

**IN THE PROVINCIAL COURT OF NEWFOUNDLAND AND
LABRADOR
JUDICIAL CENTRE OF CORNER BROOK**

Citation: *R. v. Taker*, 2016 NLPC 1315A00249

Date: January 8, 2016

HER MAJESTY THE QUEEN

V.

FLORENCE TAKER

Place of Hearing: Corner Brook, NL.

Hearing Date: January 4, 2016.

Summary: The accused pleaded guilty to having committed the offence of causing distress to an animal, contrary to section 18(2) of the *Animal Health and Protection Act*, SNL 2010. She was sentenced to a fine of \$1,000.00; prohibited for life from having in her care, control or possession more than five animals at any one time; and required before purchasing, acquiring, or otherwise taking into her custody any animal in replacement of the animals presently residing with her, to ensure that the animal is in good health by having it examined by a qualified veterinarian before taking possession or control of that animal.

Appearances:

Ms. V. Yip counsel for Her Majesty the Queen.

Ms. S. MacKinnon counsel for Ms. Taker.

CASES CONSIDERED: *R. v. Lundrigan*, 2012 NLCA 43, *R. v. MacIsaac*, [2008] N.S.J. No. 648 (P.C.), *R. v. Barrett*, [2015] N.J. No. 103 (P.C.), *R. v. Webber*, 2013 ABCA 189, *R. v. Knott*, 2012 SCC 42, *R. v. Klemenz*, 2015 SKCA 89, *R. v. Berner*, 2013 BCCA 188, *R. v. Cluney*, 2013 NLCA 46, *R. v. Briand*, [2010] N.J. No. 339 (C.A.), *R. v. Blundon*, 2009 NLTD 6, and *R. v. White*, [2012] N.J. No. 263 (P.C.).

STATUTES CONSIDERED: The *Animal Health and Protection Act*, SNL 2010, and the *Criminal Code of Canada*, R.S.C. 1985.

JUDGMENT OF GORMAN, P.C. J.
(SENTENCE)

INTRODUCTION:

[1] In December of 2014, Ms. Taker had over one hundred and forty cats (plus a parrot) living with her at her residence in Cox's Cove. As might be expected, she was unable to properly care for all of these animals. They were eventually seized and removed by volunteer animal welfare organizations. Not all of the cats survived. Ms. Taker was charged with and has pleaded guilty to having caused "distress" to animals, contrary to section 18(2) of the *Animal Health and Protection Act*, SNL 2010.

[2] The sole issue for determination is the imposition of an appropriate sentence for this offence. For the reasons that will follow, I have concluded that the following sentence should be imposed:

-a fine of \$1,000.00. This fine must be paid to the Provincial Court within twelve months of today's date and it must be paid at a minimum rate of \$100.00 per month with the first payment being made no later than March 15, 2016, and by the 15th of each month thereafter until paid in full;

-payment of a victim surcharge is waived;

--Ms. Taker is prohibited for life from having in her care, control or possession more than five animals at any one time, but she is allowed to maintain possession of the animals presently in her care (Bear, Polar, Bandit,

Panda, and Herman) as long as she provides the Royal Canadian Mounted Police with proof within fourteen days of today's that Bear has been neutered; and

-before purchasing acquiring, or otherwise taking into her custody any animal in replacement of the animals presently residing with her, Ms. Taker must ensure that the animal is in good health by having it examined by a qualified veterinarian before taking possession or control of that animal.

[3] Let me explain my reasons for this conclusion by commencing with a review of the circumstances of the offence committed by Ms. Taker.

THE CIRCUMSTANCES OF THE OFFENCE

[4] On December 13, 2014, Scaredy Cat Rescue, Sunshine Kitty Rescue and Corner Brook Kitty Academy, removed one hundred and forty-one cats from Ms. Taker's residence. The residence was described at the sentence hearing as smelling of urine and feces. The cats were described as being "emaciated", "flea ridden", and in "terrible condition." Many of the cats were "severely ill" and a number of the cats died.

