Court of Queen's Bench of Alberta

Citation: R. v. Muhlbach, 2011 ABQB 9

Date: 20110106
Docket: 070656756S1
Registry: Red Deer

Between:

Her Majesty the Queen

Appellant

- and -

James Muhlbach

Respondent

Reasons for Judgment
of the
Honourable Madam Justice A.B. Moen

Appeal from the Judgment of
The Honourable Judge J.D. Holmes
Dated the 10th day of December, 2009
(Docket No. 070656756P1)

I. Introduction

[1] The Crown appeals the acquittal of James Muhlbach (Muhlbach) of a charge laid under the *Animal Protection Act*, R.S.A. 2000, c. A-41 (the *Act*) for mistreating cattle on his farm near Stettler, Alberta.

[2] Muhlbach owns and operates a cattle farming operation, and in 2007, the Alberta Society for the Prevention of Cruelty to Animals (ASPCA) investigated various concerns about cattle

treatment on the Muhlbach farm. As a result of those investigations, Muhlbach was charged with one count of permitting animals to be in distress contrary to sec. 2(1) of the *Animal Protection Act*.

[3] On December 16, 2009, the Crown filed a Notice of Appeal of Muhlbach's acquittal on the following grounds:

1. The Learned Trial Judge erred [by] misdefining the offence and reading in an element of the offence that the Crown was not required to prove,
2. The Learned Trial Judge erred by misdefining and misapplying the statutory defence,
3. The Learned Trial Judge erred by misapprehending the evidence, and
4. The Learned Trial Judge rendered an unreasonable verdict.

II. Standard of Review

[4] The standard of review in a summary conviction appeal is dependent on the characterization of the ground of appeal. The Supreme Court in *Housen v. Nickolaison* [2002] 2 S.C.R. 235, 2002 SCC 33 (*Nickolaison*), indicated that there are four grounds: pure questions of law, findings of fact, inferences of fact, and questions of mixed law and fact.

[5] The standard of review for pure questions of law is correctness (*Nickolaison* at para. 8). Questions of law are questions where the interpretation of a legal principle or statute is being challenged by the appellant. A correctness standard means that an appellate court may replace the opinion of the Trial Judge with his or her own.

[6] The standard of review for findings of fact is palpable and overriding error (*Nickolaison* at para. 10). Findings of fact are inherently within the jurisdiction of the judge who was in the courtroom during the testimony of the witnesses, and a reviewing court should not interfere with these findings unless an error is plainly apparent.

[7] The standard of review on inferences of fact is palpable and overriding error (*Nickolaison* at para. 22). This review requires two questions to be answered: first, is there a palpable and overriding error with respect to the underlying facts relied upon by the Trial Judge? If not, is the inference-drawing process itself palpably in error such that an appellate court can interfere with the factual conclusion?

[8] The standard of review on questions of mixed law and fact is palpable and overriding error (*Nickolaison* at para. 27). These can be the most difficult to identify, but are generally questions of applying a legal standard to a set of facts.

III. Discussion

[9] We are here reviewing a decision of the Learned Trial Judge concerning an interpretation of the *Animal Protection Act*, s. 2(1). That section states that "no person shall cause or permit an animal of which the person is the owner or the person in charge to be or to continue to be in distress." For his decision, the Trial Judge had to consider the meaning of "distress"which is defined in s.1(2) of the *Act*:

> 1(2) For the purposes of this Act, an animal is in distress if it is:
>
> (a) deprived of adequate shelter, ventilation, space, food, water or veterinary care or reasonable protection from injurious heat or cold,
> (b) injured, sick, in pain or suffering, or
> (c) abused or subjected to undue hardship, privation or neglect.

[10] The Crown submits that the purpose of the *Act* is to ensure the welfare of animals through the imposition of duties on persons owning or having charge of animals. This purpose is not set out anywhere in the *Act*. In *Hi Hotel* the Alberta Court of Appeal considered the interpretation of what it deemed to be "protective legislation". The Court held that strict construction of regulatory legislation was not appropriate and that such legislation should be construed to ensure the attainment of the object of the legislation: ***Hi Hotel v. Holiday Hospitality Franchising*** 2008 ABCA 276 at paras. 16-17.

