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# LEGISLATIVE SUMMARY



## **Bill C-84: An Act to amend the Criminal Code (bestiality and animal fighting)**

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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*Legislative Summary of Bill C-84*  
(Legislative Summary)

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# LEGISLATIVE SUMMARY OF BILL C-84: AN ACT TO AMEND THE CRIMINAL CODE (BESTIALITY AND ANIMAL FIGHTING)

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## 1 BACKGROUND

Bill C-84, An Act to amend the Criminal Code (bestiality and animal fighting),<sup>1</sup> was introduced in the House of Commons by the Minister of Justice and Attorney General of Canada, the Honourable Jody Wilson-Raybould, on 18 October 2018. It received second reading and was referred to the Standing Committee on Justice and Human Rights on 29 October 2018.

Bill C-84 amends the *Criminal Code*<sup>2</sup> to broaden the scope of three criminal offences in order to prohibit certain activities related to bestiality and animal fighting.

### 1.1 CONTEXT

#### 1.1.1 BESTIALITY

Bill C-84 amends the *Criminal Code* to define “bestiality.” Although section 160 of the *Criminal Code* criminalizes bestiality, it does not include any definition of the term. The Supreme Court of Canada considered which acts are prohibited by this offence in its *R. v. D.L.W.* decision in 2016.<sup>3</sup> The Court determined that the term “bestiality” has a “well-established legal meaning and refers to sexual intercourse between a human and an animal”<sup>4</sup> and stated that sexual penetration “has always been understood to be an essential element” of the term.<sup>5</sup> The court noted that it was not its role to expand upon this accepted meaning, but rather that it would be up to Parliament to “broaden the scope of liability” for the offence by introducing an express provision in the *Criminal Code*.<sup>6</sup>

The *D.L.W.* case involved a stepfather who was convicted of numerous sexual offences for acts he committed against his two stepdaughters, but he was acquitted of bestiality charges that had been laid because he had forced his stepdaughters to perform acts with the family dog “for a sexual purpose” that did not involve penetration.<sup>7</sup> According to the Department of Justice, the proposed amendment in Bill C-84 “addresses gaps” in the law by criminalizing any contact for a sexual purpose between a person and an animal.<sup>8</sup>

Statistics Canada provides crime statistics for bestiality, dividing the offence into two categories:

- committing or compelling a person to commit bestiality; and
- committing bestiality in the presence of a child or inciting a child to commit bestiality.

The latter offence was only added in 2015, and so Statistics Canada urges caution when considering this data.<sup>9</sup> Among the statistics provided are the “actual incidents” reported by police and the total number of charges against accused persons. These statistics indicate that between 2013 and 2017, incidents of “bestiality, commit or compel person” range from 12 to 17 per year for those years, with the number of charges ranging from 1 to 10.<sup>10</sup> Over the same period, single incidents of “Bestiality in presence of, or incites, a child” were reported in 2016 and 2017, with charges being laid against one youth in 2016.<sup>11</sup>

In December 2018, the Canadian Centre for Child Protection Inc. published *“Bestiality” as reflected in Canadian case law: Considerations for protecting children and animals after R v DLW*.<sup>12</sup> This report examines questions surrounding the definition, scope and prevalence of bestiality. It notes that there is in fact “little information about the issue of bestiality overall,” but underscores that most incidents would not be reported to police. After reviewing the relevant jurisprudence, data from Statistics Canada and its own research, the Centre notes that there were more examples of non-penetrative than penetrative sexual activity involving animals, a fact that it says supports the need to expand the criminal definition of bestiality. The study also notes that coerced sexual acts involving animals often occur in conjunction with other very serious behaviour involving human victims.

