

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Lane

REGINA

v.

JAMES DILLABOUGH

Appearances:
Megan Seiling
James Dillabough

Counsel for the Territorial Crown
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] LANE T.C.J. (Oral): This is the time and place for the decision with respect to court file 20-04518, alleging, as amended, on or between April 29 and August 18, 2020, near Whitehorse, Yukon, did fail to comply with a condition of Control Order 2018-001 (the “Control Order”) by possessing domestic goats that were not within an enclosure approved by an inspector, contrary to s. 57(2)(a) of the *Animal Health Act*, SY 2013, c.10.

[2] I have had a chance to go through all of the evidence that we heard yesterday. It is not going to be a lengthy decision and it is not a fun decision that is all there is to it, but the bottom line is that the Government of the Yukon had the power and the

jurisdiction to create the Control Order. It was passed or implemented to protect the population of wild goats and wild sheep in the Yukon from the possibility of contracting diseases from domestic goats or domestic sheep. That is the reason behind it.

Dr. Magnusson is an inspector under the legislation, a veterinarian, who testified and set out that there really were three objectives behind this Control Order.

[3] The Control Order is Exhibit 1 in this matter. The Control Order, as it applied to Mr. Dillabough, sets out in para. 8(a):

A person may possess a domestic sheep or domestic goat on land that is below 1,000 metres in elevation where the following conditions have been met:

(a) the domestic sheep or domestic goat is within an enclosure approved by an inspector within the previous calendar year;

[4] It cannot just be any enclosure. It has to be an enclosure that the inspector has been given the authority to approve or not approve.

[5] The three objectives behind the Control Order are:

- (i) to keep the livestock, in other words, the goats that Mr. Dillabough had, in the enclosure so they could not get out and potentially interact with wild goats;
- (ii) to keep the wild goats out of the enclosure so their interaction could not occur; and
- (iii) it went as far as to have an enclosure that also facilitated that the animals, that is, a wild goat on the

outside and one of Mr. Dillabough's goats on the inside of the enclosure, could not have nose-to-nose contact.

[6] I gather that the idea there was a concern or a fear of respiratory viruses passing from the domestic population, if they had them, to the wild population. The whole point is to try and protect the wild population from a virus like that, or virus or bacteria like that. I am assuming it is a virus but I do not know that for sure. This placed an obligation on those who had wild goats and wild sheep to build an enclosure.

[7] Dr. Magnusson testified that when they would go to inspect a property and look at the proposed enclosure or an existing enclosure, they would take with them a representative of the Department of Agriculture who had some expertise in fencing as it related to, in particular here, goats.

[8] Mr. Dillabough was not satisfied that these people from the Department of Agriculture were qualified, really, to tell him whether the fence he proposed was or was not adequate. He would not let them on his property.

[9] Dr. Magnusson indicated that the policy was that they would travel together; however, she was prepared to work around that, given that Mr. Dillabough did not want a Department of Agriculture employee on his property. She would work around that, and the bottom line described, in addition to the letters that he would have received, one is dated April 29 — well, the first one is dated January 29, 2020, and I believe that is Exhibit 2 — and then Exhibit 3 is a Notice of Non-Compliance dated April 29, 2020, setting out what was wrong, what had to be done to remedy it, and what might happen if it was not remedied.

[10] The animal inspectors tried to work around Mr. Dillabough's concern about a Department of Agriculture employee coming on his property, they just simply asked him to send in his long-term enclosure plan and to complete his short-term enclosure, get her done, and then the animals could be tested.

[11] Dr. Magnusson paid an onsite visit on July 29, 2020, at Mr. Dillabough's farm, and he described where the enclosure was going to go. She talked about seeing a shed, a darkened kind of a shed, where there, she thought, were two goats.

Mr. Dillabough indicated, in fact, I think he said there were two plus one kid — a young goat — and she had understood that throughout the property there were eight goats. I think Mr. Dillabough confirmed that there were at least eight goats at some point or another. In any event, they were roaming freely on his property.

