

0807PA-00148

In The Provincial Court of Newfoundland and Labrador

Grand Bank

In the matter of an application
made *ex parte* by
Pauline Beazley,
a member of the **SPCA**,
for a search warrant pursuant to
The Animal Protection Act,
in relation to a dog named
“Shadow” and an orange
coloured cat, animals
belonging to **Mrs. Rita Millette**

Reasons for denying the application

1. By way of introduction, this is not the first time that I have denied an application made by Ms. Beazely (a member of the SPCA) for a search warrant to enter Mrs. Millette’s home and take her dog and cat from her. Last week I denied an application which very clearly indicated that Ms. Beazley intended to remove Shadow, and have it

euthanized. I gave brief oral reasons for denying that application, and suggested that there might be other, less drastic means, of taking care of the apparent distress of the dog without causing any distress to its owner. Regrettably, my suggestions appear to have fallen on deaf ears: instead, a second application for a search warrant has now been filed.

2. I am not granting the application. These reasons will explain why. While it could simply be denied because it is undated (and one has to wonder how the jurat was completed by a justice of the peace without completing the date) there are more substantive reasons for denying this application. Let me first of all briefly review the law.
3. The **Animal Protection Act**, RSNL1990 Chapter A-10, amended 1995 c20; 2004 cV-4.1 s54; 2006 c40 s21, includes a provision for an application by a “peace officer” for a search warrant to apprehend animals which are believed to be in distress. Unlike most public statutes,

section 2 of the Act includes members of a corporation, the SPCA, as “peace officers”.

4. This anomaly was strongly criticized by my friend and colleague Judge Gorman in the case of **R. v. Clarke**, [2001] N.J. No. 191, where, at paragraph 6 he said as follows:

“That a private organization such as the S.P.C.A. would be given the authority to investigate and sometimes to even prosecute an alleged Criminal Code of Canada offence is unacceptable. Private individuals and organizations cannot be allowed to usurp the responsibilities of the police and the Attorney General.”

5. In the matter at Bar, there is not yet any hint of any proposed prosecution of anyone. However, what is at stake is fundamental to the core of our society. Over four hundred years ago, in **Semayne's Case** (1604) 577 E.R. 194, a man’s house was held to be unto him his very own castle. Today, the police, who are bound by oaths of

fidelity to the Sovereign¹, must obtain prior judicial authorization to enter a dwelling house, even when investigating a murder: see **R. v. Feeney**, 1997 CanLII 301, [1997] 3 S.C.R. 1008.

6. Despite these constitutional guarantees of the right to sanctity and security in one's home, our **Animal Protection Act** purports to allow a member of the SPCA to apply for a search warrant to enter a private dwelling, by force if necessary. Section 6(2) of the Act provides as follows:

“Where it appears to a Provincial Court judge on information laid before him or her on oath or affirmation that there are reasonable grounds for believing there is an animal in distress in any premises or vehicle or thing, the Provincial Court judge may issue a warrant authorizing a peace officer to enter, by force where necessary, the premises or vehicle or thing specified in the warrant and search for the animal, and the peace officer may exercise his or her powers under section 5 with respect to an animal found there in distress.”

¹ Unlike members of the SPCA.

7. The application discloses certain facts, which were briefly amplified during the hearing last week. Mrs. Millette, who is eighty years old, lives in Marystown with her two pets, a small black dog named “Shadow” and an orange coloured male cat. The application does not disclose a name for the cat: perhaps it does not have one, or perhaps the applicant does not know what Mrs. Millette calls her cat. For the purposes of this decision, I will refer to it as “the cat”.
8. A social worker visiting Mrs. Millette in July reported that the dog might be in distress. On August 9, 2007, a visit to Mrs. Millette’s home was conducted by Ms. Beazley, a member of the SPCA. Ms. Beazley did not have to resort to a search warrant, because Mrs. Millette very graciously invited Ms. Beazley into her home.
9. During that visit, Shadow was noted to have matted fur, extremely long “nails” (by which I assume Ms. Beazley

means “claws”²), and a serious gum issue- the dog was missing teeth, and its remaining teeth appeared to be rotten.

10. Ms. Beazely persuaded Mrs. Millette to let her take the dog to a veterinarian for an examination, and volunteered that the SPCA would pay for the cost of the examination. No search warrant or other Court order was required: Mrs. Millette agreed to let the SPCA take Shadow to see the veterinarian.
11. An examination was carried out of Shadow on August 15, 2007, by Dr. Harding. He concluded that the dog needed its teeth extracted, a procedure which would cost slightly less than five hundred dollars. He did not say that the dog should be put down.
12. Mrs. Millette can not afford to pay for the dog’s operation. In the meantime, the dog is in discomfort, and in poor temper because of the discomfort. Apparently it was

² Humans and primates have “nails”; lesser mammals have “claws” or “hooves”, and birds have “talons”.

