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# ONTARIO COURT OF JUSTICE



**B E T W E E N :**

**HER MAJESTY THE QUEEN**

**— AND —**

**CHRISTOPHER MUNROE**

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Before Justice Fergus ODonnell
Sentencing submissions heard on 25 March, 2010
Amended Reasons for Sentence released on 20 April, 2010
(Sentence imposed on 15 April, 2010)

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**Ms. Carolyn Boyd..... for the Crown**
**Mr. Thomas Brock..... for the defendant Christopher Munroe**

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**ODonnell, J.:**

## Introduction

1. In 2003, Justice Doherty, speaking for the Court of Appeal for Ontario in *R. v. Power,* (2003) 176 C.C.C. (3d) 209, a high-profile animal cruelty case observed: "In fixing the appropriate penalty, the trial judge had to bear in mind that six months was the maximum penalty provided for that offence. It

may well be that the present maximum is wholly inadequate. That is, however, a matter for Parliament."

2. On 17 April, 2008 Parliament gave effect to widespread concerns that the *Criminal Code* provisions concerning cruelty to animals had fallen drastically out of step with current social values and restructured those provisions. In addition to fine-tuning the offences themselves, Parliament took what had been a pure-summary conviction offence in the *Power* case, with a maximum sentence of six months no matter what the nature of the offence and created a hybrid sentencing structure with a maximum sentence of five years' imprisonment by indictment and a "super-summary" sentencing maximum of eighteen months' imprisonment. Accordingly, the overall maximum penalty for offences of this nature increased ten-fold.

3. Before the ink was dry on the coming into force of those amendments to the *Criminal Code*, Mr. Munroe moved in with his girlfriend, Katherine Cappella and her three Boston terriers, Abbey, Zoe and Mr. Big. Before spring had given way to summer, Abbey was dead and Zoe was seriously injured. The autopsy on Abbey pointed to a human cause for her death and Mr. Munroe was charged as a result. I found him guilty after a trial. I am now required to determine what is a fit sentence in light of Mr. Munroe's background, the nature of his offences and the dramatic change to the legislative landscape for those offences. Before I get to the core of the sentence, however, there are several ancillary issues that must be addressed.

**The Kienapple Issue**

4. Mr. Munroe has been found guilty of two counts under s. 445(1)(a) of the *Criminal Code* for causing unnecessary suffering to each of Abbey and Zoe and two counts under s. 445.1(1)(a) of the *Criminal Code*, one for the unlawful killing of Abbey and the other for the unlawful wounding of Zoe. Although it is irrelevant to the question of sentence, the issue then arises as to whether convictions should be entered on all four of those counts or whether some of those charges should be conditionally stayed because of the rule against multiple convictions for the same offence as set out in the Supreme Court of Canada's decision in *Kienapple v. The Queen* [1975] 1 S.C.R. 729 and its progeny, including *R. v. Prince*, [1986] 2 S.C.R. 480.

5. The two offences are described as follows in the *Criminal Code*:

> 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; ....
>
> 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;.....

6. The application of the rule against multiple convictions requires that there be both a factual nexus and a legal nexus. Both Ms. Boyd for the Crown and Mr. Brock for Mr. Munroe are in agreement that there is a factual nexus in this case. They diverge, however, with respect to the presence of a sufficient legal nexus. Mr. Brock contends that there is a sufficient legal nexus between the s. 445 and the s. 445.1 offences so that I should enter convictions on only one pair or the other. Ms. Boyd concedes that in the case of Zoe there is a

sufficient legal nexus between the unnecessary suffering and the unlawful wounding and suggests that I should conditionally stay the wounding count in relation to Zoe. With respect to Abbey, however, Ms. Boyd argues that the rule against multiple convictions is not engaged and convictions should be entered for both offences.

7. In *Prince*, Chief Justice Dickson, speaking for the Supreme Court of Canada stated:

> 32. I conclude, therefore, that the requirement of sufficient proximity between offences will only be satisfied if there is no additional and distinguishing element that goes to guilt contained in the offence for which a conviction is sought to be precluded by the *Kienapple* principle.

