**ALBERTA COURT OF JUSTICE**

**DOCKET: 250264389P1**

**BETWEEN:**

**HIS MAJESTY THE KING**

- AND -

**LOUIS LIBIN**




**REASONS OF THE HONOURABLE JUSTICE J. MAHER**

## INTRODUCTION

The accused is charged with contravening section 445.1(1)(a) of the Criminal Code, which provides:

> 445.1 (1) Every one commits an offence who
> (a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird;

## AGREED FACTS

There is an Agreed Statement of Facts, including these:

1. On September 26, 2024, the nighttime concierge on shift at the Royal Apartment Building ("the Royal") in Calgary, Alberta, relayed to the daytime concierge, concerns he had about an incident he observed on a CCTV video of the elevator at the Royal ("the elevator video").
2. Both concierges reviewed the elevator video of the incident and were upset and in disbelief over what they observed in it.
3. At 9:35 a.m. that day, the daytime concierge contacted the non-emergency line for the Calgary Police Service to report her concerns. She also contacted the Calgary Humane Society's Protection and Investigation Department to report the incident she had observed in the elevator video.
4. The elevator video was provided to the Calgary Police Service and peace officers with the Calgary Humane Society.
5. The elevator video, which was entered into evidence with the consent of the accused, is authentic, reliable and an accurate depiction of what occurred in the elevator on September 26, 2024, from 1:32:19 a.m. to 1:33:19 a.m.

6. The male depicted in the elevator video is the accused and the dog depicted is owned by the accused's fiancée.
7. At 11:15 a.m. that day, two peace officers from the Calgary Police Service and two peace officers from the Calgary Humane Society, arrived at the Royal and determined that the individual depicted in the elevator video was the accused.
8. At 11:19 a.m. all four officers attended the accused's apartment at the Royal, and upon knocking on its door the accused's fiancée answered it. The officers explained that they were there to investigate a complaint of animal cruelty, and upon request they were invited into the apartment.
9. The officers conducted a warrantless search and seizure, the lawfulness of which is not contested.
10. The dog was apprehended at 11:35 a.m. and taken to a veterinarian to be assessed.

## EVIDENCE

Additionally, there were four sources of evidence in the trial: the elevator video, the *viva voce* testimony of the accused's fiancée, the *viva voce* testimony of one of the investigating peace officers, and an apprehension video of the encounter between the peace officers and the accused's fiancée,

### A. The Elevator Video

The 60 second elevator video, 45 seconds of which covered the time from when the accused and the dog entered the elevator until they departed, includes audio recording. No one else was on the elevator at the time.

The camera recording the video, appears to have been located at a rear corner of the elevator ceiling, facing downwards and diagonally, towards the floor of "the opposite corner" of the elevator, where the elevator door begins to open and finishes closing. As is customary, the elevator panel is on the same side of the elevator as the elevator door, the front of the elevator.

The elevator video depicts the accused and the dog entering the elevator, with the dog held upright by the accused right arm, the accused's left hand occupied by what appears to be a leash as well as an elevator card key used to activate the elevator. The dog is of medium size, weighing approximately 40 lbs., and appears similar in appearance to a small German Shepherd. Almost as soon as the accused and the dog entered the elevator, it began to whimper.

Immediately upon entering the elevator, the accused faced the elevator panel, squatted and appeared to have scanned the card key to activate the elevator. As he did that, he dropped the dog to its feet, a distance from the dog's feet to the elevator floor of no more than two feet, if that.

It is not in my view unreasonable for one to carry a dog of that size in the manner it was carried, when entering an elevator, and then, upon no one else being in the elevator, to release or drop it to the floor, as the elevator was to travel for what clearly would have been a significant period of time.

