

# USING EXPERTS IN ANIMAL ABUSE CASES

Updated May 22, 2020  
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## Types of Animal Experts Explained

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## TYPES OF ANIMAL EXPERTS EXPLAINED

Animals cannot speak and so an expert is often required to provide a full picture to the Court about what happened. Experts might be required to explain fingerprint, tool marks, DNA or other bodily samples but there are some unique experts that aren't often seen in other criminal cases. These include:

- Veterinaries
- Forensic Veterinaries
- Animal Pathologists
- Animal / Veterinary Behaviourist

## VETERINARY

A vet is a medical professional trained to protect the health, safety and well being of animals. They can diagnose, treat and control animal diseases and injuries. They can provide advice to owners on the proper care of animals including behavior. They can provide evidence concerning whether an animal experienced pain or suffering. They are also mandated reporters for suspicion of animal abuse. [Section 14](#) of *PAWS Act (Provincial Animal Welfare Services Act)* requires a vet to report suspected animal abuse.

## FORENSIC VETERINARY

Not all vets are forensic vets. Canada only has a handful of fully trained forensic vets. Forensic vets have specialized training in applying their knowledge for legal purposes. In the same way a forensic police officer or forensic doctor has specialized training.

Forensic Vets don't just provide evidence in animal abuse cases. They can also be very beneficial in other types of investigation and litigation. For just a few examples:

- Determining if a body (human or animal) has been subject to animal predation
- Determining the cause of property damage as animal origin
- Determining if behavior blamed on an animal was in fact caused by a human (it is really a crime scene)

Forensic vets normally come into play when an animal has been the victim of a crime. These cases generally can be separated into different categories.

1. The circumstances of the death of an animal are suspicious and investigation is needed to determine if the cause, mechanism and manner of death was criminally caused
2. The animal is still alive but displaying unusual clinical signs or injuries
3. An opinion is required as to whether the circumstances of the animal's welfare would have caused unnecessary pain, suffering or injury or distress

A forensic vet is trained in

- The examination of an alleged crime scene
- The examination of living and dead animals
- The examination of the living surroundings / environment
- The collection and testing of evidence (including correct storage and retention for court)
- The preparation of reports for investigators, prosecution and court
- Testimony in court

Crime scene collection evidence can be sent after the fact to a forensic veterinary for further examination and opinion.

The Canadian Veterinary Medical Association (CVMA) has an [Animal Abuse program](https://www.canadianveterinarians.net/policy-advocacy/animal-abuse) with extensive resources online with sections on the collection and documentation of evidence, writing reports and the chain of custody. See <https://www.canadianveterinarians.net/policy-advocacy/animal-abuse>

## ANIMAL PATHOLOGIST

The medical examination of a human body after death is called an autopsy, when an animal is the subject it is called a necropsy. All vets have some training in performing a necropsy and other

animal pathology. Experts in animal pathology can be found at the Ontario Veterinary College at the University of Guelph. They also have a campus in Kemptville. Samples, specimens and bodies can be shipped for analysis. A pathologist can provide a diagnose of disease or other conditions through an examination of tissue and bodily fluids and can important in cases where an animal survives (e.g. a poisoning) or only samples are available (e.g. not enough remains for a full necropsy). For criminal law purposes, a pathologist will usually become involved when an animal is deceased and the manner of death needs to be determined. It is important to note that not all animal fatalities require a pathologist to comment on the cause of death. Direct vive voce evidence about what occurred should be sufficient (i.e. a witness sees the offender kill the animal – it does not require an expert to determine an animal is dead).

## **ANIMAL BEHAVIOURIST**

Generally speaking, a behaviourist works with animal owners to find solutions to problematic animal behaviour. A behaviourist may also be utilized in farm, zoo or medical research facilities to improve the lives of the animals. Unfortunately, there is little regulation with regards to behaviourists and as a result anyone can claim to be one. Courts should be mindful to engage with a behaviourist that has university degrees in animal behavior. A veterinary animal behaviourists are certified veterinarians and can prescribe medication. These veterinarians should be a diplomate of the American College of Veterinary Behaviourists (or other similar International College). In the animal abuse realm, a behaviourist can provide information or a report about the “meaning” of an animal’s behavior in a situation. For example, what does it mean if a cat is standing rigid with fur on end or a dog urinating upon seeing an individual. Some behavior is self-evident and doesn’t require an expert opinion, for example, a lay person can determine if a dog crying out is caused by pain (*R. v. Dugalic* [2018] O.J. No. 5590 (para 48)). A behaviourist can be useful in providing investigative information to investigators (what to look for while attending a scene) and after the fact evidence for court (for example, if a video is seized, explaining the meaning of the animal’s behaviour).

