*Case Name:*

# R. v. Veinot

**R. (appellant) v. Barry Lawrence Veinot (respondent)**

[1989] N.S.J. No. 534

92 N.S.R. (2d) 45

237 A.P.R. 45*

7 W.C.B. (2d) 388

C. BW. 7557

Nova Scotia County Court District Number Two

**Freeman, J.C.C.**

April 27, 1989

(5 pages) (32 paras.)

**Cases Noticed:**

Attorney General for Saskatchewan v. Plante (1981), 9 Sask.R. 23, consd. [para. 22].
Morrison and the City of Kingston, Re, [1938] O.R. 21, consd. [para. 22].
Attorney General v. Lazavovitch (1940), 69 Que. K.B. 214, appld. [para. 24].

**Statutes Noticed:**

Criminal Code, R.S.C. 1970, c. C-34, s. 446 [paras. 10, 31].
Dog Hunting and Training Regulations (N.S.) - see Wildlife Act.
General Wildlife Regulations (N.S.) - see Wildlife Act.
Interpretation Act, R.S.N.S. 1967, c. 151, s. 6(3) [para. 18].
Lands and Forests Act, R.S.N.S. 1967, c. 163, s. 163 [para. 27].
Regulations Act, S.N.S. 1973, c. 15, s. 2(g) [para. 18].
Wildlife Act, S.N.S. 1987, c. 13, ss. 113(ac), 113(ad), 113(br) [para. 8]; 43 [para. 16].
Wildlife Act, S.N.S. 1987, c. 13, Dog Hunting and Training Regulations, ss. 2(f) [para. 17]; 3(3)(b) [para. 5]; 4 [para. 12]; 6 [para. 13]; 9(1) [para. 14].
Wildlife Act, S.N.S. 1987, c. 13, General Wildlife Regulations, s. 6(10)(d) [para. 31].

**Authors and Works Noticed:**

Black's Law Dictionary (4th Ed.) [para. 21].
Random House Dictionary of the English Language (2nd Ed.) [para. 9].

**COUNSEL:**

Anthony W. Brown, for the appellant Crown
Albert Bremner, Q.C., for the respondent accused

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This case was heard on March 7, 1989, at Bridgewater, Nova Scotia, before Freeman, J.C.C., of the Nova Scotia County Court of District Number Two, who delivered the following judgment on April 27, 1989:

**1** **Freeman, J.C.C.**:-- While a resident of Hamms Hill in Blockhouse, N.S., was scouring the wood for two missing pigs he came upon the respondent and an associate with a live raccoon in a cage which was suspended from a tree by a rope. [*page46]

**2** The witness had been attracted to the scene by the baying of dogs. He thought at first they were chasing his pigs, but the respondent explained that he was training the dogs to hunt raccoons with the aid of a caged animal.

**3** The respondent was subsequently charged with training a dog to hunt wildlife without a valid permit, contrary to s. 3(3)(b) of the Dog Hunting and Training Regulations under the Wildlife Act.

**4** That section of the Regulations was found by His Honour Judge Joseph Kennedy of the Provincial Court to be ultra vires of the enabling legislation, s. 113 of the Wildlife Act. The Crown has appealed.

**5** Section 3(3) of the Regulations was repealed July 12, 1988, by Order-in-Council 88-756 but, if valid, it was in effect at the time of the alleged offence, June 29, 1988. It read:

"3(3) It shall be an offence for a person

(a) to conduct a field trial
(b) to train a dog to hunt wildlife
(c) to train a dog to hunt a raccoon at night; or
(d) to hunt a raccoon at night with a dog

without a valid permit issued under subsection (1)."

**6** The Crown explained s. 3(3) was repealed for redundancy, because the permits are required under other sections of the Regulations.

**7** It is clear from the Dog Hunting and Training Regulations that dog training is a broad and distinct concept, addressed by a well-developed scheme of permits and regulations.

