

Case Name:
R. v. Bailey

Between
Her Majesty the Queen, and
Dana Bailey and Gail Benoit

[2002] N.S.J. No. 182

File Nos.: C-1031508, 1031513, 1031504 and 1031505

Nova Scotia Provincial Court
Digby, Nova Scotia

Prince Prov. Ct. J.

Heard: May 15, June 21, and August 24, 2001; and January
24, 2002.

Judgment: January 24, 2002.

(127 paras.)

Animals -- Cruelty to animals -- Offences -- Penalties.

Sentencing of Bailey and Benoit for of three counts under section 11(1) of the Animal Cruelty Prevention Act. Bailey and Benoit operated a puppy mill. The animals were found in significant distress. However, the accused's personal pet was properly cared for and was not in the same danger as the puppies.

HELD: Bailey and Benoit were fined \$560 for each count, which represented the fine, costs and the victim fine surcharge. Taking into account the condition of the puppies, as well as the fact that the situation was chronic and not acute, the elements of specific and general deterrence were emphasized. The principle of totality and the overall affect of the penalty as it related to the accused's means were considered. The accused were also prohibited from owning any animals for five years, with the exception of the pet that they currently owned.

Statutes, Regulations and Rules Cited:

Animal Cruelty Prevention Act, ss. 11(1), 11(2), 17, 18.

Criminal Code, ss. 446, 722, 722(4), 723.

Liquor Control Act.

Summary Proceedings Act, s. 7(1).

Court Note:

Charge: 11(1) A.C.P.A.

Counsel:

Lloyd Lombard, for the prosecution.

Michael K. Power and David R. Hirtle, for the defence.

[Quicklaw note: Portions of the transcript which were deemed by a legal editor to be not pertinent to the ruling have been omitted from this document.]

TRANSCRIPT OF EVIDENCE

PRINCE PROV. CT. J.:--

1 MR. LOMBARD: Good morning, Your Honour, we're here on, dealing with the Dana Bailey/Gail Benoit sentencing matter. I note the letter that I've provided to the Court. We don't anticipate calling any other witnesses to, for the sentencing hearing. And I'm just referring to that letter that I had sent to my friend indicating that we may wish to call further evidence.

2 THE COURT: The letter of January 21st?

3 MR. LOMBARD: Yes.

4 THE COURT: Okay.

5 MR. LOMBARD: So we won't be calling any further evidence on the sentencing hearing.

6 THE COURT: I was given an envelope, which I haven't opened, because I don't know what's in it. At some time prior, after, I assume, the conviction and I don't know if it's some sort of victim impact statement or something of that nature.

7 MR. POWER: I can indicate that I believe that's what probably is in that. I too received a documentation on the form of a victim impact statement.

8 THE COURT: Yeah. Is that something that is anticipated by the Animal Cruelty Prevention Act. I mean, Criminal Code prosecutions in relation to offences anticipates the submission of a victim impact statement. But I don't --. The impression that I had, is that the Animal Cruelty Prevention Act codifies everything, as far as its procedure is concerned, including a penalty. And I don't know how it would be admissible. Do you have any comment on that?

9 MR. POWER: I did, Your Honour. And I was hoping to motion to block it. It seemed to me if it was forwarded under s.722 as being, you know, an victim impact statement --. Victim is defined, of course, as Your Honour well knows, under that ss.(4) and I would say that the complainant, who is known to me as the author of that particular document, it would be a stretch to include that person as a victim as contemplated under ss.(4).

10 THE COURT: Yeah. I don't even think, I don't think it would apply. Because if you read 722, it talks about a person being sentenced or discharged for an offence. And the implication, of course, is that it's an offence under the

Criminal Code. And, generally speaking, if a statute includes its own penalty section and other sanctions, than those certainly are exclusive to what would be available under the Criminal Code. For example, under the Animal Cruelty Prevention Act you can't get probation, right.

