

Case Name:

R. v. Hadwen

Between

**Her Majesty the Queen, and
Robert Hadwen**

[2005] O.J. No. 928

Information No. 998-04-310

Ontario Court of Justice
Walkerton, Ontario

G.J. Brophy J.

Heard: August 2, 2004.

Oral judgment: February 8, 2005.

(87 paras.)

Criminal law -- Offences -- Property offences -- Cruelty to animals -- Sentencing -- Considerations -- Denunciation -- Particular sanctions -- Conditional sentence -- Prohibition orders.

Sentencing of Hadwen for various offences involving cruelty to animals. Hadwen pleaded guilty to five charges under the Criminal Code and the Dead Animal Disposal Act, with respect to his treatment and disposal of cattle. He had failed to provide adequate food, water and care for the animals, 31 Holstein cows, and had failed to dispose of the animals' bodies within 48 hours. Hadwen, a life-long farmer, had allowed the cows to starve to death. Inspectors found the animals tied and starving, in very poor condition; many had to be put down. Hadwen had no prior criminal record and the pre-sentence report was favourable. A doctor's report indicated that Hadwen had suffered from a severe depression at the time of the offences. The Crown requested a 90-day period of incarceration, to be followed by a three-year probation order, for the cruelty to animals charges. The Crown also requested the maximum fine for the charges under the Dead Animal Disposal Act. Hadwen submitted that a suspended sentence or conditional sentence would be appropriate.

HELD: Hadwen was sentenced to five months, to be served in the community, followed by a three-year probation order. Hadwen was further ordered to perform 240 hours of community service. Finally, a \$2,000 fine was imposed for the offences under the Disposal of Dead Animals Act. A suspended sentence was not appropriate. Hadwen was also prohibited from owning or being around animals. Denunciation was an important factor in sentencing, given the extreme nature of the neglect and the impact on the animals. However, since Hadwen was not the worst offender, a conditional sentence was appropriate. A distinction was drawn between Hadwen's actions in neglecting the animals, and the more serious torture cases.

Statutes, Regulations and Rules Cited:

Criminal Code, ss. 446, 446(1)(a), 446(1)(c), 446(5), 718, 718(2)(d), 718(2)(e), 718.2, 738, 739, 742, 742.1.

Dead Animal Disposal Act, s. 3(1), s. 3(2), s. 17.

Charges: Cruelty to Animals x 3 -- Dead Animal Disposal x 2

Counsel:

Ms. D. Scapinello, Counsel for the Crown

Ms. A. Mankotia, Counsel for the accused

1 G.J. BROPHY J. (orally):-- This is a sentencing decision involving Robert Hadwen. Mr. Robert Hadwen stands before this Court having pled guilty to five offences: three of them pursuant to the Criminal Code and two of them pursuant to the Dead Animal Disposal Act, the provincial legislation.

2 The Criminal Code offences are as follows. Firstly, he has been charged that on the 26th of March, 2004, at the County of Bruce, being the owner or person having custody or control of animals, to wit: cattle, did wilfully neglect or fail to provide suitable and adequate food, water, or care for such cattle, contrary to s. 446(1)(c) of the Criminal Code of Canada. He further stands charged that on or about that same date, being the owner or person having custody or control of those cattle, he did wilfully permit unnecessary pain or suffering that those cattle were subject to by failing to provide adequate food, water or care, contrary to s. 446(1)(a) of the Criminal Code. Lastly, in terms of the Criminal Code offences, on that same date being the owner or person having custody or control of animals, that is to say in this instance one Holstein-type cow, he wilfully permitted unnecessary pain or suffering to be directed towards that cow by failing to exercise reasonable and adequate care and supervision of the animal contrary to s. 446(1)(a) of the Criminal Code of Canada.

3 I would indicate that the Provincial Offences are as follows. Firstly, being the owner of dead animals, that is to say 31 Holstein-type cows, he unlawfully failed to dispose of the dead animals within 48 hours of death, contrary to s. 3(1) of the Dead Animal Disposal Act and thereby committed an offence under s. 17 of that Act. Secondly, on the Provincial Offences side, he also on the date in question, the 26th of March 2004, being the owner of a fallen animal, being one Holstein-type cow, did fail to kill the animal in a humane manner contrary to s. 3(2) of the said provincial legislation thereby committing an offence under s. 17 of that Act.

4 The matter was dealt with by way of a guilty plea. The guilty plea was received on the 26th of November 2004. I should indicate that all of these offences are summary conviction offences. The Provincial Offences by statute are summary conviction offences, and under the Criminal Code, the cruelty to animal charges, the three that I have described generically, are summary conviction offences.

