

18783-1, 18691-1
Rossland Registry

In the Provincial Court of British Columbia
(BEFORE THE HONOURABLE JUDGE FABBRO)

Rossland, B.C.
July 16, 2009

REGINA

v.

LOUISE MCANERIN

PROCEEDINGS AT SENTENCING

COPY

Crown Counsel:

A. Janse

Defence Counsel:

K. McGee

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Proceedings

1
2 Rossland, B.C.
3 July 16 2009
4 MR. MCGEE: Your Honour, that brings us to the matter
5 that's on the trial list today. Ms. -- Ms. Janse
6 and I have been lucky -- luckily able to arrange a
7 disposition of this matter and three other matters
8 which were coming before the court later during
9 the summer. So, we weren't able to do this in
10 enough time because of the complexity of the case,
11 which you'll begin to learn about in a few
12 moments, to enable Ms. Hadikin to fill up the day,
13 but basically once we're done today, two other
14 court days will cleared up -- I think will be able
15 to be filled by other Grand Forks matters.
16 THE COURT: And are you going to be dealing with those
17 other matters?
18 MR. MCGEE: All -- all informations are going to be
19 dealt with.
20 THE COURT: Are they all here today?
21 MR. MCGEE: Yes, all the --
22 THE COURT: But not all -- not all on the list, are
23 they?
24 MS. JANSE: They are.
25 THE COURT: Oh, they are? Okay. It's only one
26 defendant, though, is it?
27 MR. MCGEE: Yes.
28 MS. JANSE: Correct.
29 MR. MCGEE: One accused.
30 THE COURT: Okay.
31 MR. MCGEE: Your Honour, there's -- there's really four
32 informations before the court. I'm going to be,
33 on behalf of my client, entering pleas to a couple
34 of counts in two of them. So, beginning with
35 18691, I have instruction to enter -- to apply to
36 change the plea of not guilty entered previously
37 and enter a plea of guilty to Count 1 on that
38 information.
39 And in relation to the Information Number
40 18783, I have instructions to apply to the court
41 to strike the plea of not guilty to Count 1 and
42 enter a plea of guilty to Count 1.
43 THE COURT: Okay, that's a -- a breach.
44 MR. MCGEE: Yes, Your Honour.
45 THE COURT: Okay. Those pleas will resolve all the
46 remaining informations and allegations therein?
47 MS. JANSE: Your Honour, at the end of sentencing, I'll

Proceedings

1 be staying all the remaining outstanding counts
2 and informations.
3 THE COURT: Okay. If you're ready to proceed, you can
4 tell me the circumstances.
5 MS. JANSE: Thank you, Your Honour.

SUBMISSIONS BY CROWN:

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8
9 MS. JANSE: Your Honour, the circumstances are as
10 follows. The SPCA has been involved with Ms.
11 Mcanerin, the accused, regarding animals in her
12 care since 1998. In most cases, compliance has
13 been issued through issuing orders and working
14 with Ms. Mcanerin, but the situation has required
15 continual monitoring by the SPCA.
16 In May of 2004, Ms. Mcanerin was no longer
17 complying with the orders, and it became necessary
18 for the SPCA to obtain a warrant. A warrant was
19 executed June 29th, 2004, and 121 animals were
20 seized after being found in distress as defined in
21 the ***Prevention of Cruelty to Animals Act*** and taken
22 into the custody of the SPCA.
23 Essentially, Your Honour, the concerns were
24 general neglect, inadequate food, water, shelter,
25 and needing veterinary care.
26 THE COURT: These are circumstances outside --
27 MS. JANSE: This is background information.
28 THE COURT: -- of the alle --
29 MS. JANSE: Correct.
30 THE COURT: -- of the --
31 MS. JANSE: That's correct.
32 THE COURT: -- the time allegations.
33 MS. JANSE: That's correct, Your Honour.
34 THE COURT: Okay.
35 MS. JANSE: I more put this in for background with
36 respect to our proposed plan, which I'll note we
37 do have a joint submission for the court --
38 THE COURT: Very good.
39 MS. JANSE: -- but for the length of time of a
40 prohibition on owning animals.
41 THE COURT: Okay.
42 MS. JANSE: And I put this in to support the length of
43 the prohibition.
44 THE COURT: Okay.
45 MS. JANSE: Over the next year and a half, Ms. Mcanerin
46 obtained some new animals, and it began making it
47 necessary for the SPCA to begin monitoring the

Submissions by Crown

1 animals in her care and issuing orders.
2 She did comply with orders and
3 recommendations successfully through to the summer
4 of 2006. At this point, matters began to --
5 excuse me -- degenerate once again, and she failed
6 to comply with orders, and a second warrant was
7 executed in July 28th, 2006.

8 THE COURT: This is a warrant entitling the SPCA to
9 enter on the lands and remove?

10 MS. JANSE: That's correct.

11 THE COURT: Okay.

12 MS. JANSE: It's -- the warrant --

13 THE COURT: Under the **Act**.

14 MS. JANSE: -- would be to prevent the continuation of
15 distress.

16 THE COURT: Okay.

17 MS. JANSE: Correct.

18 THE COURT: Okay.

19 MS. JANSE: On that occasion, the only issue there was
20 there was water not made available to the animals
21 and, while they were there, a truck did bring in
22 barrels of water. I understand Ms. Mcanerin is
23 not on -- was not on city water. So, a truck came
24 in while they were executing the warrant. An
25 order was issued rather than seizing any animals
26 on that occasion, and it included recommendations
27 that she not house any animals inside the
28 dwelling-house due to the debris and garbage as
29 well as black mould present in the house and that
30 they -- she -- they advised her they would be
31 continuing to return to ensure compliance with the
32 order.