11 MR. LOMBARD: I'm not sure that's correct, Your Honour.

12 THE COURT: I think it is.

13 MR. LOMBARD: And we've had this argument, actually, in Provincial Court in Kentville. Under s.7, ss(1) Summary Proceedings Act, there's a number of cases, actually we pulled off of Quicklaw yesterday. And our understanding is that s.7(1) under the Summary Proceedings Act applies mutas--

14 THE COURT: Mutatis mutandi.

15 MR. LOMBARD: Thank you. ...to the Criminal Code. And, therefore, all the sections of the Criminal Code apply.

16 THE COURT: No. I don't think that can be correct. Because, clearly, for example the Liquor Control Act contains its own search provisions.

17 MR. LOMBARD: Yes.

18 THE COURT: And a number of Acts contain their own search provisions, which may either be weaker than the Criminal Code provisions or perhaps giving greater power than the Criminal Code provisions. And those would prevail.

19 MR. LOMBARD: Yes, absolutely. Always a more serious offence would prevail, I guess, in that respect. But I guess all we're saying, is that if there is a section under the Criminal Code where you can impose a certain penalty, for example, probation or a fine, when you deal with the Summary Proceedings Act, there is an application that you can impose the, as we read it at least, probation as well under the Summary Proceeding --, because of s. 7(1) of the Summary Proceedings Act. We're also, I guess from our point of view, on s. 722 doesn't necessarily apply in any case, to this matter. What we would submit is that s.723 may apply. And s.723 allows the Court, in particular s.723(1):

Before determining a sentence, a Court shall give the prosecutor and the offender an opportunity to make submissions to any facts relative to the sentencing to be imposed. And a Court shall hear any relevant evidence presented by the prosecutor or the offender.

And then, again, s.3:

The court may, on its own motion, after hearing argument from the prosecutor and the offender, the court [inaudible - banging on mic] of evidence that will assist in determining the appropriate sentence.

That's where you can, the Court has, obviously, the power to bring in any witnesses that the Court deems important to the matter. That whole section and, in particular as well, s.4:

Where it's necessary, in the interest of justice, the court may, after consulting the parties, compel the appearance of a person.

Uh, that's not the one I was looking for. I guess it was s.3. I guess, that whole section, we feel, allows the Court to bring in any evidence, again, that the Court feels is important for the sentencing of the person. If you take into consideration s.722, which is a victim impact statement, we would submit to the Court that there is a procedure under the Criminal Code for a very specific reason. That is to give victims a chance, an opportunity, if you will, to present to the Court the impact that it has on their lives, the criminal offence. In this case, you have, and the Court has, perhaps four particular victims, if you will, in society that are not always able to speak for themselves. That is senior citizens, children, disabled

or mentally handicapped, what have you, and animals. And I would submit to the Court, that under the Animal Cruelty Act [sic], there is no particular section which allows for, perhaps a victim impact statement. But there's nothing in there that says that the Court can't hear it either. So I'm submitting to the Court that if we do present evidence, in terms of, if there is evidence before the Court or "evidence", perhaps is a strong word, but a victim impact statement from the, for example, the SPCA, then that should be admitted. Because they represent, at least I would ask the Court to take judicial notice, that they represent animals and animal rights in the Province of Nova Scotia. And as a result of that, that the Court should read that statement and take it into consideration in terms of sentencing. So that would be our submission.

20 THE COURT: What do you say to that, Mr. Power?

21 MR. POWER: Well, there --. Before I reply, may I just --. There are three documents that concern the defence. And I don't know if they're all in that...

22 THE COURT: I don't know. I didn't want to open it until I heard from counsel with respect to whether or not it would be admissible.

23 MR. POWER: There are three that we're aware of, that are trying to be put forward or brought in as being relevant to this particular...

24 THE COURT: Do you want to open it and you can see what's in it and then you'll know whether or not you're talking about the same thing.

