

Case Name:

R. v. Lukasik

**Between
Her Majesty the Queen, and
Cheryl Ann Lukasik, accused**

[2006] M.J. No. 179

Manitoba Provincial Court
Teulon, Manitoba

Lismer Prov. Ct. J.

Oral judgment: April 24, 2006.

(99 paras.)

Sentencing -- Offences against the administration of law and justice -- Escapes and rescues -- Failure to attend court -- Particular sanctions -- Discharge -- Absolute discharge -- Victim fine surcharge -- Sentencing considerations -- Time already served -- Guilty plea -- Sentencing hearing of the accused for failing to attend court -- Accused spent one day in custody -- She received an absolute discharge but had to pay a victim fine surcharge of \$35.

Sentencing -- Non-Criminal Code offences -- Miscellaneous statutes -- Particular sanctions -- Fines -- Victim fine surcharge -- Forfeiture -- Prohibition orders -- Sentencing considerations -- Submissions -- Joint submission -- Sentencing hearing of the accused for providing inadequate medical attention, food and water to dogs that were in her care -- Accused was fined \$9,000 and had to pay a victim fine surcharge of \$1,950 -- Seized dogs became the property of the Crown -- Accused was prohibited from owning animals for five years -- Joint submission was accepted.

Sentencing hearing of the accused Lukasik -- Lukasik was convicted of four counts of providing inadequate medical attention to dogs that were in her care -- She was also convicted of providing inadequate food and water to the dogs in her care -- There was a joint submission as to sentence for these offences -- Lukasik also pleaded guilty to failing to attend court -- She was unable to attend because she had no means of transportation -- Lukasik spent one day in custody -- HELD: Lukasik was fined -- She was fined \$2,000 for each of the inadequate medical attention convictions and had to pay a victim fine surcharge of \$300 for each offence -- She was further fined \$5,000 and had to pay a surcharge of \$750 for the last offence -- Lukasik was also prohibited from owning animals for five years -- Animals that were seized from her became the property of the Crown -- Joint submis-

sion was accepted -- Lukasik received an absolute discharge for the failure to attend but had to pay a victim fine surcharge of \$35 -- Sentence: Fine of \$9,000 and victim fine surcharge of \$1,950 for the animal offences -- Five-year prohibition order -- Absolute discharge for the failure to attend court and a victim fine surcharge of \$35.

Statutes, Regulations and Rules Cited:

Criminal Code,
Summary Conviction Act,

Counsel:

Mr. S. Brennan, for the Crown
Mr. C. Sigurdson, for the Accused

1 LISMER PROV. CT. J. (orally):-- All right. So on the basis of the lengthy submission -- the circumstances on this very sad situation as the defendant, Cheryl Lukasik, acknowledges, the recommendations are reasonable. I am taking into account that the maximum under section 34(1) is 5,000 for each of the offences with imprisonment of not more than six months or both.

2 Are counsel recommending the alternative - if the surcharge is not paid - of imprisonment? I haven't heard that.

3 But I believe that the operation of the act as to the victim's surcharge would work on that according to formula, in the Summary Conviction Act --

4 MR. BRENNAN: Yes. That's --

5 THE COURT: -- or the Criminal Code. Could be --

6 MR. BRENNAN: It's in The Summary Convictions Act.

7 THE COURT: Yes.

8 So in accepting the joint recommendation then to proceed on each of the offences under number 1 on the docket -- the November 3rd, 2004 -- and the number 4 on the docket -- December 9th, 2004 -- and at number 8 on the docket -- inadequate medical attention from 3rd of November to 11th of December, 2004 and under the matter under 10 on the docket for inadequate medical attention from November 3rd to December 11th in respect of another dog -- the puppies -- 2004, the -- accept the joint recommendation of \$2,000 each plus a victim fine surcharge of \$300 each with no costs.

9 In respect of the charge under number 6 on the docket, which is inadequate food/water from 3rd of November to 11th of December, 2004, \$5,000 with a victim fine surcharge of 750 with no costs.

10 That addresses the precedents of previous cases referred to by Mr. Brennan on similar matters, your financial circumstances, and the totality of the total fines recommended. In addition, again in accepting the joint recommendation under section 35(1) which provides that where a person is

found guilty of an offence, the justice may prohibit the person from owing or having possession or control of animals or a number of animals for up to five years. There will be that prohibition for five years except for any animals owned or possessed by -- what is your husband's name?

11 THE ACCUSED: Jeff (phonetic).

12 THE COURT: Pardon?

13 THE ACCUSED: Jeffery (phonetic).

14 THE COURT: Jeffery? Same surname as you -- Lukasik?

15 THE ACCUSED: Yes.

16 THE COURT: By her husband, Jeffery Lukasik, at the Winnipeg Beach property.

17 What is the Winnipeg Beach property address?

18 THE ACCUSED: 335 Silverdale Avenue.

19 THE COURT: Silverdale?

20 THE ACCUSED: Avenue.

21 THE COURT: And with the proviso that you do not assert any possession or control of these animals. Do you understand?

22 They are strictly your husband's domain concern.

23 Then under (b), as to the animals that have been presently seized, I order that they shall become the property of the Crown.

24 The fines then would be under the Fine Option Program. You're saying that the victim fine surcharges can be \$100 a month?