Upon being dropped to the floor, to the right and behind the accused, the dog whimpered or squealed. It then moved away from the accused about two feet and lay on its stomach facing the elevator door. While it did so, the accused continued to face the elevator panel, stood upright and appeared to press a button. After pushing the button and while the door was closing, the accused pivoted facing the opposite corner. For about two seconds he stared at the dog about two feet away. He then flexed his right knee, bringing his right foot back about three inches and then rapidly forward, kicking the stationary dog. The impact of the kick knocked the dog about a foot and a half against the elevator side with an audible thud and an accompanying yelp from the dog. There was no apparent or discernible reason or explanation for the kick.

On recovering, the dog made whimpering or squealing sounds and moved away from the accused to "the opposite corner" of the elevator, as close as possible to where it would begin to open. The dog lay down looking back at the accused a couple of times.

More than 10 seconds passed after the kick landed on the dog, during most of which the accused simply appears to have looked at the dog. He then walked toward the dog, bent down and picked it up, again holding it in his right arm, where he stood, his body facing the elevator door about a foot from the right side of the elevator. The dog whimpered while being picked up. As he picked the dog up the accused is heard saying, "It's O.K. buddy, its O.K". The accused then almost immediately and over less than two seconds, three times banged or slammed the dog's head into the right side of the elevator with enough force, the impact with the elevator side is clearly audible. The accused's motions are telling. To facilitate the first of the three blows, he stepped to the right with his right foot lifting his left foot off the floor. He stepped further to the right with his right foot to facilitate the second blow. He took a third shorter step to the right with his right foot to facilitate the third blow. The dog repeatedly yelped. As with the kick, there was no apparent or discernible reason or explanation for the accused's actions.

Immediately following those blows, while still holding the dog, the accused flicked the leash in his left hand in the direction of the dog's head.

The dog then tumbled forward out of the accused grasp, and fell awkwardly against the elevator door, landing on its head. The dog then sat in "the opposite corner", looking mostly at the door but occasionally back towards the accused. The accused simply looked at the dog. After about 7 seconds, the accused picked the dog up and can be heard uttering what sounded like words of comfort. When the elevator door opened, the accused exited holding the dog.

As they were walking away from the elevator, the accused can be heard saying words which sounded like "bong, bong".

### B. The Accused's Fiancée

The accused's fiancée testified that she had owned the dog for about 12 years. It was a rescue dog which she attributed to it being anxious, jittery, skittish. She believes that an anxiety condition causes it to yelp for no apparent reason or cause. Indeed, in the apprehension video the dog yelped for no apparent reason or cause when standing by itself apart from its owner and the peace officers.

She described it as nervous around strangers. That assertion is not consistent with either the testimony of the peace officer who testified about his involvement in the dog's apprehension, or the video of that apprehension.

She indicated that the dog was in good health both before and after the elevator incident. She said that on the evening of and before the incident, she and the accused had gone out for drinks, and upon returning home she asked the accused to take the dog out to pee. The accused seemed to be in a good mood.

The accused and the dog returned after about 15 minutes, and both seemed normal.

### C. The Peace Officer

A peace officer from the Calgary Humane Society testified that he was one of the four peace officers who attended the fiancée's apartment and apprehended the dog. He wore a body camera, which included an audio recording, yielding the apprehension video. He confirmed the dog's unexplained yelp as described by the fiancée. He described the dog as friendly and in no apparent pain, including when he rubbed, at the same time with both his hands, the dog's torso, in order to ascertain whether there was any injury. He confirmed the dog yelping for no apparent reason when standing alone. He gave non-expert evidence that the symptoms of a dog in pain were whimpering, crying and yelping.

### D. The Apprehension Video

The apprehension video depicts the dog as very friendly and active, even as the peace officer vigorously rubbed its sides. All four peace officers seem to have been strangers to both the dog and the fiancée, making its friendliness especially notable. The video depicts the dog's yelp for no apparent reason when standing alone.

## ISSUE

While it was not argued, and in my view could not reasonably be so argued, for the record, I am satisfied beyond a reasonable doubt that the accused's entire conduct inside the elevator was wilful and that he had the necessary *mens rea*.

Counsel for the accused concedes that the words "pain, suffering or injury" in paragraph (a) of subsection (1) of section 445 are disjunctive and that proof of any of those three will suffice for a conviction. Crown counsel concedes there is no evidence of an injury.

