

Case Name:

**Pitney v. Ontario Society for the Prevention of Cruelty
to Animals**

Between

**Pamela Pitney, Plaintiff, and
Ontario Society for the Prevention of Cruelty to Animals,
Newmarket, Connie Mallory, Ontario Society for the Prevention
of Cruelty to Animals, Niagara Falls, Cathy Silvestro, Jay
Desroches, Brian Villeseche, Animal Care Review Board and Rae
Legault, Defendants**

[2012] O.J. No. 3412

2012 ONSC 4163

Court File No. CV-11-434100

Ontario Superior Court of Justice

R.F. Goldstein J.

Heard: July 10, 2012.

Judgment: July 16, 2012.

(9 paras.)

Counsel:

No counsel mentioned for the Plaintiff.

Christopher Diana, for the Defendants (moving parties) Animal Care Review Board and Rae Legault.

1 R.F. GOLDSTEIN J.:-- On August 31, 2009, Pamela Pitney's beagle, Little One, was removed by officers of the Ontario Society for the Prevention of Cruelty to Animals ("the OSPCA") pursuant to s. 14 of the *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36 ("the Act"). The officers issued a compliance order pursuant to s. 13 of the Act. When that order was not complied with, the officers issued a Notice of Removal and took Little One to an emergency veterinary clinic. The veterinarian who examined Little One found that she was blind, underweight, and suffering from diabetes. Little One also had a urinary tract infection, fleas, a yeast infection, and possibly cancer.

Ms. Pitney had been treating Little One's diabetes with naturopathic medicine and vitamins for dogs. Little One remained in the care of the OSPCA as Ms. Pitney was unable to pay the bill for her care.

2 Ms. Pitney appealed the s. 14 removal to the Animal Care Review Board ("the Board"). Her appeal was dismissed. Although s. 18 of the Act provides for an appeal from the Board to a Superior Court judge, Ms. Pitney instead brought an application for judicial review to the Divisional Court. The Divisional Court quashed the application for want of jurisdiction and indicated in the endorsement that she could apply to the Superior Court in Welland for an extension of time to file an appeal. Ms. Pitney has not attempted to appeal the decision of the Board. Instead, she has filed a statement of claim against the officers who removed Little One pursuant to the s. 14 order, various branches of the OSPCA, the Board, and Ray Legault, the Board's chair.

3 This motion is brought by the Board and Ray Legault to strike the statement of claim as against them on a variety of grounds. Ms. Pitney did not appear, although I am satisfied that she was properly served pursuant to the Rules.

4 Ms. Pitney did not avail herself of the remedy set out at s. 18 of the Act. That is the only basis upon which she could have properly attacked the order. The statement of claim is clearly a collateral attack on the order of the Board: *R. v. Consolidated Maybrun Mines Ltd.*, [1998] 1 S.C.R. 706.

5 In my view, nothing in the Act indicates that the Legislature intended that the Board be an entity capable of being sued. The existence of the statutory appeal in s. 18 reinforces my conclusion: see *Ontario v. Gratton-Masuy Environmental Technologies Inc.* (2010), 101 O.R. (3d) 321 (C.A.).

6 It is beyond question that Ray Legault enjoys immunity from suit pursuant to s. 19 of the Act.

7 Mr. Diana, on behalf of the Board and Ray Legault, argued that the statement of claim is frivolous, vexatious, and an abuse of process. It is all of these, as well as prolix and, in places, incomprehensible.

8 As it is plain and obvious that the claim cannot succeed against the Board and Ray Legault, it is struck as against those defendants. Costs in the amount of \$1000 are awarded.

9 Counsel for the Board and Ray Legault is to take steps to serve these reasons on Ms. Pitney at her last known address.

R.F. GOLDSTEIN J.

cp/e/qljel/qlpmg