### 1.1.2 ANIMAL FIGHTING

Bill C-84 amends the *Criminal Code* to broaden the scope of prohibited activities pertaining to violence and cruelty toward animals and animal fighting. Animal fighting most often involves two animals that are set against each other in violent conflict for human entertainment. Spectators may wager which animal will defeat the other by killing it or seriously wounding it so that it cannot continue fighting.<sup>13</sup>

Statistics Canada does not collect data on animal cruelty offences.<sup>14</sup> As noted by Minister Wilson-Raybould, “Given its clandestine nature, it is difficult to collect statistics on the prevalence of dog fighting in Canada.”<sup>15</sup>

There have been various reports of animal fighting across Canada in recent years, particularly involving dogs.<sup>16</sup> The Ontario Society for the Prevention of Cruelty to Animals (Ontario SPCA) reports that dog fighting is undeniably taking place and has an awareness and advocacy campaign to address it.<sup>17</sup> In 2015 and 2016, a partnership between the Ontario SPCA, the Ontario Provincial Police and the Chatham-Kent Police Service led to investigations that resulted in the seizure of 64 pit bull dogs and various items related to training dogs for fighting and holding dog fights.<sup>18</sup>

The Department of Justice has stated, “Animal fighting has often been linked to organized crime, including illegal gambling and the illicit trafficking of drugs and weapons.”<sup>19</sup> Various advocacy groups and individuals have been calling for criminal law reform to address cruelty and violence toward animals, including animal fighting, for many years.<sup>20</sup>

Sections 444 to 447 of the *Criminal Code* criminalize various forms of cruelty and violence toward animals. These offences cover, among other things, wilfully causing pain and suffering, wilfully killing, harming and neglecting an animal, and animal

fighting.<sup>21</sup> They fall under Part XI of the *Criminal Code*, “Wilful and Forbidden Acts in Respect of Certain Property.” Some offences pertain to livestock or other animals that are kept for “a lawful purpose” and therefore have a “keeper” who exercises control over the animal.<sup>22</sup> The fact that criminal provisions concerning animal cruelty are found in this part of the *Criminal Code* reflects the traditional legal view that domestic animals are to be treated as property.<sup>23</sup>

Section 445 includes a broad offence that makes it an offence to kill, maim, wound, poison or injure all animals (other than cattle and related livestock,<sup>24</sup> which are addressed under section 444). Section 445.1 also includes a broad offence in subsection (a) for anyone who causes unnecessary pain, suffering or injury to an animal or bird. Subsection 445.1(1)(b) specifically criminalizes aiding or assisting at the fighting or baiting of animals or birds. Section 447 makes it an offence for any person to build, make, maintain, keep or allow a “cockpit” on property the person owns or occupies. While the *Criminal Code* does not define this term, in a case that examined evidence to determine whether a cockpit had been maintained, an expert described one simply as “a place where cocks are fought.”<sup>25</sup>

Animal welfare laws at the provincial and territorial level can also address cruelty toward animals and animal fighting. Some provisions in these laws provide substantial standards of care for animals and administrative penalties for violating them, though they are not criminal laws.<sup>26</sup>

### 1.1.3 PREVIOUS BILLS AND AMENDMENTS

The animal cruelty offences in the *Criminal Code* have changed little since the law was first passed in 1892.<sup>27</sup> Many bills have been introduced over the years to either amend specific sections or propose broad reforms, such as by creating a new part of the *Criminal Code* that would pertain to crimes against animals. In the late 1990s, the Government of Canada undertook consultations and published a consultation paper entitled *Crimes Against Animals*.<sup>28</sup> The paper considered revisions to the Code to make it easier to prosecute violence and cruelty toward animals and also to update the penalties to reflect the seriousness of the crimes. Following the release of this report, in December 1999, then Justice Minister Anne McLellan introduced Bill C-17, An Act to amend the Criminal Code (cruelty to animals, disarming a peace officer and other amendments) and the Firearms Act (technical amendments), in the House of Commons.<sup>29</sup> This bill would have moved crimes involving animals from the property section of the *Criminal Code* into a new Part V, which would have had the title “Sexual Offences, Public Morals, Disorderly Conduct and Cruelty to Animals.” Animals would no longer have been regarded simply as property and their capacity to feel pain would have been recognized. The bill died on the *Order Paper* on the dissolution of Parliament, as did other subsequent government bills to reform these offences.<sup>30</sup>

