

COURT OF QUÉBEC

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF IBERVILLE
Criminal and Penal Division

Nos. **755-61-025999-104 and 755-61-026040-106**
Statements of offence: 100400-11111944247 and 100400-1111944254

DATE: September 6, 2012

PRESENT: **MARIE-JOSÉE HÉNAULT**
PRESIDING JUSTICE OF THE PEACE

DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS
Prosecutor

v.

MARIA CONCEICAO
Defendant

JUDGMENT

[1] The defendant, the custodian of an animal kept for the purpose of sale or breeding, is charged with not having ensured the cleanliness of the premises in which the animal was kept and not having ensured that the installations were not organized or used in any way that could affect the safety or welfare of the animal, contrary to the first

and second paragraphs of section 55.9.3 of the *Animal Health Protection Act*¹ (hereinafter, the "Act").

[2] Since both offences were noted during a single inspection, a joint hearing of the evidence related to both statements of offence was held, with the consent of the defendant.

THE FACTS ADDUCED

[3] The defendant is the president, secretary, treasurer, majority shareholder and sole director of the kennel located on the property that she and her spouse co-own.

[4] On the morning of June 16, 2009, Anima-Québec inspectors came to the kennel. The visit, a control visit, followed up on a previous visit, on February 6, 2009, after which a notice of non-compliance was issued, in particular because of major deficiencies noted with regard to cleanliness and ventilation.

[5] During the inspection of June 16, 2009, the inspector noted the presence of several dog breeds. Most of the dogs were inside a large building; others were outside, either in pens or cages, or tied to doghouses.

[6] The inspector noted a number of shortcomings with regard to the cleanliness of the premises and the way the installations were organized and used. As a result of those shortcomings, the statements of offence that are the object of this dispute were filed.

1 R.S.Q., c. P-42.

QUESTIONS IN DISPUTE

[7] The defendant explained that, at the time of the inspectors' visit, the kennel was being renovated. She explained that, in fact, certain installations were temporary and that some animals had been placed there to allow the work to proceed.

[8] The Court must therefore determine if each offence has been proved beyond any reasonable doubt.

[9] If applicable, the Court must determine if the defendant has established a defence of due diligence likely to relieve her of any penal liability.

ANALYSIS

[10] The inspector's testimony and the photographs she took during the inspection clearly establish that the kennel was in a general state of uncleanliness.

[11] The inspector noted the presence of feces and urine in a number of places in the kennel as well as inside a number of cages.

[12] The defendant explained that the presence of feces and urine is unavoidable in a kennel. Indeed, the Court understands this quite well. However, in this case, the inspector referred to trampled and dried feces, not fresh feces.

[13] As well, the inspector's testimony and photographs clearly established the presence of elements liable to compromise the safety and welfare of the dogs kept there.

[14] Hence, in addition to the fact that the walls and floors of certain cages were not firmly secured, the Court noted the presence of a hole in the metal wire floor of an outside cage with a dog in it, and broken wire mesh in another cage.

[15] The defendant explained the shortcomings in the installations by the fact that she had to temporarily move the dogs for the day because work was being done outside.

[16] The Court has no doubt that renovation work was done and that the installations have been upgraded. The defendant's photographs are eloquent. However, the Court has no faith in the testimony of the defendant and her spouse to the effect that work was under way on the day of the inspection.

[17] When she filed her photographs, the defendant indicated that they were taken on the day of the inspection. On looking at the photographs, the Court again asked the defendant about them. She again indicated that all the photographs were taken on the day of the inspection. That statement is completely unbelievable.

[18] In cross-examination, the defendant finally admitted that some of the photographs were taken after the renovation work was completed, some time in July 2009.

[19] Furthermore, both the defendant and her spouse indicated that inside renovation work on the kennel had begun in February 2009, and that they had waited until April 2009 to begin work outside. The defendant's spouse stated that they waited for the spring thaw before doing the outside drainage work.

[20] However, comparison of the inspector's photographs and those of the defendant, leaves no doubt that, at the time the inspector came round on June 16, 2009, the interior work had not yet been done.

[21] In addition, the inspector indicated that, when she arrived, the defendant was with some clients, and that a woman arrived on the premises near the end of her inspection. The inspector stated that, while she was on the premises, aside from those persons, she had seen only the defendant and her spouse.

[22] The inspector stated that she went around the buildings. She also mentioned that there were pens and cages behind the building. She could hardly have failed to notice the presence of a concrete mixer and workers employed in pouring concrete.

[23] When cross-examined on the fact that the inspector had not noted the presence of any workers inside, the defendant indicated that there was a section without any dogs, since the cages were being taken out. Yet, the inspector's photographs show, beyond the shadow of a doubt, the presence of dogs in unrenovated cages whose front grid was, for some of them, completely rusted.

[24] On one of the cages housing a dog, a strand of wire was sticking out toward the interior of the cage. Once again, the defendant explained that the situation was due to the renovations. The cage was inside. According to the defendant, the inside renovation work had been under way since February 2009.

[25] In the whelping area, in a cage with puppies, an unprotected heating lamp inside the cage presented a risk of burns. In this regard, the defendant explained that she had never been told that such a lamp could represent a danger. She added that dogs are

intelligent animals who will not snuggle up to a hot lamp. The explanation was far from convincing.

[26] In addition, the defendant's claim that the inspector did not want to take into account the fact that renovations were under way is hardly compatible with the inspector's testimony and the defendant's past record with Anima-Québec.

[27] The defendant mentioned that she loves her dogs. She said that she always sought to cooperate with the inspectors of Anima-Québec. She specified that none of her dogs is ill-treated, beaten or poorly fed.

[28] The Court does not doubt the defendant's sincerity in this regard. She is evidently quite proud, with reason, of the improvements made to her kennel. However, there is no doubt that, at the time of the inspection, on June 16, 2009, the kennel was in violation of the provisions of the Act.

[29] Furthermore, the evidence to the effect that renovation work was being done at the time of the inspection, or was done after it, does not establish that the defendant took every precaution a reasonably prudent and diligent person operating a dog breeding facility would have taken to avoid committing the offences with which she is charged.

[30] If the work was done after the inspection of June 16, 2009, it certainly cannot be taken into account in analyzing the defence of due diligence.

[31] If the work began in February 2009, as argued by the defendant, it is clear that it was not completed at the time of the inspection of June 16, 2009. The work was

therefore carried on over a period of almost five months and the defendant had the obligation, during the work, to take the necessary measures to fulfil her obligations.

[32] The execution of renovation work does not explain the presence of trampled and dried excrements in a number of places in the kennel and inside a number of cages.

[33] As well, execution of the work did not exempt the defendant from ensuring that the installations were organized and used, even temporarily, in any way that would not affect the safety or the welfare of the animals in her custody.

CONCLUSION

THEREFORE, THE COURT declares the defendant guilty of both offences charged and imposes on her the minimum penalty provided for in the Act for each offence, namely a fine of \$400, for a total of \$800.

Considering the fact that the kennel has been entirely renovated since the offences were committed, the Court exempts the defendant from the payment of costs.

The defendant is granted 90 days to pay the fines and the \$10 contribution applicable to each record.

MARIE-JOSÉE HÉNAULT
PRESIDING JUSTICE OF THE PEACE

Mtre. Daniel Tousignant
Counsel for the prosecutor

Maria Pereira Conceicao
Defendant, not represented by counsel