25 MR. POWER: I think we're agreed, Your Honour, that before you, in this envelope at least, is a victim impact statement which is the subject of this particular argument. It is on the prescribed form and it's signed by a complainant. The other document, we both agree --. And there's two copies of it, for some reason. There's two envelopes that contain the same thing, a victim impact statement on the prescribed form. I think we're agreed and I think that's what my learned friend just said, the other document is not properly before, or not relevant or properly before the Court. It is a letter signed by the TLC Society [sic] I think they're called, The Tender Loving Care Society [sic]. I think we both agree on that. There was a third one and I'm not sure where it came --. I'm sure it came from my learned friend and it is a, it's on a complaint form under, and it's entitled, it looks like Shelley Barnaby.

26 MR. LOMBARD: I think that's already before the Court or maybe it's not, I don't know.

27 MR. POWER: And at any rate, we wanted to address those three forms of statement. And as it comes down to it, it may just come down to the one which is the victim impact statement on the prescribed form. And we submit that it's tendered under that particular procedure. And a victim, of course, and I don't want to belabor it, because I'm sure the Court is well aware. But it's a person to whom harm was done, who suffered physical or emotional loss in result of the commission of the offence. And, of course, clause (b) I don't think applies, in that it's for the relatives, if you will, in case a person has been incapacitated or, God forbid, killed in the process of a commission of a crime. So I think it's (a) that is the relevant section and I'd be the first to agree with my learned friend if he was to make the argument that there is a, this is a person who may feel that harm was done to them. But really, this section is geared towards the person who has actually been involved or so closely connected as a relative or as a spouse, or whatever, of the victim as to qualify under section (a). The case, in the case of the complainant in this particular --. The complainant in the place of the person who has signed the victim impact statement, I refer to her as the complainant. I think it's a step removed. There's lots of people in society who are offended by certain actions of others in society. But I don't think that qualifies them as victims. And I think she falls in that category that's of people who are far removed. They may have an interest in a particular crime area, but she is not one who has been, I submit, so connected to the incident as to qualify under s.4(a).

28 THE COURT: Who was the person?

29 MR. POWER: This person is one, Rebecca Longmire. I believe she did testify...

30 THE COURT: Yes.

31 MR. POWER: ...for the prosecution's case. And she has signed one of these forms. We're objecting to the introduction of that as not being permissible, if not for the, what you have indicated, Your Honour, then certainly I don't, I submit she does not fit within the definition of a victim as defined in 4(a).

32 MR. LOMBARD: My friend is correct. We're not seeking to admit the statement provided by TLC Animal Shelter. And the reason being, is that it deals with many issues which are not before the Court and I don't think it would be proper to admit that. We're also not seeking to admit the, Shelley Barnaby's statement that was provided to my friend, via my office. We are seeking, however, to admit the Rebecca Longmire victim impact statement. We submit to the Court, as my friend has correctly indicated, the Crown is seeking to admit that on the basis that she was a victim in the sense that she's the one who found the dogs in the state that they were in. She's the one who made the telephone call to the local SPCA officer. And as a result of that she had, this statement is clear about her emotional well being and what not.

33 THE COURT: But doesn't it speak about emotional loss?

34 MR. LOMBARD: Yes.

35 THE COURT: See. I guess the --. Sometimes it's important to maintain the scope of a particular section because it trivializes its importance if you don't. And I guess I'm concerned that in the circumstances here, obviously what that section drives at, in its definition, is a person to whom harm was done, which obviously implies some actual...

36 MR. LOMBARD: Physical or emotional loss.

37 THE COURT: Well --. No. It's even different than that. Because it says:

...harm was done or who suffered physical or emotional loss.

Those imply something substantial, in my view.

38 MR. LOMBARD: And I agree, Your Honour. And the problem with that section, applying that to this Provincial Statute, is that the animal here cannot speak for itself.