33 She did comply with that order, and by the
34 second re-inspection, there was running water at
35 that point on the premises.

36 However, in February -- or, sorry, between
37 February and August 2007, there began to be
38 complaints once again regarding Ms. Mcanerin's
39 property and her animals running at large, being
40 left unattended without food or water, and
41 eventually the SPCA made an attendance. They came
42 in April 2007 making verbal recommendations to Ms.
43 Mcanerin to make arrangements for the animals when
44 she had to leave her home.

45 The continued to receive complaints
46 throughout May and June, July, and August about
47 the dogs being left alone without a caregiver,

Submissions by Crown

1 dogs running at large, chasing livestock, and
2 being left with no food or water.

3 Eventually, SPCA were called as a neighbour
4 had corralled a few of Ms. Mcanerin's dogs which
5 had been running on their property. Those animals
6 were found to be dehydrated and were taken back to
7 the SPCA.

8 Ms. Mcanerin phoned and wished to have her
9 dogs back. The SPCA advised they would have to
10 inspect the premises prior to returning the dogs
11 to ensure that there was adequate facilities, and
12 she refused them access. It was noted that the
13 animals, while at the SPCA, were noted to have
14 feathers and bones in the fecal matter of the dogs
15 belonging to Ms. Mcanerin, and the suggestion
16 there was that the dogs killed and consumed
17 chickens from her property.

18 THE COURT: On the same property.

19 MS. JANSE: Correct.

20 THE COURT: Her own chickens.

21 MS. JANSE: Yes.

22 THE COURT: Okay.

23 MS. JANSE: Eventually, Your Honour, due to the fact
24 that Ms. Mcanerin would not allow the SPCA access
25 to her residence and the fact that they were
26 continuing to receive complaints from neighbours,
27 SPCA obtained a warrant to search pursuant to the
28 **PCA Act**, and on August 14th, they executed that
29 warrant. In attendance were a number of special
30 provincial constables as well as a police officer
31 and a veterinarian.

32 They entered the property and they viewed --
33 in the residence no litter box was available.
34 There was four kittens inside the house.
35 Newspaper was on the floor of the bathroom. It
36 was wet with urine and had feces on it. There
37 were piles of feces on the floor in the basement.
38 Garbage and debris were stacked throughout the
39 room in the basement except for a small area.
40 It's noted SPCA officers and the veterinarian had
41 to don protective gar -- garments including gloves
42 and respirators to enter the dwelling-house.

43 At this point, SPC Walker and Dr. Sackney
44 began individual exams of all animals on the
45 property as well as in the dwelling-house and
46 videotape and photographs were also taken.

47 It was noted the outside temperature in the

Submissions by Crown

1 area was 42 degrees Celsius. There was no food
2 available to the dogs. There was -- the water
3 provided to the dogs was dirty, foul-smelling, and
4 covered in green slime. The shelter provided to
5 the dogs was under trailers or torn tarps. The
6 water for the fowl loose on the property was dirty
7 and also foul and slime covered. The feed for the
8 fowl was in closed containers inaccessible to the
9 birds. There were pigeons on the property, and
10 their water was also dirty with a thick film of
11 green slime. No food was observed available to
12 the pigeons.

13 It was noted there was garbage and debris on
14 the front porch which made entry to the dwelling-
15 house difficult. The number of black flies was so
16 great that it was necessary for SPCA officers to
17 cover their mouths so as not to inhale them when
18 trying to enter the residence. There was various
19 items stacked almost to the ceiling in the
20 kitchen/dining area as well as the back wall in
21 the living room leaving only a small area to move
22 around.

23 There was a plastic container filled with
24 kibble available to the kittens on the kitchen
25 floor. There was a one cup plastic container with
26 approximately a quarter cup of water in it
27 available to the kittens on the bathroom floor;
28 however, as I noted, due to the lack of litter
29 boxes, there was newspapers on the bathroom floor
30 wet with urine and had piles of feces.

31 Two doors to other rooms could only be opened
32 partway because of garbage and debris stacked
33 almost to the ceiling in each room, and the
34 downstairs was also stacked with garbage and
35 debris with a small area about three to four feet
36 square void of any material. This area had large
37 amounts of feces. The officers and the
38 veterinarian --

39 THE COURT: We're talking about the residence.

40 MS. JANSE: I'm talking about in the residence, yes.

41 The SPCs then went with Dr. Sackney to the pigeon
42 hutches. It was noted they had to put respirators
43 on to even get close to them due to the
44 overwhelming smell.

45 While having the respirator on, Dr. Sackney
46 noted the odour from the pigeon hutch was so
47 strong she could still smell it through the

Submissions by Crown

1 respirator, and they had to back away from time to
2 time during the exam to get fresh air.

3 It was determined that all the dogs, kittens,
4 and pigeons on the property were in distress as
5 defined by the **Act**, and they were taken into
6 custody to relieve their distress. Taken on this
7 occasion was four kittens, six dogs, and 14
8 pigeons.

9 I'm going to proffer some photographs to the
10 court just to show the general idea of -- of the
11 circumstances. These aren't all the photos that
12 were taken, just of some of the water and some of
13 the residence. My friend's seen them. I'm going
14 to ask that they be marked as a document.

15 THE COURT: They can be marked Exhibit 1 collectively,
16 and I'll look at them, please.

17
18 **EXHIBIT 1: 4 pages of colour copied photos,**
19 **4 photos per page, of animals and the**
20 **exterior and interior of a residence**
21

22 MS. JANSE: They were labelled and I took the labels
23 off so as not to -- that evidence is not before
24 the court, but --

25 THE COURT: Thank you.

26 MS. JANSE: -- I think Your Honour gets the impression.

27 As a result of these allegations, Ms. -- a
28 warrant in the first instance was issued for Ms.
29 Mcanerin, and she was arrested and released on a
30 police undertaking to not have possession --
31 sorry, to possess or have custody or control of
32 any animal or bird.