[12] There was a Texas gate, which is a device used to keep livestock within an enclosure that essentially has horizontal pipes and gaps in between the pipes so that the animals are not comfortable walking on it lest their feet fall through the gaps and they get stuck or break their leg or something like that. Other than that, Dr. Magnusson indicated there was no gate.

[13] There was a Texas gate. Dr. Magnusson was familiar with what a Texas gate is, as am I — from Saskatchewan, I have seen many Texas gates, so I know the theory behind them — but she did not feel that even a Texas gate would be enough.

[14] In any event, Dr. Magnusson went there on July 29, 2020. Mr. Dillabough said that he could build a short-term enclosure, which would be a smaller fenced-in area or combined with a building or something; he would build it. It would take him a week.

Dr. Magnusson wanted to make sure he had plenty of time, so she said she would give him, as it turned out, more than two weeks. Initially, she had said he would have until August 14 to build it. Then she realized — maybe it was the 16th, but, anyways, she realized that she had given him until a Saturday, so she extended it to the following Monday. This is in August.

[15] Dr. Magnusson phoned Mr. Dillabough on August 18, 2020, and asked him if he had finished the short-term enclosure. That was the one for immediate use. According to her, his answer was, no, I have not. When Mr. Dillabough testified, he said “no, it's not done but it's nearly done”. In his testimony, he said he probably could have finished it in — I think he said an hour or two but not very long, it would not take him long to finish it.

[16] Dr. Magnusson then asked Mr. Dillabough if he had completed a plan for the long-term enclosure. His response, according to her testimony, was, no, he had not done that.

[17] She had concerns then that he had said he could have it done in a week, this was probably 16 or 17 days, and it still was not done and she had, it seems to me, pretty logical she would have concerns about the reliability of his undertakings to do that.

[18] One can understand that Mr. Dillabough would not want to invest the kind of money that might need to be invested for a large enclosure, a fenced-in area. It would be a lot of money because the next step, once there was an enclosure of some kind, Dr. Magnusson indicated that she would be prepared to come out and test the animals

to see if they had the respiratory illness that the government was concerned about, but there would have to be a short-term enclosure ready when she did that.

[19] I have been reading between the lines as she talked about it. I assume the Yukon Government does not want to waste what precious resources they have to go out and do testing, and find that there is no enclosure for the animals, so the testing is futile until they actually have an enclosure. She indicated that when the testing was complete, if the animals tested positive they would be put down and compensation to the farmer would be offered. It is quite obvious, to me at least, that the construction of an expensive long-term enclosure might make a farmer wish to wait, have a smaller enclosure in the meanwhile to make sure all of his animals were okay, and he could keep them. If the animals ended up having to be put down, well, there is no point in having an enclosure built unless, of course, he was going to start the process over again with new animals.

[20] Having said that, Mr. Dillabough had not completed the short-term enclosure by August 18, 2020, and told Dr. Magnusson that on the phone. He told her he did not have a plan for the long-term enclosure that he was able to share with her at that time.

[21] Mr. Dillabough later testified that he had completed a 24 x 24 foot building where the animals would be kept. He described some of the problems he had had in the past with wolves and other predators coming in and harassing, and sometimes killing his animals, and he felt that this building would be an ideal structure.

[22] Well, this is not a building that Dr. Magnusson testified she had seen, or even heard about.

[23] I asked Mr. Dillabough if she saw the building or if he told her about it. His answer was “no” because she never asked him about it. Challenging at a minimum.

[24] One would think that if you would put in the cost and effort into making a 24 x 24 foot building that you proposed to use as an enclosure for these animals in order to be compliant with the Control Order, you would volunteer that information, realizing that while she has never seen it, she does not even know it exists, does not know he planned on building it, that it would have been important to say, yes, by the way, come and look at it.

