

## Anthropomorphic Justice: The Case of the Cute, Yet Menacing Dog

By Shaun Fluker

### Cases Considered:

[\*R. v. Hardy\*, 2007 ABQB 747](#)

Erin is a 10 year-old who loves dogs. One morning while in the Kensington district of inner-city Calgary with her parents, Erin's affection led to an unfortunate encounter with Paul Hardy's young German pointer leashed to a sidewalk post. As she attempted to pet the dog, it unexpectedly lunged upwards and bit her mouth. She required plastic surgery to treat the severe injuries inflicted upon her lips.

The Crown prosecuted Hardy for violating numerous provisions of the City of Calgary's Responsible Pet Ownership Bylaw Number 23M2006. At trial, Justice of the Peace J. R. Shaw fined Hardy for failing to license the dog and for leaving it unattended while leashed on the sidewalk. In addition, the J.P. declared the dog a "vicious animal" under the bylaw. Hardy appealed this declaration in front of Mr. Justice P.J. McIntyre of the Alberta Court of Queen's Bench as an improper exercise of discretion.

In his reasons for judgment in *R. v. Hardy*, McIntyre J. describes Hardy's argument as two-fold. First, Hardy argued the Justice of the Peace failed to account for expert testimony that established the dog was not dangerous or vicious. McIntyre J. disposes of this argument by asserting the J.P. was not bound by the expert evidence in exercising his discretion to declare the dog to be vicious. Second, Hardy raised a natural law argument that the declaration was improper because the consequences for the dog – the prospect of a confined life or perhaps death – were too severe relative to the bylaw infractions. McIntyre J. also dismisses this argument because of its anthropomorphic character and it is this aspect of his judgment that interests me here.

Anthropomorphism is the attribution of human characteristics to non-human entities. In this case, it entails the suggestion that the consequences of a legal declaration (life-long confinement or death) ought to have been taken into account by the Justice of the Peace. McIntyre J. finds that not only is this position unpersuasive, it detracts from the objectives of the bylaw (at para. 16):

There was also argument that to declare the dog to be vicious is to put it in jail, to sentence it to a life of confinement. In my view, these phrases are best left to assessing sentencing of humans. An anthropomorphic approach to interpreting animal control bylaws is not helpful, and detracts from the paramount need to protect the public.

Yet, McIntyre J.'s judgment is full of its own anthropomorphism in assessing the fate of the German pointer. Consider, for example, how McIntyre J. supports the J.P.'s declaration concerning the dog (at para. 10):

He found the true nature of the dog to be masked. Attractive, everyone wanted to pet it. The dog's quiet menace was that it appeared friendly, yet it moved from being placid and friendly, to attacking and biting, to being placid again. There were no warning signs from this dog. Its calm demeanor before and after the attack was troubling. He remarked that some dogs you know to leave alone. Not this dog. This dog was like a teddy bear with a sharp edge. Thus he declared the dog to be a vicious dog and ordered it muzzled. There are other consequences to the declaration that need not be outlined.

The German pointer is cute and attractive, with a calm demeanor to hide its menacing personality from unsuspecting victims. By his own account, McIntyre J. attributes many human characteristics to the dog. So it is somewhat of a contradiction for McIntyre J. to suggest anthropomorphism is of no relevance in deciding on an appropriate legal sanction, while at the same time employing it to justify his own finding.

Perhaps what he meant to say was that the interests of the dog have no relevance towards interpreting the objectives of the animal control bylaw and appropriate sanctions for violations thereof. This view would accord with the dominant perspective that our laws generally properly exclude the interests of non-humans, except in cases where they are instrumental towards furthering human interests such as happiness.