



# Lending a Helping Paw: An Overview of the Law of Service Animals in Ontario

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## **A. Introduction**

1. Service animals are, frankly, pretty amazing. Some of them can smell when a diabetic person's blood sugar is too low and alert them.<sup>1</sup> Others can activate an alarm system in the event of a seizure.<sup>2</sup> They can calm children with autism in high anxiety situations or while in public.<sup>3</sup> They can respond to nightmares or flashbacks experienced by people with PTSD with nudges and a calm disposition, which can in turn make the person feel safe in the environment.<sup>4</sup> There are numerous other tasks that service animals can be trained to perform.

2. These animals allow their handlers to function independently or increase their independence, both within their homes and in public. They can be an essential tool that allows a person with a disability to fully participate in society.

3. The legal landscape has not been able to keep pace with the evolution of service animal use. The protections for service animal users vary dramatically from explicit rights for the users of certain, certified animals, to the general protection available under human rights statutes.

4. This paper outlines the various legal definitions that apply to service animals, with a focus on the regulatory regimes in Ontario, and canvasses the debate about whether service animals should be certified. The final part of this paper reviews the steps that an organization can take within Ontario's regulatory scheme to meet their legal obligations and ensure that service animal users are treated with dignity and respect.

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<sup>1</sup> Lions Foundation of Canada Dog Guides, "Diabetic Alert", *Lions Foundation of Canada Dog Guides* (website), online: <<https://www.dogguides.com/diabetic.html>>.

<sup>2</sup> Lions Foundation of Canada Dog Guides, "Seizure Response", *Lions Foundation of Canada Dog Guides* (website), online: <<https://www.dogguides.com/seizure.html>>.

<sup>3</sup> Lions Foundation of Canada Dog Guides, "Autism Assistance", *Lions Foundation of Canada Dog Guides* (website), online: <<https://www.dogguides.com/autism.html>>.

<sup>4</sup> National Service Dogs, "Certified Service Dogs For PTSD", *National Service Dogs* (website) online: <<http://www.nsd.on.ca/programs/skilled-companion-dogs-for-veterans/>> [*Certified Service Dogs*].

## **B. What is a service animal?**

5. In Canada, there is no unified legal definition of a “service animal”. There are a variety of regulatory regimes in each province, territory, and federally that either explicitly or implicitly address the use of assistive animals. Even within a jurisdiction, there can be a variety of laws and regulations that address service animals, which each use different terms, definitions or qualifiers.

6. In Ontario, there are four statutory regimes that address the use of assistive animals:

- The *Blind Persons’ Rights Act* applies to guide dogs for people who are blind, low vision, or have vision loss, and provides public access and housing protections for the users of these animals.<sup>5</sup>
- The *Human Rights Code* protects people with various disabilities from discrimination, harassment, and reprisal in all of the areas covered by the *Code*, including services, goods and facilities, accommodation, contracts, employment, and vocational associations.<sup>6</sup> The definition of disability includes people who rely on guide dogs and service animals.
- The *Integrated Accessibility Standards* regulations under the *Accessibility for Ontarians with Disabilities Act* (“AODA”) contain protections for the users of both guide dogs and service animals, by allowing service animal teams to access to premises where goods, services, or facilities are provided to members of the public or third parties.<sup>7</sup>

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<sup>5</sup> *Blind Persons’ Rights Act*, RSO 1990, ch b7 [BPPRA].

<sup>6</sup> *Human Rights Code*, RSO 1990, c H.19 [Human Rights Code].

<sup>7</sup> *Integrated Accessibility Standards*, O Reg 191/11 [Integrated Accessibility Standards].

- Finally, the *Food Premises* regulations under the *Health Protection and Promotion Act* allows guide dogs and service dogs (but not service animals) into premises where food is served, sold, or offered for sale.<sup>8</sup>

7. The challenge of finding a unified definition is compounded by the multiple terms used by advocates, organizations, and the public to refer to assistive animals, which include the legal terms of “guide dog”, “service dog”, or “service animal” but also include terms not defined in legislation such as “emotional support animal”, “social signal dog”, “therapy dog”, and “psychiatric service dog”, among others.

8. Although there may be some overlap between these categories, assistive animals are generally understood to fall in one or more of the categories below.

