

Indexed as:

Sheets v. Ontario Society for Prevention of Cruelty to Animals

**IN THE MATTER OF an Application by William R. Sheets and
Cross-application by the Ontario Society for the Prevention of
Cruelty to Animals for Judicial Review of an Order of His
Honour Judge Clare dated November 28, 1982 pursuant to the
Society for the Prevention of Cruelty to Animals Act, R.S.O.**

1980, Chapter 356

Between

**William R. Sheets, applicant, and
The Ontario Society for the Prevention of Cruelty to Animals,
respondent**

[1984] O.J. No. 1339

5 O.A.C. 309

No. 1066/82

Ontario Supreme Court - High Court of Justice
Divisional Court

O'Driscoll, Gray and Sutherland JJ.

Heard: September 4, 1984.

Oral judgment: September 4, 1984.

Released: October 9, 1984.

(11 pp.)

Counsel:

Ronald M. Lieberman, for the applicant.

I.F.H. Rogers, Q.C., for the respondent.

The judgment of the Court was delivered by

1 GRAY J. (orally):-- This is an application for judicial review in which the applicant seeks an order that:

- (a) the Order of His Honour Judge Clare dated as of November 28, 1982 be set aside as to the finding that the cost of care for the horses in question was \$6 per day on the grounds that
 - (i) there was no evidence upon which the learned Judge could find that the cost of providing food, care or treatment to the 37 horses was \$6 per day;
 - (ii) the learned Judge erred in failing to direct issuance of a summons requiring the Society for the Prevention of Cruelty to Animals to produce documentation relating to the cost of providing food, shelter and care for the said animals.
- (b) The Order of His Honour Judge Clare dated as of the 28th of November, 1982 be set aside as to the direction that William R. Sheets pay \$6 per day per horse as indicated in the said Order on the grounds that there was no jurisdiction for the Judge to order William R. Sheets to pay any amounts to the Society for the Prevention of Cruelty to Animals because the terms of the Settlement Agreement reached by the parties and incorporated into the Order of His Honour Judge Clare directed His Honour to find "What portion of that cost, if any, (was) to be paid by the Society" and further on the grounds that the Society for the Prevention of Cruelty to Animals Act, R.S.O. 1980, chapter 356 does not provide any jurisdiction to the County Court Judge hearing the de novo appeal from the decision of the Animal Care Review Board to order payment of the said sum.

2 In reality what is sought is an order setting aside the Order of His Honour Judge Clare really upon two grounds:

- (1) that there is no evidence to warrant the finding that the cost should be on the basis of \$6 per day per annum; and
- (2) that the learned judge had no jurisdiction to make the order which required the payment by the applicant.

3 Our attention was directed to the Ontario Society for the Prevention of Cruelty to Animals Act, R.S.O. 1980, Chapter 356, which we were told was the third Act dealing with this subject matter, the original having been enacted by the Legislature of Ontario in 1919 and the second being enacted by the Legislature of Ontario in 1955.

4 Our attention was specifically directed to three sections of the Act, s. 15 which makes provision for the liability of an owner of animals in connection with certain expenses and which also provides that the Society may, in certain circumstances, sell or dispose of an animal and reimburse itself of the proceeds in the event that the owner or custodian of the animal refuses to pay an account for which he is liable under s. 15(1).

5 The other two sections or section 17(6), the most material portion of which reads as follows:

(6) After a hearing or, with the consent of the Society and the person who issued the notice under subsection (1) or (2), without a hearing, the Board may,

- (a) respecting an order made under subsection 13(1), confirm, revoke or modify the order appealed against;
- (b) respecting the removal of an animal under subsection 14(1), order that the animal be returned to the owner or custodian and may make an order in the same terms as an order may be made under subsection 13(1); or
- (c) order that the whole or any part of the cost of complying with an order or providing food, care or treatment to an animal be paid by the Society.

6 The third section is the section which provides for an appeal from an Order made by the Animal Care Review Board. This s. 18 makes provision for the appeal going to a judge of the county or district court of the county or district in which the animal was at the time the order or seizure was made.

7 Section 18(4) reads as follows:

(4) The appeal shall be a hearing de novo and the judge may rescind, alter or confirm the decision of the Board and make such order as to costs as he considers appropriate, and the decision of the judge is final.

8 In the present application, our attention was directed to the evidence adduced before Judge Clare with respect to the cost of providing "food, care or treatment" with respect to the 37 horses in question.

9 Three witnesses might be described as independent witnesses gave evidence with respect to the costs involved on a daily basis so far as food, care or treatment were concerned. I pause here to point out that the portion of the appeal which dealt with the allegation that the learned judge erred in failing to direct issuance of a summons was not argued before us on this application.

