

*Case Name:*

**R. v. Stewart**

**Between**

**Her Majesty the Queen, and  
Agnes Stewart and Peter Wilson**

[2008] O.J. No. 4041

Ontario Court of Justice  
Toronto, Ontario

**J.C. Moore J.**

Heard: June 20, 2008.

Oral judgment: June 20, 2008.

(129 paras.)

*Criminal law -- Criminal Code offences -- Wilful and forbidden acts in respect of certain property -- Cruelty to animals -- Couple who had 56 cats and two dogs living in deplorable conditions in one-bedroom apartment convicted of three offences relating to their care of animals -- Officers and veterinarians provided reliable evidence about poor conditions of apartment, lack of food and water, and numerous medical problems experienced by animals as a result -- Couple failed to provide credible explanation for their conduct -- Criminal Code, ss. 429, 446.*

*Criminal law -- Constitutional issues -- Canadian Charter of Rights and Freedoms -- Legal rights -- Protection against unreasonable search and seizure -- Application by couple, accused of cruelty to animals in their care, to exclude evidence based on insufficiency of information to obtain warrant to search their residence dismissed -- Based on officer's past dealings with couple and observations of residence, information to obtain was sufficient -- Canadian Charter of Rights and Freedoms, s. 8.*

Trial of Stuart and Wilson, a married couple, on several charges relating to their negligent care of their cats and dogs. The couple had been the subject of OSPCA investigations before. An OSPCA officer received another complaint about cats at the residence and visited the residence, noting the smell of cat urine. She left a note, and received a call from her to let the officer know Stuart was away and would return to the residence a week later. The officer continued to investigate, because she feared Wilson was trying to delay her entry into the residence. She concluded animals in the residence could be in distress, so she obtained a warrant to enter the residence. Wilson and Stuart were home when the officer and another OSPCA employee attended to execute the warrant. The officers discovered 56 cats and two dogs living in the one bedroom apartment. There were feces all over the place, dirty litter boxes, and soiled newspapers and towels. Several of the cats had problems with their eyes, dried blood and missing fur. Many were thin. One dog and one cat were in crates with no food or water. The other dog was locked in another room because it was aggressive. There was no water visible for the cats to drink, although there was some dog food in the kitchen. The couple admitted they were giving the sick cats children's medicine. Stuart claimed she had an animal care diploma and knew how to care for

cats. The animals were seized and examined by two veterinarians. The veterinarians discovered many infections, eye, nose and respiratory problems, and one cat with burns to its paws. Eight cats had to be euthanized because they were so sick. The officer denied she had a bias against the couple, and denied she suggested the couple was operating a puppy or kitten mill. The couple claimed the information to obtain the search warrant was insufficient and that the warrant should not have been issued. They testified they knew of a bylaw limiting the number of animals per household to six, but explained they took in more animals to provide shelter. Stuart testified the couple was operating an animal rescue operation. Stuart testified the condition of the apartment was worse than normal when the officers arrived, because Wilson was ill and she was a bit overwhelmed by the number of animals she was caring for. She admitted she chose what medicines to administer to the sick animals. She had a great deal of knowledge of animal care and treatment.

HELD: The couple was convicted as charged. The couple failed to show the warrant was obtained without sufficient grounds, and as such, there was no breach of the couple's right to protection against unreasonable search and seizure. The OSCPA officers and veterinarians provided credible and reliable evidence without bias. Stuart's evidence was riddled with inconsistencies and her explanations defied common sense and logic. To subject the animals to the living conditions in the couple apartment was criminal. The couple's conduct was wilful. They caused unnecessary pain and suffering to the cats, and failed to provide adequate food, water and shelter for most of the animals. They were equally responsible for the offences.

**Statutes, Regulations and Rules Cited:**

Canadian Charter of Rights and Freedoms, 1982, R.S.C. 1985, App. II, No. 44, Schedule B, s. 8

Criminal Code, R.S.C. 1985, c. C-46, s. 429(1), s. 446(1)(a), s. 446(1)(c), s. 446(3)

Ontario Society for the Prevention of Cruelty to Animals Act, R.S.O. 1990, c. O.36, s. 11, s. 12, s. 14

**Counsel:**

Ms. D. Carbonneau: Counsel for the Crown.

