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**The *Guide and Assistance Dog Act*:  
A Proposal for New Legislation for British Columbia  
Briefing Note**

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## **The *Guide and Assistance Dog Act*: A Proposal for New Legislation for British Columbia**

### **Introduction**

People with disabilities use working dogs to help them live with dignity, independence and as full participants in the community. They assist people with disabilities to attend school, work, volunteer, socialize, go to appointments, and participate in the full range of activities available to non-disabled people. They also provide emotional support and have a positive impact on the overall health and well-being of their users.

In 2009, eight organizations representing guide and assistance dog users and trainers formed a working group to develop new legislation governing the rules of access and accommodation for British Columbians who use guide dogs, assistance dogs and other types of working dogs and animals. The organizations were:

- Access for Sight Impaired Consumers
- Alliance for Equality of Blind Canadians
- Autism Support Dogs
- BC Coalition of People with Disabilities
- BC Guide Dog Services
- CNIB (Formerly Canadian National Institute for the Blind)
- Pacific Assistance Dogs (PADS)<sup>1</sup>
- Paws International

Our working group has produced a draft Act entitled the BC *Guide and Assistance Dog Act* (GADA) to clearly identify what our community needs.

This briefing note explains why British Columbians who use working dogs need new legislation and reviews the major points of our proposed legislation. Our organizations look forward to working in partnership with government to help ensure that the access rights of people with disabilities who use working dogs are improved and upheld.

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<sup>1</sup> Until March 2010

## **Why BC Needs a New Act**

All Canada's provinces and territories have human rights legislation that protect against discriminatory treatment based on disability. A number of provinces (BC, Alberta, Ontario, Quebec, Nova Scotia, and Newfoundland and Labrador) have additional legislation that makes specific provisions for people accompanied by a guide or assistance animal. BC's *Guide Animal Act* sets out the protection for persons requiring such assistance and states in Section 2 (2) that:

“...a person with a disability accompanied by a guide animal may, in the same manner as would a person not accompanied by an animal, enter and use an accommodation, conveyance, eating place, lodging place or any other place to which the public is invited or has access...”

In Section 3, the Act asserts:

“A person must not interfere with the exercise of a right or privilege under Section 2 or charge a fee for a guide animal accompanying a person with a disability.”

Our organizations and clients have experienced the impact of the inadequacy of this statute for years. Guide dog and assistance dog users badly need new legislation to help ensure they are never turned away from a restaurant, mall, refused entry by taxi drivers, or challenged by Strata Councils. Certified dog trainers, instructors and licensed puppy raisers also need their right of access clearly enshrined in legislation.

It is widely accepted that people with disabilities and seniors can benefit greatly from interaction with animals. Unfortunately, the *Guide Animal Act* insufficiently protects the rights of access and accommodation for the various types of working dogs and animals. For example, handlers of certified medical therapy dogs need access rights when they are working with clients and also tenancy rights when, as is often the case, they accept the responsibility of caring for these dogs themselves.

Some people with disabilities depend on animals in their homes for their emotional well-being. When a medical practitioner states there is a compelling medical need for a person to have an animal, this medical need should be protected by law. Too often we hear heartbreaking stories of people with disabilities or seniors not being able to keep a beloved animal that has enormous therapeutic value to them because of tenancy restrictions.

A serious omission in the *Guide Animal Act* is that it includes no reference to or penalties for the interference, injury, death or disabling of working animals. In Washington State, legislation known as Layla's Law was enacted in 2001. The Law was named after a guide dog who was repeatedly accosted by an aggressive off-leash dog. The attacks resulted in Layla avoiding all dogs which negatively affected her ability to work as a guide dog and limited her owner's ability to live independently.

Layla's Law makes it illegal "for any person or their dog to interfere with the use of a guide dog or any other assistance animal, or for any person or dog to interfere, disable or cause the death of a guide dog or any assistance animal." It also makes it illegal for anyone "to take unauthorized control of a guide dog or any other assistance animal." Since 2001, 16 American states have enacted similar laws.

In October 2009, Manitoba became the first province in Canada to pass legislation dealing with the interference of working dogs. A new Act that speaks to this issue would see the government of BC also taking a leadership role in this field.

