

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

REGINA

v.

LAWRENCE WRIGHT

Emily Hill

Appearing for Crown

Lawrence Wright

On his own behalf

REASONS FOR JUDGMENT

[1] CAMERON J.P.T.C.(Oral): Mr. Wright has pled not guilty to one count under s. 49 of the Animal Control Bylaw.

[2] Representations made by the Crown, and sworn testimony of Ms. Dokic, indicating that she resides at 13 Topaz Crescent, has resided there for five years. On October 1st of last year she called Bylaw complaining about noisy dogs. The dogs that she was complaining about reside at number 5 Topaz. She could observe them, clearly, from her back deck. They are large dogs that have a deep bark.

[3] Her report was handled by Bylaw Officer Gosselin. He indicated to her that she should keep what is known in the vernacular as a dog-log with regards to recording any barking that takes place for periods of greater than five minutes.

[4] She did so from October 1st to until October 23rd. It has been tendered as Exhibit 1. It indicates numerous, throughout the day, entries. Of particular significant note, the earliest indicates an entry of five in the morning; it was on October 1st. The latest indicates 10:17 p.m. on October 22nd. Numerous entries throughout the days, virtually every day. It would appear that on October 9th there is no entry, October 12th, there was no entry. Other than that, there were entries on every day. October 6th, one entry, 10:11 a.m., does not indicate for how long. Some days it would appear to be on and off all day. Other days it appears to have been fairly minimal. October 16th, for example, 6:20 in the morning, but there is only that indication, it does not say how long and there are no other entries for that day.

[5] Ms. Dokic indicated that she had confronted Mrs. Wright in August. Mrs. Wright indicated to her that dogs have to bark. Ms. Dokic indicated that there are certainly many other dogs in the neighbourhood but her indication is that if they bark they seem to have fairly immediate controls placed on them that stops the barking from going on indefinitely. They are taken inside homes or such things.

[6] Under cross-examination, Ms. Dokic indicated that neither she nor her husband had video-taped the Wright's home. She resides four houses away, approximately 300 feet distance.

[7] A sketch was tendered by Mr. Wright, indicating the lots in the area and indicating quite a number of dogs in the area, particularly surrounding his home.

[8] Mr. Wright then indicated via a digital camera some pictures he had taken towards her home, and she admitted she could not see her home in those pictures. However, when questioned further she indicated that she could see the Wright's

home because the yard is lit at night; the dogs can be seen. She also indicated that the bark of the Wright's dogs is deep and loud and she has found it to be very distinct from other dogs in the neighbourhood.

[9] Testimony of Bylaw Officer Gosselin indicates that he received the complaint on October 1st. He went to interview Ms. Dokic. She had initially complained of noisy dogs from two different locations, one 17 Lazulite and the other 5 Topaz. While he was conducting that interview, he became aware that the dogs at 5 Topaz were in fact barking, barked steadily for a 15-minute period. He also indicated that he could observe them clearly as being the dogs in that particular home.

[10] He also indicated that there had been two warnings issued to number 5 Topaz., one on August 11th 2002, and another on August 23rd, 2002.

[11] He then indicates that on October 1st he attended 5 Topaz and spoke with Mrs. Wright; she was home at the time, that he issued a third warning notice on October the 1st.

[12] On October 23rd, he attended 5 Topaz. The Wright's were not home. He observed that the dogs were in the garage at that time. He attended again on the 24th, and again observed that the dogs were inside. On the 24th he issued a ticket. The offence date of the ticket is October 1st. Exhibit 6 showed there were certified copies of two dog licences for 5 Topaz.

[13] At cross-examination he had indicated that he had been told by the complainant that they had video-taped number 5 Topaz and he also indicated that he had not seen such a video tape. He reiterated that he could observe the dogs clearly on the

deck of 5 Topaz from 13 Topaz.

[14] He indicated under cross-examination that he had, after issuing the ticket on the 24th, he had canvassed immediate neighbours and found several of whom certainly had concerns with regards to the noisy dogs at 5 Topaz, however, had not registered complaints.

[15] Mr. Wright took the stand and made a sworn statement on his own behalf. Mr. Wright's testimony then was that when they moved here in May to June 2002, they initially resided in Riverdale. No complaints had been forthcoming. They moved to Topaz during the summer, which was very busy, there was a lot of construction going on, children in the area, there was a lot of activity. The dogs did a lot of barking.

[16] There was some initial contact with the complainant in August, after which they bought a barking collar which could only be used on the older of the two dogs. He indicates that he asked the City what the standard for a barking dog was, and they told him 15 minutes.

[17] On October 1st, the day in question, he was not in town and indicates his wife worked a long day that day, and that the dogs were outside.

[18] He indicated that subsequent to them having moved in and a number of different neighbours moved into places surrounding him and they all have dogs.

[19] His dogs are not out in the early morning hours. They now put the dogs in the garage during the day and at night when they are out. Again, he indicated that all dogs bark and that he was simply trying to meet the standard that was given to him

by the City.