39 THE COURT: Okay. So the problem is though, is that sub (b), when it talks about the victim being unable to speak or otherwise being incapable of making any statement, it refers to a person.

40 MR. LOMBARD: Yes.

41 THE COURT: (Quoting):

Where a person described in paragraph (a) is dead, ill, or otherwise incapable of making a statement.

42 MR. LOMBARD: And that's where I'm asking the Court to make the coordination between the Criminal Code which is clearly surrounded for, or adapted for persons, under human beings. And the Animal Cruelty Act [sic] which is a Provincial Statute, which is clearly dealing with animals.

43 THE COURT: Okay. But even the Criminal Code which has its own provisions with respect to animals, doesn't include animals in the sections dealing with victim impact statements.

44 MR. LOMBARD: Yes. I agree, Your Honour. But here, we are dealing with a Provincial Statute here. And we're not, with all due respect to my friend's submissions, the Criminal Code victim impact statement, I would submit to the

Court, perhaps provides us with certain guidelines. But here, the Provincial Statute is clear. As Your Honour knows, the Criminal Code was amended some time ago, to bring the level of offence for a prohibition on having animals from two to five years. And the Provincial Statute has a life time ban prohibition. Which implies, I would submit, that perhaps a more onerous burden on the accused to a certain extent. Well, if there is --. I guess there is no, perhaps, a burden on the accused to prove anything. But, I guess, all I'm saying is that the Provincial Statute, again, as I said before, does not indicate clearly whether the Court has an obligation to accept or deny a victim impact statement. And all I'm saying to the Court, if the Court is satisfied, looking at s.722 and 723 of the Code, which I'm asking the Court just to provide some kind of guidance. But, again, that guidance is only for the fact that there are certain victims which may or may not be able to provide or who would be able to provide some kind of a statement to the Court as to their emotional and physical loss. In this section, the animals are not able to speak for themselves. There's only someone else that can speak for them. And I'm submitting, that when you have a victim who has experienced, been involved in the matter, and has experienced some kind of emotional or physical loss and, more likely, emotional. Because in this case, as in many cases with animal cruelty, it's the animal that suffers the physical loss. That that person should be permitted to speak on behalf of herself and, perhaps, on behalf of the animals as well, of what she's seen and, especially, when she's specifically seen the events before the Court. So I submit that the Court should provide some latitude to s.11(2) and in view of s.723, where the Court clearly has the discretion to accept any evidence that it feels relevant to the matter. And I submit that a victim impact statement from someone who did see these animals is relevant to the matter at hand.

45 THE COURT: Okay. Going back to the issue of s.7. I think the answer, with respect to that, is in the first lines. It says that:

Except where and to the extent that it is otherwise specifically enacted, the provisions of the Criminal Code, except 734.2 which deals with fine orders, as amended or re-enacted from time to time applicable to offences punishable on summary conviction, whether those provisions or procedural substantive including provisions which impose additional penalties and liabilities applied to every proceeding under this Act.

The perspective that I've always held with respect to that, is that, as I said, if an Act, for example, the Motor Vehicle Act has a discreet compendium of penalties that are available, those are the penalties you have to impose. Those are specifically enacted, in the same way, as if a particular piece of Provincial Legislation has its own search provisions or forfeiture provisions, those are specifically enacted to the exclusion of the provisions of the Criminal Code.

46 MR. LOMBARD: Mm-hmm.

47 THE COURT: And I think that's in fact the case here. Because the Animal Cruelty Prevention Act has its own, its own regime of penalties, its own regime of prohibition. So, in other words, it is specifically enacted what the penalties can be under the Act, so that the provisions of the Criminal Code, in my view, couldn't apply.

48 MR. LOMBARD: I agree with that submission, yes, Your Honour.

49 THE COURT: Okay. So you agree that the provisions of the Criminal Code don't apply to the proceedings under this Act?

50 MR. LOMBARD: The, the --. No. What I agree to, is that the penalty section doesn't apply. Because we have a lifetime ban prohibition and certain other things that you can apply under the Act, under s.11 or s.18, I believe, that is the penalty provision. However, what I'm submitting is that the other sections of the Criminal Code can be some kind of guidance to support --.

