Court File No. 36450

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

BETWEEN:

HER MAJESTY THE QUEEN

APPELLANT

AND:

D.L.W.

RESPONDENT

FACTUM OF THE APPELLANT

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

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PART I: OVERVIEW AND STATEMENT OF FACTS

Overview of Appellant's Position

1. Is penetration an essential element of bestiality, a term not defined in the *Criminal Code*, R.S.C. 1985, c. C-46? The question arises from the disturbing facts underlying this appeal. During a period encompassing 10 years, the respondent repeatedly sexually molested his two stepdaughters from the time they were each 12 years old. In this period there were four incidents in which the respondent for his own sexual gratification facilitated and encouraged his older stepdaughter to engage in sexual activities with the family dog.

2. In the first such incident he masturbated the family dog in an unsuccessful attempt to have the dog penetrate her. In the second incident he spread peanut butter on her vagina, this time successfully enticing the family dog to lick her vagina. During this incident he photographed the complainant and the dog together. In the third incident the complainant video recorded an incident of the dog licking her vagina after the respondent repeatedly asked her to make such a video. In the fourth incident the respondent provided the complainant with peanut butter which she spread on her vagina, brought the dog into the room, and was present during the act. The complainant was 15-16 years old when the first three incidents occurred and was about 20 years old during the fourth incident.

3. The trial judge was satisfied that the respondent's conduct constituted bestiality, focussing his reasons on the first, second and third incidents. The respondent therefore was found guilty of bestiality pursuant to s. 160(1) of the *Criminal Code*. He was also convicted of 12 other charges arising out of years of his repeated sexual molestation of his two stepdaughters.

4. Even though the respondent was found by the trial judge to have encouraged and facilitated his young stepdaughter to engage in sexual activity with the family dog, the majority of the British Columbia Court of Appeal ("Court of Appeal"), for the reasons given by Goepel J.A. concurred in by Lowry J.A., concluded that this kind of sexual activity between a human and animal did not constitute the offence of bestiality, and entered an acquittal on the bestiality count. The majority concluded in essence that bestiality means "buggery with an animal", requiring proof of either vaginal or anal penetration.

5. The Crown now appeals to this Court as of right pursuant to s. 693(1)(a) of the *Criminal Code* on the basis of the question of law raised by Bauman C.J.B.C.'s dissenting judgment – whether the offence of bestiality under s. 160(1) of the *Code* is a general intent offence which encompasses sexual activity of any kind between a person and an animal with penetration not being an essential element of the offence.

6. The Crown/appellant's position is that Parliament intended bestiality to have a broader meaning than the old common law offence of buggery, encompassing sexual activity of any kind between a person and an animal. This definition is the only logical and common sense interpretation of the provision after applying the modern principles of statutory interpretation by examining the bestiality provision in light of the scheme of the *Criminal Code*, the purpose of the bestiality provision and Parliament's intent in enacting it. The majority of the Court of Appeal erred by relying on the common law meaning of "buggery" and applying that meaning to the modern bestiality provision without recourse to these accepted principles of statutory interpretation. Consequently, the majority's narrow interpretation does not give full effect to the harm the legislation sought to address.

7. The reasons in support of the appellant's position are developed in Part III of this factum, but the primary reasons are briefly stated now.

8. First, prior to 1955 the crime prohibiting sexual activity between a human and animal was called buggery, and was part and parcel of the offence criminalizing anal intercourse between humans. The offence prohibited "buggery, either with a human being or with any other living creature." In 1955 Parliament for the first time put the term "bestiality" into the *Code*. The new section prohibited "buggery or bestiality". By separating the two, bestiality must have had its own meaning apart from buggery - the buggery part of the offence to criminalize anal intercourse between humans, the bestiality part to criminalize sexual activity between a human and animal. Interpreting bestiality as a subset of buggery gives the offence as drafted in 1955 an illogical scope as it would criminalize anal penetration between a human and animal, yet it would perfectly lawful for a human to vaginally penetrate (or be vaginally penetrated by) an animal. Moreover, if the newly-introduced term "bestiality" simply meant buggery with an animal, as *per* the pre-1955 provision, then Parliament legislated in vain. As Bauman C.J.B.C.

said in dissent "Why separate bestiality from buggery if bestiality was intended to be merely a type of buggery?"

9. Second, subsequent changes to the bestiality provision enacted in 1987 and in force since 1988 confirm that Parliament intended to give bestiality a broad interpretation not restricted to penetrative conduct. These changes were made as part of a legislative package designed to address the perceived gaps in the *Criminal Code* that dealt with child sexual abuse in order to protect children from all forms of sexual abuse. In that context, Parliament separated bestiality entirely from buggery by putting bestiality in its own section, and renaming the buggery offence "anal intercourse." At the same time Parliament created three bestiality offences: bestiality, compelling another to commit bestiality, and committing bestiality in the presence of a child or inciting a child to commit bestiality. As part of the same legislative package, Parliament introduced the offences of sexual interference, invitation to sexual touching and sexual exploitation, none of which were dependent upon proof of penetration.

10. The context surrounding the enactment of the new bestiality provision in 1988 shows that Parliament must have assumed at the time they modified it that the term bestiality encompassed sexual activity of any kind between a human and an animal. The purpose of the 1988 legislation was to protect children from all forms of sexual abuse and the bestiality provision was modified to conform to that purpose. In that context, it would be illogical for Parliament to define bestiality as requiring proof of penetration, and exclude all other forms of sexual activity with an animal. Such a narrow interpretation would overlook the significant physical and psychological trauma to victims caused by sexual activities with animals other than by intercourse, and thus would not give full effect to the underlying purpose of the legislation.

11. Accordingly, a narrow interpretation would lead to absurd results. For example, having a dog lick a person's genitals in the presence of a child would not be criminalized by the bestiality provision, nor would inciting a child to have oral sex with a dog, nor would inciting a child to fondle the genitals of an animal for a person's sexual gratification. As stated by Bauman C.J.B.C., such a restrictive approach would lead to "the unfortunate *lacuna*…in the legislative response to the need to protect children from all forms of sexual abuse".

12. Third, bestiality is an offence of social mores. In addition to the purpose of protecting children, it prohibits sexual activity between a human and animal because such activities offend fundamental social values of the community. Common sense suggests that the respondent 's conduct in encouraging and facilitating his vulnerable young stepdaughter to have oral sex with the family dog is on an equal moral plane as if he had arranged for her to have penetrative sex with the family dog. Surely both activities are abhorrent to society's fundamental values.

13. Fourth, considering the bestiality provision in context of the scheme of the *Criminal Code* as a whole shows that intercourse, as a required element for sexual offences, is an outmoded concept in the modern *Code*, rarely included as an element of a sexual offence. In the very rare circumstances that intercourse is an element, Parliament expressly states it to be so, which it did not do for the bestiality offences.

14. Fifth, the French version of s. 160 is compatible with the English version and supports a broad interpretation of bestiality as each of the three offences refer to "un acte de bestialité" which suggests that bestiality can be committed by more than one kind of "act", and is not limited to a penetrative act.

15. Upon consideration of all these factors, the only acceptable definition of bestiality is sexual activity of any kind between a person and an animal. As Bauman C.J.B.C. says, this interpretation "happily accords with common sense."

Evolution of the provisions criminalizing sexual activity between a human and animal

16. At common law, and in the early days of Canada's *Criminal Code,* there was no offence called bestiality. Rather, sex with an animal was merely an iteration of the crime of buggery. It appears that the offence was first codified in Canada in 1869 as the "abominable crime of buggery committed either with mankind or with any animal"[1], and then changed in 1886 to "the crime of buggery, either with a human or with any other living creature."[2] In Canada's first *Criminal Code*, proclaimed in 1893, the offence was worded as follows:

[1] *An Act respecting Offence against the Person,* 32-33 Vict. C. 20, s. 63 (1869) – App. Authorities, Tab 41
[2] *An Act respecting Offences against Public Morals and Public Convenience*, R.S.C. 1886, c. 157, s. 1– App. Authorities, Tab 42

> Every one is guilty of an indictable offence and liable to imprisonment for life who commits buggery, either with a human being or with any other living creature.[3]

17. In 1954 the wording of the provision was changed to include, for the first time, the term "bestiality" in the *Code*[4], and came into force on April 1, 1955[5] as s. 147 of the *Code*, later changed to s. 155[6] (referred by the Court of Appeal as the 1954 Amendment but hereinafter referred to as the "1955 Amendment" based on the year it came into force). The provision read:

> Every one who commits buggery or bestiality is guilty of an indictable offence and is liable to imprisonment for fourteen years.

18. This change was part of a complete revision to the *Criminal Code*. The primary purpose of the 1955 revision was to, among other things, clarify ambiguous and unclear provisions and eliminate inconsistencies, legal anomalies or defects.[7] As far as the appellant can ascertain, there was no debate in Parliament over the revision to the buggery and bestiality provision.

19. The next development was in 1987 when Parliament passed Bill C-15[8]. Bestiality was separated entirely from the buggery offence, and three new bestiality offences were created and given its own section in the *Code*, first as s. 155 and now s. 160[9]. The term "buggery" was replaced with "anal intercourse" to recognise the fact that the word buggery was outdated and offensive and no longer had a place in the *Criminal Code*[10], and was given its own section in what is now s. 159 of the *Code*. The legislation came in to force on January 1, 1988 (referred by the Court of Appeal as 1985 Amendment but will be referred to hereinafter as the "1988 Amendment" to refer to the year it came into force).

