

BACKGROUND PAPER

On Meeting the Need for Dog Off-Leash Areas in The City Of Victoria

**Submitted to Mayor and Council
City of Victoria**

Prepared by Citizen Canine
citizencanine.org

June 30, 2003

Introduction

Many reputable studies in recent years have noted the benefits to people and families of responsible ownership of a pet. Dogs contribute immeasurably to their family's quality of life, helping to foster a sense of community for everyone. Findings are that dog ownership relates to peoples' physical, mental and spiritual wellbeing.

In 1995 an association endorsed by the World Health Organization issued a General Declaration urging governments to recognize the rights of people to own pets. Governments need to be responsible and accountable to ensure that the human public environment is planned and developed to take in account the needs and characteristics of pets and their owners. This includes off-leash access. Highly restrictive off-leash policy disadvantages the elderly, women, and those with disabilities – a fact that is now a matter of Constitutional challenge in Ontario court (See Appendix 1). **Responsive public policy recognizes that off-leash activity with dogs is a legitimate recreational choice of responsible dog owners, and provides for an equitable distribution of access to public space for this activity.**

Off-leash areas for dogs provide many benefits for both people and their pets. They reinforce the importance of communal exercise and socializing in the urban environment. They enhance the mental development of dogs, which produces peaceful coexistence between humans and pets, while minimizing aggressiveness and anti social behavior. They promote community spirit through positive contacts between people and dogs, and they encourage park usage by responsible people.

These realities have not been lost on the general public. Expectations of off-leash recreational opportunities have shifted greatly over the years both among dog owners and non-dog owners. According to a 2002 Ipsos-Reid poll, 75 percent of BC residents support the idea of providing green space for dogs to walk and interact off-leash. That number includes 42 percent who "strongly" support the idea. Victoria-specific polls, such as one conducted by CFAX last year, reveal similar trends.

Progressive municipalities across Canada, including Vancouver, Edmonton, Toronto, Mississauga, Ottawa, Calgary and Montreal, have responded to the needs of citizens and their pets and provide interactive off leash areas (See Appendix 2). Some of the park systems in these cities have been around for a decade or more and all have grown over time. Other cities such as Oak Bay and Saanich have never banned off leash recreation, and have maintained liberal access for dog owners.

As leisure and sports trends expand so does the need for off leash areas. This is why most cities have declared public space as multi-use areas. Travel publications include descriptions of off-leash areas in their travel guides to meet the expanding demand from pet owners. Amenities vary as to how the off-leash programs are coordinated, but the key elements remain the same: **Dog off-leash areas are in demand from the citizens and taxpayers.**

The Need for Off-Leash Areas in the City of Victoria

There is a clear and yet unanswered demand for more off-leash areas in Victoria. This has come about for several reasons:

- **Increased numbers of dogs in the city**, due to population increase and more people owning dogs. This may be a result of demographics, for example, increasing numbers of childless couples and retired people choose to include dogs in their lives. In addition, many households have more than one dog. Current estimates are 14,000 dogs in the city.
- **Increasing number of responsible dog owners** who recognize their dogs' needs for off-leash exercise and socialization. Proper socialization for dogs can only occur in an area where dogs are permitted to safely play and learn off leash.
- **Backlash to the increased enforcement of the dog leash bylaw** that began last spring, and resulted in thousands of responsible dog owners being "warned" not to take their off-leash dogs anywhere in the city except Dallas Road. Some dog owners have been ticketed for simply walking with their dogs quietly at their side or for playing ball with their dog in an empty field.
- **Overcrowding and problems at the one off-leash area at Dallas Road.** This area is simply not sufficient to meet the needs of thousands of dog owners citywide. Some parts of the area are degraded and crowded with dogs and therefore potentially dangerous to both dogs and people.
- **The emergence of Dallas Road as a destination dog park.** Dog owners from all of South Vancouver Island come to Dallas Road with their dogs. On the weekend, almost half the visitors with dogs at Dallas Road are from other municipalities. This adds to the potential for conflicts between various user groups (e.g. joggers, windsurfers, kite flyers etc.)
- **Development of dog advocacy groups** like Citizen Canine, which is now regionally based with over 500 members. There are also many local dog obedience groups and dog sport groups that advocate for more off-leash access.
- **Needs of residents without cars** who don't live within walking distance of the off-leash area at Dallas Road. Many elderly and handicapped people without vehicle transport are also dog owners. These people are severely hampered in their efforts to exercise their dogs, as dogs are not allowed on public transit.
- **Demand from environmentally concerned people** who want access to off-leash areas without the need to drive cars and add to air pollution in the City.
- **Growing public awareness that Victoria's leash laws are restrictive** compared to the more enlightened approaches taken in adjacent municipalities.

(Saanich and Oak Bay for example, which emphasize responsible ownership and control). Many dog-owning residents in Victoria are angry that their needs for neighbourhood access are ignored. The existing bylaw is seen to be unfair and it is eliciting a defiant, rather than a compliant response from dog owners.

