

R. v. Krajnc, 2017 ONCJ 281 (CanLII)

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**ONTARIO COURT OF JUSTICE**

CITATION: *R. v. Krajnc*, 2017 ONCJ 281  
DATE: 2017 05 04  
COURT FILE No.: Halton 15-2464

**B E T W E E N :**

**HER MAJESTY THE QUEEN**

**— AND —**

**Anita KRAJNC**

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Before Justice D.A. Harris

Heard On August 24, 2016, August 25, 2016, October 3, 2016, November 1, 2016,  
November 10, 2016 and March 9, 2017

Reasons for Judgment released on May 4, 2017

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**Harutyun Apel ..... counsel for  
the Crown**

**Gary Grill & James Silver..... counsel for the defendant Anita  
Krajnc**

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**D.A. HARRIS J.:**

**INTRODUCTION**

[1] It was June 22, 2015. A tractor trailer carrying 190 pigs drove south on Appleby Line in Burlington. It stopped in the left turn lane for a red traffic light at

Harvester Road. It was approximately 100 metres away from its destination, the slaughterhouse located on the south side of Harvester Road.

[2] A number of animal rights protesters gathered on the traffic island beside the truck. At least one of them spoke to the pigs, reached in to pet some of them and gave some of them water to drink.

[3] Up until this point, this was a fairly routine event at that intersection.

[4] That changed when the truck driver got out of the truck and approached the protester. He questioned what she was doing. She replied that she was giving water to the pigs, that they were thirsty. He told her to stop. He called her a rude name. She continued to give water to the pigs until he got back into the truck and drove off to the slaughterhouse.

[5] The above events were video-recorded by the protesters.

[6] The truck driver made a telephone call to his employer. Somebody then called the police. The protester, Anita Krajnc was charged with mischief to property.

[7] Following that, she made a number of court appearances before the matter was scheduled for trial.

[8] Crown counsel elected to proceed summarily.<sup>[1]</sup> Ms. Krajnc pled not guilty and the trial took place with evidence heard over five days.

[9] The Crown called two witnesses, being the truck driver and the owner of the farm that shipped the pigs to the slaughterhouse.

[10] Ms. Krajnc testified in her own defence. Her counsel also called the following four expert witnesses to give opinion evidence:

1. Dr. Armaiti May – a veterinarian;
2. Dr. Lori Marino – a cognitive behaviourist testified as to the sentience of pigs;
3. Dr. David Jenkins – a nutritional scientist testified as to the nutritional health impact on humans from the consumption of red meat and on the relationship between that and certain chronic diseases; and
4. Dr. Anthony Weis – an environmental scientist testified as to the environmental impact of factory farming.

[11] The courtroom was full of spectators on each of those five days and on the day when counsel made their submissions. Actually, the courtroom was more than full on each of those days. Every seat was taken. Many sat on the floor. There was no empty space left there. Members of the press chose to sit in what would normally be the prisoner's box. Permission was sought and granted for them to send live tweets of the proceedings. A last minute request to live-stream video of the submissions was dismissed.

[12] I wish to commend everyone in attendance for their patience and their politeness. They made a difficult situation work.

[13] I also can say that I was pleased to see the court system receiving some public attention. That is extremely rare. I note that on the day that final submissions were made, we almost had to turn people away. At the same time, there were no spectators and no media at all in the courtroom next door where a preliminary hearing was being held with respect to a charge of second degree murder.

[14] I wish to make it clear that we would be even more pleased if the media and members of the public showed the same level of interest in other cases of interest to the people of Halton.

[15] Having said that, I will now deal with the charge against Ms. Krajnc.

## **THE CHARGE**

[16] Anita Krajnc stands charged that on June 22, 2015, at Burlington, she did, without legal justification or excuse and without colour of right, commit mischief by obstructing, interrupting or interfering with the lawful use, enjoyment or operation of property, to wit VAN BOEKEL Hog Farms, contrary to [section 430\(1\)\(c\)](#) of the *Criminal Code*.