### ***Guide Dogs***

9. Guide dogs are trained specifically to guide people who are blind or partially sighted. Guide dogs are the most well-known and easily recognized assistive animal, due in large part to their long history of use. In fact, there is evidence that people who are blind or have vision loss have been working with the assistance of dogs for centuries. For example, a Roman mural found at Pompeii appears to depict a blind figure being guided by a dog, and there are wooden plaques from the Middle Ages that show similar images.<sup>9</sup>

10. More recently, guide dogs came to prominence after the First and Second World Wars after thousands of soldiers lost their sight.<sup>10</sup> Guide dog schools were founded across Europe and North America and throughout the following decades guide dogs became an important part of many people’s lives.<sup>11</sup> Today, CNIB, an organization that supports

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<sup>8</sup> *Food Premises*, RRO 1990, Reg 562, s 60 [*Food Premises*].

<sup>9</sup> Gerald A Fishman, “When Your Eyes Have a Wet Nose: The Evolution of the Use of Guide Dogs and Establishing The Seeing Eye” (2003) 48:4 *Survey of Ophthalmology* 452 at 452 - 453.

<sup>10</sup> *Ibid* at 455.

<sup>11</sup> *Ibid*.

people who are blind or partially sighted, reports that there are over 10,000 guide dog handler teams across North America.<sup>12</sup>

11. The long standing use of guide dogs to support people who are blind, low vision or have vision loss is also reflected in the legislative landscape. In most jurisdictions people who rely on guide dogs have much clearer legal protections than those who rely on service animals for other types of assistance.

12. In Ontario, the *Blind Persons' Rights Act* defines a guide dog as “a dog trained as a guide for a blind person and having the qualifications prescribed by the regulations”.<sup>13</sup> The regulation indicates that a dog is qualified as a guide dog if it has completed a training program by one of a specific list of organizations.<sup>14</sup>

13. The *Blind Persons' Rights Act* provides certain rights to people who use guide dogs. In particular, it confers the right to be accompanied by a guide dog when accessing spaces where the public is customarily admitted, and to live in a “self-contained dwelling unit” with one’s guide dog.<sup>15</sup> It also allows the Attorney General to issue a card identifying the guide dog and its handler, which is deemed to be proof that the animal is a qualified guide dog under the Act in the absence of evidence to the contrary.<sup>16</sup>

### ***Service Animals***

14. While the term “guide dog” is well understood and defined in legislation aimed at providing rights and protections for people who are blind, low vision or have vision loss, the term “service animal” has a less consistent definition. Across Canada, the legislation and regulations that pertain to service animals are fragmented and inconsistent, and the use of service animals for various disabilities is not well understood within the public. This leads to challenges for service animal handlers, as well as for the people who come

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<sup>12</sup> CNIB, "A History of Guide Dogs" (2017), online: <<http://www.cnib.ca/en/living/safe-travel/Pages/history-dogs-0807.aspx>>.

<sup>13</sup> *BPRA*, *supra* note 5, at s 1.

<sup>14</sup> *Guide Dogs*, RRO 2005, Reg 58 [*Guide Dogs*].

<sup>15</sup> *BPRA*, *supra* note 5, at s 2.

<sup>16</sup> *Ibid* at s 4.

into contact with service animal teams, such as store owners, restaurant staff, schools, and employers.

15. As noted in the introduction, service animals assist with a wide range of disabilities. Hearing or Signal Dogs are trained to alert people who are deaf or have hearing loss to certain sounds, and direct the handler to the source of the sound.<sup>17</sup> Seizure response dogs are trained to protect a person having a seizure, and some people have reported that their dog may even be able to detect seizures before they occur.<sup>18</sup> Other dogs are trained to assist people with psychological disabilities, and can help in a multitude of ways, by, for example, recognizing anxious behaviour and helping to physically redirect the handler to more positive activities, like petting the dog.<sup>19</sup> There are a multitude of other tasks that animals can be trained to perform for numerous disabilities.

16. While the majority of service animals are dogs, other animals can provide useful assistance. For instance, the American non-profit Helping Hands Monkey Helpers provides highly trained capuchin monkeys to people with spinal cord injuries and other mobility impairments.<sup>20</sup> Similarly, another American organization, the Guide Horse Foundation, provides miniature horses as guide animals for the blind. It reports that miniature horses have some advantages over guide dogs, like extended service due to longer life spans and greater stabilizing strength for those with physical disabilities. Miniature horses are especially important for people who are allergic to dogs or have a

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<sup>17</sup> Dogs for the Deaf Inc, “Hearing Dogs”, *Dogs for the Deaf Inc* (website), online: <<https://www.dogsforthe deaf.org/hearing-dogs/>>.

