

2017 BCPC 228
British Columbia Provincial Court

R. v. Blackwell and Larson

2017 CarswellBC 2137, 2017 BCPC 228, [2017] B.C.W.L.D. 5876, 141 W.C.B. (2d) 684

REGINA v. LLOYD BLACKWELL, CODY LARSON

P. La Prairie Prov. J.

Heard: June 28, 2017

Judgment: June 28, 2017

Docket: Chilliwack 63894-2-C

Counsel: J. MacAulay, for Crown
B. Durrant (Blackwell), for Accused
E. France (Larson), for Accused

Subject: Criminal; Property

Related Abridgment Classifications

Criminal law

[XXIII Sentencing by offence](#)

[XXIII.12 Wilful and forbidden acts in respect of certain property](#)

[XXIII.12.b Cruelty to animals](#)

Headnote

Criminal law --- Offences — Cruelty to animals — Injuring or endangering cattle

Accused L and accused B were employed by dairy farm, and were responsible in relation to cattle — Evidence depicted L hitting and kicking cows, and L failed to intervene to prevent similar actions of other employees — After cow had fallen, other employees kicked and hit cow with chains, and B lifted cow using tractor and chain hooked around cow's neck — Both accused pleaded guilty to 'being person responsible for animals, causing or permitting cattle to be in or continue to be in distress', in violation of [s. 9.1\(2\) of Prevention of Cruelty to Animals Act](#) — Accused L also pleaded guilty to 'being person responsible for animals, failing to care and protect cattle from circumstances likely to cause animals to be in distress', in violation of [s. 9.1\(1\) of Act](#) — L sentenced to \$4,000 fine; jail sentence of 20 days, to be served intermittently on weekends; one year prohibition from owning or having custody or control of large animals for remuneration; and probation while serving sentence — B sentenced to fine of \$7,000; and three year prohibition from owning or having custody of large animals for remuneration — Accused acknowledged harm caused or permitted, expressed remorse and accepted responsibility — Range of sentences set out in authorities provided by Crown were consistent with sentences being proposed by way of joint submission, which was accepted.

Table of Authorities

Cases considered by *P. La Prairie Prov. J.*:

R. v. Anthony-Cook (2016), 2016 SCC 43, 2016 CSC 43, 2016 CarswellBC 2929, 2016 CarswellBC 2930, 488 N.R. 289, 32 C.R. (7th) 1, 342 C.C.C. (3d) 1, 404 D.L.R. (4th) 238, [2016] 2 S.C.R. 204 (S.C.C.) — followed

Statutes considered:

Criminal Code, R.S.C. 1985, c. C-46

Generally — referred to

Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372

Generally — referred to

s. 1(2) — considered

s. 9.1 [en. 2011, c. 7, s. 2] — considered

s. 9.1(1) [en. 2011, c. 7, s. 2] — considered

s. 9.1(2) [en. 2011, c. 7, s. 2] — considered

s. 24 — considered

Victims of Crime Act, R.S.B.C. 1996, c. 478

Generally — referred to

SENTENCING of accused for offences under *Prevention of Cruelty to Animals Act*.

P. La Prairie Prov. J.:

1 Cody Larson and Lloyd Blackwell have entered guilty pleas to offences under the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, Chapter 372. Mr. Larson has entered guilty pleas to two offences under the *Act*. The first is that being a person responsible for animals, he did cause or permit cattle to be in or continue to be in distress, in violation of s. 9.1(2) of the *Act*, between the 30th day of April and the 1st day of June 2014. The second is that being a person responsible for animals, he did fail to care and protect cattle from circumstances that were likely to cause the animals to be in distress, in violation of s. 9.1(1) of the *Act*, between the 30th day of April 2014 and the 1st day of June 2014.

2 Mr. Blackwell has entered a guilty plea to one offence under the *Act*, that being a person responsible for animals he did cause or permit a cow to be in or continue to be in distress, in violation of s. 9.1(2) of the *Act*, on May 16, 2014.

3 An agreed Admissions of Fact was filed by the Crown and both of the accused. The Admissions of Fact set out the following:

Chilliwack Cattle Sales Ltd. is a Dairy Farm located at 47749 Prairie Central Road in Chilliwack, British Columbia. The company facility comprises three large barns and a revolving parlour for milking. There are some 2,800 cattle at the facility. The company facility operates on shifts including a night shift from 11:45 p.m. to 6:45 a.m. Cows are put into stalls on a rotary parlour. Milking machines are attached to the cows' udders and the cows are milked as they go around the parlour. The milking machines are detached at the completion of the revolution and the cows exit the parlour. There were between six or seven workers employed on the night shift between April 30, 2014 and June 1, 2014.

Cody Larson and Lloyd Blackwell were employed by Chilliwack Cattle Sales Ltd. and working at the facility at the time of the offences before the Court. Cody Larson and Lloyd Blackwell were at all material times in the matter before the Court persons responsible in relation to cattle at the facility.

