

BESTIALITY

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OVERVIEW

Bestiality is often looked at as a “victimless” crime. There is a growing group of people that advocate bestiality as a lifestyle choice that doesn't hurt people and is a safe outlet for sexual desires.

Leaving aside a number of religious objections to acts of bestiality there are many societal reasons why bestiality continues to be a criminal offence and worthy of prosecution.

At its core, animals are incapable of providing “consent” to sexual activity. For many species or breed of animal an act of bestiality would be extremely painful for the animal. The animal may suffer extensive injury or death. Animals are incapable of communicating about abuses suffered.

The most troubling aspect of bestiality, however, is it is often used as a grooming tool to abuse children. The [Canadian Centre for Child Protection](#) provided evidence to Parliament when changes to the bestiality law were being debated. ([Bill C-84](#)). They found there are large number of Canadian incidents that had never been reported to the police. Predators often use coerced sexual acts with animals in the presence of a child. The Centre also noted there were many acts of non-penetrative sexual activity with animals that occurred.

“Look at me touching the dog here, it's okay for you to touch me here.”

“Look at me doing this to the doggie, I'm going to do this to you next.”

Predators also use the information that bestiality had occurred as a means to control the victims and prevent reporting. “If you tell anyone what I've done, I'll tell them what you've done to the doggie.”

The Centre also found that bestiality can also occur in concert with the most coercive forms of sexual abuse. One doesn't need to look any further than the trial decision of *D.L.W.*, 2013 BCSC 1327

“I have been a judge for almost 40 years. This offender is one of the most evil men that I have encountered during my long tenure on the Bench. The man is evil incarnate. He is a monster. It is said that the devil can cite scripture for his own use. That is certainly the case here. With a warped vivid imagination and using passages from the Bible to justify his actions, D.L.W., in a most vile manner, sexually abused two of his stepchildren on a daily basis for over a decade.”

THE LAW

BESTIALITY OFFENCES

Section 160 creates 3 separate offences. Bestiality Simpliciter (160 (1)), Compelling Another Person to Commit Bestiality (160 (2)). Bestiality in the Presence of a Child (160 (3)) and includes when bestiality occurs in the presence of a child, or by inciting a child to commit bestiality. A child is defined in this section as under the age of 16.

Careful consideration should be taken in a case where a child is incited to commit bestiality. This could be an offence under section 160 (2) or 160 (3). Compelling bestiality is preliminary inquiry ineligible but child bestiality opens the door for a potential preliminary hearing.

BESTIALITY DEFINED

In *D.L.W.* the offender did not penetrate the animal. He attempted to get the family dog to penetrate his step-daughter but was unsuccessful. When that failed he spread peanut butter on her vagina and took photos while the dog licked it off. While the offender was convicted of numerous other sexual violence offences against his children the bestiality conviction was overturned by the Supreme Court of Canada. [2016] S.C.J. No. 22. The majority decision narrowly defined the definition of bestiality to include acts of penetration.

As a result of this decision, and, resulting public outcry, Parliament, in Bill C-84, amended the Criminal Code and changed the definition of bestiality. Bestiality is now defined as “any contact, for a sexual purpose, with an animal.”

There are a number of reported decisions prior to *D.L.W.* that did not require proof of penetration.

SEXUAL PURPOSE EXPLAINED

What does “for a sexual purpose” mean. This term has yet to be defined in the bestiality context but is a term that appears frequently in other offences in the Criminal Code.

- Sexual Interference s. 151
- Invitation to Sexual Touching s. 152
- Sexual Exploitation s. 153
- Sexual Exploitation with Disabled Person s. 153.1
- Voyeurism s. 162
- Child Pornography s. 163.1
- Indecent Act s. 173

Examination of Hansard makes it clear that Parliament did not intend it to include acts of accepted acts of animal husbandry or veterinary practices. In other words, for example, the artificial insemination of an animal is not an act of bestiality.