<sup>18</sup> Epilepsy Foundation, “Seizure Dogs”, *Epilepsy Foundation* (website), online: <<http://www.epilepsy.com/get-help/staying-safe/seizure-dogs>>.

Epilepsy Foundation, “Seizure Predicting Dogs”, *Epilepsy Foundation* (website), online: <<http://www.epilepsy.com/get-help/staying-safe/seizure-dogs/seizure-predicting-dogs>>.

<sup>19</sup> *Certified Service Dogs*, *supra* note 4.

<sup>20</sup> See <https://monkeyhelpers.org/>. This organization does not provide animals in Canada and there does not appear to be any Canadian organizations training monkeys as service animals at this time.

dog phobia.<sup>21</sup> In the United States, parrots, ferrets, goats, and pigs have all been claimed as non-traditional service animals by their owners.<sup>22</sup>

17. Some laws or regulations only provide for protections for the handler of service dogs and not for the users of other animals. For example, in Alberta and British Columbia, there is specific “service dog” legislation that provides protections for service dog users and regulates and certifies animals as service dogs.<sup>23</sup> As mentioned above, in Ontario, the *Food Premises* regulation allows service dogs to be present where food is served, sold, or offered for sale, but does not exempt other animals from the rules that bar animals from the premises.<sup>24</sup> In contrast, the *Integrated Accessibility Standards* and the *Human Rights Code* extend protections to users of any animal.

18. The legal definitions of a service animal in some jurisdictions emphasize that a service animal is *trained* to provide assistance to an individual with a disability and may even prescribe specific qualifications. For example, under the *Service Dog Act* in Alberta, a “service dog” is “a dog *trained as a guide* for a disabled person and having the qualifications prescribed by the regulations.”<sup>25</sup> British Columbia’s legislation defines a service dog as a dog that “is *trained to perform* specific tasks to assist a person with a disability”.<sup>26</sup>

19. The Ontario regulatory regimes, however, do not make specific mention of a training requirement or of the need for training by a specific organization. Protections under the *Human Rights Code* have been extended to handlers who have trained the animal themselves to perform specific tasks.<sup>27</sup>

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<sup>21</sup> Guide Horse Foundation, “Guide Horse Foundation – Miniature horses for the blind”, *Guide Horse Foundation* (website), online: <<http://www.guidehorse.com/>>.

<sup>22</sup> Robert L Adair, “Monkeys and Horses and Ferrets. . . Oh My! Non-Traditional Service Animals Under the ADA” (2010) 37:1 N Ky L Rev 415.

<sup>23</sup> *Service Dogs Act*, SA 2007, c s-7.5 [*Service Dogs Act*]. ; *Guide Dog and Service Dog Act*, SBC 2015, ch 17 s1 [*Guide Dog and Service Dog Act*].

<sup>24</sup> *Food Premises*, *supra* note 8.

<sup>25</sup> *Service Dog Act*, *supra* note 23 at 1(c).

<sup>26</sup> *Guide Dog and Service Dog Act*, *supra* note 23.

<sup>27</sup> See e.g. *Sweet v 1790907 Ontario Inc o/a Kanda Sushi*, 2015 HRT0 433 [*Kanda Sushi*].

20. Under the *Integrated Accessibility Standards of the Accessibility for Ontarians with Disabilities Act* (“AODA”) an animal is considered a “service animal” for a person with a disability if:

(a) the animal can be readily identified as one that is being used by the person for reasons relating to the person’s disability, as a result of visual indicators such as the vest or harness worn by the animal; or

(b) the person provides documentation from one of the following regulated health professionals confirming that the person requires the animal for reasons relating to the disability...<sup>28</sup>

21. The *Food Premises* regulations contains a similar, but not identical, definition.<sup>29</sup>

22. The *Human Rights Code* does not define the term service animal at all. In defining the term “disability”, it refers to “physical reliance on a guide dog or other animal”.<sup>30</sup> Notwithstanding the language of “physical reliance”, *Code* protections have been extended to people who use service animals for a variety of psychological disabilities.<sup>31</sup>

### ***Emotional Support and Therapy Animals***

23. The terms “emotional support animal” and or “therapy animal” are not defined by legislation. In some jurisdictions, these animals may be considered service animals, but in others, the users of these animals are not provided with any specific legal protections.

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<sup>28</sup> *Integrated Accessibility Standards*, *supra* note 7 at s 80.45(4).