33 Due to a further allegation of -- excuse me
34 -- of a breach, she was once again arrested, and
35 then released --

36 THE COURT: Are you talking about the breach of July
37 1st?

38 MS. JANSE: No, this was an alleged breach in February
39 which I'll be entering a stay of proceedings on.

40 THE COURT: Okay.

41 MS. JANSE: I just wanted to explain how she came --
42 she was first on a police undertaking. That ended
43 up being cancelled after -- further to that
44 allegation of breach, she's then arrested. She is
45 held in custody for a psychiatric assessment after
46 the further breaches of July were alleged. So, I
47 didn't explain it very well, but a number of

Submissions by Crown

1 further breach charges are alleged. She's brought
2 into custody --

3 THE COURT: These are breaches of undertaking relating
4 to the --

5 MS. JANSE: Right.

6 THE COURT: -- charge -- this charge.

7 MS. JANSE: Exactly.

8 THE COURT: Okay.

9 MS. JANSE: Exactly. And so, she's brought back into
10 custody. She's held for a psychiatric assessment
11 by -- I believe that was Judge Sperry, and she was
12 subsequently released on an undertaking to -- at
13 this time, an undertaking to a justice.

14 Now, the breach that she has pled guilty to,
15 Your Honour, stems from a July 1st, 2008,
16 incident. A complaint was received June 24th,
17 2008, from the neighbours advising that there were
18 animals on the property. Constable Ennis
19 attended on that date to speak with Ms. Mcanerin.
20 He knocked on the door. Nobody answered, but he
21 could hear dogs barking in the house. As a result
22 of that, a warrant was issued at the request of
23 the SPCA, and that was executed July 1st.

24 On July 1st, SPC Enkirch attends with a
25 constable from the RCMP. Ms. Mcanerin was outside
26 on the porch when they attended. She then
27 proceeded inside and locked the door. She refused
28 to open the door, and they warned her that the
29 door would be kicked in if she didn't open it, and
30 they tried knocking one more time, and she did not
31 answer. So, the door was kicked in.

32 Upon entering, Ms. Mcanerin was found in the
33 living room standing next to a large brown dog.
34 She was then placed under arrest for a breach of
35 recognizance by the RCMP officer. She attempted
36 to run into the bathroom, refused commands, and
37 was eventually arrested and removed from the
38 premises.

39 Constable Enkirch proceed with a search of
40 the residence while Constable Coombes took Ms.
41 Mcanerin back to the detachment. Upon entering,
42 the large dog -- the large brown dog was seized.
43 It was noted the dog had been standing on two
44 piles of dog feces. Further, in the bathroom, a
45 black and white collie dog -- type dog was located
46 there. It had no access to water. Further, a
47 black and white Husky-type dog was located in a

Submissions by Crown

1 bedroom. The ber -- ba -- the pathway to the door
2 was barricaded with two large end tables believed
3 to be in order to block the passage to that room,
4 and the items were moved, and the dog was seized.
5 It was noted there was two piles of feces on the
6 ground in that area as well.

7 Further, two small Vari-kennels on the floor
8 in the bedroom were located at the bottom of a
9 five to six foot pile of clothing. There were two
10 Pit Bull-type dogs. The Vari-kennels they were
11 being housed in were too small for them to stand
12 up or move around. The floors of the kennels were
13 covered in feces, and it was noted that the dogs
14 had minor to moderate hair loss and rough skin,
15 likely due to mites. Those dogs were both seized
16 as well.

17 It was noted that none of the dogs in the
18 house had access to water despite the temperature
19 being above 30 degrees, and the smell of ammonia
20 and feces was quite overwhelming in the house.
21 The dogs all received veterinary care as a result
22 of the problems they were suffering from.

23 So, that is the breach, Your Honour, and I --
24 I should have said after that breach is when she
25 was taken into custody and held for 30 days. She
26 was subsequently released and has been on bail
27 since July 28th. So, there was three different
28 bail orders essentially.

29 THE COURT: Well, since 2002 -- 2008.

30 MS. JANSE: That's correct. It's almost a year.

31 THE COURT: Okay.

32 MS. JANSE: So, those are the circumstances, Your
33 Honour. I think it's fair to say Ms. Mcanerin
34 suffers from mental health issues. She appears to
35 be, in a layperson's opinion, suffering from a
36 hoarding compulsive disorder.

37 There was a psychiatric assessment. I don't
38 know if my friend wants to put that before the
39 court. I have a copy, but from -- from what Your
40 Honour can see briefly of the house, it appears
41 that there is obviously some issues with
42 maintaining the house for herself nonetheless for
43 the animals.