10 Having reviewed the evidence with some care, we have come to the conclusion that there was evidence to warrant the finding by the learned judge that the cost should be on the basis of \$6 per day per annum. It is true that invoices, statements, and various accounting documents were not brought to the hearing by the Society's main witness, Inspector G.D. Hepworth and that the judge was correct when he said "To say the least the evidence has been very unsatisfactory". Having said that however, we after reviewing the evidence given by the independent witnesses, have reached the conclusion that there was evidence upon which to base the \$6 a day finding.

11 In effect, what the learned judge did was to penalize the Society to some extent by cutting down the amount claimed to \$6 a day which was a lesser amount than the daily figure given in evidence by the three independent witnesses.

12 The learned judge found that the applicants' evidence was not acceptable and he went on to say this:

I think the Society for the Prevention of Cruelty to Animals must be taught that, if they are going to seize animals, they will have to keep proper records of the cost of maintaining those animals, and if they do not keep those costs and keep records and be able to show a proper basis for the charges that they are asking, that they are going to suffer as a consequence.

13 In point of fact, the Society in this particular case, did suffer certain consequences.

14 Turning now to the second ground which dealt with the question of whether the learned judge had jurisdiction to make the Order he made, it should be noted that when the hearing got underway, the learned judge at p. 111 of the transcript of the proceedings asked counsel for the applicant, this question:

THE COURT: All right. But then, presumably there is going to be a judgment for so much money given today?

MR. LIEBERMAN: That's correct, Your Honour, under the -- the issues ...

THE COURT: All right. Go ahead. Now, the one issue that you wish me to try is what?

MR. LIEBERMAN: The question of what the cost of providing food, care or treatment to the animals seized is, and what portion of that cost, if any, shall be paid by the Society.

15 It should also be remembered that the matter had been the subject of a settlement reached between the parties, re the sale of horses and the return of horses and the settlement document itself contained this statement:

2. Statement of Issues To Be Determined:

- a) cost of providing "food, care or treatment" to the 37 horses. [s. 17(6)c. of the Act]
- b) what portion of that cost, if any, to be paid by the Society [ibid.]

16 It was argued before us by counsel for the respondent that the equitable principle of estoppel should lie in this case, because the parties reached an agreement by the terms of which it was agreed that the cost of providing "food, care or treatment" should be determined by the learned judge and further by reason of the fact that the parties had been in agreement that certain costs incurred by the Society were in the total amount of \$2,437.

17 It may well be that there is force to the estoppel argument, but we have decided not to base this decision thereon. The reason, of course, for this position is the matter to be decided is whether or not the learned judge had jurisdiction to make the Order he made and it is fundamental that if a court or tribunal does not have jurisdiction, such jurisdiction cannot be given to it by the consent of the parties.

18 We are all of the opinion, however that the learned judge did have the jurisdiction to make the Order in question.

19 Counsel for the applicant in a forceful submission urged us to find that there was no provision in the present governing legislation for an order to be made by the learned judge requiring the payment specifically by an animal owner.

20 It is true that s. 17(6)(c) does not contain specific words to that effect and it is also true that neither s. 15 nor s. 18 contain specific words to that effect.

21 We have come to the conclusion on this application for judicial review that the entire purpose of the Act must be considered. The authority for this proposition is the decision in *Regina v. Ontario Labour Relations Board, Ex p. Taylor* (1964) 1 O.R. 173 where Chief Justice McRuer dealt with this subject on that basis.

22 If one reviews the provisions of the Act, it is quite apparent that the owner of the animals in question is liable for the expenses incurred on their behalf and, in our view, the decision of Mr. Justice Gale, as he then was, in the case of *T.T.C. v. Aqua Taxi Limited et al.* [1957] O.W.N. 65 is not applicable in this instance.

23 The legislation given a broad reading makes it clear that the appeal should lie from the Animal Care Review Board to the learned judge and having reviewed the reasons given by the learned judge it is quite apparent that everyone involved in the hearing took part therein on the assumption that the learned judge had the authority to order payment. No good purpose would be served by conducting any hearing for any other purpose at that point in time.

24 The most important section, of course, is s. 18(4) to which reference has earlier been made and which makes it clear that "the judge may rescind, alter or confirm the decision of the Board ... and the decision of the judge is final." This privative clause means that the judge's decision is final unless he has acted completely without jurisdiction and, in our view, he had jurisdiction to make an order for payment.

25 After hearing the submissions made with respect to costs by counsel, we are all of the opinion that there should be no order as to costs with respect to this application. We have reached this conclusion because of the fact that there does not appear to be any body of judicial precedent involving applications of this type and the matter appears to be a matter of some interest to the public. In the result, therefore, the application is dismissed with no order as to costs. We are obliged to counsel for their assistance in the presentation of this application.

GRAY J.

O'DRISCOLL J.

SUTHERLAND J.

---- End of Request ----

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