The *Guide Animal Act*, as we discuss in more detail in this brief, limits the remedy available in cases where it is breached to prosecution for an offence against the Act. As such, civil action is not an option. We believe this must be changed so that our community has an additional avenue through which wrongdoing can be addressed. That there has never been a prosecution under the *Guide Animal Act* demonstrates its ineffectiveness as a tool for the protection of people who use working dogs.

Even if the *Guide Animal Act* was being used, the fines attached to it are not a deterrent. The maximum penalty for violation of the Act is \$200. Sadly, BC's legislation has not kept up with the times. A significant difference exists (please see Appendix B) between the penalties assigned to offences under BC's legislation and that of other provinces regarding the rights of people accompanied by guide and assistance dogs.

### **Need for Public Education**

Despite the fact that guide dogs have been used by people who are blind in North America since 1929, the level of ignorance and misinformation about access rights continues to astound our community. The new legislation we are calling for will need to be introduced to the public through a concerted public education campaign so that service providers, landlords, strata councils etc. understand the rules and the penalties for violating them.

## **Guide and Assistance Dog Act (GADA)**

The Act is comprised of 7 parts.

### **Part One**

Part One provides for the access rights of guide and assistance dogs. These animals are trained and provided by recognized training facilities accredited by the *International Guide Dog Federation* or *Assistance Dogs International*.

**Guide Dogs:** for people who are blind or visually impaired.

**Assistance Dogs:** do tasks that help mitigate a person's disability. They include but are not limited to:

**Autism Support Dogs:** assist people with autism

**Hearing Dogs:** alert people who are deaf or hard of hearing to specific sounds

**Seizure Response Dogs:** provide emergency response to people with epilepsy

**Service Dogs:** assist people who use wheelchairs.

**Certified trainers/instructors:** individuals licensed/accredited by recognized dog training facilities.

**Puppy raisers:** individuals licensed by recognized training facilities to participate in training and socializing guide and assistance dogs.

### **Access Rights**

The *BC Guide Animal Act* protects the access rights of people with disabilities using assistance animals entering or using any place or conveyance "in the same manner as would a person not accompanied by an animal." The GADA extends this right to certified trainers/instructors and puppy raisers. When a dog/puppy is being trained and socialized to be a working dog it has to learn how to behave appropriately and safely in public. Trainers and puppy raisers face an enormous challenge in doing their work if their access rights are not protected.

Hotels and other service providers sometimes try to charge working dog users an extra fee. To address this, the GADA includes a prohibition against this practice.

### **Tenancy Rights**

Guide or assistance dog users may not be refused housing or otherwise be discriminated against because of their disability or their dog. This applies to all types of housing. GADA differs from the current Act by specifically including strata and housing co-op units which, unlike private rentals and public housing, are not governed by BC's *Residential Tenancy Act*.

The lack of clear protection in law for condo and co-op dwellers with certified working dogs means they are sometimes required to justify their need of a dog to strata councils and co-op boards. This can result in a stressful and undignified experience for working dog users.

When guide or assistance dogs are retired from service, their owners often experience sadness at losing a valued partner and difficulty finding a home for a mature dog. To address, this we have included in the Tenancy Rights section a provision that grants retired dogs the same tenancy rights as working guide and assistance dogs providing they remain in the care and custody of the person for whom they have been trained.

### **Certificate**

This section is unchanged from current legislation. It lays out the rules on guide and assistance dog users' rights and responsibilities regarding certification and ID. We believe the GADA will provide the tools for Ministry staff to better manage and administer the issuance of provincial certificates to applicants from recognized facilities.

### **Part Two**

Part two refers to the limited access rights for a certified medical therapy dog.

**Medical Therapy Dog:** trained by an accredited training facility. These dogs work with handlers from a range of occupations including psychologists, psychiatrists and counsellors. Handlers may be employees of long-term care facilities and/or may visit different locations with the dog to provide therapy.

### **Access Rights**

As noted, people with disabilities and seniors can derive great benefits from interacting with animals. In the GADA public access guarantees are the same as those in Part One when the handler and therapy dog are working directly with a client. Tenancy rights for handlers are also the same as in Part One.