**8** Section 113 of the Wildlife Actenables the Governor-in-Council to make regulations:

"... (ac) prescribing when dogs may be used to hunt or be in a wildlife habitat;

"(ad) respecting field trials for dogs and designating dog hunting areas; ...

"(br) respecting any matter necessary or advisable to carry out effectively the intent and purpose of the Act."

**9** "Training" is not mentioned in the enabling subsections. "Train" is not defined in the Act or the Regulations. Its ordinary meaning in the present context is "to develop or form the habits, thoughts or behaviour ... by discipline or instruction". ( Random House Dictionary of the English Language(2nd Ed.)) It is clear from other sections of the Regulations that they give "training" a more specialized, and perhaps less innocuous, meaning.

**10** The Crown has submitted that the use of caged raccoons to train dogs is a common practice and considered permissible to holders of raccoon dog night training permits issued under s. 3(1), when otherwise conducted within the terms of the Regulations. It is possible, however, that a permit may not prove to be an effective shield under s. 446 of the Criminal Code, which deals with cruelty to animals.

**11** The sections of the Regulationsdealing with training include the following;

**12** Section 4, which restricts training in wildlife habitat but permits the establishment of dog training areas where training can take place throughout the year without a permit.

**13** Section 6, which limits dog training at night in wildlife habitat to permit holders during an open season from the first day of August to the first day of December.

**14** Section 9(1): "The holder of a Raccoon Dog Night Training Permit shall not fail without reasonable excuse to prevent a raccoon from being attacked [*page47] by a dog being trained."

**15** "Hunting" has its own definition and does not include training. The wording "... when dogs may be ... in a wildlife habitat ..." could be stretched to encompass training only by belabouring the construction.

**16** The legislature appears to have come closest to implying that dog training is an object of the Wildlife Act in referring to "field trials" in s. 113(1)(ad) and in s. 43, which enables the Minister to issue permits for dog field trials, to designate dog training areas and "prescribe regulations to administer such areas". The need for training areas presupposes training.

**17** A dog entered in field trials has presumably been trained. However, the question is clouded by s. 2(f) of the Regulations, which limits "field trial" to "a trial of sporting dogs in actual performance". Field trials are further distinguished from the concept of training in the s. 2(e) definition of "dog training area" which means "an area designated in a permit where field trials or dog training may be conducted".

**18** In s. 6(3) of the Interpretation Act regulations are defined as rules "... made in the execution of a power given by an enactment ...". The Regulation Act defines them as rules "made in the exercise of a legislative power conferred by or under an Act of the Legislature ...".

**19** Regulations respecting the training of dogs appear to be beyond the legislative intent expressed in ss. (ac) and (ad) of s. 113 of the Wildlife Act, but that is not conclusive on the point. The act must be interpreted to "insure the attainment of its objects"; the Act as a whole must be considered to determine whether dog training is included as one of its objects. If so, dog training regulations may be intra vires under s. 113(br).

**20** With the possible exception of s. 43, the legislative intent has not been expressed anywhere in the Act with respect to dog training. It might be inferred for the type of training associated with obedience schools without doing serious violence to the broad purpose of the Act, but the use of caged wildlife as training aids implicit in permits under s. 3 of the Regulations represents a further step to be taken in divining legislative intent.

**21** The respondent argues that the necessary authority cannot be found in s. 113(br) under the ejusdem generis rule:

"... where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things

of the same general kind or class as those specifically mentioned ..." ( Black's Law Dictionary (4th Ed.), p. 608.)

**22** Similar legislative authority -- specific powers to municipalities to pass bylaws governing animals followed by language of wider application -- was considered in Attorney General for Saskatchewan v. Plante (1981), 9 Sask. R. 23. Bayda, J.A., followed principles expressed by Middleton, J.A., in Re Morrison and the City of Kingston, [1938] O.R. 21:

"As the general or residual power applies to matters 'not specifically provided for' by the Act, when the Act grants specific authority in respect of a particular subject matter, such grant would appear to be exhaustive and subject to extension only as would arise by necessary implication from the nature and extent of the power granted."