Mr. G.M. Zoppi: Counsel for Mr. Wilson.

Ms. M. Johal: Counsel for Ms. Stewart.

**REASONS FOR JUDGEMENT**

**1 J.C. MOORE J.** (orally):-- We are dealing with the matter of Agnes Stewart and Peter Wilson. As a result of an investigation conducted by the OSPCA (The Ontario Society for the Prevention of Cruelty to Animals), the two defendants, Peter Wilson and Agnes Stewart, husband and wife, were charged with the following offences:

- 1) It is alleged that they, on or about the 21st day of February in the year 2006, in the City of Toronto, being the owners of domestic animals, to wit: cats, did wilfully fail to provide suitable and adequate care for such cats, contrary to section 446(1)(c) of the Criminal Code.
- 2) And further, that Agnes Stewart, also known as Nancy Wilson, and Peter Wilson, did on or about the 21st day of February in the year 2006, in the City of Toronto, being the owners of domestic animals, to wit: cats and dogs, did wilfully fail to provide suitable and adequate water for such cats and dogs, contrary to section 446(1)(c) of the Criminal Code of Canada.
- 3) And further, that Agnes Stewart, also known as Nancy Wilson, and Peter Wilson, did on or about

the 21st day of February in the year 2006, in the City of Toronto, being the owners of domestic animals, to wit: cats, did wilfully permit to be caused unnecessary suffering to such cats, contrary to section 446(1)(a) of the Criminal Code of Canada.

**2** The Crown elected to proceed summarily and the trial was heard by me, the two defendants having entered pleas of not guilty to the charges.

**3** Although the charges were laid in early 2006, it was not until the latter part of 2007 that the two defendants retained the present counsel, Ms. Johal and Mr. Zoppi.

**4** Upon the arraignment of the defendants an application to quash the information was made on behalf of the defendants. That application was dismissed. The trial commenced April 28, 2008. A Charter application had been filed April the 8th, 2008.

**5** The application alleged a breach of the defendants' section 8 Rights and sought an exclusion of evidence seized pursuant to a search warrant. It was agreed that the Charter application proceed and be decided upon at the commencement of the trial and be done so by way of a blended voir dire and trial with the evidence called on the Charter application being applied to the trial proper.

**6** I found that there was no breach of the defendants' section 8 Right to be secure against unreasonable search and seizure, and dismissed the applications with reasons to follow.

**7** All evidence obtained as a result of the search and observations made during and after the search was ruled to be admissible at the trial of the two defendants.

**8** Firstly, I will give my reasons for dismissing the Charter application and then I will render my judgment on the trial proper.

**9** Two witnesses testified on the Charter application. Lynne Barrington was called as a witness by the Crown and Sarah Beaugard (ph) was called by the defence. Each was employed at the relevant time by the OSPCA and each was involved in the investigation of this matter. It is not disputed that the governing legislation under which the two persons were acting is the Ontario Society for the Prevention of Cruelty to Animals Act.

**10** At the relevant time, i.e. February 2006, both Lynne Barrington and Sarah Beaugard were employees of the Society, Ms. Barrington as an agent and Ms. Beaugard as an inspector and supervisor of Ms. Barrington. At the time, they worked out of the same office and their duties included investigating complaints of cruelty to animals, enforcing the law, educating the public and pet owners, etc. Much of their power and authority is derived from the above mentioned Act.

**11** Section 11 of the said Act gives any agent or inspector with the OSPCA the powers of a police officer. When involved in the welfare of or the prevention of cruelty to animals, section 12 provides for the issuance of a search warrant by a Justice of the Peace, enabling an OSPCA agent to enter a building or place and carry out an inspection.

**12** Section 14 gives such agent the power to then seize and remove, if necessary, an animal believed to be in distress.

