

# In the Alberta Court of Justice

Citation: R v Van Hoepen, 2024 ABCJ 79

Date: 20240411  
Docket: 220549703P1;  
220958037P1  
Registry: Calgary

Between:

**His Majesty the King**

- and -

**William Van Hoepen**

## Reasons for Sentence of the Honourable Justice A.A. Fradsham

### Introduction

[1] Mr. Van Hoepen pleaded guilty to three offences:

1. On May 15, 2022, at Calgary, Alberta, and without lawful excuse, willfully injuring a dog (“Kato”) contrary to section 445.1(1)(a) of the *Criminal Code* (Count 2 on Information 220549703P1).
2. On September 20, 2022, biting a finger of his domestic partner and thereby committing an assault and disobeying a previous court order contrary to sections 266 and 127(1), respectively, of the *Criminal Code*.

[2] A reference in these Reasons to a section number is, unless otherwise stated, a reference to that section number in the *Criminal Code*.

[3] The Crown proceeded by summary conviction procedure.

### Issues

[4] The overarching issue involves the determination of the appropriate sentences to be imposed in relation to these three offences. The subsidiary issue is whether a section 742.1 Conditional Sentence Order is appropriate if a gaol sentence is imposed in relation to the section 445.1(1)(a) animal injury offence.

## Facts

### *The Offences*

[5] The facts in relation to the offences of assault and breach of the court order are as follows:

1. On November 2, 2021, Mr. Van Hoepen entered into a peace bond because his actions on January 28, 2021, had caused his domestic partner to have a reasonable fear that Mr. Van Hoepen would cause him personal injury. The Peace Bond required Mr. Van Hoepen to “keep the peace and be of good behaviour”. On September 30, 2022, Mr. Van Hoepen and his domestic partner (a different partner than he had in January 2021), had an argument which escalated into a shoving match. Both men were intoxicated. Mr. Van Hoepen bit his partner’s right hand ring finger and drew blood, thereby committing assault and the section 127(1) *Criminal Code* offence of disobeying a court order (peace bond) of November 2, 2021 (Counts 1 and 2, respectively, on Information 220958037P1).

[6] The facts in relation to the offence of injuring the dog are as follows:

1. On May 15, 2022, at 11:15 pm, Mr. Van Hoepen (the offender) was outside a condominium complex in Calgary. He had with him a dog (medium to large size) who was not on a leash. Using two hands, the offender grabbed the dog by its throat, dragged the dog towards a concrete barrier beside the driveway to the condominium complex’s parkade, and slammed it against the barrier. The offender then punched the dog several times in its head. The dog yelped when struck. This was observed by a witness who yelled at the offender; the offender stopped hitting the dog.
2. The offender then entered the condominium complex. He picked the dog up by its collar; all four feet of the dog were off the floor. Once inside the first set of doors of the complex, Mr. Van Hoepen put the dog down and kicked the dog in the ribs. The dog ran away. The kick fractured one of the dog’s ribs. The offender admitted that, as a result of the fractured rib caused by the kick, the dog would have suffered bruising and protracted pain during the healing process.

### *The Offender*

[7] Mr. Van Hoepen is currently 27 years old; he was 25 years old when he committed these offences. He had no criminal record.

[8] He now lives in Regina, Saskatchewan, and has employment with a funeral home. His plans are to make that work his career. I accept that those plans are realistic.

[9] I am told, and accept, that Mr. Van Hoepen experienced physical violence at the hands of his father.

[10] I also accept that Mr. Van Hoepen took 7 on-line counselling sessions between June and September, 2022. However, beyond that, I know nothing of the content of those sessions, nor do I have any information about the agency or individuals who conducted the sessions. While I do accept that Mr. Van Hoepen’s participation in the sessions is some positive evidence of his desire to take responsibility for his actions and a willingness to address his problems, apart from that, his participation in those sessions does not assist me in my deliberations.

[11] Mr. Van Hoepen exercised his right under section 726 to address the Court. He expressed remorse at having hurt others. He said that he understands “vulnerability” and “what it is like to have to hide”. He said that his father made him fearful, and that he never wanted to do that to other people or animals and “now he has”. He said that he grew up on a farm with animals, and that what he did to the dog was a “horrible thing to do”. He said he was very sorry for his acts.

[12] I accept that Mr. Van Hoepen is genuinely remorseful for his actions, and I accept the sincerity of his expressed remorse. I accept that he now has insight into his offending behaviour.

