, *planned*, or *deliberate* killing of humans (and killing of police officers) and was punishable by death, while non-capital murder involved all other types of killing and was punishable by life imprisonment only.[195] Both are now, respectively, referred to as first- and second-degree murder.

It is noteworthy that those humans who had not killed *intentionally* or with *premeditation* were held legally liable only by life imprisonment and not death. It is remarkable, however, that dogs, even upon the most liberally taken anthropomorphic view, *cannot* form intent or truly premeditate bites or attacks upon humans or domestic animals the way that humans can scheme to commit murder and, yet they can be, in the parlance of old, "capitally punished" under *DOLA*. In other words, even as recently as 1961, in some cases, humans who took another human life were not executed, but imprisoned for life and yet dogs are currently executed for biting, attacking, or even merely being amorphously "menacing."

Put less passionately, or some might say less hyperbolically, even though *DOLA* does not hold dogs criminally (or civilly) liable for their actions, it does permit a court to de facto sentence them *as if they are*.[196] It is perhaps fitting to here observe and remember that for centuries *we* domesticated, labelled, and chose to live with certain animals as "companion animals," and that they did not and do not necessarily chose to live with *us* in companion animal contexts.[197] Kymlicka and Donaldson argue that as a result, dogs and other domesticated animals are, because of this relationship of dependence, owed a form of co-citizenship and specific duties from us.[198] Elizabeth Anderson argues that humans have reciprocal relationships with animals, including dogs, and thus should be recognized as

---

192 Christine M Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996) at 93; Christine M Korsgaard, "Morality and the Distinctiveness of Human Action" in Stephen Macedo & Josiah Ober, eds, *Primates and Philosophers: How Morality Evolved* (Princeton: Princeton University Press, 2006) 98; Christine M Korsgaard, "Facing the Animal You See in the Mirror" (2007) 16:1 Harvard Rev Philosophy 4.

193 Library of Parliament, *supra* note 23 at 1–2, 10, 12.

194 *R v Newborn*, 2020 ABCA 120 at para 30 [*Newborn*].

195 *Ibid*.

196 Hyde, *supra* note 26 at 719.

197 Kymlicka & Donaldson, "Locating," *supra* note 31 at 693–96; Zwart, *supra* note 150 at 387–89. See also Monika Martyn, "Dog Attacks by Breed 2025 – Dog Bite Statistics & State Fatality Data" (20 March 2025), online: [perma.cc/4CZB-9GFJ] (which claims that "[t]he third deadliest creature on Earth is a dog. Part of that is the sheer number of dogs in the world").

198 Will Kymlicka & Sue Donaldson, *Zoopolis: A Political Theory of Animal Rights* (Oxford: Oxford University Press, 2011) at 59. See also Alasdair Cochrane, "Life, Liberty, and the Pursuit of Happiness? Specifying the Rights of Animals" in Tatjana Višak & Robert Garner, eds, *The Ethics of Killing Animals* (New York: Oxford University Press, 2016) 201 at 208.

having at least the capacity to be rights-bearing subjects.[199] In the context of this article, we have unilaterally placed certain terms and conditions on dogs and other animals within our social relationships with them — terms and conditions which are not innate to them and which they cannot bring into full cognition — and then kill them when they transgress those terms and conditions. In the simplest sense or most rudimentary context, to prevent unnecessary tragedies, supervising dogs in the presence of children so as not to provoke innate biting or attacking defence responses in the dog which the law might punish with death is always helpful.[200]

Capital punishment was not, however, fully abolished until 1998, when the federal *National Defence Act* imposed life imprisonment instead of death for various offences under that Act.[201] There were various goals which capital punishment were argued to serve, chief among them retribution and deterrence, and with fluctuating consistency, a majority of Canadians generally supported the measure.[202] Others argued that the deterrent effect of capital punishment was dubious and that it was just as immoral for the state to take a human person's life as much as it was for an individual to do the same.[203] Further, capital punishment was seen as something that fundamentally dehumanized people, punished those who had not had the opportunity to learn and develop social responsibility, risked the lives of the innocent, was administered unequally, rendered the dispensation of justice uncertain given the nature of appeals, and eliminated one of the three core principles of punishment: rehabilitation.[204]

One prominent argument against capital punishment was that it was a form of cruel and unusual punishment (prohibited now in the *Canadian Charter of Rights and Freedoms*[205] and earlier in the *Universal Declaration of Human Rights*,[206] as well as other legal instruments) because death (by hanging, as the punishment was administered in Canada) was not painless or instantaneous, the waiting period between sentencing and execution was mentally torturous, and the practice remained a "relic of barbarism and unworthy of a civilized nation."[207] Another concern was the brutalizing effect the death penalty imposed on society at large.[208] Following its abolition, numerous Parliamentary efforts sought to reinstate capital punishment, but none were successful.[209] In 2023, the Toronto Star and others reported that 54 percent of Canadians were in favour of reinstating capital punishment, with about 59 percent of those aged 55 years or older supporting the idea, about 54 percent of those aged between 35 to 54 years, and about 50 percent of those aged between 18 to 34 years.[210]

---

199 Anderson, *supra* note 50 at 287–89.

200 Caffrey, *supra* note 103 at 21. See also Shroff, *supra* note 12 at 180–82.

201 Bill C-25, *An Act to amend the National Defence Act and to make consequential amendments to other Acts*, 1st Sess, 36th Parl, 1997 (first reading 4 December 1997; assented to 10 December 1998).

202 Library of Parliament, *supra* note 23 at 3–6. See also JM Beattie & L Distad, *Attitudes Towards Crime and Punishment in Upper Canada, 1830–1850: A Documentary Study* (Toronto: Centre of Criminology, University of Toronto, 1977) at 56–73.

203 Library of Parliament, *ibid* at 6.

204 *Ibid* at 6.

205 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

206 UNGA, 3rd Sess, UN Doc A/810 (1948) GA Res 217A (III).

207 Library of Parliament, *supra* note 23 at 8.

208 *Ibid* at 9.

209 *Ibid* at 10–14.

210 Kevin Jiang, "Majority of Canadians are in Favour of Bringing Back the Death Penalty, New Poll Suggests," *Toronto Star* (17 March 2023), online: [perma.cc/PY3F-SEN4]; Mario Canseco,

The Supreme Court of Canada has, however, in a series of cases, resisted the finding that capital punishment is *in itself* cruel and unusual punishment. In *Miller et al. v. The Queen*, Chief Justice Bora Laskin (as he then was) held that the death penalty did not in itself constitute cruel and unusual punishment and that the *Canadian Bill of Rights* essentially protected Canadians from cruel and unusual methods of administering the death penalty.[211] In *Kindler v. Canada (Minister of Justice)*, the majority held that the rendering of a fugitive back to the US where he would be executed did not constitute cruel and unusual punishment because the punishment would be not be administered by the Canadian government.[212] While Justice Beverly McLachlin (as she then was), as part of the majority, held that "there is no clear consensus in this country that capital punishment is morally abhorrent and absolutely unacceptable,"[213] Chief Justice Antonio Lamer and Justice Peter Cory held that "the death penalty is a cruel punishment" and the Crown's extradition of Mr. Kindler to face such execution was "an indefensible abdication of moral responsibility" which Canada had a legal obligation to prevent.[214] The majority's answer in *Reference Re Ng Extradition (Can.)*, a companion case to *Kindler*, was largely the same.[215]