### **Certificate**

Medical therapy dog handlers obtain a letter of recommendation from their training facility and apply to the Minister for a certificate. Annual re-certification is overseen by the training facility.

### **Part Three**

Part Three refers to the limited access rights for certified animals other than guide, assistance, and medical therapy dogs.

**Therapy Animals:** promote the emotional well-being of individuals in their home on the recommendation of a medical practitioner. They are not accredited or professionally trained and exclude exotic animals as defined by provincial legislation.

**Facility Animals:** visit people with disabilities, people who are chronically ill and seniors in hospitals, seniors homes, special needs classes, extended healthcare facilities, palliative care units and other such facilities. They are not accredited or professionally trained. However, an animal and its handler may be certified by a recognized facility animal program such as those provided by St. John's Ambulance, BC Pets and Friends, or other organizations with standards and codes recognized by the Minister.

#### **Access Rights (Therapy Animals)**

A person with a certified therapy animal would enjoy Part One tenancy rights. However, because therapy animals are not professionally trained, they have no public access rights.

#### **Certificate (Therapy Animals)**

Once a person obtains a letter from their medical practitioner supporting their need for a therapy animal, they can apply to the Minister for a certificate that can be used to ensure their tenancy rights are respected.

#### **Access Rights (Facility Animals)**

Handlers and their facility animals have public access rights if the handler is certified by a recognized facility animal program and working directly with a client at a facility. They have no tenancy rights.

#### **Certificate (Facility Animals)**

Animals must work with individuals certified by a recognized facility animal program.

### **Part Four**

GADA makes it an offence to interfere, harm or incapacitate a guide, assistance or medical therapy dog. Interference is defined as "obstructing, intimidating, or otherwise jeopardizing the safety of the animal user or the animal." People found guilty of interference are subject to the fines listed in Part Five of the Act and the Criminal Code.

## **Part Five** **Offences and Penalties**

The current Act's \$200 penalty does not reflect the value placed on the rights of people with disabilities nor encourage respect for the rights the Act was intended to protect.

Given that there has never been a prosecution under the BC *Guide Animal Act*, it may well be that having a trivial fine inhibits the likelihood that prosecutions will be brought. Why would the police or Crown prosecutor's office pursue a charge that involves at most a \$200 fine? If there is no enforcement, then the law runs the risk of becoming meaningless.

We need meaningful remedies for non-compliance with the legislation. Those remedies may take the form of a fine on being convicted of the offence provided in the Act or by a damage award for a civil action for breach of the Act.

### **Recommended Penalties**

We recommend the following penalties for summary convictions for offences contravening any of the provisions contained in the GADA.

- A person convicted of an offence: fine of at least \$500 and not more than \$3,000
- Corporation or firm convicted of an offence: fine of at least \$2,500 and not more than \$5,000
- A person convicted of second or subsequent offences: a fine of at least \$1,000 and not more than \$5,000
- A corporation or firm convicted of second or subsequent offences: fine of at least \$5,000 and not more than \$10,000.

## **Part Six** **Right of Civil Action**

We recommend that persons whose rights under the GADA are interfered with have a right of civil action. Given the constraints on the resources of police, Crown counsel and criminal courts, the inclusion of a civil remedy would provide additional opportunities for wrongdoing to be dealt with.

Similar rights of civil action exist in other contexts. For example, under the *Civil Rights Protection Act*, promoting hatred or contempt of a person or class of persons is made a tort actionable without proof of damage. That law, however, is seldom used because it expressly provides that lawsuits must be brought in the Supreme Court of British Columbia. The higher cost of pursuing a lawsuit in that court makes it less likely that any suits for such wrongs are brought.

Other statutes provide rights of civil action that may be brought in the Provincial Court Small Claims Division. These rights of civil action are in addition to providing for penalties if there is a prosecution for an offence. For instance, sections 171-172 of the *Business Practices and Consumer Protection Act* allow actions for damages for infringement of consumer rights and for injunctions to restrain unlawful practices.

Previous court decisions have held that without express legislative language a civil remedy is not readily to be inferred from breach of a statute. It is therefore appropriate that new legislation make clear its intention that breach of our proposed Act allows for a right of civil action. We recommend that a statutory right of civil action be provided and that this action be exercisable by any person against whom the prohibited act was directed or, if the prohibited act was directed against a class of persons, by any member of that class.

