Court File No. 39430

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

ATTORNEY GENERAL OF BRITISH COLUMBIA

APPELLANT
(Respondent)

and

COUNCIL OF CANADIANS WITH DISABILITIES

RESPONDENT
(Appellant)

[Style of cause continued on next page]

FACTUM OF THE INTERVENER, ANIMAL JUSTICE

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I - OVERVIEW AND FACTS

1. This appeal has significant implications for many groups who struggle to have their legal challenges heard and their interests fairly represented in court. One such group is animals. As Justice Sossin has observed, "[i]ndividuals and groups seeking to advance animal welfare or animal rights cases have faced particularly difficult challenges in meeting the threshold for public interest standing."[1]

2. Animal Justice is Canada's leading animal law organization. It engages in strategic litigation and law reform to advance the rights and interests of animals.

3. To ensure public interest standing performs its important function in the Canadian legal landscape, Animal Justice urges this Court to confirm that the *Downtown Eastside* analysis should be informed by (a) the nature of the rights and interests at stake in a given challenge, (b) the importance of upholding legality, and (c) the need to facilitate access to justice for voiceless and vulnerable groups in society.

4. Animal Justice accepts the facts as found by the Court of Appeal and summarized in the factum of the CCD. It takes no position on any disputed facts.

PART II - STATEMENT OF POSITION ON THE QUESTIONS ON APPEAL

5. Animal Justice's position with respect to the questions at issue in the appeal is as follows:

a) Where a challenge involves the rights and interests of voiceless or vulnerable groups, or rights that are held by all members of the public in common, legality and access to justice should be the primary objectives driving the public interest standing analysis.

b) The factual matrix necessary to advance a challenge depends on the nature of the case and the interests at stake. In many cases, evidence focused on the factual context of a specific individual is not necessary or even preferable.

PART III - STATEMENT OF ARGUMENT

6. The CCD aptly notes that for vulnerable and marginalized people, the barriers to accessing justice are significant, and can be insurmountable.[2] Because the barriers are higher still for animals, and other voiceless or rightless entities such as the environment, obtaining standing to litigate on behalf of animals is one of the most significant challenges for Canadian animal

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[1] *Schnurr et al v Canadian Tire Corporation Limited et al*, 2019 ONSC 5781 at para 31 [***Schnurr***].

[2] CCD Factum at para 40.

protection groups.[3] The experience of such groups can thus provide a useful perspective in considering the impact of public interest standing law on voiceless and vulnerable groups.

7. Animals' inability to engage in electoral politics, commence litigation, or shape laws that impact their interests, combined with the "pervasive infliction of institutionalized, legalized, routinized, commercialized harm" on animals in Canadian society are the sources of the "radical vulnerability" of animals in our constitutional democracy.[4] Furthermore, there are significant and pervasive barriers to the effective enforcement of animal protection laws in Canada.[5]

8. Outside of the prosecution context, litigation to protect animals is complicated by the fact that "animals are the objects of rights-holders, rather than rights-holders themselves."[6] As such, the "blunt procedural instrument"[7] of denying public interest standing continues to be used routinely to dismiss challenges aimed at protecting animals.[8]

9. To meet the needs of Canada's evolving public interest litigation landscape, the law of public interest standing should develop in a way that takes the interests of animals and other voiceless or vulnerable groups into account.

A) The primary importance of legality and access to justice in claims involving the rights of the vulnerable and voiceless, and those engaging quintessentially public interests

10. A central issue in this appeal is how courts should balance the competing objectives underpinning the public interest standing analysis. This balancing exercise should be informed by

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[3] *Schnurr*, *supra* note 1, at para 31; Jessica Eisen, "Animals in the constitutional state" (2017) 15:4 Intl J Con L at 941-946 [**Eisen**]; Peter Sankoff, "Opportunity Lost: The Supreme Court of Canada Misses a Historic Chance to Consider Question of Public Interest Standing for Animal Interests" (2012) 30:2 Windsor Y B Access Just 129 at 134 [**Sankoff**].

[4] Eisen, *ibid*, at 941-944.

[5] See, e.g. *Her Majesty the Queen v Chen*, 2021 ABCA 382 at para 20 [***Chen***]; *Reece v Edmonton (City)*, 2011 ABCA 238, per Fraser CJ, dissenting, at paras 59-64, 71 [***Reece***], leave to appeal to SCC refused, [2011] SCCA No 447; Terry L Whiting, "Policing Farm Animal Welfare in Federated Nations: The Problem of Dual Federalism in Canada and the USA" (2013) 3:4 *Animals (Basel)*, at 1086-1087, 1097-1098, 1101-1107.

