

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Biddersley v. BCSPCA*,
2014 BCSC 2338

Date: 20140926
Docket: S11837
Registry: Campbell River

Between:

Earl Biddersley

Petitioner

And:

BCSPCA and Farm Industry Review Board

Respondents

Before: The Honourable Mr. Justice Thompson

Oral Reasons for Judgment

In Chambers

Appearing on his own behalf:

E. Biddersley (via teleconference)
D.A. Parsons, Representative (via
teleconference)

Counsel for BCSPCA:

C.A. Rhone (via teleconference)

Counsel for Farm Industry Review Board:

F.A.V. Falzon, Q.C. (via
teleconference)

Place and Date of Hearing:

Campbell River, B.C.
September 25, 2014

Place and Date of Judgment:

Nanaimo, B.C.
September 26, 2014

[1] **THE COURT:** The petitioner seeks an order for the return of the dog, Bandit, and ancillary declarations and directions and, to this end, applies for a judicial review of a decision of the British Columbia Farm Industry Review Board (“FIRB”).

[2] The *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 [PCAA] provides that an authorized agent of the British Columbia Society for the Prevention of Cruelty to Animals (“BCSPCA”) may take measures for the relief of an animal in distress, including the taking of custody of an animal. The PCAA authorizes the BCSPCA to review a decision by an authorized agent to take custody of an animal and authorizes an appeal by an animal's owner to the FIRB if the owner is dissatisfied with the results of the BCSPCA review.

[3] The 98-paragraph FIRB decision may be viewed at www.firb.gov.bc.ca. (The reference to March 27, 2013, on the face page of the FIRB adjudicator’s reasons for judgment is a typographical error — the date of the FIRB hearing was, in fact, March 27, 2014.)

[4] Following is a chronology of key events:

- a) 14 October 2013 — Bandit was hit by a car and suffered a left hind leg injury.
- b) 6 November 2013 — Bandit was taken by his owner, the petitioner, to see Dr. Chappell, a veterinarian, who diagnosed a dislocated hip joint with attendant lameness and pain. Dr. Chappell advised the petitioner that his dog needed pain control and surgery. The petitioner left the veterinarian's office with Bandit.
- c) 20 December 2013 — After failing to receive assurances that Bandit had received necessary treatment, Dr. Chappell made a complaint to the BCSPCA.

- d) 22 January 2014 — The RCMP attended at the Quadra Island property where the petitioner lives and observed Bandit to be using three legs to move about.
- e) 30 January 2014 — An authorized agent of the BCSPCA sought and obtained a warrant to enter upon the Quadra Island property to determine whether any action authorized by the *PCAA* should be taken to relieve the animal's distress and to take such action. The warrant was executed and Bandit was taken into BCSPCA custody, and a course of veterinary care was begun.
- f) 28 February 2014 — After conducting a review of the decision to take custody of Bandit on application of the petitioner, the chief prevention and enforcement officer of the BCSPCA concluded that (1) the seizure of Bandit had taken place in accordance with the *PCAA*, (2) Bandit would not be returned to the petitioner, and (3) the boarding expenses (\$365.00) and costs of BCSPCA-directed veterinary care (\$2,248.87) were to be paid by the petitioner.
- g) 27 March 2014 — The FIRB heard the petitioner's appeal from the BCSPCA decision.
- h) 15 April 2014 — The FIRB adjudicator delivered reasons dismissing the petitioner's appeal, other than varying downwards by \$50.00 the amount payable by the petitioner to the BCSPCA.

[5] After a thorough review of the evidence, the FIRB adjudicator decided that Bandit was in distress when seized and that it was not in the dog's best interests to be returned to the petitioner. The adjudicator ordered, pursuant to s. 20.6 of the *PCAA*, that Bandit would remain in BCSPCA custody to exercise its discretion to destroy, sell, or otherwise dispose of Bandit. The adjudicator was mindful of the BCSPCA's desire to "re-home" the dog.

[6] Happily, the material discloses that Bandit is in the course of a good recovery from the veterinary surgery conducted shortly after he was taken into BCSPCA custody. The BCSPCA transferred ownership of the dog to a new owner in the period of time after the FIRB dismissed the appeal and before the BCSPCA was served with the petition for judicial review of the FIRB decision.

[7] Mr. Binnersley petitions for declarations about the meaning of various provisions of the *PCAA*, a declaration that the search warrant was invalid, declarations that BCSPCA representatives and the FIRB adjudicator have misconducted themselves, an order for return of the dog, and orders that the respondents pay him various costs.

[8] As I understand the argument set out in the amended petition, as refined during oral submissions, the petitioner's case — stripped of gratuitous insults, unnecessary invective, and unsubstantiated attacks on the *bona fides* of BCSPCA representatives and the FIRB adjudicator — is that the FIRB decision ought to be set aside for the following reasons:

1. The adjudicator erred in her interpretation of s. 11 of the *PCAA* or, in the alternative, in failing to refer a question of law in this regard to the Court for determination.
2. The adjudicator erred by failing to find that the search warrant was invalid or by not deciding this issue or, in the further alternative, by failing to refer a question of law in this regard to the Court for determination.
3. The adjudicator failed to conduct a fair hearing, in particular by admitting into evidence affidavits from BCSPCA personnel over the objection of the petitioner.

