

Case Name:

R. v. Larouche

Between

**Her Majesty the Queen, and
Martin Larouche**

[2001] O.J. No. 6226

Nos. 1547-01, 3551-00

Ontario Court of Justice
St. Catharines, Ontario

L.M. Baldwin J.

Oral judgment: August 7, 2001.

(27 paras.)

Criminal law -- Offences -- Property offences -- Cruelty to animals -- Evidence -- Burden and standard of proof -- Standard of proof -- Beyond a reasonable doubt.

Trial of the accused Larouche for causing unnecessary suffering to a dog by beating it. A witness observed Larouche repeatedly punch a 16-month old dog that had been barking in his backyard. Another witness saw Larouche punch and kick the dog. Larouche denied that he beat the dog. One of the witnesses was the subject of a complaint by Larouche to the Humane Society because she laid traps in her garden to catch his cats. The other witness only reported what he saw two months after the incident.

HELD: Larouche was found not guilty. The court could not find beyond a reasonable doubt that the beating occurred and that the animal suffered unnecessary pain, suffering or injury. The evidence was suspect, especially since one of the witnesses' concern for animal welfare was problematic. The court would also not convict because procedures contained in the Ontario Society for the Prevention of Cruelty to Animals Act were not followed regarding the investigation of this complaint. It was not appropriate to resort to the Criminal Code under such circumstances.

Statutes, Regulations and Rules Cited:

Criminal Code, s. 446(1)(a)

Ontario Society for the Prevention of Cruelty to Animals Act, s. 13(1), s. 14(1), s. 17

Charge: S. 446(1)(a) Criminal Code - Causing Unnecessary Suffering

Counsel:

Mr. J. Ramsay, Counsel for the Crown

Mr. A. McGarvie, Counsel for the accused

REASONS FOR JUDGMENT

1 L.M. BALDWIN J. (orally):-- These are my reasons for judgment in the matter of Regina versus Martin Larouche. He is charged that on or about the 27th day of April, 2000, at 44 Berkley Drive, St. Catharines, he did wilfully cause unnecessary suffering to a dog by beating it, contrary to Section 446(1)(a) of the Criminal Code of Canada. That Section reads:

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

2 The court heard from Ms. Chantal Beauvias who initiated the complaint to the Humane Society on April 27th, 2000; Ms. Beauvias resides at unit 113 of the 44 Berkley Drive, St. Catharines townhouse residence. Mr. Larouche resided at unit 115 at the time. At approximately eight a.m. on April 27th Ms. Beauvias was in her unit in an upstairs bedroom. The window of this bedroom looks down upon the backyard of unit 115, as depicted in photo exhibit number four. The dog in question, a 16 month old German Shepherd named Riley, was barking in the Larouche's backyard. Ms. Beauvias testified that she observed Mr. Larouche to come to the back door and call Riley to come in. Riley did not respond and continued to bark. Ms. Beauvias heard Mr. Larouche say "When I get you, you little fucker I'm going to kill you".

3 Ms. Beauvias observed Mr. Larouche to catch the dog and hold him down with his left hand. She then observed Mr. Larouche punch the dog with a closed right fist. The dog was punched powerfully approximately five times on his backside near the spine. The dog was yelping while being punched. Mr. Larouche then dragged the dog back into the house. Ms. Beauvias reported her observations to the Humane Society that day.

4 In her evidence, Ms. Beauvias denied having any feud with these neighbours next door. She admitted however, to having a problem with the Larouche's cats who would come into her garden. She agreed that she put bags containing cat feces on the Larouches' door as a result of this problem. She acknowledged that approximately one month before the dog complaint, the Humane Society came to her door as a result of a complaint made against her by the Larouches. Ms. Carol Davidson, who is Mr. Larouche's common law partner, testified that the complaint to the Humane Society concerned Ms. Beauvias laying mouse traps in her garden to trap the Larouches' cats.

5 Ms. Beauvias had reported the Larouches to the Humane Society on a prior occasion with regard to them leaving the dog out in the backyard when it was raining.

6 Douglas Baskin testified that he does the lawn maintenance at 44 Berkley Drive. He was clipping hedges with a gas trimmer on the property one day at the end of April 2000. He testified that at 8:25 a.m. he observed Mr. Larouche enter his backyard area and yell at the barking dog. He observed Mr. Larouche to hit the dog in the rib area with his fist and kick the dog approximately six to seven times. The dog was loudly whimpering in the corner of the yard. Mr. Baskin was approximately 15 feet from Mr. Larouche and the dog when he made these observations. At that time, he was walking by the wooden fence and these observations were made through the cracks of the wooden fence as depicted in photo exhibit number two. Mr. Baskin may have been wearing ear protectors at the time. He testified that he had seen Mr. Larouche before and knew him but he had no problems with him. Mr. Baskin did not want to get involved and did

not report the matter to the Humane Society. He was contacted by them on June 16th, 2000. Evidence indicated that Ms. Beauvias had spoken to Mr. Baskin about the incident sometime after it had occurred.

7 The court also heard from Dr. Marcia Toles, a veterinarian, qualified as an expert in the treatment of animals. She did not examine Riley, the dog in question. She testified that a dog struck in the manner described above, by the Crown witnesses, would suffer physically with possible bruising and injury to the internal organs. She testified that the dog would suffer emotionally as well. She testified that punching a dog to discipline it is not acceptable in dog training circles.