[5] Ms. McKinnon indicated that after Ms. Taker's husband died in 2014, Ms. Taker went to clear out the shed on her property. This shed had been used almost exclusively by her late husband. Ms. Taker found a number of cats and kittens in the shed. Ms. MacKinnon indicated that Ms. Taker brought the cats into her

residence to care for them, but lost control as the number of cats increased. Ms. MacKinnon filed a number of receipts indicting that Ms. Taker had bought food and supplies to care for the cats. Ms. MacKinnon also indicated that Ms. Taker had contacted the Society for the Prevention of Cruelty to Animals for assistance, but did not receive a timely response.

[6] Ms. Taker has four of her own cats (Bear, Polar, Bandit, and Panda) as well as a Catalina Macaw (Herman). These animals were in good condition and not removed from the residence.

THE VICTIM IMPACT EVIDENCE

[7] Crown counsel indicated that the removal and care of the cats seized from Ms. Taker cost approximately \$15,000.00.

[8] On behalf of Scaredy Cat Rescue, Ms. Janice Alteen prepared and read a victim impact statement at the sentence hearing. The statement reads, in part, as follows:

Scaredy Cat Rescue has not fully recovered from the great burden placed on both our finances and resources by the actions of Florence Taker. We faced a sudden, overwhelming reflux of rescued animals in terrible condition that had to be evaluated, given medical care, cleaned up, and neutered, in addition to being housed and fed. Precautions had to be put in place to prevent the great risk of the ill animals introducing communicable disease to cats already in our care. Thousands of dollars earmarked for TRAP/NEUTER/RETURN programs has to be redirected to the care of these cats. We incurred huge additional costs for emergency treatment when cats suddenly became ill after vet office hours. SCR elicited and received assistance from many rescues and shelters throughout the province to

rehome the large number of cats. The workload in organizing the removal of the cats from the home to rescues throughout the province was enormous!

The local area has one shelter which was already filled to its capacity of housing 20 animals. All the cats removed were placed in private homes where arrangements were made to transfer the cats to rescues throughout the province. The rescue effort commenced on November 29, 2015, continuing through the following two months to remove a far higher than usual number of animals being kept as domestic pets, from what we believe was improper housing and care.

Our memories of the sad condition of the cats are forever imbedded in our minds.

The community and rescue individuals are not equipped with the resources, or mental stamina to deal with another such situation.

[9] In *R. v. Lundrigan*, 2012 NLCA 43, the Court of Appeal indicated that a “fit sentence” is one “that takes account of the circumstances of the offences and the offender.”

THE CIRCUMSTANCES OF THE OFFENDER

[10] Ms. Taker is sixty-nine years of age. She has no prior convictions. Ms. Taker was born at Les Iles de la Madeleine, Quebec. The pre-sentence report notes that Ms. Taker “characterized her early personal and family of origin dynamics in positive terms. Her father worked as a marine mechanic and he was the sole wage earner as Ms. Taker’s mother did not work outside the home. Ms. Taker noted that her parents were very strict with respect to the freedom they afforded their children. Overall, Ms. Taker feels that she did have a good upbringing. Ms. Taker

related that she did not have any early, social adjustment issues in the community or school environment.”

[11] Ms. Taker moved to Cox’s Cove after developing a relationship with Mr. George Crane, who died in 2014. The pre-sentence report indicates that Ms. Taker “now lives alone in her home at Cox’s Cove, NL. She has a small circle of friends and associates – many of whom were members of Mr. Crane’s family – in the community. She has four neutered tomcats and a macaw for company and to care for – all of which she owned before the proliferation of other cats in her home that now sees Ms. Taker before the Court. Otherwise, Ms. Taker spends a lot of her free time quilting. Overall, she is content with the life she has made at Cox’s Cove.”

[12] Ms. Taker is retired and she has a retirement income of approximately \$1,500.00 per month.

[13] The author of the pre-sentence report describes Ms. Taker as being “cooperative and respectful during the process of completing” the report:

Ms. Taker was cooperative and respectful during the process of completing this report. She has entered a plea of guilty to the offense of causing distress to cats in her care. Ms. Taker feels that she has been misrepresented by animal protection persons/agencies and the media. She related that she has had a life-long affinity for animals. Her family raised animals and Ms. Taker has had pets throughout her life. She has had four cats for several years and a macaw for even longer.