5 With respect to this matter, on the 25th of January 2004, after receiving a pre-sentence report that had been previously ordered, I received submissions and the matter was adjourned to today for sentencing.

6 The facts in this case are well documented in terms of the agreed summary prepared by the investigators from the Ontario Society for the Prevention of Cruelty to Animals. It has been filed as Exhibit Number 1 in these proceedings and has been agreed as being accurate, with some minor exceptions noted at the time of receiving the plea with respect to two issues that really do not impact upon the sentencing. One is that there was some attempt to offer water to these

animals by way of a garden hose but clearly it was not adequate, and that is a minor correction of facts. The only other minor correction of facts that was expressed as that in the summary it is unclear particularly why Mr. Hadwen as retaining or keeping the cattle and the facts were clarified by saying that his decision to keep the cattle through the winter of 2003 and into 2004 was to try and get a better price for them, hoping that the BSE or mad cow crisis would lift and there would be a better market for the cattle once the border into the United States was opened. Those two corrections are minor clarifications, in my view, given the impact of the general set of facts.

7 In a summary fashion, because the exhibits set out in unfortunate detail the way in which these cattle were found on or about the 26th of March 2004, I will indicate that the offender, Mr. Hadwen, age 47, is a lifelong farmer who allowed his dairy herd to starve to the point that many of his animals died. The surviving animals, after intervention by the Ontario Society for the Prevention of Cruelty, had to be euthanized after the intervention because of their poor condition. The circumstances of the starvation and death of the animals has been set out, as I have indicated in the summary that was filed as Exhibit Number 1, and there are a set of photographs which have been filed as Exhibit Number 2; 27 photographs in all, which detail in rather stark clarity the distress and circumstances of these most unfortunate animals.

8 The inspectors on the 26th of March 2004 found at the Hadwen farm 31 dead animals tied up in loose pens, concealed in deep manure or in a pile in the barnyard. Twenty living animals were also found. At the time, one cow was unable to get up and she was euthanized immediately for humane reasons. The balance of the animals that were alive were provided with food and water but they continued to deteriorate and under the advice of a veterinarian they ultimately were put out of their misery on the 31st of March 2004. It is noteworthy when considering these facts that there were in fact large quantities of animal feed present on the Hadwen farm. Unfortunately, Mr. Hadwen had made only limited food and water available to the animals, notwithstanding the presence of that food. It is set out in the summary that Mr. Hadwen was of the belief that his farm, and particularly the animals that we are dealing with here, had been infected with Bovine viral Diarrhoea. He did not seek the help of a veterinarian notwithstanding the large number of animals dying between December 2003 and March 2004. There is a report that was detailed in the summary filed as Exhibit Number 1 from the University of Guelph indicating that there was no evidence of that disease actually found in the animals. The diagnosis from the University of Guelph, Department of Veterinary Medicine indicated that the cause of death of the animals on the farm was, in fact, starvation.

9 The photographs filed as Exhibit Number 2 illustrate the physical impact of the starvation on the animals. They show pictures of dead cows still tied to stanchions; bodies lying in manure piles; sickly, underweight animals standing or walking in deep manure; empty water troughs; empty feeders; living cows tied to stalls next to dead animals; flooded areas in the barn. One animal in particular as it is being taken out of the barn by the inspectors immediately began drinking water from a stable cleaner. There were, in fact, dead calves found on the site as well and most disturbingly, as illustrated by the photographs, there was at least one living cow buried in the manure pile. The photographs show that animal's head barely emerging out of the manure but with the eyes still indicating that the animal was alive. This is very tragic and cruel, unfortunately in the extreme.

10 The facts are what they are and have to be dealt with.

11 It is important to note that Mr. Hadwen has come to this Court with a guilty plea acknowledging responsibility for his actions. I should indicate that I have ordered the pre-sentence report, as was mentioned, and the pre-sentence report has been reviewed by me in detail.

12 The pre-sentence report shows and satisfies me that Mr. Hadwen has generally been a good citizen in our society. He comes to this Court without a criminal record. He, as I have indicated, has been a lifelong farmer. He completed grade 13 in high school and immediately went to work on the farm. It was a family farm operation involving his father and then other members of the family and over time, in a natural, progressive way, they went their separate ways and Mr. Hadwen ultimately was farming on his own.

13 The report indicates Mr. Hadwen generally has been a hardworking individual and has done his best to support his

family. There are five dependents in the family. I believe there are four children in all; two adult children and two children still at home, although I think the children that are at home are in their early to mid-teens. I don't think they are young children. And Mr. Hadwen has supported them and has done his best to provide for all of their needs. The family is still united. His spouse is supportive.

