

Citation: Van Dongen v. BCSPCA and Devos
2006 BCPC 0379

Date: 20060720
File No: 17075
Registry: Abbotsford

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

QUIRINIUS VAN DONGEN

CLAIMANT

AND:

**THE BRITISH COLUMBIA SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS and LIZ DEVOS**

DEFENDANTS

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE D. R. GARDNER**

Appearing for the Claimant:

Casey Van Dongen

Counsel for the Defendants:

Donald P. Montrichard

Place of Hearing:

Abbotsford, B.C.

Date of Judgment:

July 20, 2006

[1] On April 9, 2003, pursuant to five warrants to search, issued under the Prevention of Cruelty to Animals Act, RSBC, 1996, the British Columbia Society for the Prevention of Cruelty to Animals (the Society) attended at three parcels of property located at the following addresses:

1585 Lefevre Road, Abbotsford, BC
 6260 Sorenson Street, Abbotsford, BC
 6316 Tall Road, Abbotsford, BC

[2] The Society attended at the premises in order to determine if any animals on those premises were "in distress" and to take steps authorized by the Act to relieve any such distress.

[3] During the execution of the Search Warrants, and based on her observations of the premises and, after receiving the advice of a registered veterinarian, Special Provincial Constable Elizabeth Devos formed the opinion that a number of animals located on the premises were "in distress" within the meaning of the Act, including 62 cattles, 45 horses and one cat.

[4] SPC Devos also determined that the persons responsible for the animals had failed to promptly take steps to relieve that distress or could not be immediately found and informed of the animals' distress.

[5] As a result, SPC Devos took all of the animals into her custody, on behalf of the Society, and pursuant to the authority granted to her by the Search Warrants.

[6] Following the execution of the Search Warrants, the Society did not dispose of the animals, pursuant to the Act, as it was authorized to do so, because the owners agreed to meet certain minimal standards of care and to reimburse the Society for the expenses that it incurred with respect to the costs of care.

[7] Most of the animals were returned to the custody of their owner on or about April 14 to 17, 2003, after the owner, and/or his agents, signed release documents verifying the numbers and species of animals that were transferred to them from the custody of the Society.

[8] The Claimant commenced an action for:

(a) cost of recovery	\$11,941.28;
(b) devalue of chattels as a result of lack of care	\$11,000.00;
(c) damages	\$10,000.00.

[9] The claim against SPC Devos has been dismissed, by consent, on the basis of the immunity from liability provisions of the Police Act, R.S.B.C. 1996.

[10] The claim for "loss of reputation" was dismissed at the Settlement Conference on September 12, 2005, on the basis that such a claim was beyond the jurisdiction of this court.

[11] The main issue is whether or not the animals were lawfully taken into the custody of the SPCA on April 9, 2003. If they were taken lawfully into custody, then the Claimant is strictly liable to the Society for the costs of care, pursuant to the provisions of the Act.

[12] I will deal with the defence evidence first. Their only witness was Special Provincial Constable Devos, who lead and coordinated the execution of the search warrants on April 9, 2003. She testified that on February 6, 2003, the Society received a complaint about the welfare of horses located on the Smith Road property. On February 7, SPC Devos attended at that property where she observed some disturbing conditions, as she was concerned that there was an inadequate amount of shelter accessible to the horses.

[13] She spoke to the owner of that property, who told her that the Claimant was the owner of the horses on the Smith Road property and he lived at the Lefeuvre Road property. On February 7, February 11 and again on February 22, she attended that address and left notices for the owner to contact her regarding the horses on the Smith Road property.

[14] She contacted the Claimant by telephone and they agreed to meet in person on February 28 so that she could attend at the Claimant's residence, so she could view the horses that had apparently been moved there from the Smith Road property. On that date, she attended the Lefeuvre property where she met with the Claimant and his grandson, Rob Van Dongen. She expressed her concerns about a lack of shelter for the animals and the danger posed to the animals by the presence of debris in the fields. The Claimant told her that his horses did not need shelter because the local climate was mild.

[15] SPC Devos advised that she would return with written recommendations regarding minimal shelter requirements and her concerns for debris in the fields.

[16] She re-attended on March 7 and provided the Claimant with a "Cruelty Complaint" notice and a written list of recommended actions to improve the conditions of his animals. This included shelter which ensures protection from heat, cold and dampness appropriate to the weight and protective outer coat of animal, provides sufficient shade to protect animals from the direct rays of the sun, shelter for sufficient space to allow the animal to turn freely and to easily stand, sit and lie down and an area or pasture kept free of injurious objects.

[17] SPC Devos advised that she would return in a month to assess the conditions. Prior to her departure, the Claimant advised that he did not believe that his horses need shelter.