[6] Sankoff, *supra* note 3 at 134; *Zoocheck Canada Inc v Alberta (Minister of Agriculture and Forestry)*, 2019 ABCA 208, per O'Ferrall J, dissenting, at para 75 [***Zoocheck***], leave to appeal to SCC refused, 2019 CarswellAlta 2750.

[7] *Council of Canadians with Disabilities v British Columbia (Attorney General)*, 2020 BCCA 24 at para 88 [***BCCA Decision***].

[8] *Schnurr*, *supra* note 1 at para 31; *Reece*, *supra* note 5 at paras 54-71. See also e.g. *Zoocheck*, *supra* note 6 at para 75*; Cassells v University of Victoria*, 2010 BCSC 1213 at paras 63-66 [***Cassells***]*; Greenpeace Foundation of British Columbia v British Columbia (Minister of the Environment)*, [1981] 122 DLR (3d) 179 at paras 13-15; *Re Teja's Animal Refuge c Québec (Procureur général)*, 2009 QCCS 918, appeal dismissed on other grounds 2009 QCCA 2310; *Skibsted v Canada (Environment and Climate Change)*, 2021 FC 416 at paras 95, 99.

the context in which a challenge is brought and the nature of the rights and interests at stake. Where a challenge involves rights and interests of voiceless or vulnerable groups, or interests that are quintessentially public[9] – such as protection of the natural environment, navigation, or public roads – legality and access to justice should be the primary objectives underlying the analysis.

1) The rule of law and governments' duty to protect vulnerable groups in society

11. Governments have a duty to protect vulnerable segments of society and to defend collective public rights and interests. Though the implications of these duties vary, and are frequently the subject of debate, the duties themselves are well-recognized, and form the basis for established legal doctrines, such as *parens patriae* and public trust.[10]

12. Indeed, the roots of public interest standing in Canada can be found in relator actions in which Attorneys General occasionally consented to be named in a private action to defend a public right falling under the Attorney General's *parens patriae* jurisdiction.[11] The development of the law of public interest standing was motivated by recognition in this context that the Attorney General is not always a "satisfactory guardian of the public interest".[12]

13. The need to ensure governments uphold their duty to protect vulnerable segments of society, and to defend public rights, in turn informs the appropriate role of the courts.[13] In challenges involving such rights and interests – including those of animals – there is a heightened need for courts to act as guardians of the rule of law by ensuring there is a practical and effective way to challenge laws and government actions through the granting of public interest standing.[14]

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[9] Andrew Gage, "Public Rights and the Lost Principle of Statutory Interpretation", (2005) 15 J Envtl L & Prac at 107.

[10] *Re Eve*, [1986] 2 SCR 388 at paras 31-35, 41-42, 72-77 [***Re Eve***]; *British Columbia v Canadian Forest Products Ltd.*, 2004 SCC 38 at paras 67, 69, 72-81 [***Canfor***]; Eisen, *supra* note 3 at 953; *Committee for the Commonwealth of Canada v Canada*, [1991] 1 SCR 139 at 154-155; *Bancroft v Nova Scotia Minister of Lands and Forestry*, 2021 NSSC 234 at paras 134-152; Craig E Jones, "The Attorney General's Standing to Seek Relief in the Public Interest: The Evolving Doctrine of Parens Patriae" (2006) 86 Can Bar Rev 121 at 122-127 [**Jones**].

[11] *Ibid* at 123.

[12] The Law Reform Commission of British Columbia "Report on Civil Litigation in the Public Interest" (1980) LRC 46 at 12-13, 55-56 [**Law Reform Commission of BC**]; Jones, *supra* note 10 at 123-124.

[13] *Re Eve*, *supra* note 10 at paras 73, 74, 77; Margaret Hall, "The Vulnerability Jurisdiction: Equity, *Parens Patriae*, and the Inherent Jurisdiction of the Court" (2016) 2:1 CJCCL at 189-192 [**Hall**].

[14] *Re Eve*, *supra* note 10 at paras 73, 74, 77; *Canfor*, *supra* note 10 at para 78; *Reece*, *supra* note 5, per Fraser CJ, dissenting, at paras 71, 88, 90; *Zoocheck, supra* note 6, per O'Farrell J, dissenting, at para 75; Hall, *supra* note 13 at 188, 190.

