

CANADA / JUDGMENT

R. v. Reid

2024 BCSC 1044

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Supreme Court of British Columbia

DECIDED

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2024 BCSC 1044 R. v. Reid

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Reid,

2024 BCSC 1044

Date: 20240617

Docket: 35031

Registry: Vancouver

Rex

v.

Arielle Reid

Before: The Honourable Madam Justice Sharma

On appeal from: A Judicial Justice's Decision in the Provincial Court of British Columbia, dated September 12, 2023 (Vancouver File No. 38439-1).

Reasons for Judgment

Counsel for the Crown/Appellant:

D. Clements

The Respondent, appearing in person:

A. Reid

Place and Date of Trial/Hearing:

Vancouver, B.C.

April 19, 2024

Place and Date of Judgment:

Vancouver, B.C.

June 17, 2024

- [1] This is a summary conviction appeal brought by the City of Vancouver (the "City") against Arielle Reid. Ms. Reid was charged with violating s. 7.2 of the City of Vancouver's Animal Control Bylaw 9150 [Bylaw] on September 13, 2022. Section 7.2 addresses the keeping of certain animals.
- [2] After a trial held before Judicial Justice Z. Makhdoom, Ms. Reid was acquitted of that charge, and written judgment was released on September 12, 2023: *City of Vancouver v. Reid*, 2023 BCPC 204.
- [3] The contravention relates to Ms. Reid's keeping of two guinea fowls on her property. The City's position is that those birds clearly fall within the prohibition contained in s. 7.2 of the Bylaw. Among other things, that section prohibits the keeping of "quail, or other poultry or fowl".

THE BYLAW

- [4] The Bylaw deals primarily with the keeping of dogs, but s. 7, titled "Regulation of Animals", is broader.
- [5] The following provisions are relevant:

Controlling other animals

7.1 A person who keeps an other animal, or a person who has care, custody or control of an other animal, must not permit, suffer, or allow the other animal to be elsewhere than on his or her property unless it is under the immediate charge and control of a competent person.

Prohibition against keeping certain domestic animals

7.2 A person must not keep in any area, temporarily or permanently, any horses, donkeys, cattle, swine, sheep, goats, ducks, geese, turkeys, pheasants, quail, or other poultry or fowl, except that this prohibition does not apply to: (a) keeping hens, subject to sections 7.15 and 7.16; ; or (e) the exceptions set out in section 7.4.

Prohibition against keeping certain exotic or wild animals

7.3 A person must not keep in any area, temporarily or permanently, any animal listed in Schedule B to this By-law, except as permitted by section 7.4.

Prohibition against keeping excessive numbers of certain animals

7.5 A person must not keep in any area, temporarily or permanently, at any one time, more than:

- (b) 12, in aggregate, registered homing pigeons, canaries, budgerigars, parrots, parakeets, and exotic birds of all species, except that a person who has obtained permission from Council to keep an aviary may have a greater number of such birds in or about the premises designated in the permit;
- [6] Section 7.4 lists a number of agencies to whom the prohibitions listed in s. 7.2 and 7.3 do not apply, including the Vancouver animal control shelter, the British Columbia Society for the Prevention of Cruelty to Animals, veterinary hospitals, etc.
- [7] Schedule B to the Bylaw lists prohibited animals, which are:
 - a) Canids including coyotes, foxes, jackals, and wolves but excluding domestic dogs;
 - b) Crocodilians including alligators and crocodiles;
 - c) Felids including lions and tigers but excluding domestic cats;
 - d) Green anaconda (*Eunectes murinus*), yellow anaconda (*Eunectes notaeus*), reticulated python (*python reticulatus*), African rock python (*python sebae*), Burmese python (*python molurus bivittatus*), Indian python (*python molurus molurus*), or amethyst python (*morelia amethystina*);
 - e) Hyenas;
 - f) Ursids including bears; and
 - g) Reptiles and snakes classified as venomous, whether or not they have venom glands.
- [8] A number of terms are defined in s. 1.2 of the Bylaw, but poultry, fowl, and exotic birds are not included in those definitions. "Dog" and "hen" are defined as is "other animal", which means "any animal, including any mammal, bird, reptile or amphibian, except a dog or domestic cat".
- [9] The power of the City to enact bylaws respecting the "impoundment and keeping of animals" is contained in s. 324 of the Vancouver Charter, S.B.C. 1953, c. 55. Section 324 is within "Part XIV - Nuisances" of the Vancouver Charter.
- [10] Many subsections of s. 324 specifically refer to dogs, horses, cattle, and other animals (see ss. 324(a), (f)-(g)). The only other animals specifically mentioned in s. 324 are goats, swine, rabbits (s. 324(g)) and "cats, mink, foxes and other undomesticated animals" (s. 324(h), relating to kennels).

