



# Litigation and Animal Experts

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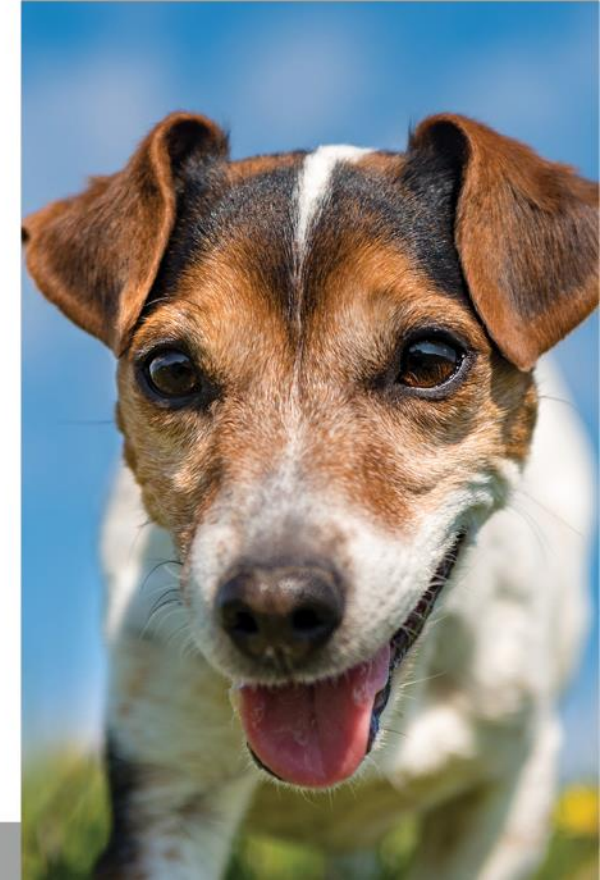
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# Admissibility of the Expert Opinion

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- (a) logical relevance of the opinion;
- (b) necessity in assisting the trier of fact;
- (c) the absence of any exclusionary rule;
- (d) qualifications of the proposed expert;
- (e) particularly where the opinion is based on novel science, reliability of the underlying methodology.



# Purpose of Expert Opinion (Necessity)

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- “Expert opinion evidence is necessary to assist the trier of fact when the factual matter in dispute is ‘such that ordinary people are unlikely to form a correct judgment about it, if unassisted by persons with special knowledge’.”

*Kelliher (Village of) v. Smith*, [\[1931\] S.C.R. 672](#) at 684 (S.C.C.),



# Expert Qualifications

## The Court Considers Expert Qualifications, Including Adherence to Duties

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- Expert must have special knowledge acquired by study, training, or experience.
- Experts are compensated by parties, but their primary duty is to the Court.
- Experts must provide the court with impartial, independent and unbiased opinions.



# Types of Animal Law Cases that may rely upon Experts

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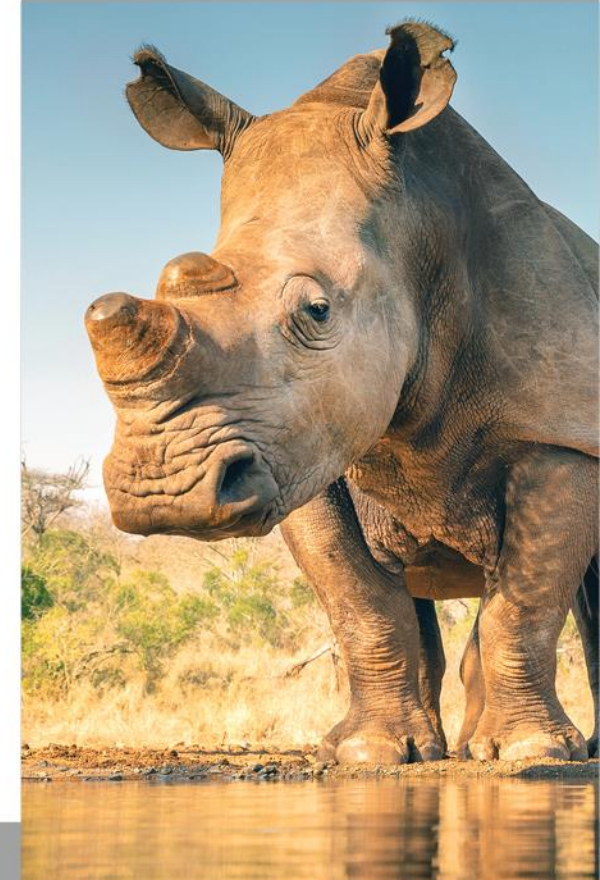
- Animal cruelty - seizure of animals
  - *Best interest of the animal*
- Criminal law
  - *Proof of animal cruelty*
- Animal custody (family law)
  - *Best Interest of the animal*
- Wildlife cases
  - *Environmental impacts*



# Types of Animal Law Cases that may rely upon Experts (con't)

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- Tort / occupier's liability (dog bites etc.)
  - *Animal behaviour – known propensity*
- Veterinarian malpractice
  - *Professional standard of care*



# Animal Seizure Cases

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- BCSPCA seizure authorized by statute (*Prevention of Cruelty to Animals Act*)
- Owner disputes seizure before Farm Industry Review Board
- Tribunal may rely upon experts to assist in determining animals' best interest



# Animal Seizure

Example – *Magaw v BCSPCA* (BCFIRB 2021)

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- Dog Sled operator
- Issues with dogs' shelter, nutrition, care
- Owner's experts "*dogs not in distress*"
  - Dr. Reynolds DVM & PhD, Cornell University, board certified American College of Veterinary Nutrition.
  - Dr. Ailena Baum DVM UW-Madison School of Veterinary Medicine, USDA Level 2 Accredited Veterinarian.





