File No. 36450

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

B E T W E E N:

HER MAJESTY THE QUEEN

Appellant

- and -

D.L.W.

Respondent

- and -

ANIMAL JUSTICE

Intervener

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PART I: STATEMENT OF FACTS

1. Animal Justice accepts the facts as set out in the Appellant's factum.

PART II: ANIMAL JUSTICE'S POSITION ON THE QUESTION IN ISSUE

2. Although Animal Justice asks this Honourable Court to adopt the interpretation of s. 160 suggested by the Appellant, it disagrees with the position – one shared by the British Columbia Court of Appeal and the Respondent – that the need to protect animals plays no role in determining the scope of the bestiality offence. Instead, Animal Justice advances the approach taken by the Trial Judge, who was cognizant of the fact that bestiality is an offence that cannot be committed without the sexual abuse of an animal that is in no position to resist. As a consequence, s. 160 should be interpreted to reflect one of its key objectives: deterring the improper use of animals in order to recognize that "members of our society have a responsibility to treat animals humanely, which is especially true for domesticated animals that rely on us".[1]

3. The Trial Judge's approach is supported by a careful examination of Parliament's intent, as demonstrated by the 1954 *Criminal Code*[2] [*Code*] reforms that simultaneously amended the bestiality provision and key parts of the *Code* prohibiting cruelty against animals. In the alternative, should this Court decide that s. 160 draws its force exclusively from abhorrence about the immoral nature of the act involved, concern about animals should remain part of the section's focus. Any crime premised on immorality must reflect contemporary Canadian values relevant to the offence. Today, two fundamental values that should be considered in assessing the scope of bestiality are: (1) the need to protect vulnerable animals from the risks posed by improper human conduct; and (2) the wrongfulness of sexual conduct involving the exploitation of non-consenting participants. As the trial judge suggested, the focus of the bestiality offence must "include deterring non-consensual sexual acts and animal abuse".[3]

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[1] Reasons for Judgment in *R. v. D.L.W.*, 2013 BCSC 1327 at para. 310, Appellant's Record, Vol. 1, p. 91.
[2] *The Criminal Code*, S.C. 1953-54, c. 51.
[3] Reasons for Judgment in *R. v. D.L.W.*, 2013 BCSC 1327 at para. 310, Appellant's Record, Vol. 1, p. 91.

PART III: STATEMENT OF ARGUMENT

I. AN ASSESSMENT OF PARLIAMENT'S INTENTION SHOULD CONSIDER CONTEMPORANEOUS REFORMS INVOLVING THE PROTECTION OF ANIMALS

4. Animal Justice adopts the Appellant's argument insofar as it recognizes the 1954 reforms to the *Code* as a key indicator of Parliament's intention to create a distinct offence of bestiality, severing it from its historical connection to buggery.

5. However, Animal Justice rejects the suggestion that bestiality exists exclusively to protect human morals. Although this Court stated as much in *R. v. Malmo-Levine*[4] and *R. v. Labaye*[5] the point was not essential to the Court's ultimate finding in either case; nor did the Court have the benefit of submissions or engage in any real scrutiny of the offence. Animal Justice accepts that morality and safeguarding children, the latter through ss. 160(2) and (3), *are* core values animating the bestiality provision, but contends that Parliament also intended to protect vulnerable animals from sexual exploitation and the risk of harm by creating a broad bestiality offence that is not confined to traditional acts of buggery.

6. Parliament's intention to protect animals can be divined by assessing reforms that occurred at the same time as the alteration of the bestiality offence. The 1954 reform of the *Code* was thorough and detailed, including a "substantial amount of new law" designed to "improve [the *Code*] by making out and out changes in what had previously been the policy of the law".[6] One of the most significant changes involved the law designed to deter cruelty against animals. Ruth Sullivan writes that "[w]hat one looks for when considering an Act in its entirety is (1) provisions that are in some way related to the provision to be interpreted...".[7] The crimes of cruelty against animals and bestiality are linked thematically: they are the only offences in the *Code* that require animals to be used in an improper way in order to be completed. The fact that significant changes to the cruelty offences occurred provides insight into Parliament's view of the importance of protecting animals from mistreatment when it amended the bestiality offence.

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[4] [2003] 3 S.C.R. 571 at para. 117.
[5] [2005] 3 S.C.R. 728 at para. 109.
[6] A.J. MacLeod and J.C. Martin, "The Revision of the Criminal Code" (1955) 33 Can. Bar.Rev.3 at 3, 4.
[7] Ruth Sullivan, *Statutory Interpretation*, 2d ed. (Toronto: Irwin, 2007) at 131.