[25] Dr. Magnusson would not approve, as a temporary enclosure, the little shed that she claimed that she saw the goats in, and she thought there were two goats. Mr. Dillabough said that there were actually two goats, plus a little goat. She said it was dark in the shed and she had trouble seeing. She could see two goats when she was on site on July 29, 2020.

[26] Dr. Magnusson can look at any proposed enclosure and she has the power, pursuant to the legislation and the Contact Order, to decide what is, and what is not, an enclosure that she is willing to approve. Of course, in law, there is a duty to act with natural justice and there is a duty to act within your jurisdiction, but the bottom line is, she has that power.

[27] Now, the Government of Yukon is a democratically elected government by the residents of the Yukon and they pass laws that — and this perhaps in virtually every democracy and maybe every country — some laws people like, some laws people do not like. That is all there is to it.

[28] If they are acting within their jurisdiction, they have the power to pass these laws, as the Government of Yukon had the power to do. Whether you like the law or not, it is there, and it has to be complied with.

[29] Mr. Dillabough has been farming for approximately 55 years; I believe he said, all at the same location. Like many other farmers that I know from the Province of Saskatchewan, where I originate, he simply has a very deep distrust of government officials. This is not uncommon in the jurisdiction that I come from. He testified that he has had some bad experiences with government officials, including, but not limited to, the Department of Agriculture, RCMP officers, and other government departments that he has not been happy with. Eventually, Mr. Dillabough developed, in his mind, a deep distrust for government officials and he would likely cooperate as little as possible just because he did not believe he could trust them.

[30] Mr. Dillabough, whether you agree with it or not, it is the law. It does not make me feel good to have to convict you of this offence. It is the law of the Yukon.

[31] Yes?

[32] MR. DILLABOUGH: That building, the 24 x 24, Dr. Harms and Dr. Thompson were out there, the goats were in there before. They'd seen it.

[33] THE COURT: In any event —

[34] MR. DILLABOUGH: And also with the cattle guard, there is a gate on the outside, too.

[35] THE COURT: Well, the building inspector who had the power to conduct this investigation was not aware of it, nor was she made aware of it by you.

[36] MR. DILLABOUGH: No, but the rest was.

[37] THE COURT: The bottom line is this is the law of the Yukon, I am afraid. You cannot at this level of court or at, really, any level of court argue that the law is wrong because you do not like the policies that were behind the law. The law is the law.

[38] If you want to challenge the validity of the law or otherwise suggest that Dr. Magnusson denied you natural justice when deciding whether a particular enclosure would suffice or would not suffice, or if you wanted to argue that she acted outside of her jurisdiction, the only place you can do that is in the Supreme Court. This Court does not have jurisdiction or power to deal with prerogative writs, which is what I am referring to, only the Supreme Court has that jurisdiction.

[39] Mr. Dillabough, I like you. As much as this is as distasteful as it is to me, the law is the law. Just like you, at least to yourself, you probably swore an oath that you were going to take care of your animals and take care of your goats, I swore an oath to uphold the law. Whether I like it or not, the law is there and the law applies to me, but it also applies to you.

[40] In the circumstances, it has been proven to me beyond a reasonable doubt that you did possess domestic goats; that they were not possessed in an enclosure that had been approved by an inspector; that the Control Order came into effect at least on January 1, 2020; and, quite honestly, Dr. Magnusson gave you a lot more opportunity to

comply with the Control Order than she was required to do under the law — she really did go the extra mile to try and give you time and assistance in complying with this. She testified that she had no personal interest in seeing your goats gone. I know you believe that the government wants them all dead. She testified she has no knowledge of that and no personal interest in seeing that. She just wants to uphold law as she has been required to do in her position, just like you uphold your obligations to your animals, just like I promised to uphold the law that is in front of me. All of us have a role to play. If we are going to act with integrity, none of us can depart from that, including myself. I cannot.

[41] In any event, I do find you guilty of the count, the sole count that is still alive on Information 20-04518.

[42] Count 2 has been stayed by the Crown.

LANE T.C.J.