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**Currency Date:** May 28, 2013

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On August 29, 2005, a ban on pit bull ownership became effective in the province of Ontario. The law that codifies the ban, entitled the *Dog Owners' Liability Act* (Ontario) (hereafter referred to as "**DOLA**"), accomplishes the following three goals: (a) it bans pit bull ownership as of August 29, 2005; (b) it places restrictions on pit bulls that were owned prior to August 29, 2005; and (c) it toughens penalties for the owners of dogs that are deemed a danger to the public. For more information regarding how this law was enacted and to read the text of the statute, click on the link below:

[http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/dola-pubsfty/dola-pubsfty.asp#TOC\\_01](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/dola-pubsfty/dola-pubsfty.asp#TOC_01)

The DOLA also provides that if a municipality has enacted by-laws regarding the ownership of pit bulls, then the law that is most restrictive, whether the DOLA or the by-law, will govern the ownership of pit bulls in that municipality (DOLA, s. 11).

Persons who owned their pit bulls prior to August 29, 2005 or persons who owned pit bulls that were born in Ontario within 90 days of August 29, 2005 (i.e. by November 28, 2005) are permitted to keep the dogs provided that they comply with certain restrictions under DOLA and the *Pit Bull Controls Regulations* (hereafter referred to as the "**Regulations**"). These restrictions include spaying or neutering every pit bull owned (Regulations, s. 2), and having the pit bull muzzled and leashed when in public (Regulations, s. 1). As a result of these restrictions, there is a complete ban on pit bull breeding in Ontario, even if only one of the dogs involved in the breeding is a pit bull.

### **Definition of a Pit Bull**

Section 1(1) of the DOLA defines a pit bull as:

- a) A pit bull terrier;
- b) A Staffordshire bull terrier;
- c) An American Staffordshire terrier;
- d) An American pit bull terrier;
- e) A dog that has an appearance and physical characteristics substantially similar to any of those dogs.

Pursuant to clause (e) your dog may be detained or confiscated and impounded if it has the appearance of a pit bull.

### **Seizure of Pit Bulls**

No peace officer may enter your home to search for or seize a pit bull unless that person has a warrant (DOLA, s. 13). Where such person has a warrant, he or she may be accompanied by veterinarians or animal control personnel. Additional persons do not need their own warrants, nor do they need to be named in the warrant (DOLA, s. 13(4)).

A peace officer is permitted to enter your home without a warrant where he or she has reasonable grounds to suspect that entry into the premises is necessary to prevent immediate bodily harm or death to a person or domestic animal (DOLA, s. 14).

Your pit bull may also be seized in a public place if, among other reasons, a peace officer has reasonable grounds to believe that you have not complied with the DOLA, the pit bull you own is a banned pit bull or there is reason to believe the pit bull may cause harm to a person or domestic animal (DOLA, s. 15).

### **Court Proceedings**

Section 4 of the DOLA states that proceedings may be commenced against the owner of a dog if it is alleged that:

- a) the dog has bitten or attacked a person or domestic animal;
- b) the dog has behaved in a manner that poses a menace to the safety of persons or domestic animals; or,

- c) the owner did not exercise reasonable precautions to prevent the dog from,
  - (i) biting or attacking a person or domestic animal, or
  - (ii) behaving in a manner that poses a menace to the safety of persons or domestic animals.
- d) the person contravened a provision of this Act or the Regulations or a court order made under this Act.

If there is a court proceeding regarding your dog, and the court finds that your dog is a pit bull and: (a) the dog has bitten or attacked a person or a domestic animal, or has behaved in a way that poses a menace to the safety of persons or domestic animals; or (b) the owner of the pit bull contravened any portion of the DOLA or any court order regarding the pit bull, then ***the court must order that the dog be euthanized*** (DOLA, ss. 4(8) and 4(9)).<sup>1</sup>

The burden of proving that the dog is not a pit bull lies on the owner of the dog (DOLA, s. 4(10)). This is termed a reverse onus, because in general, in criminal proceedings, the onus is on the prosecutor to prove a specific fact, or prove that the defendant committed an alleged crime. Further, in DOLA proceedings, findings of fact are made on a balance of probabilities (DOLA, s. 4(1.3)). This too is unusual as the general criminal law standard is proof beyond a reasonable doubt.<sup>2</sup>

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<sup>1</sup> In [R v Huggins](#), 2010 ONCA 746, at para 14, the Court held that s. 4(8) of DOLA is clear and unambiguous, stating that “once a dog is found to be a pit bull, and to have bitten or attacked another domestic animal or a person, or to have behaved in a manner that poses a menace to the safety of persons or domestic animals, the court is mandated to order that the pit bull be destroyed”.