[11] In order for the Crown to be successful in convicting Muhlbach of the charge, it had to prove, beyond a reasonable doubt, the *actus reus* of the offence that Muhlbach caused or permitted an animal or animals to be in distress. The nature of this charge is quasi-criminal requiring the higher standard of proof, beyond a reasonable doubt, or as the Trial Judge put it, the criminal standard of proof. Given that the charge is strict liability, the Crown is not required to prove the mental element of the offence, but Muhlbach is entitled to a raise a defence of due diligence. This defence is described in the *Act* at s. 2(2) as:

> This section does not apply if the distress results from an activity carried on in accordance with the regulations or in accordance with reasonable and generally accepted practices of animal care, management, husbandry, hunting, fishing, trapping, pest control or slaughter.

[12] In his decision, the Trial Judge correctly set out the test, the standard of proof required of the Crown, and the defence of due diligence (at p. 292 l. 30 to p. 293 l. 22).

[13] The Trial Judge was required to determine first if an animal or animals were in distress and then to determine if Muhlbach made out a defence of due diligence to this charge.

[14] The Trial Judge found that the Crown had made out the *actus reus* of the offence with respect to a number of animals.

[15] Muhlbach, however, lead a defence of due diligence, that is, he claimed and lead evidence that his practices were in accordance with reasonable and generally accepted practices of care of cattle. Muhlbach had only to prove this on a balance of probabilities to raise a reasonable doubt. The Trial Judge found that Muhlbach had successfully made out that defence and acquitted him.

A. Background Facts

[16] In May of 2007, the ASPCA became concerned about the welfare of the cattle on the Muhlbach farm, and so on May 1, 2007, Peace Officer Jackie Lozinski visited the Muhlbach farm, noting various concerns during her brief viewing of the property, including a number of cattle and calf carcasses and a bull with an enlarged scrotum.

[17] On May 3, 2007, Peace Officer Lozinski obtained and executed a search warrant on the farm, and accompanied by Peace Officer Ken Dean and Dr. Melissa Hooson, a veterinarian, met Muhlbach at his residence, explaining that they were there to inspect the cattle pursuant to the search warrant.

[18] Peace Officer Lozinski investigated the cattle and spoke to Muhlbach, while Peace Officer Dean took photographs of the animals and the farm. Dr. Hooson inspected the animals. During this investigation, a friend of the Muhlbach's, Mr. Garth Ahlstrom, also attended at the farm.

[19] According to the two Peace Officers and Dr. Hoosen, the following observations were made:

- A steer with a grossly enlarged scrotum,
- A cow with a limp that appeared to be missing part of its hoof wall,
- Several younger animals with pinkeye,
- Two automatic watering bowls with no water in the yearling and the bull pen,
- Standing water in the bull pen that was stagnant and contained manure,
- External parasite burdens and a lack of hair in certain areas of the animals in the bull pen,
- A "downer cow" lying on the ground that appeared to Dr. Hoosen to be dehydrated and emaciated, and
- Dead calves and dead cattle left uncovered on the land.

[20] On the basis of these observations, the Peace Officers charged both James and Betty Muhlbach with the following count on May 28, 2007:

> Between 01 January A.D. 2007, and 03 May A.D. 2007, both dates inclusive, at or near Stettler, in the Province of Alberta, did cause or permit animals, to be or to

> continue to be in distress contrary to Section 2(1) of the *Animal Protection Act*, Province of Alberta.

[21] On December 13, 2007, both Betty and James Muhlbach pled not guilty to the charge, and a trial was scheduled for February 18, 2009. Just before the commencement of the trial, the Crown dropped the charges against Betty Muhlbach.

[22] The trial took place over two days. The Crown called the two investigating Peace Officers and Dr. Hooson, a veterinarian, and defence counsel responded with testimony from Muhlbach and Mr. Ahlstrom.

[23] On December 10, 2009, the Trial Judge acquitted Muhlbach of the one count against him. He found that although the Crown had established the *actus reus* of the offence by proving that there were some sick, injured or suffering animals on the farm, he also found that the Crown had not proved the *actus reus* with respect to whether the animals were deprived of adequate food, water, shelter, space or veterinary care.

[24] Finally, he found that Muhlbach had proven the defence of due diligence on a balance of probabilities that the distressed animals were being cared for pursuant to reasonable and generally-accepted practices of animal care, a defence found in sec. 2(2) of the *Act*. Here, the Trial Judge relied on a lack of evidence produced by the Crown showing dehydration of any of the animals, or any obvious pain or extreme discomfort.

