

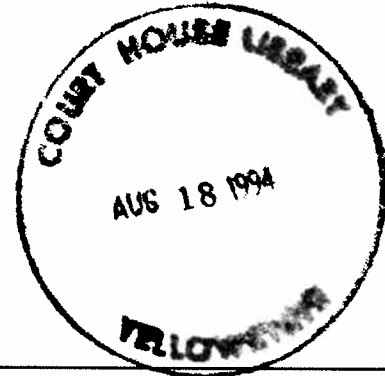
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

GEORGE BAIRD




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A count of causing bodily harm by criminal negligence by keeping dangerous dogs in such a manner that they were able to run at large contrary to s.221 of the Criminal Code dismissed.

Heard at Yellowknife on the 29th day of June 1994.

Judgment filed: July 6th 1994

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REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M.M. de WEERDT

Counsel for the Crown: Alan R. Regel, Esq.

Counsel for the Accused: Robert D. Gorin, Esq.

## IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUÉEN

- and -

GEORGE BAIRD

REASONS FOR JUDGMENT

1 George Baird is charged on indictment that he caused bodily harm to Amelia Debogorski on June 20th 1992 at Yellowknife, by criminal negligence contrary to s.221 of the **Criminal Code**. The charge alleges that, in particular, he did so by keeping dangerous dogs in such a manner that they were able to run at large.

2 At the conclusion of the trial on June 29th 1994 I reserved judgment until today so that I might more fully consider the evidence and the relevant law. Having done so, I find Mr. Baird not guilty of the charge in the indictment.

3 The circumstances revealed by the evidence call for a detailed examination, in so far as that is possible on the basis of the material before the Court. This material consists of the trial testimony of George Baird and three exhibits, that is to say two written statements of agreed facts (together with diagrams, photographs and copies of medical reports) and an item of hardware described as a "locking nut". The Court is able, in addition, to take judicial notice of applicable federal and territorial statutes, such as the

**Criminal Code and the Dog Act, R.S.N.W.T. 1988, c. D-7.** The Court is not, however, able to take notice of any applicable municipal by-law since none has been placed in evidence before it.

**I. Agreed Facts**

4 Amelia Deborgorski, almost 2½ years old on June 20th 1992, was attacked at about 11.00 a.m. that day by two dogs near her home at 617 Anson Drive, Yellowknife. The dogs were running at large.

5 The attack was a serious one, requiring the child to be immediately evacuated to Edmonton by air for extensive treatment. It was indeed fortunate that she was rescued from the dogs by a passer-by and that her mother was available to accompany her to the hospital. Amelia's injuries included deep lacerations of her face, head, neck, back and thighs, in addition to other wounds to her body and the shock to which these and the attack gave rise.

6 The dogs were registered as Canadian Eskimo Huskies belonging to George Baird and his then wife Elaine Baird, the registration having been made when they were sold to the Bairds by Bowspringer Kennels of Yellowknife. Mrs. Baird had bought the first dog as a Father's Day gift for her husband. The Bairds then bought the second dog as a companion for the first. It is agreed that the dogs were looked upon as family pets and that Alex. Baird, then about 16 years old, had primary charge of the dogs though all members of the family took turns to look after them.

The dogs were kept in the back yard of the Baird residence at No. 4 Igloo Village, a short distance from 617 Anson Drive. This back yard was stoutly fenced. In addition, the dogs would be kept chained for as much as a week at a time after they had leapt the fence, as they did on occasion, to run at large. This was known to Mr. Baird and the others in the family. City by-law officers visited the home on June 16th and 18th 1992, when Mr. Baird was there, to bring recent instances of this to his attention.

8 Mr. Baird was not at home on June 20th 1992, though Mrs. Baird was. They had been experiencing marital difficulties and he had gone to his cabin a short distance by air from Yellowknife. The dogs had remained at home with Mrs. Baird. Mrs. Baird took a chartered flight to the cabin at noon that day, when she was informed of the attack on Amelia Debogorski, so as to let Mr. Baird know. They separated permanently (and presumably she returned to Yellowknife) that day. Mr. Baird came home the following day.

9 According to Mr. Baird, the dogs were very shy and would not approach just anybody; so much so that Alex. Baird was the only member of the family to whom they would respond when called. Mr. Baird's testimony on this point is somewhat supported by the supplementary statement of agreed facts. Friends of the Bairds named Tymchatyn described the dogs as timid to the point that they would back away from the Tymchatyn's 5-year-old daughter. However, the Tymchatyn children had never been left alone with the dogs. According to Mr. Tymchatyn, who associated with Mr. Baird quite frequently, he had never observed the dogs to act aggressively or to snap at any creature, human or otherwise.