8. It seems clear to me in light of that pronouncement that the *Kienapple* principle is not engaged in relation to Abbey. Each of the two offences has an additional distinguishing element that is not contained in the other. Thus, Abbey's death is an additional element that is not material to a conviction for the s. 445.1 cruelty charge. That offence is fully made out upon proof of unnecessary pain and suffering, even where the animal survives. Likewise, on a theoretical level the unlawful killing of a dog does not necessarily engage the infliction of unnecessary pain and suffering. There could be an unlawful but perfectly humane killing of a companion animal that would make out the s. 445 offence.

9. Accordingly, there will be convictions on counts 1, 2 and 3. Count 4 will be conditionally stayed.

**The Pet Ownership Prohibition**

10. Section 447.1 of the *Criminal Code* authorizes the sentencing court to prohibit a defendant from owning or living with animals for any period the court considers appropriate. As I will elaborate further later in these reasons, these offences are truly chilling in nature, the degree of suffering experienced by Abbey and Zoe must have been extremely high and it was obviously prolonged and, having heard the evidence and having observed Mr. Munroe in court throughout the proceedings, I am not at all convinced that he has any appreciation of the impact or seriousness of his crimes. It is possible that he will develop greater empathy over time, but I am not optimistic that he will do so. Accordingly, I consider it necessary to make an order prohibiting Mr. Munroe from owning, having the custody or control of or residing in the same premises as an animal or a bird for a period of twenty-five years from 15 April, 2010.

**The Restitution Issue**

11. Section 447.1 of the *Criminal Code* also authorizes me to order that Mr. Munroe "pay to a person or an organization that has taken care of an animal or a bird as a result of the commission of the offence the reasonable costs that the person or organization incurred in respect of the animal or bird, if the costs are readily ascertainable." That specific restitution provision is in addition to, and not in place of, the general *Criminal Code* restitution provision in s. 738, which provides:

738. (1) Where an offender is convicted ... of an offence, the court imposing sentence on ...the offender may, on application of the Attorney General or on its own motion, in addition to any other measure imposed on the offender, order that the offender make restitution to another person as follows:

(*a*) in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence ..., by paying to the person an amount not exceeding the replacement value of the property as of the date the order is imposed, ..., where the amount is readily ascertainable;

(*b*) in the case of bodily or psychological harm to any person as a result of the commission of the offence ..., by paying to the person an amount not exceeding all pecuniary damages incurred as a result of the harm, including loss of income or support, if the amount is readily ascertainable;

12. Ms. Boyd has presented me with a list of expenses incurred by Ms. Cappella in relation to Abbey and Zoe. The question thus becomes whether each of those amounts is properly claimable under either or both of the two restitution provisions in the *Criminal Code*. Upon review of the relevant receipts, Mr. Brock takes no issue with respect to whether or not the actual amounts are "readily ascertainable" as required by both restitution sections. The various categories of expenditure are as follows:

    a. Veterinarian visits: $5,741.17. These expenses are squarely within the language of s. 477.1 of the *Criminal Code*.
    b. Autopsy on Abbey: $311. This also falls clearly under s. 477.1; the expense was a reasonable one as identifying the cause of Abbey's injuries was vital to Zoe's recovery.
    c. Purchase of Abbey: $1,300. This expense fits within both s. 477.1 and s. 738(1)(a).
    d. Moving costs ($209) and storage locker ($1,558.44). Mr. Brock argues that these expenses are not claimable as he says Ms.

Cappella could not have afforded to pay the rent at the house she shared with Mr. Munroe once he moved out. I had no evidence in support of this contention. It also struck me as a potentially circular argument. If I thought this argument were seriously sustainable, I would then have to assess whether or not any inability by Ms. Cappella to pay the rent on her own was brought about by the fact that she incurred over $8,500 in veterinary expenses and counselling as a result of Mr. Munroe's crimes at a time in her life when unexpected expenses of that magnitude were crippling. I am satisfied that the moving costs and storage locker are properly recoverable under s. 738(1)(b). It is entirely reasonable that upon discovering that Mr. Munroe had abused two of her dogs, killing one, Ms. Cappella would feel the need to place herself, in her words, "in a secure and safe place away from him," and in the security of her mother's home. She continues to be afraid of him today and in light of the nature of the offences and in the absence of any evidence of either insight or remorse on Mr. Munroe's part that fear is not irrational.