[9] The respondent BCSCPA submits that the issues in this case are academic and the petition ought to be dismissed as moot: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342; *Swan v. British Columbia Society for the Prevention of Cruelty to Animals* (23 August 2012), Powell River S2275, an unreported decision

of Mr. Justice Groves of this Court. At the outset of the hearing yesterday, the BCSPCA advised that it is waiving its claims for the veterinary and boarding expenses in light of the petitioner's straitened financial circumstances. Ownership of the dog has been transferred, and in this regard BCSPCA refers to s. 19.1 of the *PCAA*:

- 19.1 If an animal has been sold or otherwise disposed of under section 17 or 18, all rights and interests in the animal
 - (a) vest in the person to whom it has been sold or otherwise disposed of, and
 - (b) the former owner ceases to have any of those rights and interests.

[10] There is much to be said for this submission on mootness. While the Court retains discretion to elect to address moot issues, I accept that it is a discretion that, for good policy reasons expressed in *Borowski*, ought to be only sparingly exercised. Nevertheless, I will address the petitioner's submissions because of the evident effort that has been injected into the preparation of argument on behalf of the petitioner and the fact that the petitioner does not have the benefit of counsel, and because I do not want to leave the petitioner with the false impression that if he had served the petition on the BCSPCA before a new home was found for Bandit that he might have succeeded on this application.

1. The adjudicator erred in her interpretation of s.11 of the *PCCA* or, in the alternative, in failing to refer a question of law to the Court for determination

[11] Section 11 of the *PCCA* reads as follows:

- 11 If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal
 - (a) does not promptly take steps that will relieve its distress, or
 - (b) cannot be found immediately and informed of the animal's distress,the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

[12] The petitioner presented argument to the FIRB that s. 11(a) of the PCAA requires that notice be delivered to the animal's owner along with a time schedule for compliance. The FIRB rejected that contention at paras. 78 and 79 of its adjudicator's reasons.

[13] The petitioner argues that the adjudicator failed to apply the decision of *Van Dongen v. The Society for the Prevention of Cruelty to Animals*, 2005 BCSC 548, which he cited for the proposition that the BCSPCA is required in every case to give the owner time to relieve the animal's distress. It is true that on the facts of that case, Madam Justice Ross found that the BCSPCA was required to communicate its concerns to the owner before undertaking a seizure of his animals and its failure to do so undermined the legality of the seizure. But the petitioner's submission ignores *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at paras. 36-38:

[36] A review of the cases cited by the judge shows that they are very fact specific, but they all take a broad approach to the language of s. 11(a) of the Act. In my view that is consonant with the scheme of the legislation as stated by the chambers judge.

[4] In *Eliason v. British Columbia Society for the Prevention of Cruelty to Animals*, 2004 BCSC 1773, Groberman J. summarized the scheme of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372, ("the Act") as follows:

[3] The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of.

[37] In my view, s. 11(a) must be given a broad purposive interpretation. The words "does not promptly takes steps that will relieve ... distress" sometimes will lead to the authorized agent making orders and giving directions, in other circumstances he or she may conclude that the person responsible for the animals is unable to take the necessary steps or it may be apparent that the person is unwilling to take steps to relieve the distress. The cases referred to by the chambers judge illustrate these varied scenarios.

[38] I do not think the cases support the notion, advanced by the appellant, that, as a matter of law, in every case the agent must give the responsible person time in which to relieve the animals' distress. In some cases, as in the present case, it will be reasonable not to do so. The word "promptly" suggests a consideration whether the person can or will take the necessary action.

The material before me discloses that the *Ulmer* case was referred to in argument before the FIRB adjudicator.

[14] Reading the entirety of the FIRB reasons, it is apparent that the adjudicator reached the conclusion that Bandit was an animal in distress and that it was apparent that the petitioner was an owner unable or unwilling to take the steps necessary to relieve the distress. I am not persuaded that the adjudicator acted unreasonably by failing to find that she was bound by the law to find that the BCSPCA was required, on the facts of this case, to give the owner time to relieve the dog's distress.

[15] The alternative argument is that the adjudicator was obliged to refer the interpretative question to the Court. While a tribunal has the discretion to adopt such a course, it is just that: a discretion. Following are the relevant provisions of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45:

- 43 (1) The tribunal has jurisdiction to determine all questions of fact, law or discretion that arise in any matter before it, including constitutional questions.
- (2) If a question of law, including a constitutional question, is raised by a party in a tribunal proceeding, on the request of a party or on its own initiative, at any stage of an application the tribunal may refer that question to the court in the form of a stated case.

The legislature has given the jurisdiction to the FIRB to conduct these *PCAA* appeals and given the jurisdiction to the tribunal to determine questions of law. In her discretion, the adjudicator chose not to refer a question. There is no basis in the record to question the manner in which she exercised this discretion.