14. In her groundbreaking dissent in *Reece v Edmonton* – the first of two Alberta Court of Appeal decisions involving a captive elephant named Lucy in which public interest standing was denied – Chief Justice Fraser noted that there are strong parallels between promoting access to justice in cases involving animals and those involving other vulnerable groups in society:

> Why are the rights of animals important in our society? Animals over whom humans exercise dominion and control are a highly vulnerable group. They cannot talk – or at least in a language we can readily understand. They have no capacity to consent to what we do to them. Just as one measure of society is how it protects disadvantaged groups, so too another valid measure is how it chooses to treat the vulnerable animals that citizens own and control.[15]

15. Courts around the world have recognized that the duty governments have to protect the rights of voiceless and vulnerable groups, including animals, underscores the importance of ensuring access to the courts in cases involving their interests.[16] For instance, in a challenge involving a controversial bull taming sport, India's Supreme Court recognized that the doctrine of *parens patriae* informs the role of the courts in cases involving the rights of animals, and the need for courts to be "vigilant" to ensure the purposive application of animal protection laws.[17]

16. Likewise, the U.K. Supreme Court has acknowledged that the public interest standing analysis in cases impacting collective public rights – such as environmental law cases – should be informed by the need to maintain the rule of law by promoting the principle of legality.[18]

17. To safeguard the rule of law and ensure governments do not abdicate their duties to protect vulnerable segments of society or public rights, courts should place primary emphasis on legality and access to justice when undertaking the balancing exercise underpinning the public interest standing analysis in cases where such rights and interests are at stake.[19]

2) Upholding the balancing exercise underlying the Downtown Eastside analysis

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[15] *Reece*, *supra* note 5, per Fraser CJ, dissenting, at para 88.

[16] See e.g., *Animal Welfare Board of India v A Nagaraja & others*, 2014 (7) SCC 547 at para 26 [***Animal Welfare Board of India***]; *Animal Legal Defense Fund, Inc. v Glickman,*, 154 F (3d) 426 (DC Cir 1998) at 438; Paola Villavicencio Calzadilla, "Case Note: A Paradigm Shift in Courts' View on Nature: The Atrato River and Amazon Basin Cases in Colombia", (2019) 15:1 LEAD Journal at 56-59 [**Calzadilla**].

[17] *Animal Welfare Board of India, ibid* at para 26.

[18] *Walton v Scottish Ministers*, [2012] UKSC 44 (appeal taken from Scot) at paras 93-94, 151-154 [***Walton***].

[19] *Reece*, *supra* note 5, per Fraser CJ, dissenting, at para 171; *BCCA Decision*, *supra* note 7 at para 79.

18. Objectives achieved through the restriction of standing are adequately reflected in the three *Downtown Eastside* factors, as well as judicial discretion to grant other remedies to dismiss or restrict unmeritorious or inappropriate claims early in the litigation process.[20] Because voiceless or vulnerable groups, including rightless members of society, cannot bring a challenge themselves, there is a serious risk that a denial of standing can effectively shelter a given law or government action from judicial scrutiny, rendering the law "a dead letter."[21]

19. With respect to animal protection laws in particular, Justice O'Ferrall held as follows in his dissenting judgment in *Zoocheck* – the second Alberta Court of Appeal decision in which standing was denied in a case involving Lucy the elephant:

> Efforts by citizens or advocacy groups to uphold [animal protection] laws ought not to be silenced through the denial of standing. If animals are to be protected in any meaningful way, they, or their advocates, must be accorded some form of legal standing.
>
> Denying the appellants' public interest standing suggests the government's control over animals in its care is immune from review and organizations attempting to protect those animals' interests are without recourse. This cannot be the case. Courts cannot stand by when animal protection laws are ignored. Upholding the rule of law against the executive is the dominant rationale for granting public interest standing.[22] [emphasis added]

20. In short, placing primary emphasis on legality and access to justice in appropriate cases is consistent with the balancing exercise prescribed in *Downtown Eastside*.[23] It properly focuses the analysis in light of the context of the case, and the purposes of public interest standing.

B) An unduly onerous approach to seriousness and justiciability can prevent access to justice for the voiceless and vulnerable

21. Adopting an unduly onerous approach to assessing seriousness and justiciability at stage one of the public interest standing analysis can be particularly detrimental in the context of cases that are novel, and contest existing boundaries of justiciability and legally protected interests. For instance, in cases aimed at protecting animals, the very locus of dispute requiring advocacy and judicial consideration is often whether interests are protected by law.[24]

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[20] CCD Factum at para 97; Law Reform Commission of BC, *supra* note 12, at 59-62.
[21] Law Reform Commission of BC, *ibid* at 16 (citing *Gouriet v Union of Post Office Workers* [1977] QB 729).
[22] *Zoocheck, supra* note 6, per O'Ferrall J, dissenting, at paras 54-55.
[23] *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at paras 1, 23, 28 [***Downtown Eastside***].
[24] See e.g. *Zoocheck, supra* note 6 at paras 25, 37, and 76-88; *Cassells, supra* note 8 at para 82.

