

*Indexed as:*  
**Weir v. Ontario Society for the Prevention of Cruelty to  
Animals**

**Between**  
**Linda Louise Weir, plaintiff, and**  
**Ontario Society for the Prevention of Cruelty to Animals,**  
**defendant**

[1999] O.J. No. 3516

91 A.C.W.S. (3d) 180

Court File No. C-131095

Ontario Superior Court of Justice

**Gordon J.**

Heard: August 30-31 and September 1-3, 1999.

Judgment: September 16, 1999.

(57 paras.)

*Animals -- Cruelty to animals -- Protected animals -- Sale of protected animals -- Surrender of animals -- Torts --  
Abuse of legal process -- Malicious prosecution -- Evidence and proof.*

Action by Weir against the Ontario Society for the Prevention of Cruelty to Animals for damages for malicious prosecution, false arrest and imprisonment and breach of trust. After an investigation, Weir had surrendered her dogs to the Society. The Society had sold the dogs. Weir alleged that Inspector Feagan, on behalf of the defendant Society, intimidated her and threatened her with additional criminal and financial charges. Weir claimed that she had maintained a well-run, caring kennel with proper veterinary services. At a meeting, Weir accused Feagan of calling her operation a Puppy Mill. He denied making those comments. Evidence given by veterinarians indicated that the dogs that had been sheltered by Weir were in deplorable condition. Weir claimed that the Society had sold the dogs for less money than they were worth.

HELD: Action dismissed. Weir's allegations of false arrest or imprisonment were not proven. Nothing showed that duress through intimidation was specifically raised by Weir until the action was commenced in June 1995. There was no logic in criticising the Society for failing to obtain the best prices for animals in its care. Its object focussed on the animals and their well-being. The Society's reasonable costs greatly exceeded its revenue and no balance was due to Weir. Pursuant to section 15(2) of the Ontario Society for the Prevention of Cruelty to Animals Act, the Society was allowed to sell or dispose of the animals at the discretion of its managerial representative in a reasonable manner.

Feagan's demeanour was acceptable. He was not defensive or nervous and showed no dislike for Weir. The surrender was not voidable.

**Statutes, Regulations and Rules Cited:**

Ontario Society for the Prevention of Cruelty to Animals Act, S.O. 1997, ss. 3, 11, 12, 13, 13(2), 14(1)(b), 15(2).

**Counsel:**

Philip Zylberberg, for the plaintiff.

Kenneth C. Hill, for the defendant.

---

**1 GORDON J.:**-- This trial came on for hearing on August 30th and 31st, and the 1st, 2nd, and 3rd of September and was reserved for decision. I intend hereby to deliver that decision.

**2** The Plaintiff brings action for damages of \$250,000 and, in addition, claims punitive and aggravated damages for \$50,000.

**3** The ground pleaded for such damages include malicious prosecution, false arrest and imprisonment, and breach of a trust created by section 15(2) of the Ontario Society for the Prevention of Cruelty to Animals Act, S.O. 1993, c. 27; S.O. 1997, ch. 39, sections 11 and 12.

**4** Section 15 reads as follows:

15. - (1) Where an inspector or an agent of the Society has provided an animal with food, care or treatment, the Society may serve upon the owner or custodian of the animal a statement of account respecting the food, care or treatment by mailing the same by registered mail to the owner's or custodian's last known place of address and the owner or custodian is, subject to subsection 17(6), thereupon liable for the amount specified in the statement of account.
- (2) Where the owner or custodian refuses to pay an account under subsection (1) within five days after service of the statement of account or where the owner or custodian, after reasonable inquiry, cannot be found, the Society may sell or dispose of the animal and reimburse itself out of the proceeds, holding the balance in trust for the owner or other person entitled thereto.

**5** Section 17(6) refers to the powers of the Animal Care Review Board on appeal by owner or custodian.

**6** The Plaintiff has made serious allegations that Inspector Kevin Feagan, on behalf of the Defendant, intimidated her, threatened her with additional criminal charges and financial charges, and improperly dissuaded her from exercising appeal rights and from obtaining legal or other advice. If the allegations can be said to have been proven on the balance of probabilities, not only would the animal surrender document (Exhibit P9) at least be voidable but also punitive damages would be in order.