14 There has been, as described in this pre-sentence report and somewhat in the submissions and other documents I have received, some issues with respect to Mr. Hadwen perhaps being more silent and removed from the family life at times than perhaps he should have been, but that is maybe a matter of small differentiation between other persons and is not of major importance in this matter. Although, and I have to mention this, I think in fairness to keep the picture that I have in my mind about the circumstances as clear as I can, and that is this. The animals were visible - not all of the animals, but some of the animals were visible from the laneway as you went into the farm property. There is an indication in the material that I have received that Mr. Hadwen, as matters deteriorated through the 2003-2004, indicated to his family members that the barn was his place of work and that he did not encourage other persons to go into the barn and see what was happening. But it does beg the question about why there wasn't an intervention or some stronger steps taken by other members of the family to bring this to a close at an earlier point.

15 It is difficult of course for all persons who are outside the family structure to understand the dynamic of the family and I appreciate that. There are some persons and some families wherein the dynamic is such that there are very clear and distinct areas of responsibility and that may well have been the case here. Mr. Hadwen, it would appear, based upon the reports I received, both the pre-sentence report and also the two reports I have received from Dr. McDonald, who is a psychiatrist who has been consulted by Mr. Hadwen, that Mr. Hadwen was in fact experiencing a crisis in his life with respect to his inability to make decisions and his inability to confront the reality of his farming operation.

16 In fact, according to Dr. McDonald whose reports I accept as being clear and focused, this was a man who was not normally a cruel person or one who would normally neglect his animals or cause them or any person harm. Doctor McDonald opines that he believes that the behaviour at the time was predicated upon depression which was cleared by the time Dr. McDonald was able to deal with Mr. Hadwen in the summer of 2004.

17 Doctor McDonald indicated that in the information he was able to garner involving Mr. Hadwen, that Mr. Hadwen began to dread going to the barn. He began declining to make any decisions whatsoever and found himself desiring to be with his wife and his family much more than would be the norm in his habitual practices. He was sleeping a large amount of the day, up to 16 hours per day, and during this time he also suffered from a persistent pain in his chest, which Mr. Hadwen himself wrote off as a function of stress but it is indicative of the anxiety that Mr. Hadwen was experiencing.

18 Doctor McDonald indicates in his letter of October the 1st, 2004, filed as Exhibit Number 3 in this matter, that, and I quote, "On examining him the 13th of September 2004, there was no evidence of depression. However, the story which has unfolded strongly suggests that he did suffer a significant depressive reaction this winter which led him into not trusting his own judgment, not asking for help, feeling overwhelmed and obsessed with the problems that he was facing daily, yet totally fixated on the fact that his animals were dying of a viral infection which may or may not have been true."

19 That is an interesting comment when juxtaposed with the remarks of Dr. K.L. Dunstan of the Mildmay Veterinary Clinic, which has been presented to the Court by the way of an addendum to the pre-sentence report, filed as Exhibit Number 6. Doctor Dunstan indicated that Mr. Hadwen had complained to him that although he spent a lot of time in the barn with his cows, or rather that is the opinion of Dr. Dunstan, that Mr. Hadwen complained different times to Dr. Dunstan about how he, Mr. Hadwen, wasn't feeling well and wondering whether he himself could be contracting some disease from the cows. Doctor Dunstan comments that Mr. Hadwen seemed quiet and reserved and was determined to tend to and treat his cows himself, seeking outside help only when he thought he was beat.

20 Finally with respect to the comments concerning the pre-sentence report, I should indicate that Mr. Hadwen has,

since this most unfortunate and terrible set of events come to light, has picked himself up and has obtained work and employment through the auspices of the Family Y Community and Employment Services. I fully appreciate that for a man of 47 years, who has spent his life working on a farm, that removing himself from the farm and working in an environment which is subject to employment constraints, directions from employers, taking a job on effectively, although not officially, as an apprentice with respect to cabinet making, that that is quite a significant effort on his part. It is important that I note that Mr. Hadwen, in keeping with his lifelong habits of trying to be a supportive family member and earning income to assist his family, has in fact transformed himself into a person who is labouring in a cabinet making place of employment and even after the Family Y Community and Employment Services training subsidy was completed, Mr. Hadwen's work ethic and capacity to perform the duties that have been asked of him was such that he continues to be employed in that function with the employer he had been placed with.

21 As a result, I think it is important to note and give Mr. Hadwen proper credit for his efforts since the event occurred that has brought us to court here today.