The Supreme Court of Canada in *Chase* [1987] 2 S.C.R. 293 held that a sexual purpose can be determined by the “reasonable observer.” The Court listed a number of factors to consider:

- parts touched
- nature of the contact
- situation in which it occurred
- words and gestures
- all other circumstances
- accused’s intent or purpose / motive
- if the motive sexual gratification

The Alberta Court of Appeal in *Morrissey*, 2011 ABCA 150 stated:

[21] Touching is done for a sexual purpose, if it is done for one’s sexual gratification or to violate a person’s sexual integrity. In determining whether touching takes place in circumstances of a sexual purpose, we are of the view that a trial judge can in assessing the *mens rea* of the accused, consider whether the sexual context of the touching would be apparent to any reasonable observer. The “sexual purpose” may be proven either by direct evidence, or it may be inferred from circumstantial evidence or from the nature of the touching itself (ie. the only reasonable inference to be drawn from the circumstantial evidence or from the nature of the touching itself is that the accused committed the touching for a sexual purpose). (see para 24 of *R v Menjivar*, (2010) AJ No 610)

The British Columbia Court of Appeal in *G.B.* [2009] BCJ No. 342 held sexual purpose doesn’t have to be for the accused’s sexual gratification. The only intent required “is that the touching be for a sexual purpose.” Whether something is of a sexual nature is not defined by the area of the body touched, but rather the sexual nature of the touching.

Also see:

R. v. Jarvis,

R. v. Trachy 2019 ONCA 622
R. v. Plehanov 2012 BCPC 563 (BCCA)

While these cases are prior to the expanded definition of bestiality they may be helpful when sentencing occurs in an animal case with a “sexual purpose.”

R. v. Dugalic [2018] O.J. No. 5590 (O.C.J.)
R. v. S.E.A. [2015] ABCA 182 (Alb.C.A.)

PROSPECTIVE / RETROSPECTIVE

Bill C-84 came into effect on June 21st, 2019 this resulted in a substantive expansion of the offence and, is, therefore, to be applied prospectively. In other words – prior to June 21st, 2019 – cases involving bestiality must include penetration.

OTHER CONSIDERATIONS

Bestiality does not require proof of distress, pain, suffering, injury or harm to the animal.

In cases where bestiality occurs with other criminal offences Crowns should be mindful of whether severance is appropriate. *R. v. M. (B.)* (1998), 42 O.R. (3d) 1 (OCA)

While there is little other reported case law on bestiality. The British Columbia County Court in *R. v. Triller*, [1980] B.C.J. No. 2373 does provide some points of note:

- bestiality is a general intent offence
- drunkenness is not a defence
- bestiality does not have to be between a person and animal of the opposite sex.

SEXUAL ACTIVITY WITH ANIMALS THAT ISN'T AN OFFENCE / CHILD PORNOGRAPHY

There are still troubling sexual activity involving animals that is not captured under the new expanded definition. Some of these activities were evident in the *D.L.W.* facts. In *D.L.W.* the offender had groomed his victims with videos of pornography and bestiality. He had also created pornographic stories about his victims and the family dog.

Even a quick search of child pornography cases reveal many of these offenders also have a large collection of bestiality. While possession of bestiality material is not an offence many forensic psychiatrists agree it does increase an offender's risk of recidivism.

ATTEMPTED BESTIALITY

There remains a question as to why *D.L.W.* wasn't convicted of an attempt in relation to his offences against his step-daughter. The facts seem to support that conclusion, however, attempted bestiality never seems to have been argued. There remains support for an attempt bestiality in *R. v. Triller* [1980] B.C.J. No. 2373 and *R. v. D.C.M.*, [2015] O.J. No. 6231

IS THE VICTIM A PARTY TO THE OFFENCE?

The majority decision in the Supreme Court in *D.L.W.* mused whether the victim would also be guilty of bestiality if her step-father had been successful in getting the dog to penetrate her. Note should be made of the minority decision of Justice Abella. She was very critical of this argument (para 152). She indicated it would be “is inconceivable that bestiality charges would ever be laid against the stepdaughter.”