**7** There has been no reference by the Plaintiff's counsel, at any time that I recall, to the pleaded allegations of malicious prosecution or false arrest or imprisonment. Submissions were directed almost entirely at the actions of Inspector Feagan as a bases for punitive damages and to void the surrender, thereby giving rise to compensation for the Plaintiff from the proceeds obtained on the disposition of the animals in a manner that breached the trust set up by section 15(2).

**8** Since I have not been advised the claims were abandoned, I find that on the evidence there is no false arrest or

imprisonment proven. Even if the period during which the Plaintiff assisted in unloading her animals could be considered arrest or imprisonment which, in my view, it cannot, the damages would be a nominal \$1.

**9** The question of malicious prosecution shall be dealt with further when the Plaintiff's allegations regarding Inspector Feagan are discussed.

**10** The Plaintiff was in consultation with her counsel on January 2nd, 1995 and, on January 4th, he sent the letter set out as Exhibit P16. The letter makes no reference to the surrender document, or the alleged actions of Inspector Feagan, but by implication invokes the trust provisions of section 15(2). Though of questionable purpose because of its failure to specifically state the surrender document to be voidable because of the alleged intimidation, the letter must, of necessity, by its invocation of section 15(2), be taken to have been an attempt to render the surrender void.

**11** The response to counsel's letter on January 13th, 1995, written by B. F. Denham (Exhibit P17) draws attention to the surrender issue: "You should be aware that your client surrendered to the O.S.P.C.A. on December 27, 1994, all of the animals concerned."

**12** There is nothing to show that duress through intimidation was specifically raised by the Plaintiff until the action was commenced on June 22nd, 1995 and, apparently, served in December of the same year.

**13** I accept that if the Plaintiff's allegations against Inspector Feagan were proven to a civil standard, they would, in the circumstances of this case, constitute duress, the result being that the surrender document would be voidable.

**14** If one accepts the surrender to have been voidable and voided by counsel's letter, an interpretation of the section 15(2) trust is required. Counsel has found no previous legal interpretation.

**15** As a primary consideration, I look to the objects of the Society under the legislation as set out in section 3 of the Act:

The object of the Society is to facilitate and provide for the prevention of cruelty to animals and their protection and relief therefrom.

**16** Dealing firstly with revenue received from the removed animals, it is noted the Plaintiff's counsel by his letter of January 4th indicates:

Mrs. Weir would expect you to make all efforts to maximize your proceeds, account for your expenses and provide her with the surplus funds.

**17** It was also said: "these animals are eminently marketable".

**18** In view of this letter and the evidence of the Plaintiff that she had the paperwork for American and Canadian Kennel Club pedigree and registrations for some of these animals, it is curious these papers were not made available. Indeed, from my recollection of the evidence, even their existence was not disclosed. It is of little consistency to demand maximum value and withhold the wherewithal to acquire it.

**19** Further, I can see no logic in criticism of the Defendant for failing to obtain the best prices for animals in their care. The Society's legislated object, as set out above, focuses on the animals and their wellbeing. The Society is not a pet store and is not necessarily favoured with either a commercial traffic area or a marketing scheme. Staffing costs, food and accommodation costs, and veterinarian fees present an accumulating debt load that requires a balance in pricing of disposed of animals. For a Society to keep an animal for a long period of time in the hope of obtaining a higher price would make little sense economically if the accruing cost of retaining the animal overcame any potential benefit. The Society must have some discretion and it must have parameters that allow for consideration of many variables. Some of such variables are as follows: the age and health of the animal, the pedigree of the animal, the overall

availability in the market for the size and breed of the animal, the nature and size of the Society facility available to accommodate the animals, the number of animals which it has on hand. These are not all inclusive but should be considered along with what price can best be obtained to place the animal in an acceptable caring and loving home. On the expense side, the same applies. Food, care, veterinarian expenses, and a daily boarding rate reflecting in addition to food and water, the costs of the shelter, its staff and its utilities are realistic and reasonable charges. The Animal Care Review Board has recognized such a daily boarding rate and I agree that it should be an available charge.