[18] On March 15, the SPCA received a complaint that a horse located on the property appeared to be lame and was not able to walk properly. Later that day SPC Devos attended the Lefeuvre property and observed a lame horse which was trying to walk on only three legs. She spoke to Clarence Douma and advised him of her concern for the well-being of the horse. Douma ordered her off the property.

[19] On March 15, SPC Devos authored an "Offence Warning Notice" to the Claimant, along with a list of recommended actions, which indicated that the Claimant was required to have the lame horse examined by a registered veterinarian within 24 hours and to follow his recommendations.

[20] SPC Evers later attended at the Lefeuvre Road property and hand-delivered the notice to the Claimant, who ordered him off the property.

[21] On March 28, the Society received a complaint about animals located at the Sorenson Street property. The complaint indicated that there was a concern about a dead calf and several horses with "rain scald" located in a field. The complaint indicated that one horse was missing an eye due to infection and that there was a lame horse located on the property.

[22] On March 28, SPCs Devos and Westlund attended at the Sorenson Street property and spoke with Judy Van Dongen, who gave them permission to view the animals on that property. They also spoke to Rob Van Dongen, who advised that the Claimant owned the horses located on the Sorenson Street property. He also advised that Mr. Douma was treating the horse with the injured eye.

[23] While the constables were still on the property, Mr. Douma appeared and ordered them to leave.

[24] On March 28, Devos left a letter in a mailbox at the Lefeuve Road property which advised of her concerns for the animals at the Sorenson Street property. The letter requested that the Claimant contact her as soon as possible to inform her as to what, if any, steps he was taking to alleviate her concerns.

[25] On April 1, the SPCA received a complaint that a newborn foal on the Lefeuve Road property had not been provided with any shelter and was lying outside in the rain.

[26] Later that day Devos attended at the Lefeuve Road property, where she spoke with Rob and Eddy Van Dongen. She requested permission to view the newborn foal. Eddy Van Dongen refused permission for her to do so.

[27] While she was still there, the Claimant approached her and acknowledged that he had received the letter that had been left in his mailbox. She asked him to meet her at the Sorenson Street property but he told her he did not want the SPCA to enter onto that property. He added that he would attend to see if there were any problems.

[28] She contacted him via telephone later that day and asked if he had attended that property. As well, she asked him if he had addressed any of her specific concerns; he said he would not be constructing any additional shelter there.

[29] On April 5, 2003, Devos attended the Lefeuve Road property and left an envelope on the door, which contained a copy of The Recommended Code of Practice for the Care and Handling of Farm Animals: Horses. The Code of Practice included two sections which were highlighted by Devos, which stated that natural or constructed shelter areas must offer adequate protection from adverse weather conditions and horses should be provided with a clean, dry area for lying down. While there, Devos observed several horses that were without access to any shelter in the pasture in which they were located. On April 6, Devos drove to the Sorenson property and took three photographs of an equine with a severe-looking eye injury.

[30] By April 6, Devos was concerned that the horses were being subjected to a number of indicia of distress and that the response of the Claimant to her repeated expressions of concern were not being treated seriously by him.

[31] On April 8, Devos attended the Registry at Surrey Provincial Court where she swore several Informations to Obtain a Warrant to Search. The warrants were subsequently issued. Pursuant to these warrants, several SPCA and Abbotsford police officers attended the Lefeuve Road, Sorenson Street and Tall Road property. The warrants were executed on April 9 between 9 a.m. and 9 p.m.

[32] While there, the officers did not encounter the Claimant or any of his family members. Devos attempted to contact the Claimant by telephone but was unsuccessful. A veterinarian, Dr. Mark Steinebach, assisted during the search. Dr. Steinebach provided Devos with his professional opinion regarding the condition of the animals and the premises where they were being kept.

[33] Dr. Steinebach had the following concerns:

- (a) lack of access to clean and fresh water;
- (b) lack of adequate shelter;
- (c) serious injuries and sicknesses that required immediate veterinary attention;
- (d) ready access to debris, such as scrap metal, which represented a significant risk of harm to the animals;

- (e) inappropriate disposal of animal carcasses, representing a significant risk of infection;
- (f) access to manure pits and ponds, which represented significant risk of harm;
- (g) built-up manure in feeding and bedding areas, representing a significant risk of harm, including a risk of infection;
- (h) a lack of dry and bedded areas to lie down upon; and
- (i) a lack of salt or mineral licks.

[34] The animals were then taken into custody. Numerous photographs were taken and submitted into evidence. The photographs illustrate, at times in graphic detail, the conditions set out above.

[35] After being taken into custody, the animals were boarded with a number of private facilities where they received food, water and veterinary care. During that time, the Society incurred the costs of care. Between April 12 and May 23, 2003, all of the animals (except the cat), were returned to the Claimant or his family. The Claimant paid to the Society the sum of \$11,491.28, pursuant to Section 20 of the Act.