The list of regulated health professionals include members of: the College of Audiologists and Speech-Language Pathologists of Ontario; the College of Chiropractors of Ontario; the College of Nurses of Ontario; the College of Occupational Therapists of Ontario; the College of Optometrists of Ontario; the College of Physicians and Surgeons of Ontario; the College of Physiotherapists of Ontario; the College of Psychologists of Ontario, and the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario.

<sup>29</sup> *Food Premises*, *supra* note 8 at s 60(2): “A dog other than a guide dog for the blind is a service dog for the purposes of clause (1) (a) if, (a) it is readily apparent to an average person that the dog functions as a service dog for a person with a medical disability; or (b) the person who requires the dog can provide on request a letter from a physician or nurse confirming that the person requires a service dog.”

<sup>30</sup> *Human Rights Code*, *supra* note 6 at s 10.

<sup>31</sup> See for example *Kamis v 1903397 Ontario Inc*, 2015 HRTO 741, [2015] OHRTD No 755 [*Kamis*] and *Kanda Sushi*, *supra* note 27.



24. Therapy animals are generally understood to be animals with specific training, although the training is focused on allowing the animal to interact with many people other than its handler. Therapy animals often visit hospitals, residences and schools to provide physical and mental comfort and support.<sup>32</sup>

25. The label of emotional support animal is generally applied to animals that are not specifically trained to perform particular tasks to assist with a disability.<sup>33</sup> They do however, provide comfort and support to both people with anxiety and depression.

26. In Ontario, the legal regimes that govern service animals (with the exception of guide dogs) do not contain definitions that require the animal to be specifically trained to perform certain tasks, or trained only to assist the handler. Arguably, protections under the *Integrated Accessibility Standards*, *Food Premises* regulations or the *Human Rights Code* could be extended to people with disabilities who rely on animals that some might consider to be “therapy” or “emotional support” animals.

27. In *Allarie v. Rouble*, the Applicant had a Chihuahua (called “Dee-o-Gee”) that helped him deal with a variety of physical and psychiatric disabilities. It is unclear the degree to which the dog had training to perform specific tasks, although it did assist the handler with eating and going to bed at regular times, waking him up when he had bad dreams, and sitting on lap to give him a focal point. The Applicant had a medical note which indicated that the dog was “of great benefit” with his various medical conditions.<sup>34</sup> The Tribunal stated, “There is nothing in the *Code* which limits the definition of a service animal to one which is trained or certified by a recognized disability-related

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<sup>32</sup> Kim Hughes, “How Your Pet Can Provide Therapy in Hospitals, Nursing Homes, Schools”, *Samaritan Mag* (27 July 2014), online: <<http://www.samaritanmag.com/animals/how-your-pet-can-provide-therapy-hospitals-nursing-homes-schools>>.

<sup>33</sup> Service Dog Central, “What is the difference between a psychiatric service dog and an emotional support animal?”, *Service Dog Central* (website), online: <<http://www.servicedogcentral.org/content/node/76>>. Also see this new story where a woman is seeking to allow emotional support animals in government housing, even if they are not specifically trained: Sarah Petrescu, “Tenant seeks law opening door to emotional support animals”, *Times Colonist* (12 February 2017), online: <<http://www.timescolonist.com/news/local/tenant-seeks-law-opening-door-to-emotional-support-animals-1.9824655>>.

<sup>34</sup> *Allarie v Rouble*, 2010 HRT0 61 at paras 9-12 [*Allarie*].

organization.”<sup>35</sup> However, it ultimately dismissed the application finding that the Applicant had been asked to leave the store in question due to his own confrontational behaviour.

28. The terms “emotional support” or “therapy” animals may help in understanding what the animals are trained to do, but when considering whether an animal and its handler is protected under the law, these labels may be of little use. Rather, one should consider whether these animals fit within the definition of “service animal” in light of the specific legislative requirements.

### **C. Establishing the right to use a service animal**

29. The steps to establishing the right to use a service animal will depend on the jurisdiction. In Alberta and British Columbia, certification of the service animal is required. There are detailed requirements set out in regulation, and service animal users are provided with a government-issued ID for the handler and the animal.<sup>36</sup>

30. In Ontario, however, there is no certification requirement for service animals, with the exception of guide dogs for the blind.<sup>37</sup> The requirements for establishing the right to enter premises and the right to be accommodated while using a service animal raise difficult questions about medical privacy, including what information must be disclosed, how much information, and to whom.