**20** Accordingly, when section 15(2) allows the Society to "sell or dispose of" the animal, my finding is that the Society's managerial representative at the respective shelter has a discretion to do so "reasonably". The reasonableness of the exercise of such discretion will involve many variable considerations, some of which have been set out above.

**21** I do not find the legislative intent to have been focused on obtaining for the owner, the benefit of the highest available price. To this Court it seems contradictory to expect the force of such a trust to be to benefit the person whose actions caused the Society's intervention in the first place.

**22** It must be said, however, that the disposition of an animal of visible and obvious quality to a staff member for free would hardly qualify as reasonable.

**23** On an application of this interpretation, the revenues received were reasonable. Reasonable costs greatly exceeded the revenue and no balance would be due to the Plaintiff.

**24** Donations were not accounted for in detail and, despite Mr. Looker's request for proper accounting, the records kept, at least insofar as donations were concerned, were not detailed.

**25** Except for donations, the summary prepared by Mr. Looker (Exhibit D-6) is acceptable. Reasonable boarding costs are allowable at a minimum at \$6 a day and even with what evidence there is of donations, the reasonable costs exceed reasonable revenues.

**26** Assuming without so finding that the surrender was invalid, the trust thereby activated does not produce a benefit to the Plaintiff and no damages under that head are available.

**27** The Plaintiff's success on punitive damages and damages for malicious prosecution requires analysis of the evidence generally and of that of the Plaintiff and Inspector Feagan.

**28** The Plaintiff presents as an intelligent witness who speaks clearly and directly. I denote little defensiveness in her mannerisms. There is no hesitation in her answers. In summary, except for a few episodes of vengeful sarcasm in her tone on cross-examination, her demeanour can be said to be acceptable and appropriate.

**29** I am mindful of the decision of Fitzgerald, J. (Exhibit D-20) dismissing criminal charges against the Plaintiff. I have not been provided with the list of witnesses called in that proceeding, nor transcripts of their evidence and must proceed with considerations based upon the evidence before me alone.

**30** It is trite to say that credibility cannot be founded upon demeanour alone. One must as well consider reliability and where reliability is lacking, demeanour alone will not suffice to engender a positive finding.

**31** The Plaintiff's evidence concerning her operation in or around Nelson and Ymir in British Columbia created an impression of a well run, caring kennel with proper veterinary services. A groomer was regularly employed and Ms. Wetter was produced to give evidence of the operation. She had been employed there, as the Plaintiff said, "up to a few months before I left".

**32** It was rather surprising then when Ms. Wetter's evidence revealed that she had left the Plaintiff's employ in November of 1993, some thirteen months before the Plaintiff left British Columbia and indeed had seen the operation

after it had moved to Ymir only on one occasion. That occasion was, in fact, at the time the Plaintiff moved her operation to Ymir and was for the purpose of helping the Plaintiff deliver some animals. Her knowledge of the one year operation at this temporary location was non-existent. Ms. Wetter had, in fact, found employment with Dr. Croxall who did the Plaintiff's veterinary work and says that they saw the Plaintiff there only one or two times per month while she worked there.

**33** Dr. Croxall did not attend and I am confined to information in his letter dated August 29th, 1995 and entered as Exhibit P-11 with regard to the Ymir location. With regard to the Ymir location, he says: "The facility was marginal at best. The place proved totally unsatisfactory."

**34** He says that in the latter part of 1994: "We saw very few dogs for treatment and things were obviously coming to a head."