51 THE COURT: I think --. You see, I think the difficulty with that is, once a penalty section is specifically enacted, then that's to the exclusion of the provisions of the Criminal Code.

52 MR. LOMBARD: But there's nothing in that penalty section that deals with victim impact statements, I guess is

what I'm saying. Therefore, that leaves to the discretion --. At least our submission is, that it leaves to the discretion of the Court on whether it wants to accept what I've just said, previous to. Because a victim impact statement doesn't specifically, isn't a penalty, as such.

53 THE COURT: Well, no. But it is certainly, it's certainly within the provisions of the Criminal Code that deals with sentencing.

54 MR. LOMBARD: Which deals with sentencing, but isn't a penalty, per se.

55 THE COURT: No. But, I guess, what I'm saying is that, if, for example, there is no enactment of a specific penalty section or sentencing section, if we'll call it that, in a Provincial Statute, then your argument that the provisions of the Criminal Code might apply, might have more weight. But where, as in the case of the Animal Cruelty Prevention Act, it has its own discreet compartment of penalties, then in my view, that excludes any other sentencing options that may be contained or available in the Criminal Code. So that the only way you could have, for example, what you propose, would be if there was a part of the specific penalty enactment in the Animal Cruelty Prevention Act that permitted what you propose. So, for example, if that was, if what you're saying is the case, then if someone was aggrieved as a result of a Motor Vehicle Act matter, you're suggesting that they could file a victim impact statement?

56 MR. LOMBARD: I don't see why not, yes.

57 THE COURT: Well, the reason why not is because it's not specifically enacted, something else is specifically enacted.

58 MR. LOMBARD: Again, I would say, I would submit to the Court, that it's not, if it's not particularly, specifically a penalty, that it's not part of that --. The sentencing, I guess from our point of view, the sentencing, or the victim impact statement is not particularly part of the penalty, that would be our submission.

59 THE COURT: Well, no. It's part of the penalty because you're asking the Court to consider it in imposing it.

60 MR. LOMBARD: But the Court can consider many things in terms of the...

61 THE COURT: The Court can consider things that are relevant to the imposition of penalty.

62 MR. LOMBARD: The, for example, the criminal record or previous offences under various Acts or what not. So that would be our submission to Your Honour.

63 THE COURT: For the reasons, I guess we've been discussing, in my view, because of the fact that the Animal Cruelty Prevention Act has its own regime of sentencing, which is clearly set out in the piece of legislation. It is in my view then, otherwise enacted to the exclusion of the provisions of the Criminal Code dealing with the issue of punishment for offences on summary conviction. And in my view, it would not be permissible to file such a statement for the Court's consideration. Additionally, it would seem to me, even if it did apply, that the definition of victim contained in s.722 of the Criminal Code could not, in this circumstance, be extended to the degree requested by the Crown attorney.

64 MR. LOMBARD: Thank you, Your Honour. In that case, if I could --. I guess, Your Honour, in terms of principal issue here, is whether the Court is going to impose a lifetime ban upon the defendants, prohibiting them from having animals in their custody or any other penalty that the Court deems necessary to ensure deterrence and to ensure denunciation of this type of behaviour in society. And our submission will deal with those issues. I don't know if Your Honour, I've read some of these, I've read these decisions and I believe that some of these --. And I was looking for it here a few minutes ago and I couldn't find it, but I believe that some of these matters, Your Honour I know, has the view that [inaudible] a criminal record if it's a Provincial offence, I don't know, perhaps Your Honour can give me some light on whether you're prepared to hear a criminal record in view of this offence or if the --.

