

IN THE PROVINCIAL COURT OF ALBERTA

CRIMINAL DIVISION

Between

HIS MAJESTY THE KING

and

BRAVO #1 AERIAL APPLICATION LTD.

AGREED STATEMENT OF FACTS

1. Bravo #1 Aerial Application Ltd. (hereinafter "Bravo") stands charged that:

Count 7: On or about August 30th, 2021, at or near Kinsella, in the Province of Alberta, did commence or continue any activity that is designated by the regulations as requiring a registration without holding the required registration, to wit: did offer or provide a pesticide service involving the use or application of a pesticide listed in Schedule 2 for hire or reward without being the holder of a valid pesticide service registration contrary to section 7(1)(a) of the *Pesticide (Ministerial) Regulation* and did thereby commit an offence contrary to sections 61 and 227(j) of the *Environmental Protection and Enhancement Act*.

Incident

2. On August 30, 2021, a farmer near Kinsella, AB, was working in the yard of her home. Bravo was aerially spraying a mixture of Roundup Transorb HC (PCP #28198) and Heat LQ (PCP #31468) (hereinafter referred to as the "Pesticide")

on her neighbour's field.

3. The farmer saw the Bravo plane make a pass over the neighbour's field. She felt a mist on her face, and her belief was that the Pesticide had drifted into her face and yard.
4. The farmer took photographs and video as the Bravo plane made 2 more passes over the neighbouring field. The farmer also texted her neighbour who advised her via text that he had hired the principal of Bravo (Mr. Larson) to spray his field with Roundup.
5. The farmer spoke to her husband a little bit later about the incident. He had been in the barn at the time. She went and helped some other neighbours later that day do some farm work.
6. The farmer woke up with a headache on September 1, but she worked normally.
7. On September 2, 2021, the farmer was supposed to take her horse to the veterinarian for an eye surgery. Before going, she phoned her doctor to make an appointment. Her doctor phoned her back later that morning. The doctor advised her to attend at the hospital immediately for a checkup. She did not. She told her doctor that she would go the next day after she dealt with her horse's surgery.
8. On September 3, 2021, the farmer attended the hospital after waking with a headache. She got some lab tests, and she was told that the results would come back in about a week.
9. On the morning of August 30, 2021, Mr. Larson, who operates Bravo, set out to complete a contract for spraying a property near Kinsella, AB. This property was next to the property of the farmer referenced above. He loaded a tank mixture of the Pesticide into his plane and checked the wind with his handheld Kestrel weather and wind speed meter.
10. At his property, near Irma, AB, the windspeed appeared to be approximately 9.6 km/h. However, checking the windspeed at this location was of limited use as the wind speed was tested at ground level and at a location 10 km away

from the site of application. In addition, the location where Mr. Larson tested the wind was near outbuildings and other structures that would reduce the windspeed there.

11. The manufacturer's label for Transorb HC advises to "Avoid application of this product when winds are gusty. DO NOT apply when wind speed is greater than 16 km/h at flying height at the site of the application." The label also indicates "DO NOT apply during periods of dead calm." The pesticide labels indicated that the pesticide should not be applied where they could drift into areas of human habitation.
12. At approximately 11:30AM, Mr. Larson took off in his aircraft and headed to the Kinsella area property, approximately 10 km away. The property in question has power lines of approximately 30 feet in height along the south portion of the property, running east to west.
13. Mr. Larson approached the property from the south (travelling northbound) and descended to an appropriate aerial spraying height (12-15 feet above the ground) after having cleared the power lines on the south edge of the property. As he travelled north at the aerial spraying height, there were no gusty winds or any cause for concern. He did notice after pulling up after the first pass that the winds were becoming gusty at higher elevations.
14. After spraying the first south to north line on the property, he then looped around and did a parallel line starting at the northernmost portion of the property and heading south. He maintained the typical 12-15 feet of clearance above the ground while spraying but as he approached the southern border of the property, he had to raise his altitude in order to clear the power lines.
15. As he began to ascend to clear the power lines, he continued to spray, which meant that for a portion of time he was not spraying at the appropriate height from the ground. This increased the risk of drift and indeed resulted in spray drifting onto the farmer's property and the farmer herself.

Additional Details

16. The winds on the date of spray at times gusted above that permitted by the pesticide labels for the Pesticide. However, the exact wind speed at the time of spraying is unclear.

17. On September 10, 2021, Alberta Environment took samples of the earth at the farmer's home and the field that had been sprayed with the Pesticide. Lab tests showed that the field had 4.6 part per million glyphosate (the active ingredient in the Roundup Pesticide that had been applied). The lab tests showed that glyphosate was present around the farmer's home at concentrations between 0.23 to 1.4 parts per million. No party obtained any expert report explaining the significance of the lab tests or what effects the Pesticide could have had on people or land.
18. Bravo had a pesticide registration with Alberta Environment that permitted the use of a particular plane. That airplane had been completely destroyed in a plane crash in August 2017. Bravo had not registered their new plane with Alberta Environment. Bravo did have insurance on the plane as Alberta Environment requires. Bravo also had a valid calibration certificate for the spraying apparatus on the plane notwithstanding that the plane had not been registered.
19. The principal of Bravo had prepared a pesticide application record as required. That pesticide application record was substantially compliant with the legislation requiring same though a couple of details were missed.
20. The farmer has reported that she believes that the vegetation around her home was affected by the Pesticide. The farmer has not reported any effects upon her person beyond those already described.

Agreements

21. The parties agree that:
 - a. Bravo #1 Aerial Application Ltd. will plead guilty to Count 7 on Information 230183246P1 described in paragraph 1 of this Agreed Statement of Facts. All remaining charges as against all charged parties on the Information will be withdrawn upon the Court sentencing Bravo.
 - b. Bravo agrees that it will be sentenced on all facts forming part of the circumstances of the offences that could constitute the basis for separate charges pursuant to s. 725(1)(c) of the *Criminal Code of*

Canada.

- c. The facts contained within this Agreed Statement of Facts are fully admitted and acknowledged by Bravo. The parties will be at liberty to make further submissions about those facts to the Court.
- d. The parties will jointly submit that Bravo should receive a penalty of \$10,000.00, inclusive of the Victim Surcharge, for Count 7 on Information 230183246P1.
- e. This Agreed Statement of Facts may be filed and relied upon even if signed in counterpart or by facsimile copies of the signatures of any person or both.

CONSENTED TO WITH RESPECT TO FORM AND SUBSTANCE THIS 23rd day of October, 2023.

Alberta Crown Prosecution Service,
Appeals and Specialized Prosecutions
Office

Per:



Craig A. Kallal
Counsel for the Attorney General of
Alberta

Bottos Law Group

Per:



William J. van Engen
Solicitor and Agent for Bravo #1 Aerial
Application Ltd.