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[3] *The Criminal Code, 1892*, S.C. 1892, c. 29, s. 174– App. Authorities, Tab 46
[4] *An Act respecting the Criminal Law*, S.C. 1953-54, c. 51– App. Authorities, Tab 45
[5] A.J. MacLeod and J.C. Martin, The Revision of the Criminal Code (1955), 33 Can Bar Rev. 3 at p. 3. – App. Authorities, Tab 30
[6] See *The Criminal Code*, R.S.C. 1970, c. C-34, s. 155– App. Authorities, Tab 47
[7] Canada. Royal Commission on the Revision of the Criminal Code. *Report of Royal Commission on the Revision of the Criminal Code.* Ottawa: Queens Printer, 1954 at 3– App. Authorities, Tab 37
[8] *An Act to Amend the Criminal Code and the Canada Evidence Act,* S.C. 1987, c. 24 – App. Authorities – Tab 43
[9] *An Act to Amend the Criminal Code and the Canada Evidence Act*, R.S.C. 1985, c. 19 (3rd Supp.), s. 3– App. Authorities, Tab 44 - the bestiality offences became part of s. 160 on December 12, 1988 when the 1985 Consolidated Statutes came into force
[10] Minutes of the House of Commons Standing Committee on Justice, 33rd Parl, 2nd Sess, No. 9 (17 Feb 1987) at 52; – App. Authorities, Tab 33; Minutes of the House of Commons Standing Committee on Justice, 33rd Parl, 2nd Sess, No. 10 (17 March 1987) at 20-22– App. Authorities, Tab 34

20. Bill C-15 was introduced for the express purpose of addressing the perceived gaps in the *Criminal Code* that dealt with child sexual abuse. The same legislation introduced the crimes of sexual interference, sexual exploitation, and invitation to sexual touching, none of which were dependent upon proof of penile penetration. The dominant purpose of these new offences and the bestiality offences was to protect children from the insidious harm from sexual abuse.[11]

21. The 1988 bestiality provision read as follows:

> **Bestiality**
>
> **160. (1)** Every person who commits bestiality is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.
>
> **Compelling the commission of bestiality**
>
> **(2)** Every person who compels another to commit bestiality is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.
>
> **Bestiality in presence of or by child**
>
> **(3)** Despite subsection (1), every person who commits bestiality in the presence of a person under the age of 14 years, or who incites a person under the age of 14 years to commit bestiality is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

22. The bestiality provision has been amended three times since its enactment. Section 160(3) was amended by the *Tackling Violent Crime Act*[12] which increased the relevant age of a child from 14 to 16. *The Safe Streets and Communities Act*[13] further amended s. 160(3) by imposing a mandatory minimum sentence by a term of imprisonment for one year for an indictable offence, and six months for an offence punishable on summary conviction. The *Tougher Penalties for Child Predators Act*,[14] which received Royal Assent on June 18, 2015 and came in force on July 17, 2015, further amended s. 160(3) by increasing the maximum punishment when the Crown proceeds by indictment to 14 years from 10 years. The facts underlying this appeal pre-date these amendments.

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[11] Minutes of the House of Commons Standing Committee on Justice, 33rd Parl, 2nd Sess, No. 1 (27 Nov 1986) at 18-22 (Hon. Ramon John Hnatyshyn) – App. Authorities, Tab 35
[12] S.C. 2008, c. 6, s. 54– App. Authorities, Tab 49
[13] S.C. 2012, c. 1, s. 15– App. Authorities, Tab 48
[14] S.C. 2015., c. 23, s. 5– App. Authorities, Tab 50

Facts of the Case

23. The respondent was charged with 14 counts relating to sexual offences committed against his two stepdaughters over the course of 10 years. The trial took 38 days. The Crown called 27 witnesses. The defence called two witnesses, including the respondent.

24. The bestiality charge of which the respondent was convicted and which is the subject of this appeal is set out in count 13 of the Indictment and reads as follows:

> Count 13
>
> [DLW], between the 28th day of August, 2004 and the 6th day of October, 2010, inclusive, at or near Prince George, in the Province of British Columbia, did commit bestiality with a dog contrary to Section 160(1) of the Criminal Code. [*AR, Vol 2, p. 1]*

25. The respondent met the victims' mother in 1999 and moved into her house the following year. They were subsequently married. [*Reasons for Judgment ("RFJ") in R. v. D.L.W, 2013 BCSC 1327 at para. 9, Appellant's Record ("AR") Vol. 1, p. 10]*

26. The older stepdaughter was born in 1989. She is referred to throughout the trial judge's decision as "the older complainant". The younger stepdaughter was born in 1991. She is referred to throughout the trial judge's decision as "the younger complainant". [*RFJ at para. 22, AR, Vol 1, p. 13]* The older complainant will simply be referred hereafter as the "complainant".

27. Both sisters testified that the respondent began sexually fondling them when they each turned 12. By the time each victim had turned 14, the respondent was forcing them to engage in oral sex and sexual intercourse on a near-daily basis. He also had anal intercourse with them, and encouraged the two sisters to perform sex acts with each other. This went on until 2010. [*RFJ at paras. 11 and 12, AR, Vol 1, pp. 10-11]*

28. While the respondent testified in his own defence that there had only ever been consensual sexual touching between himself and his stepdaughters after they had each turned 18, the trial judge found that he was a "shameless liar". He also found the victims and their mother credible and accepted their evidence over that of the respondent at every point where there was an inconsistency. [*RFJ at paras. 18-19, 53-55, AR Vol 1, pp. 12, 13, 21]*

29. Further, the trial judge noted that a great deal of the victims' testimony was corroborated by real evidence:

> Unlike many cases of its kind, the case at bar cannot be characterized as only a "he said, she said" case. Here, there is a considerable amount of very reliable corroborative evidence, which corroborates the evidence of the complainants. This evidence includes a date-stamped image of the accused and the older complainant naked in bed together when she was 15 years old. It also includes a recovered video recording of the older complainant performing fellatio on the accused, with the accused operating the camera and giving instructions to the older complainant. There is audio with this video. In the audio, one could hear the accused using language that both the younger and older complainant testified to be the type of language that the accused used when having sexual contact with them. There is also evidence of recovered pornographic material found in the possession of the accused, which was edited by the accused in the fashion suggested by the complainants.
>
> *[RFJ at para. 21, AR Vol 1 at p. 13]*

30. The bestiality count, too, was supported by real evidence. A photograph taken of the complainant and the dog during the second incident was admitted into evidence. A video of the third incident was also entered into evidence (see paras. **35** and **37** below).

Evidence on the bestiality counts

31. The complainant testified that in 2005, when she was 15 years old, the family got a dog. [*RFJ at para. 106, AR Vol 1, p. 34; Trial Transcript ("T"), AR Vol 2, pp.29, 30, 88]*

32. Over the course of her testimony, the complainant described four separate incidents of sexual contact with the family dog conducted at the respondent's behest.

The first incident

33. The complainant testified that after the family acquired the dog and leading up to the first incident, the respondent showed her pornographic videos of girls having sex with dogs, asked her if she was interested in it, and eventually told her that he was thinking of bringing the dog into the bedroom. *[T, AR Vol 2, p. 101]*

34. When the complainant was 15, the respondent for the first time brought the dog into the master bedroom where most of the sexual abuse occurred. The respondent groped the dog's penis to try to get the dog erect, which was unsuccessful as the dog had been neutered. The complainant's understanding with respect to what would happen if the dog was able to get an erection was that the dog "was going to put his penis inside me, just from what we'd seen on the videos and what he [the respondent] had talked about". The respondent then wanted the dog to lick the complainant's vagina but the dog would not come near her. *[T, AR Vol. 2, pp. 104-105]*

The second incident

35. The complainant testified that a few days or a week after the first incident, around the time of her 16th birthday, the respondent once again brought the dog into the master bedroom after he had done some research and decided to try a different technique. The responded asked her to undress and sit on the floor. He then put peanut butter on her vagina, a technique the respondent had read about that would make the dog want to lick. The dog did lick the peanut butter on the complainant's vagina, and while doing so, the respondent watched and took photographs. A photograph from this incident, depicting the dog licking the complainant, was entered into evidence at trial. After the dog left, the responded told her that he enjoyed watching and that he would like her to make a video of the dog licking peanut butter on her vagina. The respondent and the complainant then had sex. [*T, AR Vol 2, pp.120-121, Vol 3, pp. 91-92; RFJ at para. 317, AR Vol 1, p. 93]*

36. The complainant testified that she did not enjoy engaging in sexual activity with the dog and that it was really uncomfortable. She said she had learned that there were consequences if she said no to the respondent, and that she would not have been sexually active with the dog if there had been no negative consequences for not doing so. [*T, AR Vol 2, p. 123; RFJ at para. 91, AR Vol 1, p. 31]*

The third incident

37. The complainant testified that after the second incident she did make the video for the respondent of herself engaged in sexual activity with the dog that the respondent asked her to make. Her evidence was that the respondent had asked her multiple times to make such a video, and on the day she made it he told her it would be a good day to make the video. She said the

respondent told her he wanted to see the dog licking her vagina in the video and he wanted her to "come", so she put peanut butter on her vagina and called the dog into the bedroom. She recorded what transpired using the webcam on her laptop. That video was entered into evidence at trial. [*T, AR Vol 2, pp. 121, 123; RFJ at paras. 199(c), 318, AR Vol 1, pp. 58, 93]*.

The fourth incident

38. The complainant testified that the respondent would periodically watch the video of her and the dog. He told her that he wished he had another one. She testified she was "constantly" saying no to his requests to involve the dog in sexual activity. [*T, AR Vol 2, pp. 123-124]*

39. The complainant testified that in the summer of 2010 when she was about 20 years old, she agreed to involve the dog in sexual activity because if she did so then she thought there would be another long break before she had to do it again. She testified that the respondent called the dog into the bedroom. He then took peanut butter out of a drawer in the bedroom. The complainant spread it on her vagina. The respondent was watching the act. *[T, Vol 2, AR, pp. 123-127]*

Reasons of the Trial Judge

40. The trial judge found the respondent guilty of 13 of the 14 counts charged, and conditionally stayed two of the counts because they were based on the same factual and legal foundation as other charges of which he was convicted. *[RFJ at para. 336, AR, Vol 1, p. 98]*

41. The reasoning on the bestiality count is found in his reasons at paras. 300 to 321. *[AR, Vol 1, pp. 80-94]* By applying modern principles of statutory interpretation, the trial judge concluded that "bestiality" means touching between a person and an animal for a person's sexual purpose. He said that this is reflected in the numerous cases where guilty pleas were entered for conduct consisting of an animal licking a person's genitals, and is consistent with the entire scheme of the *Code*. *[RFJ at para. 312, AR, Vol 1, p. 92]*

42. Having so interpreted the section, the trial judge outlined the complainant's testimony regarding her sexual activities involving the dog (referred to by the trial judge as "D"):

> [317] The older complainant testified that D.L.W. attempted to make D. have intercourse with her. When that failed, D.L.W. did some research and decided to try a different technique. He brought D. and the older complainant into the bedroom again and spread peanut butter on her vagina. He took photographs while D. licked it off. Later, he asked her to do that act again and make a video of it for him. He did all of this for a sexual purpose: so that he could watch the dog engage in sexual acts with the older complainant.
>
> [318] I accept the older complainant's testimony. It is corroborated by numerous exhibits containing bestiality pornography, including stories found on the thumb drive that were rewritten to include the older complainant's, the accused's, and D.'s names, as well as the video of D. licking the older complainant's genitals.[*AR, Vol 1, p.93]*

43. The trial judge convicted the responded of bestiality on the basis of being a party to the offence of bestiality, as he facilitated the complainant to engage in bestiality by encouraging her to do so and by using the peanut butter. *[RFJ at para. 320, AR, Vol 1, p.94]*.

