

**IN THE DISTRICT COURT  
AT PALMERSTON NORTH**

**CRI-2015-054-003421  
[2016] NZDC 3937**

**SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS**  
Prosecutor

v

**TODD NICOL**  
Defendant

Hearing: 9 March 2016  
Appearances: M Blaschke for the Prosecutor  
P Coles for the Defendant  
Judgment: 9 March 2016

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**NOTES OF JUDGE G M LYNCH ON SENTENCING**

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[1] Todd Nicol is 51 years old and is for sentence on a charge of ill-treating a dog, being an offence against s 29(a) Animal Welfare Act 1999.

[2] On 2 April 2015 an SPCA inspector and another officer visited Mr Nicol's Pohangina property to inspect Mr Nicol's 13 year old Huntaway dog. The dog was tethered to a kennel but was recumbent and unresponsive to both voice and touch. The dog was in bad shape evidenced from the following:

1. A severe maggot infestation from the base of the tail to the shoulder blades with moist raw purulent skin inflammation and a bloody discharge saturating the dog's coat.
2. A deep mildly necrotic wound at the base of the tail.

3. Muscle wastage with toe joints thickened and enlarged in both hind feet indicating that a degenerative joint disease may have been present.
4. Mild dehydration.

[3] The dog was euthanized. The attending vet concluded the minimum timeframe that the dog would have been infested by maggots was one to two days and that this should have been noticed and the dog treated before it became recumbent and unable to stand.

[4] Mr Nicol is a farmer of 30 years experience in sheep and beef. When spoken to he said he had identified and treated many cases of fly strike. He said that two days before the arrival of the SPCA inspector he had noticed some eggs on the dog's rump and used disinfectant in an attempt to kill them, but had not checked to see if that had worked. Mr Nicol has not been prosecuted by the SPCA previously and has no relevant criminal convictions.

[5] Ms FitzHerbert for the SPCA filed written submissions which Mr Blaschke spoke to today. It was acknowledged that there are no tariff cases for this charge of ill-treatment and that is because each case varies in relation to number and type of charges, number and type of animals and the particular circumstances. For the reasons explained it was submitted that a community-based sentence was appropriate. Today it is accepted that it is a fine which is the appropriate outcome in the particular circumstances of this matter.

[6] While an order disqualifying the defendant from owning or exercising authority over dogs could be sought, on the provision of an undertaking addressing the SPCA concerns regarding the care of the defendant's other dogs, such an order is not sought. I will return to the undertaking Mr Nicol has provided in a moment.

[7] As Mr Coles observes the SPCA vet accepts the wound at the base of the dog's tail and the maggot infestation could have occurred within one to two days. This was an old dog where its arthritis may have reduced his mobility and

contributed to the fly strike. The vet could not determine whether the severe fly strike was due to an underlying disease or simply the pathology caused by the flies themselves over a prolonged period. Five other dogs were present with access to water and all in acceptable condition for farm dogs and did not require intervention. An aged horse along with a lamb were in an adjacent paddock and also did not require attention.

[8] I am satisfied that Mr Nicol's failure in terms of his clear obligations and duties under the Animal Welfare Act is limited to this single dog and occurred over a short period of time measured in one, two or three days.

[9] For the reasons explained Mr Coles submitted that a fine was appropriate here together with costs. It is plain that Mr Nicol's care of this dog fell below the standard required and that it caused this dog to suffer for a very short period of time unreasonable or unnecessary pain or distress. I have no information in front of me to suggest that Mr Nicol was callous or as in some of the cases intentionally caused harm. To the contrary, I accept that Mr Nicol actually cared for this dog and my assessment of Mr Nicol is that he simply put his head in the sand in relation to a dog which had been part of his team for many years.

[10] When I discussed this assessment with Mr Coles, Mr Coles provided me a copy of the transcript of Mr Nicol's interview with the SPCA which I found helpful. Mr Nicol described Storm, that is the Huntaway dog at issue here, as his "mainstay". Mr Nicol described him in this way, "He's like another person in the paddock with me." Later in the interview Mr Nicol describes Storm as his "mate" and said, "I couldn't really put him down, you know," and described what Storm did during the day which was not very much, mainly sleeping.