**23** In dealing with a bylaw purporting to regulate the noise of animals, Bayda, J.A., held: [*page48]

"As the Urban Municipality Act, supra, specifically provides for the council to enact or pass bylaws respecting dangerous dogs, the restraining and regulating the running at large of dogs, and controlling the keeping of horses, cattle and other specified animals, this would appear to exhaust the legislative power of the council respecting the subject matter of animals unless it can be said the extended right to legislate arises by necessary implication from the nature and extent of the power given. In my view the section of the Urban Municipality Act which gives the City Council the specific authority to enact bylaws respecting animals, as I have already stated, exhausts the council's right to legislate in this field. The language of the sections does not support the argument that the nature and extent of the powers granted give rise by necessary implication to the power of the council to enact bylaw 17A."

**24** Crown counsel has referred me to Attorney General v. Lazavovitch (1940), 69 Que. K.B. 214, in which Barclay, J., discussed the principles to be applied in determining whether regulations made under statutory authority are within the powers delegated by the statute:

"In deciding whether or not the authorization or discretion conferred had been exceeded, the doctrine of ultra vires 'ought to be reasonably, and not unreasonably, understood and applied, and whatever may be fairly regarded as incidental to or consequential upon, those things which the legislature had authorized ought not (unless expressly prohibited) to be held, by judicial construction to be ultra vires'."

**25** Judge Kennedy held, following Morrison, supra, that "... the legislature not having chosen to specify training and licensing for training purposes of hunting dogs under any of the specific subsections of s. 113 that pertain to the use of hunting dogs that the Crown cannot then rely upon the residual general section, that is s. 113(1)(br) to support the creation of the regulation that was the subject of this charge ...".

**26** I would consider that the test for the validity of a regulation dependent upon a general enabling section such as s. 113(1)(br) is whether the legislature can reasonably be found first to have considered the general subject matter, then to have intended or at least contemplated the liklihood of the resulting regulation, and finally to have refrained from expressly prohibiting such regulation.

**27** The Crown argues that regulations are presumed to be valid unless clearly shown to be invalid, and that courts can consider extensive evidence including statements of ministerial intention. No such evidence is before me, but I have considered the predecessor statute, the Lands and Forests Act, R.S.N.S. 1967, c. 163. Section 163 enables regulations for the hunting, taking and killing of raccoons but is silent as to their use as training aids. I have also considered other regulations made pursuant to the Act as well as to the overall scope of the Actitself.

**28** I am satisfied that the legislature intended the Wildlife Act and the Regulations made under it to constitute a comprehensive code dealing with wildlife and related matters. In particular it deals with raccoons in a number of sections, as a distinct species, as a fur bearing animal, and as a wild animal that may by permit be kept in captivity. Dogs are dealt with in relation to wildlife. Training areas and field trials are provided for. It is difficult to discern a legislative intent to exclude regulations governing the training of dogs with respect to wildlife, nor a purpose to be

served by any such exclusion.

**29** I find the legislature must be presumed to have been aware of the concept of dog training in enacting the Wildlife Act. Having enacted s. 43 providing for dog training areas it must have been aware regulations relating [*page49] to training might become necessary or advisable. Authority is clear for regulations respecting animals in captivity, apparently an aspect of dog training as it has been practised. Regulations relating to dog training are not expressly excluded.

**30** Considering the intent and purpose of the Wildlife Act taken as a whole, I find that s. 3(3) of the Dog Hunting and Training Regulations is authorized by implication under s. 113(1)(br) as a matter necessary or advisable to carry out effectively the intent and purpose of the Act.

**31** A person wishing to use caged raccoons to train dogs must persuade the Director of Wildlife such treatment is humane under s. 6(10)(d) of the General Wildlife Regulations, as well as complying with s. 446 of the Criminal Code.

**32** I allow the appeal and return the matter to the Provincial Court to be dealt with in accordance with my finding that s. 3(3) of the Dog Hunting and Training Regulations was a valid enactment at the date of the alleged offence.

Appeal allowed.