Meeting the Need in Victoria

To deal with this issue, it is necessary first of all for the city to **recognize that dog owners are a major component of the city's population and that they have a right to equitable access to public space**. Dog walking and off-leash activities with dogs are a legitimate recreational choice for thousands of people. Furthermore, dog owners require city-sanctioned access to off-leash areas in their own neighbourhood in order to responsibly meet their dogs' needs for play and exercise.

The City's current passive solution of negotiating one by one with groups of dog owners to develop a Memorandum of Understanding (MOU) for a particular park is not an appropriate policy solution for this citywide issue. Indeed it has not opened a single park, let alone responded to the broad need of dog owners across the City. Over the past three years, several "dog groups" have tried to develop agreements with the City for off-leash access without success. At this point only one group remains and this group was recently presented with yet more requirements.

This type of process will only cause more bad feeling and will not solve the problems at Dallas Road or create any additional off-leash areas in the city. If one dog owning group managed to get their park approved, it would then become another destination off-leash area like Dallas Road. This will do nothing to provide for the needs of thousands of Victoria residents who have no neighbourhood off-leash access for their dogs. Simply put, the MOU will not get us from where we are now, to what is minimally acceptable as an accommodation for the citywide off-leash needs of Victoria residents.

To meet the need the city must develop a strategic plan for systematic citywide access to public space. There are two typical models. One emphasizes effective control and owner responsibility. Leashes are an exception to be used in a few designated areas or parks. This is the system used by both Saanich and Oak Bay. (See the attached map showing the network of off-leash areas in Oak Bay, Appendix 3.) The other model establishes a base network of parks and sets up a system by which more parks can be added. This is the approach used in all major urban municipalities that have reformed their off-leash policy, including Vancouver, Edmonton, Calgary, Winnipeg, Montreal, Mississauga, Ottawa, and others.

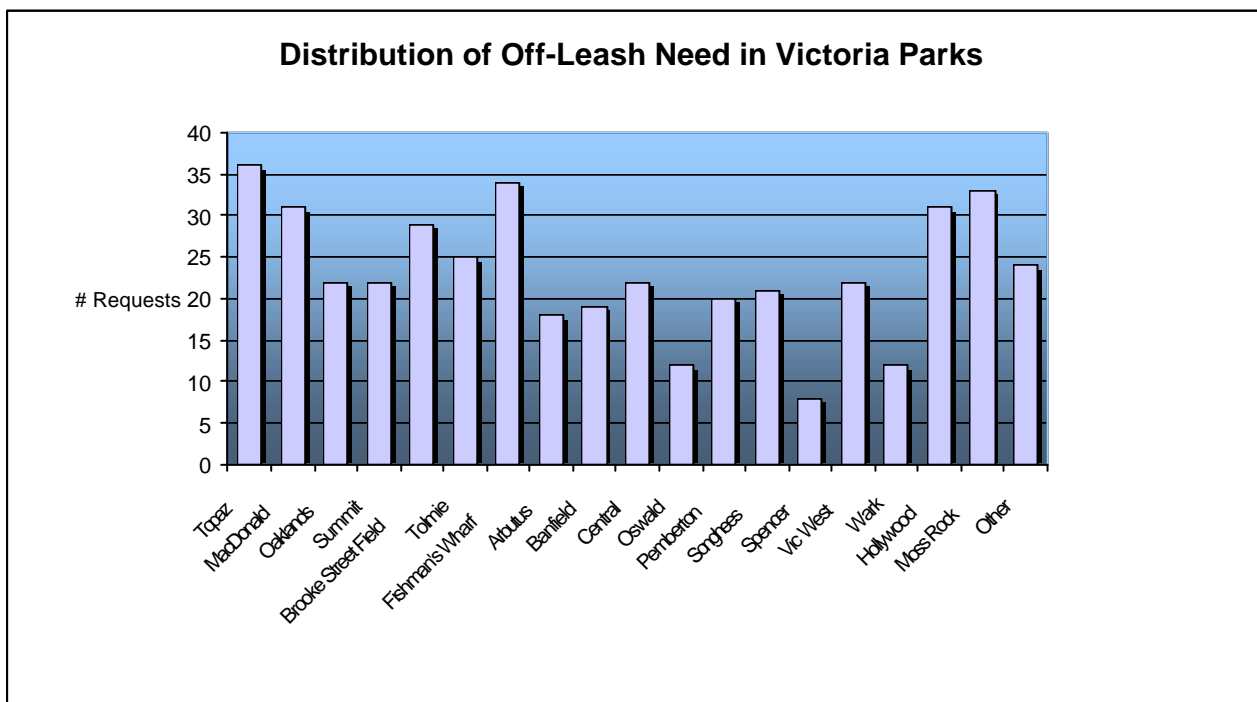
We strongly recommend the second model. Victoria should be proactive and develop a rationalized citywide off-leash policy that opens up access to a number of other parks throughout the city. This means identifying and developing a network of dog-friendly parks. It requires the establishment of areas for off-leash access in various neighborhoods around the City—either as permanent off-leash parks or as parks with designated off-leash hours.