Mercy for Animals Canada is an animal welfare, non-governmental organization. It has no relationship or connection to the Society for the Prevention of Cruelty to Animals. An employee of Mercy for Animals Canada, Matthew, applied for farm work as a labourer at a number of facilities, including Chilliwack Cattle Sales in the Fraser Valley in April 2014. Matthew was offered a job by Chilliwack Cattle Sales Ltd. and commenced work primarily on the night shift on April 30th, 2014. Matthew was employed from April 30, 2014 to May 30, 2014. During Matthew's first shift he was paired with a fellow employee who showed him how to hook up the milk machines, how to soap and wipe udders and which buttons to press to start and stop the parlour and to raise and lower the gate for the cows. Matthew wore a hidden camera during the time he was working for Chilliwack Cattle Sales Ltd. from April 30th, 2014 to May 30th, 2014. The camera recorded video and audio activities of his co-workers, including Mr. Larson and Mr. Blackwell, during the month of his employment.

4 Audio and video CDs marked as exhibits at the sentencing hearing depict the offences committed by Mr. Larson and Mr. Blackwell. Mr. Larson caused distress to cattle in violation of s. 9.1(2) of the *Act* and a summary of the contents of the audio/video recordings depicting this is as follows. This is Count 13 on the Information. The first incident, the 22nd of May 2014, he hits a cow in the legs, hits a cow repeatedly, throws a cup at a cow, then jabs and hits a cow in the chute. The next incident, May

26th, 2014, hits a cow in the leg with a cane. Another incident on the 2nd of May 2014, stands on bars and kicks from above, and says, "This is way more fun than milking." And on May 22nd, 2014 hits a bull in the testicles with a soap dispenser.

5 Mr. Larson failed to protect cattle from circumstances that were likely to cause them distress in violation of s. 9.1(1) of the *Act*, and a summary of the contents of the audio/video recordings is as follows. On May 28th, 2014 a cow was down in the parlour and an employee, Mr. Visser, kicked the cow repeatedly in the head. The cow did not get up. Mr. Larson used his cane to strike the cow on its back five times. The cow did not get up. Workers then tied a rope around the cow's leg to pull her out. A worker then went to get the tractor to pull the cow out. While waiting for the tractor to arrive Mr. Larson threw cow feces in the downed cow's face. The first attempt to lift the cow by a chain around the cow's neck fails. The tractor is backed away. Mr. Larson hits the cow on the back three times. Mr. Larson suggests pulling the downed cow out with a tractor by the rope tied to her ankle. Matthew asks if pulling on her leg with the tractor might pull her leg off, and Mr. Larson responds, "It's not my leg." It was decided to try to lift the downed cow by her neck with the chain again. The chain was put around the cow's neck and hooked up to the tractor bucket. As the cow was being lifted an employee punched the cow in the face three times. The cow's body was lifted completely off the ground. While the cow was hanging in the air one employee said, "Leave her like that." Another said, "Leave her hanging." The cow was released and ran back towards the holding pen. Mr. Larson did not intervene to prevent the actions of the other employees.

6 On the 19th of May 2014 an employee hit a cow to the body and head and put a knee to the spine. Mr. Larson did not prevent this activity. On May 2nd, 2014 an employee turns shockers on. The cow is trapped in the parlour. Mr. Larson does not prevent this activity. Again on May 2nd, 2014 an employee repeatedly kicks a downed cow. Mr. Larson does not prevent this activity. On the 21st of May 2014 an employee repeatedly hits a cow. Mr. Larson does not prevent the activity. And on the 23rd of May 2014 an employee hits a downed cow with a rope. Mr. Larson does not prevent the activity.

7 In total Mr. Larson was involved in ten incidents caught on audio and video during the month of May 2014 where cattle were subjected to pain and distress in violation of the *Act*.

8 Mr. Blackwell caused distress to a cow in violation of s. 9.1(2) of the *Act* on May 16, 2014 and a summary of the contents of the video recording depicting this is as follows. May 16th, 2014 around 5:50 a.m. a cow slipped and fell in the parlour. The cow was hit with chains and kicked in the head by other employees. The cow did not get up. Mr. Blackwell drove a tractor where the cow was. Employees hooked the chain around the cow's neck and hooked the chain to the bucket of the tractor operated by Mr. Blackwell. Mr. Blackwell raised the bucket, lifting the cow up and out of the parlour by the neck. Once out of the parlour the cow was able to stand on her own.

9 Mr. Blackwell's actions as seen in the video caused pain and distress to the cow. Pursuant to s. 1(2) of the *Act* the circumstances under which an animal is in distress include the following: "If it is injured, sick, in pain or suffering, or abused or neglected." Pursuant to s. 24 of the *Act*, a person who contravenes section 9.1 of the *Act* commits an offence. A person who commits an offence under the *Act* is liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding two years or to both.