Nevertheless, there had been an incident when the dogs snapped at a small puppy in 1991, which Mr. Baird had held in his hand to show them, resulting in a cut or bite to his thumb (of which he took little notice). Later on, when the puppy had grown, the dogs gave it no trouble. There had also been an incident when a close neighbour put his 7-year-old son over the fence into the Baird's back yard to retrieve a piece of wood. The dogs had attacked the boy, inflicting a gash to his temple which required medical attention to staunch the bleeding. The Bairds were made aware of this incident. The neighbour later took steps to insert boards along the fence between his back yard and that of the Bairds, since the dogs would escape over that part of the fence when the snow was piled sufficiently high. However, the neighbour's 12-year-old daughter had on various occasions caught the dogs and returned them to the Baird's yard herself without anything untoward occurring.

1 Another incident, during March 1992, in which a chihuahua dog chained up in a neighbour's front yard had been attacked by dogs running at large, was also brought to the Bairds' attention. But, in this instance, it is not clear if the Bairds' dogs were among the attackers, although this is possible. There were other dogs also known to be running at large in the neighbourhood from time to time.

12 According to Mr. Baird, the dogs were kept chained in the back yard whenever he was at home. He had left home on June 19th 1992 to go to his cabin (without telling anyone, however) apparently due to his differences at the time with Mrs. Baird. The only indication of the situation then regarding the steps taken to control the dogs, apart from the established fact that they were running at large when they attacked

Amelia Debogorski, is the observation made by Mr. Tymchatyn some ten days later that one of the dogs had somehow obtained release from its chain when the locking nut connected to its collar had been opened, and the other had somehow got away leaving its opened collar attached to its chain. Mr. Tymchatyn made these observations in the Baird's back yard at Mr. Baird's invitation in the week of June 29th 1992.

13 The dogs were caught on June 20th 1992, after the attack, and were kept in quarantine to check for disease. Fortunately, they were found to be free of disease. Nonetheless, Mr. Baird then authorised them to be destroyed; and this was done.

14 Counsel agree that the Canadian Eskimo Husky is a breed known for its high energy and its instinct for pulling but is not well-suited as an attack dog. They also agree that it tends to be aggressive towards other dogs but not necessarily towards humans. And that this aggressive tendency is most noticeable on their own territory. The Bairds' dogs were not aggressive towards other family pets, even within their own territory.

## II. Facts Not In Evidence

15 There is nothing in evidence to indicate whether any investigation was made by the police or by the City of Yellowknife's by-law officers to establish the facts regarding how the Bairds' dogs came to be at large on June 20th 1992. I infer, accordingly, that no such investigation took place. The only evidence which has any bearing on the question is that comprising the observations of Mr. Tymchatyn over a week later, when Mr. Baird invited him to examine the dogs' chains and collar in the Bairds' back yard. Had an investigation been made of the situation on June 20th 1992,

while Mr. Baird was still at his cabin, the possibility that he had fabricated the scene observed by Mr. Tymchatyn would have been eliminated. And Crown counsel did not see fit to cross-examine Mr. Baird as to why he took so long to show the backyard scene to Mr. Tymchatyn; nor did Crown counsel otherwise challenge the authenticity of the scene or the cogency of the inferences which can be drawn from it, to the effect that someone other than Mr. Baird may have released the dogs.

16           The actual locking nuts used for chaining the dogs by their collars were not placed in evidence. Mr. Baird testified that the locking nut in evidence is similar to those actually used. My examination of the exhibited locking nut shows that it is capable of being locked so tightly that it is very unlikely to have been opened other than by human hands, and strong hands at that.

17           There is nothing in evidence as to the licensing of the dogs by the City of Yellowknife or as to any record of instances of breach of any City by-law with reference to the dogs, other than as mentioned above under the heading of Agreed Facts.

18           No by-law of the City of Yellowknife has been placed in evidence.

### III. Legislation

19           The offence with which Mr. Baird is charged in the indictment is created by s.221 of the **Criminal Code**. That section states:

221. Every one who by criminal negligence causes bodily harm to another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Criminal negligence, as the words imply, is to be distinguished from non-criminal (or "civil") negligence. The **Criminal Code** defines criminal negligence as follows:

219. (1) Every one is criminally negligent who

- (a) in doing anything, or
- (b) in omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

(2) For the purposes of this section, "duty" means a duty imposed by law.

21 No reference was made during the trial to the **Dog Act**. In particular, no attempt was made to show that Yellowknife, or at any rate that part of it where the attack on Amelia Debogorski took place, was on June 20th 1992 within an area to which s.5 of that Act then applied. This section reads as follows:

5. (1) The Commissioner may define an area within which a dog is not permitted to run at large.