The issue then is whether the Crown has proved beyond a reasonable doubt that the accused's conduct in the elevator caused the dog unnecessary pain or suffering.

**THE LAW**

The Court of Appeal of this Province has noted recently that animals, including dogs, are sentient. They are beings, capable of feeling and experiencing sensations and emotions, including feeling pain and suffering. Speaking for the Court in *R. v. Chen*, 2021 ABCA 382, a sentence appeal, Justice Paperny commented at paragraph 27:

> Moreover, there has been little appellate guidance. In Alberta, the only reported animal cruelty decisions from this court are *R v Sanaee*, 2016 ABCA 289, a conviction appeal that does not discuss sentencing, and *R v Alcorn*. In *Alcorn,* the court noted that case law on sentencing "has not revealed an overall policy strategy for animal cruelty cases as yet", but went on to state categorically that animals are sentient beings and "not objects": para 41. The court also opined that, by enacting s 445.1 of the *Criminal Code,* "Parliament recognized, and intended that courts also recognize, that cruelty to animals is incompatible with civilized society": para 42. I agree that animals, sentient beings that experience pain and suffering, must be treated as living victims and not chattels. Smashing a pet through a window is not the same as smashing a window.

Counsel for the accused usefully categorized offences of animal cruelty into active abuse and passive abuse: active abuse covering intentional and malicious hurting or killing an animal or in specific ways that are deemed to be cruel; and passive abuse covering neglect in providing an animal food, water, shelter or care.

The decision of the Quebec Court of Appeal in R. *v. Menard*, (1978) 43 C.C.C. (2d) 333, sets out the analytical framework in applying section 445.1 to the facts of each case. Leave to appeal to the Supreme Court of Canada was refused by Justices Pigeon, Estey and Pratte, on November 20, 1978.

At paragraphs [46] and [47], Justice Lamer (as he then was) observed:

> Since the coming into force of the Canadian Criminal Code of 1953-54, it is forbidden to cause "... pain, suffering or injury" without its being necessary. Certainly, the legislator did not intend, as in cases of assault among human beings, to forbid through criminalization the causing to an animal of the least physical discomfort and it is to this extent, but no more, that one may speak of quantification. With the exception of these cases, however,

> the amount of pain is of no importance in *itself* from the moment it is inflicted wilfully, within the meaning of s. 386(1) of the Criminal Code, if it was done without necessity according to s. 402(1)(a) and without justification, legal excuse or colour of right within the meaning of s. 386(2).
>
> Without importance in itself, the extent of the suffering finds its place on the other hand in the appreciation of the "necessity". It is sometimes necessary to make an animal suffer for its own good or again to save a human life....

Section 445.1(1)(a) in 2024 was worded the same as section 402(1)(a) was worded in *Menard.*

At paragraph [50] Justice Lamer noted the issue of necessity related to both the purpose of the act which caused the pain and the means employed. He concluded by endorsing the view expressed in *Ford v. Wiley*, (1889), 23 Q.B.D. 203, when Justice Hawkins said at page 220:

> I have said enough to indicate my views, namely, that the legality of a painful operation must be governed by the necessity for it, and even where a desirable and legitimate object is sought to be attained, the magnitude of the operation and the pain caused thereby must not so far outbalance the importance of the end as to make it clear to any reasonable person that it is preferable that the object should be abandoned rather than that disproportionate suffering should be inflicted.

It does not matter the amount of pain, the degree of pain or the duration of pain caused by the act. Once pain, that is, something more than "the least physical discomfort", is proved beyond a reasonable doubt, that is enough to move the analytical inquiry to the next step, determining whether the pain was unnecessary. See also *R. v. Picco*, 2023 NLCA 33 at paragraphs [22] to [25].

**ANALYSIS**

Several cases of alleged abuse of domestic animals were referenced for the purpose of demonstrating failures on the part of the Crown to prove beyond a reasonable doubt the infliction of pain or suffering. Those dealing with alleged active abuse, deserve comment because they illustrate that each case depends upon its own facts.