**35** The letter refers to an official S.P.C.A. inspection made in Ymir by Dr. Croxall and a Dr. Morgenthaler from Trail, B.C. but does not give the result, though the Plaintiff, through counsel, gives the impression the inspection was generally positive. Concern, then, with the Plaintiff's evidence of the general condition of her animals in Ymir is raised because of Dr. Croxall's comments, the attempt through Ms. Wetter to produce corroboration of her comments when, in fact, this evidence was largely irrelevant in that regard and, further, by the existence of Exhibit D-16. The latter is a letter dated December 22nd, 1994 from Mr. John Vanderhoeven, Director of Field Operations for the B.C. Society for the Prevention of Cruelty to Animals to Ms. Frances Rodenburg of the Canadian Federation of Humane Societies. The letter addresses other subjects but, on page 2, deals with the Plaintiff and I quote:

On a different topic, we fortunately have very few, if any, real puppy mill operations in B.C. One such operation has given us many problems and was located in Nelson, B.C. This kennel operation consisted of more than 150 dogs and was operated poorly. E.G. Low quality food, disease, poor housing, inbreeding and so on. The owner operator, a Ms. Weir has decided to move her operation to Perkinsfield, Ontario. I have no specific address as she is very uncooperative.

**36** Preliminarily then, though on the surface the Plaintiff's evidence of conditions before leaving B.C. seemed from her evidence positive, there are significant detractors. This may provide some background for consideration on the issue of credibility and reliability of her evidence generally.

**37** In addition, in cross-examination upon Dr. Croxall's letter, the Plaintiff disagrees with its contents where they have negative implication for her to the point where it seems she will not accept even a simple term. For example, a portion of the letter was put to her as follows: "A combination of too many unsold dogs, a low income, expensive food and labour with kennel space in short supply soon became a real problem" and the Plaintiff was asked if she agreed. She elected to alter it to say: "It was a concern." Though perhaps insignificant in itself, this was an example of several answers that refused acceptance of anything that would negatively shade the picture of her operation. It begs saying that Dr. Croxall has nothing palpable to gain by being other than objective.

**38** It is useful to apply general overview to credibility and reliability issues to determine likelihood of trustworthiness. Some questions on doing so arise as follows:

At the meeting in Sudbury in July of 1994 when the Plaintiff was considering moving to this area, the Plaintiff accuses Inspector Feagan of calling her operation a "Puppy Mill" with obvious negative connotation. Those present were the Plaintiff, Inspector Feagan, Marie Prevost, a Real Estate Agent, and another lady with the Plaintiff, whose identity was not in evidence. Inspector Feagan denies the comment and, Marie Prevost, when called gives evidence that this comment was not made. She goes further and indicates that there were no words of any kind similar to this used that would give that impression or sense. She does remember those words being used by

Inspector Feagan when he and she were alone and discussing the meeting later. The Court has not heard from the others who attended. This situation does not increase the Plaintiff's credibility.

If the Inspector had threatened the Plaintiff with more criminal charges and further financial charges if she consulted with anyone or tried to appeal, why would he give her a 1-800 number to call to obtain legal assistance?

If such comments were made, is it not likely the Plaintiff's sister, who is a police officer and her brother who is a correctional officer would have taken no steps to report this activity or to object to it. Would they not have confronted the Inspector with such conduct on December 27th at the meeting at Parry Sound?

It was obvious, by December 27th that the Plaintiff had consulted at least with her sister and brother-in-law yet we have heard of no additional criminal or financial charges.

It would seem objectively logical at that time that the Inspector would be confronted and an appeal launched with the Animal Care Review Board. A solicitor is not required for such an appeal and such an action would, in my view, be invited and almost inevitable result of such alleged extreme intimidation and breach of rights. If these extreme comments were made and related to the Plaintiff's sister and brother-in-law, it is unlikely, in my view, that he would not have been confronted.

If the Plaintiff was afraid because of his comments "if I tried to appeal or if I talked to anyone, he would add costs and charges", why did she, notwithstanding, talk to her sister, her brother-in-law and her Aunt Vera Patrick.

Mrs. Patrick was then in contact, through her husband, with a person, in my notes, named Mr. Courey who held some S.P.C.A. position. If he was told of any of these allegations, the Court has not heard of it.

It is not unfair to say the comments alleged are extreme, if not outrageous. Given this, isn't it likely that the Defendant would have heard from someone about them very quickly? The police officer sister, the correctional officer brother-in-law, the aunt, Mr. Courey, or finally the Plaintiff's counsel. If the Plaintiff did not tell anyone of them on a timely basis, then why not? Intimidation hardly seems an acceptable answer since she did, in fact, speak to others about her situation in face of what she refers to as threats that she should not do so.

