



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

NUCRO TECHNICS INC.

Applicant

and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Respondent

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*, RRO 1990, Reg 194

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing:

- ☐ In writing
- ☒ In person
- ☐ By telephone conference
- ☐ By video conference

at the following location:

330 University Avenue, Toronto ON M5G 1R7

on a day to be set by the Registrar

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____
Local Registrar

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APPLICATION

1. The Applicant, Nucro Technics Inc. ("NTI"), makes this application under Rule 14.05 of the *Rules of Civil Procedure* for:

- (a) a declaration that the following provisions (collectively, the "**Ban**"), as enacted by the *Keeping Criminals Behind Bars Act, 2026*, SO 2026, c 7, Schedule 1, are of no force or effect:
 - (i) section 15.1 of the *Animals for Research Act*, RSO 1990, c A.22 (the "**Act**");
 - (ii) section 3.1 of the Act;
 - (iii) section 21 of the Act insofar as it pertains to and/or implements sections 15.1 and 3.1; and
 - (iv) sections 13 and 14 of *General*, RRO 1990, Reg 22 (the Act's "**General Regulation**").
- (b) in the alternative, a declaration that the Ban is inoperative to the extent that it conflicts with and/or frustrates the purpose of federal law, and/or impairs federal powers, including with respect to the following statutes:
 - (i) the *Food and Drugs Act*, RSC 1985, c F-27, and the *Food and Drug Regulations*, CRC, c 870, including Part C, Division 5, thereof; and
 - (ii) section 445.1 of the *Criminal Code*, RSC 1985, c C-46;

- (c) an interlocutory and final injunction staying the coming into force of the Ban and restraining the Respondent from enforcing it;
 - (d) the costs of this Application; and
 - (e) such further and other relief as this Honourable Court may deem just.
2. The grounds for this Application are as follows.

I. Overview

3. The federal government has exclusive jurisdiction over criminal law. While the provinces can validly regulate matters within their sphere, their dominant purpose cannot be moral or ethical. That is the exclusive purview of the federal criminal law power. As the Supreme Court of Canada has explained, “The guiding principle is that the provinces may not invade the criminal field by attempting to stiffen, supplement or replace the criminal law.”¹

4. In June 2026, as part of an omnibus bill entitled *Keeping Criminals Behind Bars Act, 2026*, Ontario enacted significant amendments to the Act that prohibit invasive medical testing on dogs and cats, encroaching on the federal criminal law power and jeopardizing drug safety testing required by Health Canada under federal law.

5. NTI brings this application to address this unconstitutional Ban.

6. Before the impugned amendments, the Act had existed in substantially the same form since it was passed in the late 1960s. The purpose of that regulatory regime is to regulate the use of

¹ *R v Morgentaler*, [1993] 3 SCR 463.

animals in research, and includes oversight of research facilities, animal welfare protections, supply-chain regulations, and inspection and enforcement. The Act strikes a balance between ensuring that animals can be used for legitimate scientific and educational purposes, and safeguarding animal welfare through a structured licensing, inspection, and enforcement regime. That purpose is well within the legislative powers of Ontario.

7. In direct opposition to that purpose, Ontario enacted the *Keeping Criminals Behind Bars Act, 2026*, which amended the Act to prohibit invasive medical research on dogs and cats, except for a veterinary purpose, and prevent breeding of animals for research. The only purpose of the Ban is to enforce a moral or ethical position. There is no legitimate provincial purpose for the Ban.

8. Indeed, the purpose of the Ban was made clear by statements from the Premier of Ontario, Doug Ford, before its enactment:

- (a) “You can’t be experimenting on dogs. They’re part of our families. Or cats. Go with the mice, go with the rats, no problem.”²
- (b) “Legislation will be pretty short and simple: you aren’t going to use pets, dogs or cats to experiment on any longer. Simple as that, we just don’t do that. It’s unacceptable.”³

² Robert Benzie, “[Doug Ford praises anonymous ‘whistleblower’ who exposed medical testing on beagles](#)” *The Star* (August 25, 2025, updated September 10, 2025).

³ Robert Benzie, “[Doug Ford praises anonymous ‘whistleblower’ who exposed medical testing on beagles](#)” *The Star* (August 25, 2025, updated September 10, 2025).