7. The most important animal cruelty offence was re-enacted in s. 387(1)(a). In contrast to other offences involving animal cruelty, which address specific forms of conduct,[8] s. 387(1)(a) applies to a broad range of animal mistreatment. Prior to 1954, the offence was numbered as s. 542(a) and read as follows:

> Everyone is guilty of an offence... who wantonly, cruelly or unnecessarily beats, binds, ill-treats, abuses, overdrives, tortures or abandons in distress any cattle, poultry, dog, domestic animal or bird or wild animal or bird in captivity, or, being the owner, permits any such animal to be so used, or who by wantonly or unreasonably doing or omitting to do any act, or causing or procuring the commission of any act, causes any unnecessary suffering, or being the owner, permits any unnecessary suffering to be caused to any such animal.[9]

After the 1954 reforms, the provision read essentially as it does today:

> Everyone commits an offence who wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or bird. [10]

8. Through this amendment, Parliament made significant changes to the *Code*'s primary animal cruelty offence. First, it extended the protection of s. 387(1)(a) from cattle and domesticated animals and birds to *all* species of bird and animal.[11] Second, it eliminated all reference to the historically narrow version of animal cruelty that required harmful conduct to be of an acute nature, represented by the focus upon such harm being imposed 'wantonly', 'cruelly' or 'unnecessarily' and also being of a particular character, in that the defendant had to beat, bind, ill-treat, abuse, overdrive, torture or abandon the animal.[12] Third, it dramatically reduced the threshold of suffering required to ground a conviction. Prior to 1954, it was extremely difficult to

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[8] See for example, s. 445.1(b) of the current *Code*, which addresses animal fighting and baiting and s. 445.1(c), which focuses on the use of poisonous or injurious drugs and substances upon animals.

[9] R.S.C. 1927, c. 36, s. 542(a), rep'd and sub'd S.C. 1938, c. 44, s. 35. There were no amendments to the provision between 1938 and 1954.

[10] The offence has been renumbered as s. 445.1(a).

[11] This change is essential to the argument that bestiality is intended to protect animals from being abused. Had this amendment not been made, it would be impossible to suggest that bestiality, a crime that can be committed on a wide variety of animal species, has anything to do with animals. To put it another way, if the cruelty provision did not extend to all species, how could it be said that bestiality - which does - is designed to protect animal interests?

[12] This version of the offence, which was the only form of cruelty until 1938, was highly problematic. It focused exclusively on the brutality of the action, rather than what the animal suffered. The inclusion of the term "unnecessary pain and suffering" in 1938 was significant in that it shifted focus to the outcome upon the animal, rather than the action that caused it, but did so in an imperfect way, as noted above. The 1954 reforms enshrined and furthered this change, making it clear that the focus was no longer upon the type of conduct involved, but rather upon the human purpose and pain inflicted. For more on the significance of this change, albeit in the context of the United Kingdom, see Michael Radford, *Animal Welfare Law in Britain* (Oxford: Oxford University Press, 2001) at 63.

prove a contravention of s. 542(a). Because of the need to prove *both* that unnecessary suffering had occurred and that such suffering had been caused "wantonly" and "unreasonably", the jurisprudence restricted s. 542(a) to situations of extreme cruelty in which intentional and "unnecessarily *substantial* suffering" had been caused.[13]

9. In 1954, Parliament adopted a modern approach to animal protection, making it clear that animals had a legally measurable interest in being free from pain and suffering that was *deserving* of legislative protection, while ensuring that this interest was weighed fairly in assessing the correctness of harmful actions initiated against them. In the leading decision on s. 387(1)(a), *R. v. Menard*,[14] Lamer J.A. (as he then was), recognized the significance of these amendments, noting that "I dare to believe that we were given in 1953-4 a norm which was intended to be more sensitive to the lot which we reserve alas all too often to animals."

10. Given that the bestiality provision was amended at exactly the same time, it is reasonable to propose that Parliament *was* concerned with protecting animals and ensuring that the most vulnerable beings in our care are not the objects of unnecessary abuse, harm, and exploitation.