22 In summary, the pre-sentence report confirms this. It confirms Mr. Hadwen is a first offender; raised on a farm; and has known little other work experience other than farming. He has experienced a positive family situation and relationships and the support of his parents and his own nuclear family. Mr. Hadwen has reported to the maker of the pre-sentence report that the situation got out of control by his own inaction. He acknowledges that. He accepts responsibility for the demise of the cattle. He notes in his comments to the maker of the pre-sentence report that it was not his intent to allow the cattle to die. He has sought counselling since these events and has established a work situation. The maker of the pre-sentence report indicates that Mr. Hadwen was likely suffering from depression and anxiety at the time of the offence and that it is thought that this situation contributed to his withdrawal and inability to make appropriate decisions in regard to his livestock. Those are the comments that are in the pre-sentence report and they are of significant value to this Court in determining what should be happening today.

23 With respect to the situation that I have to look at, I have to reflect upon the fact that Mr. Hadwen has been charged with offences under s. 446 of the Criminal Code, which are summary conviction offences, and the maximum penalty available to the Court is six months in custody. There are other issues that can be dealt with in terms of penalty, that is by way of a probation order and by way of a prohibition order under s. 446(5) dealing with limitations on Mr. Hadwen's ability to have animals or livestock in his care or in his home. I should note that the Dead Animal Disposal Act penalties are basically fines. There is an allowance for imprisonment but the Crown hasn't suggested that there should be imprisonment on those matters but has simply suggested that fines should be imposed and that the fines would be at a maximum \$2,000 on each count. These are the available sentencing ranges that this Court can look to.

24 With respect to the situation generally, I should indicate that counsel have provided me with clearly thought out and intelligible positions and I appreciate their advocacy in this matter. The Crown, reflecting the horrific nature in the way in which the cattle were found and, to use her words, the stark horror of the situation that these animals found themselves in, the Crown has submitted to this Court there should be a period of incarceration which would be for a 90 day period. The Crown has then suggested three years probation and with the appropriate terms of control concerning animal connections with Mr. Hadwen. Concerning the Dead Animal Disposal Act charges, the Provincial offences, the Crown has suggested the maximum fine in each count would be appropriate.

25 The defence, through Mr. Oldfield's effective submissions, has suggested that the appropriate disposition should be one of a suspended sentence with probationary terms or a conditional sentence. The defence cautioned this Court, and I accept this as a proper caution, that the visceral reaction that any person would have upon hearing these facts and looking at those photographs should be tempered so that a clearly logical and consistent penalty is imposed in accordance with s. 718 of the Criminal Code and the sentencing principles that are contained in that part of the Criminal Code.

26 Quickly passing to the Provincial Offences, Mr. Oldfield takes no great issue with the Crown's suggestion that there should be fines and that the fines should be near or at the maximum that are available for first offences. That is not

the thrust of the defence submissions. The defence submissions are that a conditional sentence or suspended sentence should be considered by this Court and the defence makes these comments with respect to mitigating matters. Firstly, there is family support. Secondly, there is the public shame associated with these offences and the shame that has been experienced by Mr. Hadwen and which he no doubt has suffered as a result of the publicity engendered by this offence.

27 Mr. Oldfield also notes clearly that this is an offence which is a neglect case. I will comment on that more in a moment but the distinction is that there seems to be two types of cruelty to animal cases. The first type is the neglect case, where an animal is, or a collection of animals, is neglected with respect to the provision of food, water and other appropriate care. The other type of case is the torture case, which is incredibly sad and distressing but is best reflected in the *R. v. Power* decision which is a decision of the Ontario Court of Appeal reported [2003] O.J. No. 2414. Mr. Oldfield in his submissions tells this Court that he thinks that the torture cases are the worst cases of their type; that there is a distinction to be made between those cases and the neglect cases. I will come back to that in a moment.

28 In mitigation, Mr. Oldfield also submits that there has been great remorse exhibited by Mr. Hadwen with respect to this matter. Mr. Oldfield also comments that there were significant mental health issues outstanding at the significant times of decision making, or more to the point, lack of decision making by Mr. Hadwen. Mr. Hadwen has no record. He has entered a guilty plea and he cooperated during the investigation. And lastly, there is a good pre-sentence report suggesting that Mr. Hadwen will be able to overcome his difficulties and move into a stage in his life where again he is contributing to society and the support of his family.

29 Having looked at that of course, and reflecting upon all of those mitigating aspects, the major and fundamental aggravating aspect of this matter is the way in which these animals died. It is one which is abhorrent to the good conscious of anyone who would be exposed to these facts and, as a result, the sentencing considerations that have to be taken into account in any decision have to look at the provisions of s. 718 and the denunciation of the actions of Mr. Hadwen, or the lack of action by Mr. Hadwen, has to be reflected in this disposition. In that sense I have to consider all of the sentencing principles but I have to comment particularly upon the denunciation that is necessary in this instance.