22. Indeed, this stage of the analysis has proven particularly challenging in cases involving animals. Despite changing societal attitudes[25] and legislative signals that the interests of animals are to be taken seriously,[26] Canadian courts have taken different, and at times inconsistent, positions on the importance of adjudicating claims involving animals.[27]

23. Furthermore, to promote legality and facilitate access to justice in cases involving the voiceless and vulnerable, courts should not unduly emphasize the need for evidence focused on an individual directly impacted by the law or government action at issue when assessing justiciability. The "factual matrix" necessary to advance a given challenge, while important, will vary greatly, depending on the nature of the case, the interests involved, and the remedies sought.

1) Screening out novel claims can undermine the development of the law

24. This Court has repeatedly admonished against screening out novel claims at a preliminary stage.[28] Accordingly, courts' focus in assessing seriousness and justiciability for the purposes of public interest standing should be on whether the pleadings disclose a reasonable cause of action, regardless of whether or not the challenge is one that is based on a factual matrix focused on directly impacted individuals. Requiring public interest claimants to "marshal particularized evidence" of how they will prove their case in order to "compensate" for the absence of a directly impacted plaintiff blurs the distinction between the right to be heard and the right to succeed in the action.[29] It can undermine the development of the law, wrongly preventing judicial scrutiny of laws impacting voiceless and vulnerable groups.[30]

25. Rather than taking a particularly onerous approach to seriousness and justiciability in cases involving voiceless or vulnerable groups, or interests that are irreducibly public, simply because a directly impacted individual cannot bring the challenge, courts should adopt an approach focused on the need to facilitate access to justice. This is consistent with the global trend towards

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[25] See e.g. *Reece*, *supra* note 5 per Fraser CJ, dissenting, at paras 42, 54-58; *Chen*, supra note 5 at paras 20-25, 38.
[26] See e.g. Bill S-203, the *Ending the Captivity of Whales and Dolphins Act*, SC 2019, c 11; *Senate Debates*, 42nd Parl, 1st Sess, Vol 150, No 210 (29 May 2018) at 5625 (Hon Murray Sinclair).
[27] *Reece*, *supra* note 5, per Fraser CJ, dissenting, at paras 39, 42; *Zoocheck*, *supra* note 6, per O'Ferrall J, dissenting, at paras 75, 86, 97; Sankoff, *supra* note 3 at 134.
[28] *Hunt v Carey Canada Inc.*, [1990] 2 SCR 959, at 977; *Downtown Eastside*, *supra* note 23 at para 42 [***Hunt***].
[29] AGBC Factum at paras 65, 66, 69.
[30] See e.g. *Hunt*, *supra* note 28 at 977, 979-980, 989-990; *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 21; *BCCA Decision*, *supra* note 7 at paras 94-97.

recognizing the justiciability and importance of animal law cases,[31] and will promote access to justice in cases involving interests that have not traditionally been the focus of Canadian courts.

2) The necessary "factual matrix" depends on the nature of the case

i) Challenges to laws that have a "chilling effect"

26. In addition to the types of challenges highlighted by the CCD as being justiciable absent a factual matrix focused on directly impacted individuals, such evidence may also be unnecessary in challenges to legislation or government action that can cause an unconstitutional effect by virtue of its very existence.[32] For example, where a law prohibits forms of expressive conduct, such as by restricting means of public protest, its very existence can have an unconstitutional "chilling effect" on individuals' s 2(b) expression rights, and on the corollary rights of the public to listen.[33] This is of particular interest to Animal Justice because laws restricting protest and expressive rights of animal protection advocates have emerged as an impediment to exposing animal abuse and mistreatment, and to facilitating public debate regarding the treatment of animals in Canada.[34]

27. A challenge to such a law can be made out through an assessment of the statutory scheme and its likely impact on many members of the public. A proactive challenge to such a law, launched prior to the laying of charges, can be essential to protect individuals' expression rights, given that the "chilling effect" particularly impacts the rights of those who are *not* charged.[35]