e. Psycho-therapy: $2,700. Mr. Brock also disputes this item. However, it falls clearly within the language of s. 738(1)(b) of the *Criminal Code*. It is also an expense that is entirely foreseeable. I am a stranger to Ms. Cappella. Yet it was evident to me within minutes of her taking the stand in this case how important her dogs

are to her and how much she would be affected by the abuse they suffered. It seems obvious that Mr. Munroe did not care what effect his crimes had on Ms. Cappella. However, living with her as he did, seeing her interact with the dogs and seeing her cope with the stress of their injuries and veterinary visits, there can be no doubt that he must have known how profoundly and enduringly she would be affected. (I note that in a sense Mr. Munroe gets a free ride on some of these counselling expenses because they would be $2,250 higher if not for Ms. Cappella's health-care coverage).

f. Lost salary for veterinary visits/court: $1,145. This falls squarely within the provisions of s. 738(1)(b).

13. I have no doubt whatsoever that Mr. Munroe has the capacity to pay this restitution. He is an able-bodied young man who has shown his willingness to work hard. By his own counsel's admission, he could afford payments of $250-$300 per month, although I suspect he could pay more if he were to choose to give priority to the making of restitution. The making of restitution is also an important part of Mr. Munroe's rehabilitation as it will assist in some small way in bringing home to him the effects of his crimes on Ms. Cappella. Accordingly, I make a free-standing restitution order in the total amount of $12,964.61. Mr. Munroe shall make minimum monthly payments of the greater of (a) $300.00, and (b) 15% of his gross monthly income from all sources for the month preceding the payment. Those payments shall be made through the court on or before the 15th day of each

month until paid in full. The obligation to make monthly payments shall be suspended for any month that Mr. Munroe is in custody in a correctional institution only if Mr. Munroe provides proof to the officer-in-charge that he does not have savings to pay the $300 minimum.

**The Appropriate Sentence**

14. Ms. Boyd for the Crown submits that these are offences that require a jail sentence, in the range of 6-9 months, followed by two years' probation. Mr. Brock suggests that a conditional sentence of six months would be appropriate and that if a sentence in a custodial institution is imposed, it should be in the intermittent range. He agrees that community supervision would also be appropriate.

15. It is a bedrock principle of sentencing that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. A sentence may have various components, each directed to different sentencing objectives. A sentence should be crafted to encourage respect for the law and the maintenance of a just, peaceful and safe society by denouncing unlawful conduct and by deterring the offender and others from committing offences. A sentence should promote a sense of responsibility on the offender's part and acknowledge the harm done to the individual victim and to society at large, including reparations where appropriate. At the same time, a sentence must be structured to assist in rehabilitating the offender and should show restraint by avoiding

imprisonment or other restrictions on liberty if less restrictive punishments can achieve the objectives of sentencing.

16. Mr. Munroe will be 27 years old in a couple of weeks. At the time of these offences he was 25-26 years old. He is a first offender. At the time of the offences he was employed in a very well-paying automobile manufacturing job, which he subsequently left in order to reduce his commuting time from Kitchener, where his daughter lives. In his last five months at the manufacturing job, Mr. Munroe earned approximately $63,000 net of his severance pay. More recently, he has set up a deck business and sells vacuum cleaners.

17. Mr. Munroe's pre-sentence report shows that he was brought up in a very positive and supportive middle-class environment in which "family life was prioritised." He was a popular child and a good athlete. There is no history of anger, according to his family, and no history of animal abuse. He has a six year old daughter from a previous marriage, a marriage he entered into when he and his ex-wife were very young. He and his ex-wife describe each other in favourable terms. There is no history of drug dependency or alcohol abuse. He has plans to attend college for a skills-retraining programme. It seems obvious that there are two very different Christopher Munroes.

18. The mitigating factors in this case are Mr. Munroe's relative youth, his lack of a prior criminal record and the positive assessments of him by his family and ex-wife.

19. Mr. Munroe pleaded not guilty. That was his right. That is not an aggravating factor, simply the absence of a mitigating factor.

