

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Eliason v. S.P.C.A.
2004 BCSC 1773

Date: 20040216
Docket: S6560
Registry: Courtenay

Between:

Linda Eliason

Plaintiff

And:

S.P.C.A.

Defendant

Before: The Honourable Mr. Justice Groberman

Oral Reasons for Judgment

In Chambers
February 16, 2004

Counsel for Plaintiff:	J. Dow
Counsel for Defendant:	D. Montrichard
Place of Trial/Hearing:	Courtenay, B.C.

[1] This is an application to prevent the S.P.C.A. from acting under s. 18 of the *Prevention of Cruelty to Animals Act*. That section provides that if an animal is removed from the custody of its owner under s. 11, and taken into the custody of the Society, the Society may destroy, sell, or otherwise dispose of the animal 14 days after the Society has given notice to the owner in accordance with s. 19.

[2] It appears that the animals in question on this application are cats, and that they were seized pursuant to s.11 of the **Act** in the year 2000 or 2001. The provisions of s. 11 state that:

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 and veterinary treatment for it.

[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.

[4] The Society has, in this case, given a notice under s. 18 of the **Act**. The affidavit evidence indicates that it is concerned about the well being of the cats in question. In particular, the seizure resulted in criminal charges against the plaintiff's mother, who occupied the same dwelling as the

plaintiff. In those proceedings, the plaintiff's mother was found guilty of cruelty to animals, and was put under court order not to have more than six cats.

[5] In my view, the plaintiff has not shown any arguable case that the Society has acted contrary to its statutory duties or powers, and I am not prepared to grant the injunction.

[6] At this stage, if the plaintiff considers that she can provide a fit home for the cats, where they will not be subject to harm and will not be placed in a situation where the Provincial Court order is being violated, then it is up to her to make suitable arrangements with the Society. The court will not restrain the Society from exercising its statutory powers.

{Submissions by the Plaintiff}

[7] THE COURT: I have heard your arguments, and I am dismissing your application for an injunction.

"H. Groberman, J."
The Honourable Mr. Justice H. Groberman