- (c) “If you’re doing this with dogs or cats, you gotta stop before I catch you. Simple as that. We’re going to legislate this. ... You aren’t gonna be going after animals like that.”⁴

9. Further, on April 15, 2026, in testimony before the Standing Committee on Justice Policy, Solicitor General Michael S. Kerzner confirmed the purpose of the Ban: “Really, what we want to do ... is ban invasive medical research on dogs and cats and prohibit the breeding.”⁵

10. NTI brings this urgent application to set aside the Ban because it is unconstitutional:

- (a) The Ban is *ultra vires*. It is criminal law. Ontario had no jurisdiction to enact it. Canada has exclusive jurisdiction over criminal law under section 91(27) of the *Constitution Act, 1867*.
- (b) The Ban is inoperative because it conflicts with and frustrates the purpose of Canada’s animal cruelty prohibition under section 445.1 of the *Criminal Code*. The *Criminal Code* specifically and exclusively prohibits causing unnecessary pain, suffering, or injury to animals. The Ban conflicts with this federal law by prohibiting all invasive medical research on dogs and cats outright, regardless of whether any discomfort involved may be necessary for scientific or research purposes. Ontario is not permitted to extend the reach of criminal law beyond the bounds established by the Parliament of Canada.

⁴ Amanda Margison, “Premier Doug Ford warns Ontario scientists doing medical tests on dogs to ‘stop before I catch you,’” *CBC News* (August 12, 2025).

⁵ *Transcript*, Standing Committee on Justice Policy (April 15, 2026) (Solicitor General Kerzner).

- (c) The Ban is inoperative because it creates an operational conflict with Canada's drug approval regime under the *Food and Drugs Act*, RSC 1985, c F-27, including Division 5 (drugs for clinical trials involving human subjects) of the *Food and Drug Regulations*, CRC, c 870, and the international best practice guidelines of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use adopted and implemented by Health Canada (the "**Drug Safety Scheme**"). Under this legislative regime, Health Canada requires evidence of drug testing in animals for approval to progress to a clinical trial in humans. For certain drug categories and certain types of research, dog studies are practically required, constitute scientific best practice, and/or are the most scientifically appropriate option.
- (d) The Ban conflicts with and frustrates the purpose of the Drug Safety Scheme by prohibiting research that is necessary and/or practically required for effective and evidence-based drug safety evaluation that complies with scientific best practices. In this way, the Ban interferes with the purpose of the Drug Safety Scheme and with the federal government's power to promote safety for clinical trial participants and drug safety for Canadians without interference from the provinces.
- (e) The Ban is inoperative under the doctrine of interjurisdictional immunity because it impairs the core of the federal criminal law power.

11. NTI supports and does not challenge the remainder of the amendments or the Act as a whole, including its requirements for animal welfare and review by animal research committees.

II. The Applicant

12. NTI is an Ontario corporation that has been in operation since the 1970s, and currently has approximately 170 employees. It is a contract research organization that performs scientific research to test drugs at preclinical, clinical, and post-marketing release stages. NTI conducts analytical chemistry, microbiology, toxicology, genetic toxicology, bioanalytical, and stability sample storage and testing services, and serves approximately 500 clients, including more than forty of the fifty largest pharmaceutical companies in the world. Some of its research involves testing on dogs, within the constraints of the existing Act, applicable standards, and appropriate industry practice.

13. NTI's research helps to ensure the safety and efficacy of preclinical drugs so they can progress to clinical trials in humans without undue risk.

III. The *Animals for Research Act*

14. The Act establishes a comprehensive regulatory framework for the procurement, handling, treatment, and use of animals in scientific research in Ontario. Among other things, it requires registration of research facilities, animal care committees, anaesthesia, and analgesia, and standards for humane care of research animals.

15. The Act is unique in Canada. While every province has enacted general animal welfare legislation, no other province has a statute that specifically regulates the use of animals for scientific research purposes.