Ten years later, in *United States v. Burns*, however, in an unanimous decision (which included then Chief Justice McLachlin) the majority held that the extradition of a fugitive by the Canadian government to face the death penalty in the US violated the section 7 *Charter* rights of liberty and security of the person and could not be upheld under section 1 of the *Charter*.[216] The majority also, however, upheld the approach to cruel and unusual punishment taken in *Kindler* and *Ng*, but stipulated that the appeal in *Burns* was best resolved under section 7 of the *Charter*, not section 12, thus avoiding revisiting the question of whether execution *itself* constituted cruel and unusual punishment. On 10 October 2023, "World Day Against the Death Penalty" in that year, the Minister of Foreign Affairs issued a statement which held that "Canada reiterates its unequivocal opposition to the use of capital punishment in all cases," and "[O]n this and every day … is proud to be among the majority of countries that have abolished the death penalty in law and practice. We will continue to work toward a world free of this ineffective and inhumane form of punishment."[217] Following *R. v. Nur*,[218] in the 2016 case of *R. v. Lloyd*, Chief Justice McLachlin maintained that a sentence imposed upon a criminally convicted accused will constitute a "cruel and unusual" punishment under section 12 of the *Charter* if the sentence imposed is "'grossly disproportionate' to the punishment that is appropriate, having regard to the nature of the offence and the circumstances of the offender."[219] To be "'grossly disproportionate' a sentence must be more

"Canadians' Support of Capital Punishment for Murder Ticks Up After Several Years of Stability," *Business Intelligence Voice* (16 March 2023), online: [perma.cc/S5XQ-TS24]; Norman Douglas, "Time to Rethink Life with No Parole" (30 August 2024), online (blog): [perma.cc/PJ32-NAJK].

211 *Miller et al v The Queen*, 1976 CanLII 12 (SCC).

212 [1991] 2 SCR 779 at 782 [*Kindler*].

213 *Ibid* at 783.

214 *Ibid* at 824.

215 *Reference Re Ng Extradition (Can.)*, [1991] 2 SCR 858 [*Ng*].

216 *United States v Burns*, 2001 SCC 7 at paras 31, 143.

217 Global Affairs Canada, Statement, "Statement on World Day Against the Death Penalty" (10 October 2023), online: [perma.cc/WK3T-TSVB].

218 2015 SCC 15.

219 *R v Lloyd*, 2016 SCC 13 at para 22.

than merely excessive. It must be 'so excessive as to outrage standards of decency' and 'abhorrent or intolerable' to society."[220]

At the risk of once again being reductionist and of perhaps oversimplifying it, my argument here is that dogs are sentient, autonomous, and have consciousness as subjects-of-a-life, and therefore have ethical standing and are normatively entitled to a high degree of moral consideration from humans. From both a deontological and normative point of view, destroying dogs is, again at the risk of oversimplification, morally wrong and *does constitute* a form of cruel and unusual punishment (despite the ease with which veterinarians can execute the dog, rendering the *method* likely not cruel or unusual), because it is "'grossly disproportionate" to the punishment that is appropriate for a dog and especially when more humane alternatives to destruction exist. When capital punishment was abolished in 1976, and life sentences imposed instead, then Prime Minister Pierre Trudeau said on the House of Commons floor:

> It is clear that the protection of innocent people against assaults on their lives and liberty is one of the highest duties of the state. It is equally clear that this duty requires the aggressive and effective prevention, prosecution and punishment of criminal violence. It is essential that people have confidence in the law, essential that they have confidence in the ability of the legal process to protect them against the lawless.
>
> …
>
> Longer mandatory sentence and the tightening of parole regulations in relation to convicted murderers will give society the assurance it needs that those who have unlawfully taken the life of another will be removed from our midst for a very long time.[221]

While I am certainly not suggesting that biting, attacking or menacing dogs should be given *carceral* life sentences, I still insist that there is no valid moral, ethical, or legal reason why such dogs cannot be spared "destruction." Instead of being killed, such dogs could be treated *similarly* to the way in which human persons are deemed "non-criminally-responsible" for their illegalities and the way in which some are designated "dangerous offenders" — that is, in both cases, "removed from our midst for a very long time," or at least until they are rehabilitated. Treating dogs in a similar fashion would foster confidence in what should normatively be a more compassionate, non-speciesist, and protective legal system in Ontario.[222] In *R. v. Lacasse*, another Supreme Court case, Justice Richard Wagner (as he then was) held that "[r]ehabilitation is one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world, and it helps the courts impose sentences that are just and appropriate."[223]

The rehabilitation of such dogs therefore acts as a safety net for those dogs who have been malevolently or negligently treated by humans. It imposes a sentence that is just and appropriate. Even if capital punishment were to be reinstated, the posthumanistic deontology which informs my position respecting dogs subject to *DOLA* section 4 proceedings would

---

220 *Ibid* at para 24, citing *R v Smith (Edward Dewey)*, [1987] 1 SCR 1045 at 1072.

221 *Newborn*, *supra* note 194 at para 38, citing *House of Commons Debates*, 30-1, No 14 (15 June 1976) at 14500 (Prime Minister Pierre Elliot Trudeau).

222 See generally Clark, *supra* note 30; Diamond, *supra* note 30.

223 2015 SCC 64 at para 4.

remain the same. Not executing innocent beings is about giving them *moral consideration* to which they are entitled, it is not about the *legality* of denying such consideration to them. As Mahatma Ghandi said, "the more helpless a creature, the more entitled it is to protection by man from the cruelty of man."[224] Overall, *DOLA* does very little to protect dogs themselves from the cruelty of which humankind is capable.

### B. NOT CRIMINALLY RESPONSIBLE DESIGNATIONS

Ignoring, for the time being, its amenability to Foucauldian critique,[225] section 16 of the *Criminal Code* creates a defence to charges under the *Criminal Code* on the basis of mental disorder, but *not* mental disorder alone.[226] Rather, section 16(1) provides that "[n]o person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person *incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong*."[227] Section 16(3) provides that "[t]he burden of proof that an accused was suffering from a mental disorder so as to be exempt from criminal responsibility is on the party that raises the issue."[228] Section 16(2) provides that "[e]very person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility [under] subsection (1), until the contrary is proved on the balance of probabilities."[229] Sections 672.34 to 672.95 in Part XX.1 of the *Criminal Code* elaborate on the provisions in section 16, which are not necessary to discuss in great detail here, but I will note that Ontario's *Mental Health Act* speaks to some of them.[230] Ultimately, the *Criminal Code* provides that a "verdict of not criminally responsible on account of mental disorder" is one in which "the accused committed the act or made the omission that formed the basis of the offence with which the accused is charged but is not criminally responsible on account of mental disorder."[231]

Section 672.54 of the *Criminal Code* speaks to the dispositions that may be made by a court or review board on a finding of NCR. This section directs the court or review board to take into account the safety of the public (the paramount consideration), the mental condition of the accused, the reintegration of the accused into society, and the other needs of the accused in making one of the following three dispositions that are necessary and appropriate in the circumstances.[232]

First, where a verdict of NCR has been rendered and, in the opinion of the court or review board, the accused is not a significant threat to the safety of the public, the court or review

---

[224] Julietta Singh, "Gandhi's Animal Experiments" in Kaori Nagai et al, eds, *Cosmopolitan Animals* (London: Palgrave Macmillan, 2015) 120 at 120.

[225] James E Moran, "Mental Disorder and Criminality in Canada" (2014) 37:1 Intl JL & Psychiatry 109; Riley Olstead, "Contesting the Text: Canadian Media Depictions of the Conflation of Mental Illness and Criminality" (2002) 24:5 Sociology Health & Illness 621.

[226] *Criminal Code*, *supra* note 120, s 16.

[227] *Ibid*, s 16(1) [emphasis added].

[228] *Ibid*, s 16(3).

[229] *Ibid*, s 16(2).

[230] *Mental Health Act*, RSO 1990, c M.7, ss 25, 25(2), 49(1).