(Please see Appendix 4, which details the criteria used by Ottawa to determine which parks are suitable for off-leash activities.)

There are a number of areas now being used by dog owners illicitly to exercise their dogs without incidents or problems. These are obvious areas to look at for sanctioned off-leash activity. Some of them can be designated off-leash areas like Dallas Road. Others, which may be near playgrounds or school grounds, can be designated off-leash during hours of the day when they are not in use. Some possibilities include Fisherman’s Wharf Park, McDonald Park, Pemberton Park, lesser-used areas in Beacon Hill Park (e.g. around the flagpole, behind the cricket field), Central Park and Topaz Park, to name just a few.

A recent poll of a sampled group of Citizen Canine members (conducted June 23-24) reveals the following levels of demand in 18 Victoria parks:

Topaz Park	36	Oswald Park	12
MacDonald Park	31	Pemberton Park	20
Oaklands Park	22	Songhees	21
Summit Park	22	Spencer Park	8
Brooke Street Field	29	Vic West	22
Tolmie Park	25	Wark	12
Fishermans Wharf	34	Hollywood Park	31
Arbutus	18	Moss Rock	33
Banfield Park	19	Other	24
Central Park	22		
		Total	441



This survey demonstrates that the demand for parks among dog owners is broadly distributed across Victoria. To avoid the pitfalls of regional destinations, sound city policy would try to replicate this expressed variance. Moreover, it would respect park preference and history among dog owners, and try to accommodate their access in the listed parks. Clearly, high demand parks, including Topaz, Moss Rock, Hollywood, MacDonald, Fisherman's Wharf, and Brooke Street field must be carefully considered. Those with expressed demand under the MOU, including Oaklands, Tolmie, and again both MacDonald and Topaz, should also be given special consideration.

Dealing with Potential Conflicts in Sharing the Parks

There are potential conflicts generated by off-leash dogs in City greenspace. Of course, some conflict is inevitable in urban areas; it is not confined to park management nor to dogs' use of public parks. Many different recreational activities and groups are competing for access to the same space. The problems generally noted about dogs and their owners in public space include defecation, aggression to humans and other animals, liability, and compliance with leash laws.

- **Dog feces** left on the ground by irresponsible dog owners are a main concern. There will always be some dog owners who do not pick up after their dogs, just as there will be some park users litter or destroy property. City bylaws require the removal of feces but enforcement is difficult. However support and education do help. Since the extra bag stations and garbage cans have been in place at Dallas Road the environment is greatly improved. A citywide "stoop and scoop" campaign combined with enforcement could address the problem. Pressure from other dog owners also significantly raises the level of compliance.
- **Dog aggression** is often mentioned as a reason for keeping all dogs on leash in public places. Dog attacks are the most serious potential problem and certainly nothing can prevent them completely. Most dogs, however, don't bite other people or other dogs. Those that do are either frightened, dominant or protective. These behaviours can be countered through training and proper socialization. Teaching a dog to be sociable is done through integration not separation. Off-leash areas in fact provide socialization opportunities where dogs can run and play with other dogs, meet different people, and learn how to behave in society.
- **Liability** is a concern, however it is not limited to the issue of dogs. Whenever people use a public football field or swimming pool there is a liability risk. Generally, a disclaimer notice effectively discharges any liability. For dog bites, it is the owner of the dog who is liable for injuries or damage.
- **Compliance** with leash laws is higher when there is a balanced approach to providing for the needs of dog owners in public parks. Compliance with a bylaw can be related to acceptance of its fairness. If dog owners perceive a bylaw to be unfair, they may ignore it in protest. If on the other hand, they sense there is equitable access for off-leash

recreation in parks, they are more likely to comply with associated bylaws. Compliance is obviously also linked to the extent of enforcement of bylaws. Some authorities impose dog bylaws which they have little intention of enforcing. This policy creates conflicting expectations in the community as well as greater levels of non-compliance by dog owners. A balanced and open approach that provides for needs of all user groups will benefit dog owners as well as the wider community and those charged with enforcing the bylaws.

Benefits of Off-Leash Areas in Neighborhoods

Off-leash dog areas are a positive trend in many cities in Canada. Experience with opening a network of off-leash areas in Edmonton, Calgary and Vancouver has been very positive. Cities benefit in many ways from providing interactive off-leash areas in the urban environment.

