

Indexed as:

R. v. Racicot

**Between
Her Majesty the Queen, and
Kitty Racicot**

[1998] O.J. No. 6443

Information No. 97-34127

Ontario Court of Justice (Provincial Division)
Ottawa, Ontario

Ratushny Prov. J.

Oral judgment: November 30, 1998.

(20 paras.)

Criminal law -- Sentencing -- Considerations on imposing sentence -- Deterrence -- Sentence, particular offences -- Cruelty to animals.

Sentencing of Racicot following a plea of guilty to permitting unnecessary pain, suffering or injury to 29 dogs, and failing to provide suitable and adequate food, water and care for six dogs and eight turtles. After a fire, firefighters discovered that Racicot's house was full of small dogs, cats and other animals. There had been more than 88 small dogs in the house. Ten or so died of smoke inhalation. All the animals were removed and given medical attention and care. The conditions of the house were described as very filthy, unkept and unsanitary, with a strong smell of decay. Many dogs were filthy, and many were in dirty cages. A veterinarian said that the animals' condition was due to a long term of varying degrees of chronic and extreme neglect. Many dogs were very thin and malnourished. Racicot's father testified that his daughter always loved animals, but that about two to three years earlier, she became frightened and neurotic and was afraid to call the Humane Society. He said that the situation got out of hand, but that she did her best, and the neglect was not purposeful. Since the fire, Racicot had sought medical assistance for extreme stress and anxiety. She was 27 years old, and on medication. She quit school in grade 10 and helped with the care of her mother and grandmother. She had very little contact with other people. She had no criminal record and no addictions. She was on social assistance.

HELD: Racicot was sentenced to 30 days imprisonment to be followed by three years of probation. She was ordered to perform 250 hours of community service work and pay \$10,000 to the Humane Society. She was prohibited from having custody or control of an animal for five years. General deterrence and denunciation were considered. Racicot was not a worst offender.

Statutes, Regulations and Rules Cited:

Criminal Code, s. 446(1)(a), 446(1)(c), 446(5).

Counsel:

Mr. Lindsay, for the Crown.

Mr. St-Jacques, for the defence.

1 RATUSHNY PROV. J. (orally):-- This is the matter of Kitty Racicot. The accused has plead guilty to permitting unnecessary pain, suffering or injury to a total of 29 dogs and to having failed to provide suitable and adequate food, water and care for another six dogs and for eight turtles, contrary to sections 446(1)(a) and 446(1)(c) of the Criminal Code. The main issue on this sentencing is whether the accused should be incarcerated for her crimes. And if so, for how long. The facts are the following. On March 30th, 1997, the accused called 9-1-1 because of a fire at her and her parents' home. Firefighters arrived and extinguished the fire which had originated in the basement. Smoke had reached the second storey. After the fire was out, the firefighters discovered that the house was full of small dogs. There were also a few cats, some birds, rabbits and eight turtles. A later count revealed there had been more than 88 small dogs in the house, which was half of a duplex. Ten or so of the dogs in cages near the source of the fire had died of smoke inhalation. Firefighters, police and Humane Society officials proceeded to remove all the animals from the house in order to give them medical attention and care. They were appalled by the condition of the house. They described it as extremely filthy, unkept and unsanitary with a strong smell of decay, urine, faeces and rotten animal food. There were large amounts of animal faeces on the basement floor. In one room upstairs, dogs were in cages and the cages were stacked three high. In that room, the faecal matter was deep.

2 The dogs' physical appearance reflected their living conditions. A large number of them were caked in faeces, old dog food and urine. Some of the dogs were loose but most were caged. For some of the cages, dogs were packed inside. In the room upstairs, the dogs looked as though they never got out of their cages. All the cages were dirty. The accused assisted in the removal of the animals from her home.

3 At the Humane Society's shelter, Dr. Pukay, a veterinarian, summarized the animals' condition as being due to long term, meaning years, of varying degrees of chronic and extreme neglect. He examined 78 dogs, one cat and was shown eight turtles and two birds. The turtles were swimming in a foul smelling brown liquid. The dogs had a variety of conditions. Many had severe periodontal disease and their teeth were rotting and falling out. He said that took years to happen. One dog had a leg fracture that had healed improperly. Others had active corneal ulcers, old healed corneal ulcers, collapsed eyeballs, eye lesions and eye infections. Other medical problems included heart abnormalities, possibly as a result of teeth problems, follicular dystrophy, skin rashes and hernias. There was also evidence of poor or no breeding practices leading to, for example, jaw and kneecap problems. Many of the dogs were extremely thin and malnourished. Many were severely matted with faeces caked on their fur and suffering from dermatitis and seborrhea. Several exhibited obsessive-compulsive behaviour, consistent with prolonged confinement and lack of stimulation.