44. The trial judge acquitted the respondent on count 14 of compelling the complainant to commit bestiality with a dog (s. 160(2) of the *Criminal Code*). His reasoning on this count turned on whether the complainant was actually compelled. Notwithstanding that the trial judge accepted the evidence of the complainant, he nevertheless found that the Crown failed to prove that the respondent compelled her to commit bestiality. *[RFJ at paras. 323-325, AR, Vol 1, pp. 94-95]* The trial judge's conclusion that she was not compelled, or his reasonable doubt in this regard, while questionable, is not an issue on this appeal. Also questionable is the trial judge's finding that the respondent was an aider or abettor as opposed to personally committing the s. 160(1) bestiality offence as a principal. However, this finding does not impact the respondent's culpability as the law is indifferent whether he personally committed the offence as a principal or as an aider or abettor.[15]

45. The trial judge sentenced the respondent to a global sentence of 16 years imprisonment, which included a consecutive sentence of two years' imprisonment on the bestiality count. [Reasons for Sentence in *R. v. D.L.W.*, 2014 BCSC 43, *AR. Vol 1 p. 101]*

[15] *R. v. Thatcher*, [1987] 1 S.C.R. 652 at p. 694

Reasons of the Court of Appeal: *R. v. D.L.W.*, 2015 BCCA 169

Majority judgment *AR Vol 1, pp. 153-165*

46. Goepel J.A. for the majority, concurred in by Lowry J.A., said that penetration was a required element of the offence of bestiality. He said the genesis of the current legislation is the English common law which penalized all unnatural penetrations of vaginas or anuses by penises, whether between humans or animals. He rejected the proposition that penetration ceased to be an element of the offence when the *Criminal Code* was amended in 1954 (in force in 1955) when the term "bestiality" was first introduced into the *Code*. He said Parliament would not have left the offences in the same section if it intended to reformulate the historical offence of buggery.

47. Goepel J.A. rejected the proposition that the 1988 Amendment to the *Code* confirmed that penetration was not a required element.

48. Goepel J.A. said that if Parliament had intended by the two amendments to sever bestiality from its historical foundation it was would have done so by using clear and specific language.

Dissent *AR Vol 1, pp. 166-171*

49. The appellant's position is that this appeal should be allowed on the basis of the comprehensive reasons of Bauman C.J.B.C. who said that penetrative conduct was no longer an element of bestiality once the 1955 Amendment came into force. He said Parliament departed from the common law when it created a distinction between buggery and bestiality, which showed its intention to modernize the historical offence of buggery committed upon animals. He said that when Parliament added bestiality to the *Code* in 1955, it must be presumed to have some reason for doing so, and that if bestiality simply meant buggery with an animal, the 1955 Amendment was enacted in vain and the word bestiality was mere surplusage.

50. Responding to the majority's point that if Parliament had intended for bestiality not to require penetration it would have said so in clearer language, Bauman C.J.B.C. said that the 1955 Amendment is sufficiently clear to express an intention for bestiality to differ from buggery, and gave the following reasons for this conclusion:

1) Otherwise, Parliament acted in vain by inserting the term "bestiality" into the *Criminal Code*. Bauman C.J.B.C. said "Why separate bestiality from buggery if bestiality was intended to be merely a type of buggery?"

2) By separating bestiality entirely from buggery, the 1988 Amendment continued the trend of the 1955 Amendment and thus confirmed his broad interpretation.

3) The 1988 Amendment added the two new bestiality offences, which was a legislative response to the need to protect children from all forms of sexual abuse. He agreed with the Crown that a restrictive definition would lead to absurd results, for example, by not criminalizing the act of inciting a child to have oral sex with a dog or an adult having a dog lick that person's genitals in front of a child; and thus would lead to a gap in the legislative response to the need to protect children from all forms of sexual abuse.

51. Bauman C.J.B.C. said that bestiality was a general intent offence, and disagreed with the trial judge to the extent he said that it was an offence requiring specific intent. He concluded his reasons by stating that his broad interpretation "happily accords with common sense."

PART II: QUESTIONS IN ISSUE

52. The appellant's position is that the offence of bestiality under s. 160(1) of the *Criminal Code* is a general intent offence that encompasses sexual activity of any kind between a person and an animal, penetration not being an essential element of the offence. The majority erred in concluding that penetration is a required element of the offence.

PART III: ARGUMENT

Introduction

53. It is the appellant's position that the only common sense interpretation of "bestiality" is one that encompasses sexual activity of any kind between a person and an animal. This interpretation is based upon an analysis of the purpose of the bestiality provision and Parliament's intent in enacting it, as well as its context in the scheme of the *Criminal Code* as a whole

54. The appellant's position is based on the application of the modern principles of statutory interpretation. This Court has repeatedly stated that the starting point for all exercises in statutory interpretation is Driedger's modern approach:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[16]

See: *Rizzo & Rizzo Shoes Ltd (Re),* [1998] 1 S.C.R. 27 at pp. 40-41 – App. Authorities, Tab 3 and *R. v. Sharpe*, [2001] 1 S.C.R. 24, 2001 SCC 2 at para. 33 – App. Authorities, Tab 24.

The purpose of the legislation and Parliament's intent in enacting it supports a broad interpretation

55. The respondent was convicted under s. 160(1) of the *Criminal Code*, the bestiality provision enacted by the 1988 Amendment. The term "bestiality" is to be construed as it would have been the day after the statute passed: *R. v. Perka*, [1984] 2 S.C.R. 232 at pp. 264-265 – App. Authorities, Tab 20. Therefore the term "bestiality" is to be construed as it would have been the day after Bill C-15 was passed. However, it is well established that the legislative evolution of a provision "may throw some light on the intention of the legislature in repealing, amending, replacing or adding to it": *Gravel v. City of St. Leonard*, [1978] 1 S.C.R. 660 at 667– App. Authorities, Tab 1. See also *Sullivan on the Construction of Statutes* 6th ed. (Markham, Ont.: Lexis Nexus, 2014) at p. 661– App. Authorities, Tab 39. The legislative history of the 1988 Amendment is illuminative of how the word "bestiality" would have been construed the day after Bill C-15 was passed.

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[16] E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87– App. Authorities, Tab 29

The common law criminalized sexual activity between a human and animal as buggery

56. As stated in para.16 above, at common law and in the early days of Canada's *Criminal Code,* sexual activity with an animal was criminalized as buggery. Although the majority says at para. 6 *[AR Vol 1, pp. 1554-155]* it was "common ground" that the common law penalized all unnatural penetrations of vaginas and anuses, this was not the appellant/Crown's position in the court below. The appellant's position is that the offence of buggery at common law only penalized anal intercourse, whether between humans or between a human and animal. *R. v. Bourne* (1952), 36 Cr. App. R. 125 – App. Authorities, Tab 5 is the only case relied on by the majority which could support the wider definition of buggery preferred by the majority. However, the issue before the court in *Bourne* was not whether buggery occurred, but whether the appellant aided and abetted his wife in the commission of the act. That case contains no analysis on the required elements of buggery and, standing alone, cannot support a proposition as strong as that the English common law penalized all unnatural penetration, whether vaginal or anal.

57. The appellant adopts the reasoning of Bauman C.J.B.C. at paras. 52 and 53 *[AR Vol 1, p.168]* where he concludes that, at common law, buggery required anal intercourse. In support for his conclusion, Bauman C.J.B.C. refers to the definition of buggery taken from P.G. Osborn, *A Concise Law Dictionary* (London: Sweet & Maxwell, 1954) at 61– App. Authorities, Tab 36 as "the offence committed with mankind or with an animal, consisting of penetration *per anum*". As Bauman C.J.B.C. says at para. 54 *[AR Vol 1, p.168-169]*, this interpretation of buggery is confirmed by the 1988 Amendment, by which the buggery offence was renamed "anal intercourse."

1955 Amendment

58. It is the appellant's position that by introducing the term "bestiality" in the *Criminal Code* for the first time in the 1955 Amendment, Parliament intended to separate it from its common law conception of buggery and give it its own meaning. As noted above at para. 17**,** the term "bestiality" was first introduced in the *Criminal Code* in the 1955 Amendment wherein s. 147 made it an offence to commit "buggery or bestiality".

59. The appellant adopts the reasoning of Bauman C.J.B.C. at para. 52 *[AR Vol 1, p. 168]* that interpreting bestiality as a subset of buggery gives the offence an illogical scope so that "it is a criminal offence to anally penetrate (or be anally penetrated by) an animal, yet it is perfectly lawful for a human to vaginally penetrate (or be vaginally penetrated by) an animal." As Bauman C.J.B.C. stated, that alone indicates that Parliament had an intention in 1955 "to change the essential nature of the offence, to have it encompass more than anal penetration of or by animals."

60. The fundamental question is: Why introduce the new term "bestiality" in 1955 if Parliament only intended to prohibit buggery with animals? If bestiality simply means buggery, this would imply, as Bauman C.J.B.C. says at para. 51, "Parliament legislated in vain. Why separate bestiality from buggery if bestiality was intended to be merely a type of buggery?" *[AR Vol 1, p. 168]*

61. This position is supported by the accepted principles of statutory interpretation that every word in a statute must be given a meaning: *R. v. Kelly*, [1992] 2 S.C.R. 170 at 188 – App. Authorities, Tab 15; that no legislative provision should be interpreted as to render it mere surplusage: *R. v. Proulx*, [2000] 1 S.C.R. 61, 2000 SCC 5 at para. 28 – App. Authorities, Tab 21; and that Parliament "does not speak in vain": *Quebec (Attorney General) v. Carrières Ste. Thérèse Ltée*, [1985] 1 S.C.R. 831 at 838– App. Authorities, Tab 2.

62. These cases support the notion that there is a strong presumption that legislative amendments are made for intelligible purposes such as to clarify meaning, to correct a mistake, to change the law. The respondent in the court below argued that by introducing the word bestiality into the *Code*, Parliament should not be taken to have changed the scope of the offence, and relied on s. 45(2) of the *Interpretation Act*[17] for that proposition. However, *Sullivan on the Construction of Statutes* says at p. 663 – App. Authorities, Tab 39 that s. 45(2) of the *Interpretation Act* does not affect" the presumption that changes to the wording of legislation are purposeful," adding:

[17]R.S.C. 1985, c. l-21, s. 45(2) which reads: The amendment of an enactment shall not be deemed to be or to involve a declaration that the law under that enactment was or was considered by Parliament or other body or person by whom the enactment was enacted to have been different from the law as it is under the enactment as amended.

> Nor do they preclude the court from acknowledging that, in principle at least, the foremost purpose of amendment is to bring about a substantive change in the law. They do, however, remind the courts that amendments do not necessarily have this purpose.