[25] I turn now to a discussion of each of the errors alleged by the Crown to have been made by the Trial Judge.

B. The Trial Judge erred by misdefining the offence and reading in an element

[26] The Crown alleged that the cattle were in distress due to a lack of water, among other things. Under this heading, the Crown takes issue with the Trial Judge's interpretation of the *Act* concerning "distress".

[27] In his determination of whether the cattle were in distress due to a lack of water, the Trial Judge came to the following conclusion:

> As I have heard Dr. Hooson's evidence, there was no diagnosis of dehydration with respect to any animal except for the post-mortem calf, which was hydrating through its mother. If there was no access to adequate water, it would not explain the apparently adequately hydrated condition of the majority of the herd, and I cannot find that any distress resulted from the inadequate provision of water that has been shown (at p. 294).

[28] The Crown argues that the Trial Judge misinterpreted the *Act* by requiring evidence of dehydration, rather than evidence of distress.

[29] In effect, in the Crown's submission, all that the *Act* requires is evidence that the animal was deprived of water which proved the animal is in distress.

[30] The Respondent contends that the Trial Judge did not import a requirement of dehydration into the consideration of whether an animal was in distress. Instead, the Respondent submits that the Trial Judge simply found that the Crown only gave evidence as to a lack of water on the day of the investigation, but no evidence of distress related to that lack of water.

[31] The evidence that the Respondent submitted included that there were two automatic watering bowls in the yearling and the bull pen with no water in them. The Respondent gave evidence, and the Trial Judge accepted, Muhlbach's explanation that the automatic waterers were connected to the same pump, that pump was down that day and that he had immediately repaired it. However, the Trial Judge found that the *actus reus* had not been proved by the Crown because the Crown did not prove dehydration.

[32] Here we are dealing with s. 1(2) which defines distress as, among other things, deprivation of adequate water.

[33] The Crown submits that this must be interpreted within a remedial legislative intention to prohibit not only acts which result in immediate and acute harm but to also prohibit acts which would result in eventual harm to the animal if continued over a period of time.

[34] Although at first glance this appears to be a question of law, deeper consideration reveals that this is an inference of fact. The Trial Judge used the lack of evidence of dehydration to infer that the animals were not in distress due to a lack of adequate water. The standard of review for an inference of fact is palpable and overriding error, as the Supreme Court wrote in *Nickolaison* at para. 23:

> We reiterate that it is not the role of appellate courts to second-guess the weight to be assigned to the various items of evidence. If there is no palpable and overriding error with respect to the underlying facts that the Trial Judge relies on to draw the inference, then it is only where the inference-drawing process itself is palpably in error that an appellate court can interfere with the factual conclusion.

[35] I must therefore ask whether the Trial Judge erred in his understanding of the facts underlying his determination that there was no distress caused by a lack of water, and if no error is found there, then whether his inference-drawing process was palpably in error.

[36] After reviewing the transcript of the trial, I have concluded that the facts outlined by the Trial Judge in the quote above are correct. I could find nothing in my review of Dr. Hooson's

testimony that suggested that there was clear evidence that any cattle on the farm were in distress due to lack of water.

[37] From these facts, the Trial Judge was entitled to infer that the cattle were not in distress due to a deprivation of water by finding that no evidence was given showing dehydration of the cattle. This was not an addition to the test found in sec. 2(1), but rather an inference that he felt he was required to make since Muhlbach had raised a reasonable doubt regarding the waterers' functioning that day.

[38] I do not find a palpable or overriding error in the Trial Judge's reasoning on this ground of appeal.

C. The Trial Judge erred by misdefining and misapplying the statutory defence

[39] After the Trial Judge came to his conclusion that some of the animals on the Muhlbach farm were in distress, he then found that the statutory defence in s. 2(2) applied, and that the distress resulted from an activity carried on in accordance with reasonable and generally accepted husbandry practices. In a few cases, such as the bull with the enlarged scrotum or the "downer" cow, the Trial Judge accepted Muhlbach's practices, though appearing neglectful, because there was no evidence presented that those two animals were in "obvious pain or discomfort" (at p. 296).

[40] The Appellant submits that once distress is established, there is no requirement on a plain reading of the *Act* that the animals be found in "pain or obvious discomfort." Further, the Crown submitted that reading in this addition to the test is contrary to the purpose and ameliorative nature of the *Animal Protection Act*.