44 THE COURT: Thank you.

45 MS. JANSE: Sorry.

46 THE COURT: When -- when the entry was made in August
47 of 2007, was there the -- was there the presence

Submissions by Crown

1 of -- of the offender living in the home at that
2 time?
3 MS. JANSE: Was she at home when they --
4 THE COURT: Yes.
5 MS. JANSE: -- did the search? No.
6 THE COURT: Okay, but --
7 MS. JANSE: She was not home.
8 THE COURT: But was she living --
9 MS. JANSE: Oh, yes.
10 THE COURT: -- there, but just not there that day.
11 MS. JANSE: Yeah, they had had dealings with her
12 throughout, before and after.
13 THE COURT: Okay.
14 MS. JANSE: She just wasn't home that day.
15 THE COURT: Okay.
16 MS. JANSE: So, she is a first-time offender, Your
17 Honour. Obviously the mitigating factor's that
18 she has no criminal record. She's entered guilty
19 pleas, and I can tell you that these matters would
20 have been very long and complicated to prosecute.
21 So, certainly she has saved the court significant
22 time and expense. So, that's a mitigating factor.
23 And the aggravating factors, Your Honour,
24 obviously, are the conditions that these animals
25 were living in. The breach is obviously quite
26 aggravated as she is breaching the protective
27 order of her bail, the only really substantive
28 condition that there was placed upon her, and the
29 animals were found in similar conditions while she
30 was on bail.
31 The case law indicates, Your Honour, that a
32 jail sentence is appropriate. I have brought
33 cases, but since this is a joint submission, I
34 don't intend to proffer them, but suffice to say
35 courts have expressed the opinion that in cases of
36 this nature, general deterrence and denunciation
37 are paramount considerations given our duty of
38 care towards animals.
39 As I noted, she spent just over 30 days in
40 custody, and getting to my sentence position, Your
41 Honour, it's my position -- and as I noted, it's a
42 joint submission -- that with respect to 18691-1,
43 the count of allowing animals to be in distress, I
44 would suggest a sentence of one day with the
45 record to reflect 45 days time served. I'm giving
46 the two for one credit, Your Honour. And a five
47 year probation on owning or having custody or

Submissions by Crown

1 control of an animal for -- sorry, and I said for
2 five years. I've passed Your Honour a copy of the
3 **Act** just so Your Honour can see the wording that's
4 used in the **Act**. It's s. 24(3) on page 10.

5 Now, Your Honour, s. 24(4) allows the court
6 to make that order on any terms Your Honour deems
7 are appropriate.

8 Now, my friend and I have had some discussion
9 and studies have shown that often with these types
10 of offenders that the intent is not to harm the
11 animals. In essence, they'll love animals too
12 much and take on a number of animals they can't
13 care for, and it's considered helpful to allow
14 them to have one or two companion animals.
15 Keeping a cap on that number, but allowing them to
16 continue to have those relationships that are
17 considered healthy.

18 So, in my submission, it would be appropriate
19 -- and my friend and I are in agreement here --
20 that Your Honour could make an exception for two
21 companion animals with an accompanying condition
22 that she allow the SPCA to inspect her residence
23 without notice between 9 a.m. and 6 p.m.

24 THE COURT: Would that be any day of the week or --

25 MS. JANSE: Yes.

26 THE COURT: Same. Okay.

27 MS. JANSE: The other -- with respect to 18783-1, she's
28 entered a plea to a breach of probation or a
29 breach of undertaking, I apologize. Your Honour,
30 I've already outlined what I consider to be the
31 aggravating factors there. I'm going to suggest
32 on that count that a sentence be one day with the
33 record to reflect 15 days time served with a two-
34 year probation order to follow. The conditions
35 I'm suggesting would be to report to a probation
36 officer. I don't know if one's sitting here
37 today, but within however long is usual for Grand
38 Forks.

39 THE COURT: Well, usually it's done by telephone --

40 MS. JANSE: Okay.

41 THE COURT: -- today and then thereafter --

42 MS. JANSE: Perfect. To report as directed, to provide
43 an address to the probation officer and not change
44 that address without prior written consent, to
45 take counselling as directed, and I would ask that
46 there similarly be a prohibition on owning or
47 having custody or control of an animal in -- in

Submissions by Crown

1 that order as well. So, a concurrent order with
2 concurrent exceptions on both the probation and
3 the **PC Act** order.

4 I can tell Your Honour -- the last thing I'll
5 tell you is that civil proceedings have occurred
6 with respect to the cost incurred by the SPCA with
7 respect to all three warrants, and a substantial
8 judgment was rendered against Ms. Mcanerin, and
9 it's now been rendered against the property that
10 she owned which will be forfeited essentially.
11 So, any restitution I may have sought has already
12 been taken care of, and I don't expect she would
13 be in a position to pay a victim fine surcharge.

14 I can tell Your Honour that the thrust of the
15 probation order is to help with rehabilitation,
16 get her access to some better counselling that she
17 may not have access through the community, and to
18 ensure again compliance with the court orders.

19 Those are my submissions subject to any
20 questions, Your Honour.

21 THE COURT: Thank you.

22 MS. JANSE: Thank you.

23 THE COURT: Mr. McGee.

24
25 **SUBMISSIONS BY DEFENCE:**

26
27 MR. MCGEE: Your Honour, I -- what I'm going to do is
28 talk about the circumstances from the point of
29 view of Ms. Mcanerin, and then, if interested, the
30 sentencing submissions.

31 My friend has been fair in her submissions,
32 and I only can add things that will help the court
33 to understand how Ms. Mcanerin finds herself in
34 the massive difficulty that she's in today.

35 First of all, Ms. Mcanerin was living in a
36 slightly rural area of Grand Forks, and because of
37 the way things go sometimes, she got in crosswise
38 with her neighbours, and under the current way
39 that the SPCA acts, the neighbour could dispute
40 and use the -- a neighbour's in a dispute, can use
41 the SPCA to get back at a neighbour who may not be
42 caring for animals to the standards that the SPCA
43 would like everyone to care for these animals.

44 So, this dispute simmered between the
45 neighbours. My friend alluded to that in saying
46 that the neighbours were reporting, and they were
47 constantly reporting Ms. Mcanerin, and there was

Submissions by Defence

1 trouble because occasionally Ms. Mcanerin's dogs
2 would escape, as dogs are prone to do, and go over
3 and chase the neighbour's horses, not to a serious
4 degree, and then the neighbours finally corralled
5 some of the dogs in their garage.