[231] *Criminal Code*, *supra* note 120, s 672.1(1). See e.g. *R v Centre for Addiction and Mental Health*, 2014 ONCA 740.

[232] *Criminal Code*, *ibid*, s 672.54.

board may order an absolute discharge.[233] Under the *Criminal Code*, a significant threat to the safety of the public is a risk of serious physical or psychological harm to members of the public, including any victim(s) of or witness to the offence, and any person(s) under the age of 18, resulting from conduct that is criminal in nature but not necessarily violent.[234] Second, the court or review board may order that the accused be discharged subject to conditions as the court or review board considers appropriate.[235] Finally, a court or review board may order that the accused be detained in custody in a hospital, subject to conditions as the court or review board deems appropriate,[236] which might result in indefinite detention.[237]

In *Winko v. British Columbia (Forensic Psychiatric Institute)*, writing for the majority, Justice McLachlin (as she then was) of the Supreme Court of Canada held that the

> history, purpose and wording of s. 672.54 of the Code indicate that Parliament did not intend NCR accused to carry the burden of disproving dangerousness. Rather, Parliament intended to set up an assessment-treatment system that would identify those NCR accused who pose a significant threat to public safety, and treat those accused appropriately while impinging on their liberty rights as minimally as possible, having regard to the particular circumstances of each case.[238]

One writer commented that NCR designations are not cake walks and that defence counsel should be cautious about over relying on them given the possible deprivations of liberty to accused humans which may exceed those usually attached to traditional incarceration.[239] Furthermore, the NCR regime and designations made under it as it relates to humans present many complex issues which are outside the scope of this article.[240]

Nevertheless, I have not specifically argued in this article that dogs subject to *DOLA* section 4 proceedings (or other animals generally) are persons in the same way that humans or corporations are persons, but that conclusion is largely the pinnacle of legal change to which this article aspires. As noted earlier, the posthumanistic view adopted here gives little attention to defining human personhood as a state of being to which both humans and animals enjoy membership, and more in the sense which contemplates a heterogeneous cluster of rights which might manifest and be exercised differently by a variety of moral beings. That said, despite not having *any* rights at law not the least of which are section 7 *Charter* rights, I would still hold that canine capital punishment does not, at least, impinge on dogs' *autonomy* and *inherent moral worth* as minimally as possible. Instead, it impinges on dogs' status as subjects-of-a-life by imposing upon them the greatest possible deprivation of bodily integrity and liberty: death.

---

233 *Ibid*, s 672.54(a). See also *Manrique (Re)*, 2024 ONCA 649; *Re A(P)*, 2018 CarswellOnt 1160 (Ontario Review Board).

234 *Criminal Code*, *ibid*, s 672.5401.

235 *Ibid*, s 672.54(b).

236 *Ibid*, s 672.54(c).

237 G Greg Brodsky, "Proceed with Extreme Caution: The Not Criminally Responsible Defence" (2017) 40:1 Man LJ 89 at 92.

238 1999 CanLII 694 at para 16 (SCC) [emphasis added] [*Winko*]. See also *Re A-M(D)*, 2019 CarswellOnt 10755 (ORB).

239 Brodsky, *supra* note 237.

240 *Ibid* at 114. See also Lisa Grantham, "Bill C-14: A Step Backwards for the Rights of Mentally Disordered Offenders in the Canadian Criminal Justice System" (2014) 19 Appeal 63.

I have also not argued that dogs subject to *DOLA* section 4 proceedings suffer from a mental disorder(s) as the *Criminal Code* contemplates, although canine cognitive and behavioural issues are not inconceivable or impossible in other contexts.[241] That said, reference here is made to these provisions of the *Criminal Code* to illustrate that as a society, those who are *incapable* of appreciating the nature and quality of their acts or omissions or of knowing that they were wrong[242] are not held criminally responsible for their actions and that *DOLA* could explicitly do the same by eliminating the section 4(3) destruction order power and replacing it with provisions that reflect the status of dogs (and other animals) as sentient, conscious, and autonomous moral beings that are treated with a higher degree of ethical and moral restraint, like the *Criminal Code* does for humans.[243]

An example of such ethical and moral restraint would be placing biting, attacking, or menacing dogs in a rehabilitation sanctuary under conditions established in an amended *DOLA* and which also perhaps provides the court the power to impose any other conditions that the court deems appropriate. Proposing such an amendment to *DOLA*, which is further discussed below, is *precisely* motivated by the same principles that form the basis for holding human persons NCR.[244] Put more simply, one might say that while *DOLA* currently holds dog *owners* legally liable or quasi-criminally responsible for the dog's actions, it is *dogs* who are unnecessarily and ultimately held *mortally* liable for their actions thus largely eviscerating any assertion that some indication of NCR is already baked into *DOLA*. In total, I am simply suggesting that if we truly accept that dogs are incapable of appreciating the nature and quality of their acts and of knowing that those actions are "wrong," it is neither fair to them nor just to execute them.

### C. DANGEROUS OFFENDERS

A finding that an accused is NCR is the impetus for and informs the disposition that a court or review board makes in considering whether an accused human is a significant threat to the safety of the public; that is, whether they present a threat of serious physical or psychological harm to members of the public (humans and animals alike, one must presume), and may be discharged (as circumstances warrant) or detained. The situation under "dangerous offender" and "long-term offender" proceedings is markedly different, and may apply when an NCR finding or designation is unavailable or unfitting.

Part XXIV of the *Criminal Code* is titled "Dangerous Offenders and Long-term Offenders." Sections 752 to 761 in that part establish the manner in which a court may, under certain circumstances, designate a person convicted of a serious offence(s) as a "dangerous

---

241 See e.g. Lauren Powell et al, "Relinquishing Owners Underestimate Their Dog's Behavioral Problems: Deception or Lack of Knowledge?" (2021) 8 Frontiers in Veterinary Science 1; Danielle Stephens-Lewis et al, "Understanding Canine 'Reactivity': Species-Specific Behaviour or Human Inconvenience?" (2024) 27:3 J Applied Animal Welfare Science 546; Grigg et al, *supra* note 15; Negar Didehban et al, "Problematic Behaviors in Companion Dogs: A Survey of Their Prevalence and Associated Factors" (2020) 39 J Veterinary Behavior 6.

242 *R v Minassian*, 2021 ONSC 1258 at paras 18–19; Nadya Gill "Not Criminally Responsible due to Mental Disorder & Alek Minassian" (2023) 71 Crim LQ 52. See also *R v Fraser*, 1997 CanLII 6315 (ONCA).

243 Schindler, *supra* note 53 at 122.

244 *Winko*, *supra* note 238 at para 1 ("[i]n every society there are those who commit criminal acts because of mental illness. The criminal law must find a way to deal with these people fairly, while protecting the public against further harms. The task is not an easy one").

offender" or as "long-term offender."[245] While a dangerous offender designation is more severe than a long-term offender in that it involves indefinite or indeterminate incarceration rather than long-term state supervision of the offender,[246] the primary purpose of designating such individuals under either designation is the protection of the public by "carefully defin[ing] a very small group of offenders whose personal characteristics and particular circumstances militate strenuously in favour of preventive incarceration [or supervision]."[247]

The procedures by which a person is designated a "dangerous offender" are complex and outside the scope of this article,[248] but, generally speaking, there are two main steps. First, is the "designation stage" for which the criteria are set out in section 753(1). Second, is the "penalty stage" for which the sentencing options available to a court are provided in sections 753(4) and (4.1).[249] While section 753(1) of the *Criminal Code* contemplates two categories of dangerousness: (a) dangerousness resulting from violent behaviour; and (b) dangerousness ensuing from sexual behaviour,[250] the vast majority of dangerous offenders and long-term offenders are individuals who are sex offenders and have a high prevalence of anti-social personality disorders.[251] In *R. v. Lyons*, Justice La Forest "concluded that four criteria were 'explicit' from the language of s. 753(1): (1) the offender has been convicted of, and has to be sentenced for, a 'serious personal injury offence'; (2) this predicate offence is part of a broader pattern of violence; (3) there is a high likelihood of harmful recidivism; and (4) the violent conduct is intractable."[252] Treatability of the accused is an important consideration in assessing these four criteria,[253] which are also referred to as "pathways" to the designation,[254] but it is also a critical consideration at the penalty stage.[255]

---

[245] *R v Lyons*, 1987 CanLII 25 at para 18 (SCC):

> In addition to having been convicted of a serious personal injury offence, s. 688(a) and (b) provides that to qualify as a dangerous offender, it must also be established that the offender constitutes a threat to the life, safety or well-being of others on the basis of evidence of the dangerous and intractably persistent or brutal behaviour described in subparas. (i) to (iii), or that the offender has shown an inability to control his sexual impulses and a likelihood that he will thereby cause injury, pain or other evil to other persons.