65 THE COURT: Well, the issue of record, I suppose can, theoretically, be relevant in some circumstances. But I would suspect that if it was going to be relevant to the issue of penalty with respect to this offence, it would have to be the same type of offence under the Criminal Code.

66 MR. LOMBARD: Under s.446 or something of that nature. I guess our submission is that, perhaps any record of violence would be also of interest to the Court. Because, we submit, even though any kind of abuse, cruelty to an animal, is a form of violence. And as a result, any criminal record which would be related to violence and to violent offences would also be relevant before the Court. I'll let my friend speak to that.

67 THE COURT: Go ahead. Do you want to make a submission on, or a reply on that submission.

68 MR. POWER: Just on the...

69 THE COURT: Well, he's suggesting...

70 MR. POWER: For the matter of the record?

71 THE COURT: Well, yeah, I guess. And he's suggesting that a record of violence, somehow, is relevant to the issue of neglect.

72 MR. POWER: Well, first of all, on the matter of the record. It's our submission to the Court, that the only relevant record in this particular case is, and as provided for at s.18, is whether this is a first offence under this particular --, or subsequent, because there are different levels of penalty. So it is our submission or understanding that this is a first offence under this particular Act. There may be other criminal matters, but we don't think they're relevant for the purposes of sentencing in this particular section. And with regards to the matter of violence, okay. There was, we don't think it's relevant in this particular case, in any event. Because if you, I'm sure we'll review it at some point, the violence here was, if you will, there was no violence here. The violence has to be, it has to be attributed that the fact that they weren't there on the site, that that amounted to some sort of violence, but I don't think, first of all, under this particular charge...

73 THE COURT: Is there a copy of the Act that we'd had in the exhibits or something? I think there may have been.

74 MR. POWER: The charge of course was, neglecting to providing certain items.

75 THE COURT: It raises an interesting point. It's clear that the criminal law had differentiated quite clearly, the difference between negligence and neglect and direct causing of harm in the regime of offences.

76 CLERK: No, there wasn't.

77 THE COURT: There wasn't. Does anybody have a spare copy of that?

78 MR. LOMBARD: I don't have a spare copy, Your Honour, but you can have a look at mine.

79 MR. POWER: Of the Act?

80 THE COURT: Yeah. I just wanted to take a look while you're speaking. You were saying s.17, was it?

81 MR. LOMBARD: S.18, I believe, Your Honour.

82 MR. POWER: S.18 provides a stepped approach to penalty depending, of course, upon whether it's a, what type of offence it is, for first, second and third or subsequent offences. So 18 (a) and (b). So it was our submission that it would be treated as a first offence under that particular section, sentencing section.

83 THE COURT: Are there any specific charges or convictions under 446 or anything that would be relevant to the specific issue we're dealing with on the record?

84 MR. LOMBARD: There is --. If the Court's asking whether there is other charges under the Criminal Code in terms of animal cruelty or abuse...

85 THE COURT: Yes?

86 MR. LOMBARD: ...there is not.

87 THE COURT: Okay. Well, in my view, that would be --. If any of the Criminal Code convictions could be relevant or would be relevant, in my view, it would only be that type.

END OF OPENING REMARKS

SENTENCING DECISION

88 THE COURT: Sentencing in this type of case, at least for me, isn't an easy function because the Court has to caution itself not to inject too much of a personal perspective with respect to the issues. Because, of course, that would be inappropriate and I'd have to caution myself because, perhaps of personal perceptions, not to be overwhelmed by the factual circumstances and to ensure that I've viewed them in an objective way. Because otherwise, the temptation clearly could exist to impose a sentence which does not reflect the appropriate principles of sentencing. Emphasizing, perhaps, inappropriate factors or irrelevant factors, or factors which do not have a place in an objective process which, to a large extent, is what sentencing has to be.