6 Now, how did this all happen? Ms. Mcanerin
7 had a very, very serious health issue with her
8 leg. She was -- she was required to have surgery.
9 She was completely laid up. She was unable to do
10 anything. What she did at this point is to enlist
11 the services of a friend of hers who she felt was
12 a very, very good friend, and he was from the
13 United States, to assist her in caring for the
14 animals. She was completely unable to care for
15 the animals at this period around the August long
16 weekend in two oh seven, and that's when
17 everything went downhill.

18 After that seizure, there was a good deal of
19 difficulty in trying to figure out what to do
20 about this problem, and at the original point of
21 the seizure, Ms. Mcanerin was not banned from
22 having animals because she was on a police
23 undertaking, as I understand it. And really, this
24 was such a -- a close case that there was some
25 doubt as to whether charges would actually go
26 forward. It was decided that charges would go
27 forward. She was ordered to have no animals.

28 Now, at this point, she had gotten some new
29 animals, five dogs, and she was faced with a real
30 dilemma. If the SPCA took the dogs, then she
31 would be again faced with these very, very high
32 charges, \$75 a day to take care of the dogs is
33 what the SPCA claims against a person, and they
34 have all the powers to get that money if the
35 person has property.

36 So, instead, she gave her five dogs to her
37 friend Linda, and her friend Linda was able to
38 care for the dogs for a long period of time;
39 however, Linda had her own dogs and it's difficult
40 enough to care for one or two dogs, so there was
41 problems, and at a certain point, Linda spoke to
42 Ms. Mcanerin and she called me. She told me,
43 "Look, I can't keep the dogs any more."

44 So Louise was really then on the horns of a
45 dilemma, and due to the fact that she may not be
46 able to completely clearly think these things
47 through, what she did is she took back the five

Submissions by Defence

1 dogs, and those are the five dogs that were found
2 as the subject of the Count 2 that she's pled
3 guilty to.

4 Now, the difficulty was is that now she was
5 in a position where she knew --

6 THE COURT: Count -- do you mean the breach?

7 MR. McGEE: Yeah.

8 THE COURT: The breach.

9 MR. McGEE: Okay. These are the five dogs for that.

10 THE COURT: Okay.

11 MR. McGEE: She knew --

12 THE COURT: It's Count 1 of the -- of that --

13 MR. McGEE: Yeah.

14 THE COURT: Okay.

15 MR. McGEE: She knew that she couldn't keep these. She
16 wasn't supposed to. So, the reason that they were
17 found at the --

18 THE COURT: That's the brown dog and the two --

19 MR. McGEE: The brown and the two black --

20 THE COURT: -- Pit Bulls.

21 MR. McGEE: -- and white ones and the two -- two
22 puppies. The reason they were in those conditions
23 is because she was trying to keep them under
24 wraps. And so, because of her difficult
25 circumstances anyway and limited financing, the --
26 the way that she was keeping them under wraps was
27 the way that they were discovered on the morning
28 when the SPC -- SPCA went in with the second
29 warrant, if I can put it that way.

30 So, those dogs had been hastily stuffed into
31 these rooms in cages, but in any event, it wasn't
32 appropriate care because she couldn't let them out
33 because the neighbours were, again, reporting, you
34 know, Louise has got barking dogs.

35 Now, once that -- that occurred, then things
36 really started to go seriously downhill for Ms.
37 Mcanerin, and what happened is is that Judge
38 Sperry listened to things, took a look at Ms.
39 Mcanerin, spoke to her briefly, and sent her off
40 to forensics.

41 Now, the SPCA had kicked in their door. Now,
42 what that meant was is that when the community
43 recognized that she was no longer in occupation of
44 this rather ramshackle rural property, a whole
45 bunch of squatters moved onto it. She was
46 desperately trying, through me, to get her friend,
47 again from the States, Bill, to take care of the

Submissions by Defence

1 property by watering her trees. There weren't any
2 animals on the property. Bill probably has his
3 own issues, and he's from the States, so he was
4 rather slow to respond. By the time he got to the
5 property, a fifth wheel trailer -- travel trailer
6 and people, a 38-year-old man and a 16-year-old
7 girl were living in her house. Another couple was
8 occupying the travel trailer, and this went on
9 with really Bill being unable to get proper action
10 from the police to do anything.

11 So, Louise gets out of the forensics, is
12 released back into the community, goes home, and
13 finds that there are people in her house who have
14 been selling things from her home to make, quote
15 unquote, the mortgage payment, and there's this
16 fifth wheel on it. The police, by this point, are
17 -- are faced with a difficult situation because
18 it's more of a civil proceeding, as they put it.

19 So, Louise is trying to get rid of these
20 people, and all of her stuff is gone that has any
21 value, including her hot water heater, all her
22 accordions, seven or eight saddles. They just
23 wholesale stole her -- her blind. No police
24 action has assisted her on that.

25 But, in any event, she gets rid of them.
26 She's starting to settle back down, and her house
27 mysteriously burns down through arson. The
28 police, again, and the fire marshal, they can't --
29 they don't know who did the arson. It wasn't
30 Louise. This was her home. She didn't have fire
31 insurance. It was somebody who was mad, is our
32 theory, but that person has never been charged.
33 No charges have ever arisen from any of this.

34 So suddenly, as of last fall at the end of
35 August, Ms. Mcanerin is in real trouble. She
36 doesn't have her house. She is now beginning a
37 process, last fall, of dealing with the civil
38 judgments and the civil actions that the SPCA has
39 brought against her, and that totals about \$47,000
40 or so for all of the actions that they pile up.
41 She's not able to get legal counsel for that, and
42 so she's -- she's been battling that one out
43 herself with mixed success.