See also *R v Boutilier*, 2017 SCC 64 [*Boutilier*]; *R v Johnson*, 2003 SCC 46 at para 19 [*Johnson*].

[246] *R v Solano*, 2014 ONCA 185 at para 15:

> Resort to the long-term offender regime is appropriate only where there is evidence that an offender can be meaningfully treated, so that the offender's risk to the public can be controlled at an acceptable level, within a determinate period of time. A mere hope that treatment will be successful, or simple optimism that there is a reasonable possibility of eventual control of the offender's risk in the community, is insufficient to ground a determinate sentence.

[247] *Johnson*, *supra* note 245 at para 19, citing *Lyons*, *supra* note 245 at para 44; *R v Standingwater*, 2013 SKCA 78 at para 20. See generally *R v Whynder*, 2024 NSSC 196.

[248] See e.g. Jordan Thompson, "Reconsidering the Burden of Proof in Dangerous Offender Law: Canadian Jurisprudence, Risk Assessment and Aboriginal Offenders" (2016) 79 Sask L Rev 49.

[249] *Boutilier*, *supra* note 245 at paras 14–15. See also *R v Hason*, 2024 ONCA 369 at para 84 [*Hason*].

[250] *Boutilier*, *ibid* at para 16.

[251] Solicitor General Canada, *High-Risk Offenders: A Handbook for Criminal Justice Professionals*, by Lawrence MacAulay, Catalogue No JS42-94/2000 (Ottawa: SGC, 2001) at 72.

[252] *Boutilier*, *supra* note 245 at para 26, citing *Lyons*, *supra* note 245 at para 43.

[253] *R v Francis*, 2023 ONCA 760 at para 62, citing *Boutilier*, *supra* note 245 at para 45.

[254] *Hason*, *supra* note 249 at para 84.

[255] *R v Jackman*, 2024 ONCA 150 at para 23.

Nevertheless, in *R. v. Johnson*, a 2003 Supreme Court case, Justices Iacobucci and Arbour held that:

> Indeterminate detention under the dangerous offender regime is warranted only insofar as it actually serves the purpose of protecting the public…. [T]here may be circumstances in which an offender meets the statutory criteria for a dangerous offender designation but the goal of protecting the public can be achieved without indeterminate detention. An interpretation of the dangerous offender provisions that would require a sentencing judge to declare an offender dangerous and sentence [them] to an indeterminate period of detention in each instance in which the statutory criteria for a dangerous offender designation have been satisfied would introduce an unnecessary rigidity into the process and overshoot the public protection purpose of the dangerous offender regime.
>
> Nor is there anything in the purposes of the sentencing regime as a whole, as set out both in the decisions of this Court and in … the *Criminal Code*, which would indicate a duty to find an offender dangerous in each circumstance in which the statutory criteria are met. On the contrary, the underlying objectives of the sentencing regime, of which *the dangerous offender provisions form a part, indicate a discretion to impose a just and fit sentence in the circumstances of the individual case*.[256]

All of this is to say that *DOLA* could be amended to first define with adequate clarity the terms "bite," "attack," and "menace."[257] Second, it could be amended to provide the court with the power *under provincial law* to designate certain dogs as what I term "hyper-reactive dogs" because their biting, attacking, or menacing behaviour (that is, their "reactivity," or perhaps undiagnosed hyperkinesis[258]) has been extreme in some sense and to order their surrender to a provincially established or sanctioned sanctuary for rehabilitation or long-term sanctuary care. Designating specific dogs as "dangerous" is something the City of Toronto recently started doing in a bylaw, but this measure simply labels the dog as such for their lifetime and provides no training or rehabilitative assistance to dog owners, the dogs themselves, or ways to remove the designation.[259] The City of Toronto also created the "Dangerous Dog Review Tribunal" which hears appeals of dangerous dogs designations under section 15.1 of the bylaw, but there is no mechanism in the bylaw by which to remove the "dangerous dog" designation, meaning the dog could be labelled as such indefinitely.[260]

While the section 4(3) destruction power is best abolished entirely, perhaps to make such amendments removing the currently overbroad section 4(3) destruction power more palatable to politicians and the public, and perhaps infuriating Gary Francione and other animal rightists who reject animal welfare incrementalism, a necessary first step might be to amend the legislation to provide specific criteria under which the dog could still be destroyed in *extreme* and *unusual* circumstances which perhaps mirror those found in the dangerous offender designation: (1) the dog has viciously bitten or attacked without provocation; (2) the dog's biting or attacking is a part of a broader pattern of uncontrollable behaviour; (3) there is a high likelihood of the dog biting or attacking viciously again; and (4) the dog is totally

---

256 *Johnson*, *supra* note 245 at paras 20–21 [emphasis added].
257 *R v LeBlanc*, 90 NBR (2d) 63 at 72 (CA).
258 U Andreas Luescher, "Hyperkinesis in Dogs: Six Case Reports" (1993) 34:6 Can Veterinary J 368.
259 City of Toronto, by-law C 349, *Animals* (22 March 2024), s 349-15.1. See also Liam Baker, "Why Some Experts Question if Aggressive Dogs Should Get Lifetime 'Criminal Records,'" *CBC News* (6 May 2024), online: [perma.cc/SF6Z-LMUC].
260 Baker, *ibid*. See also *Houdek*, *supra* note 178.

intractable and, in the opinion of qualified veterinarians, without any hope of rehabilitation. The fourth criteria would obviously separate some dogs from destruction and rehabilitation, and is bound to arouse controversy but perhaps not to the degree that it would presently.[261]

That said, one would need to give serious consideration in such cases as to whether voluntarily euthanizing the dog is indeed the practice of moral consideration toward them,[262] and moreover if it is even worthy of consideration given the arguments presented in this article. Ultimately, however, it is my proposal that dogs normatively should not be destroyed at all as even in the cases of the worst human offenders we either incarcerate them indefinitely or supervise them long term. While in totality the suggestions made here might all seem eccentric to some, the time is ripe for the Ontario legislature to revisit *DOLA* and specifically section 4. The way in which we treat dogs and other animals in society normatively comments on our status as humans and our commitment to justice, especially respecting our treatment of the most vulnerable members of our society.