[17] The first issue is whether the Information actually charges Ms. Krajnc with what she is alleged to have done. Did she interfere with the operation, enjoyment or use of VAN BOEKEL Hog Farms or did she interfere with the operation, enjoyment or use of the pigs which were the property of VAN BOEKEL Hog Farms?

[18] Crown counsel argued that she did both in that by interfering with the operation, enjoyment or use of the pigs, she interfered with the operation, enjoyment or use of the entire business. Alternatively, if I rejected that position, Crown counsel asked that I amend the Information to allege interference with the operation, enjoyment or use of the pigs.

[19] I accept the Crown's argument that interfering with the use of the pigs would constitute interference with the operation of the corporate business.

[20] Alternatively, I would have allowed the application to amend the Information pursuant to [section 601](#) of the *Criminal Code* to allege that Ms. Krajnc interfered with the lawful use of the pig or pigs.

[21] Everyone clearly understood the issues in this case.

[22] The Crown alleged that Ms. Krajnc gave an unknown liquid to one or more pigs that were the property of Van Boekel Hog Farms. That created the foreseeable risk that the slaughterhouse would refuse to accept those pigs (and possibly all of the other pigs contained on that truck).

[23] Counsel for Ms. Krajnc cross-examined the Crown witnesses in a fashion that clearly addressed those issues. The defence then led evidence that also addressed

those issues. Ms. Krajnc would not be prejudiced by the proposed amendment. Her counsel quite properly conceded that she would not be prejudiced.

[24] In any event, nothing really turns on which wording is contained in the Information because I am not satisfied beyond a reasonable doubt that Ms. Krajnc interfered with the lawful use, enjoyment or operation of either property or that she did so wilfully.

[25] My reasons for this are set out below. I have also addressed a number of other issues that were raised in this case. I have done so for two reasons. The first one is based on the possibility that a reviewing court might disagree with my decision on the one issue. The second one is based on the possibility that these further issues might be raised again in future litigation.

## **THE RELEVANT PROVISIONS OF THE *CRIMINAL CODE***

[26] I will begin my analysis by setting out the relevant portions of the *Criminal Code*.

430. (1) Every one commits mischief who wilfully

(c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property;

428. In this Part, "property" means real or personal corporeal property.

429. (1) Every one who causes the occurrence of an event by doing an act or by omitting to do an act that it is his duty to do, knowing that the act or omission will probably cause the occurrence of the event and being reckless whether the event occurs or not, shall be deemed, for the purposes of this Part, wilfully to have caused the occurrence of the event.

(2) No person shall be convicted of an offence under sections 430 to 446 where he proves that he acted with legal justification or excuse and with colour of right.

[27] Crown counsel therefore must prove each and every one of the following issues and must prove them beyond a reasonable doubt:

1. Were the pigs property;
2. Were the pigs being used lawfully;
3. Did Ms. Krajnc obstruct, interrupt or interfere with the lawful use, enjoyment or operation of property;
4. Did she do so wilfully; and
5. Did she do so without legal justification or excuse and without colour of right?

## **WERE THE PIGS PROPERTY?**

[28] Counsel for Ms. Krajnc argued that the pigs were not property. They are in

fact persons.

[29] Dr. Lori Marino was allowed to testify as an expert in neuroscience and animal behaviour and to give opinion evidence regarding animal behaviour, self-awareness and intelligence in non-human animals, animal welfare, biopsychology of non-human animals and cognitive ethology.

[30] She testified that pigs:

1. like to roam and graze in a natural setting;
2. will form social groups, usually several females and their offspring;
3. have a very complex communication system;
4. have a number of different personality traits and interact with each other in very interesting and complex ways;
5. are similar to dogs in level of intelligence and in the emotional and psychological characteristics that they possess;
6. empathize;
7. experience joy and happiness;
8. are sentient – capable of feeling good or bad depending on circumstances;
9. suffer both physically and psychologically in a factory farm setting.

[31] She further expressed the opinion that pigs are persons. She based that conclusion on the following:

Well, what it means to be a person is not equivalent to being human. Person, even under the law is someone who is autonomous, has the capacity to be self-aware and has the ability to understand that they have a life that they are going to be leading, is a future. The common law says that practical autonomy is, is equivalent to personhood.