### ***Access to Premises***

31. There are two regulations that specifically govern service animal access to certain premises in Ontario.

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<sup>35</sup> *Ibid* at para 27.

<sup>36</sup> In Alberta: *Blind Persons’ Rights Act*, RSA 2000, c B-3 at s 6.

In British Columbia: *Guide Dog and Service Dog Act*, SBC 2015, ch 17 at s 6.

<sup>37</sup> *Blind Persons’ Rights Act*, RSO 1990, c B7 s 4(2).

*Guide Dogs*, *supra* note 14.

32. The AODA *Integrated Accessibility Standards*, which applies organizations that are providers of goods, services or facilities, allow the users of a service **animals** to enter the premises with a service animal and to keep the animal with them, unless the animal is otherwise excluded by law from the premises.<sup>38</sup>

33. In addition, although animals are generally barred from entering restaurants, service **dogs** are expressly permitted to enter food establishments under the Regulations to the *Health Protection and Promotion Act*.

34. Under these regimes, an animal is defined as a service animal or service dog if it is “readily apparent” or can be “readily identified” as assisting a person with a disability. Alternatively, access is permitted if the person using the animal provides or can provide documentation from a medical professional that confirms that person requires a service animal or requires the animal for reasons relating to disability.<sup>39</sup>

35. The use of a vest identifying the animal as a service animal may be sufficient to establish the right to enter the premises with the animal, particularly where it is clear that the animal is well behaved or well-trained. Alternatively, a one-line medical note that reveals minimal personal information and simply states that the handler requires the use of a service animal (or the particular animal in question) for “medical reasons” would likely be sufficient.

36. However, this latter requirement may reveal stigmatizing information about the underlying disability, as the note may reveal the name and speciality of the doctor. A letter from a psychiatrist, for example, may reveal the existence of a mental health condition. Many invisible disabilities are highly stigmatized, and requiring people to prove their disability every time they want use a public service or go out for dinner can create unfair and discriminatory barriers.

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<sup>38</sup> *Integrated Accessibility Standards*, *supra* note 7 at 80.45(4).

<sup>39</sup> *Ibid.* ; *Food Premises*, *supra* note 8.

37. Unlike housing, education, or employment situations, restaurants and shops are rarely obliged to make major changes to accommodate a service animal. As a result, the circumstances require less information about a person's disability. In fact, requesting identification for a service animal may be found to be discriminatory in circumstances where a complainant's disability and reliance on the service animal is obvious.<sup>40</sup> However, in circumstances where the disability is not obvious and it is not clear whether the animal is functioning as a service animal, it may be reasonable to request to see a medical note.<sup>41</sup>

### ***Accommodation in Housing, Employment, School and Other Areas***

38. The *Human Rights Code* provides the broadest protections to service animal users, as it extends the right to be free from discrimination, harassment, and reprisal in all of the social areas covered by the *Code*, including services, goods and facilities, accommodation, contracts, employment, and vocational associations.

39. The *Code* does not, however, provide any guidance on what a person must do to prove that their animal is a "service animal".

40. Where an employee is seeking accommodation pursuant to the *Human Rights Code*, in a work, school, or residential setting for example, he or she may be required to provide more information than a one-line medical note. The accommodation is often permanent or long-term, may require modifications to the space, and the likelihood of coming into contact with other users who may assert competing rights is increased. Guidance may be drawn from other cases where people have sought accommodation based on disability.

41. The general principles that apply to other types of accommodations would also apply to individuals seeking accommodation for their service animal. Namely, they would be required to provide sufficient medical evidence to demonstrate the need for accommodation and to support the fact that the use of a service animal is a required

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<sup>40</sup> *Feldman v Westfair Foods Ltd*, [1997] BCHRTD No. 10, upheld [1998] BCJ No 3380, para 13-14.

<sup>41</sup> *Allarie*, *supra* note 34 at para 35.

accommodation. The exact nature of the information required, however, would depend on the context.<sup>42</sup>

42. The employer (or other organization) is entitled to sufficient information to allow it to satisfy its accommodation obligations.<sup>43</sup> In the context of a person or individual being asked to accommodate a service animal team, they may be entitled to some information about the animal's training to satisfy their legitimate interests. This could include information that would establish that the animal has been trained to safely interact with other users of the space, that the animal itself will be safe in the space, and that the animal will not be disruptive. However, they likely would not be entitled to insist upon a specific training program and may not be entitled to information about the specific disability that the animal has been trained to assist with.