## VII. LOOKING FORWARD

One critical problem that has not been addressed here in great detail is the legal status of dogs, and all animals in our society for that matter, as chattels — as *property*. When viewed as chattels, the distinction between destruction of dogs by individuals who own them and kill them lawfully and without unnecessary pain and suffering (which implies some pain and suffering may be "necessary") and by a court order seems to be minimal.[263] In that sense, until the legal status of animals as property changes to something other than mere chattels,[264] the arguments I have made here truly pertain to those owners who do not, or would not, wish to euthanize their dogs and seek to resist *DOLA* section 4 proceedings. Thus, until the legal status of dogs (and all animals for that matter) changes drastically, those humans who would *voluntarily* wish to relinquish or euthanize — if voluntary euthanasia in section 4 *DOLA* proceedings is properly viewed as an act of compassion — their dogs under the current section 4 *DOLA* proceedings and regime or for some other reason, would largely be free to continue to do so.[265] Put differently, it is perhaps *unrealistic* to expect amendments to be made to *DOLA* in the absence of laws pertaining to dogs and other animals being changed more generally. Any changes to *DOLA* would need to accompanied by changes to other laws which would, once revised, prohibit the summary execution and arbitrary destruction (or "euthanasia") of dogs by their owners and others such as peace officers, and only permit euthanasia of dogs (and perhaps other animals) in certain limited circumstances in the same

---

261 Liam Casey, "Lawyers Lining Up to Fight OSPCA Court Application to Destroy 21 Dogs," *Canadian Press* (21 February 2016), online: [perma.cc/2RVE-D97M]; *Robert*, *supra* note 58.

262 Birch, *supra* note 32 at 9.

263 *Criminal Code*, *supra* note 120, ss 445–47. See also Vaughan Black, "Beastly Dead" (2019) 5:1 Can J Comparative & Contemporary L 1.

264 Wendy A Adams, "Human Subjects and Animal Objects: Animals as 'Other' in Law" (2009) 3:1 J Animal L & Ethics 29. See also *Ferguson v Birchmount Boarding Kennels Ltd*, 2006 CanLII 2049 at paras 20–21 (ONSC (Div Ct)) ("the court likened the dog to a chattel, stating, 'If Bear [the dog] were a stereo, the most [the plaintiff] could recover in damages is the $350 she paid'…. The court viewed the dog as just another consumer product. In my view, that characterization as a general proposition is incorrect in law" [citations omitted]).

265 Pat Foran, "Ontario Family Shocked at $1,300 Bill to Put Ill Cat Down," *CTV News* (12 May 2022), online: [perma.cc/Q4C7-6LD4].

way that medical assistance in dying is regulated.[266] Vigorous enforcement of these amended laws would also be required.

On that note, until Ontarian and Canadian society is prepared to treat dogs and other animals as rights-holders, if not as persons, anti-cruelty and animal welfare legislation which more directly protects dogs and other animals is desperately needed across the country, not just in Ontario. Additionally, because the regulation of dogs and other animals spans federal, provincial or territorial, and municipal jurisdictions, animal control measures to prevent dog bites and attacks such as ticketing and licencing have varied greatly in practice and effectiveness, and breed-specific legislation has shown no evidence of reducing dog bite incidents.[267] That said, as I discuss below, more stringent regulation of the pathways to dog and other animal "ownership" and caregiving is also needed.[268] Additionally, the practice of training dogs to act as security personnel or as personal protection dogs would also need to be reconsidered, as would all utilitarian or instrumental purposes to which dogs (and other animals) are put.

Another criticism levied against my proposal might be that Ontario (like much of the rest of Canada) already has enough dogs and cats in need of rescue and adoption, and not enough humans to adopt them. Similarly, another claim would be that we do not need more unadopted dogs living their lives out in shelters or ultimately euthanized (the latter of which is an issue in itself). But the volume or quantity of dogs needing shelter, care, and affection in humans' lives is not, precisely, the point. The point is that deontologically speaking, sparing dogs' lives under *DOLA* section 4(3) proceedings is normatively the right thing to do.

In *Halton Hills*, Justice of the Peace Donald Dudar of the Ontario Court of Justice discussed the possibility of dog owners surrendering their dog to the Ontario Society for the Prevention of Cruelty to Animals (OSPCA) and so ordered them to do so as a measure to protect public safety, despite the Crown's objection, rather than issuing a destruction order.[269] In another case, the Ontario Court of Justice reversed a Justice of the Peace's decision to issue a destruction order and instead, because of the circumstances of the case, issued a *strict* control order.[270] Both of these cases bring to light several of the issues that I have addressed in this paper, but they unfortunately do little to normatively move these issues forward on a policy level except to illustrate that alternatives — perhaps inchoate ones — already do exist to *destroying* biting or attacking dogs. The point, however, that I have tried to make is that any threat posed by a biting or attacking dog to a person, another animal, or a community can be removed without destroying the dog.

Destroying — or "killing" — the dog permanently and mortally surely removes the dog from the community in which the dog has been deemed a menace to society. But the dog can equally be physically and not *mortally* removed from the community, and instead can be

---

266 *Criminal Code*, *supra* note 120, s 241; *Carter v Canada (Attorney General)*, 2015 SCC 5.

267 Nancy M Clarke & David Fraser, "Animal Control Measures and Their Relationship to the Reported Incidence of Dog Bites in Urban Canadian Municipalities" (2013) 54:2 Can Veterinary J 145 at 145, 149.

268 Daniel W Dylan & Aurora Fitzgerald "Balancing the Best Interests of Animals and Human Rights in Companion Animal Rescue and Adoption Operations" (2024) 20 Animal & Natural Resource LR 73.

269 *Halton Hills*, *supra* note 19 at paras 86–91.

270 *R v Sikand*, 2016 ONCJ 301 at para 96.

placed in a sanctuary.[271] Although finding so in the criminal animal cruelty context, Justice Brown of the Provincial Court of Alberta held:

> The criminal law represents the most important, the fundamental principles of our society. It is a cornerstone of a system based on governing our actions by the rule of law. Our criminal law reflects the civilized, fair and compassionate society Canadians have worked to establish and strive to maintain. A person who breaks the criminal law does not hurt just one business or other person, but everyone.
>
> Protection of animals is part of our criminal law because a person's treatment of animals, like the treatment of children, the infirm or other vulnerable parties, is viewed as a barometer of that person's treatment of people. As with all other criminal offences, harming animals amounts to hurting everyone.[272]

Such a finding was treated favourably later in some Saskatchewan cases and in the Ontario case of *R. v. Dennison*,[273] and in my view stands for the general proposition that destroying dogs under *DOLA* section 4 proceedings is speciesist and unjust in a "civilized, fair and compassionate society"[274] because it cruelly imposes a death sentence upon a dog that cannot — although conscious, sentient, and autonomous — critically reason through and understand the social, moral, legal, or other consequences of their actions *to humans*. That is the case, further, because we do not impose such punishments on anyone, let alone children, the infirm, or other vulnerable members of society — the members of society, sometimes unkindly referred to as the "marginal cases," to whom we do *not* deny moral status and consideration even though they are generally removed from legal liability and whom we seek to *protect* the most because of their vulnerabilities.[275] In other words, dogs and other animals are protected in Canada — albeit with the worst animal laws in the Western world[276] — with anti-cruelty legislation because *some* moral consideration is given to them; not destroying them under *DOLA* would, in a Kantian-styled ethics, simply *extend* the moral consideration already given to them in existing anti-cruelty legislation.[277] In *R. v. Huggins*, renowned late criminal lawyer Clayton Ruby made a similar argument which was tersely rejected by the Court of Appeal for Ontario.[278] Nearly 13 years have passed since then, and given the legal developments in Canadian and Ontarian animal law, the Court of Appeal for Ontario might find differently in a new case. As the prolific animal advocate and scholar Steven Wise wrote in respect of other species: "If judges recognize the basic rights of … humans, then reject the

---

271 *Robert*, *supra* note 58.

272 *R v Campbell Brown*, 2004 ABPC 17 at paras 30–31 [*Campbell Brown*].

273 *Potoreyko v R*, 2021 SKQB 212 at para 79; *R v Dennison*, [2021] OJ No 4661 (CJ).