44 She has two mortgages on the property. They
45 are gone -- have gone into foreclosure along with
46 the civil judgments. So, she's just about ready,
47 unless she can get some family help, to lose her

Submissions by Defence

1 land, and that's going to be gone.
2 So, now she's living in a trailer in a
3 trailer park outside or inside of town. Her best
4 hope for the future is sitting right next to her.
5 That's Christine. Christine is working with the
6 Canadian Mental Health Association. She has been
7 assisting Louise through this whole process,
8 assisting me, assisting everyone. Christine
9 actually has an acquaintanceship with Cathy
10 Woodward, who is sitting over here from the SPCA,
11 and Cathy Woodward has replaced Constable Enkirch.
12 Now, Constable Enkirch was in charge, and
13 this really put things in a tailspin because
14 Louise has suffered a history of sexual and
15 physical abuse from aggressive men, and Constable
16 Enkirch is an aggressive man, and he has
17 aggressively approached Louise to demand entry.
18 He has aggressively approached Christine to -- who
19 has been with Louise to try to smooth entry for
20 inspection. He has very aggressively dealt with
21 her. He's gone now to the Nelson City Police.
22 So, he's no longer involved in the SPCA.
23 My friend, recognizing that there are
24 problems with Louise's dealing with male authority
25 figures, and I are both hopeful that with Ms.
26 Woodward, through her acquaintanceship with
27 Christine, through Louise's good relationship with
28 Christine that the inspections proposed by my
29 friend will work. We're really hopeful that they
30 will without causing a meltdown on Louise's part
31 because of her past history, which is very, very
32 serious, and really, my friend has described from
33 a laywoman's point of view the animal hoarding
34 which does seem to be possible, and from a
35 layman's point of view, Louise suffers from the
36 kinds of reaction that abused women and children
37 often display in the future after they've been
38 abused by these men when they're in -- in the --
39 under control really of other aggressive men.
40 So, here we come to you now. I agree with
41 every single thing that my friend has said.
42 Louise understands what's happening today. She
43 understands that, in a sense, she's getting a real
44 break from the Crown in the idea that she could
45 have a couple of companion animals. She's very
46 reluctant, as she's expressed it to Christine and
47 to myself, to embark on that course probably

Submissions by Defence

1 because she truly loves animals and, as my friend
2 very fairly said, she's -- she doesn't intend any
3 harm to any of these animals. In fact, it's just
4 the absolute opposite. She will in the period of
5 time of the orders obtain a couple of companion
6 animals. She's hopeful that she can work with the
7 SPCA representatives to continue to grow in her
8 knowledge of how to properly care for them. It's
9 not an issue of cruelty -- of purposeful cruelty
10 or not wanting to take care of them. It's more an
11 issue of ability to take care of them and
12 financial resources to do so.

13 So, my friend says, if I understood her, two
14 years probation and four years of a prohibition.

15 I --

16 THE COURT: It was five she was asking.

17 MR. MCGEE: Oh, five, okay. I would suggest that the
18 court consider something more in the range of one
19 year probation and two years prohibition. I say
20 that because Ms. Mcanerin has been under extremely
21 onerous release conditions since last summer.
22 Constable Enkirch was at her house four or five
23 times over the winter period. She didn't have any
24 animals, but he -- when she found a place to live,
25 she was living with people who had their own
26 little dog. She had to get out of there. She's
27 -- she's been really bounced around like a rubber
28 ball, and she's just barely hanging on.

29 I think that on top of what she's already
30 undergone that one year of probation and a couple
31 of years of the prohibition with the exception
32 would be sufficient, and Your Honour, except for
33 any questions that you may have, those are my
34 submissions.

35

36 **REPLY BY CROWN:**

37

38 MS. JANSE: Your Honour, just some very brief --

39 THE COURT: Yes.

40 MS. JANSE: I just note that -- and this should
41 actually be in the court file -- the psychiatric
42 assessment which --

43 THE COURT: Yes, I have it.

44 MS. JANSE: Okay, great. On -- I just jump to the last
45 page, Your Honour, where they -- they note that
46 they believe she has a personality disorder and
47 that she would benefit from counselling and anger

Reply by Crown

1 management, respectful relations, counselling in
2 the community, responsibility education --
3 THE COURT: I'm looking at paragraph 6.
4 MS. JANSE: I'm looking at page 7, paragraph 4.
5 THE COURT: Oh, okay.
6 MS. JANSE: And so they do suggest that counselling
7 would be helpful in her rehabilitation, and Your
8 Honour, with respect to -- if Your Honour is
9 referring to paragraph 6 on the last page, that's
10 not going to be an option, the volunteering at the
11 SPCA for obvious reasons. But, anyways --
12 THE COURT: Mm-hmm.
13 MS. JANSE: -- I think what they're trying to get at is
14 that it might be helpful for her to be allowed to
15 have some contact with animals, but I think I've
16 stressed --
17 THE COURT: Mm-hmm.
18 MS. JANSE: -- my perspective about why the longer
19 prohibition is necessary given her lengthy history
20 of having these sorts of situations arise.

REPLY BY DEFENCE:

21
22
23
24 MR. MCGEE: Your Honour, the good news is is that she's
25 -- Christine just informs me she's in those
26 programs right now, anger management, respectful
27 relationships, and communication services.
28 THE COURT: Okay.
29 MR. MCGEE: Communications. So, you know, really, I'll
30 tell you that in my experience just to sort of
31 back up what my friend is saying, Ms. Mcanerin has
32 really come a long way, a long, long way in
33 looking at this problem from a different
34 perspective and recognizing her parts of it and
35 our parts of it, and she -- she's really bent and
36 determined to do better in her life in all
37 aspects, and she's really trying, and she's got --
38 she's so lucky that she's got Christine to help
39 her because when a person suffers from some
40 emotional or mental problems in our communities
41 today, they're often shunned by others and not
42 assisted because of the difficulties and that's --
43 that's what happened with the police. They just
44 can't quite get a handle on how to help Louise
45 with her thefts, with her burned house. So,
46 Christine is really a good resource for Louise.
47 Louise trusts Christine. She's getting -- she's

Reply by Defence

1 already in the program. All my friend's
2 suggestions can only bolster that and assist.
3 THE COURT: Okay, thank you, counsel. Counsel, Ms.
4 Mcanerin may remain seated until I am ready to
5 impose the sentence.