The case of *R. v. J.T.*, 2017 BCSC 2273 is of limited comparable value in this case. There is scant evidence or reasoning by the Court in concluding there was no proof beyond a reasonable doubt of any pain. There is only one reference to the charge, where it was said at paragraph [155]:

> Turning now to the charges of unnecessary pain and suffering to the dogs. Counts 4 and 15 charge J.T. with causing unnecessary pain and suffering to two dogs, Boy and Mason. I accept the evidence of various witnesses that J.T. would

> regularly kick the dogs. By doing so, he tormented the dogs and his family members. However, I am not satisfied that this caused unnecessary pain or suffering contemplated by the *Code*. The dogs would yelp and cower when J.T. kicked them, but dogs can yelp when startled or surprised. Dogs have different temperaments and some may cower regularly. J.T.'s behaviour was unacceptable, but I am not satisfied that it resulted in the pain or suffering contemplated by s. 445.1 of the *Code*.

In *R. v. Aleck*, 2021 BCPC 75, the Court found an injury when the accused struck a sleeping kitten in the head three times with the heavy end of a selfie stick, resulting in blood issuing from the kitten's head and ultimately its death. The kitten made no noise and there was no sign of life after the blows. The Court found that there was insufficient evidence to establish pain and suffering. Clearly, it could not find evidence of pain and suffering because there was no evidence that the kitten was alive or conscious following the blows

The case of *R. v. Sun*, 2015 CanLII 2210 (NLPC), was a case of conflicting credibility, where the evidence of the accused was accepted over that of the complainant. The accused's evidence was that he did not kick the complainant's dog but merely nudged it so that it was redirected away from him. As such, there was no kick, only a nudge. The charge was dismissed.

The decision of *R. v. McRae*, 2002 O.J. No 4987, a decision of the Ontario Superior Court, is an appellate decision, and difficult to understand. The appellate justice concluded the trial judge had erred in concluding that the threshold for a finding of pain or suffering was high, but notwithstanding that, concluded the trial judge could infer its absence as she did. Accordingly, the Crown appeal was dismissed. I do not find the case helpful.

"I feel your pain", or so the adage goes. But the adage is misleading, because pain is personal to one's being. However, pain, can be inferred in another being, from what one sees of and hears from that being. It can even be inferred from what one has been told by others as to what they have seen and heard of another being.

Expert evidence can assist in drawing inferences one way or the other. In *R. v. Abbey*, [1982] 2 S.C.R. 24, Justice Dickson (as he then was) stated, at page 42:

> With respect to matters calling for special knowledge, an expert in the field may draw inferences and state his opinion. An expert's function is precisely this: to provide the judge and jury with a ready-made inference which the judge and jury, due to the technical nature of the facts, are unable to formulate. "An expert's opinion is admissible to furnish the Court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of the expert is unnecessary" (*Turner* (1974), 60 Crim. App. R. 80, at p. 83, *per* Lawton L.J.

For the trier of fact, expert evidence is of assistance only. While it may be of value in assisting the trier of fact in determining whether an animal sustained pain or suffering, it does not

determine the outcome of the issue. Expert evidence is of particular value in cases of alleged passive abuse. That was the case in *Menard* and in *R. v. Gerling*, 2016 BCCA 72. But even in alleged passive abuse cases, expert testimony that an animal suffered pain or suffering, may not suffice to prove the same beyond a reasonable doubt. That was the case in *R. v. Robinson* 218 BCSC 1852, where the foundational facts, upon which the expert relied for his opinions, were not proven.

I take the accused's point that there is no testimony before me of an expert, such as a veterinarian or an animal behavioural scientist, who might testify that what is displayed in the elevator video, is evidence of pain more than "the least physical discomfort". But that does not mean that based upon what I can see and hear on the elevator video, using common sense and experience, I am not able to conclude beyond a reasonable doubt that the dog sustained pain and suffering.