8 Mr. Larouche testified and denied being in the backyard with his dog at the time in question. He stated that he worked late the previous day and he slept until 11 a.m. He denies striking his dog at any time. He testified that he was not approached by the Humane Society until June 20th, 2000, with respect to this matter almost two months later. And I do note that the summons bringing him to court on this matter is sworn June 20th, 2000. Mr. Larouche testified that the dog did bark a lot and was high strung in temperament. In February of 2001, Mr. Larouche took the dog to the Humane Society because it was jumping on the children. The court learned that the Humane Society was unable to find Riley a new home and he has since been put down by the Humane Society.

9 Ms. Shelly Williams, another resident at the Berkley Drive residence testified. She lived in unit 117 and was friends of the Larouches and knew of Ms. Beauvias. She observed Mr. Larouche with his dog approximately two to three times a week and observed no ill treatment. She did hear the Larouches holler to the dog to be quiet. She described the dog as high strung in temperament.

10 Ms. Davidson testified that she did not observe Mr. Larouche to strike the dog. She was not home at the time this incident was observed by Ms. Beauvias and Mr. Baskin. Ms. Davidson testified that the dog was taken back to the Humane Society because he had started to bite her daughters. She testified that they would discipline this dog when he was aggressive by tying him up all day to a dresser. She testified that sometimes the children would throw stones and sticks at him.

11 I analyze the evidence in this matter as follows:

Ms. Beauvias testified that she reported this incident to the Humane Society on April 27th, 2000. There is no evidence to indicate that the Humane Society investigated this complaint on that day, and what injuries, if any, the dog Riley sustained.

Mr. Larouche testified that he was not contacted until June 20th, 2000, with respect to this matter.

12 I have read the Provincial Legislation entitled The Ontario Society for the Prevention of Cruelty to Animals Act and wish to refer to three sections in particular. The first is section 13(1):

"Where an inspector or an agent of the Society ..."

Referring to the Humane Society,

"... has reasonable grounds for believing that an animal is in distress and the owner or custodian of the animal is present or may be found promptly, the inspector or agent may order the owner or custodian to,

- a) take such action as may, in the opinion of the inspector or agent, be necessary to relieve the animal of its distress; or
- b) have the animal examined and treated by a veterinarian at the expense of the owner or

custodian.

13 Section 14(1) reads as follows:

"An inspector or an agent of the Society may remove an animal from a building or place where it is and take possession thereof on behalf of the Society for the purpose of providing it with food, care or treatment to relieve its distress where,

- a) a veterinarian has examined the animal and has advised the inspector or agent in writing that the health and well-being of the animal necessitates its removal;
- b) the inspector or agent has inspected the animal and has reasonable grounds for believing that the animal is in distress and the owner or custodian of the animal is not present and cannot be found promptly; or
- c) an order respecting the animal has been made under Section 13 and the order has not been complied with.

14 Subsection 17 of the Act refers to remedies that a custodian or owner may seek who is aggrieved by one of these aforementioned orders, in terms of a hearing that can be held under that provincial legislation.

15 None of the above actions were taken with respect to this complaint under the provincial statute. Accordingly, the court has no evidence of what injury or distress, if any, Riley the dog sustained.

16 Curiously, despite this complaint being laid, the dog was permitted to remain with the Larouche family, until the family voluntarily returned him to the Humane Society approximately one year later, while this matter was still before the criminal courts. As I have referred to, the dog has since been put down by the Humane Society.

17 In order to determine if the dog suffered unnecessary pain or suffering the court is left with the evidence of two Crown witnesses Ms. Beauvias and Mr. Baskin. Ms. Beauvias herself was the subject of a complaint to the Humane Society for laying traps in her garden to catch the Larouche cats. Her concern for the welfare and proper treatment of animals is clearly suspect. Given that her complaint originated from the owners of the dog in question here, her motive to falsify her evidence for purposes of revenge cannot be discounted. It would be unsafe to ground a criminal conviction on her evidence.

18 Mr. Baskin had no prior dealings with the Larouches. However, he did not report this matter to the Humane Society at the time of his observations, and his statement was taken almost two months later, after he had spoken to Ms. Beauvias. Mr. Baskin's account of the incident is similar to hers and makes it more likely that the dog was beaten in the manner she described. A court could be satisfied on a civil standard of proof that he did beat his dog in the manner described.

19 However, the court cannot find beyond a reasonable doubt that this beating occurred and resulted in unnecessary pain, suffering or injury; given the absence of any investigative evidence at the time, and the absence of any follow up as provided by the provincial statute regarding animals thought to be in distress. Surely if a matter is serious enough to bring before the criminal courts, steps to protect the animal from ongoing pain, suffering and injury would be undertaken, if there is reason to believe that has occurred.

20 What is clear to the court after hearing all the evidence in this matter, is that this dog was originally adopted by the Larouche family without their having learned about the proper training and care of dogs. It was apparent from Ms. Davidson's evidence that this dog was not appropriately disciplined by the family, and was hit with objects by the children. It should not be a surprise that the dog would bark and later bite if he was treated in this manner. As I have said, this complaint was not investigated when it was first initiated, and the procedures under the provincial statute were not utilized. In my view recourse to charges under the Federal Criminal Code, which result in criminal convictions

should not be utilized in such circumstances. And a finding of not guilty will be registered.

21 MR. MCGARVIE: Thank you Your Honour.

22 MR. RAMSAY: With respect to fail to appear Your Honour.

23 THE COURT: Yes.

24 MR. RAMSAY: I'm withdrawing it.

25 THE COURT: You are withdrawing it?

26 MR. RAMSAY: Yes.

27 THE COURT: All right, Mr. Larouche you are free to go sir.

qp/s/np/qlsxl/qlmll