20. Considered dispassionately, these were chilling offences. Mr. Munroe was welcomed into Ms. Cappella's household, a household that included the three terriers, Abbey, Zoe and Mr. Big. Mr. Munroe must have known, within days of moving in if not beforehand, how large these small, dependent and defenceless pets loomed in Ms. Cappella's life. As I noted earlier, that fact was palpable to me as a complete stranger to the family dynamic within minutes of Ms. Cappella starting to give evidence at this trial.

21. I do not propose to repeat the full details of the offences, which are more fully set out in my reasons for conviction, but one need only utter the words multiple lesions, blunt force trauma, lesion from a thermal, chemical or electrical burn, haemorrhage, separated retina, collapsed lung, fourteen rib fractures, perforation of the thoracic cavity and so on to get some flavour of the magnitude of these offences. These were not the fruits of a single act of misguided anger or frustration; they reflect multiple injuries of different types inflicted at different times over a prolonged period. What I have recited are merely the injuries shown by Abbey's autopsy, without even referring to Zoe's injuries. Quite apart from the repeated nature of the offences, which belies any possibility of a single act of immaturity or anger, there is the fact that the infliction of a chemical, thermal or electrical burn necessarily involves some element of deliberation, a calculated act of

cruelty. The word “torture” is perhaps the only apt description here. It is perfectly natural to puzzle over how a mature human being could possibly inflict injuries of this nature and extent on two companion animals.

22. Abbey weighed about 8 ½ pounds.

23. There are multiple victims of these crimes. Most directly, Abbey and Zoe were the immediate victims. In a sanctuary they had come to associate with care, nourishment and love they came face to face with their polar opposites. Society has long ago moved forward from the notion of animals as mere property. While man continues to have dominion over animals, in a civilized society that is a power accompanied by significant responsibilities. Society’s repugnance for the wilful infliction of suffering on these sentient creatures is reflected starkly in the fact that Parliament recently increased the maximum overall punishment available for this offence ten-fold. The nature and extent of Abbey’s and Zoe’s suffering must have been readily apparent to Mr. Munroe.

24. Ms. Cappella is obviously also a victim of Mr. Munroe’s crimes. Her victim impact statement is saddening but not surprising. It reflects depression, feelings of guilt, fear, distrust of others, inability to sleep without medication and even a drastic change in her previous world view. A woman who once presumed goodness to be the core of human nature now worries about the dark nature that may be hidden under the caring facade of potential, or even existing, friends. While it is perhaps a fool’s errand to try to rank the odious effects of these offences on her, perhaps the worst is that this caring

woman who was everything to her pets now blames herself for what happened to them, a blame that is obviously entirely misplaced.

25. As Ms. Cappella struggled with her veterinarians for months to identify the underlying causes of Abbey's and Zoe's injuries, the suffering to which Ms. Cappella was subjected must have been entirely evident to Mr. Munroe. Yet he persisted, for reasons known only to him.

26. No point is served in this case by comparing one type of offence to another to determine the appropriate range of sentence. I have, accordingly, resisted any comparison to what crimes of this nature committed against a human victim might call for by way of sentence. However, one point of distinction is significant. A person who abuses a child always runs the risk that the child will overcome his fear and report his suffering. The abuser of an animal has no such concern. So long as he commits his abuses beyond the reach of prying eyes, he need not fear that his victim will reveal his crimes. Tragically in this case, it was only in death that Abbey found her voice to identify the nature of her and Zoe's torment and the identity of their tormentor.

27. What, then, is the appropriate range of sentence for these offences? I have sought guidance in the sentences imposed under the predecessor provisions of the *Criminal Code*. Realistically, however, where those judges imposed sentences for a straight summary conviction offence with a maximum sentence of six months even for the most expansive and worst imaginable forms of animal cruelty, their decisions are unhelpful in an

environment in which Parliament has spoken by increasing the overall maximum penalty to five years by creating an indictable offence and by making even the summary conviction option a “super-summary” offence with a maximum penalty of eighteen months imprisonment. The April, 2008 amendments to the *Criminal Code* were no mere housekeeping changes; rather, they represent a fundamental shift in Parliament’s approach to these crimes. Such a dramatic change in a penalty provision is virtually unheard of in our criminal law.

28. Where do Mr. Munroe’s offences fall within the range of offences prosecutable under sections 445 and 445.1 of the *Criminal Code*? I can only conclude that they are well within the upper range of offences that would be prosecuted by summary conviction. Put otherwise, any offence substantially more serious than these offences, or even these same offences committed by an offender with a previous record, for example, would most likely be prosecuted by indictment.