# Animal Seizure

Example – Magaw v BCSPCA (BCFIRB 2021)

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SPCA Experts – “*dogs in distress*”

- Dr. Adrian Walton, veterinarian licensed to practice in British Columbia
- Dr. Karen van Haaften, veterinarian licensed to practice in British Columbia; three-year residency in clinical behavior



# Animal Seizure

## Example – *Magaw v BCSPCA* (BCFIRB 2021)

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“Society video from the day of the seizure show a number of dogs demonstrating stereotypic circling behavior ... The Appellant argues that the dogs were exhibiting typical behaviour for sled dogs and were not in distress. Dr. Reynolds and Dr. Baum support this argument in their testimony, saying it is natural for dogs to bark and get agitated when strangers arrive.”

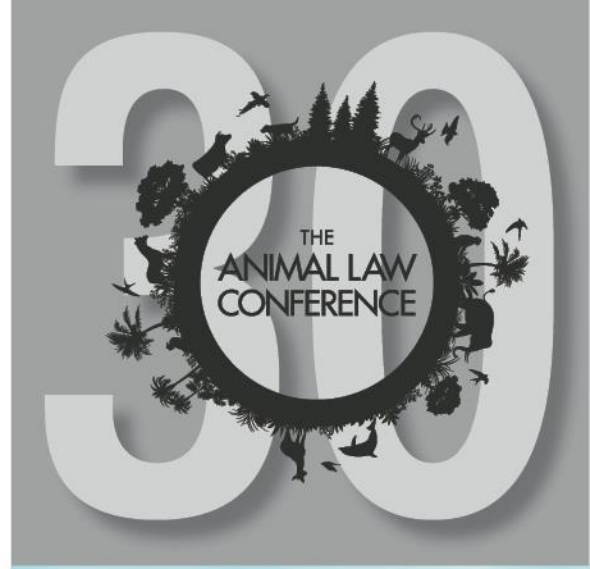
“The Panel prefers the evidence of Dr. van Haaften, who had the opportunity to spend hours with the dogs in their environment. We find that the video evidence supports Dr. van Haaften’s description of repetitive behaviors being carried out identically over and over again over time. ...”



# Wildlife Case

- Issue re. SPCA Wild ARC release of non-native eastern grey squirrels per Reg. Exemption. Release requirement required sterilization. Ministry refused license renewal. SPCA appealed.
- Wildlife Biologist (Dr. Mark Fraker) – BCSPCA's expert - supported release of non-native squirrels to overturn Ministry refusal permit renewal.

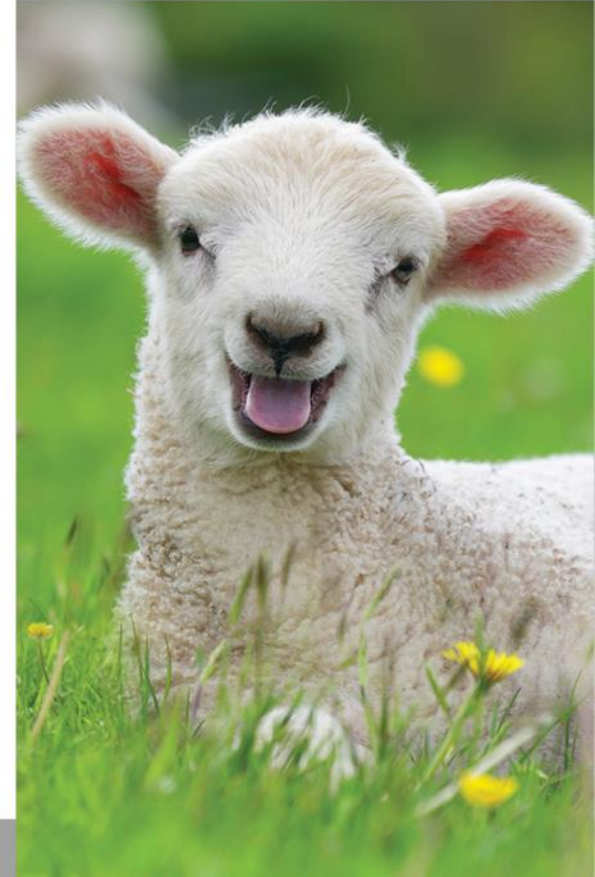
<https://www.bceab.ca/decision/2015wil006a/>



# Wildlife Case

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Expert Dr. Farkar produced data to support his conclusions whereas Ministry's expert failed to do so. The Tribunal rejected the Ministry's argument that Dr. Farkar's opinions should be given "no weight". Dr. Farkar's opinion was supported by scientific research and data, which revealed lack of impact by non-native sterilized squirrels.





Thank you!

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