

Citation: *R. v. Dillabough*, 2008 YKTC 46

Date: 20071211
Docket: T.C. 07-05555B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

JAMES DILLABOUGH

Appearances:
Stephanie Schorr
James Dillabough

Counsel for the Crown
Appearing on his own behalf

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. Dillabough has pled not guilty to one count under s. 30(2) of the *Highways Act*, R.S.Y. 2002, c. 108. The Crown's case, essentially, came from the sworn testimony of Gwen Hanna, who is a pounds keeper in the North Yukon District and has been for the last 10 to 12 years. She referred to the notes from her log that she keeps in regards to calls and so on.

[2] From that she indicated that on September 19th she received a call that Mr. Dillabough's cattle were on the Klondike Highway. She attended, observed the cattle to be on the highway. They chased the cattle back in. They stepped over the fence in an

area where the fence was very low. Exhibit 1 shows the cattle, in fact, on the right-of-way.

[3] September 26th, she received another call about Mr. Dillabough's cattle being out. She attended and chased them back in, once again, over the fence, a low area where they could step. She had photos taken at that point in time. It shows the area of the fence as being in the area of two and a half or no more than three feet high. She indicated in her testimony that the cattle generally crossed it quite easily. They headed for that area as soon as she stopped.

[4] October 2nd, received a call from the RCMP, there was cattle on the road at the intersection of Burma Road and the highway. In this case, she attended and drove the cattle back in again, over a different spot in the fence, but she let some in through the gate of the rodeo grounds. Again, accompanied by a photo of cattle on the road.

[5] October 3rd, early morning, there was a call to Ms. Hanna from the RCMP indicating that a neighbour was concerned that Mr. Dillabough's cattle were on his property. They attended the area, found the cattle to be out of Mr. Dillabough's property. At that time she got them back through a gate. Later on in the afternoon, late afternoon, again, another call that the cattle were out again and photos showing cattle on the right-of-way.

[6] Between July and October of this year there were a total of 14 incidents of livestock at large, being livestock that belonged to Mr. Dillabough.

[7] Mr. Dillabough took the stand, affirmed his statement indicating that the animals are out because the government is coaxing them out due to the vegetation that is on the right-of-way. He indicates that most of his fence is seven to eight strands high and that he has a lot of difficulty keeping up with breakages. He does not dispute that the photos show his cattle and that they are off his property. He indicates that mostly his cattle are in corrals now, although not all of them. He thinks that the government should be responsible for fencing.

[8] Of course, the animals are going to go to wherever they think the best feed is; that is what animals do. But what this is about, Mr. Dillabough, is that when you take on the lifestyle you have taken on, which is certainly a commendable lifestyle, and one in the agricultural world, there are certain required responsibilities, and the required responsibility in this case is to keep your livestock off the highway. That is your responsibility. It is not the responsibility of the government. They are not responsible to build your fences for you or to provide you with fences. The government is not sprinkling tasty feed out there to, in fact, entice your animals. Your animals are enticed by what is out there, and probably because it is left alone on the side of the road that it grows nice and green and lush. They are certainly going to be enticed by that. You have to find ways and means to keep them from getting there. That is your responsibility entirely. It is not anybody else's.

[9] You talk about gates being left open. None of these incidents that we are dealing with here today had anything whatsoever to do with gates being left open. All of them had to do with, essentially, parts of the fence being down, where the cattle could leave

of their own accord, and could re-enter your property of their own accord. There was virtually no restriction.

[10] I understand how difficult it is to run around every day and check your fences. That is what you have taken on as a responsibility. If you do not want to be doing that for all of your fence line, which is a significant amount of property, then you will have to find ways and means to keep your cattle in a very confined area where the fence is easier to check. The bottom line is the pictures and the evidence is all supported that your cattle were on the right-of-way between the 19th of September and October the 3rd, and that they were on the highway a number of times during that period.

[11] The offence has been made out. The offence is simply that they were not on your property when they should have been. So I am finding you guilty of the offence.

[12] THE ACCUSED: The fence is fixed every time that the animals get out.

[13] THE COURT: Well, it would be a lot of nicer if the fence was fixed before the animals got out.

[14] THE ACCUSED: Is the government not paying for fences, because they've got the elk out there in different places? They're getting --

[15] THE COURT: The government are not paying for your fences.

[16] THE ACCUSED: No, they're paying them bloody elk farmers and stuff; \$15,000 to put up more fences.

[17] THE COURT: Okay. That is not my problem. It is perhaps your problem but it is not mine. You are responsible to fence in your property, that is what the law says.

[18] THE ACCUSED: I have, and the law let's people break things down too.

[19] THE COURT: Well, again, that is not the evidence that I have before me.

[20] What were you seeking in the way of penalty?

[21] MS. SCHORR: In the way of penalty we're seeking \$500.

[22] THE ACCUSED: Do you want that in shit, because that's the only thing I've got left.

[23] MS. SCHORR: It was our intention to call Mr. Briggs to speak to impact on him and the community but if that's not necessary.

[24] THE COURT: Well, I not only think it is not necessary, I think it is irrelevant. I mean this law is there for safety of people using the highway. It is not there to take care of the feelings of the neighbourhood or anything like that; it is simply a safety issue.

[25] The fine will be \$500. How long do you need to pay that, Mr. Dillabough?

[26] THE ACCUSED: It's going to take a while.

[27] THE COURT: Six months?

[28] THE ACCUSED: Unless you're willing to take a load of manure.

[29] THE COURT: Six months?

[30] THE ACCUSED: At least six months.

[31] THE COURT: Okay. Well, I will give you six months. You can pay it a bit at a time. You can set up a payment schedule, whatever you want over that six months. At the end of six months, you can come in and get an extension. However, at that time, we are going to want to see what efforts have been made to pay. If no efforts have been made to pay, then of course you would not get an extension.

[32] I will once again tell you, you can appeal this decision. You must launch that appeal within 30 days of today's date.

CAMERON J.P.T.C.