## Law and Analysis

### *Crown’s Position*

[13] The Crown submitted that the appropriate global sentence is 60 to 90 days incarceration followed by 6 months of probation. The Crown submitted that the gaol sentence could be served on an intermittent basis. The Crown also sought an order under section 447.1 prohibiting Mr. Van Hoepen from “owning, having the custody or control of or residing in the same premises as an animal or a bird” for his lifetime.

[14] The Crown submitted that deterrence and denunciation are the primary sentencing objectives for crimes of violence, and that is particularly so for crimes of violence against intimate partners and against animals. The Crown submitted that only a gaol sentence could achieve those objectives in this case.

[15] The Crown opposed any gaol sentence imposed being served in the community pursuant to a Conditional Sentence Order (CSO) under section 742.1, and did so submitting that a CSO would not adequately achieve the identified sentencing objectives.

### *Defence Position*

[16] The defence submitted that the passage of sentence should be suspended, and that Mr. Van Hoepen should be placed on probation with counselling terms. In the alternative, defence submitted that if gaol was necessary, then such a sentence should be served in the community pursuant to the conditions set out in a CSO.

### *Court’s Analysis*

[17] The sentencing objectives in respect of the offence of causing unnecessary pain to the dog are deterrence and denunciation: **R. v. Chen** 2021 ABCA 382, at paragraph 39.

[18] The sentencing objectives in respect of the assault committed upon an intimate partner are deterrence and denunciation: **R. v. Brown** 1992 ABCA 132.

[19] The sentencing objectives in respect of the offence of breaching a court order are deterrence and denunciation.

[20] The aggravating factors applicable in the case at bar are (1) that the assault was committed against the offender’s intimate partner [section 718.2(a)(ii)]; and (2) that the animal cruelty offence was committed against a victim (his pet dog) over which the offender had authority [section 718.2(a)(iii)].

[21] The mitigating factors are (1) that the offender pleaded guilty to each of the offences; (2) that the offender is genuinely remorseful; and (3) that the accused has no criminal record [**R. v. Bertrand Marchand** 2023 SCC 26 at paragraph 127].

[22] Section 718.2 also states that:

1. “a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances”: section 718.2(b).
2. “where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh”: section 718.2(c).
3. “an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances”: section 718.2(d).
4. “all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders....”: section 718.2(e).

[23] Having said all that, it is imperative to remember that the fundamental principle of sentencing is proportionality: that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Proportionality is not only the paramount sentencing principle, but is also the “organizing” sentencing principle, related to all other sentencing considerations in sometimes complex ways: **R. v. Parranto**, 2021 SCC 46 at paragraph 10:

“The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives”: denouncing unlawful conduct and harm done to victims, deterring the offender and others from committing offences, separating offenders from society where necessary, assisting in rehabilitating and promoting a sense of responsibility in offenders, and acknowledging and paying reparations for harm done to victims or communities: s 718.

[24] In the case at bar, I am satisfied that if I were to suspend the passage of sentence and put Mr. Van Hoepen on probation, I would not achieve the sentencing objectives of general deterrence and denunciation, nor would I have crafted a sentencing response which was proportionate to either the animal cruelty offence or the domestic violence offence. Such a sentencing response might be appropriate in some cases, but not on the facts of this case.

[25] The animal cruelty offence, while neither as prolonged nor as vicious as the beating described in **R. v. Chen**, *supra*, was serious. The offending behaviour inflicted significant pain, and though I infer the intensity of that pain diminished over time, some degree of pain was present during the healing process. The offence was made up of several separate acts of violence.

[26] The domestic violence offence resulted in a cut to the finger of Mr. Van Hoepen’s domestic partner. That alone makes the assault serious, but I am of the view that though the “seriousness” threshold is breached, the event was still towards the lower end of the serious range of domestic assaults.

[27] I am satisfied that a period of incarceration is required for the animal cruelty offence. I am of the view that the imposition of fines will address the sentencing objectives and be proportionate for the breach of the court order and the assault.

[28] As to the assault, I am guided by the words of the Court of Appeal in *R. v. Brown, supra*. At paragraphs 20-21, the Court said:

20. In cases of assault by a man against his wife, or by a man against a woman with whom he lives even if not married, the starting point in sentencing should be what sentence would be fit if the same assault were against a woman who is not in such a relationship. For example, what would be the fit sentence if the man had assaulted a woman on the street or in a bar -- and if the aggravating factors (such as severe violence, or a serious record of previous convictions for similar or other assaults), or the mitigating factors (such as a guilty plea or other evidence of remorse) were the same as in the actual case?