10 Mr. Larson and Mr. Blackwell have entered guilty pleas to the offences. Neither of these men has a criminal record. The Crown and counsel for the accused are proposing a joint submission on sentence. For Mr. Larson the Crown and his counsel propose a fine of \$4,000 plus a jail sentence of 20 days, as well as a prohibition in relation to the care and custody of animals. For Mr. Blackwell the Crown and his Counsel propose a fine of \$7,000, as well as a prohibition in relation to the care and custody of animals.

11 The Crown points out that deterrence and denunciation are the paramount sentencing factors for these types of offences. Each of the accused had a positive duty to protect the animals in their care. The actions of each of the accused as depicted on the audios/videos, as well as the actions of the other workers in the presence of each of the accused, demonstrates what can only be described as gratuitous violence against the cattle. The sentence that is imposed must send out a message that this type of gratuitous violence against animals will not be tolerated in our society.

12 By pleading guilty Mr. Larson and Mr. Blackwell have acknowledged the harm they caused or permitted to be caused to the cattle in their care. Both Mr. Larson and Mr. Blackwell have expressed remorse for their actions and have accepted responsibility for their behaviour. Counsel submits that Mr. Larson and Mr. Blackwell have learned from their actions and that this type of behaviour will not occur again in relation to these men.

13 The Supreme Court of Canada set out the test for a Court to consider in accepting a joint submission of sentence in the case of *R. v. Anthony-Cook*, 2016 SCC 43 (S.C.C.). At paragraph 32 the Court stated:

Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

14 The Crown has provided a number of authorities setting out the sentencing range for cases involving cruelty to animals. I am satisfied that the range of sentences set out in the authorities provided by the Crown are consistent with the sentences being proposed in this case by means of the joint submission. Therefore, I will not depart from the joint submissions proposed for Mr. Larson and Mr. Blackwell.

15 Mr. Larson, if you could stand, please. Your sentence is as follows.

16 There will be a fine of \$4,000; \$2,000 will be applied to each count. There will be a jail sentence of 20 days in jail; 14 days on Count 13 and six days consecutive on Count 14 for a total of 20 days.

17 There will be a one year prohibition from owning or having custody or control of any large animals for remuneration, including pigs, cattle or horses.

18 Your sentence will be served intermittently from Friday at 7:00 p.m. until Sunday at 5:00 p.m. on consecutive weekends, starting Friday, June 30th, 2017 at the Surrey Pre-Trial Centre.

19 You will be on probation until your jail sentence is served in full with the following conditions.

20 That you keep the peace and be of good behaviour.

21 Report to Court as required. Notify the Court of any change in name or address.

22 That you surrender to the correctional centre each Friday on time and in a sober condition without any alcohol, intoxicating substance or drugs in your body, except in accordance with a medical prescription.

23 Mr. Blackwell, could you stand, please. Your sentence is as follows.

24 You will be fined \$7,000 and you will have a three year prohibition from owning or having custody or control of any large animals for remuneration, including pigs, cattle or horses. Those are the sentences.

25 THE COURT: He can surrender on Friday for his first day. I realize you were asking for Monday mornings to be released. I considered that, but I know it is difficult for the institution and I know that Mr. Larson is working and I believe is operating heavy equipment, so probably best for him to have a good night's sleep on Sunday before he's at work on Monday, so that's why I've got him surrendering on Friday and being released on Sunday.

26 MR. MACAULAY: Your Honour, there is *Victims of Crime Act*, Victim Surcharge that's automatically applied at 15 percent and I've advised my friends of that.

27 THE COURT: Right. There's nothing I can do as in the *Criminal Code* to make it payable forthwith or anything of that nature, so it is there.

28 MR. MACAULAY: It'll be with the time to pay.

29 THE COURT: Yes.

30 MR. MACAULAY: And time to pay I've discussed with my friends, two years each.

31 THE COURT: All right. Time to pay two years for each of the individuals.

32 MR. MACAULAY: Yes.

33 MS. FRANCE: Yes, that's agreeable. Thank you.

34 THE COURT: All right, well, thank you.

35 MR. MACAULAY: Just finally by way of housekeeping, Your Honour, I'll just ask Madam Clerk to confirm. The guilty pleas for Mr. Larson were to Counts 13 and 14.

36 THE CLERK: Correct.

37 MR. MACAULAY: And the Crown directs a Stay of Proceedings with respect to Counts 19 and 20 with respect to Mr. Larson. Mr. Blackwell, the guilty plea was to Count 17.

38 THE CLERK: For Mr. Blackwell, Count 18 is what I had.

39 THE COURT: I have Count 17.

40 MR. MACAULAY: Yeah, I have Count 17. If that correction could be made. I think we're all in accord with that. The guilty plea was to Count 17 and the Crown directs a Stay of Proceedings with respect to Count 18.

41 THE COURT: Yes.

42 MR. MACAULAY: Thank you, Your Honour.

Order accordingly.