63. Yet the majority says bestiality means buggery because it was left in the same section as buggery. The difficulty with this reasoning is that it disregards the presumption that changes to the wording of legislation are purposeful. Similarly, the majority's reasoning – that if Parliament intended bestiality not to require penetration then it would have said so in clearer language – also disregards this presumption.

64. The appellant also adopts and relies upon the conclusion of Bauman C.J.B.C. at paras. 47-49 *[AR Vol 1, p.167]* that the majority's reliance on secondary literature citing the common law definition of buggery and then applying that definition to both "buggery" and "bestiality" is not helpful on the interpretation of bestiality in what was then s. 147.

1988 Amendment

65. The purpose in enacting the 1988 Amendment and the debate surrounding it show that, at the time Bill C-15 was passed, Parliament necessarily must have assumed that the term bestiality encompassed sexual activity of any kind between a human and an animal. The 1988 Amendment confirms that not only did Parliament intend in 1955 to give the term bestiality a meaning separate apart from "buggery", but also to give bestiality a broad interpretation not restricted to penetrative conduct. Otherwise, the changes brought about by the 1988 Amendment, as part of a legislative package to protect children from the harm caused by all forms of sexual abuse, would not give full effect to the underlying purpose of the legislation.

66. The appellant's position relies on the accepted principles of statutory interpretation that Parliament's intent can be determined by analysing the purpose underlying the legislation, the social context in which it was introduced, and the mischief the legislation was designed to cure. See: *R. v. Chartrand*, [1994] 2 S.C.R. 864 at pp. 874-875 and 880-882 – App. Authorities, Tab 7, a case with some parallels to the present case, in which this Court gave a broad interpretation to the offence of abduction of a person under the age of fourteen by giving significant weight to the legislative goal of supporting the safety of children.

67. There are two underlying purposes for criminalizing bestiality. First, bestiality was and still is an offence of social mores, prohibited by Parliament because such acts offend fundamental social values of the community: *R. v. Malmo-Levine,* [2003] 3 S.C.R. 57, 2003 SCC 74 at para. 117 – App. Authorities, Tab 19; *R. v. Labaye*, [2005] 3 S.C.R. 728, 2005 SCC 80 at para. 109 – App. Authorities, Tab 16. The offence was designed to criminalize such activity deemed abhorrent by the community.

68. If the majority and respondent's preferred definition of bestiality is accepted, then it is a necessary corollary that society's fundamental values would *only* have been offended in this case if the appellant had succeeded in having the family dog penetrate his stepdaughter, and that society's values were left completely intact by what did occur: forcing his vulnerable stepdaughter to have the family dog perform oral sex on her. The appellant submits that common sense suggests both scenarios are on an equal moral plane, and equally abhorrent to fundamental values.

69. Second, Bill C-15 was a set of child-centered reforms[18] explicitly introduced to address the perceived gaps in the *Criminal Code* that dealt with child sexual abuse. The same legislation introduced the new child-specific, gender-neutral offences not dependent on proof of penile penetration: sexual interference, sexual exploitation, and invitation to sexual touching.[19]

70. The minister responsible for the bill provided at the committee stage direct evidence of the purpose of the bill. He said its purpose was to protect children from the harm of sexual abuse. He added:

> …new criminal offences are proposed that will protect girls, and boys equally and will replace outmoded offences which limited protection to girls, and even then, to those who were victims of a very narrow range of sexual behaviour…I am pleased there is a collective will in the House to take appropriate legislative response …to correct the existing imbalance in the justice system which denies our children and adolescents adequate protection from the psychological and physical harm that is sexual abuse.[20] [emphasis added]

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[18] McGillivray, Anne. "Abused Children in the Courts: Adjusting the Scales After Bill C-15" (1990), 19 Man. L.J. 549 at p. 555– App. Authorities, Tab 32

[19] *Ibid*, at p. 556– App. Authorities, Tab 32

[20] Minutes of the House of Commons Standing Committee on Justice, 33rd Parl, 2nd Sess, No. 1 (27 Nov 1986) at 18-22 (Hon. Ramon John Hnatyshyn) – App. Authorities, Tab 35

71. The new bestiality offences were part of this legislative package to protect children from sexual abuse. Bestiality was separated entirely from the buggery offence, and placed in a separate section comprised of three offences: s. 160 (1) (bestiality), 160 (2) (compelling bestiality) and160 (3) (bestiality in the presence of a child). The old buggery offence criminalizing anal intercourse between humans was replaced with the new term "anal intercourse" and put in its own section (see para. 19 above).

72. The context surrounding the passage of Bill C-15 provides several instructive points regarding the intention of Parliament as it pertains to the interpretation of the current bestiality provision.

73. First, it confirms Parliament's intention to conceptually separate it from buggery by enacting the standalone bestiality offences. This makes sense because in today's world the concepts embodied by the terms "bestiality" and "buggery" are wholly unconnected to one another, the former applicable to sexual activity between a human and animal while the later, the origins of which was to discriminate against gay sex[21], applicable to sex between humans.

74. Second, the context surrounding the passage of Bill C-15 strongly suggests that the bestiality offences exist not only because sexual activity with an animal is antithetical to deeply held social values, but also to protect children from the insidious effects of child abuse. This second contention is supported by the fact that the modern-day standalone bestiality provision has been amended three times since their enactment by legislation focused on protecting children from sexual predators: see para. 22 above.

75. In addition to these specific amendments to s. 160, there was another amendment to Part V of the *Code* that supports this point. Section 161[22] allows a judge, who has convicted a person of, *inter alia*, the ss. 160(2) and (3) bestiality offences with respect to a child, to prohibit the offender from attending places where children can reasonably be expected to be present, from working or volunteering at a job that involves being in a position of trust towards children, from having unsupervised contact with children, and from using the internet without conditions imposed by the court.

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[21] *R. v. C.M.* (1995), 98 C.C.C. (3d) 481, [1995] O.J. No. 1432 (C.A.) at para. 20– App. Authorities, Tab 6
[22] Originally enacted by S.C. 1993, c. 45, ss. 1, 17(a)

76. The fact that the standalone bestiality provision was introduced in 1988 and has since been amended three times indicates that the bestiality is not simply a relic of the common law that remains fossilized in the *Criminal Code*. It has been purposefully included and continually refined as part of a recent sustained legislative campaign to strengthen the *Code* to protect against child sexual abuse.

77. A narrow interpretation would lead to absurd results. As this Court said in in *Rizzo & Rizzo Shoes Ltd. (Re)* at p. 43 – App. Authorities, Tab 3, it is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd results.

78. For example, Part V of the *Criminal Code* would criminalize an adult caressing a child's buttocks for a sexual purpose *per* s. 151 but would not criminalize in s. 160(3) the act of inciting a child to have oral sex with a dog if bestiality was confined to penetrative acts alone. Likewise, if bestiality only includes penetrative acts, then the criminal law would not prohibit an adult from having a dog lick that person's genitals in the presence of a child, or from inciting a child to fondle an animal's genitals for the sexual gratification of the adult.

79. The appellant's submissions on this point were adopted by Bauman C.J.B.C., stating at para. 59:

> I agree that accepting the appellant's submissions, which urge a restrictive approach to what constitutes "bestiality", would lead to the unfortunate *lacuna* noted by the Crown in the legislative response to the need to protect children from all forms of sexual abuse. *[AR Vol 1, p. 170]*

80. In this context, restricting bestiality to penetrative conduct would overlook the significant physical and psychological trauma to victims caused by sexual activities with animals other than by intercourse[23] and thus would not give full effect to the harm the legislation sought to address.

81. While the majority says if Parliament intended to criminalize non-penetrative conduct, it could have done so with an express amendment to the definition of bestiality, it is better said that if Parliament intended to limit the law's protection to victims harmed by penetrative conduct only, it would have expressly have said so.

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[23] McGillivray, Anne. "Abused Children in the Courts: Adjusting the Scales After Bill C-15, *supra*, at p. 560– App. Authorities, Tab 32

82. The majority erred by relying on the common law definition for one word – buggery – to interpret a different word – bestiality – to the exclusion of any other analysis. Given this Court's endorsement of Driedger's approach to statutory interpretation, it simply cannot be acceptable to interpret the meaning of a disputed word in a statute solely by considering common law cases pertaining to a different term. The entire purpose of the modern approach to statutory interpretation is to ensure that words in a statute are interpreted in the way that best ensures the attainment of that statute's objects. By ignoring the modern approach to statutory interpretation and limiting its analysis to the common law definition of another term, the majority arrived at an interpretation of the word bestiality that is incompatible with the object of the modern bestiality provision and which would defeat Parliament's purpose to protect children from a broad range of sexually abusive conduct.

83. There is support for appellant's interpretation from a comment made by Richard Mosley, Q.C., then General Counsel, Criminal Law Policy and Amendments Section and one of the legislative drafters of Bill C-15. In answering a question of a parliamentarian at the House of Commons Legislative Committee on Bill C-15 regarding the inclusion of what are now ss. 160(2) and (3) in Bill C-15, Mr. Mosley explained why those provisions were added and, in doing so, stated that bestiality encompasses any form of sexual conduct with animals:

> The reason had more to do with modifying the offence of bestiality to conform more closely to the approach of the bill. It was concerned more with offences against children, primarily to bring in the notion of the offence of bestiality in the presence of or by a child. The compulsion and sighting [*sic*-"inciting"] aspect of it was felt to round the application of that offence to any form of conduct involving sex with animals. [emphasis added][24]

84. Mr. Mosley, as one of the drafters of the legislation, was responding to questions by parliamentarians at a Parliamentary committee debating Bill C-15, who for the most part were seeking clarifications with respect to some of the bill's provisions. In these circumstances, his comments with respect to the meaning and intent of these provisions is a helpful tool that a court can be consider in determining Parliament's intent. See: *R. v. Lavigne*, [2006] 1 S.C.R. 392; 2006 SCC 10 at para. 41– App. Authorities, Tab 17, and *R. v. Sharpe*, *supra*, at para. 126 – App.

[24] Minutes of the House of Commons Standing Committee on Justice, 33rd Parl, 2nd Sess, No. 9 (17 Feb 1987) at 66-67– App. Authorities, Tab 33

Authorities, Tab 24 where this Court considered comments made by Mr. Mosley at other parliamentary committee hearings.

85. Another Department of Justice official, in reporting on the impact of Bill C-15's amendments, described the bestiality provision using terms similar to those Mr. Mosely used before the committee considering Bill C-15, stating:

> The law created a new section specifically concerning the crime of engaging in sexual activity with animals. (Under the old law, section 155 covered both buggery and bestiality.) As well, it added two new offences concerning children: inciting a child under 14 to commit bestiality, and engaging in bestiality in front of a child under 14. [emphasis added][25]

86. Admittedly the respondent was convicted under s. 160(1), not (2) or (3) which were the new offences added concerning child sexual abuse. However, the meaning of bestiality has to be the same for all three offences. Parliament could not have intended that an identical word would have different meanings in the same section of the *Code*, especially as the gravamen for all three offences is the same. See *R. v. Clark*, [2005] 1 S.C.R. 6, 2005 SCC 2 at para. 51– App. Authorities, Tab 9.