**39** The Plaintiff seeks, by referring to her meeting in the summer of 1994 with Inspector Feagan, to establish, on his part, a negative attitude towards her which permeated his dealing with her on and following December 24th, 1994. From the Inspector's comments to Marie Prevost following that meeting, it seems clear he thought her operation undesirable. In argument, the solicitor for the Defendant pointed out the Inspector, if he was of such predisposition, could have under section 13 of the Act, taken direct action to relieve the animals of their distress instead of opting under subsection 2 of that section to have the animals examined by a veterinarian. This position was objected to by the Plaintiff's solicitor and the Defendant's solicitor withdrew it. I fail to understand why. My reading of the section is such

that the Inspector, so long as he had reasonable grounds, could have directly taken steps to inspect the animals and remove them under section 14(1)(b). He did not do this but opted for the examination by a veterinarian. If anything, this is an indication of other than a heavy hand.

**40** The veterinarian that saw the animals, Dr. Darren Stinson, needed only a quick look into the truck. He detected poor air quality from exhaust fumes and heavy ammonia odour from urine. The animals were wet and shivering, their coats matted. Dr. Stinson says Inspector Feagan was firm with the Plaintiff but he saw nothing improper in what he did or said while in the veterinarian's presence. Dr. Stinson did a triage to determine what should be the immediate course with each animal.

**41** Evidence was impressive from Dr. Dan Ransberry who volunteered his services on December 28th to help the Society with the animals' treatment. It is an understatement to say this veterinarian was appalled. His practice, as I understand it, dealt exclusively with dogs and cats and he counted breeders amongst his clients. He saw and examined about 50 dogs before he could stand no more emotionally and left in tears. A partial list of problems included skin lesions, odour from breath, eye lesions, ulcerated eyes, ear problems. He was astounded at how many had ear mites with an incredible amount of blood and puss. Of the approximately 50 animals he examined, all had problems, with extreme ear conditions probably the worst. There was secondary ear infection in many indicating the problems were not recent and other parasites were present besides ear mites. He found it not easy to identify breeds as purebreds as many were substandard.

**42** The problems were far greater than he would expect in a kennel operation especially in the adults.

**43** In cross-examination, it was sought to establish his reaction to the conditions he found at the time had coloured his recollection unfairly to the Plaintiff. In answer, this witness conceded the impact upon him was huge. In view of his recital of the many and varied diseases and conditions he found, his evidence, in my judgment, though passionate, was professional. He is not associated with the Defendants so as to have any undue interest.

**44** His evidence is inconsistent with the impression left by the Plaintiff that the animals were properly looked after and that any negative health conditions found were easily treatable and transient. This reflected negatively, in my view, on the Plaintiff's credibility.

**45** No less passionate was the evidence of groomer, Richard Lalonde, who has 19 or 20 years experience as a pet store operator and groomer. He is also a breeder. He was asked by the S.P.C.A. to attend to the animals after they had been removed from the Plaintiff and he recruited four or five other experienced groomers to help him. He speaks of being able to smell the infection grossly as it was so prevalent. He speaks of coats matted, of rectums plugged with feces, of pads on paws split from standing and walking in feces, of nails that had been so neglected they had grown into the animals legs and required the use of pliers to remove and clip, of plugged and abscessed anal glands, of skin lesions. He was very graphic in his description. From his evidence and that of Dr. Ransberry, it is difficult to believe that these animals had been properly cared for up to December 20th when the Plaintiff left British Columbia.

**46** In my view, Mr. Lalonde's and Dr. Ransberry's evidence impacts negatively upon Ms. Weir's evidence as to her care of the animals and this bears consideration when one analyzes her reliability in considering her allegations against Inspector Feagan.

**47** It is acknowledged that the Agriculture Department Inspector, on December 22nd, allowed the Plaintiff to continue on her way from the border of Manitoba and Ontario.