11. A broad approach to the bestiality provision is also consistent with the courts' approach in defining s. 387(1)(a) [now 445.1(a)]. In *Menard*, the Quebec Court of Appeal considered the meaning of "unnecessary pain and suffering" and found that it required an assessment of multiple factors, depending upon the circumstances. First, it must be shown that the animal endured pain or suffering, beyond "the least physical discomfort".[15] Once this is proven, a court must consider if the pain or suffering was inflicted "in pursuit of a legitimate purpose".[16] Pain or suffering imposed for illegitimate purposes are *always* "unnecessary";[17] in contrast, pain or suffering imposed for legitimate human purposes must be examined further to determine whether or not the harm was "inevitable taking into account the purpose sought and the circumstances of the particular case". This includes consideration of "the privileged place which man occupies in nature", relevant "social priorities, the means available [and] their accessibility", and whether the

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[13] *R. v. Linder* (1950), 97 C.C.C. 174 at 176 (B.C.C.A.) [Emphasis added].
[14] (1978), 43 C.C.C. (2d) 458 at 464 (Que. C.A.).
[15] *Ibid*. at 463.
[16] *Ibid*. at 465.
[17] See for example *R. v. Brown*, [2008] O.J. No. 2263 at paras. 29-31, 36 (Ont. C.J.).

suffering could have been reasonably avoided.[18] The latter part of the test creates a balancing approach that measures the social value of the activity – taking into account the importance of the purpose for inflicting pain and suffering – against the harm caused to the animal, and whether reasonable alternatives were available. *Menard* makes it very clear that the more social value an activity creates, the more harm can be imposed on animals. In contrast, activities undertaken for illegitimate purposes cannot justify harm.

12. Touching animals for sexual gratification is an illegitimate activity with no social value whatsoever, and as such, it made sense for Parliament to prohibit this form of contact without any proof that the animal suffered harm.[19] In other words, the bestiality offence is not designed to redress situations in which animals have suffered harm, but instead recognize that *by its very nature* bestiality uses vulnerable sentient beings for exploitative purposes and creates needless *risks of harm* by virtue of the wide range of sexual activities involved.[20] The balance mandated by s. 445.1 is not required because the act lacks a legitimate purpose. To put it another way, the calculus of competing interests is *always* resolved in favour of protecting the animal.

13. Contrary to the Appellant's suggestion at para. 92 of its factum, s. 445.1 is an inadequate way of protecting animals from the risks of harm that arise when they are used for sexual purposes. Section 445.1 requires proof of harm as an absolute requirement, and is difficult to prove without veterinary evidence or testimony describing an undeniable physical injury.[21] The very nature of bestiality is that it will almost inevitably occur in private, and it will be only in rare instances that examination of the animal near to the time of offending will be possible, making prosecutions under s. 445.1 extremely difficult.

14. The approach to s. 160 taken by the British Columbia Court of Appeal leaves animals vulnerable to numerous risks. The wide variety of activities that will be permitted if bestiality is

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[18] *R. v. Menard* (1978), 43 C.C.C. (2d) 458 at 465-66 (Que. C.A.).

[19] The requirement of harm in s. 445.1(a) makes sense because it is a general provision that applies to every form of human contact with animals, and a threshold barrier for prosecution is desirable. In contrast, s. 160 is a tightly focused provision that only deals with sexual contact.

[20] It is also consistent with other animal cruelty provisions that focus on risk and do not require proof of actual harm. See s. 445(1)(b) (placing poison in a place where it may be consumed by animals) and s. 445(1)(b) (failing to provide suitable and adequate food, water, shelter and care for an animal).

[21] See for example *R. v. McRae,* [2002] O.J. No. 4287 (S.C.J) (evidence that animal yelped after being hit with a metal pole insufficient to establish suffering).

restricted to vaginal or anal intercourse includes digital penetration of the vagina or anus, penetration by the use of sexual implements,[22] the use of restraints (to permit sexual conduct to take place), and physical manipulation of sexual organs. These activities impose unnecessary risks upon the animals involved, and have no social utility whatsoever.

II. AN OFFENCE PREMISED ON MORALITY MUST BE INTERPRETED IN LIGHT OF SOCIETY'S INCREASED CONCERN FOR ANIMALS

15. The Appellant suggests that bestiality exists "because such acts offend fundamental social values of the community" and are "deemed abhorrent",[23] but provides little insight into what those fundamental values are or why the acts are abhorrent, only raising the possibility of the "physical and psychological trauma to [child] victims".[24] The Respondent suggests that the only value in issue is "moral hygiene".[25] With respect, neither position correctly applies this Court's approach to crimes that are premised on societal concerns about morality.