[32] I did not accept this conclusion.

[33] First of all, Dr. Marino was not qualified to express an opinion as to who or what, in law, constitutes a “person” or “property”.

[34] Secondly, she did not say which law or common law she was relying upon. I am unaware of any such law or common law to that effect in Canada. Counsel for Ms. Krajnc did not refer to any such law or common law in their submissions.

[35] In fact, by law in Canada, pigs are not persons and they are property.

[36] Ms. Krajnc and like-minded individuals may believe otherwise and they are fully entitled to that belief. That does not however make it so.

[37] In passing, I note that dogs and cats and other pets are property too, and not persons.

[38] Finally, before leaving this area, I will also note that Dr. Marino was also not qualified to give opinion evidence that the treatment of pigs in “factory farms” constitutes torture.

## **WAS THE USE OF THE PROPERTY LAWFUL?**

[39] Counsel for Ms. Krajnc also argued that the use of the property on that day was not lawful. More particularly he suggested that the pigs were not being transported in compliance with the governing regulations.

[40] Again, I disagree.

[41] Dr. May was allowed to testify as an expert in veterinary medicine and animal welfare and to give opinion evidence regarding pig physiology and responses to stimuli and environmental conditions.

[42] She testified that, in her opinion, the pigs were “distressed, overheated, very thirsty and in immediate need of hydration”. They were at risk of heat stroke.

[43] She did not however, say that the level of distress constituted a breach of the regulations which govern here. Quite frankly, she would not have been allowed to give such evidence as it would have been outside of her area of expertise.

[44] Further, there are a number of problems with the evidence that she did give.

[45] Firstly, even before Crown counsel argued that Dr. May was not impartial in her testimony, I had reached the same conclusion. Dr. May was clearly opposed to the transportation and slaughter of any animals for food purposes and this clearly coloured her testimony.

[46] Secondly, she based her opinions on what she saw in the short video which had been produced by Ms. Krajnc and her supporters. This showed only a few of the 190 pigs that were on the truck.

[47] Finally, I found her analysis to be less than scientific and of little if any assistance to the court. I did not need her evidence in order to see that the pigs were upset / stressed, and that they eagerly accepted the water that was offered to them.

[48] I heard evidence that pigs drink a great deal of water every day, averaging five gallons daily per 100 pound pig. The pigs on the truck weighed on average between 250 and 260 pounds. Accordingly, on an average day, each one would drink between 12.5 and 13 gallons of water each. So if someone offers water to the pig, it will take it and do so eagerly.

[49] What would have been of assistance to me was an objective assessment of the degree of any distress and application of that to the governing regulations. That was not provided.

[50] This last comment can also be applied to the evidence of Dr. Marino in this

area.

[51] She too watched the same video and noted pigs in the truck were panting and frothing at the mouth which could be signs of inability to regulate temperature and that the pigs were probably over-heated and dehydrated. Further, from body language and squeals it looked to her like they were also obviously in psychological distress.

[52] With regard to whether the treatment of the pigs complied with the applicable regulations and was therefore lawful, I had the evidence of the farmer and the driver that they were well aware of the governing regulations, which take into account temperature, humidity, size of pigs and length of time in transit, and that they complied fully with these regulations.

[53] Further, it is clear that the industry is highly regulated and that it is being subjected to a high degree of public scrutiny by Ms. Krajnc and her supporters. I realize that Ms. Krajnc does not agree that the regulations are adequate. However the evidence presented on her behalf did not leave me with a reasonable doubt as to the fact that the pigs were being transported in compliance with those regulations here.

[54] Finally, I note that despite the dire forecasts of Dr. May and Dr. Marino as to the health of the pigs, not one failed to make it off the truck. Not one was rejected by the slaughterhouse as being in an unsatisfactory condition.

[55] I am satisfied that any use of the property in this case was lawful.

[56] Before moving on to the next topic, I note that counsel for Ms. Krajnc argued that once I had ruled that Dr. May was an expert qualified to give opinion evidence, I was precluded from subsequently discounting her opinion on the basis that she was not impartial. I reject that argument. I allowed her to express her opinions in order to assist me in making my decision. The final decision was still mine to make. Further, it was open to me to weigh every aspect of her evidence and to decide what weight, if any, to give it. Finally, in that regard, I will state that had I known then, what I know now, I would not have ruled the same way with respect to Dr. May being qualified to be an expert witness.