30 In this case the sentencing principles all have to be looked at but it is clear to me that specific deterrence is not an issue in this matter in any large way because Mr. Hadwen is not going to have an opportunity to attend to animals in the future, nor do I expect his family would allow him to do that; nor do I expect that he has any desire to do that given this experience. So specific deterrence is not a major factor.

31 With respect to general deterrence, in my view the type of case that we are dealing with is so peculiar to the circumstances involved and particularly the circumstances of Mr. Hadwen, particularly as they relate to the mental health issues and the depression, that it would be incorrect to overload the emphasis that should be put on general deterrence although it always is a background factor that has to be taken into consideration.

32 As to separating offenders from society where necessary, clearly that is not the major issue here. Mr. Hadwen is otherwise a good citizen and poses no threat to society.

33 In terms of rehabilitation, Mr. Hadwen has gone a long way towards rehabilitating himself and that is something which this Court takes into consideration.

34 In terms of reparations for harm done to victims of the community, Mr. Hadwen has made some, and will and can through the sentencing decision I am going to make, make a significant contribution to his community by way of community service work and that is going to happen and I will come to that detail in a moment.

35 With respect to the expenses of the Ontario Society for the Prevention of Cruelty to Animals there has been a very clear request that there be restitution in a relatively modest amount given the expenses of the O.S.P.C.A. and Mr. Oldfield in his submissions indicates that is quite in order and that is going to happen.

36 With respect to a sense of responsibility and acknowledgement of harm done to the victims in the community, Mr.

Hadwen has expressed that through his remorse and has accepted his responsibility for these events and as a result Mr. Hadwen, in my view, has satisfied that aspect of the sentence principles that have to be looked at.

37 It remains, however, to consider the denunciation of Mr. Hadwen's behaviour and that has to be reflected in the sentencing decision. I also note in s. 718.2(d) and (e) that an offender is not to be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances and there should be consideration given to all available sanctions other than imprisonment that are reasonable in the circumstances for all offenders.

38 With respect to the decision that I have to make in this regard, to a certain extent I have been assisted in considering three cases. The first one I have mentioned already, that is the *R. v. Power* Ontario Court of Appeal decision. I have already provided the citation for that. That is a case in which Mr. Power and two of his friends captured a healthy domestic cat and tortured it and killed it and it was for the purpose of some artistic effort on their part. Without getting into the details of that, the sentencing Judge sentenced Mr. Power for his role in the matter to 90 days in custody on the cruelty to animals charge. There was a subsidiary offence in that regard, being a mischief matter, for which he received an 18 month conditional sentence.

39 The Court of Appeal indicated that that case was the worst offence, but it was coupled with certainly not the worst offender appellation given that Mr. Power was otherwise a good citizen and a person who had no difficulties in society generally and felt great remorse for what had happened. In that decision the Court of Appeal approved of the trial Judge's decision to impose a 90 day jail term and did that in light of the principles of deterrence and denunciation and the Court of Appeal approved that sentencing decision.

40 That offence is distinguished from the offence that have in front of me in terms of it being a positive act on the part of the offender by way of torturing that cat.

41 I have two other decisions which are of assistance. The next one is the *R. v. Ruth Anne Johnston*, a decision of Madam Justice Livingston from 2000 (unreported) which was a case which was although in its level of intensity not as significant as the case before me, nevertheless was a neglect case with respect to a domestic animal, a dog. In that case the neglect was significant and it was well established. In that case Justice Livingston suspended the passing of sentence and placed the offender on probation for a maximum period of three years.

42 The only other case that I have been referred to and that seems to be of any assistance is *R. v. Olendy*. The Olendy decision is a decision by Madam Justice Schnall and has a citation of [2001] O.J. No. 1957. In that decision there was the repeated striking and yelling at a dog. It was a seeing eye dog and the offender unfortunately was the person who was the recipient of the assistance from that dog. In that decision Justice Schnall imposed a suspended sentence on Mr. Olendy and again placed him on three years probation.

43 The thrust of those latter two decisions is to this effect it. They were emphasizing the preventative aspect of future interaction with the animals. In both instances there were penalties imposed with respect to s. 446(5) prohibition on having animals in the possession of those offenders.

44 I turn now to what sentence should be imposed in this particular matter. The Crown seeks a period of incarceration followed by the appropriate controls by way of probation order and a s. 446(5) order. The defence suggests a suspended sentence or in the alternative a conditional sentence.

45 In looking at this matter I have to first deal with a threshold matter concerning whether or not a conditional sentence is something that should be considered and the first consideration in that regard is whether or not there should be a sentence of incarceration.