(2) No owner shall permit a dog to run at large

- (a) within any area that is defined by the Commissioner under subsection (1); or
- (b) contrary to a municipal by-law.

22 There is nothing before the Court to suggest that any provision of the **Dog Act** was invoked following the attack on Amelia Debogorski, in spite of the specific provisions in the Act with reference to attacks by dogs on human beings. And, as already mentioned, there is no by-law of the City of Yellowknife before the Court from which the Court might better comprehend the nature of a dog owner's duties at the time and place of the offence charged. The mere fact that by-law officers visited the Baird residence to



inform Mr. Baird that his dogs had been seen running at large and that the officers then issued him a ticket in respect of one such instance (but tore it up on hearing his side of the matter) is of no assistance to the Court in determining the specific nature of those duties.

#### IV. Discussion

##### 1. General Principles

23

Since the Court is sitting without a jury, I must of course instruct myself, or at least keep in mind, the principles of law which apply in every criminal trial in Canada. Of these, the most fundamental principle is the presumption of innocence. It requires that every person who is charged with a criminal offence is to be presumed by the Court to be innocent of that offence unless and until the Crown proves the guilt of the accused beyond a reasonable doubt. The accused person can only be found guilty by the Court if, after considering all the evidence, the Court is satisfied that the Crown has proved its case, on the charge in the indictment, beyond a reasonable doubt. And by this I mean that the Crown has proved each element of the offence charged beyond a reasonable doubt.

24

This requirement is sometimes emphasized by saying that the accused person does not have to prove anything. The burden of proving the guilt of the accused person rests upon the Crown throughout the trial and never shifts. The Court must find the accused person not guilty if, after it has considered all of the evidence, it has a reasonable doubt as to the accused person's guilt.

Proof beyond a reasonable doubt is perhaps best understood in the sense of a conviction or moral certainty of the guilt of the accused person, on the basis of the evidence before the Court. A reasonable doubt may arise from the evidence, a conflict in the evidence, or a lack of evidence. It is a doubt based on reason and common sense, having regard to the evidence before the Court. If, on reviewing the evidence, it appears that the accused person is only probably guilty, or merely likely guilty, so that there is still a reasonable doubt as to guilt, the benefit of the doubt must be given to the accused person and the Court must then return a verdict of "not guilty".

## 2. The Evidence

26 Bearing in mind that two years have been allowed to elapse between the date of the events giving rise to the charge in the indictment and the trial, and the difficulties faced by the Crown in view of the apparent absence of a thorough investigation of the alleged offence, it is not difficult to understand why so much of the evidence before the Court consists of statements of agreed facts. As already mentioned, there is also the exhibited locking nut and the testimony of the accused person, namely George Baird. Nothing has emerged in the trial to cast doubt upon Mr. Baird's credibility. I accept his testimony as being truthful and as accurate as memory will allow. And, as mentioned earlier, I note that Crown counsel did not challenge the circumstantial evidence of the scene in the Bairds' back yard as shown to Mr. Tymchatyn in the week of June 29th 1992.

27 It is Mr. Baird's evidence that the dogs were kept chained when he was at home; and that he was often away from home during the period up to June 20th 1992.

There is no evidence to the contrary other than circumstantial evidence of the dogs escaping and running at large. Nothing emerges from the evidence to indicate that the dogs were allowed to escape and run at large when Mr. Baird was at home. The inference is open that this occurred only when he was absent from home. And the scene described by Mr. Tymchatyn is consistent with this occurring as the result of human intervention, presumably by another member of the family, without Mr. Baird's knowledge or permission.

28            Much was made, during the cross-examination of Mr. Baird, of the dangerous nature of the dogs. The dogs had shown themselves to be dangerous to the neighbour's seven-year-old son when the neighbour set him down in the Baird's back yard to retrieve a piece of wood. This was a clear invasion of the dogs' territory. They had, on the other hand, allowed the neighbour's twelve-year-old daughter to return them to their yard after they had escaped, without any untoward incident, showing them not to be in any way dangerous to her outside of their yard. The incident with the puppy is likewise unclear as to any inherent danger, given their apparent acceptance of that animal once it was grown.

### 3. Criminal Negligence

29            The Crown has established beyond a reasonable doubt that the dogs were registered jointly in the names of Mr. and Mrs. Baird by Bowspringer Kennels. There is no other evidence of ownership of the dogs apart from the agreed fact that Mrs. Baird bought the first dog as a Father's Day gift for Mr. Baird and that they acquired the second dog as a companion to the first. The dogs were kept in their back yard as family pets.