6
7 [REASONS AT SENTENCE]
8

9 THE COURT: And I will return the assessment, the
10 photographs -- the assessment can be filed into
11 the record as I have alluded to it, and -- and a
12 copy of the **Act** as well. Thank you.

13 MS. JANSE: Thank you, Your Honour.

14 MR. McGEE: Your Honour, we -- Ms. Mcanerin has, at
15 some point or another placed -- how much money?
16 Five hundred dollars in as bail and she -- we hope
17 that she's entitled to get that back.

18 THE COURT: Yes, does the Crown have a --

19 MS. JANSE: No, I'm not applying to --

20 THE COURT: Okay, I'm going to direct the -- the
21 release and return to her of her \$400, assuming
22 it's been -- \$500? Madam Clerk, do we have a
23 record of that?

24 MR. McGEE: It's on one of them, Your Honour. I think
25 Madam Clerk's going to have some sorting to do.

26 THE COURT: Okay. Well --

27 MR. McGEE: I'm going to suggest to --

28 THE COURT: -- I'm directing the return of those funds
29 to her.

30 MR. McGEE: I would suggest or ask the court or Madam
31 Clerk if she figures about an hour to get this
32 sort of sorted out for Louise to sign or what do
33 you think?

34 THE CLERK: I think we have no [inaudible/not near
35 microphone] documents and I think half an hour at
36 least.

37 THE COURT: Sure. If they can just stay with us for a
38 bit. Go for a coffee and then come back, and I'll
39 see counsel in my chambers.

40
41 (PROCEEDINGS CONCLUDED)
42
43
44
45
46
47

**File No: 18783-1, 18691-1
Registry: Rossland**

In the Provincial Court of British Columbia

REGINA

v.

LOUISE MCANERIN

**REASONS FOR SENTENCE
OF
THE HONOURABLE JUDGE FABBRO**

COPY

Crown Counsel:

A. Janse

Defence Counsel:

K. McGee

Place of Hearing:

Rossland, B.C.

Date of Judgment:

July 16, 2009

[1] THE COURT: I am dealing with the sentencing of Louise Mcanerin on two charges today. She has pled guilty to a charge that on the 14th day of August 2007, at or near Grand Forks, in the province of British Columbia, being the owner responsible for an animal, did cause or permit the animal to be or to continue to be in distress, contrary to s. 24(1) of the **Prevention of Cruelty to Animals Act**.

[2] She has also pled guilty to a charge that on or about the 1st day of July 2008, at or near Grand Forks, in the province of British Columbia, did being at large on her recognizance entered into before a justice and being bound to comply with a condition of that recognizance to have no contact directly or indirectly with any animal or bird without lawful excuse, failed to comply with that condition by possessing five dogs in the dwelling-house, contrary to s. 145(3) of the **Criminal Code**.

[3] So, she has pled guilty today to a charge under provincial legislation and now to a charge under the **Criminal Code**. She has no prior criminal history as counsel have pointed out.

[4] This matter comes to me as a joint submission and recommendation -- we better get some Kleenex --

[5] MR. McGEE: Oh, sorry, Your Honour.

[6] THE COURT: -- in the gallery there. Are you all right?
Is everybody okay? Would you like a little break?

[7] UNIDENTIFIED SPEAKER: No, I just was sneezing.

[8] THE COURT: Oh.

[9] MR. McGEE: Oh, okay.

[10] UNIDENTIFIED SPEAKER: Excuse me. I'm sorry.

[11] THE COURT: It's okay. Thank you. As I was saying, this matter comes to me by way of a joint recommendation. Courts must always consider whether a joint recommendation is appropriate, but decide on the circumstances and the case if it is an appropriate disposition in law. First of all, I should say that I should commend both counsel, Crown and the defence, for dealing with this very difficult problem of enforcement, on the one hand, and the interests of the SPCA under their legislation and the vulnerability of a party who is attached to animals and feels that she has need for those animals to properly survive.

[12] So, I should say at the onset this is a tragic story, both from the point of view of the animals and from the point of view of the offender in this case. The sentence, as I will

impose it based on the joint recommendation, I am satisfied is quite appropriate. Counsel have done a very good job of dealing with the competing interests here.

[13] In respect to the plea in Count 1 of 18691, the SPCA, I am satisfied on the circumstances as described by the Crown. The SPCA found the animals at her residence, I am satisfied, in circumstances where it can be said that the owner of those animals caused them to be or to continue to be in distress. This involved six dogs, four cats, and 14 pigeons. They were found in circumstances where their needs and their circumstances were such that one could conclude that they were in a condition of distress.

[14] I have heard from the Crown of a prior history of relationship between the accused and the SPCA, and there has been an ongoing relationship. Previous animals have been removed. There has been some compliance and then a degeneration of the relationship, and that ultimately led the constables of the SPCA to investigate and to find the animals in the circumstances they were found.

[15] She has also pled guilty to a breach of a charge under s. 145(3) of the **Criminal Code**. She was under a recognizance not to have contact with animals, and she was found to have the dogs in the home. Mr. McGee has given some explanation as to

what occurred, but these animals, as an aggravating circumstance, again were not being properly cared for.