4 Dr. Pukay, who has practised as a veterinarian for 24 years and whose animal hospital has a contract with the Humane Society, said it was the worse case of neglect he has ever seen. He stressed that the animals' condition was due not to deliberate acts of cruelty, but to acts of omission, being chronic and extreme neglect. He said most of the dogs were breeds that can't fend for themselves. He said that Chihuahuas, poodles and Pomeranians are bred by man to be babies. They are bred to need love and attention so that it is especially horrendous for them to live in stacked cages.

5 Humane Society employees worked on the animals for all that night and the next day. Ms. Smith, the manager of emergency services, described it as an assembly-line ordeal. After all the animals had been attended to, the total of expenses occurred by the shelter for these animals was slightly in excess of \$15,000. Of that, approximately \$6,300 was

for medical care. Almost all of the dogs have ended up being adopted.

6 The accused did not testify at the sentencing hearing. Her father did. He said his house had not been in the condition shown by some of the photographs. He said that the police and firefighters inside the house would have messed it up. He described his daughter as a young woman who started to raise and breed some dogs about five or six years ago, who always loved her animals like they were little babies, who tried to sell some dogs about three years ago, but couldn't. When people came to buy them, they scared her. She didn't purchase that number of dogs. They grew in numbers by themselves. About two or three years ago, she went, as he said, inwards, and she became frightened and neurotic. She was afraid to call the Humane Society for what they would do to her for having so many animals. She wasn't making any money at all from them. The situation got out of hand. She didn't give up, he said. She saw each dog each day and everyday the caged dogs were let out and fed. She couldn't afford a veterinarian and neither could he. She did her best. He said the dogs were not malnourished over a long period of time and that Chihuahuas' teeth decay quickly. He said the dogs were all well looked after. He agreed however, and this was closer to reality, that there was a lot of neglect, but he said it was not purposeful. He said he knew his daughter locked up the dogs who had caused eye injuries and broken bones to other dogs, but he never saw the upstairs room where she kept them, as the door was kept closed and he never went in.

7 Mr. Racicot admitted that he and his daughter knew they had too many pets. He said he was very sorry. He said he shut his eyes to the situation and he shouldn't have. He said they were trapped. She was trapped into doing nothing by her love of the animals and her fear that she would lose them. He was trapped into letting her continue because he knew his daughter lived for her animals and he was grateful for her staying at home and the good care she had given to his wife for ten years. He said if it were not for that care, his wife would be in an institution, and that was the most important thing in his life, that his wife be able to be cared for at home.

8 Since the fire, the accused has sought medical assistance for extreme stress and anxiety. She continues to seek counselling and treatment. She is on medications. Her family physician describes her as a 27 year old woman whose many pet Chihuahuas were a source of the companionship and love that perhaps was lacking in her somewhat limited social life and who feels horrified by her portrayal in the press as an uncaring and poor caregiver to her animals.

9 A pre-sentence report prepared for this sentencing describes the accused as the youngest of four children who had numerous school absences in grade eight to stay at home and assist her ailing mother. She stopped going to school during grade ten, in 1998, withdrew to her home and helped with the care of her mother and grand-mother. Once at home, her world became focussed around the care of her family and she had very little contact with the outside. This contributed to her isolation and poor mental status. The entire family became a dysfunctional unit unable to deal with the problems created by the number of animals in their home.

10 The accused has no criminal record and no addictions. She is unable to be employed due to her medications and she is supported by social assistance. The pre-sentence report states that due to the public and media reaction to the charges, the family is very frightened and afraid to go outside of their residence.

11 Crown counsel submits that there is no excuse for what happened. He says the accused started running a puppy-mill and then when she couldn't sell the animals, the situation got out of hand. He submits that for the helpless animals who lived day-in and day-out in deplorable conditions, their condition itself calls for a sentence of straight jail time, so as to demonstrate our societal censure of what happened. He submits that straight jail time may also be required by way of specific deterrence. He asks for 90 days incarceration followed by probation.