- **Development of strong community networks** when people meet regularly with a common purpose. Off-leash areas provide opportunities for authentic community building in neighbourhoods.
- **Increased social contacts for people in neighbourhoods.** With the aging population and more people living alone, dog off-leash areas facilitate meaningful social contacts. This is especially important for seniors, handicapped people, and the socially isolated.
- **Decreased automobile traffic** and pollution when dog owners can walk to local parks to exercise their dogs.
- **Increased presence of responsible people in parks** at all hours. Vandalism and crime in public parks is a critical issue. The main tool for reducing crime is to attract more park activity. Dogs and their owners assist with this since they often visit parks at non-peak times such as the early morning and late evening.
- **Better socialized dogs** since many behavioural problems in dogs stem from lack of socialization. Dogs learn acceptable public behaviour through training and exposure to other dogs in off-leash areas.
- **Fewer aggressive dogs** since dogs behave more aggressively on leash than off. Access to a public park close to home is the safest and most effective way to ensure that owners socialize their dogs and provide them with frequent experiences in the outside world.
- **More opportunities for self-monitoring and education.** Dog owners talk to each other and can promote acceptable behaviour and increase awareness of responsible dog ownership. Dog owners encourage others to pick up after their dogs, and provide modeling and support with training and dog etiquette.

- **Civic acknowledgement of the importance of dogs** in the lives of citizens. Dogs contribute to families and society. They improve family cohesion, fitness and health. Since 30 to 40 percent of households have dogs, there is need for official recognition of dog owners' needs.
- **Improved relationship between city and dog owners.** When dog owners feel the City bylaws are fair and inclusive, they will be more cooperative. This leads to greater compliance with the bylaws.
- **Opportunity to focus enforcement efforts** where they are needed (people who don't pick up after their dogs, people who don't take responsibility for their dogs' behavior).
- **Encouragement for new residents** and tourists with dogs to come to the city along with the associated economic spin-offs.
- **Opportunities for children and families to interact with friendly dogs** in their own neighbourhood. When people have an opportunity to interact with dogs, they are able to overcome fear and develop connections with other creatures. When dogs are kept leashed and segregated we deny people this experience.
- **Access for the elderly dog owners** and those who lack the mobility to travel long distances. Many dog owners do not own vehicles and are currently not able to access off-leash areas.
- **Victoria will be seen as taking its share of the responsibility** for dog owners' needs, rather than displacing dog owners to other municipalities and their parks.

Establishing a Network of Off-Leash Areas to Meet Dog Owners Needs

The first step is to **formally recognize that dog owners are as legitimate users of recreational areas in the city as any other group**. This is important because it affirms the legitimacy of this user group, and frees policy makers to find ways to accommodate this group's needs. Creative policies can be designed to address the needs of all stakeholders. Conflicts can then be addressed in multiple ways (education, enforcement, and consultation), while at the same time asking for tolerance and respect from the rest of the community.

The second step is to evaluate the needs of the user group. The most fundamental need for dogs is to be taken out with their owner as much as possible. This enables them to experience exercise, training, socialization, and relief of pent-up energy, as well as time and fun with their owners and other dogs. Dogs need interaction with their owner and a diversity of experience. This cannot be achieved by keeping them inside or in private back yards. They need to experience a range of opportunities for interaction both on leash and off leash.

Dog owners are not all the same; thus there are different needs for access to public greenspace. Children, teenagers, adults, the disabled, family groups, and the elderly are all potential users of neighbourhood off-leash areas. Many people living in the city need access to public open space because they lack it at home. Seniors and people living alone with dogs need off-leash access in a busy populated park so they can have opportunities for social contact. A range of different park options should be provided to accommodate these varying requirements. The key principles are accessibility and diversity, as well as integration with other users to provide an equitable distribution of parks.

Developing Community Support for Off-Leash Areas

It is important to recognize that the benefits of providing dog access in public parks are not just for dog owners and their dogs but also for the wider community. Opposition to off-leash areas often stems from either lack of knowledge or lack of exposure to dogs.

Following are some possible ways to develop community support for changes in the City's leash bylaw.

- Present documented research in other municipalities (Edmonton, Ottawa, Calgary, and Vancouver) showing that this is a positive trend in many enlightened Cities in Canada.
- Point out that that cities with off-leash areas are seen to be responsive and cosmopolitan since they provide vibrant inclusive park systems that offer access for the recreational needs of all residents.
- Focus on the benefits of attracting new residents and tourists with dogs, and the associated economic spin-offs.
- Undertake a statistically valid resident telephone survey such as was done in Edmonton.
- Hold several neighbourhood open houses for public information and feedback.
- Present the rationale behind a small system of parks, as well as the criterion used to provide limited access to a few initial parks, and the criterion used for adding and/or removing parks in the future. (This is important, not just to realistically address the demonstrated needs of Victoria dog owners, but also to reduce impact in any one neighborhood, and counter the legitimate question, "Why only in my backyard?" It's important that people understand why a piecemeal, one-off approach, to citywide issues is never good management (the Dallas Road scenario is an example of this).
- Introduce the change in the context of a trial, as was done in other cities. Edmonton began with 16, and now has 40. Vancouver began with four parks, and followed it with 28 more.