[20] Much has been said about what the standard of what the barking or a nuisance dog is. It is dangerous ground to get into identifying the standard as being 15 minutes or being five minutes or being two hours. The reason is that if we put in law that the standard is 15 minutes, what we are essentially saying is that you are allowed to bother your neighbours for 15 minutes at a time, which is not really what the laws are meant to put in place.

[21] Really, it is a common sense thing. I know that it is very difficult, very often for pet owners, for example, regardless of what type of pet they have, to necessarily understand non-pet owners and what might bother them and what might not.

[22] I have had situations in court here where it was very clear that the complainant was bothered by the sight of a dog. In my view that is not reasonable, and that becomes the complainant's problem. More often what we find is that complainants are bothered by a particular pitch of a dog that is incessant. If it is incessant enough to be disturbing to them, it causes a nuisance, and can be identified as a nuisance.

[23] So there is no cut and dried law that says that your dog can bark for this period of time. Even if we were to say your dog can bark for five minutes at a time, so then what kind of a rest period must be in between those five minutes of bark. So again, we have to fall back to what is common sense. Common sense dictates that dogs that bark are probably going to be annoying to those around them that do not own the dogs, just as we very often can find ourselves not bothered by our own children's noise and commotion as much as other people's children. Certainly non-pet owners will find other people's pets can be disturbing to a degree that does not disturb the

owners.

[24] So what we are dealing with here is not whether or not your dogs have been disturbing to you, but whether your dogs have been disturbing to your neighbours, whether that disturbance constitutes a reasonable inference of being a nuisance.

[25] Barking dogs are annoying if they are particularly incessant. If they bark once and they are quiet or if they bark once and upon the command of their owner they are then quite, that is not considered to be a nuisance. If they bark incessantly, whether it is brought on by activity around, vehicles driving by, kids playing, other dogs, whatever it is, it becomes a nuisance to those who do not own dogs and who are trying to reside in relative comfort.

[26] Just as you indicated, Mr. Wright, that you have been disturbed from a dog that is in close proximity to you, and your answer was to close the window rather than complain. That is how you handled it. If you were more likely to say no, I'm not going to put up with this dog barking all night, you may complain to Bylaw. That is how other people handle it.

[27] Should it have been mediated? Perhaps, but mediation is entirely a voluntary process in which both parties must partake. It is not a process that you can say I am directing you to mediate. So in as much as these types of matters are very often a cause of friction within neighbourhoods and communities, that is when Bylaw ultimately gets involved. They do not get involved until there is a complaint. Once there is a complaint registered they must get involved and they must follow through with the investigation into that complaint.

[28] You had received two prior warning notices prior to October 1st. You received

another warning on October 1st. Your indications on the stand were that you bought a bark collar for one of your dogs in August and I was not too clear on whether that was between the two warning notices or after the second warning notice. It is clear, however, that on October 1st, whatever was going on with the collar had not silenced your dogs sufficiently. In fact, probably quite unfortunately for yourself, the strength of your complainant's case grew considerably with the Bylaw Officer observing the very action that was being complained of, and clearly observing it to be your dogs; not simply just hearing it, observing it from her location.

[29] Those things all rendered support in the fact that this is a bothersome problem. It was not other dogs that were carrying on; it was simply your dogs. The number of times that are written down here, short of Ms. Dokic having nothing better to do than simply try to compile a log, it would appear that your dogs have been annoying to her on quite a number of occasions.

[30] I am not writing off that perhaps some of those occasions may have been other dogs. I did ask her if she could in fact identify your dogs by bark, and she claims she can. I do not find that unusual. I know that certainly people who are tuned into this sort of thing can find very small differences that are very identifiable to them. I know that people who are into vehicles that can tell the type of engine a vehicle has just by the noise it has. They can even tell the difference within vehicles that have the same type of engine, because they know the engine so well.

[31] So it is not to say that because there are a lot of dogs in the area every bark would be counted on here. It is clear that your neighbours also, according to Constable Gosselin, had some concerns with regards to your dogs when specifically asked. They did not complain but that does not mean that it was not bothering to

them.

[32] As such I am finding that the nuisance of your dogs has been made out and supports the offence. I am finding you guilty of the offence.

[33] The original fine sought was a \$150 fine. Are you seeking anything different?

[34] MS. HILL: No, Your Worship.

[35] THE COURT: How long would you need to pay a \$150 fine Mr. Wright? How long?

[36] MR. WRIGHT: Beg your

[37] THE COURT: How long would you need to pay that fine?

[38] MR. WRIGHT: I can write a cheque now.

[39] THE COURT: Payable forthwith. You should also be advised that if you wished to appeal this decision you may certainly do so. You must launch that appeal within 30 days of today's date. You can make that cheque out and pay at the City offices opposite of Canadian Tire.

CAMERON J.P.T.C