12 Defence counsel characterizes the entire situation as sad and tragic, both for the animals who suffered from the neglect and for the accused and her family. I agree. He says the accused is devastated and she realizes now what she has done. He says she is terribly sorry and that it will never happen again. Her life was devoted to her animals. She knows she will be prohibited from having animals for a lengthy period, and this will be severe punishment for her. She knows, too, that she has caused pain to her parents and she suffers her own pain because of this. She also suffers from all the

hate and anger directed at her. She has been terrified by it. Defence counsel says she has been punished enough and that jail will not accomplish anything, as this won't happen again.

13 In all of the circumstances, as sad as they are, I conclude that sentencing principles and sentencing goals do require a period of incarceration. Incarceration is not required for the accused for purposes of her individual deterrence, in my opinion. I accept that Ms. Racicot now understands how distanced from reality she and her family had become to let themselves think that the animals were being well cared for and to turn a blind eye to their obvious suffering. Neither in my opinion is incarceration required in this case in order to punish the accused. I also accept that punishment for her crimes has already occurred through her eight month involvement in the criminal justice system, the public outcry and the certainty that she will not be able to have any pets for a long time. Some period of incarceration is required however, in my opinion, for purposes of general deterrence, to send a deterrent message to citizens who might be similarly inclined to neglect animals in this way. It is also required, and I do agree with the crown in this respect, in order to demonstrate society's abhorrence for these crimes. How much incarceration is appropriate for the accused? This is where the balancing of all of the mitigating and aggravating factors already referred to operates to require only a short period of incarceration, in my opinion. Punishment and individual deterrence have already been served. Rehabilitation is better accomplished for the accused outside of an institution and the message should not be that for a young woman socially isolated and mentally unstable, who loved her animals and tried to care for them but couldn't, who has admitted her wrong and who is very sorry for it, that we should punish her as if she were the worst of criminals. She is not. She caused great harm, but in assessing her moral fault, in light of all of the facts, she does not register on the scales as the worst of offenders.

14 Ms. Racicot, please stand. I sentence you, Ms. Racicot, to a total of 30 days of incarceration, followed by three years of probation. For the first count, your sentence is 30 days incarceration and three years probation. For each of the remaining counts, it is 30 days incarceration concurrent and three years probation concurrent. The terms of probation are certain mandatory terms; they will be explained to you. In addition, you are to report to a probation officer within two working days of your completion of your period of incarceration, and then you will have to report whenever and wherever in the future that probation officer requires. You are not to possess or have any control over or care of any animal or bird, and this is during the three year probationary term I am referring to. You are to permit an agent of the Humane Society to enter your living and working premises to monitor compliance with this condition prohibiting you from possessing or having any control over or caring for any animal or bird. You are to attend, comply with and complete such counselling as is directed by your probation officer, including continuing your attendance with your family physician and any other medical advisor, all as directed by your probation officer. You are to perform 250 hours of community service work. You are to commence that work at a time as directed by your probation officer and you are to complete it at a minimum rate of ten hours in each month. You will have to do most likely more, as you are to complete those 250 hours prior to the expiration of two and a half years of your probation. This community service work will serve for you, Ms. Racicot, as both part of your punishment and of your rehabilitation, as I think I understand how difficult it will be for you to have to get out of your home to interact with the community and to complete the number of hours as required. You are to comply with the terms of a separate restitution order in the amount of \$10,000 payable to the Humane Society of Ottawa-Carleton. Those are the terms of probation. Do you have any questions?

15 In addition to the incarceration term, the three year probationary term and the 250 hours of community service, there is also, as just mentioned, a separate restitution order requiring you to pay the sum of \$10,000 to the Humane Society of Ottawa-Carleton. And there is also an order pursuant to section 446(5) of the Criminal Code, prohibiting you from owning or having the custody of, or control of an animal or a bird for a period of two years after the completion of your three years of probation. You are, therefore, by the cumulative effect of probation and this prohibition order, not to have any animal or bird for a total of five years. Thank you madam. Thank you counsel.

16 MR. LINDSAY: Thank you, Your Honour.

17 MR. ST-JACQUES: If I may, Your Honour, I know that you've imposed 30 day incarceration. I think that -- and I request that perhaps that may be served either on a conditional basis or on an intermittent basis.

18 THE COURT: No, for the reasons already mentioned. I thank you for your request, Mr. St-Jacques, but that is a straight term of 30 days.

19 MR. LINDSAY: Your Honour, we heard during the course of evidence that she may have two animals at home where she is living now and to comply with that order, I submit that they should be surrendered to the Humane Society.

20 THE COURT: Yes. That is a direction of this court that those animals be immediately surrendered to the Humane Society, those animals presently in Ms. Racicot's home.

RATUSHNY PROV. J.

qp/s/np/qlala