**13** Based on these powers granted under Sections 11, 12 and 14, an Information to Obtain, Exhibit 4, was drawn up by Lynne Barrington on February 21st, 2006, which resulted in a warrant being issued, Exhibit 3, enabling Lynne Barrington and Sarah Beaugard to enter the premises at 55 Maitland Street, unit 1808, in the City of Toronto, in order to ascertain if any animals found therein were in distress. Acting on this warrant, Ms. Barrington and Beaugard did enter the premises that day, made observations, obtained information, and seized animals, approximately 50, that were subsequently examined by two veterinarians, a Doctor Woodley and a Doctor Bayer.

**14** As a result of the investigation, the criminal charges were laid against the two defendants.

**15** The basis for the Charter Application is that, for several reasons, there were insufficient grounds upon which the warrant could be granted. Without the entry onto the premises, no observations would have been made, no evidence would have been collected, no photos taken, no animals would have been seized, and therefore, no opinions would have been formulated by the two expert Crown witnesses and the two veterinarians.

**16** The search conducted in this case was not a warrantless search. Thus, the onus is on the defendants to show on the balance of probabilities that there occurred in this instance a Charter breach.

**17** What the two defendants, through their counsel, are attacking in this case is the Information to Obtain document, Exhibit 4, drawn up by Lynn Barrington, upon which the warrant, Exhibit 3, was based and issued by a Justice of the Peace. It is the allegation of the defence that much of the information provided in the document is unreliable, less than credible, and tainted by a bias on the part of one or both, Barrington and Beauregard.

**18** It is submitted that in fact no reasonable and probably grounds existed here and that the document contains inaccurate information that is misleading and perhaps even intentionally omits relevant and necessary information which should have been placed before the Justice of the Peace.

**19** Ms. Barrington testified that she was employed by the OSPCA as an agent from January '06 to May '07. At about 5:00 p.m. on February the 17th, 2006, she received a radio call to attend 55 Maitland Street with respect to a complaint being made about three cats at the Wilsons' place. This address was familiar to her as she had had dealings with the Wilsons, i.e. the two accused, in the past, when she was an employee of the Toronto Humane Society.

**20** Her knowledge was based on both her personal involvement, information from other employees, and information contained in files.

**21** This went back to July 2005. A complaint had been lodged regarding the Wilsons; the conditions of cats in their residence at 55 Maitland Street, and the difficulties she had being able to actually talk to and meet with Agnes Stewart, also known as Mary Wilson, the defendant, in order to investigate the complaint.

**22** She attended at 55 Maitland at least three times, left notes, etc. From outside the apartment, she could smell cat urine. Finally, she was able to talk to Mrs. Wilson personally in mid-August 2005 and discussed the concerns over conditions in which her cats were living.

**23** This time, February 17th, 2006, she again could smell urine and could hear noises coming from the apartment. She left a note for Mrs. Wilson and eventually she received a phone call from her stating that she was up north and would be returning February 23rd, and that they could meet on the 24th. Ms. Barrington had a concern that once again, Mrs. Wilson was attempting to delay entrance into the apartment. The 17th was a Friday.

**24** On February 20th, she continued with her investigation and as part of that investigation she spoke to a Sheri Beryl, a Christine Hagel (ph), and a veterinarian, Doctor Heather Hannah (ph). Each of these three provided her with additional information about the Wilsons and their cats.

**25** She also retrieved information from past files that included allegations and findings with respect to the Wilsons' ownership of some dogs. She also made contact with an animal control officer who had had prior dealings with the Wilsons and their treatment of animals.

**26** Based on her personal observations, past and present, her past dealings with Mrs. Wilson, information obtained from others relating to present and past incidents, information gleaned from files, she formed the opinion that there could very well be animals i.e. cats and dogs, in apartment 1808, that could very well be in distress.

**27** Concerned that Mrs. Wilson would thwart her attempts to get a first hand look into the apartment, based on past experience, she, along with Ms. Beauregard, attended the Old City Hall with Exhibit 4 in order to see a Justice of the Peace, obtain a warrant, so that they could enter the premises under the authority of the warrant.

**28** She prepared the Information to Obtain, then she, Inspector Beauregard, and two police officers, attended at that address. This all occurred on February 21st, 2006.

**29** As it turned out, the Wilsons were at home. She and Ms. Beauregard, then entered the apartment and discovered approximately 56 cats and two dogs, all within the one bedroom apartment.