### ***Certification or No Certification***

43. One potential solution to the challenge of having individuals prove the legitimacy of their service animal is to require certification and identification of all service animals. British Columbia and Alberta have already made this move. Certification has many potential advantages: providing handlers and people who come into contact with service animal teams with assurances about the animal's training and addressing concerns about fraudulent service animal use.

44. However, certification has the potential to create roadblocks for people who depend on the use of service animals: there are often long wait-lists to receive an animal from a recognized training organization, there could be extra steps and cost involved for the person with a disability, and certification can diminish the autonomy of disabled people to choose and self-train the best animal for their needs.

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<sup>42</sup> For a fulsome discussion of some of the general principles around the information required for the purposes of accommodation, see e.g. *Complex Services Inc v OPSEU, Local 278*, 2012 CarswellOnt 3177, [2012] OLA No 409, 110 CLAS 49, 217 LAC (4th) 1 (Surdykowski) at paras 84-95.

<sup>43</sup> *Ibid* at para 88.

45. The British Columbia *Guide Dog and Service Dog Act* and its regulations took effect in January of 2016. The *Act* requires that all service dogs be certified in one of two ways: trained by an established service dog program or certified by the Justice Institute of British Columbia as meeting minimum training standards. Regulations under the *Act* name four dog training schools as meeting the requirements for automatic certification. If a service animal was not trained by an accredited school it must pass certification testing which assess whether:

- “The dog is calm, stable, and reliable in situations commonly encountered by dog and handler teams;...
- The handler has control over the dog;
- The dog is safe to be in public; [and]
- The dog demonstrates the high standard of training required of guide and service dogs”<sup>44</sup>

46. Once certified, the animals are exempt from rules that normally prevent animals in public spaces or in housing, and a person convicted of denying a dog and handler access faces up to a \$3,000 fine. At the same time the *Act* makes it an offense to falsely represent a dog as belonging to a guide or service team when it does not.



47. The Alberta legislation, *The Service Dog Act*, is very similar. Certified dogs and their handler can apply to the Government of Alberta for identifications cards that have an Alberta government logo and a picture of the individual with their service dog. This

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<sup>44</sup> Province of British Columbia, “Guide Dog & Service Dog Certification Testing”, *Province of British Columbia* (website), online: < <http://www2.gov.bc.ca/gov/content/justice/human-rights/guide-and-service-dog/certification-testing>>.

identification card proves that animal is a service dog and the service dog team therefore has public access rights and other protections under the *Act*.<sup>45</sup>

48. The move to certify service dog teams is, in part, a response to the problem (or perceived problem) of service animal impersonation.<sup>46</sup> According to some advocates, fraudulent service dogs have been growing in concert with the growing diversity in service dogs and their ability to help less visible disabilities.<sup>47</sup> It is possible to buy service dog vests and IDs online.<sup>48</sup> This has the potential to undermine those who truly depend on their canine companion.

49. Advocates in Ontario seem split on whether or not certification is the answer. In 2013, when the Ontario government was reviewing the Customer Service Standards under the *AODA*, the Canadian Mental Health Association (CMHA) opposed a proposed change that would require animals to be “trained to provide assistance to a person with a disability that relates to that person’s disability” as is the case in Alberta and British Columbia.<sup>49</sup> The CMHA was concerned that this type of amendment would exclude people with mental health disabilities who rely on animals that do not require specific training. On the other hand, in 2015 the National Dog Service called on the Ontario government to create legislation mandating official government ID for service dogs, lamenting the “huge grey area” created by the lack of regulation and the embarrassment caused to service dog users when required to provide doctors notes.<sup>50</sup>

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<sup>45</sup> Alberta Human Services – Government of Alberta, “Service Dogs Act”, *Alberta Human Services* (website), online: <<http://www.humanservices.alberta.ca/disability-services/service-dogs.html>>.

<sup>46</sup> Michelle McQuigge, “Guide Dog and Service Dog Act changes target fraudulent pooches”, *CBC News* (20 April 2015), online: <<http://www.cbc.ca/news/canada/british-columbia/guide-dog-and-service-dog-act-changes-target-fraudulent-pooches-1.3040374>>.

<sup>47</sup> *Ibid.*; Christina Stevens, “Advocates calling for official government ID for service dogs”, *Global News* (29 May 2015), online: <<http://globalnews.ca/news/2025261/advocates-calling-for-official-government-id-for-service-dogs/>> [*Official Government ID*].