[41] The Respondent submits that with regard the distressed cattle, the bull with the enlarged scrotum, the cattle with pinkeye, the "downer" cow, and the cow with the cracked hoof wall, the Trial Judge was entitled to find on the evidence that Muhlbach had acted within the generally accepted parameters of husbandry practice.

[42] The question raised by the Crown is whether the Trial Judge correctly applied a section of legislation to the facts. This is a question of mixed fact and law, and the standard of review is palpable and overriding error. This standard of review requires deference to the findings of the Trial Judge, and only in the case of a glaring error am I entitled to intervene in his reasoning.

[43] Section 2 of the *Animal Protection Act* reads as follows:

> **2(1)** No person shall cause or permit an animal of which the person is the owner or the person in charge to be or to continue to be in distress.

> **(1.1)** No person shall cause an animal to be in distress.
>
> **(2)** This section does not apply if the distress results from an activity carried on in accordance with the regulations or in accordance with reasonable and generally accepted practices of animal care, management, husbandry, hunting, fishing, trapping, pest control or slaughter.

[44] The Trial Judge outlined his interpretation of the test under sec. 2(2) of the *Animal Protection Act* as follows:

> Was the distress of any particular animal caused or permitted by Muhlbach in accordance with reasonable and generally-accepted practices of animal care, management, husbandry, et cetera? As mentioned, this section requires any generally-accepted practice to be reasonable. One of the factors to consider when looking at the reasonableness is the general practice in the ranching community. Just because a practice is common, does not mean it is reasonable (at p. 295).

[45] In my opinion, there is no error in this statement of the test. Clearly, the Trial Judge was alive to the test in the *Act* and he was also aware that a practice found in the ranching community must be reasonable in order to form a valid defence.

[46] In applying this test, the Trial Judge correctly relied on evidence that Muhlbach's behaviour conformed with "reasonable and generally accepted practices of animal care, management, husbandry", reviewing the evidence of both the veterinarian, Dr. Hooson, and fellow farmer, Mr. Ahlstrom, someone that the Trial Judge deemed "an experienced rancher and a reasonable observer" (at p. 295).

[47] The Trial Judge, as the Trial Judge, was better placed to determine the credibility and validity of the witnesses' testimony. He found that the evidence suggested that Muhlbach's practices regarding animals in distress was within the acceptable range of farming practices, and in the absence of a palpable and overriding error, I am bound by those findings.

[48] I find that the Trial Judge' articulation and application of the test disclosed no palpable or overriding error.

D. The Trial Judge erred by misapprehending the evidence

[49] The Appellant submits that the Trial Judge made various errors in his apprehension of the evidence with regard to the *actus reus* of the offence. I will discuss each of the alleged misapprehensions raised by the Crown below, along with the Respondent's submissions.

[50] A Trial Judge's interpretation of the evidence is a question of fact, reviewable on the standard of palpable and overriding error. Further, the Supreme Court in ***R. v. Lohrer***, [2004] 3 S.C.R. 732, 2004 SCC 80 discussed what constitutes a true misapprehension of evidence. Justice Binnie wrote (at para 2):

> The misapprehension of the evidence must go to the substance rather than to the detail. It must be material rather than peripheral to the reasoning of the Trial Judge. Once those hurdles are surmounted, there is the further hurdle (the test is expressed as conjunctive rather than disjunctive) that the errors thus identified must play an essential part not just in the narrative of the judgment but "in the reasoning process resulting in a conviction"

[51] First, the Trial Judge found that the Crown had failed to prove to the requisite criminal standard that the animals had been deprived of "adequate food, water, shelter, space or vet care". The Crown in particular takes issue with this finding respecting deprivation of water. The Trial Judge found that to prove this deprivation, the Crown's onus was to prove dehydration of the animals.

[52] The Appellant submits that the Trial Judge misapprehended the evidence related to whether or not the cattle were deprived of adequate water. The Crown submits that the question is not "are the cattle hydrated?" but rather "were the cattle deprived of water?" Because of the evidence showing the lack of water in the automatic waterers and the fact that the bull pen only had dirty standing water, the Crown submits that the second question could only be answered in the affirmative.

[53] The Respondent submits that the Crown did not supply any objective evidence of the effects of inadequate water supply for the animals, did not establish for how long water may not have been available to the animals, and did not engage in any objective testing to show the animals were in distress. When you add Muhlbach's testimony that the waterers were broken that day and repaired immediately after the inspection, it was fair for the Trial Judge to have a reasonable doubt that the animals were deprived of water.

