

File No: 33140-1  
Registry: Duncan

**In the Provincial Court of British Columbia**

**REGINA**

**v.**

**OREST POHYNAYKO**

**REASONS FOR SENTENCE  
OF  
THE HONOURABLE JUDGE WOOD**

**COPY**

<b>Crown Counsel:</b>	<b>J. Patsch</b>
<b>Defence Counsel:</b>	<b>S. Sheets</b>
<b>Place of Hearing:</b>	<b>Duncan, B.C.</b>
<b>Date of Judgment:</b>	<b>May 25, 2012</b>

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[1] THE COURT: There will be a fine. Did you want this fine payable to the SPCA?

[2] MS. PATSCH: That's what I was -- I was suggesting, if it could be payable as sort of a type of restitution.

[3] THE COURT: So it is not a fine, it is costs?

[4] MS. PATSCH: Well, essentially, or restitution, but because --

[5] THE COURT: So it is costs under s. 20(1).

[6] MS. PATSCH: My concern was that because of the reading of s. 24.1 there had to be some sort of fine, so rather than burdening Mr. Pohynayko with a fine and costs, but --

[7] THE COURT: Well, I am going to set the fine in an amount which takes into account the costs that I am going to order.

[8] MS. PATSCH: Okay.

[9] THE COURT: I am going to, of course, have to provide a good deal of time for him to pay both, given the circumstances that I have heard. So the fine is not representative of what I consider to be the enormity of the offence, which was complete and utter disregard for the well-being of the horse, whether that horse was named Sunny or otherwise. That horse needed vet care and Mr. Pohynayko simply utterly refused, and he made it very clear to Mr. Bakken, the SPCA officer who attended on him on the second occasion and spoke with him. He refused. He said he would not be calling a vet. It was that assertion --

[10] THE ACCUSED: That's not true. That's not true. That was previous. That

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was way before this situation. When he came, that had -- that was nothing --

[11] THE COURT: Mr. Sheets?

[12] THE ACCUSED: -- to do with this horse.

[13] THE COURT: That is the evidence that was given in this trial by Mr. Bakken and that is the evidence on which I am proceeding in sentencing.

[14] So as I say, the fine that I am going to impose does not in any way represent what I consider to be the real serious nature of the offence. There can be nothing worse than to disregard the well-being of an animal for which you have responsibility as the owner. In the circumstances, the fine that I should impose should be very much higher. However, it will be a fine of \$100.

[15] The reason the fine is \$100 is because I am going to make an order under s. 20(1) of the Act, as it then was, that Mr. Pohynayko will be responsible for a total of \$1,826.80 in costs. That will be payable to the SPCA. That is less than the actual costs that were required to care for both Sunny and the mare, Sunny or the horse that was seized, and its mother from which it was not yet weaned, but that mare had to be kept in care until such time as the colt was weaned. I am not sure when that was, but I have discounted the total cost to the SPCA of \$2698.27 with what Ms. Patsch tells me are the costs that can be reasonably associated with the costs of keeping the mare, because I am not certain at what point in time, if at all, the colt was in fact weaned, at which point the mare could have gone elsewhere. So the amount of costs payable to the SPCA, \$1,826.80.

[16] So there is a total bill, if I can call it that, of \$1,926.80 which will be payable in

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two amounts, a hundred dollars in the form of a fine, and the balance of the form of costs payable to the SPCA.

[17] I will, if there is a victim fine surcharge applicable to this offence, I will waive it in the circumstances in light of Mr. Pohynayko's financial circumstances.

[18] Now, in terms of time to pay, Mr. Sheets?

[19] MR. SHEETS: I don't know how much time is available under the Act, Your Honour, but I would suggest the maximum time --

[20] THE COURT: Well, I don't think the Act would --

[21] MR. SHEETS: -- at least a year.

[22] THE COURT: The Act is not involved in time to pay. I can give as much time as is reasonable in the circumstances.

[23] MR. SHEETS: I would suggest, Your Honour, 20 months.

[24] THE COURT: Ms. Patsch?

[25] MS. PATSCH: I have no submissions, Your Honour.

[26] THE COURT: All right. Well, we may as well make it a round number, 24 months to pay the fine and the costs. The fine should be paid first and the costs will be paid second.

[27] There will be an order under s. 24(3) of the Act, as it then was, that Mr. Pohynayko is not to own or have in his possession any horses for the balance of his life, with the exception of the 21-year-old thoroughbred stallion named Handsome Harold currently in his possession. In making that order, I do so because I am of the

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view that there is virtually no possibility of Mr. Pohynayko getting rid of the stallion Handsome Harold in a fashion that would be amenable to the health and well-being of that horse.

[28] THE ACCUSED: Why wouldn't they take him? They can have him. Do you want him, SPCA? You wanted the rest of the money that the horses -- you might as well have this one.

[29] THE COURT: I recognize that in making that order, or making that exception to the order, that I am saddling the SPCA with the further burden of doing periodic checks on the horse to ensure that it is being maintained and I hope that they will do so and take appropriate action if, in fact, it appears to them that the stallion is not being properly cared for, but I feel in the circumstances I have to give the horse a chance. Given the report that apparently came from the SPCA in April of this year that the horse was, generally speaking, in sound condition with the exception of the usual lack of hoof care, which by itself is not -- providing it's not associated with, as the colt in this case was, the kind of problem that this colt suffered from, it seems to me that the horse should be allowed to live out its days in the care of a man who has owned him for, as he says, some 20 years. It may be an act of misguided humanity, whether it is to Mr. Pohynayko or to the horse, but in any event, that is my order.

[30] Mr. Pohynayko will have to sign a time to pay form before he leaves here today. Mr. Pohynayko should know that if at the end of 24 months because of his financial circumstances he has not been able to make full payment, he may apply for a further extension of time if the judge before whom he makes that application is satisfied that he has made honest efforts, and that is the key, but has not been able

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to make full payment of the fine and costs because of his financial circumstances, he may apply for a further extension and he may in fact -- I do not say he will, but he may get a further extension. It is unlikely given the length of time that I have already given Mr. Pohynayko to pay that amount of money.

(REASONS CONCLUDED)