Moreover, there are active abuse cases where pain or suffering was established beyond a reasonable doubt without expert evidence. An example of that is found in the observation of Judge Seagram in *R. v. Hutchinson*, 2017 BCPC 472, at paragraph [11] :

> Pain is something that is experienced and cannot be directly observed by someone not experiencing it. It is always, therefore, a matter of inference whether another being experiences pain. As a matter of common sense and experience, I infer that yanking a leash with enough force to cause a medium sized dog to become airborne and then kicking that dog while it lies on the ground would beyond a reasonable doubt cause pain.

A second case is *R. v. Drake*, 2023 CanLII 39084 (NLPC), where at paragraph [88] Judge Porter said:

> At the risk of stating the obvious, kicking an animal down a flight of stairs will cause the animal unnecessary pain. Three witnesses watched the accused kick the cat down the stairs. I am satisfied beyond reasonable doubt that the accused committed the offence, and a conviction is entered for the offence.

In *R. v. Vittre*, 2020 BCSC 1463, the defendant was charged under a provincial regulatory statute with causing "distress" to a dog, the word "distress" defined in the Act as including the word "abused". The defendant had thrown a dog over a pile of debris, spinning it about three to four feet off the floor, over a distance of 10 to 12 feet. The dog landed against a door frame with an audible thud. It yelped, retreated into a back room and cowered in a corner. No expert was called to testify. At paragraphs [27] and [28], dismissing the defendant's conviction appeal, Justice Brundrett said:

> On the facts of the present case, I do not agree with the appellant that the trial judge required expert evidence to make the requisite finding of distress. As noted in *R. v. Mohan*, 1994 CanLII 80 (SCC), [1994] 2 S.C.R. 9 at 23, "... if on the proven facts a judge or jury can form their own conclusions without help, then the opinion of an expert is unnecessary...." Here, Pauka's emotional state was readily observable. No testing was necessary. The appellant's throwing of the dog was an

> act that a layperson could conclude could cause harm. Constable Isenor witnessed it and described it in detail.
>
> In my view, it was open to the trial judge to draw a common sense inference from the appellant's treatment of his dog as to whether Pauka suffered abuse, which is a form of distress under s. 1(2)(c) of the *PCAA*. In these circumstances, the issue of whether Pauka appeared to be in distress as a result of being forcibly thrown across a room and into a doorframe was not outside the purview of common knowledge so as to require expert evidence.

The Alberta Court of Appeal in *R. v. Sanaee*, 2016 ABCA 289, suggested there may not be a need to call an expert to establish an animal's pain and suffering. In that case, in addition to witnesses to the incidents complained of and to the dog's behaviour thereafter, there was an expert who gave evidence about excessive pain where the accused used a cattle prod in the context of training or disciplining a dog. At paragraphs [15] and [16] the Court observed:

> There is no need for the Crown to prove the exact technical specifications of the cattle prod or exactly what level of electric shock is excessive. The witnesses testified that the dogs "yelped, the body coiled as in a muscular contraction, and the dog appeared to be in a lot of pain". It is not necessary for the Crown to prove just how the cattle prod caused that pain. A non-expert witness is entitled to give opinions arising from compendious facts, such as bodily plight or condition and emotional state: *R v Graat*, 1982 CanLII 33 (SCC), [1982] 2 SCR 819 at p 835. This principle applies to the condition of both persons and animals.
>
> We reject the appellant's argument. It is unreasonable to suggest that a device that is designed to deliver a meaningful shock to an animal many times larger than the dogs in question would not cause unnecessary pain or suffering in light of the testimony of the three Crown witnesses K.R., S.E. and N.K. [none of whom were experts] which the trial judge was entitled to accept.

The evidence of the ordinary witnesses pertained to the behaviour of the affected dog in three instances. In the first, the dog yelped, ran into another room and attacked a smaller dog, all out of character. In the second, the same dog yelped, ran into another room where it stayed for 10 minutes with its tail beneath its legs. In the third, a different dog yelped or cringed and appeared to be in a lot of pain.