25 MR. SIGURDSON: Yes.

26 THE COURT: And what about the fines? There should be some sort of --

27 MR. SIGURDSON: Thirty days to register would be my suggestion.

28 THE COURT: And is there ...

29 MR. SIGURDSON: I don't think they -- they put their own time limit on it once you're registered with them if they're not satisfied with your progress --

30 THE COURT: But what --

31 MR. SIGURDSON: -- is my understanding.

32 THE COURT: -- about the deadline? There should be Fine Option Program by a certain date?

33 THE CLERK: Usually isn't, Your Honour, as long as she continues to work.

34 MR. SIGURDSON: Yeah.

35 THE CLERK: If she doesn't work the Fine Option, they will report it and it will revert back to the fine owed.

36 MR. BRENNAN: Yeah.

37 MR. SIGURDSON: Yeah.

38 THE COURT: I see. I myself would want to make it tighter but if that is the practice - that you both accept.

39 MR. SIGURDSON: No. That's only -- yeah. Yeah.

40 THE COURT: I'm prepared to go along with it with the reservation that I have expressed because of the usual approach I take to these matters. But --

41 MR. SIGURDSON: If you were ordering community service hours there would be a time limit on that but Fine Option, they'll let -- they take care of that themselves.

42 THE COURT: Yes. Well, in effect, that is practically the same thing or else, you know, person can make themselves available for one hour a year and, you know, be paying a fine option for the next 50 years.

43 MR. BRENNAN: I'm sure --

44 THE COURT: But it --

45 MR. BRENNAN: -- we'll hear from Fine Option --

46 THE COURT: All right.

47 MR. SIGURDSON: We'll --

48 MR. BRENNAN: -- if that happens.

49 MR. SIGURDSON: -- we'll hear from Fine Option if there's a problem with that.

50 THE COURT: All right. With the victim fine surcharge which would total -- Mr. Brennan added -- about \$1950 at the rate of \$100 on the 1st of each month.

51 Can you make the first payment of June?

52 THE ACCUSED: Yes.

53 THE COURT: Of this year and continue until paid.

54 THE ACCUSED: Yes. I can.

55 THE COURT: And in respect finally of the remaining matter and that is the fail to attend court, you spent one day in custody. Why did you not attend?

56 THE ACCUSED: I didn't have any means.

57 THE COURT: Pardon me?

58 THE ACCUSED: I didn't have any means to get here because I had no (inaudible). I had no gas, no vehicle.

59 THE COURT: Well, why did you not phone someone?

60 THE ACCUSED: I did. I phoned the RCMP and they said well, they'll try and get the message over if there's an RCMP person here. I didn't leave messages that day because I was still trying to get rides that morning.

61 And I did, I did phone and left messages with the Crown Attorney.

62 THE COURT: Yes. And --

63 THE ACCUSED: And I told him about my situation, like, you know, without having a vehicle and without having any income it's really hard to get around.

64 THE COURT: Yes. And, and --

65 THE ACCUSED: And that last court date I -- when I was taken into custody, I mean I came to court on my own to see what was going on. I wasn't forced to. I wasn't, you know, there was a warrant out that I didn't -- wasn't picked up for. I came to court on my own to see -- to get this dealt with -- to talk -- to get a lawyer and that was a problem too -- is trying to get lawyer to represent me --

66 THE COURT: Right.

67 THE ACCUSED: -- here. And that's when I was take into custody -- when I was sitting in court here.

68 THE COURT: Right. Well, when you have an obligation to attend court, you have to make arrangements in advance so that you could arrange in advance to be able to come to court. And I'm sure that there would be --

69 MR. SIGURDSON: Yeah. She's pleading --

70 THE COURT: -- buses or something --

71 MR. SIGURDSON: -- guilty on that basis.

72 THE COURT: I am just replying to her because she is coming pretty close to saying that she had a lawful excuse.

73 THE ACCUSED: Oh. No.

74 THE COURT: Under the circumstances, on this charge there will be an absolute discharge but pay a victim fine surcharge of \$35. That would be in addition to the day the overnight that you spent in custody, you are to pay towards the fund for victims of crime which is included in the other total.

75 All right?

76 THE ACCUSED: Okay. Thank you.

77 THE COURT: You will not have a criminal record for this.

78 The one thing that I want to clarify is that -- with the prohibition order there is the exception for the husband and we have his name.

79 THE CLERK: Yes.

80 THE COURT: Jeffery and at that address.

81 THE CLERK: Yes.

82 THE COURT: Yes.

83 All right. Any questions?

84 MR. BRENNAN: Time to pay on the 35 for the victim fine surcharge on the fail to appear?

85 THE COURT: Included in that \$100.

- 86 MR. BRENNAN: Okay. I see.
- 87 THE CLERK: (Inaudible).
- 88 THE COURT: Per month.
- 89 All right? No questions? And --
- 90 THE ACCUSED: No, Your Honour.
- 91 THE COURT: -- there's no probation order for you to sign.
- 92 THE CLERK: I will have a --
- 93 THE COURT: And, and --
- 94 THE CLERK: -- Fine Order for her though.
- 95 THE COURT: Yes. For the victim fine surcharge. Madam Clerk will explain it to you. It's called a Fine Order and so you'd know of your obligations. All right?
- 96 THE ACCUSED: Okay. Thank you, Your Honour.
- 97 THE CLERK: So have a seat and I'll call you when I can get the papers done.
- 98 THE ACCUSED: Okay. Thanks.
- 99 MR. SIGURDSON: Those are my matters. Good morning, Your Honour.
- qp/e/qw/qlrds

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