16. The Act was enacted in 1969. In the legislative debates at the time, the Honourable William A. Stewart, Minister of Agriculture and Food, explained that the legislation aimed to make animals

“more readily available to research facilities” and that it would result “in benefits to both man and animals.” He emphasized the importance of animal research to medical progress, noting (by quoting a letter from a medical expert, submitted in connection with the legislation) the “severe shortage of animals for teaching and research” that was “seriously handicap[ping]” the “development of new methods of diagnosis and treatment of disease.”

17. When enacted, the Act was intended to facilitate animal research, not to prohibit it. Accordingly, before the 2026 amendments in which Ontario introduced the Ban, the Act regulated the conditions under which animal research could occur but did not prevent it from occurring. While the Act evolved over the years, it was not fundamentally changed from its original structure until 2026, when the Ban was enacted.

18. The Ban was enacted as Schedule 1 to the *Keeping Criminals Behind Bars Act, 2026*, SO 2026, c 7, an omnibus criminal justice bill which received royal assent on June 2, 2026. The Ban is scheduled to come into force on January 1, 2027.

IV. Purpose of the Ban

19. The purpose of the Ban is to criminalize research on animals, namely dogs and cats, that are often kept as pets.

20. Section 15.1 mandates that, “No person shall perform invasive medical research on cats, dogs or other prescribed animals.” This prohibition is subject only to a narrow exception for veterinary research (i.e., to advance veterinary medicine, not human medicine). Sections 13 and 14 of the Act’s General Regulation define “invasive medical research”.

21. Section 3.1 mandates that, “No operator of a supply facility shall breed cats or dogs for research purposes.” This prohibition prevents the breeding of dogs and cats for any research purposes.

22. Under section 21, as recently amended, penalties for major and minor offences are set out:

- (a) Breaching section 15.1 is newly designated as a “major offence”. Individuals convicted of a “major offence” are liable to imprisonment of not more than two years and fines of not more than \$130,000 (first offence) or \$260,000 (second or subsequent offence). Corporations are liable to a maximum fine of \$500,000 for a first offence and \$1,000,000 for a second or subsequent offence.
- (b) Breaching section 3.1 is designated as a “minor offence”. Individuals convicted of a “minor offence” are liable to imprisonment of not more than six months (first offence) or one year (second or subsequent offence) and fines of not more than \$75,000 (first offence) or \$100,000 (second or subsequent offence). For “minor offences”, corporations are liable to a maximum fine of \$100,000 for a first offence and \$250,000 for a second or subsequent offence. In contrast, the maximum penalties under section 21, as it stood before 2026, were \$5,000 and six months’ imprisonment.

V. The Ban Is *Ultra Vires* Ontario

23. Section 91(27) of the *Constitution Act, 1867*, grants the federal government exclusive jurisdiction to legislate “The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.” In pith and substance, the Ban intrudes on this area of exclusive federal jurisdiction, is *ultra vires* Ontario, and is of no force or

effect. This intrusion was made explicitly clear by Ontario when it chose to seek to introduce the Ban through the *Keeping Criminals Behind Bars Act, 2026*.

24. The Ban is criminal law because it encompasses: (1) a prohibition; (2) a penalty; and (3) a criminal law purpose.

25. First, there is a prohibition on invasive medical research and breeding. Section 15.1(1) states: “No person shall perform invasive medical research on cats, dogs or other prescribed animals.” Section 3.1 states: “No operator of a supply facility shall breed cats or dogs for research purposes.”

26. Second, there is a penalty. Breaching section 15.1 is a “major offence”. For corporations, fines reach \$500,000 for a first offence and \$1,000,000 for subsequent offences. For individuals, a first offence carries a maximum fine of \$130,000, imprisonment for up to two years, or both. Breaching section 3.1 is a “minor offence”. For corporations, fines reach \$100,000 for a first offence and \$250,000 for subsequent offences. For individuals, a first offence carries a maximum fine of \$75,000, imprisonment for up to six months, or both.

27. Third, there is a criminal law purpose. The Ban seeks to suppress and condemn conduct by imposing criminal penalties on conduct that Ontario regards as morally unacceptable, evidenced by the comments made by the Premier and the Solicitor General. The Ban prohibits invasive medical research on dogs and cats only. That is because Ontario finds it morally objectionable that animal species often kept as pets are involved in research of this kind, despite their significant and necessary contributions and relevance to scientific and medicinal advancement.