- [11] Section 324(i) addresses the "keeping of birds" permitting Vancouver council to make bylaws "for regulating the keeping of domestic poultry, pigeons, and other birds, and for defining areas within which such birds may be kept or within which the keeping of them is prohibited".

THE TRIAL DECISION

- [12] At trial, the City called animal control officer Shane Burnham, and Ms. Reid testified in her own defence; she was not represented by counsel at trial, or at the appeal.
- [13] The case for the City consisted of the testimony of Officer Burnham and two photographs. There was little dispute about the evidence.
- [14] Ms. Reid harboured two guinea fowls at her residence. Someone made a noise complaint about Ms. Reid's birds. In response to the complaint, Officer Burnham attended at the property and noted two birds lived inside a coop in the backyard of Ms. Reid's home. He left his card which gave 14 days' notice to remove the birds. The officer returned after the 14-day period and noted the birds were still there, and subsequently mailed a notice of violation of the Bylaw to Ms. Reid. This led to the laying of a charge against Ms. Reid dated September 13, 2022.
- [15] During cross-examination, Officer Burnham confirmed that prior to the complaint that initiated this case, he had never interacted with guinea fowl and did not know to what country they were native. He was also asked what guidelines the City has for distinguishing pets from animals kept for another purpose. His answer was prohibited animals that are not considered pets are listed at Schedule B to the Bylaw.
- [16] He also confirmed that in his notes dated March 23, he referred to the birds as "guinea fowls", but referred to them merely as "birds" in his notes dated between March 8 and March 23.
- [17] It is not disputed that Ms. Reid kept the birds as pets. She hand-raised the birds. She grew up in Jamaica, and had lived in Mozambique. In both places, guinea fowls were routinely kept as pets. She stated that guinea fowls are sensitive to damp environments before becoming fully feathered, and therefore she hand-reared them before moving them to an outdoor coop.
- [18] Ms. Reid testified that when she received the 14-day notice of bylaw violation, she chose to rehome the birds to avoid them being apprehended by the City as she was concerned that they would not have the expertise to look after exotic creatures.

[19] The Judicial Justice noted guinea fowls were endemic to Africa, and can be domesticated primarily to protect crops. He found that Ms. Reid did not "domesticate" the guinea fowls, but had raised and socialized them. He also found that Ms. Reid kept the birds as "beloved companions, for the pure pleasure of their proximity", noting that that was perhaps the same reason many people keep "canines or felines, budgies or parrots".

[20] The Judicial Justice identified the following as the question before him: whether harbouring guinea fowl hens as a pet within the City of Vancouver was prohibited.

[21] At para. 18 he stated the following:

As a society that recognizes people's desire to seek companionship of animals having a mix of deleterious and beneficial outcomes, the Bylaw sets out a thoughtful structure. It is a regulatory scheme that balances human need for animal companionship and public safety. After reading the Bylaw, Ms. Reid chose to keep birds that she saw when she was growing up in Jamaica or when she was in Mozambique as a Peace Corps volunteer. Her conduct in stewardship and care of these birds is exemplary. She has provided for these birds an exceptional sanctuary[.] Exhibits 1-3 show an excellent coop, clean, airy and bright with fresh water and food, demonstrating Ms. Reid's diligent efforts in creating a comfortable habitat for these beautiful birds. There is no evidence that their presence has any deleterious effects on our civic life.

[22] The Judicial Justice goes to describe the Bylaw as "a model of bland prose bereft of nuance, or concealing within its complex idiomatic layers multiple corollaries or meanings" such that an enactment so rich in precision would have enumerated the birds as prohibited. He noted the Bylaw did not precisely enumerate guinea fowls as prohibited, and that mere reference to "fowls" did not prove the City intended to prohibit guinea fowls.