## **DID MS. KRAJNC OBSTRUCT, INTERRUPT OR INTERFERE WITH THE LAWFUL USE, ENJOYMENT OR OPERATION OF THE PROPERTY?**

[57] My simple answer to this question is, “No. She did not”.

[58] The theory of the Crown is that Ms. Krajnc gave “an unknown substance / possible contaminant” to the pigs thereby creating a risk that the slaughterhouse would refuse to take them.

[59] That theory breaks down when one looks at the evidence.

[60] First of all, there was no evidence that Ms. Krajnc gave the pigs an unknown substance let alone a contaminant. There was evidence (from Ms. Krajnc) that she

gave them water.

[61] The truck driver testified that he did not know what she had given to the pigs. It might have been a contaminant.

[62] That statement is not borne out by the facts.

[63] He declined the offer from Ms. Krajnc to take the bottle of water and have it tested.

[64] He did not turn around and drive the truckload of “contaminated” pigs back to the farm. He drove them straight to the slaughterhouse. Once there, he did not tell anyone that the pigs might have been contaminated. I am satisfied that the driver did not do this in order to sneak a load of contaminated pigs into the slaughterhouse. He did this because he believed that Ms. Krajnc had given them water, just like she and other protesters had done before.

[65] There is also no evidence that the slaughterhouse did anything to determine whether the pigs had been contaminated. I do not know if they were even aware of the possibility but in any event, there was nothing done that would indicate that the pigs received anything other than water.

[66] Based on the evidence that was presented to me, I am satisfied that Ms. Krajnc gave water to the pigs.

[67] I am also satisfied that her doing so did not obstruct, interrupt or interfere with the lawful use, enjoyment or operation of any property.

[68] Ms. Krajnc did not cause the truck to stop. The driver chose to stop in compliance with the red traffic light facing him. Ms. Krajnc and her compatriots took advantage of that situation but they did not cause it.

[69] She did not cause the truck to remain there. That again was the decision of the driver who testified that he had stopped and got out of his truck before but that he usually did not do this. He did not suggest that Ms. Krajnc or the others prevented him in any way from driving on when the light changed to green.

[70] The slaughterhouse did not refuse to accept the truckload of pigs. As far as I know, every pig on that truck went on to be slaughtered and processed and passed on to consumers in the usual fashion.

[71] Crown counsel argued that Ms. Krajnc created a risk that the slaughterhouse would refuse the load on the basis that they might be contaminated. The farmer and the truck driver both testified that this possibility caused them very real concern.

[72] Again I find that this is completely contradicted by the evidence.

[73] Protesters had given water to pigs before. The driver was aware of this. The slaughterhouse was aware of this. Despite this, the slaughterhouse had **never** refused to accept a load of pigs for that reason.

[74] As I stated above they did not reject that particular load on that particular day.



[75] Further, protesters continued to give water to pigs in the same fashion after Ms. Krajnc was charged. Up until the time that I heard evidence about this, the slaughterhouse still had **never** refused to accept a load of pigs for this reason.

[76] Accordingly, I find that the Crown has failed to prove that Ms. Krajnc obstructed, interrupted or interfered with the lawful use, enjoyment or operation of the property.

### **DID SHE DO SO WILFULLY?**

[77] There was no evidence that Ms. Krajnc intended to cause the slaughterhouse to refuse to accept that load of pigs.

[78] In light of my comments in paragraphs 73 through 75, there was no reason for her to think that giving water to a pig might have that effect.

[79] Accordingly, I find that the Crown has also failed to prove willfulness.

[80] Having found that the Crown has failed to prove two essential elements of the offence, I could stop here. I will however address the final issue, just in case an appeal court should find that I was wrong.

### **DID SHE DO SO WITHOUT LEGAL JUSTIFICATION OR EXCUSE AND WITHOUT COLOUR OF RIGHT?**

[81] Counsel for Ms. Krajnc argued that she acted with legal justification or colour of right in this case. He did not argue that she acted with legal excuse.