CHARGING OTHER OFFENCES

Injury, pain or suffering are not elements of bestiality, however, these elements *may* also occur. When an animal that is “kept for a lawful purpose” is killed or injured then a charge under 445 should also be laid. When an animal has experienced pain, suffering or injury then a charge under 445.1 should also be laid (the element of “unnecessary” would be assumed by proving the bestiality charge as something cannot be necessary and illegal at the same time).

Other criminal code charges may have also occurred to facilitate the bestiality such as mischief, theft or break and enter.

As indicated above, bestiality is often found with child pornography or committed in the course of sexually abusing a partner or a child.

PENALTIES AND SENTENCING

(1) Committing Bestiality

- Indictment - Max 10 years
- Summary - Max 6 months
- Preliminary Inquiry Unavailable
- DNA – Generic Secondary
- SOIRA Mandatory
- 109 / 110 order only available if *Samery* [2007] O.J. No. 3510 successfully argued
- Animal prohibition under 160 (4) available for up to life
- Restitution order available under 160 (4) or 738

(2) Compelling Another Person to Commit Bestiality

- Indictment - Max 10 years

- Summary - Max 6 months
- Preliminary Inquiry Unavailable
- DNA – Primary Compulsory
- SOIRA Mandatory
- 161 Order Available
- 109 / 110 order only available if *Samery* [2007] O.J. No. 3510 successfully argued
- Animal prohibition under 160 (4) available for up to life
- Restitution order available under 160 (4) or 738

(3) Committing in Front of Person Under 16, or Inciting Person Under 16 to Commit

- Indictment – Max 14 years
- Min 1 year
- Summary - Max 2 years
- Min 6 months
- Preliminary Inquiry Available
- DNA – Primary Compulsory
- SOIRA Mandatory
- 161 Order Available
- 109 / 110 order only available if *Samery* [2007] O.J. No. 3510 successfully argued
- Animal prohibition under 160 (4) available for up to life
- Restitution order available under 160 (4) or 738

A breach of an animal prohibition as a result of a 160 (4) offence is a straight summary conviction offence and governed by section 160 (5).

SENTENCING CASES

R. v. Dugalic [2018] O.J. No. 5590 (OCJ)

- accused repeatedly hit dog in her vulva with a stick while he masturbated
- Minimal injury to dog
- 7 months jail

R. v. S.E.A. [2015] A.J. No. 583 (ACA)

- Accused gets cat from Kijji – hangs it from ceiling and slits it's throat – he has sex under the cat while it is dripping blood on him
- 20 month jail sentence upheld by Court of Appeal

R. v. L.M.R. 2010 ABCA 286

- A one-year sentence was ordered for an offender who forced an extremely young child to have her vagina licked by a dog.
- had also been filmed while engaged in sex with a dog (para. 3). The offender pled guilty and had dramatic and mitigating personal circumstances (paras. 4-9).

R. v. Black

- a woman was recorded having her vagina licked by a male dog and she also stimulated the dog (paras. 7-8). A one-year sentence was appropriate (para. 19) as this offender had strong mitigating characteristics, including a genetic condition that affected her cognition. She also showed clear paedophilic character. The offender was also sentenced for a variety of child sex offences as well as making child pornography. The global sentence imposed was four years (para. 21).

R. v. J.J.B.B. 2007 BCPC 426

- an uncle engaged in sexual abuse of his young niece, aged 3-5, and the misconduct was recorded. One component was filming his niece being licked vaginally by two different dogs on three different occasions (paras. 19, 53). A sentence of 15 months was ordered.

R. v. Pye 2005 BCPC 355

- a two year sentence was ordered for an offender who, succinctly, had raped dogs in public.

R. v. K.D.H., 2012 ABQB 471

- Horrific sexual abuse against his children including bestiality and child pornography - 18 year total sentence

R. v. D.L.W., 2014 BCSC 43 / *R. v. D.L.W.* [2016] S.C.J. No. 22

- Horrific sexual abuse against his step - children including bestiality - 16 year total sentence

R. v. K.T. [2016] O.J. No. 2045 (O.C.J.)

- sexual abuse, child pornography, bestiality – received a long term offender designation

CONTACT

Tara Dobec
Assistant Crown Attorney -Ottawa
613-239-1083
Tara.Dobec@ontario.ca.