16. Offences premised on morality require a careful analysis of fundamental Canadian values in order to obtain a settled meaning. The approach taken by this Court in *R. v. Butler*[26] and *R. v. Labaye*[27] is instructive. In both cases, the Court was faced with an ambiguous term that was premised on society's view of a moral standard, and in both judgments, the meaning of the term was fleshed out through a consideration of core, modern Canadian values. To be sure, there are important differences between *Butler* and *Labaye* and this case. Both of those decisions interpreted a provision with the potential to attach itself to protected human conduct, including expressive conduct, and it was necessary to restrict the application of the clauses to avoid the creation of an unduly vague standard.[28] Nonetheless, fundamentally the Court's task is the same.

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[22] Both the British Columbia Court of Appeal and the Respondent are somewhat vague about acts of this sort, as both repeatedly use the term "penetration" rather than intercourse. Nonetheless, the Court of Appeal's reasons ultimately make it clear that the focus is not on penetration generally, but exclusively on contact between a penis and vagina or penis and anus. See Reasons for Judgment in *R. v. D.L.W.*, 2015 BCCA 169 at paras. 6, 21 & 36, Appellant's Record, Vol. 1, pp. 154-55, 159, 163-64. See also Respondent's Factum, para. 40.
[23] Appellant's Factum, para. 67.
[24] Appellant's Factum, para. 80.
[25] Respondent's Factum, para. 76.
[26] [1992] 1 S.C.R. 452.
[27] [2005] 3 S.C.R. 728.
[28] See *Labaye, ibid*. at paras. 2, 18 and 54, where the Court's concerns about vagueness are expressly set out.

In *Butler*, the Court was asked to define "obscenity". In *Labaye*, the focus was on the term "indecency", and in this case, the Court is being asked to flesh out the meaning of "bestiality".

17. When considering what core values can be said to define the relevant moral standard, it is not necessary to restrict the analysis to the values in place when the offence was originally enacted, as the Respondent is asking. In *Butler*, the Court recognized that insofar as morals were involved, through an examination of "the community's standard of tolerance", it was vital to focus on *contemporary standards*, rather than historical norms. The Court explicitly adopted the conclusions of Freedman J.A. (dissenting), in *R. v. Dominion News & Gifts (1962) Ltd.*:[29]

> Community standards must be contemporary. Times change, and ideas change with them. Compared to the Victorian era this is a liberal age in which we live. One manifestation of it is the relative freedom with which the whole question of sex is discussed. In books, magazines, movies, television, and sometimes even in parlour conversation, various aspects of sex are made the subject of comment, with a candour that in an earlier day would have been regarded as indecent and intolerable. We cannot and should not ignore these present-day attitudes when we face the question whether [the subject materials] are obscene according to our criminal law.

18. An examination of fundamental Canadian values reveals that bestiality should be defined broadly so as to capture all contact with animals that is undertaken for a sexual purpose. In addition to the general abhorrence that arises from crossing the species barrier for sexual gratification, the recognition that animals are worthy of protection from illegitimate human contact should also be considered in assessing whether a particular act is immoral. More than ever before, Canadians recognize that we have an obligation to protect the most vulnerable beings in our care, and not subject them to abuse. That this has become a *fundamental* Canadian value is evident from the number and scope of legislative developments involving animal protection over the past few decades, and by judicial statements to this effect.

19. In 2008,[30] the federal government changed the penalty structure for offences involving cruelty against animals from the existing six months' maximum, as a straight summary conviction offence, to a hybrid offence with a maximum of five years' imprisonment if pursued on

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[29] [1963] 2 C.C.C. 103 at 116-17 (Man. C.A.), adopted in *R. v. Butler*, [1992] 1 S.C.R. 452 at para. 44. See also *R. v. Labaye*, *ibid*. at paras 33, 54, which, for the purpose of eliminating concerns about vagueness, took a strict line about the type of social values that could be considered. It nonetheless recognized that the values in question must be examined in light of the present day.