[16] The Crown has fairly stated in this case that this is not an act of trying to cause intentional harm to the animals. In fact, quite the contrary. But, in her circumstances, she was unable to care for the animals in question. For her, that was just one of the problems that was ongoing in her life. She was having a dispute with her neighbours. The animals being out at large were causing a problem, and that resulted in, defence says, the intervention of the SPCA and the police, as a result of the complaint of her neighbours.

[17] As I look at the photographs that were entered, one would say this residence is not suitable for animals, but one might also say that this was not a residence even suitable for her, and the question must be asked where is society when there is such a need by such a person? Because she is conflict with her neighbours and with the SPCA, it seems that she does not have the benefit to have the other resources in the community come to help her and guide her. Christine -- and I just forget her last name who is in court today.

[18] MR. McGEE: Eyre. Eyre, Your Honour.

[19] THE COURT: Eyre?

[20] MR. McGEE: E-y-r-e.

[21] THE COURT: Thank you. Ms. Eyre has been in court today and has come to help us with a number of these types of cases and has been consistently at her side as a mental health worker. For what turns out to be an offence and violation of provincial legislation, the court must also consider the intrusion that has occurred in her life. She is arrested on public interest warrants. She is arrested and kept in custody. She is forced to take a psychiatric assessment. She has lost her home. Her home has been burnt. She has lost her possessions. That is not attributable to the Crown, but the charges arise out of her own inability to care for animals, but nevertheless, the intrusion into her life that results from such an investigation is considerable.

[22] It might be said that offenders of far more serious crimes, like drug offenders, would never be subjected to this kind of investigation and what has occurred in this case. But, there is competing interests here and, in the final analysis, I think I have to say again as I said earlier, the Crown and the defence have tried to handle the matter as best they can, and they have done a very good job.

[23] With respect to the charge under the **Prevention of Cruelty to Animals Act**, Count 1 of Information 18691, I am

satisfied that the joint recommendation for that offence and the following offence is appropriate. For Count 1, I will impose one day imprisonment. It will be recorded as a 45 day time served sentence. Pursuant to s. 24(3) of the **Act** that Crown have provided to me, I am going to impose in addition to any other penalty that may be imposed for the offence that she be prohibited from owning or having custody or control of an animal for a period of four years with the exception that she be allowed to own, possess, and care for two companion elements, and that as a condition of this order that she allow the SPCA to inspect her residence. Just the wording of that if Crown could tell me again? The exception is to inspect her residence for --

[24] MS. JANSE: We've been suggesting that --

[25] THE COURT: -- compliance with that condition each day of the week between 9 p.m. [sic] and 6 a.m. [sic].

[26] MS. JANSE: And I would just -- the only other wording I had been suggesting, Your Honour, was "without prior notice."

[27] THE COURT: Okay, without prior notice.

[28] MS. JANSE: Thank you.

[29] THE COURT: With regard to the **Criminal Code** offence and

conviction, for that offence, I am going to impose a one day in prison showing a 15 day time served sentence, and I am going to, in addition, impose 18 months of probation with the statutory conditions of keeping the peace and being of good behaviour and reporting to the court when required to do so by the court. She will report to a probation officer today by telephone and, thereafter, in the manner directed by the probation officer. To repeat the statutory conditions are keep the peace and be of good behaviour, report to court when required to do so by the court, report to the probation officer today by telephone, and report thereafter in the manner directed by the probation officer. She will provide to the probation officer her residential address and not change that address without first advising her probation officer.

[30] I alluded to a psychiatric assessment that was done of her. In that assessment, there are recommendations with regard to counselling, and I am going to order that she take such counselling as may be directed by her supervising probation officer and that such counselling to be considered should include anger management courses and groups, respectful relations counselling, group community responsibility education, and stress management courses. Now, those are matters for the probation officer to consider and impose if he

or she thinks it is necessary.

[31] There will be a further condition of this probation order that she be prohibited from owning or having custody or control of an animal for the term of the probation order, and again, the exception to that is that she will be entitled to have two companion animals in her residence subject to the inspection by the SPCA without notice, and that will be in the same terms as the previous order, on any day between 9 p.m. [sic] and 6 a.m. [sic] to ensure compliance with that condition.

[32] MR. McGEE: Nine a.m.

[33] THE COURT: Nine a.m. to 6 p.m., yes, thank you. I have also heard about her particular vulnerability as Mr. McGee has pointed out, and I note now that through her relationship with Christine and a constable of the SPCA -- I am not sure which one of you it is who -- thank you. Thank you. That will help her as she proceeds forward in life. No doubt this legislation is set up to protect animals and to ensure their safety, but for her, her life has been greatly affected. This relationship with the special constable, hopefully, will help her in the future dealing with these matters.

[34] One would hope that, you know, we all treat one another

fairly in society without having to have these kind of issues, but competing interests, competing values, give rise to different approaches, and both of you as lawyers have applied your skills today.

[35] MS. JANSE: Thank you, Your Honour. Victim fine surcharge on the breach matter?

[36] THE COURT: Pardon?

[37] MS. JANSE: I'm not opposed to victim fine surcharge being waived.

[38] THE COURT: Yes, I am going to find in this case that she is a hardship case, and I will not impose a victim fine surcharge. And a last comment. Christine has been here with her today, but she has appeared with other people who have mental health issues. We appreciate that and find her to be a great resource for the court. We know that outside the courtroom there are some who benefit from your involvement and your involvement is greatly helpful to what happens in the courtroom, and we thank you.

[39] MS. JANSE: Thank you, Your Honour. I don't know if Madam Clerk needs me to read out all the different stays, but stay of proceedings on all outstanding counts.

[40] THE COURT: Yes, thank you.

[41] MS. JANSE: Thank you.

(REASONS CONCLUDED)