This case before me is somewhat unique, in that as the trier of fact I do not have to base my conclusions on what I am told by witnesses to the event or by experts. I have firsthand evidence of what occurred by reason of the elevator video.

It is alleged that the accused's conduct in the elevator, the kick, the slams, the leash flick, and the tumble, consisted of four distinct or separate acts causing the dog unnecessary pain or suffering, and that those acts, whether viewed individually or collectively, prove the offence beyond a reasonable doubt.

**(a) The Kick**

I have no doubt that the accused's kick caused the dog pain, having regard to a constellation of factors: the seconds the accused looked down at the dog before flexing his knee to bring his foot back, the speed the accused flexed his knee, the distance the accused flexed his knee, the speed he administered the kick, the lack of any warning the dog might have had that a blow was imminent, the dog lying motionless and docile on its stomach before the impact, the movement of the dog from the force of the kick, the dogs yelp immediately following the kick, and the dog removing itself as far as possible away from the accused to a place as close as possible to where it might escape the elevator once the door started to open.

It was not a nudge, a prod, a shove, a tap or anything like that, which might have caused mere discomfort. This was nothing short of a well-placed forceful kick.

I acknowledge that the dog does yelp on occasion without any discernable reason. But that is not to say that the dog only yelps for no discernable reason. Because the dog frequently yelps at nothing, does not mean that it only yelps at nothing. It does not mean it does not yelp when in pain.

I am satisfied beyond a reasonable doubt it was objectively foreseeable that the kick, performed in the manner it was performed, would cause the dog pain or suffering. The evidence is clear that it was done intentionally and not accidentally. I conclude it was done with the intention of causing pain. It was, on the evidence, entirely unnecessary There is no other explanation for the accused's behaviour.

**(b) The Slams**

As with the kick, I am satisfied beyond a reasonable doubt that the repeated slamming against the elevator side, caused the dog pain, having regard to a constellation of factors: the speed the dog was slammed, the number of slams, the force used in making the slams, including the movement of the accused's feet to facilitate the slams, the lack of any warning the dog might have had that the blows were imminent, and the dog yelping with the sound of the impacts as it came in contact with the elevator side.

I am similarly satisfied it was objectively foreseeable that the slams, performed in the manner they were performed, would cause the dog pain or suffering. The evidence is clear that they were done intentionally and not accidentally. I conclude they were done with the intention of causing pain. It was on the evidence entirely unnecessary There is no other explanation for the accused's conduct.

**(c) The Leash Flick**

My view of the video convinces me that the flick was nothing more than that. More importantly, I do not see contact with the dog. Accordingly, I am far from satisfied that it caused pain.

### (d) The Tumble

The accused's conduct in kicking the dog, repeatedly slamming its head into the side of the elevator and flicking the leash in the direction of the dog's head, all in the manner I have described, certainly provides a context in which one could easily conclude, as was contended by Crown counsel, that the accused intentionally flipped the dog so that it would tumble as it did. However, there are two other possible explanations for the tumble. First, the dog may have simply slipped from the arm of the accused. Second, the dog itself may have decided to escape from the control of the accused, a conclusion which, having regard to what the accused had done to it in the previous 30 seconds, would have been a reasonable reaction by it. My view of the elevator video not only does not satisfy me beyond a reasonable doubt that the accused flipped the dog, but I also cannot conclude even on a balance of probabilities, which explanation is more probable than the other two as to how the tumble was caused.

## CONCLUSION

Having been satisfied beyond a reasonable doubt that both the kick and the slams caused the dog unnecessary pain and suffering, over and above "the least physical discomfort", I find the accused guilty of the offence charged

Heard on the 5th and 6th days of December 2025.

Dated at the City of Calgary, in the Province of Alberta this 23rd day of February 2026

John Maher

A Justice of the Alberta Court of Justice

**Appearances:**

Mr. Paul Marcellus

Counsel for the Crown

Mr. James M. Lutz, K.C.

Ms. Jillian Williamson

Counsel for the Accused