The judge feels that this judgment does not warrant publication.

QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2005 SKQB 432**

Date: **20051011**
Docket: Q.B.A. No. 20/05
Judicial Centre: Battleford

BETWEEN:

LENARD CARPENTER

APPELLANT

- and -

HER MAJESTY THE QUEEN

RESPONDENT

Counsel:

S. A. Busse, Q.C.	for the appellant (Carpenter)
W. R. Campbell	for the respondent (Crown)

JUDGMENT KRUEGER J.
October 11, 2005

[1] The appellant, Lenard Carpenter, stands charged with four separate offences of cruelty to animals under s. 446(1)(a) of the *Criminal Code* and s. 4 of *The Animal Protection Act, 1999,* S.S. 1999, c. A-21.1. He appeals from a ruling (order) made by the summary convictions motions judge (Provincial Court) on his application for a judicial stay of the charges pursuant to ss. 7 and 11(a) of the

Charter. The appellant's application was based on an argument that the informations are too vague as to time and identity of the particular animals (horses and cattle) affected by the alleged neglect to permit him to make full answer and defence. The summary convictions judge concluded that the appellant was reasonably informed of the allegations made against him and declined to grant a stay of the proceedings.

ANALYSIS

[2] All of the charges against the appellant are for summary conviction offences. Section 446(2) of the *Criminal Code* provides that every one who commits an offence under s. 446(1) is guilty of an offence punishable on summary conviction. Part XXVII of the *Criminal Code* applies to summary conviction offences pursuant to s. 786(1) of the *Code*. Likewise, s. 14 of *The Animal Protection Act, 1999* makes a contravention of s. 4 a summary conviction offence. Subsections 4(4) and (4.1) of *The Summary Offences Procedure Act, 1990*, S.S. 1990-91, c. S-63.1, directs that the provisions of the *Criminal Code* relating to summary conviction matters apply.

[3] The appeal rights of a person charged with a summary conviction offence are subject to s. 813(a) of the *Code*. It reads:

> 813. Except where otherwise provided by law,
> (a) the defendant in proceedings under this Part may appeal to the appeal court
> (i) from a conviction or order made against him;
> (ii) against a sentence passed on him;

> or
> (iii) against a verdict of unfit to stand trial or not criminally responsible on account of mental disorder.

Section 785 defines "order" as being any order, including an order for the payment of money.

[4] The scope of this court's review on appeal is defined in s. 830(1). Section 830(1) reads:

> A party to proceedings to which this Part applies or the Attorney General may appeal against a conviction, judgment, verdict of acquittal or verdict of not criminally responsible on account of mental disorder or of unfit to stand trial or other final order or determination of a summary conviction court on the ground that
> (a) it is erroneous in point of law;
> (b) it is in excess of jurisdiction; or
> (c) it constitutes a refusal or failure to exercise jurisdiction.

[5] The appellant agrees that the ruling appealed from is an order made within the meaning of s. 813(a)(i) of the *Code*. Since, however, his application was a "stand alone" application (not made during the trial process), it was argued that it is a final order and appealable.

[6] Madam Justice Dawson in *R. v. Leitner* (1998), 173 Sask. R. 269, [1998] S.J. No. 735 (Q.B.), at para. 11 stated that "...an order under s. 813(a)(I) must be a final order in the sense it brings to an end that particular proceeding." That definition was adopted by Scheibel J. in *R. v. Ironeagle* (2000), 202 Sask. R. 268, [2000] S.J. No. 769, 2000 SKQB 553. In *R. v. Laviolette* (2005), 260 Sask. R. 121, [2005] S.J. No. 65, 2005 SKQB 61, it was noted that "order" under s. 813 of

the *Code* encompasses only final orders. The law appears to now be settled that for an accused (appellant) to enjoy the right of appeal under s. 813(a)(i) the order must be final in the sense that it brings to an end the proceedings.

[7] The argument by the appellant that the court ruling as to the sufficiency of the informations was not made in the context of a trial as was the ruling in *Laviolette, supra*, and, therefore, cannot be considered interlocutory rings hollow. The Manitoba Court of Queen's Bench in *R. v. Music Explosion Ltd.* (1996), 108 Man. R. (2nd) 311, dealt with a situation where a s.15 *Charter* application was made prior to pleas being entered. The judge ruled that any breach of s. 15 of the *Charter* was saved by s. 1 of the *Charter*. The defendant appealed. Kennedy J. at paras. 14, 19 and 20 considered whether the failure to enter a plea prior to hearing an application allows a defendant to appeal what would otherwise be an interlocutory order. Kennedy J. stated:

> [14] It appears to me that this case has taken a wrong turn by virtue of the failure to require a plea be taken before dealing with the evidence relevant to s. 1 of the *Charter*. The issue of whether the section of the bylaw is saved by s. 1 of the *Charter* ought not to be heard in a vacuum. If the Provincial Judge's ruling had been made in the course of the trial itself, there would have been no issue about whether an appeal would be available at this time. An appeal would then dispose of all outstanding issues rather than fragment the prosecution as has occurred here.
> ...
>
> [19] The appropriate procedure would have been to enter a plea so that all matters would be subject to one appeal only. The absence of a plea should not however alter the most expeditious course of action. ...
>
> [20] The argument that the Crown, if an appeal is allowed, would be able to stay the proceedings leaving his client with a decision against it, and without any right to appeal, is but a further reason why all matters

> should be resolved before any appeal lies. It makes eminently greater sense to conclude a trial before the appeal process is triggered. [Emphasis in original]

[8] The deciding factor in determining whether a right of appeal arises is the finality that the order brings to the proceedings. An order in this case staying all of the charges would have been a final order. The order dismissing the appellant's application did not finalize the proceedings. It only concluded one aspect of the proceedings in order to make way for the trial. An accused must wait until the trial process has been completed before he/she is entitled to appeal any non-final orders made, either pretrial or during the course of the criminal trial.

CONCLUSION

[9] Here the determination that the informations are sufficient is a ruling that does not bring an end to the proceedings and in the context of s. 813(a)(i) is not a final order. Nor does the argument that the application was made before pleas were entered move it within the purview of a final order. This result is consistent with the policy reason prohibiting appeals from interlocutory rulings in criminal proceedings. See *R. v. Adams* (2001), 290 A.R. 316 (Q.B.), and *R. v. Laviolette, supra,* at para.20.

[10] There is no jurisdiction to hear the appeal at this stage of the proceedings. Accordingly, it is unnecessary to consider the issues regarding the sufficiency of the informations.

_____J.

D. K. KRUEGER