# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***McAnerin v. British Columbia Society for the Prevention of Cruelty to Animals (BC SPCS) et al***
2005 BCSC 1835

Date: 20051013
Docket: 65157
Registry: Kelowna



Between:

**Louise McAnerin**

Petitioner

And

**British Columbia Society for the Prevention of Cruelty to Animals (BC SPCA)**
**Special Provincial Constable Bradley Kuich,**
**Attorney General of British Columbia**

Respondents

Before: The Honourable Mr. Justice Brooke

## Oral Reasons for Judgment

In Chambers
October 13, 2005

Counsel for Petitioner: E. Gilmore

No Other Appearances

Place of Hearing: Kelowna, B.C.

[1] **THE COURT:** Despite Mr. Montrichard's non-appearance by telephone or otherwise, the Reasons I think are straightforward and I will deliver those.

[2] Following the dismissal of the petition under the ***Judicial Review Procedure Act***, R.S.B.C. 1996, c. 241, the parties were invited to make submissions with respect to costs.

[3] By way of background, the petition arises out of the seizure and detention of the petitioner's animals by the respondent, British Columbia Society for the Prevention of Cruelty to Animals ("B.C. SPCA"). The petitioner argued that the seizure was unlawful and sought an order in the nature of mandamus, compelling the return of her animals and awarding her damages and costs.

[4] The principal ground of attack was that the information to obtain was grounded upon a warrantless and, hence, an illegal search by the respondent, Mr. Kuich.

[5] The petition, as I have indicated, was dismissed.

[6] The successful respondent seeks costs at Scale 3 and disbursements pursuant to Rule 57(9). The petitioner says the ordinary rule that costs follow the event should not be applied based on four grounds: Firstly, that the petitioner is impecunious; secondly, that the petitioner raised valid issues and no remedy is afforded under the ***Prevention of Cruelty to Animals Act***, R.S.B.C. 1996, c. 372, upon which the seizure and detention was undertaken; thirdly, that the action of the respondent in those proceedings is quasi-criminal in nature; and fourthly, that the petitioner used her best efforts to resolve the matter prior to the petition for a judicial review coming on for hearing and proceeded in an expeditious way.

[7] I will address each of these arguments in the order advanced. While there is some evidence that the petitioner is impecunious (here, I refer to the fact that she was granted indigent status for the purpose of the proceeding under the ***Prevention***

***of Cruelty to Animals Act***), that alone does not justify a departure from the ordinary rule (see ***Robinson v. Lakner***, [1998] B.C.J. No. 1047 (B.C.C.A.)).

[8] What is important is that a person aggrieved has access to justice, and as a corollary, that impecuniosity does not impede that access. However, having had her day in court, the successful party should not be mulcted of costs because of the petitioner's impecuniosity.

[9] Secondly, the petitioner raised valid grounds which are generally raised in similar proceedings regarding the detention of animals under the ***Prevention of Cruelty to Animals Act***, but that of itself cannot displace the ordinary rule that costs follow the event. Moreover, the respondent fully disclosed the evidence upon which it relied to support the entry and the seizure of the animals and made reasonable efforts to communicate with the petitioner. Hence, there is no basis to find any misconduct on the part of the respondents in the proceedings under the ***Prevention of Cruelty to Animal Act***.

[10] While the proceedings taken under that ***Act*** have some of the badges of a criminal proceedings, for example, proceedings under the ***Act*** are commenced by an Information, warrants to enter and search property may be given, and rights under the ***Charter of Rights and Freedoms*** may be engaged. Nevertheless, this proceeding is under the ***Judicial Review Procedure Act*** and is entirely civil.

[11] The authority cited by the petitioner in support of this submission is ***Blake v. British Columbia (Society for the Prevention of Cruelty to Animals)***, [1987] B.C.J. No. 1700 (Co.Ct.), a decision of Mr. Justice Gow dismissing the plaintiff's

claim but without costs. However, the character of the proceeding as quasi-criminal was neither considered nor determined by the court, nor on the face of the Reasons for that matter were any submissions made with respect to costs.

[12] There is no evidence to support the submissions that the petitioner proceeded expeditiously, and even if there were, that of itself would not support an order displacing the ordinary rule that costs follow the event.

[13] Accordingly, the respondents will have their costs of and incidental to this proceeding and the proceeding under the ***Prevention of Cruelty to Animals Act*** at Scale 3.

[14] The petitioner submits that no out-of-town counsel disbursements should be allowed because local lawyers could have been found without retaining Vancouver counsel. The respondent has filed an affidavit setting out the skill and experience of counsel engaged in this matter and in the proceedings under the ***Prevention of Cruelty to Animals Act*** and the absence of any local counsel with comparable expertise. In the result, I cannot find that it was unreasonable to engage the counsel retained, and the respondent will have its disbursements for out-of-town counsel.

[15] The respondent seeks costs thrown away pursuant to Rule 57(37)(c) with respect to the petitioner's application to convert the proceedings in chambers under the ***Prevention of Cruelty to Animals Act*** to a trial. That was abandoned at the last minute. The respondent says that those costs should be payable by counsel for the petitioner. I decline to make such an order but allow the costs thrown away, and I fix the amount of those costs at $900 inclusive of disbursements.

"T.R. Brooke, J."
The Honourable Mr. Justice T.R. Brooke