- Notify the public about the pilot programs and erect signs at park entrances to ensure that visitors are aware of the new rules. Postings at community centres plus newspaper advertising and leaflets around the specific park areas will provide advance notice of the pilot program.
- Work to educate dog owners both directly through the City and through supportive dog owner groups, as well as a stoop and scoop campaign and information about park etiquette for dogs.
- Stress strict enforcement of the requirement that dogs be under control, as well as of the leash bylaws in other areas of the City.
- Provide doggie bags as well as adequate garbage pick-up.
- Ask for cooperation from dog owners to be responsible while in parks, and at the same time ask for tolerance and respect from the rest of the community.

Conclusions

The City's restrictive leash laws are creating serious problems in Victoria. The city needs to look at dog owners and their use of City parks in a new way. The following principles are suggested:

- Recognize that dog owners are as legitimate as any other group of park users.
- Appreciate the different needs of dogs and their owners for access to public open space. This means maximizing the number and range of opportunities available.
- Aim for integration of dogs and their owners with other park users, not separation.
- Develop a strategic citywide approach to develop an equitable distribution of parks rather than reacting on a park-by-park basis.

By opening up a network of off-leash areas in neighbourhood parks throughout the city, Victoria will take an important first step in joining the majority of enlightened cities that provide for the recreational needs of all their citizens—including the thousands who own dogs. It will help the City move toward the development of inclusive and cooperative parks policy that is much more closely in tune with their actual use and need. Embracing the benefits of urban dog ownership results in fair and equitable use of public space. These should be viewed both as goals to be reached and rewards to be reaped.

This document has been prepared for submission to Victoria City Council by Citizen Canine
June 30, 2003.

For information about Citizen Canine, visit www.citizencanine.org

References:

Batch, Eric, Hale, Matt, and Ellen Palevsky (1999) *The Case for Space: Expanding Recreational Opportunities for Dog Owners and Their Pets.* Freeplay. School of Policy, Planning, and Development, University of Southern California.

Public Open Spaces and Dogs (1995) Harlock Jackson Pty Ltd., Planning and Development Consultants in association with Associate Professor Judith K. Blackshaw, Animal Behaviour and Welfare of the University of Queensland and Jane Marriott, Landscape Architect.
<http://www.petnet.com.au/openspace/posindex.html>

Josey, Terry (2002) *Who Let the Dogs Out! Speaking Notes for Canadian Parks and Recreation Association.* City of Edmonton, Community Services Department.

Appendices:

Appendix 1. Notice of Constitutional Question, Ontario Court of Justice

Appendix 2. Comparison of Numbers of Off-leash Parks in Canadian Cities

Appendix 3. Map Showing Oak Bay Off-Leash Parks

Appendix 4. Designation Criteria Used by Ottawa to Determine Which Parks Work Best for Dog Off-Leash Areas – One Example

Appendix 1
Final Constitutional Notice

This is the Final Constitutional Notice for one of three leash-related cases now in Ontario court. (The solicitors who have taken on the case *pro bono* are Heenan and Blaikie, one of Canada's most prestigious law firms.)

ONTARIO
COURT OF JUSTICE

REGINA

v.

KAREN LANDHEER

NOTICE OF CONSTITUTIONAL QUESTION

TAKE NOTICE THAT pursuant to the Ontario *Courts of Justice Act*, the defendant, Karen Landheer, will make an application for:

1. Relief under section 24(1) of the *Canadian Charter of Rights and Freedoms* on the grounds that section 7(1) of the National Capital Commission Animal Regulations (SOR/2002-164, 25 April 2002) (hereinafter "NCCAR") is inconsistent with sections 7 and 15(1) of the *Canadian Charter of Rights and Freedoms* and is therefore inoperable or inapplicable.
2. Relief under section 2 of the *Canadian Bill of Rights* on the grounds that section 7(1) of the NCCAR is inconsistent with sections 1(a) and 1(b) of the *Canadian Bill of Rights* and is therefore inoperable or inapplicable.
3. Relief under the *Constitution Act, 1867* on the grounds that section 7(1) of the NCCAR is a federal law that regulates matters exclusively within provincial jurisdiction as set out in sections 92(13) and 92(16) of the *Constitution Act, 1867* and that section 7(1) is therefore *ultra vires* the *Constitution Act, 1867* and inoperable or inapplicable.

AND FURTHER TAKE NOTICE THAT the matter is to be heard on
2003 at 9:00 a.m. at the Court House, 1595 Telesat Court, Ottawa, Ontario.