A consideration of the bestiality provision in context of the scheme of the *Code* as a whole supports a broad interpretation

87. The appellant's position with respect to the object of the bestiality provision and Parliament's purpose in enacting it is supported upon consideration of the bestiality provision in the context of the scheme of the *Criminal Code* as a whole. Part of the modern approach to statutory interpretation is to examine the disputed provision in context of the legislative scheme. Driedger explained it as follows:

> All the words within one legislative scheme must be read in their entire context in order to find the scheme and the object of the Act and the intention embodied in the words as a whole, and then the words of the particular section under consideration must be construed within that framework.[26]

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[25] Schmolka, Vicki. Is Bill C-15 Working? An Overview of the Research on the Effects of the 1988 Child Sexual Abuse Amendments. Ottawa: Department of Justice, 1992, p. 41– App. Authorities, Tab 38

[26] Construction of Statutes, 2nd ed. at p. 90– App. Authorities, Tab 29

88. Looking at the *Code* as a whole, proof of the act of intercourse is rarely a required element of an offence. As stated in *Martin's Annual Criminal Code 2015* (Toronto: Canada Law Book, 2014) – App. Authorities, Tab 31 referring to the definition of "sexual intercourse in. s. 4(5) of the *Code*:

> With the gradual amendment to the sexual offences, sexual intercourse as an element of an offence is now rare. However, it is still relevant to the incest offence in s. 156.[27]

89. When Parliament intends to require intercourse in the modern *Code* it says so. Incest (s. 155) and anal intercourse (s.159) are the two remaining sexual offences in the *Code* requiring proof of a penetrative act, and specifically say so in the respective enactments. There is no such intercourse requirement specified in the s. 160 bestiality offences.

90. Not only did Parliament not expressly say that penetration was a required element of bestiality, a broader look at the scheme of the *Criminal Code* shows that penetrative conduct is an outmoded concept. As such, there is no logical reason for Parliament to have intended penetration to be an element of the bestiality offences. The old offence of rape which required proof of sexual intercourse was abolished, replaced by sexual assault (s. 271- in force since 1983), which does not require proof of penetration. See *R. v. Chase*, [1987] 2 S.C.R. 293 at p. 301– App. Authorities, Tab 8. Consequently, sexual assault now captures a broad range of unwanted sexual acts moving away from a concept of sexual violence that is limited to penetrative acts.

91. This was the scheme in the *Criminal Code* when Parliament was considering how Bill C-15 could best update the *Code* to deal with child sexual offences. It was a legislative scheme that had virtually eliminated penetration as a required element of any sexual offence. As already discussed, Bill C-15 itself introduced three new gender-neutral child-specific offences not dependent upon proof of penetration (see para. 69 above). It defies common sense that Parliament would not criminalize conduct that causes significant physical and psychological trauma to victims of sexual activities with animals other than by intercourse, but would

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[27] It makes sense that "sexual intercourse" is an element of incest given that the prohibition against incest is, in part, to avoid the increased risk of genetic defects to the children born of incestuous relationships: *R. v. G.R.*, [2005] 2 S.C.R. 371, 2005 SCC 45 at paras. 17 to 19– App. Authorities, Tab 10

criminalize a broad range of sexual conduct other than by intercourse for these other sexual offences.

92. A possible justification for restricting bestiality to penetrative sex alone would be if the purpose of the bestiality provision was to prevent harm to animals. However, animal cruelty provisions are in a different part of the *Code*[28]. Furthermore, this conception of bestiality – as a crime included in the *Code* solely to protect animals – is out of sorts with the placement of the crime amongst other criminal offences in Part V of the *Code* aimed to safeguard against the sexual abuse of children and at regulating social mores. Simply put, anti-bestiality offences focus on these harms, while anti-cruelty laws focus more specifically on animal welfare.

The French version of the legislation supports a broad interpretation

93. The French version of s. 160 supports a broad interpretation of bestiality. Section 160(1) reads:

> **160.** (1) Est coupable soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans, soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire,quiconque commet un acte de bestialité.

94. Subsections (2) and (3), like subsection (1) also refer to committing "un acte de bestialité". This is in contrast to the earlier bestiality offence enacted as s. 147 by the 1955 Amendment which refers just to "bestialité" and which read:

> Est coupable d'un acte criminal et passible d'un emprisonnement de quatorze ans, quiconque commet la sodomie ou bestialité.

95. Adding the phrase "un acte de" in each of the three offences supports a broad interpretation to the scope of the bestiality offences. Punishing a person for "un acte de bestialité" suggests that bestiality can be committed by more than one kind of "act", and is not just limited to a penetrative act. Otherwise, including "un acte de" in the definition is mere surplusage, and as already noted, every word in a statute must be given a meaning, and no legislative provision should be interpreted as to render it mere surplusage.

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[28] The cruelty to animal offences (ss. 445-446) are set out in Part XI of the *Criminal Code*.

96. There is a shared meaning between the French and English versions upon applying the two-step approach adopted by this Court in the interpretation of bilingual statues. See *R. v. S.A.C.*, [2008] 2 S.C.R. 675, 2008 SCC 47 at paras. 14-16 – App. Authorities, Tab 23. The first step is to determine whether there is discordance between the English and French versions of the bestiality provision. There is none. At the second step, it must be determined whether the shared meaning is consistent with Parliament's intent. For all the reason set out in this factum, both versions are consistent with the appellant's and Bauman C.J.B.C.'s broad interpretation of the modern bestiality provision to encompass all forms of sexual activity between a human and animal.

There is support from dictionaries and foreign statutes that bestiality does not require penetration.

97. As stated by Driedger, the words of the Act are to be understood in their "grammatical and ordinary sense" in applying the modern approach to statutory interpretation (see para. 64 above). There is some support, albeit inconclusive, from dictionary definitions and statues from other jurisdictions that bestiality does not require proof of penetration.

98. Though ordinary meaning should not be confused with a word's dictionary definition, nevertheless, dictionaries are often a useful starting point to determine the ordinary meaning of a word (*Sullivan on the Construction of Statutes* at 32, 43 – App. Authorities, Tab 39), including the interpretation of the *Criminal Code*: *R. v. Hasselwander,* [1993] 2 S.C.R. 398 at 415-416 – App. Authorities, Tab 11.

99. Black's Law Dictionary defines bestiality as:

> Sexual activity between a human and an animal. Some authorities restrict the term to copulation between a human and animal of the opposite sex.[29]

[29] *Black's Law Dictionary*, 10th ed. (St. Paul: Thomson Reuters, 2014) p. 191– App. Authorities, Tab 27.

100. Le Grand Robert de la langue française (internet version– App. Authorities, Tab 28) defines bestialité as:

> Perversion (dite aussi *zoophilie érotique* et, autrefois, *sodomie*) qui consiste, pour un humain, à rechercher ou pratiquer des rapports sexuels avec un animal. *La bestialité était punie de mort chez les Hébreux*.

"Rapports sexuels" can encompass a broad range of sexual activity and is not necessarily limited to penetrative sexual activity.

101. Grammatical and ordinary sense can also be determined by reference to extra jurisdictional legislation: Sullivan, Ruth "Statutory Interpretation in a New Nutshell" (2003), 82 Canadian Bar Review 51 at 59 – App. Authorities, Tab 40**.**

102. The Australian Capital Territory's *Crimes Act 1900*, section 63A – App. Authorities, Tab 51, defines bestiality as "a sexual activity of any kind with an animal". South Australia's *Criminal Law Consolidation Act 1935*, s. 5 – App. Authorities, Tab 55 defines bestiality as "sexual activity between a person and an animal". Four other Australian states or territories explicitly define bestiality as a penetrative offence. Appendix A is a chart outlining the bestiality provisions in the various jurisdictions in Australia.

103. Eleven states in the United States use the term "bestiality" in their statutes, all of which define the term broadly. No state that uses the term bestiality in their statutes limits the crime to penetrative conduct. Appendix B is a chart outlining the statutory provisions of those states that use the term "bestiality."

The jurisprudence on s. 160 is limited

104. There are no cases from appeal courts that analyse the elements of s. 160, but for the present case.

105. There are three provincial court decisions on point. Two of them state that penetration is required for bestiality: *R. v. Ruvinsky*, [1998] O.J. No. 3621 (Ct. J. – Prov. Div.) at paras. 21-40 – App. Authorities, Tab 22, and *R. c. Poirier* (1993), (Que. Crim. Div.) (unreported) which was

referred to in the third case, *R. c. M.G.*, 2002 CarswellQue 3181 (Que. Crim. Div.) at paras. 33-47 – App. Authorities, Tab 18. *M.G.* cited but did not follow the other two cases, and the court committed the accused to stand trial on a compelling bestiality charge where the accused tried without success to penetrate the complainant's vagina.

106. At para. 64 of his dissent, Bauman C.J.B.C. refers to other cases in which the accused had penetrated or attempted to penetrate an animal, but found these cases of no assistance because the courts had no reason to consider whether penetration was a required element of the bestiality offence. *[AR Vol 1, pp. 170-171]*

107. Both the trial judge *[AR Vol 1, pp. 90-91]* and Bauman C.J.B.C. *[AR Vol 1, p. 171]* refer to cases in which offenders were convicted of bestiality upon entering guilty pleas on facts in which there were no penetrative conduct. The factual basis of two of these cases are remarkably similar to the facts underlying the present appeal involving oral sex between a female child and dog: *R. v. K.D.H.*, 2012 ABQB 471 – App. Authorities, Tab 14 (the accused had the family dog lick his 13-year stepdaughter's vagina, and the stepdaughter was present when the accused had the dog lick the vagina of the child's mother); *R. v. J.J.B.B.*, 2007 BCPC 426 – App. Authorities, Tab 13 (the accused used butter to lure two different dogs on at least three occasions to lick the genitals of his niece who was 3-5 years old). The third case is *R. v. Black*, 2007 SKPC 46 – App. Authorities, Tab 4 (a dog licked the accused's vagina and the accused attempted to stimulate the dog's penis).