21. Then the Court should examine the circumstances which are peculiar because of the relationship. When a man assaults his wife or other female partner, his violence toward her can be accurately characterized as a breach of the position of trust which he occupies. It is an aggravating factor. Men who assault their wives are abusing the power and control which they so often have over the women with whom they live. The vulnerability of many such women is increased by the financial and emotional situation in which they find themselves, which makes it difficult for them to escape. Such women's financial state is frequently one of economic dependence upon the man. Their emotional or psychological state militates against their leaving the relationship because the abuse they suffer causes them to lose their self-esteem and to develop a sense of powerlessness and inability to control events.

[29] In short, the Court said one should determine the appropriate sentence if the offence had been committed on a stranger, and then adjust the sentence to take into account the fact that it was committed within a domestic relationship.

[30] Though the Court spoke in terms of a male – female domestic relationship, I am of the view that the concepts apply to all domestic relationships.

[31] In the case at bar, this particular assault, if committed against a stranger by a 25 year old person with no record, might have resulted in a suspended sentence or a fine. A higher than usual fine will take into account the domestic nature of this particular offence.

[32] I have addressed the gravity of the offences. I am satisfied that the degree of responsibility of Mr. Van Hoepen is high. His childhood had unfortunate aspects to it, but I cannot find on the evidence before me that they have any marked effect upon his moral culpability.

[33] The Crown submitted that a CSO would not achieve the sentencing objectives in relation to the animal cruelty offence. I respectfully disagree.

[34] A CSO, through its conditions, can be a significant restriction on the liberty of the subject. Justice Berger’s statement in *R. v. Soto* 2016 ABCA 85, at paragraph 3, though made in relation to “house arrest” conditions in a judicial interim release order, are apposite:

“Nowhere in his reasons do I see a recognition of the import and significance of strict house arrest as “punishment” in this case. Of course, strict house arrest does not equate with incarceration in a penitentiary or in a remand facility. But it does constitute a substantial encroachment on the liberty of the subject and, in my opinion, is deserving of careful consideration in the constellation of punishment visited and to be visited on the appellant for his crimes.”

[35] Further, as a consequence of the restrictions placed upon all Canadians as our nation struggled to deal with the recent Covid pandemic, the unpleasant impact on an individual resulting from material restrictions on personal liberty is now a matter of common knowledge. Through restrictions on personal liberty, society can express its denunciation of the offending behaviour. As Lamer, C. J. said in *R. v. Proulx* 2000 SCC 5 (at paragraph 102):

“...Incarceration will usually provide more denunciation than a conditional sentence, as a conditional sentence is generally a more lenient sentence than a jail term of equivalent duration. That said, a conditional sentence can still provide a significant amount of denunciation. This is particularly so when onerous conditions are imposed and the duration of the conditional sentence is extended beyond the duration of the jail sentence that would ordinarily have been imposed in the circumstances....”

[36] For the same reason, a CSO can exert the necessary general and specific deterrent effect (see paragraph 22 of *Proulx*).

[37] The ultimate question is: In the case at bar, can a CSO, with the conditions which may in law be placed in it, be a proportionate sentence which takes into account the gravity of the offence and the degree of responsibility of the offender?

[38] I am of the respectful view that in the case at bar it can do so. I am satisfied that the service of a sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2. The length of the CSO, and its terms, can send powerful messages about the offences committed by Mr. Van Hoepen. Those messages can be strong and clear about both deterrence and denunciation. Certainly, a CSO may not be a proportionate sentence in all animal cruelty cases, but the question is whether a CSO is adequate in the particular case at bar. I am satisfied that a properly crafted CSO is adequate.

[39] As to the section 447.1 lifetime prohibition sought by the Crown, the Court of Appeal in *R. v. Chen*, *supra*, said that such orders are designed to prevent harm to animals “in circumstances where there is a reasonable risk of future harm” to animals (see: paragraph 40).

[40] In the case at bar, there is no evidence before me which would allow me to conclude that whatever factors caused Mr. Van Hoepen to so mistreat his dog have now been successfully addressed. Consequently, I must conclude that there is still a present, reasonable risk of him

mistreating other animals within his control. Therefore, I will impose a section 447.1 prohibition order. I choose to make the order for 10 years on the basis that with the counselling to which I shall later refer, together with the maturity which may be reasonably expected to develop in a young adult over time, it is reasonable to conclude that within that 10 year period Mr. Van Hoepen will have learned how to properly care for animals within his control.

## Sentences

### *Information 220549703P1*

[41] On Count 2, I impose a gaol sentence of 6 months to be served in the community pursuant to a section 742.1 Conditional Sentence Order followed by a period of probation for 12 months.