At the time of the alleged offence the evidence shows that the dogs were kept there (except when they escaped to run at large) by both Mr. and Mrs. Baird. The fact that Mr. Baird was at his cabin on June 20th 1992 did not change the situation.

30 That the dogs proved to be highly dangerous to Amelia Debogorski is self-evident, given the agreed facts. They caused her serious bodily harm. But the only evidence pointing to any forewarning of that danger, before the attack on June 20th 1992, is limited to the incident when the neighbour's boy was attacked by the dogs in 1991 in the Bairds' back yard. That incident was made known to Mr. and Mrs. Baird by the neighbour. Yet, given the remaining evidence as to the general timidity of the dogs and their generally submissive behaviour (the puppy incident is not in my view indicative of anything to the contrary), that incident with the boy can reasonably be treated as no more than territorial defensiveness on the part of the dogs and not inconsistent with their otherwise apparently peaceable nature. Evidently that is how the matter was viewed not only by the Bairds but also by their neighbour.

31 There is therefore a reasonable doubt that the danger to Amelia Debogorski was actually known to and recognized by Mr. Baird before she was attacked on June 20th 1992. That is not, however, the test to be applied today. The test is not simply whether the accused actually knew or foresaw the danger but whether a reasonable person in the accused's situation as joint owner and keeper of the dogs would have known or foreseen the danger.

32 The **Criminal Code**, as mentioned earlier, speaks of a "wanton and reckless disregard for the lives or safety of other persons". Those words, as I understand them,

mean that an accused person need be shown only to have clearly departed from the standard of the reasonable person just referred to if the requirements of proof of criminal negligence are to be met. This is a more lenient burden on the Crown than that of proof of actual knowledge or foresight of the danger.

33

Would a reasonable person keeping these dogs, as Mr. Baird did, have known or foreseen the danger which the dogs, as events proved, in fact presented to Amelia Debogorski? On the whole of the evidence, including the evidence of their previous repeated escapes to run at large, but without injury to anyone, I have a reasonable doubt on that point. Mr. Baird has not been shown to have acted with a wanton disregard for the lives or safety of other persons, including Amelia Debogorski, as declared in s.219 of the **Criminal Code**. Dogs running at large may well have been a public nuisance to be restrained under a municipal by-law; but that is by no means the same thing as dogs running at large who present a recognized danger to the life or safety of other persons, including small children.

34

Negligence of a non-criminal or "civil" kind there may have been. I offer no comment on that, since such negligence is not in law sufficient of itself to ground a conviction for criminal negligence. Civil negligence may give rise to an award of damages and is subject to a less stringent standard of proof. Criminal negligence having penal consequences is subject to the criminal standard of proof beyond a reasonable doubt.

#### V. Disposition

The verdict of the Court is therefore that George Baird is not guilty of the

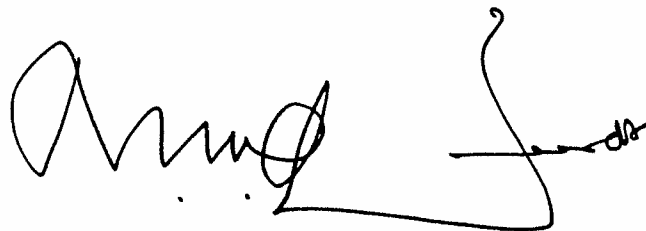
charge of criminal negligence in the indictment. He is acquitted and discharged.

36

The exhibited locking nut shall be returned to Mr. Baird following the expiry of the appeal period, unless the Crown brings an appeal within that period.

37

These proceedings are thus concluded.

A handwritten signature in black ink, appearing to read 'M.M. de Weerd', with a stylized flourish at the end.

M.M. de Weerd  
J.S.C.

Yellowknife, Northwest Territories  
July 6th 1994

Counsel for the Crown: Alan R. Regel, Esq.

Counsel for the Accused: Robert D. Gorin, Esq.

CR 02204

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IN THE SUPREME COURT OF THE  
NORTHWEST TERRITORIES

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BETWEEN:

HER MAJESTY THE QUEEN

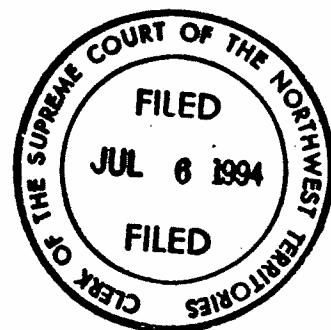
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REASONS FOR JUDGMENT OF THE  
HONOURABLE MR. JUSTICE M.M. de WEERDT

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IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

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MEMORANDUM

1           Before delivering judgment in this matter today there are some things which  
I wish to place on record which do not, however, comprise part of the judgment.