108. While none of these cases contain an analysis of the elements that make-up bestiality, they are useful because they demonstrate what judges, as well as counsel, think bestiality means in its ordinary sense. As Bauman C.J.B.C. stated at para. 66 "the judges taking those pleas, of course, were required to be satisfied that the elements of the offences had been made out. If the appellant at bar is correct that penetration is required, then these individuals were wrongfully convicted." *[AR Vol 1, p. 171]*

Bestiality is a general intent offence

109. The trial judge, without expressly saying so, found the bestiality offence to be a specific intent offence to the extent that he concluded that the act must be "for a person's sexual purpose". *[RFJ at para. 313, AR Vol 1, p. 92]* Bauman C.J.B.C. agreed with the Crown that, when applying traditional principles of statutory interpretation, s.160(1) creates a general intent offence. He added this at para. 68: "To the extent that the trial judge might be taken to suggest that it is an offence requiring specific intent, I disagree." *[AR Vol 1, p. 171]* The majority did not opine on this issue.

110. It is the appellant's position that bestiality is a general intent offence. Like the various assault and sexual assault offences, the thought and reasoning process is straight-forward involving minimal intent – the accused must intentionally engage in a sexual activity with an animal. See *R. v. Tatton*, 2015 SCC 33 at paras. 30 to 45 – App. Authorities, Tab 35.

111. The trial judge properly was concerned that bestiality should not over-criminalize non-sexual activities such as "a farmer expelling bull semen for a business purpose, or a pet owner touching a pet in its genital region for a hygienic purpose". *[RFJ at para. 313, AR Vol 1, p. 92]* However in doing so, he unnecessarily conflated the *actus reus* and *mens rea* by finding that the act must be "for a person's sexual purpose". *[RFJ at para. 313, AR Vol 1, p. 92]* Adding this *mens rea* element was unnecessary because the *actus reus* of sexual activity means that the act is sexual in nature as opposed to being for a different purpose such as for animal husbandry, hygienic, sanitary or medical purposes. See *R. v. Hutchinson*, [2014] 1 S.C.R. 346, 2014 SCC 19 at para. 57– App. Authorities, Tab 12.

Conclusion

112. By examining the bestiality provision in light of the scheme of the *Criminal Code*, its purpose, and Parliament's intent in enacting it, the only logical and common sense interpretation of the provision is sexual activity of any kind between a person and an animal. The narrow interpretation preferred by the majority and the respondent would not give full effect to the underlying purpose of the bestiality provision as it overlooks the significant physical and psychological trauma to victims, particularly children, caused by sexual activities with animals other than by intercourse.

PART IV

SUBMISSIONS CONCERNING COSTS

113. The appellant makes no submissions regarding costs.

PART V

NATURE OF ORDER SOUGHT

114. That the judgment of the majority of British Columbia Court of Appeal be set aside and the verdict of the trial judge convicting the respondent of bestiality (count 13) restored.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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Mark K. Levitz, Q.C.
Counsel for the Crown/appellant

August 7, 2015
Vancouver, B.C.

APPENDIX A - AUSTRALIA

Australian jurisdictions that do not require penetration for bestiality

Jurisdiction	Definition	Citation
New South Wales	"Any person who commits an act of bestiality with any animal shall be liable to imprisonment for 14 years".	New South Wales, *Crimes Act 1900*, s. 79
South Australia	A person who commits bestiality is guilty of an offence. Bestiality is defined as "sexual activity between a person and an animal".	South Australia, *Criminal Law Consolidation Act 1935*, s. 69, s. 5
Australian Capital Territory	Criminalizes bestiality, defined as an offence committed when a person "engages in a sexual activity of any kind with an animal."	Australian Capital Territory *Crimes Act 1900*, section 63A

Australian jurisdictions that only criminalize penetrative sexual acts with animals

Northern Territory	The crime of bestiality penalizes "any person who inserts, to any extent, the person's penis into the genital passage or anus of an animal or permits an animal to insert its penis into the person's vagina or anus".	*Criminal Code of the Northern Territory of Australia*, s. 138
Queensland	Criminalizes bestiality, defined as "carnal knowledge with or of an animal". The legislation also says that where the term carnal knowledge is used, the offence is complete upon penetration.	Queensland, *Criminal Code 1899*, ss. 6, 211
Tasmania	Criminalizes unnatural crimes, defined as any person who has sexual intercourse with an animal. Sexual intercourse is defined as "the penetration to the least degree of the vagina, genitalia, anus, or mouth by the penis".	Tasmania, *Criminal Code Act 1924*, ss. 1 and 122
Western Australia	Criminalizes "carnal knowledge of an animal". Act states that when the term "carnal knowledge" is used in defining an offence, then it is implied that the offence is complete upon penetration.	Western Australia, *Criminal Code Act Compilation Act 1913*, ss. 6, 181

APPENDIX B – AMERICAN STATES

American states that explicitly use the word "bestiality" in their statutes. All of the following states criminalize a range of sexual conduct beyond penetrative acts.

Jurisdiction	Definition	Citation
Alabama	Any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.	The Code of Alabama, 1975, §13A-6-220 and 221
Arizona	Engaging in oral sexual contact, sexual contact or sexual intercourse with an animal.	Arizona Revised Statutes tit. 13 §13-1411
Arkansas	A person commits bestiality if he or she performs or submits to any act of sexual gratification with an animal involving his or her or the animal's sex organs and the mouth, anus, penis, or vagina of the other	Arkansas Code §5-14-122 (2010)
Delaware	A person is guilty of bestiality when the person intentionally engages in any sexual act involving sexual contact, penetration or intercourse with the genitalia of an animal or intentionally causes another person to engage in any such sexual act with an animal for purposes of sexual gratification.	Delaware Code §11-5-775
Georgia	A person commits the offense of bestiality when he performs or submits to any sexual act with an animal involving the sex organs of the one and the mouth, anus, penis, or vagina of the other.	Georgia Code §16-6-6
Indiana	Bestiality defined as an act involving: 1) a sex organ of a person and the mouth or anus of an animal 2) a sex organ of an animal and the mouth or anus of a person 3) any penetration of the human female sex organ by an animal's sex organ; or 4) any penetration of an animal's sex organ by the male sex organ	Indiana Code §35-46-3-14

Iowa	Bestiality is any sex act with an animal, where “sex act” is defined as “any sexual contact between a person and an animal by penetration of the penis into the vagina or anus, contact between the mouth and genitalia, or by contact between the genitalia of one and the genitalia or anus of the other”	Iowa Code 2015, Chapter 717C
Maine	Penalizes bestiality as part of the cruelty to animals provisions. The first definition of bestiality is “a sexual act with an animal for the purpose of that person's sexual gratification”.	Maine Revised Statutes Title 17, §1031
Minnesota	Bestiality is defined as carnally knowing a dead body or an animal. Carnally knowing includes by the anus or by the mouth.	2014 Minnesota Statutes, §609.294,
South Dakota	Defines the crime of bestiality as engaging in a sexual act with an animal for the purpose of that person's sexual gratification	South Dakota Codified Laws §22-22-42.
Utah	Bestiality is defined as “any sexual activity with an animal with the intent of sexual gratification of the actor”. Sexual activity is defined to include the genitals of the actor and the mouth of the animal.	Utah Code, §76-9-301.8

PART VI – TABLE OF AUTHORITIES

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Authorities

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Authorities (Cont'd)

Additional References

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Statutory Provisions

Canada

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Statutory Provisions (Cont'd)

Australia

United States

PART VII – LEGISLATION AT ISSUE

CRIMINAL CODE

R.S.C., 1985, c. C-46

Sexual interference	**151.** Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years (*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or (*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days. R.S., 1985, c. C-46, s. 151; R.S., 1985, c. 19 (3rd Supp.), s. 1; 2005, c. 32, s. 3; 2008, c. 6, s. 54; 2012, c. 1, s. 11.	**151.** Toute personne qui, à des fins d'ordre sexuel, touche directement ou indirectement, avec une partie de son corps ou avec un objet, une partie du corps d'un enfant âgé de moins de seize ans est coupable : *a*) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans, la peine minimale étant de un an; *b*) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois, la peine minimale étant de quatre-vingt-dix jours. L.R. (1985), ch. C-46, art. 151; L.R. (1985), ch. 19 (3e suppl.), art. 1; 2005, ch. 32, art. 3; 2008, ch. 6, art. 54; 2012, ch. 1, art. 11.	Contacts sexuels
Invitation to sexual touching	**152.** Every person who, for a sexual purpose, invites, counsels or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of 16 years, (*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or (*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days. R.S., 1985, c. C-46, s. 152; R.S., 1985, c. 19 (3rd Supp.), s. 1; 2005, c. 32, s. 3; 2008, c. 6, s. 54; 2012, c. 1, s. 12.	**152.** Toute personne qui, à des fins d'ordre sexuel, invite, engage ou incite un enfant âgé de moins de seize ans à la toucher, à se toucher ou à toucher un tiers, directement ou indirectement, avec une partie du corps ou avec un objet est coupable : *a*) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans, la peine minimale étant de un an; *b*) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois, la peine minimale étant de quatre-vingt-dix jours. L.R. (1985), ch. C-46, art. 152; L.R. (1985), ch. 19 (3e suppl.), art. 1; 2005, ch. 32, art. 3; 2008, ch. 6, art. 54; 2012, ch. 1, art. 12.	Incitation à des contacts sexuels Sexual exploitation
Sexual exploitation	**153.** (1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a	**153.** (1) Commet une infraction toute personne qui est en situation d'autorité ou de confiance vis-à-vis d'un adolescent, à l'égard de laquelle l'adolescent est en situation de dépendance ou qui est dans une relation où elle	Exploitation sexuelle

	young person that is exploitative of the young person, and who (*a*) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or (*b*) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.	exploite l'adolescent et qui, selon le cas : *a*) à des fins d'ordre sexuel, touche, directement ou indirectement, avec une partie de son corps ou avec un objet, une partie du corps de l'adolescent; *b*) à des fins d'ordre sexuel, invite, engage ou incite un adolescent à la toucher, à se toucher ou à toucher un tiers, directement ou indirectement, avec une partie du corps ou avec un objet.	
Punishment	(1.1) Every person who commits an offence under subsection (1) (*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or (*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.	(1.1) Quiconque commet l'infraction visée au paragraphe (1) est coupable : *a*) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans, la peine minimale étant de un an; *b*) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois, la peine minimale étant de quatre-vingt-dix jours.	Peine
Inference of sexual exploitation	(1.2) A judge may infer that a person is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including (*a*) the age of the young person; (*b*) the age difference between the person and the young person; (*c*) the evolution of the relationship; and (*d*) the degree of control or influence by the person over the young person.	(1.2) Le juge peut déduire de la nature de la relation entre la personne et l'adolescent et des circonstances qui l'entourent, notamment des éléments ci-après, que celle-ci est dans une relation où elle exploite l'adolescent : *a*) l'âge de l'adolescent; *b*) la différence d'âge entre la personne et l'adolescent; *c*) l'évolution de leur relation; *d*) l'emprise ou l'influence de la personne sur l'adolescent.	Déduction
Definition of "young person"	(2) In this section, "young person" means a person 16 years of age or more but under the age of eighteen years. R.S., 1985, c. C-46, s. 153; R.S., 1985, c. 19 (3rd Supp.), s. 1; 2005, c. 32, s. 4; 2008, c. 6, s. 54; 2012, c. 1, s. 13.	(2) Pour l'application du présent article, « adolescent » s'entend d'une personne âgée de seize ans au moins mais de moins de dix-huit ans. L.R. (1985), ch. C-46, art. 153; L.R. (1985), ch. 19 (3e suppl.), art. 1; 2005, ch. 32, art. 4; 2008, ch. 6, art. 54; 2012, ch. 1, art. 13.	Définition de « adolescent »
Incest	**155.** (1) Every one commits incest who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent or grandchild, as the case may be, has sexual intercourse with that person.	**155.** (1) Commet un inceste quiconque, sachant qu'une autre personne est, par les liens du sang, son père ou sa mère, son enfant, son frère, sa soeur, son grand-père, sa grand-mère, son petit-fils ou sa petite-fille, selon le cas, a des rapports sexuels avec cette personne.	Inceste