AND FURTHER TAKE NOTICE THAT the material facts giving rise to the constitutional question are as follows:

1. The defendant was charged by the National Capital Commission (hereinafter "NCC") under section 7(1) of the NCCAR for "have [sic] a domestic animal, namely a dog, on unleased land owned by the National Capital Commission and not restrained in accordance with subsection 7(1) of the National Capital Commission Animal Regulation and did thereby commit a summary conviction offence under s. 30 of the said Regulations."
2. Section 7(1) of the NCCAR requires all persons who have a domestic animal on NCC land, where domestic animals are permitted, to restrain the animal by a leash or harness, held by a person or securely attached to an object, not more than two metres long, or in a container from which it cannot escape, or in a vehicle.
3. The offence is punishable by summary conviction under section 30 of the NCCAR by a fine of not more than \$500 or to imprisonment for a term of not more than six months, or to both.
4. The NCC owns and operates recreational lands and parks within the National Capital Region. The NCC reports to the federal Minister of Canadian Heritage.
5. The date of the alleged offence was November 14, 2002. The defendant was jogging after dark with her dog, a Boxer which is a medium sized dog commonly used as a family pet. The dog was off leash, and jogging behind the defendant, because she was too old to jog along side the defendant.
6. The defendant was jogging briefly on NCC land near the Rideau Canal and Colonel By Drive. She was on Carleton University property when she was approached by a man in a truck.
7. The man asked her to stop and stated that he was an NCC Officer. Seeing no visible identification, sceptical of the man's identity and concerned for her safety, the defendant refused to stop. The man then pursued her in his truck and on foot. The defendant, now terrified, ran to escape and was able to flee.

8. Upon arriving home, the defendant contacted Carleton University police to report the incident. Approximately one hour later, the same man appeared at her home. Fearing that she was being stalked, the defendant contacted the Ottawa Police who arrived and spoke to the man outside. The man then left without further incident.
9. The defendant is uncomfortable jogging at night without the companionship of her dog. In addition, the defendant brings her dog upon NCC land for companionship, enjoyment and security of her person.

AND FURTHER TAKE NOTICE THAT the grounds for this constitutional question are as follows:

1. Section 7(1) of the NCCAR discriminates against the physically and mentally disabled, who for reasons associated with their disability, choose not to restrain their dog on a leash or harness but restrain the dog through voice commands or hand signals while on NCC land. This includes, but is not limited to, persons with reduced physical mobility, quadriplegics, persons with psychiatric illness, and persons who suffer from epileptic seizures.
2. Section 7(1) of the NCCAR discriminates against the elderly, who for reasons associated with their age, are more likely to choose to have the company of a dog for security of their person and companionship and to control their dog through voice commands and hand signals while on NCC land.
3. Section 7(1) of the NCCAR is inconsistent with the requirements of fundamental justice. Where an owner of a domestic animal on NCC land, defined as a “keeper” in section 1 of the NCCAR, is a minor, that person’s mother, father or guardian is responsible for any violations of section 7(1) of the NCCAR. Therefore, the mother, father or guardian of a convicted minor could be fined or imprisoned for a contravention of section 7(1) of the NCCAR, even though they themselves did not commit any offence.
4. On the basis of the foregoing, section 7(1) of the NCCAR is discriminatory and a restraint upon freedom that is unreasonable and cannot be justified in a free and democratic society .
5. Section 7(1) of the NCCAR is *ultra vires* the *Constitution Act, 1867* because as a creature of the federal government it regulates matters within the Province of Ontario of a merely local or private nature, and regarding property and civil rights;

namely, the use and enjoyment of dogs, and where and under what circumstances dogs may be upon land located within the Province of Ontario.

6. Section 7 of the *Canadian Charter of Rights and Freedoms*:

“7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

7. Section 15(1) of the *Canadian Charter of Rights and Freedoms*:

“15(1). Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on ... sex, age or mental or physical disability.”

8. Section 24 of the *Canadian Charter of Rights and Freedoms*:

“24. Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.”

9. Sections 1(a) and 1(b) of the *Canadian Bill of Rights*:

“1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of ... sex, the following human rights and fundamental freedoms, namely,

(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law ...”

10. Section 2 of the *Canadian Bill of Rights*:

“2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared ...”

11. Sections 92(13) and 92(16) of the *Constitution Act, 1867*:

“92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next herein-after enumerated; that is to say, -

12. Property and Civil Rights in the Province

...