From her perspective she did her best to care for the numerous cats that she took into her home that had been congregating in a derelict outbuilding on

her property and those that were born thereafter. Ms. Taker related that she spent hundreds of dollars of her own money to feed the animals. She also averred that she had reached out for help from several local, animal advocacy agencies many months prior to any cats being taken from her home to be treated, fostered and – in some cases – euthanized. She felt that she did the best she could do, without the help that she sought, to prevent the animals from perishing.

[14] The author of the pre-sentence report spoke to Dr. Michael Tipple, a veterinarian. Dr. Tipple indicated that “he was not aware of the number of cats in Ms. Taker’s home. Nor was he involved in their aftercare.” He also indicated that Ms. Taker “is a longstanding client who has been a conscientious pet owner of those animals that Dr. Tipple has treated. Ms. Taker does purchase food; prescription diet for one of her cats; and she has promptly consented and paid for necessary treatments.”

[15] Ms. Taker told the author of the pre-sentence report that she “does not intend to adopt any other pets” and wants “to be able to keep those that she does have.”

[16] The pre-sentence report concludes that “community supervision\reporting to a probation officer would be unnecessary in this case with respect to rehabilitation or deterrence”:

Ms. Taker is a first-time, non-violent offender who has, in her own words, lived ‘a good and normal life.’ Ms. Taker has had no experience of being supervised in the community or any history of criminal involvement. She does understand the process and protocols of community supervision and the legal obligations of offenders for whom the Court issues Conditional Sentence Orders and Probation Orders.

Correctional case-planning would be minimal and focused on Ms Taker's compliance to any optional conditions of community supervision such as community service. Ms. Taker is apt to be compliant. Otherwise and from a correctional perspective, community supervision\ reporting to a probation officer would be unnecessary in this case with respect to rehabilitation or deterrence.

There is no assessed risk or need issue that would preclude Ms. Taker from performing community service. Therefore, she is a suitable candidate for a community service order placement.

THE STATUTORY REGIME

[17] Section 18 of the *Animal Health and Protection Act* makes it an offence to casus an animal to be in "distress." Sections 18(1) and (2) of the *Animal Health and Protection Act* state as follows:

(1) A person shall not cause an animal to be in distress.

(2) An owner of an animal shall not permit the animal to be in distress.

[18] The word "distress" is defined in section 2 of the *Animal Health and Protection Act* in the following manner:

"distress" means the state of being in need of proper care, water, food or shelter, being sick, injured, abused or in pain or of suffering undue or unnecessary hardship, privation or neglect.

The Penalty Provision:

[19] Section 76(1) of the *Animal Health and Protection Act* allows the Court to impose a fine, a period of imprisonment or both:

A person who contravenes this Act or the regulations or an order, licence or permit made under this Act or the regulations is guilty of an offence and is

liable on summary conviction to a fine not exceeding \$50,000 and, in default of payment, to a term of imprisonment not exceeding 6 months, or to both a fine and imprisonment.

Forfeiture and Compensation:

[20] Section 72(12) of the *Animal Health and Protection Act* provides the Court with the discretion to issue a forfeiture order and a compensation order:

Where a person is convicted of an offence under this Act or the regulations, a Provincial Court judge may order that

(a) an animal or thing seized in connection with the offence, or the whole or a part of the proceeds of a sale under subsection (9) be forfeited to the Crown; and

(b) the person pay to the minister an amount of compensation for the reasonable costs, expenses and charges incurred by the minister or an inspector in the management, seizure, storage and disposition of an animal or thing seized in connection with the offence.

Prohibition Orders and Order For Costs:

[21] Sections 76(4) and (5) of the *Animal Health and Protection Act* allows the Court to issue orders prohibiting an offender from having the “ownership, care or custody” of an animal (for life) and requiring an offender to pay the costs of the care provided to an animal:

(4) Where a person is convicted of an offence, a Provincial Court judge may, in addition to another penalty, make an order

(a) prohibiting that convicted person and, if the convicted person is a corporation, the directors and officers of the corporation described in subsection (2), from having the ownership, care or custody of an animal, or of a number or type of animal specified in the order, for a period of time specified in the order, including in the case of an

individual, for the remainder of the person's life and, in the case of a corporation, forever; and

(b) directing that an animal in the ownership or care of that convicted person be delivered into the custody of the SPCA or the minister.