46 In my view this is not a matter, given the number of animals that were harmed, the number of dead animals, the conditions in which all of them were living, that this is a matter which can be dealt with by way of a suspended sentence. There should be a period of incarceration to properly and thoroughly denounce the inaction and the neglect

perpetrated on these animals by Mr. Hadwen.

47 So having determined that it then becomes a question of determining what is the proper sentence and then moving to the question of whether or not there should be a conditional sentence dealt with or imposed in this matter.

48 With respect to the range of sentence that is available to me, the maximum is six months and therefore it is clear, pursuant to the provisions of s. 742, that a conditional sentence is available if I otherwise determine it to be appropriate. Section 742.1 of the Criminal Code indicates that where the sentencing range is such that it could be less than two years, which clearly this can be and should be, given the maximum is only six months, and the Court is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purposes and principles in sentencing s. 718 to s. 718.2, the Court may impose a conditional sentence.

49 I am satisfied that Mr. Hadwen, as it is understood from the legislation and the decisions dealing with conditional sentences and particularly *R. v. Proulx*, a 2000 decision of the Supreme Court of Canada reported at [2000] 1 S.C.R. 61, does not present a danger to the community and to be more specific having him serve his sentence in the community would not endanger the safety of the community. That is clear to me and therefore it remains simply to determine whether or not a conditional sentence would be consistent with the fundamental purposes and principles of sentencing. In that regard, I have been informed by the decision of *Proulx* with respect to what can be looked at in terms of a conditional sentence and the consideration of whether it is applicable in any particular case.

50 In the *Proulx* decision there are many principles spoken to but it is clear that the Supreme Court of Canada considers that conditional sentences can contain both punitive and rehabilitative objectives and that there is no presumption that conditional sentences are inappropriate for any specific offences. The gravity of the offence, however, is clearly relevant to determining whether a conditional sentence is appropriate in the circumstances and it is also dictated by the Supreme Court of Canada that serious consideration should be given to the imposition of a conditional sentence in all cases where the statutory prerequisites are satisfied.

51 I note again the principle that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances and that all available sanctions other than imprisonment, and in this sense I consider real jail as opposed to serving the sentence in the community, has to be reflected in this disposition.

52 It is indicated in *Proulx* that a conditional sentence can provide a significant amount of denunciation particularly where onerous conditions are imposed and the term of the sentence is longer than would have been imposed as a jail sentence. Where the objectives of rehabilitation, reparation and promotion of a sense of responsibility may be realistically achieved, the conditional sentence would likely be the appropriate sanction subject to considerations of denunciation and deterrence, as I have already indicated. I have also taken from the *Proulx* decision that while aggravating circumstances relating to the offence, such as the number of dead animals in this case, might increase the need for denunciation and deterrence, a conditional sentence may be imposed even if those factors are present.

53 In all then, when I consider this matter I am of the view that with respect to Mr. Hadwen, a conditional sentence is appropriate. I am going to fix the term of the conditional sentence to be five months, which is at the high end of the appropriate range. Although there are more animals harmed in this case than in the *Power* decision, the Court of Appeal thought it appropriate in that case to impose a 90 day sentence of real jail served on an intermittent basis. In my view, the extending of his term of incarceration to five months imposes greater penalty on Mr. Hadwen than he might have served if it was simply straight time.

54 I am satisfied that given the types of provisions that I am going to impose upon Mr. Hadwen that the conditional sentence is going to be of such a nature that the restrictions imposed upon him will satisfy what I consider to be appropriate in terms of denunciation and deterrence generally.

55 I am going to impose the following, and Mr. Hadwen if you would be so kind as to stand up please. Mr. Hadwen, with respect to this matter, and on a concurrent basis with respect to the three Criminal Code offences, I am ordering

that you be imprisoned for a period of five months, the sentence to be served in the community subject to the following conditions, and I will detail those conditions in a moment. That is to be followed by a period of probation for a period of three years after the serving of the conditional sentence.

56 With respect to the conditions of the conditional sentence you will abide by the following: You will keep the peace and be of good behaviour; you will appear before the Court when required to do so by the Court; you will report within two working days, or as the Court directs, in person to a supervisor and thereafter report when required by the supervisor in the manner directed by the supervisor. You will remain within the Province of Ontario unless written permission to go outside the province is obtained from the Court or the supervisor and you will notify the supervisor in advance of any change of name or address and promptly notify the supervisor of any change of employment or occupation.