274 *Campbell Brown*, *supra* note 272 at para 30.

275 David A Dombrowski, "Is the Argument from Marginal Cases Obtuse?" (2006) 23:2 J Applied Philosophy 223 at 223–24; Schindler, *supra* note 53 at 151.

276 James Gacek, "Confronting Animal Cruelty: Understanding Evidence of Harm Towards Animals" (2019) 42:4 Man LJ 315 at 318. See also Peter Sankoff, "The *Mens Rea* for Animal Cruelty after *R. v. Gerling*: A Dog's Breakfast" (2016) 26 CR (7th) 267.

277 Zwart, *supra* note 150 at 382 ("[w]e should refrain from cruelty towards animals because it is likely to enhance cruelty towards humans and because we are really degrading ourselves by displaying such behaviour"); Birch, *supra* note 32 at 2 ("we may not owe obligations *to* animals, but we can have obligations *in regard to* animals that we owe to ourselves" [emphasis in original]). See also Alex Howe, "Why Kant Animals Have Rights?" (2019) 9:2 J Animal Ethics 137 at 138; Samuel Camenzind, "Kantian Ethics and the Animal Turn. On the Contemporary Defence of Kant's Indirect Duty View" (2021) 11:512 Animals 1 at 1–2.

278 *Huggins*, *supra* note 90 at paras 20–21.

same rights of chimpanzees and bonobos with much greater autonomy, they act perversely and their decisions cannot be defended except as acts of naked prejudice."[279]

The point, however, really is that Ontario can and normatively must do better. It can overcome its impoverished view of the social, moral, and legal status of dogs and other animals. Even in earlier times when animals were on trial and facing execution, they were given some natural justice and procedural fairness. I am also not suggesting that animal trials ought to be brought back. Instead, I have attempted to show that — perhaps in an anthropomorphic sense — dogs and other animals were treated somewhat better earlier in time even though any such benefits derived from procedural fairness were sometimes negated by the animal's execution. As noted earlier, reprieves were sometimes, in certain cases, given to animals that faced execution in these trials. Given, however, the relatively modest number of dog bite or attack cases that occur in Ontario, there are economically viable and compassionate alternatives to destroying dogs. These alternatives are all anchored to the idea of rehabilitating "hyper-reactive dogs" in designated sanctuaries.

### A. DOG SANCTUARIES

In an amended *DOLA*, the creation of sanctuaries to rehabilitate dogs deemed or designated as "hyper-reactive," rather than "problematic," "dangerous," "vicious," or "aggressive" dogs, under the revised legislation could be envisioned. Recognizing that the phrase "reactive dog" or "hyper-reactive dog" also imports a certain measure of value-based judgment against the dog (the way that the other above labels do), the term is temporarily acceptable for the purposes of discussing potential amendments to *DOLA* and addressing the issues I have discussed in this article because the goal is to prevent their deaths and hopefully to rehabilitate dogs who have seriously bitten or attacked, or have a problem doing so. It is also a term that approximates those used by the veterinary community,[280] although reactive dogs are not necessarily aggressive dogs, the Cornell Richard P. Riney Canine Health Center, one of the world leaders in veterinary medicine, advises that reactivity can turn into aggression.[281] The Canadian Veterinary Medical Association also advises that "[a]ggressive behaviour in a dog is not by itself sufficient to indicate that the animal is dangerous."[282] The term used to describe dogs subject to *DOLA* proceedings is not, however, critical at this juncture. Rather, what is critical is that, irrespective of whatever term is settled, that it be one applied fairly.

The first step by the province would be to establish standards and regulations that govern professional dog training and care. The province could work with the Ontario Veterinary Medical Association, the Ontario Veterinary College, OSPCA, and local humane societies to develop the province-wide curriculum that would be offered to humans who seek to become professionally licensed dog trainers in Ontario. Following that, a similar curriculum would be offered to and required of all Ontarians who wish to bring a dog or companion animal into their lives (tuition subsidies or waivers might be available for those who might not be able to

---

279 Wise, "Dismantling," *supra* note 29.

280 See e.g. Isabel Luño et al, "Hyperactivity in a Weimaraner Dog" (2015) 1:3 Dog Behavior 32.

281 Cornell Richard P Riney Canine Health Center, "Managing Reactive Behavior," online (blog): [perma.cc/5GUN-SD7G].

282 Canadian Veterinary Medical Association, Position Statement, "Legislation Concerning Dangerous Dogs" (25 February 2022), online: [perma.cc/DX5Z-N7QK].

afford enrollment). Every person in Ontario would, therefore, be required to complete a course of education before either legally purchasing or adopting a dog or other companion animal and would be required to present a certificate of completion upon the *mandatory* registering and licencing the dog or other companion animal in the municipality in which they live. Such a measure is hardly different than the process by which one obtains a driver's licence in Ontario and is one which ultimately promotes *responsible* companion animal caregiving.[283] Failing to register and licence the dog or companion animal would be an offence punishable by fine or imprisonment under the *POA*, not just under bylaw(s) of the municipality in which the animal caregiver lives. Courts would have the discretion to consider the personal and economic circumstances of the owner in cases where they have failed to comply with this requirement and to adjust the fine accordingly or even waive it entirely if circumstances warrant doing so.

The regulations would also make it possible for these professionals who teach this curriculum to be licensed to offer such education in the local communities where they live, either as private entity or as a charitable non-profit organization under provincial law.[284] Implementing standards, regulations, and enforcement mechanisms which strongly protect animals in the province and providing education to would-be dog caregivers is long overdue in Ontario. If, for example, persons working in the service industry can be required to obtain a Smart-Serve designation before serving alcohol in public establishments, Ontario can implement this regime to ensure dogs and other companion animals are better cared for and to help reduce incidents of dog bites and attacks by better equipping those who provide care to them with training and skills to do so. Averting dog bites and attacks is, as one writer opined, a *preventable* public health concern.[285]

Second, instead of killing or destroying these dogs under section 4(3) of the current *DOLA*, courts would have, under an amended iteration of *DOLA*, the power to order dog owners to surrender their dogs to a provincially established, funded, and regulated dog *sanctuary* in the province. This sanctuary need not be a facility that is devoted strictly to "hyper-reactive dogs," but may in separate areas, also provide asylum to other dogs who have either been abused, abandoned, or are otherwise in need of professional care. The revised legislation and the sanctuary's main focus, should, however, be to provide shelter, care, and treatment to dogs deemed or designated "hyper-reactive" under the amended *DOLA*. Of course, unless the legal status of dogs (and of other animals) changes more generally in the province, the owner's surrender would be tantamount to a relinquishment of property. But, the dog's life would be spared.

Given Ontario's immense size, four such provincial sanctuaries could be established in the province: one in Southwestern Ontario, one Eastern Ontario, one in Central Ontario, and one in Northwest Ontario. Additionally, OSPCA and local humane societies could also be designated as dog sanctuaries for this purpose provided certain conditions are met, and private entities such as professional dog trainers (licencing required) or veterinarians could also,

---

283 Lydia Bleasdale-Hill & Jill Dickinson "'Dangerous Dogs': Different Dog, Same Lamppost?" (2016) 80:1 J Crim L 64 at 68. See also Shroff, *supra* note 12 at 180–82.

284 *Not-for-Profit Corporations Act, 2010*, SO 2010, c 15.