[23] The Judicial Justice accepted Ms. Reid's argument that since "the Bylaw is silent on guinea fowls that are non-native to British Columbia", they "fall inside the category of exotic birds", to which the only limitation is that one cannot house more than 12. He concluded:

I am of the respectful view that no overt prohibition is set out in the Bylaw for keeping of guinea fowls. Ms. Reid did not keep these birds as poultry either for eggs or meat but kept them for pure joy companionship, I'm of the view that the exception set out in 7.5 (b) the Bylaw permitting keeping of no more than 12 exotic bird applies. She is entitled to keep these birds so long [as] she complies with other provisions of the Bylaw. Respectfully, the charge against [Ms. Reid] is dismissed.

THE PARTIES' POSITIONS ON APPEAL

The City's Position

[24] The City's position is straight forward: a guinea fowl is a fowl and, therefore, prohibited under s. 7.2.

[25] More specifically, the City alleges that by acquitting Ms. Reid, the Judicial Justice erred in:

- a) finding that Ms. Reid's intention for keeping the birds as pets was relevant to whether she violated the Bylaw;
 - b) the interpretation of s. 7.2 by finding that guinea fowl did not fall within the words "poultry" or "fowl" in that section of the Bylaw;
 - c) the interpretation of s. 7.5 (b) by finding that guinea fowl fell within the exotic bird exception;
 - d) importing in a requirement on the City to prove that the effect of keeping the guinea fowl caused deleterious effects on the public; and
 - e) referring to an order by the BC Ministry of Agriculture (the "Order") made an exhibit for identification on the Court's own motion, but not made an exhibit at the trial proper.
- [26] The City contends that the Judicial Justice made a palpable and overriding error because the verdict was not supported by the evidence. The City's position is that the object and scheme of the Bylaw are to prohibit the keeping of animals in City limits unless they are specifically excepted.
- [27] It also argues that municipal bylaws regulate activities within municipal boundaries, are regulatory in nature and as such, are prima facie strict liability offences: *City of Vancouver v. Access Collateral Pawnbrokers Ltd.*, 2006 BCSC 1514 [Access Collateral] at para. 26, leave for appeal ref'd 2008 BCCA 191. It submits that since s. 7.2 is a strict liability of offence, the Judicial Justice erred by taking into account the reason why Ms. Reid kept the guinea fowl. Its position is that the intention of the person found with a prohibited animal is not an element of the offence created by s. 7.2. Therefore, the fact that she kept them for the "pure joy of their companionship" does not take them outside of the category of being a "fowl". Furthermore, the City contends that the Judicial Justice improperly imported into the element of the offence a requirement that the keeping of the guinea fowl have a deleterious effect on civic life. The City says all that needed to be proven was the actus reus of the offence which was the keeping of the birds: *Access Collateral* at para. 34.
- [28] The City also submits the Judicial Justice incorrectly interpreted ss. 7.2 and 7.5(b) by finding that guinea fowls were neither poultry nor fowls but were exotic birds (however, at the appeal, the City did not pursue its position that guinea fowls are poultry).

Ms. Reid's Position

- [29] Ms. Reid provided thoughtful submissions. Her position is that because the Bylaw does not specifically mention guinea fowl by name anywhere, it cannot be a prohibited animal.

- [30] She points out that in s. 7.2 and Schedule B, specific animals or types of animals are prohibited. In Schedule B to the Bylaw, the City uses scientific names to prohibit certain species including ursids, felids, canids, and hyenas. She correctly notes that guinea fowl does not appear by its scientific or common name in Schedule B, or s. 7.2, nor does its taxonomical family. Since guinea fowls do not appear anywhere in the Bylaw, she argues they are not prohibited.
- [31] She further points out that exotic birds of all species are specifically allowed, and by that reason alone guinea fowls should be kept. Guinea fowls are not native to British Columbia, so it is appropriate to consider them exotic birds.
- [32] She also submits that the Bylaw would only apply if it is true that guinea fowl are unambiguously defined as "fowl" or "poultry". However, in her view, the City did not at the trial or on appeal, point to a definition of poultry, fowl, exotic bird, or any other related term that encompasses guinea fowl. Since no definition was provided, her position is that the City cannot succeed.
- [33] She also notes that there is no clear taxonomy associated with "poultry" or "fowl" and argues that the types of birds they refer to depends on the purpose for labelling. She provided definitions from the Merriam-Webster Dictionary of "fowl" to demonstrate its ambiguity, including "a bird of any kind", "a cock or hen of the domestic chicken" or "any of several domesticated or wild gallinaceous birds".

