

CANADA / JUDGMENT

R. v. Rigeat

2022 BCSC 1123

COURT

Supreme Court of British Columbia

DECIDED

5 April 2022

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2022 BCSC 1123 R. v. Rigeat IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Rigeat, 2022 BCSC 1123 Date: 20220405 Docket: 70994 Registry: Chilliwack Regina v. Jeff Luke Rigeat Roy Makoto Sasano Nicholas Steven George Schafer Amy Elysia Soranno Before: The Honourable Mr. Justice Verhoeven Oral Ruling on Voir Dire Re expert qualifications of Dr. David Dykshorn (Voir Dire No. 6) Counsel for the Crown: S.H. Quendack Counsel for the Accused Jeff Rigeat: J. Flood Counsel for the Accused Roy Sasano: J. Killoran Counsel for the Accused Nicholas Schafer: B.D. Vaze Counsel for the Accused Amy Soranno: L. Salloum Place and Date of Voir Dire: New Westminster, B.C. April 5, 2022 Place and Date of Judgment: New Westminster, B.C. April 5, 2022

- [1] THE COURT: This is a ruling with respect to the Crown's application for an order finding Dr. Dykshorn to be an expert witness able to give opinion evidence in the field of veterinary medicine and animal health.
- [2] The circumstances are that Dr. Dykshorn was brought to the Excelsior Hog Farm on April 28, 2019, at the invitation of the Abbotsford Police Department, to be an independent observer as to the events taking place there; namely, the protest, and to assess the condition of the animals, in the context of the presence of the protestors, and the possibility of a media tour to take place, and to assist the Abbotsford Police Department with respect to protocols that should be adopted in the circumstances. While doing so, he also conducted a general survey or assessment of the health of the animals and the condition of the farm in that respect.
- [3] One of the items that Dr. Dykshorn concerned himself with is the question of biosecurity which, from the evidence of Dr. Dykshorn, essentially has to do with steps taken to prevent contamination being brought onto the farm, such as contamination by disease; or other risks. Rodents were mentioned, in particular.
- [4] There is no question that Dr. Dykshorn is qualified as a veterinarian. He is a working veterinarian who has not provided opinion evidence in a court of law previously. That certainly does not reduce his ability to give expert evidence in this matter.

- [5] His qualifications are set out in his CV. He grew up on a farm. He testified that he has considerable experience in farming of cattle, from having grown up on a cattle farm. He testified that having grown up on a cattle farm, he had dealt with biosecurity issues, among many others. He then spent a number of years becoming qualified as a veterinarian, achieving that status in 2011. He has the appropriate academic qualifications to qualify as a qualified veterinarian. He has worked since 2011 at Abbotsford, at the Abbotsford Veterinary Clinic, as I said before, as a working veterinarian, primarily working with cattle, and also working to a smaller degree with other animals, and to a small degree with hogs or swine.
- [6] The four accused are charged with mischief. One of the elements of the offence has to do with whether the conduct in question interfered with the lawful use or enjoyment of property or caused obstruction or interruption or interference with the use of property. The Crown submits that the opinion of Dr. Dykshorn is relevant in that respect. The Crown also suggests that Dr. Dykshorn's expert opinion is relevant specifically to:
- a) overall condition of the pigs and the state of the farm;
 - b) whether the presence of the protestors caused stress to the pigs;
 - c) whether the presence of the protestors represented a potential biosecurity hazard or risk to the health of the pigs.
- [7] The Crown also notes that while it is not obliged to prove that the Excelsior Hog Farm was well run or that the pigs were generally well cared for in order to prove the charged offences, the Crown anticipates that the accused may raise a defence of necessity and, in that context, the Crown submits that the opinion of Dr. Dykshorn with respect to the general state of the farm and the animals may be relevant, to counter an argument that the actions were necessary because the animals were being maltreated.
- [8] The Crown, of course, refers me to the decision of the Supreme Court of Canada in *R. v. Mohan*, [1994] 2 S.C.R. 9, where the court indicated that: [The a]dmission of expert evidence depends on the application of the following criteria: (a) relevance; (b) necessity in assisting the trier of fact; (c) the absence of any exclusionary rule; and (d) a properly qualified expert.
- [9] No submissions were made that the evidence is not relevant. The four accused join the Crown in indicating that the evidence has relevance.
- [10] There is no issue as to Dr. Dykshorn's qualifications in a general sense as a veterinary medicine expert and hence his ability to give expert evidence within that field. There is no issue here about any exclusionary rule that might be applicable. The only issue raised is with respect to the scope of qualifications, in particular as it relates to any opinion that he might give with respect to biosecurity.

- [11] I think it is fair to say that Dr. Dykshorn is not a specialist in biosecurity as such. However, I think the whole topic of biosecurity comes well within his qualifications as a general veterinary medicine expert. He also has considerable personal experience in practical aspects of biosecurity as it relates to farms in general, and some experience in that field in relation to hog farms in particular.
- [12] The apparent opinion that the Crown intends to elicit from him with respect to biosecurity is not an overly technical or specialized one. I referred to it earlier. It is whether the presence of the protestors represented a potential biosecurity hazard to the health of the pigs. I have no difficulty concluding that Dr. Dykshorn could give an opinion in that respect and is qualified to do so. I also have no difficulty concluding that an opinion that Dr. Dykshorn would give in that respect is something that would be necessary to assist the trier of fact in this case, the jury, who otherwise would not have any particular knowledge of biosecurity as it relates to farm animals.
- [13] So for those reasons, I allow the Crown's application on the voir dire and find that Dr. Dykshorn is qualified to give expert opinion evidence in the field of veterinary medicine and animal health. "Verhoeven J."

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