## **OTHER EXPERTS**

Just as with humans’ doctors there are very specialized animal doctors as well. These can include: animal dentistry, animal dermatology, oncology, orthopaedics, animal toxicology etc. A vet may list a practice focus in a specialization, however, for expert purposes the vet should have AVMA / CMVA Board Certification in the specialization.

The Centre of Forensic Sciences in Ontario will conduct DNA and fluid testing or police can conduct fingerprint analysis.

## THE VET REPORTS

- Assist in determining the species and in some cases the individual animal
- Comment on reasonably prudent actions that could have been taken to prevent disease, injury or death
- Determine cause of death or sequence of injuries, timings of pre-mortem or post mortem mutilation or other treatment. They may be able to include observations at the scene of the injury as well as necropsy and laboratory analyses
- Identify evidence that may link the injuries to a particular suspect. This could include recovery of trace materials and analysis of injuries that might be linked to a unique source
- Distinguish between death and injury resulting from human versus non-human causes (e.g. predation) or intentional versus accidental injury
- Offer opinions regarding the speed of unconsciousness and / or death and the degree of suffering the animal experienced. This may be necessary to classify a maltreatment as causing pain, suffering or distress.
- Vets cannot provide expertise on identification of particular breed, for example, a pit-bull. This would generally someone certified from the Canadian Kennel Club.
- Records about a client's animal are protected by Privacy Law and require a court order to release

The vet report should

- contain a statement of qualification
- brief statement outlining the purpose of the report
- facts and assumptions that support the expert opinion
- expert opinion with analysis and reasoning linked to definitions contained in the legislation – i.e. distress, pain, suffering

Other documents could also be attached and include:

- The animal's Medical Record
- Physical description, name, and unique ID features (tags, collars, tattoos, brands, microchips) of animal
- Name, address, contact information of owner, if known
- Reference to officer case number
- Incoming weight and body condition score of animals
- Complete physical exam with record of normal and abnormal findings

Standard veterinary medicine requires vets to keep records that record the following:

S: Subjective – history

O: Objective – physical exam findings

A: Assessment – tentative/confirmed diagnoses

P: Plan – recommended/required treatment to alleviate distress and prevent further distress

- Records must be legible, dated, signed, complete, consistent.
- A list of the records reviewed (previous medical records, photos/videos taken of animal/environment when discovered in distress, care provided by owners/officers to animal prior to receiving veterinary care) and any comment on those records.
- Results of examination and/or testing and/or treatment – Document change in animal condition over time with written records, photos, video.
- Photographs/video taken of the animals.
- An invoice itemizing cost of veterinary care.
- Any recommendations for future care.

## NECROPSY REPORTS

1. Statement of Qualifications
2. Identification of the Subject Animal / continuity
  - i.d. tag/microchip number, etc.
  - identification of the animal, i.e. species, breed, name
  - received from whom and when
  - condition of the body upon receipt (i.e. frozen or otherwise)
  - how the body and / or samples were identified and tracked in the lab
  - how does the condition of the body / sample generally affect the necropsy results (i.e. how does freezing / decay etc. effect the results in this particular case)
3. Information received about the subject. The idea here is to understand what information the pathologist had prior to performing any analysis. (i.e. this is not first-hand information of the pathologist – but rather information received)
  - Was a history received, medicals etc.
  - Understanding of when the animal became deceased and the method (i.e. euthanasia)
  - Does the method used of euthanasia affect the necropsy results
  - General statement of how euthanasia affects necropsy results (in the appropriate case)
  - Understanding of when the animal was refrigerated, frozen – or other factors that might affect findings
  - Whether any of this information was relied upon during the necropsy and whether any of the necropsy findings contradict or support this history (e.g. did the body show decomposition that was inconsistent with the information received)
4. General Observations / External Findings
  - General body condition
  - Obvious trauma
  - Condition of fur, nails etc.