57 In addition to those mandatory provisions you will also abide by the following. You will during the period of this five month conditional sentence abstain from the purchase, possession, or consumption of alcohol or other intoxicating substances. You will abstain from the purchase, possession, and consumption of drugs except in accordance with a medical prescription. You will attend and actively participate in such rehabilitative programs for family counselling, mental health issues and such other areas of concern as may be identified by your supervisor and as may be recommended by your supervisor and you will provide such proof as may be required by your supervisor of your attendance at and participation in any program recommended.

58 In addition you will comply with an order for restitution made with respect to this offence under s. 738 and s. 739 of the Criminal Code. You are to pay to the Ontario Society for the Prevention of Cruelty to Animals the sum of \$879. Payment is to be made to the clerk of the court at Walkerton. The restitution is to be paid in instalments of \$90 per month and is to be paid in full by the 15th of December 2005. Instalments will be paid on the 15th day of the month in consecutive months, commencing the 15th of March 2005. Now that will extend past the termination of the conditional sentence but it will also be reflected in the probation order that I am going to make as well.

59 You will make reasonable efforts to find and maintain suitable fulltime employment and you will also abide by these terms and conditions. With respect to animals at or on your farm property or in your house, you will not own, care for, or have in your possession any animals; and you will not live where any animal is kept. Provided that the domestic animals currently present in your home and under the charge and caretaking of your children may remain in that home. Provided further, that if your farmland or farm buildings are rented and animals are placed on the land or in the barn you will have no part or role to play in the tending to those animals and you will immediately advise your probation officer or supervisor and the Ontario Society for Prevention to Cruelty to Animals as to the presence of those animals.

60 Further, you will allow officers from the Ontario S.P.C.A. to enter and inspect your dwelling and outbuildings during daylight hours to ensure compliance with this conditional sentence order. And lastly, you will surrender any animal found in your possession while you are subject to this conditional sentence order to the Ontario S.P.C.A.

61 In addition to those terms as part of the conditional sentence order you will also abide by a house arrest provision and that will be detailed as follows. You are subject to house arrest for five months and shall not be absent from your place of residence and the yard associated therewith subject only to the following exceptions: For the purpose of employment and for travelling directly and from your place of employment; for the purpose of attending at a hospital, doctor's office, or dental office and for travelling directly to and from same; for the purpose of attending an educational program approved by your supervisor and travelling directly to and from same; for the purpose of attending religious services during daylight hours and travelling directly to and from same; for the purpose of attending any schools or daycares in which your children are registered and travelling directly to and from same; for two hours each day from 2:00 p.m. to 4:00 p.m.; and for the purpose of putting into effect any of the conditions of this sentence with the written prior approval of your supervisor; and lastly, for limited humanitarian purposes with the written prior consent of your supervisor. I will review those in a moment.

62 Anytime that you are absent from your residence in accordance with these provisions you will carry with you a copy of this conditional sentence order and you will reside where directed to by your supervisor.

63 Now I will review those exceptions while I make some other comments about the conditional sentence order.

64 I have indicated that you can go to work and you can come back from work. You cannot stop on the way. You are to go directly to work and directly home. You can go to a hospital, doctor's office or dental office and you can travel directly to that office and directly home. You cannot stop off any place; you can't visit with anybody; you cannot pick up groceries; you cannot do anything of those things.

65 You can also attend an educational program approved by your supervisor with the same limitations by going directly there and back. You can attend religious services I have indicated during daylight hours travelling directly to and from those. You can also attend schools if your children are in school and there is an important event or it is necessary for you to attend for a parent teacher meeting or some other matter related to that, you can attend that school and you have to go directly there and directly back.

66 I have also provided that for two hours each day from 2:00 p.m. to 4:00 p.m. you can be absent from your property. That is intended to allow you to go to the bank, to attend ordinary things, pick up groceries, go to the pharmacy, whatever the case might be but it is specifically to allow you to attend to obtaining the necessities of life and dealing with matters of that nature.

67 Lastly, I have indicated that you can be absent from your residence with the prior written permission of your supervisor while you are putting into effect any of the conditions of this sentence. By that I am talking about any counselling that might be required or matters of that nature. And as a final matter I have indicated for limited humanitarian purposes with the prior written consent of the supervisor you can be absent from your residence. That is in the event of a family necessity where you have to attend a wake, funeral, or something of that nature and if you satisfy your supervisor that it is important for you to be there you can obtain permission and attend that function.

68 Now those are the terms of the conditional sentence order. With respect to the probation order, I am going to place you on probation following the conditional sentence for a period of three years. The terms of the probation order will be as follows. You will keep peace, and be of good behaviour. You will appear before the Court when required to do so. You will notify The Court or the probation office in advance of any change of name or address and you will promptly notify the Court or the probation office of any change of employment or occupation. Those are statutory terms that appear in every probation order.