(5) Where a person is convicted of an offence, the court making the conviction may, in addition to another penalty, make an order that the convicted person pay the whole or a part of the cost of providing transportation, food, care, shelter or treatment provided to, and where applicable, management or destruction of, an animal that was the subject of the offence of which the convicted person was convicted.

[22] Thus, a judge can issue a prohibition order in relation to the ownership, care or custody of animals, for a period up to the remainder of the offender's life. However, section 76(4) of the *Animal Health and Protection Act* does not explicitly provide a judge with the power to include conditions in such an order. Section 76(4) does refer to the order specifying types or number of animals and by doing so a judge could order that certain animals are exempt from that order.

[23] In summary, the *Animal Health and Protection Act* sets out a maximum penalty of a fine of \$50,000 and/or a period of six months imprisonment. The Act allows a judge to issue a forfeiture order, a compensation order and a prohibition order in relation to the ownership, care or custody of animals.

THE POSITIONS OF THE PARTIES

THE CROWN:

[24] The Crown sought the imposition of a fine in the range of \$1,000 to \$1,500, a life time animal ownership prohibition pursuant to section 76(4) of the *Animal*

Health and Protection Act, and a forfeiture order pursuant to section 72(12) of the *Animal Health and Protection Act* in relation to the cats seized from Ms. Taker. The Crown did not seek a section 76(5) costs order. Ms. Yip submitted that both general and specific deterrence must be emphasized.

[25] The Crown indicated that it had no objection to Ms. Taker maintaining ownership of the five pets that presently reside with her, subject to a number of conditions being attached to the section 76(4) ownership prohibition. Many of these conditions have already been complied with by Ms. Taker. Ms. Yip requested that Ms. Taker be ordered to provide proof that Bear has been neutered and that I issue an order that Janet Bennett, a representative of Scaredy Cat Rescue, be permitted to enter Ms. Taker's residence so as to ensure that any animal residing with Ms. Taker is being properly taken care of.

[26] In support of her position, Ms. Yip presented a very thorough and reasoned submission. She referred to **R. v. MacIsaac**, [2008] N.S.J. No. 648 (P.C.) and **R. v. Barrett**, [2015] N.J. No. 103 (P.C.), in support of the Crown's position.

[27] In **Barrett**, the accused was convicted of the offence of cruelty to animals, contrary to section 445.1 of the *Criminal Code*, as well as offences contrary to the *Animal Health and Protection Act*. The latter offences involved the failure to provide proper care to a number of dogs. Judge Porter imposed a period of six

months incarceration for the *Criminal Code* offence and fines of \$500.00 for each of the *Animal Health and Protection Act* offences.

[28] In *MacIsaac*, the accused pleaded guilty to the offence of causing distress to animals, contrary to section 11(2) of the *Animal Health and Protection Act*, R.S.N.S. 1989. The offence involved twenty-seven dogs and seventy-eight cats. The evidence at the sentence hearing indicated that when the accused's residence was checked, the officers "could detect a strong smell of urine and faeces as well as an ammonia smell. There was barking and yelping in the house. And when they arrived in the house there was no food in view. The floor was covered with faeces and urine and there was a strong ammonia smell." Judge Tax endorsed a joint submission requesting the imposition of a fine of \$1,000, an order prohibiting the accused from owning and having custody of animals for a period of twenty years, subject to certain conditions, and an order allowing officers of the Society for the Prevention of Cruelty to Animals to inspect the accused's residence without notice for a period of twenty years. However, the decision in *MacIsaac* does not refer to any statutory authority allowing for such conditions to be imposed.

[29] Ms. Taker had no objection to providing proof that Bear has been neutered and she will be ordered to provide this proof to the Royal Canadian Mounted Police within fourteen days of today's date.

[30] Ms. Taker objected to Ms. Bennett being granted judicial approval to enter her residence. Ms. Taker feels that Ms. Bennett is antagonistic toward her. On this point, various Facebook pages were referred to by both counsel. These excerpts prove little or nothing. Counsel should refrain from attempting to enter such “evidence” from the counsel table. Facebook entries, which often contain a significant amount of hearsay and prejudicial information, are subject to the normal rules of evidence.

