

# Animal law going mainstream

## Field changing as people's views begin to transform

BY MICHAEL MCKIERNAN  
Law Times

**A**nimal law is going mainstream, according to the founder of an animal rights group.

Toronto lawyer Nicholas dePencier Wright chairs Animal Justice Canada, formerly Lawyers for Animal Welfare, a group dedicated to using the legal system to protect animals. He says the field has changed dramatically in recent years.

"People's view of their relationship with animals has really transformed," he says.

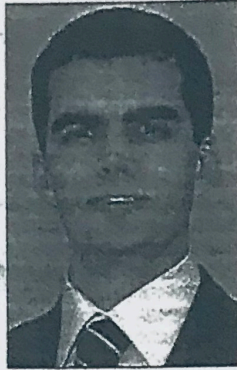
"It's gone from being an interaction between humans and property to something different. There's a respect and understanding that they are sentient beings that feel pain like we do and that deserve a position under law as something other than merely inanimate objects."

Wright is leading a campaign to form an official animal law section of the Ontario Bar Association. The British Columbia branch of the Canadian Bar Association already has a section, and Wright says Ontario lawyers have rallied behind his call. An inaugural event late last year and a follow-up in 2012 each attracted more than 50 participants.

"There's a lot of momentum and enthusiasm, and a long-term commitment from the OBA would really help us to get action in the area and give us the ability to organize more events," says Wright.

The most recent session on May 29 focused on prosecution and reform in the animal law field.

Jennifer Friedman, litigation counsel for the Ontario Racing Commission, told the audience that the commission has been a leader in the animal protection field. In 2009, it established new



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rules on the use of whips and introduced tougher penalties for excessive whipping.

Friedman said she was also encouraged by the commission's "progressive language" on cruelty used in disciplinary decisions.

"Panels have consistently held that the well-being of the horse is one of its three primary mandates," she said.

The message has filtered down through the sport, according to Friedman. In 2010, when jockey Jesse Daigrepoint was face accusations of using an electrical device to spur his horse at the gate, he was found guilty and banned for two years with the help of evidence from fellow jockeys.

Before joining the commission, Friedman was the first general counsel at the Ontario Society for the Prevention of Cruelty to Animals. The position involved appearing on its behalf before the Animal Care Review Board and prosecuting provincial offences.

In 2009, the Provincial Animal Welfare Act strengthened the OSPCA's hand by establishing standards of care for animals and introducing penalties of up to two years' imprisonment.

\$60,000 in fines, and a lifetime ban on owning animals for causing harm to them.

"This was a huge amendment as in the former act, the only offence was for breeding operations of cats and dogs said Friedman.

But there are still challenges for the organization when it comes to the court system. Some justices of the peace are reluctant to impose fines, Friedman said, and it can also be difficult to convince the Crown attorney's office to pursue Criminal Code matters.

"The Crown is in a position of having to juggle resource and consider whether they want to prosecute a crime against an animal or a crime against a person," she said. "In many cases the crimes against the person will win out."

Albert Koehl, a staff lawyer at Ecojustice, told the audience about the creative use of private prosecution to advance the rights of animals. He's leading the prosecution of two Toronto building owners over injuries and deaths of migratory birds flying into their reflective windows. The buildings include one in Scarborough that has allegedly resulted in the death or injury of more than 800 birds in a year.

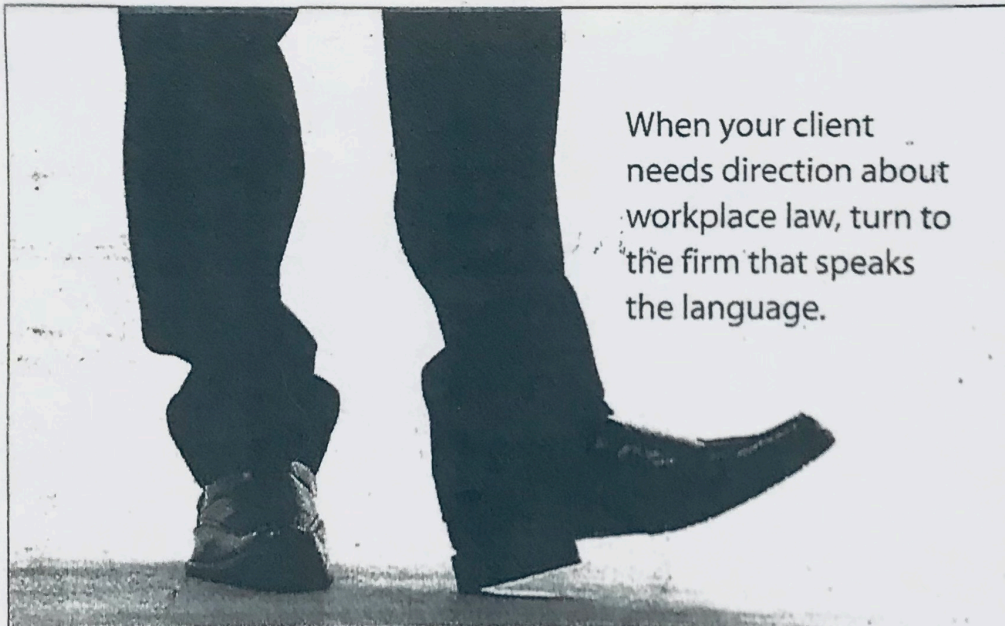
"What the birds see in these windows are trees in the sky," said Koehl. "So seeing these safe places, they fly towards them. It's nothing to do with how tall the buildings are. It's to do with the nature of the windows and how many windows there are. The birds are usually killed at the bottom floors, up to about the tree line."

Koehl estimates building collisions result in the deaths or injuries of close to a million birds each year in Toronto. The city has developed its own bird-friendly development guidelines for builders in the city, but it's a voluntary program. Koehl says potential solutions "aren't that complicated." A masking tape-style film on the window breaks up the reflection and sends the message to birds that it isn't safe.

Koehl's prosecution uses a provision of Ontario's Environmental Protection Act that bans people from discharging contaminants if they cause an adverse effect. He argued the broad definition of contaminant includes reflected light coming from the windows. One trial has wrapped up with a decision due later this year. The second trial is still in progress after nine days of evidence.

Koehl, who has a history as a prosecutor for the Ministry of the Environment, said it has been a struggle to get by without the resources of a government department.

"At the ministry, the nice thing is you've got an investigative enforcement branch full of trained professionals. In a small organization, you're not going to



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