<sup>48</sup> See e.g.: <https://www.servicedogkits.com/>. It appears that anyone may purchase a “service dog kit” through this website without first having to establish that the kit is for a service animal.

<sup>49</sup> Canadian Mental Health Association, “Response to the Proposed Revisions for the Customer Service Standard of the Accessibility for Ontarians with Disabilities Act, 2005 (AODA)”, *Canadian Mental Health Association* (website), online: <<http://ontario.cmha.ca/documents/response-to-the-proposed-revisions-for-the-customer-service-standard-of-the-accessibility-for-ontarians-with-disabilities-act-2005-aoda/>>.

<sup>50</sup> *Official Government ID*, *supra* note 47.

50. For now, Ontarians do not need to have their animal certified. However, certification may be a requirement in the future. In Ontario, a private members bill, that includes certification requirements for service animals have been put forward, but so far there has been no action on the part of government to adopt the legislation.<sup>51</sup>

#### **D. Lessons and Best Practices**

51. There are a number of lessons that can be learned from the case law about how to ensure that individuals who use service animals are treated with dignity and respect.

52. Preparation is key. Lawyers should advise their clients to conduct a review of their space, training, and policies to ensure that they are ready to welcome service animal teams onto their premises or into the workplace.

53. The following is by no means a comprehensive list of best practices or steps that could be put in place. As with other accommodation scenarios, the elements required will depend on the context and the needs of the individual requesting accommodation.

#### ***Training***

54. If any lesson can be learned from the case law, it is that employees need to be trained about what to do if a service animal team wishes to access the premises. Numerous decisions have awarded damages where restaurant staff have wrongfully denied entry to service animal teams because they did not understand the law and in particular were concerned that the presence of service animals would violate food handling regulations.<sup>52</sup>

55. The *Integrated Service Standards* require that staff receive training about the provision goods, services or facilities, as the case may be, to persons with disabilities.<sup>53</sup>

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<sup>51</sup> Bill 217, *An Act respecting the rights of persons with disabilities who use service dogs*, 1st Sess, 41st Leg, Ontario, 2016.

<sup>52</sup> See e.g. *Kanda Sushi*, *supra* note 27. ; *Kamis*, *supra* note 31.

<sup>53</sup> *Integrated Accessibility Standards*, *supra* note 7 at s 80.49(1).



This training must include instructions about how to interact with persons with disabilities require the assistance of a guide dog or other service animal.<sup>54</sup>

56. General human rights training may also be advisable to educate people about invisible disabilities and the fact that service animals can be used to assist with a variety of disabilities. Training can help mitigate against unhelpful, harassing, or discriminatory conduct by employees towards service animal handlers or teams.

### ***Signage***

57. Appropriate signage is key. Signs that say “No Dogs Allowed”, “No Pets”, or “No Animals”, for example, send an unwelcoming message to the service animal user and can give rise to liability. For instance in *Sprague v. RioCan Empress Walk Inc.*, the Applicant, who uses a service dog to assist with his post-traumatic stress syndrome, complained that signs depicting a dog with a line through were discriminatory in suggesting that service dogs may not be welcome. Following his complaint, but before the matter proceeded to a hearing, the mall signs were changed to clarify that service animals were an exception from the “no dog” policy.<sup>55</sup>

58. Likewise, signs that are misleading about the state of the law can give rise to liability. In *C.C. v. J.L. o/a [...] Restaurant*,<sup>56</sup> the restaurant owner posted signs that restricted the entry of service animals to those trained as a guide for blind persons only and suggested a doctor’s note was *required* for a service dog to enter the premises. The signage and subsequent actions of the restaurant owner in harassing the Applicant and her daughter when the service dog came to the restaurant led the Human Rights Tribunal to call the restaurant owner’s behaviour “egregious”. A combined \$25,000 in damages was awarded to the joint applicants.<sup>57</sup>

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<sup>54</sup> *Ibid* at s 80.49(2).

<sup>55</sup> *Sprague v RioCan Empress Walk Inc*, 2015 HRTO 942, [2015] OHRTD 967.

<sup>56</sup> *CC v JL o/a [...] Restaurant*, 2014 HRTO 1625, [2014] OHRTD No 1872.

<sup>57</sup> *Ibid* at para 94.

59. Poorly chosen signs have the potential effect of misinforming staff, clients, or bystanders about whether service animals are permitted on the premises. These individuals may, in turn, rely on this information to tell service animals users that their animal is not allowed. These actions can give rise to complaints of discrimination and harassment by service animal users.