Punishment	(2) Everyone who commits incest is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and, if the other person is under the age of 16 years, to a minimum punishment of imprisonment for a term of five years.	(2) Quiconque commet un inceste est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans, la peine minimale étant de cinq ans si l'autre personne est âgée de moins de seize ans.	Peine
Defence	(3) No accused shall be determined by a court to be guilty of an offence under this section if the accused was under restraint, duress or fear of the person with whom the accused had the sexual intercourse at the time the sexual intercourse occurred.	(3) Nul ne doit être déclaré coupable d'une infraction au présent article si, au moment où les rapports sexuels ont eu lieu, il a agi par contrainte, violence ou crainte émanant de la personne avec qui il a eu ces rapports sexuels.	Contrainte
Definition of "brother" and "sister"	(4) In this section, "brother" and "sister", respectively, include half-brother and half-sister. R.S., 1985, c. C-46, s. 155; R.S., 1985, c. 27 (1st Supp.), s. 21; 2012, c. 1, s. 14.	(4) Au présent article, « frère » et « soeur » s'entendent notamment d'un demi-frère et d'une demi-soeur. L.R. (1985), ch. C-46, art. 155; L.R. (1985), ch. 27 (1er suppl.), art. 21; 2012, ch. 1, art. 14.	Définition de « frère » et « soeur »
Anal intercourse	**159.** (1) Every person who engages in an act of anal intercourse is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.	**159.** (1) Quiconque a des relations sexuelles anales avec une autre personne est coupable soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans, soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.	Relations sexuelles anales
Exception	(2) Subsection (1) does not apply to any act engaged in, in private, between (*a*) husband and wife, or (*b*) any two persons, each of whom is eighteen years of age or more, both of whom consent to the act.	(2) Le paragraphe (1) ne s'applique pas aux actes commis, avec leur consentement respectif, dans l'intimité par les époux ou par deux personnes âgées d'au moins dix-huit ans.	Exceptions
Idem	(3) For the purposes of subsection (2), (*a*) an act shall be deemed not to have been engaged in in private if it is engaged in in a public place or if more than two persons take part or are present; and (*b*) a person shall be deemed not to consent to an act (i) if the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent misrepresentations respecting the nature and quality of the act, or (ii) if the court is satisfied beyond a reasonable doubt that the person could not have consented to the act by reason of mental disability.	(3) Les règles suivantes s'appliquent au paragraphe (2) : *a*) un acte est réputé ne pas avoir été commis dans l'intimité s'il est commis dans un endroit public ou si plus de deux personnes y prennent part ou y assistent; *b*) une personne est réputée ne pas consentir à commettre un acte dans les cas suivants : (i) le consentement est extorqué par la force, la menace ou la crainte de lésions corporelles, ou est obtenu au moyen de déclarations fausses ou trompeuses quant à la nature ou à la qualité de l'acte, (ii) le tribunal est convaincu hors de tout doute raisonnable qu'il ne pouvait y avoir	Idem

	R.S., 1985, c. C-46, s. 159; R.S., 1985, c. 19 (3rd Supp.), s. 3.	consentement de la part de cette personne du fait de son incapacité mentale. L.R. (1985), ch. C-46, art. 159; L.R. (1985), ch. 19 (3e suppl.), art. 3.	
Bestiality	**160.** (1) Every person who commits bestiality is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.	**160.** (1) Est coupable soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans, soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire, quiconque commet un acte de bestialité.	Bestialité
Compelling the commission of bestiality	(2) Every person who compels another to commit bestiality is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.	(2) Est coupable soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans, soit d'une infraction punissable sur declaration de culpabilité par procédure sommaire, toute personne qui en force une autre à commettre un acte de bestialité.	Usage de la force
Bestiality in presence of or by child	(3) Despite subsection (1), every person who commits bestiality in the presence of a person under the age of 16 years, or who incites a person under the age of 16 years to commit bestiality, (*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or (*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months. R.S., 1985, c. C-46, s. 160; R.S., 1985, c. 19 (3rd Supp.), s. 3; 2008, c. 6, s. 54; 2012, c. 1, s. 15.	(3) Malgré le paragraphe (1), toute personne qui commet un acte de bestialité en présence d'une personne âgée de moins de seize ans ou qui l'incite à en commettre un est coupable : *a*) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans, la peine minimale étant de un an; *b*) soit d'une infraction punissable sur declaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de deux ans moins un jour, la peine minimale étant de six mois. L.R. (1985), ch. C-46, art. 160; L.R. (1985), ch. 19 (3e suppl.), art. 3; 2008, ch. 6, art. 54; 2012, ch. 1, art. 15.	Bestialité en présence d'un enfant ou incitation de celui-ci
Order of prohibition	**161.** (1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection (1.1) in respect of a person who is under the age of 16 years, the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from (*a*) attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre;	**161.** (1) Dans le cas où un contrevenant est déclaré coupable, ou absous en vertu de l'article 730 aux conditions prévues dans une ordonnance de probation, d'une infraction mentionnée au paragraphe (1.1) à l'égard d'une personne âgée de moins de seize ans, le tribunal qui lui inflige une peine ou ordonne son absolution, en plus de toute autre peine ou de toute autre condition de l'ordonnance d'absolution applicables en l'espèce, sous réserve des conditions ou exemptions qu'il indique, peut interdire au contrevenant : *a*) de se trouver dans un parc public ou une zone publique où l'on peut se baigner s'il y a des personnes âgées de moins de seize ans ou s'il est raisonnable de s'attendre à ce qu'il y en ait, une garderie, un terrain d'école, un	Ordonnance d'interdiction

	(*a.1*) being within two kilometres, or any other distance specified in the order, of any dwelling-house where the victim identified in the order ordinarily resides or of any other place specified in the order; (*b*) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years; (*c*) having any contact — including communicating by any means — with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; or (*d*) using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court.	terrain de jeu ou un centre communautaire; *a.1*) de se trouver à moins de deux kilomètres — ou à moins de toute autre distance prévue dans l'ordonnance — de toute maison d'habitation où réside habituellement la victime identifiée dans l'ordonnance ou de tout autre lieu mentionné dans l'ordonnance; *b*) de chercher, d'accepter ou de garder un emploi — rémunéré ou non — ou un travail bénévole qui le placerait en relation de confiance ou d'autorité vis-à-vis de personnes âgées de moins de seize ans; *c*) d'avoir des contacts — notamment communiquer par quelque moyen que ce soit — avec une personne âgée de moins de seize ans, à moins de le faire sous la supervision d'une personne que le tribunal estime convenir en l'occurrence; *d*) d'utiliser Internet ou tout autre réseau numérique, à moins de le faire en conformité avec les conditions imposées par le tribunal. Le tribunal doit dans tous les cas considérer l'opportunité de rendre une telle ordonnance.	
Offences	(1.1) The offences for the purpose of subsection (1) are (*a*) an offence under section 151, 152, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171, 171.1, 172.1 or 172.2, subsection 173(2), section 271, 272, 273 or 279.011, subsection 279.02(2) or 279.03(2), section 280 or 281 or subsection 286.1(2), 286.2(2) or 286.3(2); (*b*) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983; (*c*) an offence under subsection 146(1) (sexual intercourse with a female under 14) or section 153 (sexual intercourse with stepdaughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or	(1.1) Les infractions visées par le paragraphe (1) sont les suivantes : *a*) les infractions prévues aux articles 151, 152, 155 ou 159, aux paragraphes 160(2) ou (3), aux articles 163.1, 170, 171, 171.1, 172.1 ou 172.2, au paragraphe 173(2) ou aux articles 271, 272, 273 ou 279.011, aux paragraphes 279.02(2) ou 279.03(2), aux articles 280 ou 281 ou aux paragraphes 286.1(2), 286.2(2) ou 286.3(2); *b*) les infractions prévues aux articles 144 (viol), 145 (tentative de viol), 149 (attentat à la pudeur d'une personne de sexe féminin), 156 (attentat à la pudeur d'une personne de sexe masculin) ou 245 (voies de fait ou attaque) ou au paragraphe 246(1) (voies de fait avec intention) du *Code criminel*, chapitre C-34 des Statuts revisés du Canada de 1970, dans leur version antérieure au 4 janvier 1983; *c*) les infractions prévues au paragraphe 146(1) (rapports sexuels avec une personne de sexe féminin âgée de moins de 14 ans) ou aux articles 153 (rapports sexuels avec sa belle-fille), 155 (sodomie ou bestialité), 157 (grossière indécence), 166 (père, mère ou tuteur qui cause le déflorement) ou 167 (maître de maison qui permet le déflorement) du *Code criminel*, chapitre C-34 des Statuts revisés	Infractions