<sup>2</sup> However, note that section 19(3) provides, as an afterthought, the requirement that the prosecution prove the *entirety of its case* beyond a reasonable doubt. This does not change the requirement that a pit bull owner must prove that his or her dog is not a pit bull. Once the Crown relies on s. 19 to introduce a veterinarian’s certificate that a dog is a pit bull, it is true that the accused risks being convicted unless he or she offers something, either through cross-examination of the veterinarian or by adducing other evidence, to suggest that the dog is not a pit bull. The certificate creates a situation where the accused faces a tactical burden to point to some evidence capable of raising a reasonable doubt as to the dog’s breed. But to the extent that s. 19 thereby creates what may be described as an evidentiary burden, it does not appear that it violates the presumption of innocence. It is simply the tactical burden that any accused faces once the Crown makes out a *prima facie* case on an essential element of the offence. Unanswered – for the certificate is only “proof” that the dog is a pit bull when it is unanswered – the certificate is proof that the dog is a pit bull. The provision that the certificate is “proof, in the absence of evidence to the contrary” in this context amounts to a statement of the obvious rather than a legal prescription altering the burden of proof. [Cochrane v. Ontario \(Attorney General\)](#), 2008 ONCA 718.

Section 19 also states that a statement made and signed by a veterinarian who is a member of the College of Veterinarians of Ontario stating that the dog in question is a pit bull will be admitted into evidence as proof that the dog is in fact a pit bull if there is no evidence to the contrary. Therefore, persons subject to DOLA proceedings do not have the protections most other defendants have who are accused of committing a crime.

Finally, the DOLA states that where proceedings are commenced pursuant to the DOLA, the proceedings shall be governed by Section IX (“Orders on Applications under Statutes”) of the *Provincial Offences Act*, which is further described below (DOLA, s. 4(1.2)).

### **Provincial Offences Act (“POA”)**

Part IX of the POA states that where an act, in this case the DOLA, authorizes that proceedings under that act are, in all circumstances, governed by the POA, then Part III (“Commencement of Proceeding by Information”) of the POA will apply to those proceedings (including all other sections of the POA that would apply to Part III), with necessary modifications.

Therefore, where a proceeding under the DOLA takes place, all of the provisions of the POA applicable to Part III pertain to such proceeding. The provisions of the POA that would apply to DOLA proceedings set out factors such as how a charge must be laid, how parties are to be served, rules regarding sentencing, etc. Part VII (“Appeals and Review”) of the POA also grants a defendant the right to appeal a conviction, a sentence and an order for costs.

### **Impounded Pit Bulls**

If a pit bull has been impounded, the *Animals for Research Act* (“**ARA**”) applies regarding how the pit bull will be maintained, returned, transferred or destroyed.

Section 20(7.2) of the ARA states that the operator of a pound who believes it has possession of a pit bull and who has found the person who owned the dog before it was delivered to the pound shall provide the owner with an opportunity to satisfy the pound that,

- a) the dog is not a pit bull; or,

- b) the dog is a restricted pit bull and the owner has complied with all of the requirements of the Dog Owners' Liability Act and the regulations under it relating to pit bulls.

If the owner satisfies the operator of the pound that either of these are the case, the operator shall return the dog to the owner, subject to the payment of such damages, fines and expenses as are required by law, unless the operator has reason to believe that the return of the dog would pose a menace to the safety of persons or domestic animals (ARA, s. 20(7.3)).

Section 20(7.4) provides that where the operator of a pound believes it has possession of a pit bull and that it should not return the pit bull under s. 20(7.3), the operator of the pound shall do one of the following with the dog:

1. Destroy the dog;
2. Transfer the dog to a person who is resident outside Ontario in a jurisdiction in which ownership and possession of the pit bull is lawful, where the person is acquiring the dog, in good faith, in order that it be used as a pet or in hunting or for working purposes;
3. Sell the dog to the operator of a registered research facility in Ontario who has requested the operator of the pound to sell a dog;
4. Transfer the dog in accordance with the permission to transfer restricted pit bulls given by section 9 of the DOLA.

### **What to do if Your Dog is Seized**

If your dog has been seized and impounded and you are concerned about your dog's safety you should do one of three things:

1. Prove that your dog is not a pit bull;
2. Acknowledge that your dog is a pit bull but show that you have complied with the requirements of the DOLA and the regulations under it relating to pit bulls;

3. Request that the dog be transferred out of the Province in accordance with section 9 of the DOLA.

Failure to take these steps could result in your dog being killed or sent to a research facility.

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