[82] In fact, he cited the following passage from *R. v. Perka*, which specifically distinguished justifications from excuses:

Criminal theory recognizes a distinction between "justifications" and "excuses". A "justification" challenges the wrongfulness of an action which technically constitutes a crime. The police officer who shoots the hostage-taker, the innocent object of an assault who uses force to defend himself against his assailant, the Good Samaritan who commandeers a car and breaks the speed laws to rush an accident victim to the hospital, these are all actors whose actions we consider rightful, not wrongful. For such actions people are often praised, as motivated by some great or noble object. The concept of punishment often seems incompatible with the social approval bestowed on the doer.<sup>[2]</sup>

[83] I will point out here that *R. v. Perka* then went on to deal primarily with the issue of whether the defence of necessity provided a legal excuse in certain circumstances. The issue of legal justification was not really addressed, other than in the above paragraph which was quoted by counsel for Ms. Krajnc.

[84] However, the following passage should be also noted in order to put the earlier comments into some perspective:

With regard to this conceptualization of a residual defence of necessity, I retain the scepticism I expressed in *Morgentaler*, supra, at p. 678. It is still my opinion that, "[n]o system of positive law can recognize any principle which would entitle a person to violate the law because on his view the law conflicted with some higher social value".

**The *Criminal Code* has specified a number of identifiable situations in which an actor is justified in committing what would otherwise be a criminal offence. To go beyond that and hold that ostensibly illegal acts can be validated on the basis of their expediency, would import an undue subjectivity into the criminal law. It would invite the courts to second-guess the legislature and to assess the relative merits of social policies underlying criminal prohibitions. Neither is a role which fits well with the judicial function.** Such a doctrine could well become the last resort of scoundrels and in the words of Edmund Davies L.J. in *Southwark London Borough Council v. Williams*, [1971] Ch. 734, it could "very easily become simply a mask for anarchy".<sup>[3]</sup> [Emphasis added]

[85] This latter passage should also be considered when looking to the passages from *R. v. Sharpe*<sup>[4]</sup> which counsel for Ms. Krajnc quoted.

[86] I note that *R. v. Sharpe* involved a constitutional challenge to the validity of the child pornography laws. There was no constitutional challenge here to the validity of the mischief section.

[87] Further, the decision in *R. v. Sharpe* led Parliament to amend the *Criminal Code* to include a defence of public good with respect to child pornography cases.

[88] There is however no such defence contained in the *Code* with respect to the offence of mischief to property. The only reasonable inference that I can draw from this is that Parliament did not want that defence to apply to charges of mischief.

[89] Further, as directed by the Supreme Court of Canada in *R. v. Perka*, supra, I am loathe to second-guess Parliament's decision.

[90] I am prepared however to examine the claim of Ms. Krajnc that she was justified in doing what she did. In doing that, I must first determine what it was that Ms. Krajnc was trying to accomplish?

[91] Ms. Krajnc testified that she is an animal rights activist. She is a full-time organizer for Toronto Pig Save and the Save movement.

[92] They have a three-fold mission to:

1. promote a non-violent vegan world where everyone goes vegan;
2. promote activism so that everyone will be an activist; and
3. promote a cultural shift so that everyone sees bearing witness as a duty.

[93] They attempt to accomplish these missions by raising awareness of the benefits of a vegan diet and the dangers of consuming meat – specifically meat from pigs.

[94] They attempt to make people aware of the factory farming processes and of the slaughter house mechanisms for killing animals. Ms. Krajnc believes that “if slaughter houses had glass walls everyone would be vegetarian,” but she amended this quote from Sir Paul McCartney to say that everyone would be vegan and an animal activist.

[95] The action of holding vigils at the intersection in Burlington is intended to give some transparency to the opaque walls of slaughterhouses. People driving by see the protesters and their placards and banners. Sometimes the protesters speak to the pigs and pet them. They record all of this and post the videos on social media so that even more people will see the animals on their way to the slaughterhouse and perhaps some of those people will be motivated to also become activists and bear witness.