Many other private members’ bills and Senate private bills have also been introduced to make changes to the animal cruelty offences.<sup>31</sup> One of these was passed by Parliament. Bill S-203, An Act to amend the Criminal Code (cruelty to animals), was introduced by Senator John Bryden in 2007 and received Royal Assent in April 2008. It increased the penalties associated with the offences in sections 444 to 447 of the *Criminal Code*.<sup>32</sup>

The most recent attempts in the 42<sup>nd</sup> Parliament to legislate reform of animal cruelty offences have included two private members' bills. Bill C-246, An Act to amend the Criminal Code, the Fisheries Act, the Textile Labelling Act, the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act and the Canada Consumer Product Safety Act (animal protection), was introduced by Member of Parliament Nathaniel Erskine-Smith on 26 February 2016, but it was defeated at second reading.<sup>33</sup> It proposed to consolidate and modernize various offences against animals by removing sections 444 to 447.1 and creating a new "Part V.1, Offences against animals." On 13 December 2017, Member of Parliament Michelle Rempel tabled Bill C-388, An Act to amend the Criminal Code (bestiality), which would make essentially the same amendment to section 160 as Bill C-84.<sup>34</sup>

## 2 DESCRIPTION AND ANALYSIS

### 2.1 BESTIALITY (CLAUSE 1)

Section 160 of the *Criminal Code* criminalizes engaging in bestiality, compelling another person to commit bestiality, and committing bestiality in the presence of a person who is under the age of 16 years. The first two offences are punishable on summary conviction by up to six months' imprisonment or a \$5,000 fine or both<sup>35</sup> or on indictment by up to 10 years' imprisonment (sections 160(1) and 160(2)). The third offence (section 160(3)) is punishable on summary conviction by imprisonment for a minimum of six months and a maximum of two years less a day or, on indictment, to a minimum of one year's and a maximum of 14 years' imprisonment.

Clause 1 of Bill C-84 adds a definition of bestiality to the Code by providing in new section 160(4) that it means "any contact, for a sexual purpose, with an animal." This broader definition than the one retained by the Supreme Court, as described in section 1.1.1 of this Legislative Summary, is intended to capture sexual acts involving animals and people, whether they involve penetration or not.

### 2.2 ANIMAL FIGHTING

#### 2.2.1 CAUSING UNNECESSARY SUFFERING (CLAUSE 2)

Section 445.1 of the Code lists various offences under the heading "Causing unnecessary suffering." These offences prohibit causing pain or suffering to an animal or bird, poisoning a domestic animal or bird, and other related activities. Section 445.1(1)(b) specifically makes it an offence for anyone to encourage, aid or assist at the fighting or baiting of animals or birds.

Clause 2 of Bill C-84 replaces the current section 445.1(1)(b) to add that the prohibited conduct also includes promoting, arranging, receiving money for, or taking part in the baiting or fighting of animals or birds, as well as in the training, transporting or breeding of animals or birds for the purposes of baiting or fighting.



The rest of the provisions of section 445.1, which pertain to evidentiary matters and the associated punishment, are unchanged. Punishment on summary conviction is a fine of up to \$10,000 or up to 18 months' imprisonment or both. Punishment on indictment is up to five years' imprisonment.

## 2.2.2 ARENAS FOR ANIMAL FIGHTING (CLAUSE 3)

Section 447 of the *Criminal Code* makes it an offence for any persons to build, make, maintain, keep or allow a “cockpit” on property that they own or occupy.

Clause 3 of Bill C-84 replaces the term “cockpit” in section 447(1) of the Code with “an arena for animal fighting.” This provision therefore serves to capture other types of animal fighting, such as dog fighting. As noted by the Department of Justice, the proposed amendments in the bill “will expand the existing provisions in order to protect all animals and capture all activities related to animal fighting.”<sup>36</sup>

Section 447(2) of the Code is not amended by the bill, though its application is expanded as it provides the punishment for the offence under section 447(1). Persons convicted under section 447(1) may be sentenced on summary conviction to a fine of up to \$10,000 or up to 18 months' imprisonment or both, and on indictment to up to five years' imprisonment.

