

# QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2008 SKQB 282**

Date: **2008 07 11**  
Docket: Q.B.C.A. No. 15/2008  
Judicial Centre: Saskatoon

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BETWEEN:

HER MAJESTY THE QUEEN,

Appellant

- and -

AUDREY LYNN GAMBLE,

Respondent

**Appearances:**

Lori J. Chambers

for the appellant

Audrey Lynn Gamble

on her own behalf

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JUDGMENT  
July 11, 2008

BARCLAY J.

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[1] The Crown appeals from the sentence imposed upon Audrey Lynn Gamble, the respondent, following a conviction made by the Honourable Judge White in the Provincial Court of Saskatchewan on April 2, 2008.

[2] The respondent entered a guilty plea to the offence that she, on or about the 12th day of August, A.D. 2007, at Beardy's First Nation, Saskatchewan, did wilfully and without lawful cause kill a dog, the property of Daniel Sutherland, that was kept for a

lawful purpose, contrary to s. 445(a) of the *Criminal Code of Canada*. The sentence imposed was an absolute discharge.

[3] The dog in question was a Rottweiler.

[4] Although the owner indicated that his dog had never harmed anyone, the respondent explained to the Court that the dog had previously attacked two other persons. The respondent, at the time of the offence, had been playing poker at a house on the reserve. The respondent left for home to take her medications. As she was exiting the premises, the respondent was accosted by the dog, which chased her back up the stairs. One of the occupants attempted to assist her, and he also was chased back up the stairs. After the game was completed, one of the poker players escorted her to her truck in order that she could avoid the dog.

[5] After she left in her truck, she conceded that she ran over the dog, which was in the middle of the road. The dog was still alive, and to put it out of her misery, she again ran over the animal and caused its death.

[6] She did state in court that she ran over the dog because it had attacked three adults. It is unfortunate that a woman and her young daughter were out for a walk at 1:00 a.m. and witnessed the event.

[7] The respondent is 40 years of age and is a single parent. She is the parent of four children, one of whom is living with her.

[8] The Crown has appealed the sentence on the following grounds:

- 1) That the learned sentencing Judge erred in imposing an absolute discharge.
- 2) That the sentence imposed was demonstrably unfit.
- 3) That the sentence imposed was not a proportionate response to the gravity of the offence and the circumstances of the offender.

[9] The Crown referred the Court to the following cases, namely, *R. v. Glodkiewicz*, 2006 ABPC 185, 400 A.R. 397; *R. v. Fowlie* (1998), 210 N.B.R. (2d) 1 (Q.B.); and *R. v. Randell* (1989), 96 A.R. 237 (Alta. Prov. Ct (Crim. Div.)).

[10] In these cases the animals were killed (except for the *Glodkiewicz* decision) as a result of a very cruel and despicable act which constituted a serious abuse of an animal.

[11] In the case at bar, there was provocation as the dog had attacked two other persons and threatened the respondent.

[12] However, it is not in the public interest to grant an absolute discharge. I consider it appropriate that there be some public acknowledgment by the respondent that what she did was wrong. Accordingly, the appeal is allowed, and the discharge will be conditional upon her satisfactory completion of six months' probation.

[13] The terms of the probation order will be that she will keep the peace and be of good behaviour. She will report to the Court as and when required. She will report to and be under the supervision of an adult probation officer, and she will perform 20 hours of community work service. In my view, it would be most appropriate that that community work service be performed in an animal control shelter or otherwise in the care of animals, but I leave that to the good offices of the probation officer and those agencies charged with responsibilities of that kind.

J.  
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R.L. Barclay