[96] Ms. Krajnc believes that “bearing witness” requires her to come as close as possible to the suffering of the animals being delivered to slaughter and to help them if she can. She testified that she gives recognition to the senseless suffering of these sentient beings. She tries to “put faces on the nameless numbers.”

[97] She also wants society to be aware of the sentience of pigs.

[98] Society should also know how the factory farming of pigs is contributing to the destruction of our planet;

[99] On a more immediate level, Ms. Krajnc believes that by providing water when the pigs are thirsty she hopes to provide some relief, even if it is only incremental, and only for a moment.

[100] Up until a certain point, there is nothing terribly controversial about her beliefs.

[101] I have already summarized the evidence of Dr. Marino with respect to the sentience of pigs. I will not repeat this here.

[102] Professor Tony Weis was allowed to testify as an expert in geography and environmental studies and to provide opinion evidence on the historical transformations of agriculture, the environmental impacts of industrial livestock production and the social impact of the globalization of livestock production.

[103] He opined on the negative environmental impact of factory farming.

[104] He cautioned that factory farming is a most inefficient means of providing nourishment for the world’s population. It requires more land, requires the use of more grain, more water and more natural resources to feed animals to feed people rather than just feeding those natural resources directly to the people.

[105] He warned that as the population of the Earth grows, using factory farms to create animal meat for human consumption will result in humanity’s inability to feed

itself.

[106] He further discussed the concerns about how factory farming is a prime cause of greenhouse gas emissions and global warming.

[107] He concluded that the maintenance of an animal-based diet for human consumption is not a sustainable model of sustenance for the human population of this planet.

[108] Dr. David Jenkins testified as an expert on human nutrition and gave his opinion regarding the nutritional health impact on humans from the consumption of various foods, and on the scientific relationship between chronic diseases, specifically heart disease and cancer and the consumption of various foods.

[109] He stated that people should eat less meat and eat more fruit, vegetables, whole grain cereals, legumes, nuts and seeds. He said that eating meat, and processed meat in particular, contributes to cancer, heart disease and diabetes.

[110] For the most part, the positions taken by Ms. Krajnc are in line with those of the experts.

[111] There are however occasions where Ms. Krajnc takes things much further.

[112] For example, she advocated eliminating the consumption of meat altogether while Dr. Jenkins said that it should be reduced.

[113] She compared eating meat to smoking cigarettes. Dr. Jenkins said “we’re not saying that it’s the same as smoking but we are saying that there is a reason that meat consumption should be reduced”. He pointed out that smoking is responsible for 18% of cancers while meat is responsible for 3%.

[114] She stated the belief that giving bacon to a child is a form of child abuse. When asked about that, Dr. Jenkins replied, “Well, that’s a nice one. I’ve not heard of that but I would leave all of that to all of you to contemplate”.

[115] I am quite prepared to accept that Ms. Krajnc actually believes everything that she says, even when she goes beyond what the scientists support. I recognize however that it is possible that she is simply making statements that will grab the public attention as a controversial sound-bite, thereby allowing her to get her message out through the media that pick up those sound-bites.

[116] The same thing can be said about certain of the arguments that were advanced on behalf of Ms. Krajnc. In one of these, counsel cited the cases of Mahatma Gandhi, Nelson Mandela and Susan B. Anthony. More particularly, he stated the following:

Gandhi was convicted in India, English held India, for legally harvesting salt from the coastal city of Dandi to raise awareness of the suffering of its people. Millions of Indians living under British tyranny. That small action created a ripple effect and galvanized the Indian people that ultimately changed the course of history.

And Nelson Mandela was found guilty of committing sabotage against South Africa's

apartheid government. He was sentenced to life in prison for his crime. He gave up his liberty to raise awareness and to end one of the most infamous racist regimes in human history.

And on the heels of International Women's Day, Susan B. Anthony was convicted in 1872 for voting as a woman, opening up the door for women's suffrage rights.

[117] Why were these examples even mentioned. They can all be distinguished from the present case.

[118] Mr. Gandhi and Ms. Anthony both were protesting what they believed to be unjust laws and did so by breaking those particular laws. That is not the case here.