	(*d*) an offence under subsection 212(1) (procuring), 212(2) (living on the avails of prostitution of person under 18 years), 212(2.1) (aggravated offence in relation to living on the avails of prostitution of person under 18 years) or 212(4) (prostitution of person under 18 years) of this Act, as it read from time to time before the day on which this paragraph comes into force.	du Canada de 1970, dans leur version antérieure au 1er janvier 1988; *d*) les infractions prévues aux paragraphes 212(1) (proxénétisme), 212(2) (vivre des produits de la prostitution d'une personne âgée de moins de dix-huit ans), 212(2.1) (infraction grave — vivre des produits de la prostitution d'une personne âgée de moins de dix-huit ans) ou 212(4) (prostitution d'une personne âgée de moins de dix-huit ans) de la présente loi, dans toute version antérieure à l'entrée en vigueur du présent alinéa.	
Duration of prohibition	(2) The prohibition may be for life or for any shorter duration that the court considers desirable and, in the case of a prohibition that is not for life, the prohibition begins on the later of (*a*) the date on which the order is made; and (*b*) where the offender is sentenced to a term of imprisonment, the date on which the offender is released from imprisonment for the offence, including release on parole, mandatory supervision or statutory release.	(2) L'interdiction peut être perpétuelle ou pour la période que le tribunal juge souhaitable, auquel cas elle prend effet à la date de l'ordonnance ou, dans le cas où le contrevenant est condamné à une peine d'emprisonnement, à celle de sa mise en liberté à l'égard de cette infraction, y compris par libération conditionnelle ou d'office, ou sous surveillance obligatoire.	Durée de l'inerdiction
Court may vary order	(3) A court that makes an order of prohibition or, where the court is for any reason unable to act, another court of equivalent jurisdiction in the same province, may, on application of the offender or the prosecutor, require the offender to appear before it at any time and, after hearing the parties, that court may vary the conditions prescribed in the order if, in the opinion of the court, the variation is desirable because of changed circumstances after the conditions were prescribed.	(3) Le tribunal qui rend l'ordonnance ou, s'il est pour quelque raison dans l'impossibilité d'agir, tout autre tribunal ayant une juridiction équivalente dans la même province peut, à tout moment, sur demande du poursuivant ou du contrevenant, requérir ce dernier de comparaître devant lui et, après audition des parties, modifier les conditions prescrites dans l'ordonnance si, à son avis, cela est souhaitable en raison d'un changement de circonstances depuis que les conditions ont été prescrites.	Modification de l'ordonnance
Offence	(4) Every person who is bound by an order of prohibition and who does not comply with the order is guilty of (*a*) an indictable offence and is liable to imprisonment for a term not exceeding two years; or (*b*) an offence punishable on summary conviction. R.S., 1985, c. C-46, s. 161; R.S., 1985, c. 19 (3rd Supp.), s. 4; 1993, c. 45, s. 1; 1995, c. 22, s. 18; 1997, c. 18, s. 4; 1999, c. 31, s. 67; 2002, c. 13, s. 4; 2005, c. 32, s. 5; 2008, c. 6, s. 54; 2012, c. 1, s. 16; 2014, c. 21, s. 1, c. 25, s. 5.	(4) Quiconque ne se conforme pas à l'ordonnance est coupable : *a*) soit d'un acte criminel passible d'un emprisonnement maximal de deux ans; *b*) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire. L.R. (1985), ch. C-46, art. 161; L.R. (1985), ch. 19 (3e suppl.), art. 4; 1993, ch. 45, art. 1; 1995, ch. 22, art. 18; 1997, ch. 18, art. 4; 1999, ch. 31, art. 67; 2002, ch. 13, art. 4; 2005, ch. 32, art. 5; 2008, ch. 6, art. 54; 2012, ch. 1, art. 16; 2014, ch. 21, art. 1, ch. 25, art. 5.	Infraction

Sexual assault	**271.** Everyone who commits a sexual assault is guilty of (*a*) an indictable offence and is liable to imprisonment for a term not exceeding 10 years and, if the complainant is under the age of 16 years, to a minimum punishment of imprisonment for a term of one year; or (*b*) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding 18 months and, if the complainant is under the age of 16 years, to a minimum punishment of imprisonment for a term of 90 days. R.S., 1985, c. C-46, s. 271; R.S., 1985, c. 19 (3rd Supp.), s. 10; 1994, c. 44, s. 19; 2012, c. 1, s. 25.	**271.** Quiconque commet une agression sexuelle est coupable : *a*) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans, la peine minimale étant de un an si le plaignant est âgé de moins de seize ans; *b*) soit d'une infraction punissable sur declaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois, la peine minimale étant de quatre-vingt-dix jours si le plaignant est âgé de moins de seize ans. L.R. (1985), ch. C-46, art. 271; L.R. (1985), ch. 19 (3e suppl.), art. 10; 1994, ch. 44, art. 19; 2012, ch. 1, art. 25.	Agression sexuelle
Injuring or endangering other animals	**445.** (1) Every one commits an offence who, wilfully and without lawful excuse, (*a*) kills, maims, wounds, poisons or injures dogs, birds or animals that are not cattle and are kept for a lawful purpose; or (*b*) places poison in such a position that it may easily be consumed by dogs, birds or animals that are not cattle and are kept for a lawful purpose.	**445.** (1) Commet une infraction quiconque volontairement et sans excuse légitime, selon le cas : *a*) tue, mutile, blesse, empoisonne ou estropie des chiens, oiseaux ou animaux qui ne sont pas des bestiaux et qui sont gardés pour une fin légitime; *b*) place du poison de telle manière qu'il puisse être facilement consommé par des chiens, oiseaux ou animaux qui ne sont pas des bestiaux et qui sont gardés pour une fin légitime.	Tuer ou blesser des animaux
Punishment	(2) Every one who commits an offence under subsection (1) is guilty of (*a*) an indictable offence and liable to imprisonment for a term of not more than five years; or (*b*) an offence punishable on summary conviction and liable to a fine not exceeding ten thousand dollars or to imprisonment for a term of not more than eighteen months or to both. R.S., 1985, c. C-46, s. 445; 2008, c. 12, s. 1.	(2) Quiconque commet l'infraction visée au paragraphe (1) est coupable : *a*) soit d'un acte criminel et passible d'un emprisonnement maximal de cinq ans; *b*) soit d'une infraction punissable sur declaration de culpabilité par procédure sommaire et passible d'une amende maximale de dix mille dollars et d'un emprisonnement maximal de dix-huit mois, ou de l'une de ces peines. L.R. (1985), ch. C-46, art. 445; 2008, ch. 12, art. 1.	Peine
Causing unnecessary suffering	**445.1** (1) Every one commits an offence who (*a*) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird; (*b*) in any manner encourages, aids or assists at the fighting or baiting of animals or birds; (*c*) wilfully, without reasonable excuse, administers a poisonous or an injurious drug or substance to a domestic animal or bird or an animal or a bird wild by nature that is kept in captivity or, being the owner of such an animal or a bird, wilfully permits a poisonous or	**445.1** (1) Commet une infraction quiconque, selon le cas : *a*) volontairement cause ou, s'il en est le propriétaire, volontairement permet que soit causée à un animal ou un oiseau une douleur, souffrance ou blessure, sans nécessité; *b*) de quelque façon encourage le combat ou le harcèlement d'animaux ou d'oiseaux ou y aide ou assiste; *c*) volontairement, sans excuse raisonnable, administre une drogue ou substance empoisonnée ou nocive à un animal ou oiseau domestique	Faire souffrir inutilement un animal

	an injurious drug or substance to be administered to it; (*d*) promotes, arranges, conducts, assists in, receives money for or takes part in any meeting, competition, exhibition, pastime, practice, display or event at or in the course of which captive birds are liberated by hand, trap, contrivance or any other means for the purpose of being shot when they are liberated; or (*e*) being the owner, occupier or person in charge of any premises, permits the premises or any part thereof to be used for a purpose mentioned in paragraph (*d*).	ou à un animal ou oiseau sauvage en captivité ou, étant le propriétaire d'un tel animal ou oiseau, volontairement permet qu'une drogue ou substance empoisonnée ou nocive lui soit administrée; *d*) organise, prépare, dirige, facilite quelque réunion, concours, exposition, divertissement, exercice, démonstration ou événement au cours duquel des oiseaux captifs sont mis en liberté avec la main ou par une trappe, un dispositif ou autre moyen pour essuyer un coup de feu au moment de leur libération, ou y prend part ou reçoit de l'argent à cet égard; *e*) étant le propriétaire ou l'occupant, ou la personne ayant la charge d'un local, permet que ce local soit utilisé en totalité ou en partie pour une fin mentionnée à l'alinéa *d*).	
Punishment	(2) Every one who commits an offence under subsection (1) is guilty of (*a*) an indictable offence and liable to imprisonment for a term of not more than five years; or (*b*) an offence punishable on summary conviction and liable to a fine not exceeding ten thousand dollars or to imprisonment for a term of not more than eighteen months or to both.	(2) Quiconque commet l'infraction visée au paragraphe (1) est coupable : *a*) soit d'un acte criminel et passible d'un emprisonnement maximal de cinq ans; *b*) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'une amende maximale de dix mille dollars et d'un emprisonnement maximal de dix-huit mois, ou de l'une de ces peines.	Peine
Failure to exercise reasonable care as evidence	(3) For the purposes of proceedings under paragraph (1)(*a*), evidence that a person failed to exercise reasonable care or supervision of an animal or a bird thereby causing it pain, suffering or injury is, in the absence of any evidence to the contrary, proof that the pain, suffering or injury was caused or was permitted to be caused wilfully, as the case may be.	(3) Aux fins des poursuites engagées en vertu de l'alinéa (1)*a*), la preuve qu'une personne a omis d'accorder à un animal ou à un oiseau des soins ou une surveillance raisonnables, lui causant ainsi de la douleur, des souffrances ou des blessures, fait preuve, en l'absence de toute preuve contraire, que cette douleur, ces souffrances ou blessures ont été volontairement causés ou permis, selon le cas.	L'omission d'accorder des soins raisonnables constitue une preuve
Presence at baiting as evidence	(4) For the purpose of proceedings under paragraph (1)(*b*), evidence that an accused was present at the fighting or baiting of animals or birds is, in the absence of any evidence to the contrary, proof that he or she encouraged, aided or assisted at the fighting or baiting. 2008, c. 12, s. 1.	(4) Aux fins des poursuites engagées en vertu de l'alinéa (1)*b*), la preuve qu'un prévenu était présent lors du combat ou du harcèlement d'animaux ou d'oiseaux fait preuve, en l'absence de toute preuve contraire, qu'il a encouragé ce combat ou ce harcèlement ou y a aidé ou assisté. 2008, ch. 12, art. 1.	La présence lors du harcèlement d'un animal

INTERPRETATION ACT

R.S.C., 1985, c.I-21

Amendment does not imply change in law	45.(2) The amendment of an enactment shall not be deemed to be or to involve a declaration that the law under that enactment was or was considered by Parliament or other body or person by whom the enactment was enacted to have been different from the law as it is under the enactment as amended.	(2) La modification d'un texte ne constitue pas ni n'implique une déclaration portant que les règles de droit du texte étaient différentes de celles de sa version modifiée ou que le Parlement, ou toute autre autorité qui l'a édicté, les considérait comme telles.	Absence de présomption de droit nouveau