285 Danielle A Julien et al, "*Ouch*! A Cross-Sectional Study Investigating Self-Reported Human Exposure to Dog Bites in Rural and Urban Households in Southern Ontario, Canada" (2020) 67:5 Zoonoses & Pub Health 554. See also Shroff, *supra* note 12 at 144.

under certain circumstances, seek to apply to become designated satellite dog sanctuaries in certain localities or for a particular region of the province for the same purpose as the four main ones. Whether certain veterinarians would chose to do so is perhaps unlikely given the challenges they already face but it remains possible that some would wish to engage in this kind of veterinary treatment.[286] These also may be very tall orders given that OSPCA and Ontario humane societies are chronically underfunded.[287] That said, there are already many dog rescue operations in Ontario, and those who were interested could seek designation as one of these sanctuaries.[288]

Upon successful completion of a program of rehabilitation,[289] in some cases the sanctuary would, upon proof provided to the court, be able to make an application for the hyper-reactive designation to be removed and for either the dog's previous owner(s) or other human(s) to adopt the dog and assume responsibility for their future care. Should the previous dog's owner wish to adopt the dog, they would need to provide evidence from a qualified and licensed professional dog trainer that they have completed the course of education described above and have obtained a certificate in responsible dog caregiving, also having completed a course in providing care to "hyper-reactive dogs." The new owner would need to demonstrate similarly.

If the dog is only partially able to successfully complete a program of rehabilitation, the dog would remain in the sanctuary until such time that the dog fully completes the rehabilitation program or their life comes to a natural end. Such an option of course, presents the prospect of the dog spending the remainder of their life in a sanctuary, and thus of course the conditions under which the dog is cared for in such situations would need to be carefully crafted so as to ensure that the dog does not spend an indefinite amount of time in kennels and living out their life in squalid conditions.

Despite its unpalatability, that it may simply not be possible to rehabilitate some dogs is a reality that might begrudgingly need to be accepted. Again, to make this proposal more palatable to politicians and the public, if a dog proves, in the opinion of three veterinarians and upon sufficient evidence to support and persuade a court as to the validity and accuracy of these opinions, to be totally intractable and they cannot in any way be rehabilitated to no longer pose or present a threat to the safety of the general public or to other animals, the sanctuary could, as a final step, make an application to the court for the dog's "destruction." In these situations, a provincial ombudsperson or designate, either a lawyer or paralegal experienced in animal law, would independently review the evidence adduced in the application and act as the legal agent for the dog at the destruction hearing and in respect of

---

286 Talia Ricci, "Too Many Pets, Not Enough Vets: Demand for Service Keeps Growing," *CBC News* (20 December 2023), online: [perma.cc/8NXG-3WNC].

287 Canadian Press, "Canada's Humane Societies Complain of Being Short-Changed by Governments," *City News* (13 October 2016), online: [perma.cc/3YS6-QTDM]; Katherine Lacefield, "The Changing Times of Animal Shelter Philanthropy" (9 September 2024), online (blog): [perma.cc/QT9F-693M]; Dominique Clément, "Big data reveals inequities in federal funding for non-profits across Canada" (30 May 2021), online (blog): [perma.cc/5B2K-QL58].

288 Canada's Guide To Dogs, "Ontario Rescue Organizations & Shelters," online: [perma.cc/7V4K-9TEF].

289 Pamela J Reid, "Animal Behavior Forensics: Evaluation of Dangerous Dogs and Cruelty Victims" in Lila Miller & Stephen Zawistowski, eds, *Shelter Medicine for Veterinarians and Staff*, 2nd ed (Ames, Iowa: John Wiley & Sons, 2012) 559.

any appeals they may wish to take on behalf of the dog. Obviously, there are many details that would need to be further developed on these points.

Funding for the sanctuaries would be derived from the province, increased fines upon findings of dog owners' liability under *DOLA*, voluntary payment by owners for the long-term care and rehabilitation of the dog (instead of destruction), and the Ontario Victims' Justice Fund (the VJF). First, as described above, the Province of Ontario can take the proactive step of creating and funding, from the Consolidated Revenue Fund, an animal companion curriculum and regime which finally takes the necessary steps to ensure that animals are better cared for and protected in the province. This would also entail overhauling and drastically improving the *PAWS Act*. Implementing such changes would be to the benefit of all Ontarians and companion animals that are under their care as well as other animals not just those in the companion context. As part of this measure, a portion of the revenues generated from licencing and educational activities could be directed toward the sanctuaries envisioned above. Given that over 16 million dogs and cats are given care by humans in Canada, the revenues in Ontario could be substantial given that nearly 60 percent of Ontarians own a dog or cat.[290]

Additionally, the benefit of increased fines under a revised version of *DOLA* might be twofold. First, the increased fines might serve as a strong incentive for dog owners to provide *responsible* care to dogs in the province. Second, increased fines would help to fund the sanctuaries. Furthermore, if the practice of regulating who acquires and licences a dog in a particular municipality was improved, as described above, a certain and modest portion of the licence fee in each Ontario municipality could also be devoted to funding the provincial sanctuaries and those who staff them. Dog owners could also be given the opportunity to voluntarily pay for their dog's surrender to one of these sanctuaries if it ultimately meant sparing their dog from destruction in those limited, extreme, and unusual cases where the revised statutory criteria for destruction are met, but whereas in *Johnson*, Justice Iacobucci held the court has the "discretion to impose a just and fit sentence in the circumstances of the individual case."[291]

Finally, the dogs in these cases are victims of another kind, although they may indeed also be paradigmatic victims of crime under sections 445 to 447 of the *Criminal Code* which deal with animal cruelty offences and under Ontario's *PAWS Act*. Section 737 of the *Criminal Code* previously set out the federal criminal victim surcharge regime but in 2018, it was struck down by the Supreme Court in *R. v. Boudreault* on the basis that such charges which found the payer back in prison because of payment delinquency constituted a form of cruel and unusual punishment and thus contravened section 12 of the *Charter*.[292] Given that *DOLA* proceedings and its offences under *POA* are prosecuted in provincial court, *Boudreault* does not apply. In other words, Ontario continues to collect victim surcharges. However, that is not to say that the imposition of such fines does not also present some of the challenges and

---

[290] Canadian Animal Health Institute, "Biennial Pet Population Survey Shines a Light on How Pet Population Statistics Changed Over the Course of the COVID-19 Pandemic, and Pet Owner Habits" (22 September 2022), online (blog): [perma.cc/U5UL-6QVL]; Kathryn Copeland, "15 Incredible Canadian Dog Statistics & Facts: 2025 Update" (26 March 2025), online: [perma.cc/3GPT-8YN2].

[291] *Johnson*, *supra* note 245 at para 21.

[292] *R v Boudreault*, 2018 SCC 58. See also *Her Majesty The Queen v A Group of 721 Respondents*, 2021 ONSC 7380; *R v A Group of 54 Respondents*, 2022 ONSC 1595.

issues that were decided in *Boudreault*, but the difference here is that defaulting upon or failing to pay the victim surcharge under *POA* will not result in indefinite carceral detention and therefore does not constitute a form of cruel and unusual punishment.[293] Instead, some form of prohibitive injunction could be imposed on the delinquent payer.