“aggressive” towards a social worker during a visit on August 28, 2007. I use this description cautiously, because the current application does not describe this “aggression”, or how it was controlled, other than to mention that Mrs. Millette allegedly struck the dog with a broom. One wonders whether the “aggression” was limited to growling or barking, but in any event, the application is silent on whether some less intrusive means of controlling the dog’s “aggression” might be an option.

13. As for the cat, the first application included details that the cat was well provided with food, water, and a litter box, but said that Mrs. Millette sometimes “struck” the cat in the face when it jumped up in her lap. Again, to put this in context, there is no suggestion in the evidence that Mrs. Millette has committed any offence towards the cat.
14. The present application now mentions that the cat is losing weight, and throws up a lot. No mention of any quantitative and objective evidence is made to support

either of these two conclusions. Since it has not been weighed, we do not know for a fact that the cat has lost weight. Since virtually all cats will expectorate hairballs from their grooming, and since the cat was not examined by a veterinarian, there is no evidence that the cat is in any real distress or ill health.

15. The first application plainly said that Ms. Beazely intended to take the dog from Mrs. Millette and have it euthanized. I denied the application, primarily on the basis that there was no medical evidence of the necessity of putting the dog down. The second information now seeks to have the SPCA go into Mrs. Millette's home, with or without invitation, using force if necessary, and take her dog to a veterinarian "for the purposes of a further assessment".
16. There is no reason to believe that a further assessment is necessary. Ms. Beazley included in this second application the fact that the Burin Peninsula SPCA cannot afford to

pay for the dog's dental repair. She also made it clear that if the owner of the dog is unwilling to treat the dog, then the legislation "allows for the destruction of an animal that is in such distress that it cannot, in the opinion of a veterinarian, live without undue suffering".

17. As hard as it is to believe, if the SPCA were issued a warrant to enter Mrs. Millette's home and take her dog from her, there is a risk that the dog could end up being killed, all for the sake of less than five hundred dollars.
18. Once Mrs. Millette realized that the SPCA intended to take her dog and have it put down, she refused, and continues to refuse, to allow the SPCA access to the dog. Clearly, the SPCA have soured the relationship that they had established with Mrs. Millette. However, there is no reason to believe that that bridge cannot be rebuilt.
19. There is no evidence before me that the dog "cannot, in the opinion of a veterinarian, live without undue suffering". On the contrary, Dr. Harding made it plain

following his examination of Shadow that the dog's discomfort could be alleviated by somebody paying less than five hundred dollars for an operation. As mentioned above, the whole issue turns on a relatively small amount of money.

20. This is not a case where the owner of the dog is refusing to spend the money. On the contrary, this is a situation where the octogenarian dog owner cannot afford to pay for the dog's operation. The SPCA says that it cannot pay for the dog to have its teeth out, but still it wants to go into Mrs. Millette's home and take her dog from her, over her objections. Curiously, while the SPCA says that it cannot afford to have the dog's illness treated, it appears to be ready, willing and able to pay for having Mrs. Millette's dog killed.
21. The concern of the SPCA about the dog not being in pain is commendable. However, there is no objective reason to consider killing this dog. Ms. Beazely objected to that

term during the first hearing, but in my view, to euthanize an animal is to kill it. The fact that it might be done to “put the animal out of its misery” will not make any difference to Mrs. Millette: at the end of the matter, her canine companion will have been taken from her, forever. At her age, the loss of her dog will have predictable impact upon her.

22. Since **Magna Carta**, as a society we have established a core set of human rights. We must never take these rights for granted, for they were hard earned, and paid for literally with the blood, sweat, toil and tears of our forebears. Chief among these is the right to be secure in our homes from unwarranted government action. No private citizen ought to have the ability to apply for judicial authorization to invade one’s home. Even if we assume, for the point of this debate, that members of a private corporation could legitimately be granted the legislated authority to act as peace officers, human rights

must trump animal rights. Mrs. Millette's privacy in her home ought not to be put at risk of invasion by the SPCA using a search warrant, simply because neither she nor the SPCA can afford to pay for a veterinarian to pull her dog's teeth.

23. If the dog is aggressive, the social worker might refuse to visit, or ask Mrs. Millette to muzzle or leash the dog during the visits. There is no reason advanced in the application why these options could not be used to minimize the risk, if there is any risk, to the social worker while visiting Mrs. Millette. I query the risk posed by the dog, because the so-called "aggression" of the dog has not stopped the social worker from visiting Mrs. Millette.
24. It takes very little imagination to come up with alternate and creative means of taking care of Mrs. Millette's dog while still respecting Mrs. Millette's rights. All that is required is a combination of a cooperative attitude on the part of the SPCA, and a relatively small amount of money.

25. Absent these, Mrs. Millette is entitled to her privacy, and to the comfort of her pets. Like all of us, she has the right to be left alone, as that term is used by Sherstobitoff, J.A., in **R. v. Iron**, [1987] 33 C.C.C. (3d) 157(Sask. C.A.).
26. A search warrant is unnecessary, and unjustifiable in the circumstances. The application is denied.

Dated at Grand Bank, NL, this 27th day of September, 2007.

Porter, P.C.J.