89 I've reviewed the facts as I had found them, after the trial, and it was clear from my review of the facts that I disagree with the position put forth by defence counsel, that this was a transient period of neglect that would likely have ended when they returned from their trip away. Because, in my view, having reviewed the condition that the dogs were in, and the photographs of their condition, and the reason for their condition, it was clear that this was a situation that was chronic and not acute. There's no question, that in this type of case, the principles of sentencing that apply require the Court to emphasize clearly and unequivocally the elements of specific and general deterrence. Persons in the public must know that there is significant consequences to this type of infraction. And the individuals, specifically, have to know that this type of circumstance cannot be permitted to be repeated.

90 I accept from defense counsel the suggestion that this has been a difficult situation for them and that degree of difficulty should reflect to them the importance of adhering to reasonable and minimum standards of care for animals, whether they're pets or whether they're for resale. When we take control of an animal, when we bring that animal home, we're responsible for its condition, we're responsible for its health and we have to attend to it in a reasonable and appropriate manner. Animals don't ask to come with us, we ask them to come home with us. Because of that, we take a responsibility and we have to fulfill that responsibility, at least to the minimum standards required by the law.

91 I've reviewed the cases that had been given to the Court by Crown counsel and it's clear that the range of activities described in these cases, ranges from circumstances of, perhaps, more temporary neglect to outright cruelty in relation to the animals. And it's likely for that reason, that the range of penalties identified in these cases vary so greatly. While precedent is valuable in terms of assessing penalty and ensuring some consistency, and ensuring that the punishment reflects the behaviour in question, ultimately, each case has to be determined on its particular facts. The circumstances of the offence, the circumstances of the offenders.

92 With respect to the issue of penalty it's clearly also relevant, whether or not there are prior convictions for related offences. That is not the case here. I'm advised that there are no prior convictions with respect to this particular Act. Or, if it's relevant, any other related legislation, particularly, the Criminal Code.

93 The animals in this case, in my view, were in significant distress. I've already mentioned the description given by Dr. Pothier of the condition of the larger dog. And to say that it was in poor condition, is certainly an understatement. In my view, that dog was in some real danger, as were the puppies in the circumstances that they found themselves.

94 The Crown is suggesting in the circumstance, a fine of three thousand dollars (\$3,000.00). Was that in relation to each count, there's three counts?

95 MR. LOMBARD: Totality, Your Honour.

96 THE COURT: Three thousand dollars (\$3,000.00) with respect to each of the defendants, plus the reimbursement of one thousand, two hundred and sixty-one dollars and fifty-two cents (\$1,261.52) and a lifetime ban from the possession or ownership of animals. Of the cases that I've reviewed submitted by the Crown, the closest factual, or one of the closer ones, factually, was the Crouse case. And in that case, for that particular count, the Court had ordered the payment of a five hundred dollar (\$500.00) fine and had ordered a five year ban. Reading Judge Crawford's comments with respect to the penalty in that case, it was clear that she was faced with a joint recommendation by experienced counsel, which ultimately persuaded her to impose the sentence that she did. And, in fact, she stated as much in her decision, that if the sentence was not a jointly recommended penalty, she may have imposed something significantly different.

97 In the other cases where the level of ban and/or fine was longer or higher, respectively, the circumstances were, perhaps, in some case, more egregious than these circumstances here.

98 So what I have to do, is tailor a penalty which will send the appropriate message to the individuals and send the appropriate message to the community. I also have to consider the principle of totality because there are, in relation to each of these individuals, three counts. And I have to consider the overall affect of the penalty as it relates to their means. Because, clearly, the ability to pay a fine or to pay fines has some impact with respect to the level of fine that's appropriate in a given circumstance. Obviously, persons with greater means, perhaps have the ability to pay larger fines. And a larger fine, for a person with more means, may be necessary to achieve the desired element of deterrence.

99 I've considered all of those factors in determining what's appropriate in this situation. So with respect to each of the counts, in relation to each of the individuals and the fine on each count, will be a fine of four hundred dollars (\$400.00), one hundred dollars (\$100.00) costs, sixty dollars (\$60.00) victim fine surcharge, for a total of five hundred and sixty dollars (\$560.00). So that the total penalty in relation to each will be one thousand six hundred and eighty dollars (\$1,680.00).