29. When faced with a series of calculated, violent and serious attacks against a pair of defenceless victims entrusted to Mr. Munroe’s care, I must also conclude that specific deterrence is of tremendous importance in this case. General deterrence is also a significant consideration. Parliament has expressed the people’s will in relation to penalties for these offences and it is important that the court not confound that clearly stated intention. That will also requires the court, through both its reasons and its sentence, to denounce Mr. Munroe’s infliction of months of pain and suffering on these

two dogs. The nature of the offences is serious and Mr. Munroe's degree of responsibility is as the relentless driving force behind it.

30. I am alive to the fact that Mr. Munroe is a first offender. If he had a previous criminal record I would impose a harsher sentence. I recognize that I must use imprisonment with restraint. I cannot ignore his and society's interest in his rehabilitation. Taking all of that into account, however, I am of the view that a sentence of less than twelve months, would fail to reflect the proper balance for these offences. That sentence of twelve months shall be concurrent on each count, and shall be combined with a period of probation and restitution in order to address fully the requirements of a fit sentence, while remaining alive to the concept of totality.

**Is This An Appropriate Case For The Sentence Of Imprisonment To Be Served In the Community?**

31. A conditional sentence is available:

    a. Where the sentence imposed is under two years;

    b. Where there is no minimum sentence of incarceration;

    c. Where it would not endanger the safety of the community; and,

    d. Where it would be consistent with the fundamental principles and purposes of sentencing as set out in the *Criminal Code*.

32. The application of these principles is guided by the decision of the Supreme Court of Canada in *R. v. Proulx*, [2000] 1 S.C.R. 61. In this case it is clear that the first and second requirements are made out.

33. The question of endangerment of the safety of the community requires an analysis of the likelihood of Mr. Munroe re-offending and of the potential damage arising from any re-offence. The likelihood of re-offending should be assessed in light of the degree of supervision available. In this regard, I note that the electronic supervision programme is available as a component of any conditional sentence imposed on Mr. Munroe. I also note that Mr. Munroe has no previous criminal record and, to my knowledge, there is no suggestion that he has committed any offences since he was charged.

34. I am inclined to think that the likelihood of re-offending while serving a conditional sentence might be kept low through the use of electronic monitoring and other restrictive terms, although I note first that electronic supervision monitors only location and second that these offences were offences committed behind closed doors. I also note that it is hard for me to be confident that the risk of re-offending is low when Mr. Munroe's reason for committing these offences is unknown and he has taken no steps to seek counselling to address what are necessarily very troubling underlying issues. This, however, is only the first half of the analysis. The Supreme Court of Canada's decision in *Proulx* requires that when dealing with violent crimes, and these offences are starkly and insistently and disturbingly violent, I must also consider the gravity of any harm if Mr. Munroe does re-offend. Given the nature of these offences and my sense that Mr. Munroe has not even begun to come to terms with their seriousness, I am inclined to think that Mr. Munroe does not satisfy the

"danger to the community" precondition and as such would not qualify for a conditional sentence.

35. Assuming that I am wrong in that conclusion, however, I must consider whether or not a conditional sentence would be consistent with the fundamental purposes and principles of sentence as set out in the *Criminal Code*. Other than those prescribed by statute, there are no offences for which a conditional sentence is presumptively unavailable. I am also alive to the fact that to some extent the different objectives of sentencing might in some measure be achieved through either a conditional sentence or a sentence of real jail.

36. The sheer and persistent brutality of these offences, the inherent cruelty both to the dogs and to Ms. Cappella, Mr. Munroe's domestic partner, the lack of any remorse on Mr. Munroe's part, the absence of a rehabilitative plan and the defencelessness and vulnerability of Abbey and Zoe convince me that a conditional sentence would not satisfy the principles of sentence set out in the *Criminal Code*. Mr. Munroe's apparent capacity to inflict such suffering again and again and again over a period of months is a matter for enduring concern. While it is possible for a conditional sentence adequately to convey both specific and general deterrence in some cases, this case is not one of them, by a long shot. While I consider it important that Mr. Munroe's sentence include a restorative component, I am of the view that that restorative component can only be satisfied as part of a probationary term following a period of actual incarceration. I am also alive

to the fact that a period of real jail will likely postpone Mr. Munroe's college plans and affect his relationship with his daughter, but those factors cannot possibly justify the imposition of a sentence that would fail to reflect the seriousness of Mr. Munroe's conduct. Accordingly, Mr. Munroe will serve his twelve month sentence in prison. I recommend that he serve his sentence in the Ontario Correctional Institute or some other facility equipped with resources to begin the process of unravelling why Mr. Munroe committed these offences and of minimizing the risk of any future repetition.

