



IN THE PROVINCIAL COURT OF SASKATCHEWAN

Citation: 2010 SKPC 058

Date: June 23, 2010
Information: 24344451
Location: Prince Albert

Between:

Her Majesty the Queen

- and -

John Kowalik

Appearing:

M. Longworth
P. West, Q.C.

For the Crown
For the Accused

JUDGMENT

S. C. CARTER, J

[1] The accused, John Kowalik, is charged with causing or permitting cattle to be in distress contrary to s. 4 of *The Animal Protection Act, 1999*, S.S. c. a-21.1 (the *Act*), which states:

No person responsible for an animal shall cause or permit the animal to be or to continue to be in distress.

[2] Pursuant to s. 2(2) of the *Act* an animal is in distress if it is:

- (a) deprived of adequate food, water, care or shelter;
- (b) injured, sick, in pain or suffering; or
- (c) abused or neglected.

[3] Section 2(3) of the *Act* states that an animal is not considered to be in distress if it is handled:

- (a) in a manner consistent with a standard or code of conduct, criteria, practice or procedure that is prescribed as acceptable;
or
- (b) in accordance with generally accepted practices of animal management.

[4] *The Animal Protection Regulations, 2000* S.S. c. A-21.1 Reg 1, provides in s. 3 that: “The standards or codes of conduct, criteria, practices or procedures set out in Part II of the Appendix are prescribed as acceptable for the purposes of clause 2(3)(a) of the *Act*.” For the purposes of the case at bar the code of practice found in the Appendix, which is applicable to this case is the “Recommended Code of Practice for the Care and Handling of Farm Animals: Beef Cattle, Published by Agriculture Canada”.

[5] The Crown’s evidence overwhelmingly established beyond a reasonable doubt that many of the cattle for which the accused was responsible were indeed in distress. The testimony of Barry Thiessen, who is a designated Animal Protection Officer under the *Act*, showed the cattle to have been kept in a field with inadequate shelter on one side of the quarter section and absolutely no shelter on the other three sides. Thus these animals were at the mercy of the winter winds. One old black cow had collapsed to the ground and was eating the snow in front of it as far as it could reach in an effort to keep hydrated. A large mound of faeces had built up behind it. It had to be shot to put it out of its misery. A cow had given birth. The placenta had not detached and was hanging out of the cow’s birth canal. Its newly born calf was wandering about unable to feed because the mother would not bond with it. Other cattle were clearly undernourished with their spines clearly visible. These had what a defence witness described as a “McDonald’s Arches” look. There was simply no doubt, and I find as a fact, that these animals were in distress as defined by the *Act*.

[6] The only issue to be determined is whether the accused showed sufficient diligence in order to prevent the distress from occurring or continuing.

[7] The Saskatchewan Court of Appeal decision in *Loerzel and Trad Industries Ltd. and the Queen*¹ put to rest any argument that the offence created by s. 4 of the *Act* is one which requires proof of *mens rea*. The Court agreed with the trial decision which was that this is a strict liability offence. Once distress is proved, as has been done here, the only defence is establishing that the accused exercised due diligence in an attempt to prevent the cause of the distress or its continuation.

[8] The defence evidence falls well short of establishing anything even approaching due diligence. The accused testified that he had asked his neighbour, Dennis Brassard, to help him move the cattle across the road to a more appropriate pasture where there was adequate shelter. The witness, Dennis Brassard, testified that he had indeed been asked to help move the cattle but was unable to do so prior to Christmas of 2008. He testified that he didn't help move the cattle between then and March 20 of 2009, because he was not asked to do so by the accused. Indeed the evidence showed that Brassard was more than willing to help and did indeed help when the animal inspector, Mr. Thiessen, ordered the cattle to be moved across the road. Asking a neighbour to help, and then not following up for over three months, is not exercising due diligence. Good intentions do not amount to due diligence. The accused is an experienced farmer. He was born on this farm, and he has worked on it all his life. He could and should have acted much earlier to alleviate the distress that he caused these animals, and that he allowed to continue.

[9] I find the accused guilty as charged.

S. C. Carter, J

¹ *Loerzel and Trad Industries Ltd. and the Queen*, 2007 SKCA 107.