[54] In my opinion, this concern is simply a restatement of the first ground of appeal: that the Trial Judge erred by misdefining the offence in sec. 1(1) and adding the element of "dehydration" to the Crown's onus.

[55] As I stated above, it is a reasonable inference for a Trial Judge to answer the question "were the cattle deprived of water?" by seeking out evidence that the cattle were dehydrated. The onus on the Crown for the *actus reus* was beyond a reasonable doubt, and since Muhlbach had entered uncontradicted evidence that the waterers had only been non-operational that day, the Trial Judge needed further evidence of a sustained deprivation of water in order to surpass that high standard of proof. This was not a palpable and overriding error.

[56] Second, the Trial Judge found that the Crown had proved the *actus reus* for certain animals that were "ill, sick or in pain". In doing so, the Trial Judge acknowledged that the definition of distress was very wide. The definition of distress includes injury, sickness, pain or suffering. He noted that under this wide definition, the prohibition set out in s. 2(1) was met by the Crown, that is, some of the animals had been permitted by the Respondent to be in distress. The Trial Judge found that there was no evidence to show that the Respondent had caused this distress, rather the *actus reus* fell under the "permit" part of the definition.

[57] In particular, he examined the evidence of the Crown, its expert witness, Dr. Hooson, Mr Ahlstrom (a rancher with a wealth of experience) and the evidence of the Respondent and found explanations for the apparent condition of the animals which could not be attributed to the Respondent. These explanations answered the apparent *actus reus* and, therefore, met the onus of demonstrating due diligence.

[58] For example, there were two animals which fell under the heading "ill, sick or in pain" that were considered by the Trial Judge: a bull with an enlarged scrotum and a downer cow. With respect to these two animals, the Trial Judge considered what action should have been taken by the Respondent to demonstrate due diligence. The Trial Judge found that the Respondent had met the onus to show due diligence provided in s. 2(2) of the *Act*.

[59] The Trial Judge determined that the actions taken by the Respondent which could amount to due diligence ought to relate to whether there was obvious pain and suffering for each of these animals. I take it from the whole of his reasons that he considered that the appropriateness of the actions taken by the Respondent had to be measured in the degree of distress apparent for the particular animal.

[60] An example of the necessary actions which the Crown suggested should have been taken was a more timely consultation with a veterinarian or butchering the specific animals. Although Dr. Hooson would have preferred that the Respondent consult with a veterinarian sooner than he did or was intending to do, she could not say that this would have made a difference to the pain and suffering of the animals. The Trial Judge found that the timing of such a consult or the butchering of the animal should relate to whether the animal was in obvious pain and suffering. In this case he found that the actions of the Respondent were reasonable taking into account that the animals were not obviously in any pain or suffering.

[61] The Crown argues that there was sufficient evidence led that these animals could be (not that they were) in pain and/or suffering such that the Trial Judge could not possibly have come to the conclusion that the defence was operative.

[62] The Respondent argues that the evidentiary burden is on the Crown to prove that the animals were in pain or suffering, and that there was not sufficient evidence led by the Crown's witnesses to show that any of the animals were in fact in pain, as no testing was done and all of the pain alleged was speculative. I find the Respondent's arguments here to be irrelevant, since

my reading of the Trial Judge's decision discloses that he found that the *actus reus* was made out for pain and suffering, which is why the defence of due diligence was then considered.

[63] Again, this seems to be a restatement of the second ground of appeal: that the Trial Judge misdefined and misapplied the statutory defence.

[64] In my review of his reasoning, I find that the Trial Judge was using the following test for due diligence: if an animal is in distress, did Muhlbach's actions in responding to that distress conform with reasonable and generally-accepted practices in the industry? In working through that test, the Trial Judge reasoned that the practice in the industry was to ascertain the level of obvious pain and suffering of an animal in order to determine what action needed to be taken to decrease an animal's distress. With that reasoning, the Trial Judge went on to consider each animal in distress to see what a reasonable farmer would do, and found that Muhlbach's actions were acceptable based on the fact that the animals did not appear to be in great pain.

[65] Each of the examples given by the Crown on this appeal follows the same pattern of reasoning in the Trial Judge's reasoning. I will not respond to all of the examples as they all fall under this pattern of reasoning.