**48** It is noted, in the Inspector's report, that Ms. Weir told them she had an O.K. from Dr. Croxall that the animals were fit to travel whereas Dr. Croxall says, in his letter (Exhibit P-11), that he had no accurate knowledge of when they were going to leave. He also states he raised questions of kennels, ventilation and temperature control in the vehicle and none of these were answered. If he did not know when the animals were to be transported, is it likely he could have said they were fit to travel. Does this reflect upon the Plaintiff's credibility? It fits a general picture painted by the Plaintiff to

her benefit, which upon closer examination is not solidly founded.

**49** It is fair to say that the way the animals were arranged in the truck did not lend itself to the same care and examination that was provided when each individual animal was examined at the Sudbury facility, nor does it appear there was a veterinarian present.

**50** I am mindful, as well, of Dr. Charles Lockton's evidence and though it takes something away from the evidence of doctors Ransberry and Stinson and that of Mr. Lalonde, he is candid when he says he could not second guess Dr. Stinson's conclusion. It is fair to say that spending about one minute on each animal was perhaps less time than the other witnesses had spent.

**51** Inspector Feagan's demeanour is acceptable. He is not, to my observation, defensive nor nervous. There is nothing of tone to denote an officious nature or dislike for the Plaintiff. His answers are without hesitation and are not perceived as evasive.

**52** If there is one unlikeliness on overview, it is that the Plaintiff did not attempt to arrange payment over time of the amount due on the demand or try to get some of her animals released. One must consider against this, however, that if the animals were in such unhealthy condition as the evidence indicates, she may have been unable to care for them or to afford the veterinary services necessary to properly treat them. If her position originally was to avoid euthanasia for them, it is possible her care for their well being would be better served by allowing them to get the proper veterinary treatment through the S.P.C.A. and be placed in homes where they would be loved and their care continued.

**53** On cross-examination, Inspector Feagan is shown to give answers that are more definite at trial than he is purported to have given in answer on undertaking. One such is that he is now definite the Plaintiff made no inquiry regarding part payment whereas his undertaking was that he could not specifically recall. He also cannot recall speaking to the Plaintiff on December 26th although the Plaintiff says he did in response to a message she left for him to call. He says he did not receive the message. It is submitted he would or should have been expecting her call that day and that may well be so. There is a record that she made a short call to the shelter. I consider this in assessing reliability. Inspector Feagan denies making any of the threatening or intimidating comments the Plaintiff attributes to him.

**54** I consider, as well, the allegations of a representation by someone giving identification as Ken Moss to Ms. Patrick that it was the Society's goal that Linda Weir never own another dog. It is difficult to attribute sincerity to such a remark since there is no evidence there was anyone by that name either as a volunteer or employee at the office where the call is said to have originated. Without identification as someone with a position with the S.P.C.A., any such representation cannot be said to have been a position of the Defendant. I cannot, on any evidence before me, either in chief or cross, conclude that Mr. Terry Looker, the Chief Inspector for the Ontario S.P.C.A. is being misleading when he says there was no one by that name working at the location or volunteering there at the time.

**55** On all of the evidence, I cannot conclude that the Plaintiff has, on the balance of probabilities, proven the allegations she makes concerning the threats and intimidations by Inspector Kevin Feagan. In view of this, I cannot, in any event, find the surrender to have been voidable and I decline to award punitive damages, aggravated damages or damages for malicious prosecution.

**56** Of necessity, I will assess punitive damages even though they are not awarded. In these circumstances, if the outrageous allegations were made out a punitive award in the nature of \$35,000 would be appropriate. I would not award "aggravated" damages which are compensatory in nature as opposed to punitive. They are, in my view, strictly not applicable here as the action is framed.

**57** Tentatively, costs will be awarded to the Plaintiff on a party and party basis, subject to the right of the parties to make representations. If either wishes to do so, contact must be made with the Trial Coordinator, Joy Beange, or Regional Coordinator, Geraldine Sheridan, at the Sudbury Court House before September 30th, 1999, so that a date can be set for such representations to be made. Failing such contact by September 30th, the tentative order will stand.



GORDON J.

cp/d/bbd