ISSUE

- [34] The only question on this appeal is whether the Judicial Justice erred in acquitting Ms. Reid of harbouring an animal prohibited by s. 7.2 of the Bylaw. Thus, the entire case turns on whether the guinea fowls that Ms. Reid harboured are "fowl" as used in s. 7.2.

STANDARD OF REVIEW

- [35] Appeals from bylaw offences are governed by ss. 101-130 of the Offence Act, R.S.B.C. 1996, c. 338. Section 109(1) of the Offence Act says that where an appeal is taken under s. 102 with regard to, among other things, an acquittal, ss. 683-689 (except s. 686(5)) of the Criminal Code, R.S.C., 1985, c. C-46, apply.
- [36] The City relies on s. 686(4)(b)(ii) which states that on an appeal from an acquittal, the court of appeal can enter a verdict of guilty if, in its opinion, the accused should have been found guilty, but for an error of law. However, since this is an appeal of a summary conviction offence, an appeal of an acquittal extends to issues of fact, law, or mixed fact and law, and one must read s. 686(4)(b)(ii) as if "but for an error of law" is not there: *R. v. Antonelli*, 5 B.C.L.R. 154 at para. 18, 1977 CanLII 405 (C.A.).

- [37] Therefore, the standard of review on appeal from an acquittal is the same as for an appeal on conviction on issues of fact, and the test is the same, namely the appeal court "is not empowered to retry the case and is entitled to set aside the acquittal only where the verdict is unreasonable or cannot be supported by the evidence" with the exception of credibility findings: *R. v. Danielisz*, 5 M.V.R. (2d) 244, [1988] B.C.J. No. 310 (C.A.); *R. v. Baig*, 78 C.C.C. (3d) 260 at 272, 1992 CanLII 2181 (B.C.C.A.).
- [38] The issue is whether there is evidence upon which a trier of fact could reasonably have reached the verdict, and on questions of law, the standard is correctness: *R. v. Helm*, 2011 SKQB 32 at paras. 17-20; *HMTQ v. Pomeroy*, 2007 BCSC 142 at paras. 25-29; and *R. v. Kulcsar*, 2020 BCSC 682 at para. 21. Where the legal principle is not readily extricable, then the matter is one of "mixed law and fact", and the rule is that where the issue on appeal involves the trial judge's interpretation of the evidence as a whole, it should not be overturned absent palpable and overriding error: *Housen v. Nickolaisen*, 2002 SCC 33.

INTERPRETATION OF THE BYLAW

- [39] The leading case on statutory interpretation is *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837, in which the Supreme Court of Canada clarified the approach to statutory interpretation, which is that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (para. 21). Also relevant is s. 8 of the Interpretation Act, R.S.B.C. 1996, c. 238, which states that "every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects" (emphasis added).
- [40] Ms. Reid also referred to *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42. At para. 27, after citing authorities such as *Rizzo and Driedger, Elmer, Construction of Statutes*, 2nd ed, Toronto: Butterworths, 1983, the Supreme Court stated that the "preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute". It also stated that other principles of interpretation, including the strict interpretation of penal statutes, only applies where the meaning of a provision is ambiguous. The Court then discusses, at paras. 29-30, what it means by ambiguity:

29 What, then, in law is an ambiguity? To answer, an ambiguity must be "real" (Marcotte, supra, at p. 115). The words of the provision must be "reasonably capable of more than one meaning" (*Westminster Bank Ltd. v. Zang*, [1966] A.C. 182 (H.L.), at p. 222, per Lord Reid). By necessity, however, one must consider the "entire context" of a provision before one can determine if it is reasonably capable of multiple interpretations. In this regard, Major J.'s statement in *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, 1999 CanLII 680 (SCC), [1999] 1 S.C.R. 743, at para. 14, is apposite: "It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids" (emphasis added), to which I would add, "including other principles of interpretation".