A civil action could be initiated by the complainant in Small Claims court or the Supreme Court of BC, depending upon the damages suffered and whether the claim was brought individually or as a class action. In order to make a right of action worthwhile, we further recommend that a minimum damages award be provided for. Leaving damages completely at large would leave the courts with no guidance as to what an appropriate figure would be and with no direction as to what the Legislature, as the representative of the public, regarded as the seriousness of breaching the rights provided for in the GADA.

We propose that the minimum damages required to be awarded for a breach of the GADA be \$3,000 for each person against whom the prohibited act was directed. If the court awards damages in a class action brought by a member of a class affected by a breach of the Act, the court should be authorized (as is done under section 4(2) of the *Civil Rights Protection Act*) to order payment of damages to any person, organization or society that, in the court's opinion, represents the interests of the class of persons.

### **Part Seven**

#### **Power to make regulations**

Provides authority for the Lieutenant Governor in Council to make regulations.

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## **Conclusion**

Our community needs new legislation that will better protect the access rights of people with disabilities who use working dogs. Dog trainers need new legislation that will remove the barriers that currently hinder them from doing their important work.

The introduction of new legislation needs to be accompanied by a public education campaign so that service providers, landlords, strata councils etc. understand the new rules and penalties. Such a campaign would ideally be conducted through a joint government-community initiative.

We believe that government and community working together can help ensure that working dog users will no longer suffer the humiliation and inconvenience of being turned away and refused access. Our organizations look forward to working in partnership with government so that the rights of working dog users are upheld and respected by a well-informed public.

Respectfully submitted,

Access for Sight Impaired Consumers; Alliance for Equality of Blind Canadians; Autism Support Dogs; BC Coalition of People with Disabilities; BC Guide Dog Services; CNIB; Paws International

## **APPENDIX A**

### **Summary of Recommendations**

1. The BC *Guide Animal Act* be replaced with new legislation: the Guide and Assistance Dog Act (GADA).

The new Act includes:

a) Access rights including tenancy rights of people who use guide dogs, assistance dogs, medical therapy dogs, therapy animals and facility animals. The Act also provides access and tenancy rights to certified trainer/instructors and puppy raisers.

b) Limited access and tenancy rights for handlers of medical therapy dogs, facility animals and therapy animals.

c) A clause prohibiting the interference of guide dogs, assistance dogs and other working animals.

d) The following penalties for contravening the Act:

- A person convicted of an offence: fine of at least \$500 and not more than \$3,000
- Corporation or firm convicted of an offence: fine of at least \$2,500 and not more than \$5,000
- A person convicted of second or subsequent offences: a fine of at least \$1,000 and not more than \$5,000
- A corporation or firm convicted of second or subsequent offences: fine of at least \$5,000 and not more than \$10,000.

e). A right of civil action for anyone whose rights under the Act are interfered with.

**APPENDIX B****An Overview of Penalties Across Canada**

British Columbia <i>Guide Animal Act</i>	A person who is guilty of an offence: Not more than \$200.
Alberta <i>Blind Persons' Rights Act</i>	A person who is guilty of an offence: Not more than \$3,000.
Alberta <i>Service Dog Act</i> (Does not include blind persons)	A person who is guilty of an offence: Not more than \$3,000.
Ontario <i>Blind Persons' Rights Act</i>	A person who is guilty of an offence: Not more than \$5,000.
Quebec	A "natural person" who is guilty of an offence: Not more than \$1,400. A "legal person" who is guilty of an offence: Not more than \$7,000. For second and subsequent convictions, the fines are increased to \$2,800 for a natural person and \$13,975 for a legal person.
Newfoundland and Labrador <i>Blind Persons' Rights Act</i>	An individual who is guilty of an offence: Not more than \$500 or imprisonment of not more than 30 days or both. A corporation that is guilty of an offence: Not more than \$1,000 or imprisonment for not more than 60 days or both.
Nova Scotia <i>Blind Persons' Rights Act</i>	A person who is guilty of an offence shall be liable to the penalty provided by the <i>Summary Proceedings Act</i> .