[36] Now they want their money back.

REVIEW OF THE CLAIMANT'S EVIDENCE

[37] The Claimant did not call any independent witnesses or any expert witnesses in support of their allegations in the Notice of Claim. Rather, the Claimant called himself, his brother and three of his sons. Nobody challenged the opinion formed by SPC Devos that the animals were in distress. I agree with the defence submission that, in addition to recovering damages that he believes are due to him, these proceedings are also about gaining some form of vengeance against the SPCA. In the Claimant's words: "They need to be taught a lot of lessons."

[38] Three years after the fact, the Claimant still harbours a lot of anger towards SPC Devos, as demonstrated in his outbursts of anger during cross-examination. The Claimant did, however, admit that his recollection of the events leading up to the execution of the search warrants is poor and incomplete.

[39] He did acknowledge receiving several visits from the Society's representatives. He took no meaningful action in response to the concerns that they expressed.

[40] Gary Van Dongen, the Claimant's son, also testified. Under cross-examination, he was referred to photographs of the Tall Road property; he indicated that the berry bushes and leafless deciduous trees that ringed the perimeter of the property were "adequate shelter". I reject this opinion in its entirety.

[41] Similarly, I did not find the evidence of John Van Dongen, the Claimant's brother, to be helpful to the Claimant. As he admitted in cross-examination, he had previously engaged in litigation against the SPCA. He clearly was not at his objective best while testifying.

[42] The Claimant, John Van Dongen, also has a history with the Defendant. On at least two occasions, his animals have been seized both in Alberta and B.C. He has a very low opinion of, and little use for, veterinarians. In his own words, they have their "hands on your wallet".

[43] Asked what he did for one horse's eye injury, he said the appropriate remedy is to "blow sugar in the horse's eye". He purported to have expertise with the equine condition known as

“strangles”. He conceded that the disease lies dormant for up to three weeks; accordingly, his unqualified opinion that the horses contracted while under the care of the SPCA is idle conjecture at best.

[44] The Claimant was consistent on one issue, ie, he has a lot of anger towards the SPCA. At one point, he referred to them as being “full of thieves and liars”.

THE LAW RELATING TO PREVENTION AND RELIEF TO DISTRESSED ANIMALS

[45] An animal is in distress if it is: (a) deprived on adequate food, water or shelter; (b) injured, sick, in pain or suffering; or (c) abused or neglected: **Prevention of Cruelty to Animals Act**, RSBC 1996, section 1.

[46] Persons who are responsible for an animal include persons who own the animal and persons who have custody or control of the animal. (Section 1).

[47] Under Section 10, an authorized agent of the SPCA has authority to exercise the powers of an authorized agent under the Act, if he or she has been appointed as a special provincial constable under the Police Act.

[48] If the officer is of the opinion that an animal is in distress and the person responsible for the animal, either:

- (a) does not promptly take steps that will relieve the animal's distress, or
- (b) cannot be found immediately and informed of the animal's distress, the agent may take any action that he or she considers necessary to relieve the animal's distress, including taking custody of the animal.

[49] Furthermore, an agent who believes, on reasonable grounds, that there is an animal in distress on a premise, may enter that premise with a search warrant for the purpose of determining whether any action should be taken to relieve against the animal's distress. The agent may also enter any land where animals are being kept for sale, hire or exhibition, without a warrant and during normal business hours, for the purpose of determining whether any animal on the premises is in distress (Section 15).

[50] The Act also provides for the owner of an animal(s) taken into custody is liable to the Society for the costs incurred by the Society with respect to the costs of care. (Section 20). This section also may require the owner to reimburse the Society for the Costs of Care before returning the animal.

POSITION OF THE CLAIMANT

[51] The Claimant submits that the search was unlawful and claim that the form of the search warrant was fatally flawed. He also argues that the warrants were executed in a “totally unreasonable manner” to such an extent that that (it) amounted to such an abuse of process, that to uphold it would make the “law a sham and tarnish the administration of justice”. I find no merit whatsoever to these arguments.

[52] I find the Claimant was treated reasonably by the Society, both before and after, the execution of the Search Warrants. The Claimant has not presented any evidence to counter the position that the animals were actually in distress at the time the search warrants were executed or that the warrants were obtained and executed, both properly and lawfully. The Claimant has also failed to satisfy his burden of proof with respect to the alleged “devaluation” of the animals, whether by contracting “strangles” or any other condition.

[53] Accordingly, the Claimant's action for damages is dismissed, with costs to the Defendants. I assess costs in the amount of \$50.00, for filing fees.

Donald R. Gardner, P.C.J.