[119] The facts leading up to Mr. Mandela's conviction are far too complicated to go into here but they too are very different from the case before me.

[120] None of the three argued that they should be found not guilty because they were pursuing a just cause.

[121] Most importantly, each and every one of them was convicted.

[122] Counsel certainly does not want me to do the same thing. In fact, he agreed that he was asking me to ignore the results in those cases and "be on the right side".

[123] I fear that these three examples were in fact cited because, although they serve no purpose in my deciding this case, it will look good in the social media posts for Ms. Krajnc to be compared with the likes of Gandhi, Mandela and Susan B. Anthony.

[124] With respect to the email read by counsel comparing Ms. Krajnc' actions to those by people in Hungary who gave water to Jews who were being transported to concentration camps, I found the comparison to be offensive and I will be attaching no weight to it in my decision.

[125] I would not be surprised however if it received media coverage.

[126] Leaving that aside, I find that Ms. Krajnc was not justified in breaking any laws here.

[127] If her purpose was to save a pig's life, her actions failed to accomplish that.

[128] If her purpose was to provide temporary relief to a pig, I note that all of the pigs would have been given water a few minutes later in any event. They would then have been slaughtered in the usual fashion.

[129] If her purpose was to raise public awareness, she did not need to break the law to do so. She could have simply continued holding vigils and getting her message out to the general public in the usual ways.

[130] Further, her actions (the alleged offence) failed to increase public awareness until she was charged with this offence.

[131] That may be the most ironic aspect of this case. The fact that Ms. Krajnc gave water to a pig received limited attention initially. In contrast to that, Ms. Krajnc being charged and tried, with five days of evidence, one day of submissions, and one day for this judgment along with countless remand appearances have provided her and her movement with all of the publicity they could hope for.

[132] Conversely, the act of prosecuting Ms. Krajnc has probably led to enough bad publicity for the pork industry that it might be said that the prosecution actually accomplished what they accused Ms. Krajnc of trying to do.

[133] In any event, I note that Parliament has not enacted a statutory defence of public good with respect to the charge of mischief.

[134] With respect to the suggestion that I find a common law defence of public good, I repeat one more time the comments of the Supreme Court of Canada in *R. v. Perka, supra*, that:

The *Criminal Code* has specified a number of identifiable situations in which an actor is justified in committing what would otherwise be a criminal offence. To go beyond that and hold that ostensibly illegal acts can be validated on the basis of their expediency, would import an undue subjectivity into the criminal law.<sup>[5]</sup>

[135] I am not prepared to import such undue uncertainty into the law in this case.

[136] Further, by virtue of the laws that do exist in Canada, it is legal for farmers to raise pigs and transport them to slaughterhouses, so long as they do so in accordance with the regulations.

[137] Similarly, it is legal for those slaughterhouses to slaughter pigs and process them as meat.

[138] It is also legal for consumers to choose to buy the meat that comes from the pigs and eat it.

[139] Finally it is also legal for Ms. Krajnc and others to attempt to convince consumers not to do this. They may also attempt to convince governments to change the law. They must however do this within the confines of the law that currently exists.

[140] I find that, had Ms. Krajnc broken the law, she did not act with legal justification or colour of right.

[141] Accordingly, had I been satisfied that she had obstructed, interrupted or interfered with the lawful use, enjoyment or operation of property, I would have held that she was not legally justified in doing so.

## CONCLUSION

[142] I stated earlier that I was not satisfied that Ms. Krajnc had wilfully obstructed, interrupted or interfered with the lawful use, enjoyment or operation of property.

[143] Accordingly, the charge is dismissed.

**Released: May 4, 2017**

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Signed: Justice D.A. Harris

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[1] In light of this election, the maximum sentence which could have been imposed following a finding of guilt would have been imprisonment for six months.

[2] *R. v. Perka*, 1984 CanLII 23 (SCC), [1984] 2 S.C.R. 232 per Dickson J. as he then was, at para. 27.

[3] *Infra*, at para. 32.

[4] *R. v. Sharpe*, 2001 SCC 2 (CanLII) at paras. 70 to 71.

[5] *R.v. Perka*, *supra* at para. 27.

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