30 It is necessary, in every case, for the court charged with interpreting a provision to undertake the contextual and purposive approach set out by Driedger, and thereafter to determine if "the words are ambiguous enough to induce two people to spend good money in backing two opposing views as to their meaning" (Willis, *supra*, at pp. 4-5).

[Emphasis in original.]

ANALYSIS

- [41] The City's argument is simple: because Ms. Reid's birds are called the guinea fowls, they must be "fowls" under the Bylaw. Its position is premised on the view that the keeping of any animal not specifically exempted from the Bylaw is prohibited. In other words, the City's position must be that the "object" of the Bylaw is the prohibition of keeping any animal. Thus, according to the City, except for exotic birds, s. 7.2 essentially prohibits the keeping of "birds", and it does not really matter whether the guinea fowl is poultry or fowl.
- [42] I do not agree. Specifically, I part company with the City in terms of identifying the object or purpose of the Bylaw.
- [43] The Bylaw does prohibit a number of animals, but in no section does it state that "animals" or even classes of animals are prohibited unless exempted. Instead, sections 7.1 specifically identifies the "keeping" of animals. This is not merely a semantic difference.
- [44] The object and purpose of the Bylaw is relevant at every stage of its interpretation. However, the Bylaw is also subsidiary legislation and must be read in light of the powers granted to it by the Vancouver Charter. Those sections are phrased in terms of regulating and keeping of animals. Obviously, that can and does include making bylaws to prohibit the keeping of some animals, but the overall context and scheme must be correctly characterized.
- [45] I find the object of the Bylaw is the regulation of the keeping of animals on residential property, and not, as framed by the City, the prohibition of keeping any animals unless specifically exempted.
- [46] More specifically, I also disagree with the City's position that the Bylaw essentially prohibits the keeping of "birds", except for exotic birds allowed under s. 7.5(b). The Bylaw does no such thing. Section 7.2 prohibits the keeping of "ducks, geese, turkeys, pheasants, quail, or other poultry or fowl". If the City intended to prohibit the keeping of all birds, except those listed elsewhere, it would have used the word "birds". Notably, s. 324(i) of the Vancouver Charter uses the word "birds", as does the Bylaw itself at s. 7.5(b) for instance. Ms. Reid relies on *R. v. Ali*, 2019 ONCA 1006, where Justice Watt said there is a presumption that legislative bodies avoid superfluous or meaningless words and Parliament does not speak in vain (para. 67). Accordingly, it would be erroneous to assume that the specific list of birds in s. 7.2 could be read as if it actually said "birds".

- [47] I also note that when looking at the whole Bylaw, the word "fowl" is also used in Schedule A (which is part of the Bylaw as per s. 1.4) respecting animal control fees where it twice states certain fees applicable to "Fowl, other bird, rabbit, or rodent"--this indicates that "fowl" is not all-encompassing. Based on this wording, it does not cover all birds except exotic birds as argued by the City.
- [48] Additionally, if one has to "maintain" an "exotic bird", the Bylaw imposes a higher maintenance charge compared to if it has to maintain "fowl, [or] other bird", again distinguishing "fowls" from other birds
- [49] The examples of "exotic birds" given in Schedule A are Amazon Parrots, African Grey, Cockatoos, Conures, Lorikeets, and Macaws. This is also consistent with the notion that there are several categories of birds within the Bylaw such as "fowl", "exotic birds" and "other birds".
- [50] The City submits it is common sense to conclude that guinea fowls are fowls --given its name. However, the City provided no evidence or extrinsic materials to support its position that guinea fowls are fowls, believing perhaps it was obvious that was the case.
- [51] However, I am not persuaded that a guinea fowl is necessarily a fowl because the word "fowl" appears in its commonly held English name. The simplicity of the City's argument may be appealing, but it does not account for the surrounding words, context and purpose of s. 7.2. I am not being critical of the City for taking that position. The problem is that Ms. Reid testified and provided evidence together with cogent reasons, accepted by the Judicial Justice, illustrating why such a position did not necessarily accord with common sense.
- [52] As she pointed out, the English language is full of oddities especially in terms of how things, including animals, are named and called. For instance, doves and pigeons are, in fact, the same animal, but when we eat them, they are called squab. She gave another example: an African painted dog is not a domestic dog, but it is a canid, which would be prohibited under the Bylaw. In this way, the argument by the City cannot prevail as many animals have common words as part of their names, but that is not determinative as to the legislative intent when those same common words are used in a statute. For instance, animal control legislation discussing "cats", as they are commonly understood, may not intend to include "bobcats", in the same manner that bylaws targeting "fowl" may not intend to include "guinea fowl".
- [53] Ms. Reid's argument is that taxonomies are important and ought to form part of the context relevant to interpreting the Bylaw. She submits there is no clear taxonomy associated with "poultry" or "fowl", but there is for "dog" and "cat" because they do fall clearly into categories of canid and felid. The only thing that is clear is that poultry and fowl are birds.