2           First of all, as a judge, there are limits to the extent to which I am at liberty  
to rely on my own personal experience, or on knowledge which has come to me other  
than through the evidence before the Court or from sources of which the law allows me  
to take judicial notice.

3           For example, as I shall mention in my reasons for judgment, I am entitled to  
take notice of statutes such as the **Criminal Code** of Canada and the **Dog Act** of the  
Northwest Territories; but I am not entitled to take notice of municipal by-laws unless  
these have been properly introduced in evidence before the Court, whether by agreement  
of the parties or otherwise.

)           It is of course a notorious fact that many people in the Northwest Territories



own and keep dogs of many kinds, not only working dogs for transport or hunting purposes, not only watch dogs or show dogs, but also pets and companions, and even guard dogs no doubt. The enactment of the Dog Act by the legislature is plainly intended to ensure that proper control over dogs is exercised by their owners and keepers.

5 From time to time during the third of a century since I first came to live in the Northwest Territories in the late 1950s there have been reported incidents of dogs attacking people, including small children. I recall attending an inquest, in or about 1959 at Fort Smith, into the death of a woman who had been attacked by dogs. And I recall being consulted, when I was a lawyer practising my profession here in those years, regarding litigation, on behalf of a child savaged by dogs, which the parents of the child wished to bring against the owner of the dogs. Moreover, I recall one of my own sons being attacked by a dog when he was about 3 or 4 years old, fortunately without serious consequences for him, although another child was seriously injured before the dog was caught and destroyed.

6 These instances of dog attacks in the past are all things that I have had to put out of my mind in considering the present case before the Court. They were not in evidence and so neither the Crown nor the accused person has had any opportunity to question or challenge them. Nor did counsel have any occasion to deal with them in their submissions.

7 During the 1960s I recall a dog at Fort Smith being condemned to be destroyed because it had attacked a child, although the child may well have provoked the

dog according to what we were told. There was even an appeal to this Court, in that case, against the order of a justice of the peace directing the dog to be destroyed. And although the appeal was then allowed by Mr. Justice Sissons, the dog was ultimately destroyed at the direction of its owner since he was not able to look after it properly.

8           As the present case and other cases where children have been injured by dogs clearly illustrate, dogs have to be restrained from running at large in cities, towns and even small settlements. Because, sooner or later, and especially as the weather gets warmer in the course of the year, dogs running at large get into packs in which they then tend to behave more aggressively than when they are alone or in the presence of their keepers.

          That is no doubt one of the main reasons, quite apart from ordinary environmental or sanitation concerns, why in most municipalities across Canada there are municipal by-laws (as well as statutes of the provincial or territorial legislature) providing for the licensing, restraint, apprehension and other control over dogs within areas of permanent human habitation.

10           It is not for the Court to comment in this instance upon the by-laws of the City of Yellowknife, more particularly any by-law governing dogs, especially since no such by-law has been introduced in evidence in the case now before the Court. Nor is it appropriate, given the limited nature of the evidence in this case, for the Court to offer any detailed comment upon the manner in which any such by-law may have been administered in June 1992, when the events giving rise to this prosecution took place.

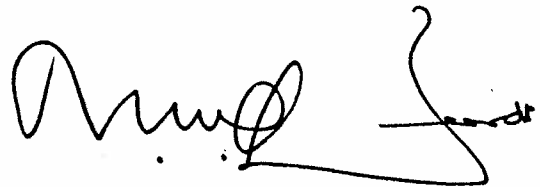
The Court, in cases of this kind, is not to act as a commission of inquiry into such matters. And so I am obliged to refrain from any inquiry of my own with reference to the existence or effectiveness of any such by-laws or their administration by the local authorities.

11

It will be for the appropriate public authorities having responsibility for police and by-law enforcement to consider these matters with a view to more effectively preventing situations such as gave rise to the case now before the Court and, it is to be hoped, more effectively investigating them for court purposes if a prosecution is to be initiated. These are matters which are beyond the scope of the judgment of this Court in the matter now before it.

12

I direct the Clerk of the Court to send a copy of this memorandum together with a copy of my reasons for judgment in this case to the Commanding Officer, "G" Division, Royal Canadian Mounted Police, and to The Mayor of Yellowknife, for their information.

A handwritten signature in black ink, appearing to read 'M.M. de Weerd', with a stylized flourish at the end.

M.M. de Weerd  
J.S.C.

Yellowknife, Northwest Territories

CR 02204

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