Section 447(3) is also not amended. This provision allows a peace officer to specifically seize “cocks in a cockpit or on premises where a cockpit is located” and to seek an order from a justice of the peace or provincial court judge that the cocks be destroyed. The bill does not therefore expand the existing authority to seize and have cocks destroyed to include other animals.

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## NOTES

1. [Bill C-84, An Act to amend the Criminal Code \(bestiality and animal fighting\)](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
2. [Criminal Code](#), R.S.C. 1985, c. C-46.
3. [R. v. D.L.W.](#), [2016] 1 SCR 402.
4. *Ibid.*, para. 19.
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*, para. 6.
8. Department of Justice, [Bestiality and animal fighting \(Bill C-84\)](#).
9. Statistics Canada, Note 7 in [“Bestiality in presence of, or incites, a child \[1381\],” Table 35-10-0177-01: Incident-based crime statistics, by detailed violations](#).
10. Statistics Canada, [“Bestiality, commit or compel person \[1380\],” Table 35-10-0177-01: Incident-based crime statistics, by detailed violations](#).

11. Statistics Canada, "[Bestiality in presence of, or incites, a child \[1381\]](#)," *Table 35-10-0177-01: Incident-based crime statistics, by detailed violations*.
12. Canadian Centre for Child Protection Inc., "[Bestiality as reflected in Canadian case law: Considerations for protecting children and animals after R v DLW](#)," December 2018.
13. For a visual explanation of what may be involved in dog fighting, see for example, Humane Society of the United States, [Possible Signs of Dogfighting](#).
14. Statistics Canada, "[Pets, cats, dogs, stray animals, animal cruelty](#)," *Does Statistics Canada collect this information?*
15. House of Commons, [Debates](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 October 2018, 1210 (Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada).
16. See, for example, Natalie Clancy and Yvette Brend, "[Dognapping in northern B.C. fuels fears of dog-fighting rings](#)," *CBC News*, 25 February 2016; Steve Morales, "[OSPCA sounds alarm over Ontario dogfighting operations](#)," *Global News*, 10 March 2016; and Andree Lau, "[Dog Fighting Rings Behind Spike In Missing B.C. Pets: Owner](#)," *HuffPost*, 2 March 2015.
17. Ontario SPCA and Humane Society, [Dog Fighting](#); and Brad Dewar, "[Dog Fighting: A Problem in Ontario?](#)," *FOCUS*, July/August 2016.
18. House of Commons (29 October 2018); and Dewar (July/August 2016).
19. Department of Justice Canada, "[Government of Canada announces measures to strengthen legal protections for children, vulnerable individuals, and animals](#)," News release, 18 October 2018.
20. See, for example, Holly Lake, "[Federal bill would broaden definition of bestiality, ban animal fighting](#)," *iPolitics*, 18 October 2018; Canadian Federation of Humane Societies, [2017 Annual Report](#); Ontario SPCA and Humane Society, [Dog Fighting](#); Animal Alliance of Canada, [Cruelty Legislation](#); Cristin Schmitz, "[Ottawa tables bestiality, animal fighting amendments but critic slams failure to make broader animal cruelty reforms](#)," *The Lawyer's Daily*, 18 October 2018; and Barbara Cartwright, "[Canada's Government Wants To Set Animal Protection Back 20 Years](#)," *HuffPost*, 5 November 2017.
21. For additional information on the history of animal cruelty provisions, see Robin MacKay, [Legislative Summary of Bill C-50: An Act to amend the Criminal Code in respect of cruelty to animals](#), Publication no. 38-1-LS-509-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 18 August 2005.
22. [Regina v. Deschamps](#), [1978] O.J. No. 3757 (Ont. Prov. Court).
23. See MacKay (18 August 2005).
24. "Cattle" is defined under section 2 of the *Criminal Code* as "neat cattle or an animal of the bovine species by whatever technical or familiar name it is known, and includes any horse, mule, ass, pig, sheep or goat."
25. *R. v. Quilloy*, 1993 CarswellAlta 675, [1993] A.W.L.D. 833, 144 A.R. 140.