5. If information was received about treatment how would that treatment affect the findings. (e.g. would antibiotics affect findings; would resuscitation affect findings etc.)
6. Explanation of Internal Findings
  - These should include both remarkable and unremarkable findings.
7. Diagnosis
8. Further Testing that Might be Relevant and Why it Wasn't Performed
9. All terms should be defined and explained

## STATEMENT OF QUALIFICATIONS / THE C.V.

- major education
- continuing education
- employment history
- memberships to professional organizations and whether the member is in good standing
- publications
- court experience – approximate number of times testifying (as an expert and otherwise)
- practical experience (i.e. number of necropsies performed and number of this particular species)
- any other information that would appear to be relevant

## NEGLECT CASES

Neglect of an animal can fall under Section [445.1](#) or [446](#) of the Criminal Code. The New [PAWS](#) legislation, Provincial Animal Welfare Services Act, creates an offence of failing to comply with the standards of care (s.13) and causing (or permitting) distress (s.15). [Standards of care](#) are very generally and require state animals should be provided very obvious things like food, water, shelter, medical care etc. The PAWS Act does not provide much guidance on what that practically means, for example, how much food should a chihuahua need compared with a Great Dane. It can be difficult to prove neglect without an understanding of what care a particular animal is supposed to have. Courts can be assisted of standard Codes of Practice. Codes of Practice exist for almost all types of domesticated animals. Failure to adhere to Codes of Practice in instances that cause unnecessary and/or avoidable animal suffering or distress could be cause for investigation, charges, and potential prosecution.

The National Farm Animal Care Council ([NFACC](#)) Codes of Practice for Care and Handling of Farm Animals include codes for the following farmed animals:

[Beef cattle](#)

[Dairy cattle](#)

[Veal calves](#)

[Pigs](#)  
[Equines](#)  
[Sheep](#)

[Poultry](#)  
[Farmed Deer](#)  
[Farmed Fox](#)

[Farmed Mink](#)  
[Bison](#)  
[Goats](#)

There is a [Code of Practice for Transportation of Animals](#). Codes of Practice also exist for dogs and cats and include

- [Code of Practice for Canadian Kennel Operations](#)
- [Code of Practice for Canadian Cattery Operations](#)
- [Mush with PRIDE Sled Dog Care Guidelines](#)

Veterinaries, Forensic Veterinaries, Pathologists and Veterinary Behaviourists can testify as to what the required standards are for any particular animal.

## THE LAW ON EXPERTS

Expert opinion evidence is presumptively inadmissible and the party tendering the evidence must establish its admissibility on the balance of probabilities *R. v. Mohan*, [\[1994\] 2 SCR 9](#). The four criteria are:

- (i) relevance
- (ii) necessity in assisting the trier of fact
- (iii) absence of any exclusionary rule, and
- (iv) the qualifications of the expert.

*R. v. Abbey*, [2009 ONCA 624](#)

(a) Step 1: Satisfying the Preconditions

The expert evidence must satisfy the following four preconditions:

- (i) the proposed opinion must relate to a subject matter that is properly the subject of expert opinion evidence;
- (ii) the witness must be qualified to give the opinion;
- (iii) the proposed opinion must not run afoul of any exclusionary rule apart entirely from the expert opinion rule; and
- (iv) the proposed opinion must be logically relevant to a material issue.

(b) Step 2: The “Gatekeeper” Function

The trial judge must engage in a cost-benefit analysis of the proposed evidence. How probative is the evidence, how probative, how reliable? Is it based on accepted scientific principles? Is it a novel science?

*White Burgess Langille Inman v. Abbott and Haliburton Co.*, [2015 SCC 23](#) requires an expert to be able to discharge a duty of independence and impartiality. Questions about this requirement may arise in animal abuse cases as many people in the field hold strong views about animals and any potential abuses. It is important to remember this is not the same as a “reasonable apprehension of bias” test. (*R. v. Rogers* [\[2015\] O.J. No. 2955](#), *R. v. Natsis* [\[2018\] O.J. No. 2383](#)). A challenge to expert evidence was raised in the animal abuse case of *R. v. Aubrey-Lafreniere*, [\[2018\] O.J. No. 5589](#). Defence counsel argued the proposed vet was biased because the vet had reported his concerns of abuse to the OPSCA. At the time the [OPSCA](#) Act required

vets to report suspected animal abuse. The new [PAWS Act](#) (*Provincial Animal Welfare Services Act*) contains a similar requirement in section 14. This argument was rejected by the trial judge.

## QUALIFYING AN EXPERT

The next witness is \_\_\_\_\_

I will be pro-offering this witness to elicit expert opinion evidence in the area of veterinary medicine and animal behaviour generally and specifically in the following areas:

- a) animal health and husbandry and / or
- b) cause, mechanism and manner of injury or death in animals and / or
- c) (what whatever specialization you require, this should be discussed with your expert in advance)

A voir dire will be required to determine whether this witness can be qualified to express expert opinion evidence in the areas that I have mentioned. (Often in cases of a vet or a pathologist the voir dire will be waived by defence counsel)

Notwithstanding this admission, and with your permission, I intend to lead this witness through this witness' statement of Qualifications and some basic elements of this witness' expertise. (Go through Statement of Qualifications (C.V.) with witness)

Highlight previous court experience, etc.