16. Generally all Matters of a merely local or private Nature in the Province.”

March 6, 2003

Heenan Blaikie LLP

Lawyers
81 Metcalfe Street, Suite 700
Ottawa, Ontario K1P 6K7

Peter Mantas LSUC#: 35269H
Tel: (613) 237-1733
Fax: (613) 236-9632

Solicitors for the Defendant

TO: **The Attorney General of Ontario**

Constitutional Law Division
8th Floor
720 Bay Street
Toronto, Ontario
M5G 2K1

The Attorney General of Canada

Justice Building
239 Wellington Street
Ottawa, Ontario
K1A 0H8

AND TO:

Federal Prosecutor's Office

Department of Justice
FPS Ottawa – Gatineau
2403-160 Elgin Street
Ottawa, Ontario K1A 0H8

Natalie Phipps
Tel: (613) 957-4793
Fax: (613) 957-9043

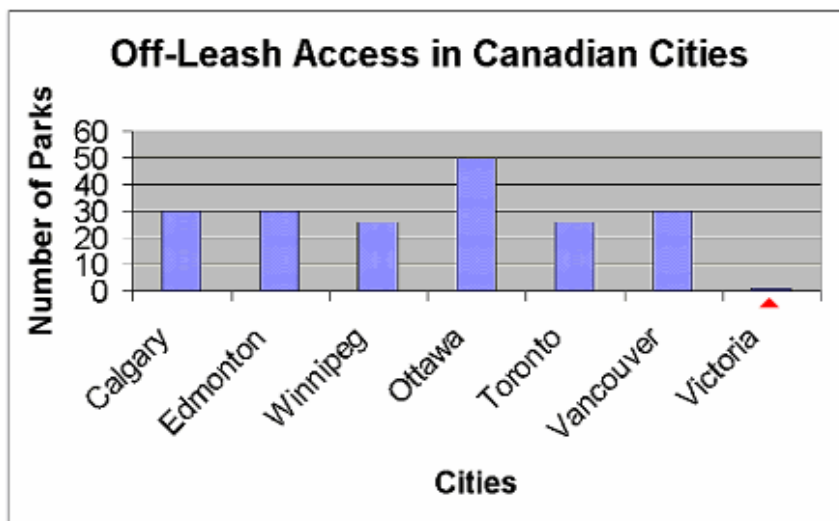
Solicitors for the Crown Prosecutor

Ontario Court of Justice

The Court House
1595 Telesat Court
Ottawa, Ontario

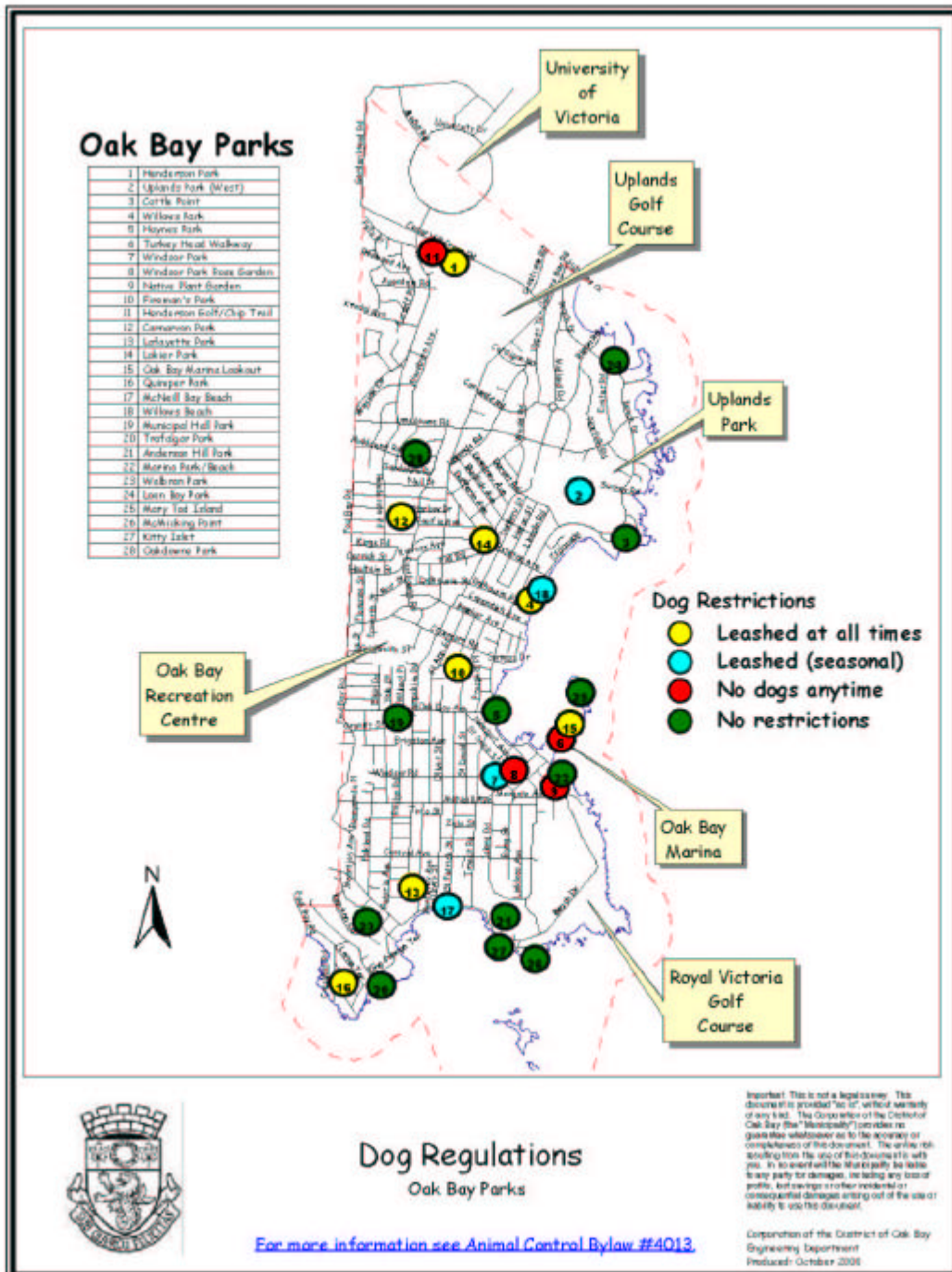
APPENDIX 2

Comparison of Numbers of Off-Leash Parks in Canadian Cities



APPENDIX 3

NEXT DOOR: OAK BAY MAP SHOWING DOG FRIENDLY PARKS



APPENDIX 4

DESIGNATION CRITERIA USED BY OTTAWA TO DETERMINE WHICH PARKS WORK BEST FOR DOG OFF-LEASH AREAS

The Dogs-in-Parks Designation Criteria assesses various elements of City parks to determine whether or not dogs are compatible with activities expected in the park. A point value is assigned to the park size and facilities with higher points assigned to the least "dog compatible" elements of a park.

Elements Measured and Assignment of Points

The following elements are used to assess "Dog/Park" compatibility: park size; facilities; proximity to schools/community centres.

A. Park Size

The park inventory has been divided into eight size categories with each category assigned a point value:

Park Size Category	Points	Number of Parks
Very Small (0.000 - 0.199 hectares)	30	26
Small (0.200 - 0.399 hectares)	25	22
Medium 1 (0.400 - 0.799 hectares)	20	33
Medium 2 (0.800 - 1.199 hectares)	15	33
Medium 3 (1.200 - 1.799 hectares)	10	37
Medium 4 (1.800 - 3.199 hectares)	5	27
Large (3.200 - 9.999 hectares)	0	30
Very Large (10.000 - over)	0	6

The park size criterion generally measures the availability of open space for the purpose of exercising dogs. Small parks which do not provide sufficient space to exercise dogs are not appropriate for dogs: the potential for dog/people conflicts increases and, where "Stoop & Scoop" is not observed, the concentration of dog waste is most problematic in small parks. Consequently, small parks rate the highest point score. Very large parks, on the other hand, can usually accommodate a number of designations, and so have no points associated with size.