100 They are a unit living, persons living together, so that amount of penalty, in my view, will no doubt, should have a significant impact from the perspective of specific deterrence. And, in my view, bearing in mind the circumstances, that level of fine should have a significant impact with respect to general deterrence as well.

101 I'm also going to sign an order in relation to each of them, that they reimburse the appropriate agency in the amount of six hundred and thirty dollars and seventy-six cents (\$630.76), each. Is there a time frame that you're suggesting, Crown, with respect to that?

102 MR. LOMBARD: Probably three months, Your Honour.

103 THE COURT: Do you want to have some input on that?

104 MR. POWER: With the --. Well, it is --. I think you normally get six months, for a fine, anyway.

105 THE COURT: Well, I normally give six months in the first instance for the payment of a fine. This is a supplementary order in some respect. Six months is what you're seeking?

106 MR. POWER: I'm seeking --. Six months is sufficient.

107 THE COURT: That order to be satisfied within six months from today's date.

108 MR. LOMBARD: Could I have the amount again, Your Honour?

109 THE COURT: Six thirty, seventy-six for each.

110 MR. LOMBARD: Thank you.

111 THE COURT: The final issue I have to address, is the issue of a ban. And it's in relation to that issue that I have to be most cautious not to let myself be influenced by issues which were, perhaps, extrinsic to the issue of sentencing before me today.

112 So I looked at the cases that were submitted by the Crown with respect to the issue of ban. And, again, it would appear that Crouse and Whynot, where the circumstances were very serious indeed, resulted in a ban of five years. I've considered the circumstances here, I have considered the fact that they have for, what defence counsel says, is a year, been effectively banned from owning any animals with the exception of the one pet. And having considered that, in my view, the appropriate range of prohibition would be for a period of five years.

113 It would appear that the undertaking that had been given, permitted an exception with respect to one of the animals. And it would appear that that animal was not an animal, at any time, that was at risk. It was apparently a personal pet and not one of the animals that was for resale. While it's incongruous to me, having viewed the evidence as I did, why all animals in the possession of an individual wouldn't merit the same treatment, it would appear that the risk to that animal is not very great. I'm satisfied that they probably love that animal and they take good care of it. I have found that it was not the same for the animals that were the subject matter of these charges. So I'm prepared to permit them to possess that animal, that specific animal. But they're not permitted to possess any other ones for the period that I identified in the ban.

114 Hopefully, the experience of these proceedings and the penalties that have been imposed and the ban that has been imposed, will cause a reflection with respect to the manner in which these creatures that we're entrusted with, of our own volition, are cared for in the future.

115 I presume that you wish six months time to pay each of the fines?

116 MR. POWER: Yes, Your Honour.

117 THE COURT: I'll grant six months time to pay each of those fines. Now, I'll leave it to Crown counsel to draft the prohibition document and it will specifically identify that particular animal.

118 MR. LOMBARD: Thank you, Your Honour.

119 MR. POWER: As being an exception.

120 THE COURT: Yes. Is there something further in connection with this?

121 MR. POWER: Yes. I was hoping to clarify that, Your Honour. There were two charges against two individuals.

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122 THE COURT: I guess the confusion was, is there is three dogs.

123 MR. POWER: Yes. But one count covered three dogs.

124 THE COURT: Yes. Well, obviously, the penalty will be adjusted accordingly.

125 MR. LOMBARD: So is that the --. Do I still understand that the total of the penalty is sixteen hundred and eighty dollars (\$1,680.00), Your Honour?

126 THE COURT: No. It would --. There are two counts in relation to each. It would be eleven twenty. Is there something further in connection this?

127 MR. POWER: No. Thank you. Thank you, Your Honour.

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