2. The adjudicator erred in failing to find that the search warrant was invalid or by not deciding this issue or, in the further alternative, by failing to refer a question of law to the court for determination

[16] The petitioner argued before the FIRB that the search warrant was invalid, and that the seizure of Bandit was unlawful. The adjudicator declined to rule on these issues:

25. I have reviewed the ITO and the circumstances under which the search warrant was obtained and executed. However, I do not see my role as a decision maker tasked with hearing appeals under section 20.3 of the PCAA as giving me the authority to review the decisions of a provincial court judge or justice of the peace as to whether circumstances justify the issuance of a warrant. A party who believes that a warrant has been improperly issued or executed can challenge that decision through judicial review and ask by way of remedy that the warrant be quashed. Until such time as a warrant has been set aside, I am entitled to rely on its validity and I choose to do so in these circumstances. I want to make it clear that I am not suggesting that BCFIRB would never consider Charter arguments in the context of an animal seizure that took place without a warrant or by a person who had no authority because they are not an authorized agent. However, where, as here, the warrant has been issued by a court of competent jurisdiction, the appellant's arguments all focus in one way or another on the warrant, and as I am satisfied that the warrant on its face applies to the premises in question, BCFIRB must in my view respect that court's function and must also respect that it is for the superior court, not this board, to assess the legality of a search warrant.

I think that this was a perfectly reasonable course for the adjudicator to adopt.

[17] At the hearing before me, the petitioner contends that the provisions of the PCAA allowing for the BCSPCA to obtain a warrant, enter on his property, and seize his dog must all be read down or interpreted such that these actions are only lawful if there is a criminal or quasi-criminal proceeding underway. It follows, the petitioner submits, that the warrant and the seizure of the dog are illegal. A reading of the PCAA makes it evident that its principal purpose is to relieve animals from distress. The legislature has seen fit to equip the BCSPCA with certain powers, quite apart from an ability to institute criminal or quasi-criminal proceedings, to achieve this important goal. A fair reading of the FIRB adjudicator's reasons show her to have been properly focused on making her findings of fact and law with the legislative purpose in the front of her mind.

[18] No attack is made on the constitutionality of the material provisions of the PCAA, and I can see no merit in the contended for restrictive interpretation of the PCAA — to interpret the legislation as requiring a criminal or quasi-criminal charge to trigger the powers to obtain a warrant and to take custody of animals in distress would very much cut against the purpose of the legislation.

[19] The alternative submission is that the tribunal ought to have referred the interpretative question or the question of the validity of the warrant to the Court. There is no basis in the record to question the manner in which the adjudicator exercised her discretion. To the extent that the adjudicator decided on the issue of the validity of the warrant to neither decide the issue nor to refer, that was, in my opinion, a course reasonably open to her on the facts of this case.

3. The adjudicator failed to conduct a fair hearing, in particular by admitting into evidence affidavits from BCSPCA personnel over the objection of the petitioner

[20] The petitioner objected to the admissibility of any affidavits before the FIRB unless the witness was made available to testify. The short answer to this submission made in this Court is that the conclusions of the adjudicator were not founded on the impugned material. This evidence went to matters that the adjudicator reasonably treated as peripheral to the real issues before her.

[21] The petitioner's submission proceeds on the erroneous assumption that the giving of evidence in affidavit form without the attendance of the witness is a *prima facie* breach of the rules of natural justice. The ultimate question is whether the hearing procedures adopted meet the test of being fair: *Martineau v. Matsqui Disciplinary Board*, [1980] 1 S.C.R. 602. I can detect no merit in this submission that the hearing was conducted in a fashion unfair to the petitioner.

[22] Stepping back for a moment from the particular grounds advanced by the petitioner, I conclude that the result of the FIRB appeal, that is, the orders made by the FIRB pursuant to s. 20.6 of the *PCAA*, were within the range of reasonable outcomes following the hearing conducted by this specialized tribunal:

Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board), [2011] 3 S.C.R. 708.

[23] Before moving to a conclusion, I note that the petitioner seeks the return of fees he paid to file the petition on the basis that he is impoverished. I decline to grant this retroactive dispensation at this stage of the proceedings. The petitioner has

managed to have his day in court, and the first purpose of R. 20-5 is to allow a party to pursue a claim that the party could not otherwise afford to pursue: *Stewart v. Canada (Attorney General)*, 2010 BCSC 1880.

[24] As for costs, the petitioner seeks various forms of costs against the respondents. Being unsuccessful, there is no need for further discussion of any of the costs orders he seeks. This is a proper case for the usual order, that is, costs to follow the event. The respondent BCSPCA seeks its costs. The respondent FIRB has elected to follow its usual practice and does not seek its costs.

[25] I order that the amended petition be and hereby is dismissed other than, by consent, the striking out of the liability of Mr. Binnersley to pay \$2,588.69 to the BCSPCA. The petitioner will pay, if demanded, the costs of the respondent BCSPCA to be assessed on Scale B.

[26] Which of the respondents will prepare the order?

[27] MR. RHONE: This is Chris Rhone for the BCSPCA. We can prepare the order. May I also have an order dispensing with signature from Mr. Binnersley?

[28] THE COURT: Yes, you may have that order.

“Thompson J.”