[31] The entering of a person’s residence through judicial authority is a prescribed power in Canada. To include it as a condition of an order under provincial legislation would be a significant expansion of a process significantly limited by Canadian law. In addition, the Crown should be leery of seeking to provide members of volunteer organizations with investigative powers beyond those even possessed by the police. Allowing Ms. Bennett or any volunteer of any organization to enter another person’s property so as to monitor their behaviour is fraught with risks and dangers to all involved. Even if I had the authority to issue such an order pursuant to the *Animal Health and Protection Act*, I would decline to do so. It is overly broad, invasive and intrusive. Ms. Taker’s offence does not result in her forfeiting her constitutionally protected privacy interests.

[32] Finally, there is no evidence that this order is necessary. The animals which live with Ms. Taker could have been seized when the multitude of cats were

seized. Obviously a decision was reached that these animals were not in need of care. If an “inspector” has reasonable grounds to believe that entry into Ms. Taker’s residence is required, then an application for a warrant to do so can be sought through section 11 of the *Animal Health and Protection Act*. This is the manner in which any residence should be entered, not at the whim of a volunteer for any organization.

MS. TAKER:

[33] Ms. Taker did not object to the range of sentence suggested by the Crown. In addition, Ms. Taker did not object to an animal ownership prohibition order being issued pursuant to section 76(4) of the *Animal Health and Protection Act*. However, she argued that it should not be an absolute ban and should allow for her to keep a limited number of animals, including the ones presently in her possession.

[34] Ms. MacKinnon argued that Ms. Taker did not intend to harm the cats seized from her. Ms. MacKinnon described Ms. Taker feeling “stuck” with caring for the cats and being overwhelmed.

[35] Ms. MacKinnon also submitted that Ms. Taker has been the subject of unfair media criticism. Ms. MacKinnon referred to a number of newspaper articles in which certain representatives of Scaredy Cat Rescue purportedly referred to Ms. Taker having “hoarded” the cats which were subsequently seized from her.

Newspaper articles are also subject to the rules of evidence. Comments in the media are not evidence and cannot be the subject of submission from the counsel table. In addition, it is not the role of the Court to scrutinize media reports for accuracy. The newspaper clippings submitted in this case are of no assistance.

THE PRINCIPLES OF SENTENCING

[36] It has been held that the “sentencing process” is “profoundly contextual” in “nature” (see *R. v. Webber*, 2013 ABCA 189). In *R. v. Knott*, 2012 SCC 42, it was held that “the purpose and principles of sentencing set out in the *Criminal Code* are meant to take into account the correctional imperative of sentence individualization.”

[37] In *R. v. Klemenz*, 2015 SKCA 89, it was held that determining “an appropriate sentence requires consideration of the purposes and principles of sentencing as set out in ss. 718 to 718.2 of the *Criminal Code* as those purposes and principles apply to the individual circumstances of the offence and the offender. It requires the weighing of factors and the balancing of sometimes conflicting objectives.”

[38] In *R. v. Berner*, 2013 BCCA 188, the British Columbia Court of Appeal indicated that the “purpose of sentencing is to protect the public through sanctions a court imposes upon a person found guilty of committing an offence. Each

codified objective of sentencing is designed to further the protection of the community.”

[39] Section 718 of the *Criminal Code* states that the fundamental purpose of sentencing "is to contribute...to respect for the law and the maintenance of a just, peaceful, and safe society." This is to be achieved by imposing sentences which have, among other objectives, the objectives of:

- separating offenders from society, where necessary;
- denouncing unlawful conduct;
- general deterrence;
- rehabilitation; and
- the promoting of a "sense of responsibility in offenders, and acknowledgement of the harm done to victims or to the community."

[40] Section 718.2(b) of the *Criminal Code* states that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances."

[41] Section 718.1 of the *Criminal Code* states that any sentence imposed must be "proportionate to the gravity of the offence and the degree of responsibility of the offender." In *R. v. Cluney*, 2013 NLCA 46, the Court of Appeal, at paragraph 16, indicated that the “principle of proportionality applies to sentencing for all

criminal offences...The appropriate range of sentence is related to the gravity of the offence and the moral blameworthiness of the offender.”