- [54] Furthermore, she points out that if one reads the list of prohibited domestic animals in s. 7.2, without reference to anything else, their only commonality is that they are all animals. That is clearly not what was intended. In the absence of the City providing definitions of "poultry", "fowl", or "exotic bird", there is ambiguity. That is especially true because of the multiple meanings and usage of the terms "poultry" and "fowl". Since the Bylaw imposed a penalty on her, Ms. Reid contends that ambiguity must be resolved in her favour.
- [55] The City submits the court should take a proactive approach to interpreting the animals listed in s. 7.2. For instance, counsel points out that mules are not listed, but both donkeys and horses are listed. The suggestion was that if Ms. Reid's approach was correct, then there would be no prohibition on the keeping of mules.
- [56] That may very well be true, but it does not persuade me that it is legally correct to expansively interpret the Bylaw beyond what the plain meaning, context, scheme, and purpose allow.
- [57] The Bylaw has no definitions attached to the animals in s. 7.2, nor do the listed animals adhere to the taxonomy in the schedules. It may be that the City contemplated some organizing principles when it passed s. 7.2 of the Bylaw, but no evidence about its deliberations was put forward. Accordingly, it is not clear to me that a conclusion that guinea fowls are not captured by the Bylaw necessarily means mules would not be.
- [58] For all those reasons, I agree that there is ambiguity with regard to whether guinea fowls are encompassed by s. 7.2 of the Bylaw.
- [59] However, Ms. Reid's position did not rest only on ambiguity in the Bylaw. She went further and provided what I find to be a reasonable approach to its interpretation.
- [60] First, she points out that there are certain classes of animals the keeping of which are prohibited as set out in Schedule B. I agree with Ms. Reid that it is significant that for the most part, the identification of animals in that schedule is pursuant to a classification scheme rather than "common" name. For example, "ursids" including bears are prohibited. Presumably, this avoids any argument about whether a "panda bear", or a "polar bear", is a bear or not.
- [61] Unfortunately, the City did not take that approach in how it worded s. 7.2, but that does not mean it has no underlying logic. For ease of reference, that list at s. 7.2 is "horses, donkeys, cattle, swine, sheep, goats, ducks, geese, turkeys, pheasants, quail, or other poultry or fowl." Ms. Reid's position is that the animals in s. 7.2 are defined by how humans interact with them. So, for instance, there can be a reasonable assumption that human's interaction with the listed animals is for commercial or agricultural purposes, including to provide food whether by slaughter or eggs. Following on that, the commonality to the specific birds captured in s. 7.2 depends on the purpose for which they are labelled.