60. Signage that prohibits animals should clearly indicate that the prohibition does not apply to service animals. Signage that welcomes service animals is even better.

### ***Other Changes to the Physical Space***

61. Adjustments may also need to be made to the physical space to avoid hazards to the animal or its user. In restaurants, for example, tables may need to be rearranged to ensure that the animal can rest comfortably either under the table or out of the way of heavy foot traffic.

62. In an employment context or educational setting, where the animal is regularly on the premises with the employee or student, a plan should be put in place to ensure that the service animal team's needs are met. This may include:

- modifying safety or evacuation plans to account for the animal and/or the handler;
- locating storage space for various items the animal needs: e.g. food/water dish, food, crate, etc.;
- identifying a location where the animal can relieve itself;
- identifying a safe location for the animal to sit while the employee is working;  
and
- identifying an area where the animal can rest if it is not working.

63. In addition to the above, the service animal user may be in a position to identify some of their needs and the needs of their animal and should be consulted as part of the accommodation process.

64. Consideration should be given to whether extra cleaning is required, whether additional air filtration devices could be installed, or whether carpets or other fabric covered spaces that may attract animal hair could be removed. This is important to avoid a situation of competing human rights that can be created where employees have allergies to the animal. It can also help avoid conflict between the service animal team and people who may become upset with the presence of animal's hair or dander for reasons related to cleanliness.

65. Although there may be a cost to these adjustments, employers may be required to bear some expense, up to the point of undue hardship.<sup>58</sup>

### ***Avoiding Conflicting Human Rights or Other Conflicts***

66. There may be instances where the introduction of a service animal may engage competing human rights. Common concerns include severe allergies to animals or religious beliefs. The Ontario Human Rights Commission has set out a policy for how to address the existence of potentially competing human rights which is a helpful tool in the event of a situation of potentially competing rights.<sup>59</sup>

67. In the context of service animals and objections thereto, one should seek to understand the legitimacy and scope of both rights. It may turn out that the conflict can be avoided. For example, a person may be very allergic to certain animals, but not to the breed of the service dog. Alternatively the person may have religious beliefs that prevent them from touching dogs, but not from sharing space with the animal.

68. If the physical space, or use of that space, needs to be adjusted in order to minimize or avoid contact with the animal, care should be taken to ensure that any

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<sup>58</sup> In *Quesnel v London Educational Health Centre* (1995), 28 CHRR D/474 (Ont Bd Inq), March 1995 BOI 95-012: an Ontario Board of Inquiry under the Human Rights Code stated that "...cost would amount to undue hardship only if it would alter the essential nature or substantially affect the viability of the enterprise responsible for the accommodation". See also *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624, at paras 87-94, 151 DLR (4th) 577; *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 SCR 868, 1999 CanLII 646 at paras 41-42.

<sup>59</sup> Ontario Human Rights Commission, "Policy on Competing Human Rights" (26 January 2012) *Ontario Human Rights Commission* (website), online: <<http://www.ohrc.on.ca/en/policy-competing-human-rights>>.

changes (such as rearranging office locations) are not done in a manner that would isolate or stigmatize either party.

### ***Prepare policies***

69. Policies should be put in place to help employers and others address any concerns they may have about the introduction of an animal into the space and to make sure that service animal users are treated with dignity and respect while those concerns are being addressed.

70. In the absence of a certification system in Ontario, employers and service providers need to consider what steps they will take to satisfy themselves that an animal qualifies as a service animal. They should also consider what additional information beyond a medical note may be needed to ensure that the animal is safe for the space or the users of the space, if they are entitled to such further information.

71. Assessments of the employee's disability and animal should be done as quickly as possible, as keeping an employee out of the workplace or requiring them to work without their animal may give rise to liability.

### **E. Conclusion**

72. The law on service animals will continue to evolve as courts, tribunals, and legislators grapple with the issues faced by service animal users, the people who share space with service animal teams, and the organizations and services that manage those spaces. These include questions about medical privacy, competing rights, and preventing the use of poorly trained animals from watering down the rights of legitimate users.

73. While the regulatory framework in Ontario does not provide the same clear cut system of certification as other provinces, there are many ways organizations can work with service animals and their handlers to create a welcoming environment in compliance with human rights law. Organizations should be flexible and creative in creating open

spaces for service dog teams, whether they be emotional support animals, service animals for visible or invisible disabilities or certified guide dogs.