File copy of the Statement of Qualifications, C.V. on the voir dire. Have it marked as an exhibit.

Ask the witness be qualified to give expert opinion evidence on \_\_\_\_\_.

In cases where defence counsel does not concede the voir dire defence has the opportunity to then cross-examine the witness as to whether the witness should be able to offer an expert opinion.

Hypotheticals can be especially helpful to provide to an expert. In cases where the Crown knows (or suspects) the defence theory it can be provided to the expert to refute. For example, in a near fatal starvation case an expert can be asked if the theory the animal was ill could account for the level of body conditioning score.

## ANIMAL MEDICAL TERMS EXPLAINED

BAR: Bright, alert, and responsive

ADR: “ain’t doing right.” It’s the opposite of BAR

QAR: quiet, alert and responsive

BCS: Body Condition Score – this is sometimes on a 5 point scale or a 9 point scale. See below

Intact: whether the animal has been spayed (ovariohysterectomy) or neutered (castrated)

CBC – complete blood count – indicates white blood cell, red blood cell and platelet counts

Chemistry – aka profile – can assess organ health – liver and kidney values, electrolytes, etc.

U/A - urinalysis

Blocked – generally refers to a blocked urinary tract, a potentially rapidly fatal condition

Whelping – dog giving birth

Queening – cat giving birth

AGE – anal gland expression

CVO – licensing body for the province of Ontario (College of Veterinarians of Ontario), not to be confused with OVC – the Ontario Veterinary College, an educational institute or OVMA – the Ontario Veterinary Medical Association, a lobbyist body for veterinarians.

Neoplasia – cancer

Pyoderma – skin infection, varying degrees of severity

Cruciate – common term used for an anterior cruciate ligament rupture in the stifle (knee)

DJD – degenerative joint disease aka arthritis, not to be confused with immune mediated poly arthritis

Dental nomenclature – should be referred to in the same universal numbering system as human dentists but different arrangements. Numbers are in the 100s to 400s.

C/S/V/D: Coughing, sneezing, vomiting, diarrhea

DDx: Differential diagnosis

DUDE: Defecating, urinating, drinking and eating

Dz: Disease

NSF: No significant findings

R/o: Rule out

T/G: Tartar, gingivitis

WNL: Within normal limits

## **BODY CONDITION SCORE**

1. Emaciated
  - No palpable fat. Moderate to severe loss of muscle mass
  - Ribs, lumbar vertebrae, pelvic bones all prominent from a distance
  - Tailbase is bony and prominent with no tissue between skin and bone
  - Severe abdominal tuck when viewed from the side, extreme hourglass shape when viewed from above
2. Underweight
  - Minimal fat covering. Mild loss of muscle mass
  - Ribs, lumbar vertebrae, pelvic bones easily palpable and slightly visible with minimal fat covering
  - Tailbase has raised bony structure with minimal tissue between skin and bone
  - Prominent abdominal tuck when viewed from the side. Moderate hourglass shape when viewed from above
3. Ideal
  - Normal fat covering and muscle mass for size/age/breed of animal
  - Ribs, lumbar vertebrae and pelvic bones moderately palpable but not visible with mild layer of fat covering
  - Tailbase has smooth contour or some thickening, bony structures are palpable under a thin layer of fat between skin and bone
  - Mild to moderate abdominal tuck when viewed from the side, mild to moderate waist behind ribs when viewed from above
4. Overweight
  - Mild to moderate excess fat covering. Abdominal fat apron present in cats
  - Muscle, ribs, lumbar vertebrae and pelvic bones mildly palpable and not visible with moderate layer of fat covering
  - Tailbase has some thickening with moderate amount of tissue between skin and bone
  - Abdominal tuck slightly visible when viewed from side, waist slightly visible behind ribs from above
5. Obese
  - Marked excess fat covering. Marked abdominal fat apron present in cats
  - Muscle, ribs, lumbar vertebrae and pelvic bones barely palpable due to marked layer of fat covering
  - Tailbase appears thickened and is difficult to feel under a prominent layer of fat
  - No abdominal tuck, waist not visible, animal is square in shape or abdomen may bulge

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