[30] *Criminal Code*, R.S.C. 1985, c. C-46, s. 445, as amended by *An Act to amend the Criminal Code (Cruelty to Animals)*, S.C. 2008, c.12.

indictment and eighteen months on summary conviction. In his opening remarks sponsoring the original Bill in the House, the Hon. Charles Hubbard (Miramachi, Lib.) noted that:

> Recently in this House and in the media the issue of animal cruelty has been getting more attention, but let us question what the issue really is. Our laws need to be improved. Penalties need to be increased. It is very important that the animals within our society receive proper care, proper protection and proper concern by our legislators.[31]

20. The federal government has not been alone in this pursuit. Amendments to provincial legislation reflect an overwhelming trend toward strengthening legal protections afforded to animals, increasing penalties, and expanding the powers of authorities to enforce animal protection laws. Since 2000, every province has strengthened standards of care for animals and/or expanded the scope of animal welfare offences,[32] in some cases going so far as to impose a requirement to respect the psychological wellbeing of animals.[33] Quebec is now even considering legislation that would recognize animals as a legally distinct category of sentient beings with biological needs, rather than property.[34]

21. Judges have also recognized that attitudes towards animals have changed. In *Reece v. Edmonton (City)*,[35] Fraser C.J.A. stated that:

> Society's treatment of animals today bears no relationship to what was tolerated, indeed widely accepted, centuries ago. The past 250 years have seen a significant evolution in the law relating to animals, though admittedly not as far as many might consider warranted. We have moved from a highly exploitive era in which humans had the right to do with animals as they saw fit to the present where some protection is accorded under laws based on an animal welfare model.

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[31] *House of Commons Debates*, 39th Parl., 1st Sess., No. 118 (26 February 2007) at 1110 (Hon. Charles Hubbard)[Emphasis added]. This speech was made in respect of Bill S-213, the predecessor of an identical Bill that was ultimately enacted (Bill S-203) after S-213 died when Parliament was dissolved for a federal election.

[32] The three most prominent and far-reaching reforms are those of Manitoba (*The Animal Care Act*, C.C.S.M. 1996, c. A84 amended 2009; 2012); Nova Scotia (*Animal Protection Act*, S.N.S. 2008, c. 33 amended 2010; 2011); and Ontario (*Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36 amended 2008; 2015).

[33] See, e.g., s. 21(4)(c) of the *Sled Dog Standards of Care Regulation*, B.C. Reg. 21/2012, which protects sled dogs from psychological harm; s. 5(1)(b) and s. 6 of the *Standards of Care*, O. Reg 60/09, which, respectively, protect captive wild animals from psychological stress and provide for mental stimulation for primates; and s. 1.1(a) of the *Animal Care Regulation*, Man Reg 126/98 and s. 1(n)(i) of Bill 2, *Animal Welfare Act,* 1st Sess, 6th Leg, Prince Edward Island, 2015 (assented to 10 July 2015) both of which protect animals from "extreme anxiety". Quebec is considering a similar change: Bill 54, *An Act to improve the legal situation of animals,* 1st Sess, 41st Leg,, Quebec, 2015, Part II, s. 7

[34] Bill 54, *An Act to improve the legal situation of animals,* Part I, s. 1.

[35] 2011 ABCA 238 at para. 54. See also *R. v. S.E.A.,* 2015 ABCA 182 at paras. 41-42, 44. *R. v. Haaksman*, 2013 ONCJ 66 at para. 14; *R. v. Connors*, 2011 BCPC 24 at para. 40.

22. Finally, it should not be forgotten that conduct of this sort exploits a sentient being that is incapable of consenting and unable, by virtue of an inherent power imbalance between humans and animals, to resist. This conflicts with the idea that sexual conduct should not take advantage of the vulnerable, a theme that has been reinforced by this Court on numerous occasions.

23. While Animal Justice recognizes that animals are unlikely to suffer from sexual abuse in the same way as humans, the basic principle that the vulnerable should not be preyed upon for sexual purposes remains valid and fundamental. As McLachlin C.J. stated in *R. v. Mabior*,[36] "we now see sexual assault not only as a crime associated with emotional and physical harm to the victim, but as the wrongful exploitation of another human being."

24. In *R. v. Saint-Laurent*,[37] Fish J.A. (as he then was) reiterated this theme, stating:

> [I]t seems to me that the purpose of the law in this area has always been to criminalize a coerced sexual relationship. Mutual agreement is a safeguard of sexual integrity imposed by the state under the threat of penal sanction. In the absence of consent, an act of sex is, at least prima facie, an act of assault.
>
> As a matter both of language and of law, consent implies a reasonably informed choice, freely exercised. No such choice has been exercised where a person engages in sexual activity as a result of fraud, force, fear, or violence. Nor is the consent requirement satisfied if, because of his or her mental state, one of the parties is incapable of understanding the sexual nature of the act, or of realizing that he or she may choose to decline participation.