28. The Act ensures animal welfare. Before the 2026 amendments, the Act and its regulations already included numerous requirements for animal welfare. These requirements include mandatory anaesthesia, mandatory pain control (analgesia), sanitation and hygiene requirements, proper environmental conditions, disease prevention, veterinary care, competent animal care personnel, and oversight from animal research committees. These provisions continue today.

29. Although sections 92(13) and 92(16) of the *Constitution Act, 1867* give the province jurisdiction over “Property and Civil Rights in the Province” and “Generally all Matters of a merely local or private Nature in the Province”, these powers cannot be permitted to override the exclusive federal jurisdiction over criminal law. In particular, provincial jurisdiction over property does not permit the province to create new criminal penalties. Provinces may regulate property and civil rights, and matters of a local and private nature, but they may not legislate for a criminal purpose.

30. The Ban is outside the legislative competence of the province. It should be declared of no force or effect.

VI. The Ban Is Inoperative Pursuant to the Doctrine of Paramountcy

31. In the alternative, even if the Ban is a valid exercise of provincial legislative jurisdiction, it conflicts with, and frustrates the purposes of, the *Criminal Code* and the federal Drug Safety Scheme. Applying the doctrine of paramountcy, the Ban should be declared inoperative.

32. Under the doctrine of paramountcy, a provincial law that conflicts or is inconsistent with a valid federal law is inoperative to the extent of the incompatibility. Whether a provincial government has jurisdiction to pass the law is irrelevant to the paramountcy doctrine. Valid federal law trumps conflicting provincial law.

The Criminal Law

33. The Ban is inoperative because it frustrates the purpose of Canada's animal cruelty prohibition under section 445.1 of the *Criminal Code*.

34. The *Criminal Code* prohibits causing "unnecessary" pain or suffering to animals. Parliament has drawn the line between lawful and unlawful treatment of animals at "unnecessary" suffering. Sometimes, unfortunately, scientific research can cause discomfort, or even pain to animals. If suffering is necessary, it is excluded from the federal criminal prohibition.

35. The Ban, by contrast and in opposition to the *Criminal Code*, seeks to criminalize invasive medical research on dogs and cats regardless of whether it involves unnecessary pain, suffering, or injury. In other words, Ontario has sought to extend a criminal ban to conduct that Parliament has excluded from criminalization: specifically, discomfort that is necessary, including for medical research. To the extent the Ban does not exceed Ontario's jurisdiction (which is denied), it frustrates the federal purpose behind section 445.1 of the *Criminal Code* by expanding the scope of condemned activities far beyond the boundaries established by Parliament, to include conduct that conforms with scientific best practices for medical research.

36. Because it conflicts with the *Criminal Code*, the Ban cannot stand. It should be declared inoperative.

The Drug Safety Scheme

37. The Ban is inoperative because it creates an operational conflict with the federal Drug Safety Scheme.

38. The Drug Safety Scheme establishes a comprehensive federal regime for drug safety in Canada.

39. Under this regime, no drug may be sold in Canada or tested on humans in a clinical trial without authorization from Health Canada. Before a drug may be tested on humans in a clinical trial, the sponsor must obtain a clinical trial authorization (“CTA”) from Health Canada. To obtain a CTA, the sponsor must submit preclinical data sufficient to demonstrate that the drug is safe for human administration. This application includes evidence of testing in animals.

40. The Drug Safety Scheme incorporates the guidelines set out by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (“ICH”). The ICH guidelines incorporated by Health Canada confirm the requirement for testing in two animal species, including a nonrodent species. For certain drug categories, dog studies are practically required and are the most standard nonrodent species because dog physiology closely resembles that of humans.

41. A research organization in Ontario cannot simultaneously comply with this practical federal requirement and the provincial Ban. This inability is an operational conflict.

42. The Ban is also inoperative because it frustrates the purpose of Canada’s Drug Safety Scheme.

43. The purpose of the Drug Safety Scheme is to protect public health by ensuring that drugs are safe before they are administered to humans. The Scheme uses a national, evidence-based approach, which is consistent with international scientific consensus. According to scientific best practices, which have been adopted by the federal government through the Drug Safety Scheme,

preclinical animal testing is a mandatory safeguard within the Scheme. Preclinical animal testing sometimes requires invasive medical testing in dogs.