The Ontario *Victims' Bill of Rights* creates what is known as the VJF.[294] The VJF is funded by victim surcharges imposed on fines levied under *POA*. Section 5(4) of *VBR* provides that monies paid into the VJF "shall be used to assist victims, whether by supporting programs that provide assistance to victims, by making grants to community agencies assisting victims or otherwise."[295] According to the Ministry of the Attorney General (MAG), approximately $44 to $50 million is collected annually in the VJF, with victim fine surcharge revenues from provincial offences fines representing about 90 percent of annual revenue into the VJF.[296] MAG also adds that since the 2012 to 2013 fiscal year, the VJF has provided more than $350 million to government funded and community-led programs and in the 2018 to 2019 fiscal year, approximately $50 million of the VJF supported victim services programming.[297] Finally, MAG states that it has invested VJF money in a broad range of programs and services to support the needs of victims of crime and uses these monies for initiatives that respond effectively to *diverse* communities and to the unique needs of victims of crime. [298] In my view, a diverse community is one which recognizes the inherent value of dogs, gives them greater moral consideration by preventing their destruction or executions, and altogether includes them as moral characters in the political and legal imaginaries. Appointing a special member well-versed in animal law and care issues to the provincial Office for Victims of Crime, an advisory body, created by *VBR* that provides advice to the Attorney General on victims' issues could assist in the administration of VJF funds and policies in relation to the sanctuaries envisioned here.[299]

Dog owners found liable under *DOLA* would be required to pay a victim fine surcharge (which the court could be given the discretion to reduce or waive on the basis of undue hardship[300]) and thus contribute to the VJF. The victim fine surcharge could also be a set fee on upon the registration and licencing of each dog in the province, meaning of course that there is a public (that is, among dog owners) subsidization component to the measure but one which would ultimately benefit all dogs in the province. As noted above, although dogs are not posthumanistic persons at law yet may still be victims of crime, a portion of the VJF could also be directed to the creation of the provincial licencing regime and dog sanctuaries. Such a notion is, after all, in keeping with the spirit of *VBR*.

---

293 *Boudreault*, *ibid*.
294 *Victim' Bill of Rights, 1995*, SO 1995, c 6, s 5 [*VBR*].
295 *Ibid*.
296 Ministry of the Attorney General, "About Ontario Victim Services," online: [perma.cc/MH2A-FCH5]. Victim fine surcharges are levied under *Criminal Code*, *supra* note 120, ss 737(1) and *POA*, *supra* note 105, s 60.1 (1).
297 *Ibid*.
298 *Ibid*.
299 MAG, "Victim Services," *supra* note 28; *VBR*, *supra* note 294, s 5.1.
300 *Criminal Code*, *supra* note 120, ss 737(2.1)–(2.2).

The preamble to *VBR* reads as follows:

> The people of Ontario believe that victims of crime, who have suffered harm and whose rights and security have been violated by crime, should be treated with compassion and fairness [and] further believe that the justice system should operate in a manner that does not increase the suffering of victims of crime and that does not discourage victims of crime from participating in the justice process.[301]

Dogs in many of these cases are as much victims as the humans or other animals whom they may "have bitten, attacked, or menaced." They too deserve to be treated with fairness and compassion, and to participate in the justice process, despite the fact that they are not human. To hold otherwise only continues to perpetuate speciesism in our society. Although statistics do not exist to verify the claim, assuming that relatively few dogs are ordered destroyed in Ontario each year under the current *DOLA* as a benchmark, supplanting destruction with such a regime is not such a preposterous, unrealistic, or unreasonable proposition to make after all.[302] In totality, the Province of Ontario needs to be create better legislation respecting animals and to fund those bodies, organizations, and entities which advocate, rescue, and care for them.

## VIII. CONCLUSION

Ghandi said "[t]he greatness of a nation and its moral progress can be judged by the way its animals are treated." [303] On that note, it is very encouraging to see that views respecting all animals in Canada are changing and that the country is mindful of how animals are treated in Canadian society writ large.[304] The ideas expressed in this article present enormous but not insurmountable logistical, moral, ethical, and legal challenges. While many details would need to be worked out, the value of the advocacy in this article is that while it is focused on *DOLA* section 4(3) destruction power, it more significantly recognizes and seeks to advance legal arguments for the increased moral and legal standing of dogs and other animals in Ontario society more *generally*. If dogs are, as I have attempted to illustrate here, *de facto* treated under *DOLA as if* they are human beings capable of committing "crimes" or "offences" against humans and other animals for which they can be "destroyed," then they must so too be normatively treated in *all* respects, meaning they should have improved standing under the law, at least some degree of natural justice and procedural fairness at law generally, and the avoidance of execution or "destruction." The right of the public to safety should be balanced with the dog's *interests in* — if not rights to — bodily integrity, bodily liberty, and freedom from death.

Not killing dogs may still, nevertheless, be a hard pill to swallow when they have seriously bitten or attacked a loved one or another animal, but deontologically considered, not executing them in these situations normatively speaks to the human capacity for benevolence, equity, equality, fairness, compassion, and justice. Continuing to kill dogs under

---

301 *VBR*, *supra* note 294.

302 Shroff, *supra* note 12 at 140.

303 People for the Ethical Treatment of Animals, "PETA Honors Gandhi's Lifelong Commitment to Animal Liberation," online: [perma.cc/478D-FRJB].

304 Mario Canseco, "Fewer and Fewer Canadians in Favour of Eating Animals, Survey Reveals," *The Orca* (25 July 2024), online: [perma.cc/BYJ2-CGRW]; Mario Canseco, "Number of Canadians Opposed to Animals in Rodeos Rises: Poll," *Business Intelligence Voice* (31 August 2023), online: [perma.cc/CY82-HMUC].

*DOLA* violates our Kantian-styled "indirect duty" (if not *direct* duty) to them and decreases our own moral and ethical standing as sentient, conscious, and autonomous moral beings ourselves.[305] Put differently, we are behooved not to kill dogs *because* of our *human* capacity to be kind, compassionate, and just toward *all* species, not just ourselves.

Thus, while the proposal offered here may seem ludicrous to some, it is serious business to others.[306] Killing dogs under *DOLA* — canine capital punishment — is a form of cruel and unusual punishment which for moral reasons Canada abolished nearly 50 years ago and is now strongly outspoken against by the federal government. Continuing to execute dogs when alternatives exist to address instances of reactive biting or attacking, such as the one proposed here, is also speciesist because doing so denies, on the basis of immutable characteristics and perceived human exceptionalism, moral consideration to dogs who are very much entitled to the same type of moral consideration, if not legal rights and personhood, that some of Ontario society's most vulnerable human members are and indeed *all* human Ontarians are entitled. While I have not made arguments *directly* to support the legal rights of dogs and other animals in Ontario, I have provided an illustrative posthumanist framework about how the speciesist and discriminatory laws found in *DOLA* can be normatively amended to bring Ontario society closer to achieving this goal.

The fact that dogs do not behave in anthropocentric ways does not mean they are not "subjects-of-a-life" or legal subjects or that they do not have consciousness, sentience, personal welfare considerations, preferences, desires, physiological unity and identity, and inherent value as autonomous moral beings independent of their utility or value to others and are undeserving of moral and ethical treatment under the law we impose upon ourselves. Quite the contrary. In the absence of changes to *DOLA* or other laws of Ontario respecting animals, destroying dogs under the current *DOLA* is therefore fundamentally speciesist and normatively unfair to them, does little to punish their owner(s) or caregiver(s) and instead likely hurts them, does little to deter future attacks by other dogs, and perpetuates the denial of access to justice to all underrepresented members of society, not just dogs and other animals.[307] For this reason alone, we should be committed to further exploring if not implementing the ideas expressed in this article and others like them. As the late great animal law scholar Steven Wise wrote: "If we arbitrarily deny basic legal rights to any deserving creature, we place our own most cherished rights in jeopardy."[308]

---

[305] Birch, *supra* note 32 at 2; see also Camenzind, *supra* note 277 at 9; Christine M Korsgaard, "Kantian Ethics, Animals, and the Law" (2013) 33:4 Oxford J Leg Stud 629; Howe, *supra* note 277 at 138–39; O'Hagan, *supra* note 48 at 532; Nico Dario Müller, *Kantianism for Animals: A Radical Kantian Animal Ethic* (Basel, Switzerland: Palgrave MacMillan, 2022).

[306] Wise, "Dismantling," *supra* note 29 at 15.

[307] Girgen, *supra* note 111 at 131–32.

[308] Wise, "Dismantling," *supra* note 29 at 15.