28. Waiting for an individual to be charged, or otherwise directly affected, to bring a claim focused on "specific factual circumstances"[36] presents an unnecessary barrier to justice, and risks leaving an unconstitutional law on the books indefinitely or else needlessly exposing the individual

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[31] See e.g. A*nimal Welfare Board of India, supra* note 16 at paras 26 and 32; *Islamabad Wildlife Management Board v Metropolitan Corporation Islamabad*, 2021 CLC 262 at paras 2-6 [***Islamabad Wildlife Mgmt Board***]; *Noah (Israeli Federation of Animal Protection Organizations) v Minister of Agriculture* HCJ 9232/01, [2002-2003] Isr SC at paras 2-4, 25-27 [***Noah***]; *The New Zealand Animal Law Association v The Attorney General*, [2020] NZHC 3009 at paras 132-136, 144-149, 197-199; Sankoff, *supra* note 3 at 135.

[32] *BCCA Decision*, *supra* note 7 at paras 82-83, 97, 112-114; See also CCD Factum at paras 73-78.

[33] *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326 at para 89; *Alberta Union of Public Employees et al v Her Majesty the Queen in Right of Alberta*, 2021 ABQB 371 at paras 16-17 [***AUPE***].

[34] Jodi Lazare, "Ag-Gag Laws, Animal Rights Activism, and the Constitution: What is Protected Speech?" (2020) 58:1 Alta L Rev 83 [**Lazare**].

[35] *AUPE*, *supra* note 33 at paras 3, 6-10, 27; *Henry v Canada (Attorney General)*, 2010 BCSC 610 at paras 165-167; Lazare, *ibid* at 104.

[36] AGBC Factum at paras 7-8; *MacLaren v British Columbia (Attorney General)*, 2018 BCSC 1753 at paras 37, 67 [***BCSC Decision***].

to fines or jail time.[37] In this context, undue emphasis on the need for evidence from a directly impacted individual advances no adjudicative interest, and can undermine the role of the courts, leading to a myopic focus on singular instances, rather than a focus on the law's broader impacts.[38]

ii) Challenges involving rights and interests of vulnerable groups

29. Overemphasis on the need for evidence focused on a specific individual can also present an unnecessary barrier to justice in challenges involving the rights and interests of voiceless or vulnerable groups in society unable to adduce evidence regarding their own experiences, as well as those that are public in nature. The AGBC proposes that in cases in which no directly impacted individual can bring the action, plaintiffs must demonstrate "with some specificity" how they will provide an adequate evidentiary record to "compensate" for the absence of an individual plaintiff.[39] As set out by the CCD, this would make an initial standing challenge a significantly more onerous procedural barrier than is necessary or justifiable, and detract from a determination of the issues.[40]

30. Allowing a preliminary standing challenge to trigger an "advance mini-trial" would not only create an uneven playing field between public interest litigants and private litigants, but would give respondents a potent tool by which to doom otherwise meritorious and important challenges to death by motion. This would be particularly harmful to the most vulnerable groups, who face heightened barriers in accessing the courts. Animals, for instance, have no resources to mobilize to support litigation, and so must rely on charitable donations and the work of others.

iii) Effect of the relief sought

31. Finally, in light of the remedial aspect of the principle of legality, the effect of the relief sought informs the factual matrix necessary to advance a given challenge.[41] Where the relief sought is not individualized, or where it primarily impacts a vulnerable group or collective public rights, the need for evidence from a directly-impacted individual is particularly attenuated.

32. In addition to remedies under s 52 of the *Constitution Act, 1982*, this may include non-individualized remedies such as declarations that a government policy or action is unlawful, or that a regulation is ultra vires.[42] It can also include administrative law remedies with broad and

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[37] *R v Nur*, 2015 SCC 15 at para 51 [***Nur***].
[38] *Ibid* at para 64.
[39] AGBC Factum at paras 65, 66, 69.
[40] CCD Factum at paras 95-98. See also *BCCA Decision, supra* note 7 at paras 86-87, 90-95, 107.
[41] See e.g. *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 228 at para 265 [***BC Civil Liberties Assn.***]; Law Reform Commission of BC, *supra* note 12 at 47-51.
[42] *BC Civil Liberties Assn., ibid* at paras 242-243, 254-266.

non-individualized implications for the ways in which government bodies discharge their legislated and constitutional responsibilities.[43]

C) Claimants with the requisite interest and capacity who bring forward a serious, justiciable case should generally not be denied standing

33. Claimants that bring a useful perspective to a justiciable case, and have the expertise and resources to advance the claim, should presumptively be granted standing. Courts should be loath to decline to resolve justiciable issues, particularly those involving the rights and interests of vulnerable and voiceless groups.