[66] I can find no palpable or overriding error in that reasoning.

E. The verdict of acquittal was unreasonable

[67] The Crown submits that the acquittal entered by the Trial Judge was unreasonable.

[68] The standard of review for an unreasonable verdict is unique, and essentially requires me to consider whether the outcome of the trial itself was reasonable, notwithstanding any problems with the evidence before the Trial Judge nor his interpretation of it. In the Alberta Court of Appeal case of *R. v. Sekhon*, 2007 ABCA 254, 75 W.C.B. (2d) 172, Berger J.A. wrote at para. 4:

> To the extent that *R. v Yebes*, [1987] 2 S.C.R. 168 is applicable, the summary conviction appeal judge was entitled to review the evidence, re-examine it and re-weigh it, but only for the purpose of determining "if it is reasonably capable of supporting the Trial Judge's conclusion; that is, determining whether the trier of fact could reasonably have reached the conclusion it did on the evidence before it."

[69] The Appellant submits that when the evidence is considered as a whole, there was strong evidence to support a conclusion that at least some of the animals were in distress as defined by the *Animal Protection Act*. The Crown further submits that there was no evidence that the specific action or inaction of the Respondent with respect to animals in distress was within the bounds of reasonable and generally accepted practices.

[70] The Respondent submits that the Crown simply did not provide sufficient evidence to prove beyond a reasonable doubt that the animals were in distress as a consequence of being denied adequate shelter, ventilation, space, food, water or veterinary care or reasonable protection from injurious heat or cold. In the cases where animals were found to be injured or sick, the Trial Judge considered the evidence as to whether or not Muhlbach's responses to the problems fell within generally accepted husbandry practices, and found that they did.

[71] The standard of an unreasonable verdict is high. I am required to find whether the Trial Judge could have reasonably reached the conclusion that Muhlbach should be acquitted based on the evidence before him. After considering the testimony of the two Peace Officers, Dr. Hooson, Muhlbach and Mr. Ahlstrom, I find that the Trial Judge had sufficient reason to come to the conclusion that he did.

[72] The Crown bears the onus of proving beyond a reasonable doubt that Muhlbach caused or permitted one or more of his animals to be in distress.

[73] In this case, the Crown alleged that Muhlbach caused distress in the following ways: by depriving the animals of water, the evidence being that the waterers were not working and the bull pen only had standing water, that one animal was injured (the cow with the broken hoof), that several animals were sick, the cows infected with pinkeye and ringworm and the "downer cow," and that one animal was suffering (the bull with the enlarged scrotum).

[74] With regard to the water deprivation, although the Crown did prove that the waterers were not operational on the day of investigation, the Trial Judge found that the evidence of Muhlbach that they were only non-operational that one day and the lack of any evidence of dehydration to find that the Crown had not proven that element beyond a reasonable doubt. This is a reasonable conclusion.

[75] With regard to the sick, injured or suffering animals, the Trial Judge found that the Crown had proven beyond a reasonable doubt that these animals were in distress, but then turned to the defence found in sec. 2(2) of the *Animal Protection Act*.

[76] After considering the evidence of Dr. Hooson, Muhlbach and Mr. Ahlstrom, the Trial Judge concluded that Muhlbach was attempting to treat the pinkeye, was monitoring the cow with the broken hoof wall, and was considering killing the bull with the enlarged scrotum. With regard to the "downer" cow, the Trial Judge found that Muhlbach was feeding and watering her and that he intended to euthanise her if she did not improve. He therefore concluded that Muhlbach had proven on a balance of probabilities that the distress had resulted from generally-accepted husbandry practices. This was, again, a reasonable conclusion for him to make.

[77] To say that the Trial Judge' acquittal was unreasonable is to say that his conclusions did not fit with the evidence put before him. That cannot be said in this case. It is clear from my review of his oral decision that he was alive to the requirements and standards of proof under the

Animal Protection Act, that he considered the evidence carefully, and that he applied the evidence to the test in a reasoned way. Therefore, it cannot be said that the acquittal verdict was unreasonable.

VI. Conclusion

[78] In the result, I dismiss the appeal.

Heard on the 16th day of July, 2010.
Dated at the City of Edmonton, Alberta this 6th day of January 2011.

A.B. Moen
J.C.Q.B.A.

Appearances:

Peter Roginski,
for the Appellant

Willard D. Willms,
for the Respondent