44. The Ban, however, prohibits invasive medical testing in dogs, even if such testing would constitute scientific best practices. In this way, the Ban interferes with the purpose of the Drug Safety Scheme and with the federal government's power to control the safety of drugs without interference from the provinces.

45. Because it conflicts with the Drug Safety Scheme, the Ban cannot stand. It should be declared inoperative.

VII. The Ban Is Inoperative Pursuant to the Doctrine of Interjurisdictional Immunity

46. Further or in the alternative, the Ban impairs the core of the federal power over criminal law and is inoperative under the doctrine of interjurisdictional immunity.

47. Morality and ethics are at the core of the federal criminal law power. They are foundational and primordial purposes for criminal law. One of the basic things criminal law does is legislate certain moral principles that Parliament deems necessary to legislate.

48. The Constitution deliberately and specifically confers the criminal law power only on Canada, not on the provinces.

49. By purporting to criminalize conduct for moral reasons, Ontario has trenched on the core of federal jurisdiction over criminal law and undone the carefully delineated structure of the *Criminal Code*, which criminalizes only cruelty—to cause unnecessary pain or suffering—and not necessary discomfort.

VIII. An Injunction Is Just and Convenient

50. The Applicant is entitled to an interlocutory injunction, if necessary, staying the Ban and restraining Ontario from enforcing it pending the determination of this Application.

51. There are multiple serious questions to be tried regarding the Ban's constitutionality, as set out above. There are good reasons to believe that the Ban is *ultra vires* and/or inoperative under the doctrine of paramountcy.

52. The Applicant and the public will suffer irreparable harm if the injunction is not granted. Among other things, if the Ban comes into force and NTI must cease its relevant research activities, the resulting harms, including disruption of ongoing research programs, loss of client relationships, loss of skilled employees, and reputational damage, cannot be quantified or compensated by damages, and/or are barred from recovery against the Crown.

53. The public will suffer irreparable harm, as well: by preventing scientifically proper research that contributes to approval of drugs for human use, the Ban stymies medical progress and prevents clinical trials from advancing quickly, or at all, with the best scientific evidence.

54. Any person convicted under the Ban or subject to the penalties imposed by the Act, including NTI's officers, employees, and contractors who perform animal research, will suffer irreparable harm from being convicted of an offence, and potentially being jailed, under an unconstitutional law.

55. The balance of convenience favours granting the injunction. An injunction would preserve the regulatory status quo that has existed since the Act was enacted in 1969. Any delay in

enforcement imposes no concrete harm on Ontario. Permitting enforcement would cause irreversible harm to NTI and individual animal researchers.

IX. Further Grounds

56. NTI pleads and relies on the following statutes and regulations:

- (a) *Constitution Act, 1867*, ss 91 and 92;
- (b) *Constitution Act, 1982*, s 52;
- (c) *Animals for Research Act*, RSO 1990, c A.22;
- (d) *General*, RRO 1990, Reg 22;
- (e) *Research Facilities and Supply Facilities*, RRO 1990, Reg 24;
- (f) *Keeping Criminals Behind Bars Act, 2026*, SO 2026, c 7, Sched 1;
- (g) *Food and Drugs Act*, RSC 1985, c F-27;
- (h) *Food and Drug Regulations*, CRC, c 870, Part C, Division 5;
- (i) *Criminal Code*, RSC 1985, c C-46, s 445.1;
- (j) *Courts of Justice Act*, RSO 1990, c C.43, ss 97, 101, 109, 131;
- (k) *Rules of Civil Procedure*, RRO 1990, Reg 194, rr 14.05, 38, 39, 40.

57. Such further grounds as counsel may advise and this Honourable Court may permit.

X. Evidence to Be Relied Upon

58. The following documentary evidence will be used at the hearing of the Application:

- (a) Affidavits to be affirmed from fact and expert witnesses; and
- (b) Such other evidence as counsel may advise and this Honourable Court may permit.

(Date of issue)

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