

## Saskatchewan Provincial Court

Citation: R. v. Bocian

Date: 1982-06-07

Between:

R.

and

Bocian

Neville, J.

Counsel:

Dale G. Kohlenberg, for the Crown;

Russell Peet, for the accused.

- [1] Neville, J.: The two accused, Anthony Bocian and his 18 year old son, Gregory Bocian owned some 100 head of cattle located on their home farm and another 140 head of cattle on rented land several miles away. The son owned only 10% of all the cattle and was learning the business from his father so his involvement was substantially less than that of his father.
- [2] On February 23, 1982, the police accompanied by a veterinarian, Dr. D.M. Pulfer, inspected the herd on the rented land and found that 37 head were dead and the remaining 100 or so were very thin and showed extreme emaciation. The 37 dead animals consisted of 22 calves, 12 cows and two new born. Three of the dead animals were examined in the Provincial Veterinary Laboratory which confirmed Dr. Pulfer's diagnosis that they were not suffering from any infectious disease and had starved to death. As he put it: death was a result of inadequate nutrition to withstand the vigorous winter.
- [3] Dr. Pulfer also observed that there were virtually no feed stores on the farm and the animals had been without water for some time. He recommended that the surviving animals should immediately be put on a high energy ration with an adequate water supply to ensure their survival. The surviving animals were then left in the care of the accused but the police monitored the situation. Then on April 28, 1982, Dr. Pulfer again inspected the herd and although three of the seriously weakened animals had since died and another seven were alow in recovering, the balance were in good flesh and had considerably improved from when he had seen them on February 23rd.
- [4] Defence counsel has pointed out a number of extenuating circumstances beginning with the fact that it was a particularly long and severe winter with considerable snow. The severe weather resulted in animals requiring a 30% increase in nutrients over what would be required in an average winter. This could not be anticipated and, unfortunately, it was coupled with the circumstance that the previous summer was dry with low hay production. As a result the accused had to

buy feed supplies at high prices often of uncertain quality because it was bought sight unseen.

- [5] A further problem occurred when their well went dry and they had to truck in water made difficult by blocked roads and stormy weather. These problems were surmountable but they exceeded the managerial abilities of the accused Anthony Bocian. Defence counsel concludes that the main reason for offence was the inability of the accused Anthony Bocian to manage his business well enough.

- [6] I think what happened here is well described by Dr. Walter Weir, Saskatchewan's provincial veterinary services director, in a recent article in the Western Producer. He mentions that a combination of low prices, extremely cold weather and high feed usage is depressing to all cattlemen but only a few were unable to cope. He is quoted as follows about those who were unable to cope:

It's an insidious thing with starvation. They get to thinking that they know their cattle are thin but if they hold on for one more day maybe the weather will break or the prices will improve.

What they don't realize, Weir said, is that their cattle are dying.

When they get into that kind of a depressed state they get confused about what to do. They should sell their cattle and cut their losses but they think their cattle will make it until spring or else they say to hell with the whole thing.

- [7] In the matter of the appropriate penalty other recent cases under the section were discussed. In a case in Manitoba, 30 day jail sentences were imposed but counsel agreed that there was flagrant and deliberate neglect present in that case which was not present here. In another and similar case in Saskatchewan a fine was assessed and while such may not exceed \$500.00, defence counsel points out that the accused through their own fault have already suffered a substantial financial loss since the cattle that died would have been worth some \$10,000.00 if they had reached market.

- [8] The Crown has recommended in the case of Anthony Bocian that in addition to a fine, the court make an order under s. 402(5) which would prohibit him from owning or having the custody or control of any cattle for the maximum period allowed of two years. The reason put forth is that Anthony Bocian does not seem to have sufficient managerial capabilities to handle cattle and such a prohibition would prevent the situation occurring again in the near future.

- [9] In regard to such an order, defence counsel argues instead for some sort of supervision which will enable the accused to earn his living and at the same time provide some needed skills in handling cattle. He points out that the Crown did not have the surviving cattle sold as occurred in other similar cases so that it must have had some confidence in the ability of the accused to cope in the future. I should also note that such prohibition cannot exceed two years so that after that time there is

nothing to prevent Anthony Bocian from returning to the cattle business. The public interest might be better served then if he acquired some additional management skills. I conclude that some sort of supervision would be preferable to an outright prohibition for the next two years.

- [10] Therefore, in the case of Anthony Bocian, I assess a fine of \$400.00 and in default of payment, 30 days in the Regina Provincial Correctional Centre. In addition he shall enter into a probation order for a period of two years with the usual statutory terms plus this terra:

1. he shall not own or have the custody and control of cattle during the period each year from December 1st to March 31st, unless they are inspected at the end of each month in that period by a qualified veterinarian who shall each time provide a written report to the Weyburn Detachment of the Royal Canadian Mounted Police.

- [11] The purpose of the report to the police is to enable them to monitor the condition of his herd and it goes without saying that any further conviction of this kind during the two year period would constitute a breach of probation.

- [12] In the case of Gregory Bocian, I assess a fine of \$100.00 and in default, seven days in the Regina Provincial Correctional Centre.

*Order accordingly.*