- [62] The City submits that since this is a strict liability offence, a person's intent for keeping the animals is irrelevant. In other words, the City submits that how Ms. Reid interacted with or kept her animals is irrelevant.
- [63] The preliminary and fundamental question is whether s. 7.2 applies to Ms. Reid's guinea fowls. That jurisdictional issue precedes the question of whether she exercised due diligence or not. In other words, accepting Ms. Reid's approach to interpreting the Bylaw does not improperly import the element of "intent" into the consideration of the actus reus of the offence.
- [64] Instead, her intent is relevant to the analysis of statutory interpretation in light of:
- a) section 7.2 being organized by how humans interact with the animal--namely, for commercial or agricultural purposes;
 - b) Ms. Reid providing evidence on how she interacts with the animals;
 - c) Ms. Reid providing evidence on human-guinea fowl interaction more generally including cultural significance and the keeping of the birds as pets; and
 - d) the City providing no evidence on how guinea fowl-human interaction is to be understood.
- [65] Importantly, the City bears the burden, as prosecutor, to prove that the Bylaw applied. Ms. Reid raised an ambiguity about the applicability of the Bylaw to her birds. The City was required to bring evidence or make submissions to resolve that contested issue. It failed to do so.
- [66] For those reasons, I do not agree with the City that how and why Ms. Reid kept the birds is irrelevant.
- [67] However, even if my reasoning on this point is flawed, I would still not find in favour of the City. In that event, having found an omission in the wording of s. 7.2, whether deliberate or inadvertent, with respect to how certain birds outside of "ducks, geese, turkeys, pheasants, [and] quail" fit within the provisions, I would find it is not a court's task to try and fill in the gap or make sense of it: *R. v. Daoust*, 2004 SCC 6 at para. 45. In that case, the Court said that it has no authority to correct errors or omissions in legislation where it has been clearly drafted. Ms. Reid submits this means that if city council had meant to include guinea fowl, it would have been more explicit in doing so (such as how specific breeds of birds were listed as "exotic" birds). Having not included them in the Bylaw, that omission cannot be corrected by the Court.
- [68] The City argues that the Judicial Justice improperly imported in a requirement that the keeping of the guinea fowl have a deleterious effect on civic life. However, this argument mischaracterizes the Judicial Justice's analysis for the same reason as the City's argument on intent. The Judicial Justice did not import the requirement into the actus reus, but rather considered it in the statutory interpretation process when analyzing the "thoughtful structure" and "regulatory scheme" of the Bylaw. It is a common step in statutory

interpretation to identify the "evil" that a law is aimed at remediating and to consider whether the impugned conduct falls within the legal regime's purpose, or legislature's intent, by causing that "evil" or deleterious effect. The Judicial Justice did not incorrectly describe the law, or make any palpable or overriding errors in its application, when finding that the guinea fowl presented no deleterious effects on civic life in light of the Bylaw creating a balance between animal companionship and public safety.

[69] For all those reasons, and given the evidence that was presented at trial, I am not persuaded that the Judicial Justice erred in law on a standard of correctness with respect to the consideration of Ms. Reid's reasons for keeping the guinea fowl in the statutory interpretation process, or in considering the presence or absence of deleterious effects in the statutory interpretation process. There is sufficient evidence upon which the Judicial Justice could reasonably reach the verdict of acquittal, and with respect to the application of the s. 7 regime, the Judicial Justice did not make any palpable or overriding errors. In my view, my conclusions address the issues identified by the City above at paragraphs 25(a), (b), and (d). Given those conclusions, I make no comment on whether the Judicial Justice was correct to characterize the guinea fowl as "exotic animals" versus "other birds" or another category; rather, the focus is on whether they fall under s. 7.2. In other words, I find it unnecessary to address the issues identified above in paragraph 25(c).

[70] Lastly, I am not persuaded that the Judicial Justice relied on the Order by the BC Ministry of Agriculture, which was marked as an exhibit for identification. The Judicial Justice concluded that "Poultry is largely an agro-business term", and briefly mentioned the Order to illustrate that guinea fowls are not included in a break-down of animals generally considered "poultry". This mention is at the end of the judgment after the Judicial Justice had already accepted Ms. Reid's evidence and arguments to this effect (e.g., that the birds are her pets as opposed to for farming), and having already found that if it had meant to exclude guinea fowls, the "enactment would have enumerated these birds as prohibited [and] [m]ere reference 'fowls', in my respectful does not prove intent of the City elders to prohibit these birds [sic]": para. 19. Accordingly, the final outcome was not materially affected by the Judicial Justice's acknowledgment of the Order. Therefore, I find it unnecessary to address the issue identified at paragraph 25(e).

[71] Accordingly, for all the reasons stated in this judgment, the City's appeal is dismissed.

"Sharma J."

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