69 In addition to those terms you will also report forthwith in person to your probation officer immediately after the termination of your conditional sentence and thereafter be under the supervision of your probation officer; report at such times, places, as that person may require. During the period of this probation order you will perform 240 hours of community service work. I have specifically delayed the start of the community service work until the conditional sentence order is completed so that there is no extra difficulty associated with you and your supervisor organizing that while you are subject to house arrest.

70 The 240 hours community service work is to commence within 60 days of the commencement of the probation order. It should be completed at a rate of not less than ten hours per month in consecutive months which will be completed to the satisfaction of your probation officer or designate prior to the expiry of this probation order. In addition, with respect to this probation order I am also requiring that the provisions I have detailed concerning the presence of animals in your residence or on your farm will also apply, that is with respect to the domestic animals and animals that might be placed on the farm land or in the barn on the same terms and conditions that I have already described. In addition, the provision allowing the inspectors to attend at your place of residence and the farm property will also apply to the probation order.

71 Lastly, with respect to the probation order I am also going to impose this upon you. You will attend and actively

participate in such rehabilitative program for family counselling, mental health issues, and other areas of concern as identified by your probation officer and you will report the results of those counselling sessions to your probation officer.

72 Those are the terms and conditions that I think are appropriate to the probation order. In addition I am making an order pursuant to s. 446(5) of the Criminal Code to this effect. I am prohibiting you from owning or having the custody or control of an animal or a bird during any period extending two years from today's date. And that is the order, Madam Clerk, that is pursuant to the language in s. 446(5) of the Criminal Code.

73 Victim fine surcharges: I considered whether or not those should be imposed upon you. It seems to me that given everything that has happened, the financial stresses you are under to begin with, the fact that you are now working at a labouring position, as I understand it, at a good but modest hourly rate, that it would be improper at this point in time and would produce a financial hardship on your part and a significant burden if I was to order a victim fine surcharge. So given all of the circumstances the victim fine surcharges will be waived.

74 Madam Crown is there anything else I should address?

75 MS. SCAPINELLO: You haven't addressed the Dead Animals Disposal Act yet.

76 THE COURT: Yes, thank you.

77 On this legislation it seems to me that there should be significant penalties imposed and the maximum for the first offence on each of these offences is \$2,000. The Crown has suggested a \$2,000 fine. The defence does not argue or did not argue in its submissions strenuously against that and looking at the entire picture and the penalties that are being imposed upon you, it seems to me that given the serious facts that we are dealing with here that if ever a case should attract the maximum penalty this should be it. And I am of the view that a \$2,000 fine on each matter is appropriate. This is the worst case in terms of facts. You certainly are not the worst offender, but nevertheless the facts are such that a \$2,000 fine is appropriate.

78 On count number one I am going to give you nine months to pay that; on count number two I am going to give you 18 months to pay that, so that will extend the time period over which those monies are to be paid by way of the fines.

79 THE COURT: Anything else Madam Crown?

80 MS. SCAPINELLO: No.

81 THE COURT: Counsel, anything else?

82 MS. MANKOTIA: Just with respect to the condition that Mr. Hadwen be given time between 2:00 and 4:00. His employment and I do have a letter of employment here, is from 7:30 up to seven o'clock. Is there any way that we can change that time so that he will be free to do or run any errands ...

83 THE COURT: I appreciate you bringing that to my attention. I actually gave some consideration to that when I was setting the time, recognizing that he is an employed person and probably at daylight hours on a regular basis. I have considered that and I have decided not to do that. The time period of 2:00 to 4:00 p.m. is designed specifically to permit Mr. Hadwen, when he is not at work and he is home on a Saturday and he has to get something done, to be able to do that. Also, if he is on vacation or leave from work that he would be able to do appropriate errands to maintain his home and so forth by going to the hardware store, all of those things. But it strikes me that during the week when he is at work he should go directly to work and directly home and there are other family members who can pick up the appropriate things mid-week. It seems to me that I should simply leave it at that. I have given consideration to your thoughts and I appreciate you bringing that to my attention so I can express this now.

84 MS. MANKOTIA: Thank you.

85 THE COURT: Thank you. Nothing else then?

86 CLERK OF THE COURT: Do you wish the restitution order to apply on the probation order?

87 THE COURT: Yes, if I didn't say that and I apologize for that. With respect to the probation order it will also contain a provision that the order of restitution made concerning the \$879 payable to the O.S.P.C.A. will be complied with as part of the probation order as well, so it will overlap into the probation order. That conclude everything. Mr. Hadwen, good luck, sir.

qp/e/qlalc/qlkjg