25. In *R. v. A.(J.)*,[38] this Court emphasized the importance of active consent in sexual relations, with McLachlin C.J. specifically tying this concept to a need to protect vulnerable victims and avoid the risks posed by sexual exploitation:

> The second difficulty is the risk that the unconscious person's wishes would be innocently misinterpreted by his or her partner... In addition to the risk of innocent misinterpretation,

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[36] [2012] 2 S.C.R. 584 at para. 48. See also *R. v. M.(R.S.)* (1991), 69 C.C.C. (3d) 223 at 225 (P.E.I.C.A.), which rejected a constitutional challenge to s. 150.1, noting that "It is not unfair to label this offence as sexual assault even though the Crown does not have to prove lack of consent. Sexual relations with children are by nature assaultive. That is because children are incapable of giving consent in any true sense to such activities." [Emphasis added].

[37] (1993), 90 C.C.C. (3d) 291 at paras. 97-8 (Que. C.A.).

[38] [2011] 2 S.C.R. 440 at paras 60-1. See similarly *R. v. R.(R.)* (2001), 159 C.C.C. (3d) 11 at para. 57 (Ont. C.A.) per Abella J.A. (as she then was), affirmed [2003] 1 S.C.R. 37, noting that "where one of the participants [to sexual activity] has demonstrable mental limitations, the threshold of responsibility [to ascertain consent] escalates exponentially. This is not to suggest that persons who are developmentally disabled cannot consent; rather, it requires that prior caution be exercised to avoid the exploitation of an exceptionally vulnerable individual."

> the respondent's position does not recognize the total vulnerability of the unconscious partner and the need to protect this person from exploitation. The unconscious partner cannot meaningfully control how her person is being touched, leaving her open to abuse...
>
> If the complainant is unconscious during the sexual activity, she has no real way of knowing what happened, and whether her partner exceeded the bounds of her consent. Only one person really knows what happened during the period of unconsciousness, leaving the unconscious party open for exploitation. The complainant may never discover that she was in fact the victim of a sexual assault.

26. Even recognizing the differences between human and animal victims, the principled thrust of these judgments remains pertinent. People should not be able to use power or other forms of domination to secure sexual gratification from those who cannot consent or resist. It is no answer to dismiss concerns about this conduct by stating that the objects of this offence are only animals. As Brown Prov. Ct. J. noted in *R. v. Campbell Brown*:[39]

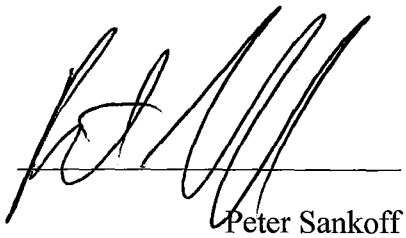
> Protection of animals is part of our criminal law because a person's treatment of animals, like the treatment of children, the infirm or other vulnerable parties, is viewed as a barometer of that person's treatment of people. As with all other criminal offences, harming animals amounts to hurting everyone.

Bestiality, as construed by the Respondent, requires an interpretation and sends a message that is contrary to fundamental Canadian norms: it permits the use of vulnerable beings, against their will, to satisfy a person's sexual desires.

PARTS IV AND V: ORDER SOUGHT

27. Animal Justice requests that it be permitted 10 minutes to provide oral submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 19th day of October, 2015



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[39] 2004 ABPC 17 at para. 31. See also *R. v. White* (2012), 326 Nfld. & P.E.I.R. 225 at para. 9 (N.L. Prov. Ct.).

PART VI – TABLE OF AUTHORITIES

Additional References **Para.**

Statutory Provisions

PART VII - STATUTORY PROVISIONS

***Criminal Code*, R.S.C. 1985, c. C-46, s.160 [as it read at the time of the offence: *Criminal Code*, R.S.C. 1985, c.19 (3rd Supp.), s.3].**	
(1) Bestiality — 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. (2) Compelling the commission of bestiality — 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. (3) Bestiality in presence of or by child — Notwithstanding subsection (1), every person who, in the presence of a person under the age of fourteen years, commits bestiality or who incites a person under the age of fourteen 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.	160(1) Bestialité 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. 160(2) Usage de la force 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, toute personne qui en force une autre à commettre un acte de bestialité. 160(3) Bestialité en présence d'un enfant ou incitation de celui-ci Par derogation au paragraphe (1), est coupable soit d'un acte criminal et passible d'un emprisonnement maximal de dix ans, soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire, toute personne qui commet un acte de bestialité en présence d'une enfant âgé de moins de quatorze ans ou qui l'incite à en commettre un.

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

- and –

ANIMAL JUSTICE

Intervener(s)

FACTUM OF THE INTERVENER

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