[42] Section 718.2(a) of the *Criminal Code* indicates that a "sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender." In *R. v. Briand*, [2010] N.J. No. 339 (C.A.), the Court of Appeal stressed the importance of considering an offender's personal circumstances in applying section 718.2(a) of the *Criminal Code*.

[43] Section 718.2(d) states that "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances" and section 718.2(e) states that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders."

[44] In *Berner*, the British Columbia Court of Appeal noted that broadly “speaking, a sentencing judge looks to the conduct and culpability of the offender and punishes the offender for that conduct through the application of the principles and objectives of deterrence, rehabilitation, denunciation and proportionality.”

SENTENCING PRECEDENTS

[45] In *R. v. Blundon*, 2009 NLTD 6, the accused was convicted of an offence contrary to section 3 of the former *Dog Act*. The trial judge imposed the death

penalty. The accused appealed. The appeal was allowed. The appeal court judge set aside the death penalty and imposed a fine of \$450.00.

[46] In *R. v. White*, [2012] N.J. No. 263 (P.C.), the accused threatened to kill his former girlfriend's cats, killed one cat and injured another, contrary to sections 264.1(1) and 445(1)(a) of the *Criminal Code*. The accused subsequently failed to appear in court. I imposed a period of six months imprisonment, which included a period of three months imprisonment for killing one cat and two months imprisonment for injuring a second cat.

ANALYSIS

[47] Ms. Taker has shown an ability to care for animals. The evidence presented indicates that the four cats and the parrot under her control are well cared for. The evidence indicated that she spent money on attempting to feed and care for the seized cats.

[48] I accept that Ms. Taker did not intentionally inflict harm upon any of the seized cats, but her actions illustrate an alarming degree of indifference to their health and well-being. These cats, and Ms. Taker, were living under deplorable conditions. Ms. Taker lived with these cats. She could not have been unaware of the suffering the cats were being subjected to and her ability to care for her own cats and parrot illustrates that she was not completely overwhelmed. In addition, the seized cats were not imposed upon Ms. Taker. She took a number of cats in to

her home and then let them exponentially reproduce to the point that it became impossible for her to care for them.

[49] Once Ms. Taker took the cats into her home and allowed them to propagate, she had a responsibility to care for them. She failed to do so.

[50] In imposing sentence, I must impose a sentence which deters individuals from harming animals. That such harm is caused by indifference to suffering as compared to the purposeful infliction of harm does not lessen this requirement.

[51] There are few sentencing precedents which can be used as guidance in this case and the sentencing provisions in the *Animal Health and Protection Act* are inelegantly drafted. However, considering the circumstances of the offence, Ms. Taker's circumstances, and the applicable principles of sentencing, I have concluded that the following sentence is appropriate:

-a fine of \$1,000.00 is imposed. This fine must be paid to the Provincial Court within twelve months of today's date and it must be paid at a minimum rate of \$100.00 per month with the first payment being made no later than March 15, 2016, and by the 15th of each month thereafter until paid in full;

-considering the amount of the fine and Ms. Taker's financial resources, payment of a victim surcharge is waived;

-Ms. Taker is prohibited for life from having in her care, control or possession more than five animals at any one time, but she is allowed to maintain possession of the animals presently in her care (Bear, Polar, Bandit, Panda, and Herman) as long as she provides the Royal Canadian Mounted Police with proof within fourteen days of today's that Bear has been neutered; and

-before purchasing, acquiring, or otherwise taking into her custody any animal in replacement of the animals presently residing with her, Ms. Taker must ensure that the animal is in good health by having it examined by a qualified veterinarian before taking possession or control of that animal.

CONCLUSION

[52] For the reasons provided, Ms. Taker is sentenced to a fine of \$1,000.00, she is prohibited from having in her care, control or possession more than five animals at any one time; and before purchasing, acquiring, or otherwise taking into her custody any animal in replacement of the animals presently residing with her, Ms. Taker must ensure that the animal is in good health by having it examined by a qualified veterinarian before taking possession or control of that animal. The animals seized are forfeited the Crown.

[53] Judgment accordingly.