[11] So it is plain Mr Nicol had deep affection for this dog and unfortunately he did not do what would have been the kindest thing and euthanized the dog himself, but understandably so.

[12] Accordingly, I find Mr Nicol's culpability to be in the low to moderate range. I am satisfied that the purposes of sentencing, which are to hold him to account for

the harm that he has caused and to denounce and deter his offending and anyone else who might act in this way can be met by a fine.

[13] I was not greatly assisted by the cases counsel referred me to. That is not a criticism, rather it illustrates the point that both Mrs FitzHerbert and Mr Coles made that there is no tariff and the point Mr Coles in particular emphasised was that there are just so many variables in these prosecutions that it is hard to line up cases against each other. Indeed Mr Coles pointed to a number of cases where the harm caused and the culpability was much greater than Mr Nicol's but still resulted in fines.

[14] That said, *Hiha v Wairarapa SPCA* [2014] NZHC 390, which both counsel referred to, is the closest on the facts because it also involved a single dog. In that case the defendant failed to get her female dog treated for a prolapse. The dog had also run off for a few days and was returned to her in bad shape. The defendant did not go to the vet because she still owed the vet money for previous treatment. In the District Court she was sentenced to 300 hours community work. On appeal France J reduced the community work to 100 hours recognising the defendant's previous good record, genuine remorse, the guilty plea and her contribution to the community.

[15] In *Hiha* France J refers to decisions where fines were imposed for more serious offending and indeed these are cases which counsel also refer to. In particular *Balfour v R* [2013] NZCA 429, *Kunicich v Royal Society for the Prevention of Cruelty to Animals* CRI 2008-488-67, 13 October 2009 and *R v Albert* CA126/03 19 December 2003 are all cases where fines were imposed, but for greater numbers of stock and over greater periods of time.

[16] So it is clear that the offending here is less serious than these other cases where fines have been imposed. In those cases a fine was able to hold the offender accountable while also satisfying the purposes of denunciation and deterrence. Accordingly, a fine would be the least restrictive outcome appropriate in these circumstances.

[17] The Crown contended for a start point in the range of \$5000 to \$6000 with an end point above \$2000. Mr Coles did not reply to that range accepting that

Mr Nicol, while not flush with money is asset rich and can pay a fine. Mr Coles invited the fine to be imposed here to be paid to the SPCA which it can be under the Act, so the fine can be used for the good work that the SPCA does. What is important also to note here is that Mr Nicol holds no grudge against the SPCA and it seems clear from what Mr Coles has said, that he sees it appropriate that the fine go to them to advance the work that they do.

[18] So the start point I adopt, taking all those matters into account, is \$3000. From the \$3000 I deduct \$300 for Mr Nicol's previous good character. I deduct a further \$200 for his remorse. I am satisfied, for the reasons I explained earlier, that there is true and discernible remorse here. From the \$2500 I deduct \$625 representing the credit for the guilty plea, resulting in an end sentence of \$1875. I convict and sentence Mr Nicol to that fine.

[19] Mr Nicol has provided an undertaking which I have seen. The undertaking records Mr Nicol will attend to monthly worming and flea treatment, undertake biannual vaccinations in accordance with veterinarian advice, have quarterly veterinary physical examinations for the dogs for the next five years and have any treatment undertaken in accordance with recommendations made. The undertaking is entirely appropriate. It is to Mr Nicol's credit in terms of acknowledging ongoing responsibility and provides an assurance capable of being verified, that a lapse like this from the care the community expects from an owner of a dog will not occur again.

[20] I also make the following orders. Court costs are to be imposed, a contribution to solicitors costs of \$300; and an order the whole of the fine be paid to the SPCA pursuant to s 173 Animal Welfare Act.

G M Lynch  
District Court Judge