34. Two considerations proposed by the AGBC – namely, the supposed need for a public interest claimant to serve as a "proxy" for a broader group, and the theoretical availability of alternative claims – are particularly unhelpful, and in fact counterproductive, in resolving the issue of standing, particularly in cases involving vulnerable and voiceless groups in society.

1) Public interest litigants should not have to be a "proxy" for a broader group

35. With respect, there is no logical or legal reason to require public interest claimants to demonstrate that they are a "proxy" for a broader group[44] – a significant barrier not faced by private claimants – in order to be granted standing. Such a requirement would be particularly unworkable in cases where the rights and interests of voiceless groups, such as animals or the natural environment, are at stake. There is simply no proxy for such entities, and Canadians' opinions regarding the acceptability of conduct involving animals or the natural environment varies widely.

36. Even where the interests of one member of a voiceless or vulnerable group are at stake, there will often be competing views about how best to protect them – views that can and ought to be given due regard through a hearing on the merits.

2) Theoretical alternatives are not a basis upon which to deny standing

37. Denying standing under the "reasonable and effective means" analysis due to the theoretical existence of other ways for an issue to be placed before the courts prevents access to justice, particularly in novel cases, without advancing any adjudicative or other public interest.[45]

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[43] *Ibid* at paras 250-251, 265, 267. See also *Walton, supra* note 18 at para 93.
[44] AGBC Factum at paras 40, 90, 115. See also *BCSC Decision, supra* note 36 at para 76.
[45] *Manitoba Metis Federation Inc. v Canada (Attorney General)*, 2013 SCC 14 at para 43; *Zoocheck, supra* note 6, per O'Farrell J, dissenting, at paras 100-101.

38. In identifying theoretical alternative approaches, courts often fail to appreciate practical or strategic shortcomings associated with those theoretical alternative approaches.[46] For instance, in Canadian animal law cases, private prosecution or reliance on law enforcement bodies have frequently been identified as desirable theoretical alternatives to advance the interests of animals without acknowledgement of the significant pitfalls of such approaches.[47]

39. While it is open to respondents to demonstrate that a challenge is not a reasonable and effective means to place an issue before the courts, this analysis should prioritize the rule of law and access to justice considerations, particularly in cases involving vulnerable and voiceless groups. The existence of theoretical alternatives is not itself a justification for denying standing.

D) Conclusion

40. Although *Downtown Eastside* has contributed to recognition and respect for the rights of many marginalized groups and individuals in Canadian society, its success at facilitating access to justice for voiceless and vulnerable groups, such as animals, remains to be seen.

41. Around the world, an increasing number of challenges are being brought to advance the interests of animals and the natural environment. Elephants, an orangutan, chimpanzees, and rivers have now had their day in court through the granting of public interest standing.[48] Justice demands that as animals continue to come knocking at Canadian courthouse doors, our law of public interest standing should serve as a path to justice in appropriate cases, rather than a barricade.

PART IV - COSTS

42. Animal Justice does not seek costs and asks that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3rd DAY OF DECEMBER 2021.

for Kaitlyn Mitchell/Scott Tinney
Counsel for the Intervener Animal Justice

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[46] *Zoocheck*, *supra* note 6, per O'Farrell J, dissenting, at paras 98-101; *BCCA Decision*, *supra* note 7 at paras 41-47.

[47] *Zoocheck*, *supra* note 6, per O'Farrell J, dissenting, at para 99; *Reece*, *supra* note 5, per Fraser CJ, dissenting, at paras 183-196; *Schnurr*, *supra* note 1 at paras 65-69; Swaigen et al, "Private Prosecutions Revisited: The Continuing Importance of Private Prosecutions in Protecting the Environment" in (2019) A Ingelson, ed, *Environment in the Courtroom*, Calgary, AB: University of Calgary Press. In contrast, see *Noah*, *supra* note 31, per Grunis J, dissenting, at para 29.

[48] *Islamabad Wildlife Mgmt Board*, *supra* note 31; *Asociacion de Funcionarios y Abrogados por los Derechos de los Animales y Otros v The Government of the City of Buenos Ares sobre Amparo*, EXPTE A2174-2015/0 (2015); *The Nonhuman Rights Project, Inc. v Stanley*, 49 Misc (3d) 746 (NY Sup Ct 2015); Calzadilla, *supra* note 16.

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