

Not banned from owning animals despite cruelty

Judge limits Toronto lawyer to two pets

BY ALEX ROBINSON

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A judge has refused to ban a Toronto lawyer from owning pets, despite having found her guilty of two counts of cruelty to animals after authorities found 107 cats in her home.

Judge William Horkins recently issued Diane Way a conditional discharge with 12 months probation after the Crown had asked for four to six months of jail time followed by three years of probation.

“Ms. Way’s crime is one of negligence and I am persuaded that Ms. Way has suffered extreme collateral consequences from being tried and found guilty of these offences,” Horkins wrote in the sentencing decision.

“She has suffered tremendous personal embarrassment and loss of reputation in both her social and professional communities.”

Authorities had found the 107 cats living “in filth, disease and squalor,” in Way’s home in April 2011. The Ontario Society for the Prevention of Cruelty to Animals euthanized all but one of the cats.

After a lengthy trial, she was convicted of animal cruelty in May.

The Crown also requested that Way be banned for life from ever keeping pets, but Horkins turned this down saying Way does not present a risk of reoffending.



David Elmaleh says a judge ‘struck an appropriate balance’ by letting a pet owner continue having animals, as part of the rehabilitation process.

He also noted she had no prior criminal record.

“She is not a deranged adolescent who would skin a cat for the sick fun of it,” Horkins said.

“She was not running a ‘puppy mill’ for profit. She is not so cognitively challenged or careless that she would tie a dog to a stake with a rope and abandon it in the snow for days while on a drinking binge.”

The judge, however, did limit Way to owning just two pets at any time.

Way, who was a teacher before her conviction and has not practiced law in years, was also sentenced to 100 hours of community service work.

Lawyers say Horkins struck an appropriate balance in his decision, acknowledging the severity of Way’s conduct but also taking into account the fact she is unlikely to reoffend.

“One of the tenants of our criminal justice system is rehabilitation,” says David Elmaleh, of McCague Borlack LLP, who was not involved in the case.

“He found her to be someone that appreciated the pets, notwithstanding the extreme neglect. So by limiting it to two animals, the judge struck an appropriate balance by letting her try and rehabilitate herself by caring for these pets, and at the same time trying to prevent her from getting into the same situation she was in before.”

Suzana Gartner, of Gartner & Associates Animal Law, says a lighter sentence is appropriate in this instance, as it does not appear that Way wilfully neglected the cats.

“She did not have a criminal record and the justice found it highly unlikely she would do this again,” says Gartner, who was not involved in the case.

Gartner added that Way’s compliance in the investigation was also likely a factor in the sentencing as accused in these types of cases are rarely compliant.

In his original decision on Way’s conviction, Horkins quoted Shakespeare, saying Way “loved her cats, ‘not wisely, but too well’ and as with Othello, there were tragic results.”

Horkins noted that Way “is not a mean person and she had great affection for her cats,” and that she let her population of cats “get out of control.”

Way’s defence lawyer, Walter Fox, questioned the conviction, saying despite the fact that Horkins found Way was not a mean person, he was compelled by the law to find her guilty.

“The real problem is the law of negligence that can find people who are not bad and not mean to be criminally liable,” he says.

Fox says the law should be changed so that people who are determined to be good people could not be found guilty of criminal negligence.

“To me, the stunning thing about the case is that this is a good person who is not a mean person, but the law says that she had to be found guilty of negligence and cruelty to animals,” Fox says.

“How do you find somebody who is neither of those things guilty of cruelty?”

In the sentencing decision, Horkins said that the sentence should include consideration of the toll the legal process took on Way physically, emotionally and financially.

“The media held her up a ‘crazy cat lady.’ And whether the shoe fits or not, the stigma of that offensive characterization has stung her deeply,” Horkins said.

“Part of the tragic irony of this case is that Ms. Way loved these cats and yet her neglect led to the need to euthanize all but one of the over 100 animals seized by the authorities. This has not rested lightly on her shoulders.”

Elmaleh says it was appropriate that Horkins’ sentencing acknowledged the fact that Way’s case garnered a lot of media attention and the effect that may have had on her.

“In today’s day and age, it’s refreshing that it was taken into account; as you can appreciate, media attention can be devastating,” says Elmaleh. **LT**