26. Newfoundland and Labrador:

- [Animal Health and Protection Act](#), S.N.L. 2010, c. A-9.1;
- [Animal Protection Standards Regulations](#), Regulation 36/12; and
- [Animal Protection Regulations](#), Regulation 35/12.

Prince Edward Island: [Animal Health Act](#), R.S.P.E.I. 1988, c. A-11.1.

Nova Scotia: [Animal Protection Act](#), S.N.S. 2008, c. 33.

New Brunswick: [Society for the Prevention of Cruelty to Animals Act](#), R.S.N.B. 2014, c. 132.

Quebec: [Animal Health Protection Act](#), C.Q.L.R. 2000, c. P-42.

Ontario: [Ontario Society for the Prevention of Cruelty to Animals Act](#), R.S.O. 1990, c. O.36.

Manitoba: [The Animal Care Act](#), C.C.S.M., c. A84.

Saskatchewan: [Animal Protection Act, 2018](#), S.S. 2018, c. A-21.2.

Alberta:

- [Animal Protection Act](#), R.S.A. 2000, c. A-41; and
- [Animal Protection Regulation](#), Alberta Regulation 203/2005 (with amendments up to and including Alberta Regulation 123/2016).

British Columbia: [Prevention of Cruelty to Animals Act](#), R.S.B.C. 1996, c. 372.

Nunavut: [Dog Act](#), R.S.N.W.T. (Nu) 1988, c. D-7.

Northwest Territories:

- [Herd and Fencing Act](#), R.S.N.W.T. 1988, c. H-2; and
- [Dog Act](#), R.S.N.W.T. 1988, c. D-7.

Yukon: [Animal Protection Act](#), R.S.Y. 2002, c. 6.

(A list of provincial and territorial legislation is maintained at Humane Canada, [Provincial Legislation](#).)

27. See MacKay (18 August 2005); and Antonio Verbora, "[The Politics of Animal Anti-Cruelty Legislation in Canada: An Analysis of Parliamentary Debates on Amending the Criminal Code](#)," M.A. thesis, University of Windsor, 2012.
28. Department of Justice, *Crimes Against Animals: A Consultation Paper*, 1998. For more information, see Library and Archives Canada, [AMICUS No. 19297371](#).
29. [Bill C-17, An Act to amend the Criminal Code \(cruelty to animals, disarming a peace officer and other amendments\) and the Firearms Act \(technical amendments\)](#), 2<sup>nd</sup> Session, 36<sup>th</sup> Parliament.
30. These bills include [Bill C-15B, An Act to amend the Criminal Code \(cruelty to animals and firearms\) and the Firearms Act](#), 1<sup>st</sup> Session, 37<sup>th</sup> Parliament; [Bill C-10, An Act to amend the Criminal Code \(cruelty to animals and firearms\) and the Firearms Act](#), 2<sup>nd</sup> Session, 37<sup>th</sup> Parliament; [Bill C-10B, An Act to amend the Criminal Code \(cruelty to animals\)](#), 2<sup>nd</sup> Session, 37<sup>th</sup> Parliament; [Bill C-22, An Act to amend the Criminal Code \(cruelty to animals\)](#), 3<sup>rd</sup> Session, 37<sup>th</sup> Parliament; and [Bill C-50, An Act to amend the Criminal Code in respect of cruelty to animals](#), 1<sup>st</sup> Session, 38<sup>th</sup> Parliament.
31. For further reference, see search results for the following in *LEGISinfo*:
  - [cruelty animals](#);
  - [animal cruelty](#); and
  - Bill C-274 – [Similar Bills Introduced in Previous Sessions](#).

## LEGISLATIVE SUMMARY OF BILL C-84

32. [Bill S-203, An Act to amend the Criminal Code \(cruelty to animals\)](#), 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament.
33. [Bill C-246, An Act to amend the Criminal Code, the Fisheries Act, the Textile Labelling Act, the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act and the Canada Consumer Product Safety Act \(animal protection\)](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
34. [Bill C-388, An Act to amend the Criminal Code \(bestiality\)](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
35. *Criminal Code*, s. 787.
36. Department of Justice, [Bestiality and animal fighting \(Bill C-84\)](#).