[42] The terms of the Conditional Sentence Order are as follows:

1. Keep the peace and be of good behaviour.
2. Appear before the court when required to do so by the court.
3. Report to a supervisor within two working days, and thereafter report when required to do so by your supervisor and in the manner directed by your supervisor.
4. You are specifically granted permission to reside in the Province of Saskatchewan, and permission is granted to transfer supervision of this Order to the appropriate authorities in the Province of Saskatchewan.
5. Notify the court or your supervisor in advance of any change of name or address and promptly notify the court or your supervisor of any change of employment or occupation.
6. Attend for assessment and counselling as directed by your supervisor, and provide to your supervisor a waiver of confidentiality so that your supervisor may obtain information from those providing counselling to you, and provide proof satisfactory to your supervisor of having completed the assessment and counselling to which you have been directed.
7. Reside only where approved by your supervisor.
8. For the first 4 months of this Order, remain in your approved residence or its grounds 24 hours a day, 7 days a week (house arrest) with the following exceptions: (a) When travelling directly to and from work, or being at your place of employment for the purposes of work; (b) attending to medical emergencies involving yourself or immediate family; (c) travelling directly to or from, or attending educational or vocational training; (d) shopping for the necessities of life for no more than two hours per week and only as approved by your supervisor; (e) travelling directly to and from, and attending, any assessment or counselling directed by your supervisor; (f) travelling directly to and from, and completing any community service hours required by this Order and which are approved by your supervisor; and (g) any exception approved in advance in writing by your supervisor.

9. For the last 2 months of this Order, maintain a curfew which requires you to be in your approved residence or its grounds from 10 pm to 6 am each day. The same exceptions apply to the curfew as apply to the house arrest as set out in this Order.
10. Maintain a land line telephone at your approved residence, with no call forwarding feature, during the currency of this Order, and keep your supervisor apprised at all times of that telephone number. Answer that telephone when it rings during those hours you are required to be in your approved residence.
11. During the hours you are required to be in your approved residence, answer the door to, or attend at the vehicle of, any peace officer or other person supervising your compliance with the terms of this Order.
12. On or before August 30, 2024, perform 40 hours of community service to the satisfaction of your supervisor, and, upon demand of your supervisor, provide proof satisfactory to your supervisor that you have performed those community service hours.

[43] The terms of the 12-month Probation Order are as follows:

1. Keep the peace and be of good behaviour.
2. Appear before the court when required to do so by the court.
3. Report to probation within two working days of the completion of your Conditional Sentence Order, and thereafter report when required to do so by your probation officer and in the manner directed by your probation officer.
4. You are specifically granted permission to reside in the Province of Saskatchewan, and permission is granted to transfer supervision of this Probation Order to the appropriate authorities in the Province of Saskatchewan.
5. Notify the court or your probation officer in advance of any change of name or address and promptly notify the court or your probation officer of any change of employment or occupation.
6. Attend for assessment and counselling as directed by your probation officer, and provide to your probation officer a waiver of confidentiality so that your probation officer may obtain information from those providing counselling to you, and provide proof satisfactory to your probation officer of having completed the assessment and counselling to which you have been directed.
7. Reside only where approved by your probation officer.

[44] Pursuant to section 447.1(1)(a), I make an order prohibiting the offender from owning, having the custody or control of, or residing in the same premises as an animal or a bird for 10 years.

[45] I impose a victim surcharge of \$100 pursuant to section 737(2)(b)(i).



[46] On Count 1 (assault), I impose a fine of \$1000 plus a 30% surcharge [section 737(2)(a)]. In default of payment of the fine within the time permitted for its payment (and I will hear submissions on time to pay), then the offender will serve a term of imprisonment determined in accordance with section 734(5).

[47] On Count 2 (breach of the court order), I impose of fine of \$200 plus a 30% surcharge [section 737(2)(a)]. In default of payment of the fine within the time permitted for its payment (and I will hear submissions on time to pay), then the offender will serve a term of imprisonment determined in accordance with section 734(5).

[48] The terms of imprisonment for failure to pay the fines are consecutive if they are served.

[49] In assessing the fines, I have taken into account the totality of their impact upon the offender.

Dated at the City of Calgary, Alberta this 11<sup>th</sup> day of April, 2024.

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A.A. Fradsham  
A Justice of the Alberta Court of Justice

**Appearances:**

Jo-Ann Munn Gafuik  
for the Crown

Nkiru Anyanwu  
for the Offender