37. Clearly, I am of the view that in light of the nature and circumstances of these offences, the complete lack of any explanation for them and my conclusion that Mr. Munroe has no insight into the seriousness of the crimes, there is a compelling need for Mr. Munroe to have ongoing supervision for the maximum possible term upon his release from prison. The community service component of probation also provides an opportunity for Mr. Munroe to give back to the community, to rehabilitate himself and, one hopes, to develop empathy. I am of the view that even though he is a first offender, the seriousness of these offences and the as yet unidentified causes require the maximum period of community supervision. Accordingly, Mr. Munroe will also be placed on probation for a period of three years, with the following terms:

    a. He shall report to probation within two days of his release and thereafter as directed by his probation officer;

b. He shall live at an address approved of by his probation officer and shall not move without the prior written approval of his probation officer;

c. He shall not communicate directly or indirectly with Ms. Cappella or be within 200 metres of any place she lives, works, attends school or is known by him to frequent;

d. He shall not possess any weapons;

e. He shall attend for assessment and counselling, including psychiatric treatment for anger management, domestic relationship issues and any other issues as directed by his probation officer and shall provide proof of compliance and any releases required by his probation officer to monitor compliance.

f. He shall make monthly payments toward his restitution order in accordance with its terms and shall provide his probation officer each month with proof of his payment and proof of his gross income for the preceding month.

g. He shall perform 150 hours of community service in a manner approved of by his probation officer, at a rate of not less than ten hours per month, commencing not later than sixty days after his release from custody. He shall provide proof of compliance as required by his probation officer and shall sign any releases requested by his probation officer to allow the probation officer to monitor the fact and manner of Mr. Munroe's compliance. It is my

recommendation that Mr. Munroe not be allowed to perform his community service in relation to animals.

38. Finally, the following are my comments re ancillary orders:

a. Section 737 of the *Criminal Code* requires that I impose a victim surcharge, which in this case amounts to a total of $150 for the three counts of which Mr. Munroe has been convicted, unless Mr. Munroe satisfies me that undue hardship would be caused by the imposition of that surcharge. There was no application for exemption from the victim surcharge. Mr. Munroe will have one year to pay the surcharge of $150 from the date of sentencing, 15 April, 2010.

b. The present wording of s. 110 of the *Criminal Code* does not permit the imposition of a weapons prohibition outside a probation order. Given the deeply disturbing nature of these offences, the police may want to consider the desirability of bringing an application under s. 111 of the *Criminal Code*.

c. I heard submissions concerning whether or not Mr. Munroe should provide a DNA sample. I was and remain fully satisfied that this was a case in which the appropriateness of a DNA sample was self-evident. However, between making the order and signing it, I realized that contrary to my initial view these are not designated offences for DNA sampling purposes unless the Crown has in fact proceeded by indictment, which would have brought these offences with the five year indictable offence “basket clause” of secondary

designated offences. It strikes me as peculiar, to use a charitable word, that these offences are not named secondary offences, especially when the rare offence of “assisting a prisoner of war to escape” managed to capture the draftsperson’s attention as a named secondary offence. It does not require much imagination to conceive of offences under these sections manifesting much more intensely the public safety imperatives for a DNA sample than are manifested in many of the real life scenarios in which DNA orders are available and in fact routinely made for secondary designated offences such as fairly minor assaults. It would be foolhardy for the purposes of DNA analysis to assume that a personality capable of inflicting unspeakable cruelty on a sentient creature would necessarily draw a bright line between animals and humans. To echo the words of Justice Doherty with which these reasons began, this issue now having been identified, the rest is a matter for Parliament.

**20 April, 2010**
**“Justice Fergus ODonnell”**