Since the overall size of the park was used to assign a point score, the measurement does not always reflect the actual open space available after taking into account facilities in the park such as buildings, sports courts, wading pools, and play structures. Facilities in a park are separately accounted for below.

B. Park Facilities

Park facilities are divided into 6 categories. The point value assigned to each facility takes into consideration: the compatibility of the facility with the presence of dogs; the amount of space occupied by the facility; and the probability that dogs might safely use the space when the facility is not in use by park patrons.

B.1 Play Area/Play Structures 4 for the first 1 for each additional Swings 1 for each structure

These facilities are used primarily by exuberant children running from one structure to another. The children's noise and movements may provoke dogs. The area around these structures should not be contaminated by dog waste.

**B.2 Wading Pool/Spray Pad 4 for the first
2 for each additional water facility**

Wading pools are used primarily by children. The children's noise and movements may provoke dogs. The area around these structures should not be contaminated by dog waste.

**B.3 Ball Diamond 3 for each lit Ball Diamond
2 for each unlit Ball Diamond**

When not in use, ball diamonds may offer open spaces for dogs to exercise. A higher point value is assigned to lit ball diamonds because they are more apt to be used at all times during park hours.

**B.4 Sports Field 3 for each lit Sports Field
2 for each unlit Sports Field**

When not in use, sports fields may offer open spaces for dogs to exercise. A higher point value is assigned to lit sports fields because they are more apt to be used at all times during park hours.

**B.5 Basketball/Tennis Courts 2 for each type of court
Horseshoe 1 for each pitch**

Tennis and basketball courts are often fenced and their surface is not appropriate for dogs. The point value reflects the fact that the surface area taken up by the courts reduces the overall park space available for dogs. Of the two, the horseshoe pitch takes up less space and is usually grassed.

B.6 Picnic (4 Tables) 1 point per each 4 tables

The space around picnic tables may be used by dogs for exercise when the tables are not in use. Picnic tables are typically used during lunch/supper times for short periods. The presence of many tables in a park is an indication that picnics are common occurrences.

C. Proximity to Schools 3 points

Proximity to Community Centres 2 points

The proximity of schools and community centres to a park is associated with higher park use, often by young people. Consequently, there is an increased opportunity for dog/people conflict in such parks. In this policy, proximity means the school or community centre abuts the park.