**30** She acknowledged under cross-examination that there was some confusion over the information she had received prior to preparing Exhibit 4 but she insisted that she adequately explained that in the document. She also acknowledged that she had used the internet and obtained information from a couple of websites that she believed were connected to the Wilsons and she failed to make reference to that in her Information to Obtain.

**31** She adamantly denied that she had an ulterior motive for doing so or that she had a bias against the Wilsons, which tainted her approach to the investigation. She denied that she ever suggested the Wilsons were operating a puppy or kitten mill.

**32** She agreed that Exhibit 4 did not contain all the information she had from her personal experience with the Wilsons, information from court documents, or prior cases, court transcripts, but she was satisfied based on steps she did take to verify that information that she was relying upon was accurate. And as this was the first time she had prepared such a document, she did speak to other employees and consult her supervisor for assistance in drawing up the document.

**33** It was her opinion, based on a great deal of information, both personal, anecdotal, and from files, that a warrant was necessary in this case that she concluded that: (1) there were several animals inside apartment 1808, and (2) that they were in distress and required the care and attention that the Wilsons were not providing. In addition, she felt that she was being stonewalled again by the Wilsons.

**34** Ms. Barrington maintained that she included the details that were necessary that she believed to be accurate and reliable, and any information that was not included was only done so as it was not necessary to include it and the omissions were not done for any ulterior motive or in bad faith.

**35** Sarah Beauregard, an inspector at the time for the OSPCA, was called as a witness by Mr. Zoppi, counsel for Mr. Wilson. Up until the time she accompanied Ms. Beauregard to the Old City Hall on February 21st, 2006, in order to get the warrant, she had no dealings with this case. She did not review the Information to Obtain, i.e. Exhibit 4, prior to attending the Old City Hall at the office of the Justice of the Peace.

**36** On behalf of their clients, Ms. Johal and Mr. Zoppi submit that the content of the Information to Obtain was insufficient, such that the Justice of the Peace could not conclude that there were animals in distress within 55 Maitland, and based on the information, a warrant should not have issued.

**37** In addition, it is submitted that the document contains relevant omissions, misstatements, and misleading and tainted information due to a bias and inexperience on the part of the informant, agent Lynne Barrington.

**38** It is argued that agent Barrington should have included information on the website, newspaper ads, past contacts with the two defendants, etc. In addition, attempts should have been made to gather more information from vets about the care the Wilsons were providing to their animals.

**39** Based on the evidence, which I accept, and applying the relevant law, I find that the applicants have not shown on the balance of probabilities, that there were insufficient grounds to issue the search warrant.

**40** The search warrant is presumed to be valid unless and until it is shown to be otherwise. One must look at the information as a whole and not in isolation. What has to be provided to the Justice of the Peace is sufficient, not all information, and that information has to be truthful, reliable and not misleading.

**41** First of all, I find Ms. Barrington to be a reliable and credible witness. I see no evidence that she had a bias against the two defendants that could have tainted any information, opinions, or conclusions that she included in the document. I found her to be a person who understood her duty to both the Wilsons and the animals in the care and custody of the Wilsons.

**42** Although the Act gives her the power to enter premises without a warrant, she understood that the power is to be exercised sparingly and that she accepted that she should obtain judicial authorization so that her request could be scrutinized by a judicial officer.

**43** There is no requirement in law that all information be included. I also find that whatever information she provided was credible and reliable, and not misleading.

**44** As to whether the issuing Justice of the Peace had the requisite reasonable grounds to believe, it is not for me to decide if I would have come to the same conclusion. The information included in the document is more than sufficient for one to conclude that there are one or more animals in 55 Maitland Street that may very well be in distress and that there was some urgency that required the issuance of the warrant due to the expressed unavailability of the Wilsons until later in the week.

**45** It is true that for some unexplainable reason the fact of the urine smell was left out, but, the inclusion of that information could only have strengthened the case that agent Barrington presented.

**46** I conclude, therefore, the applicants have not shown that a breach of their section 8 Charter Right, to be free from unreasonable search and seizure, has been breached and the application is dismissed.

**47** Next, I will deal with the trial proper.

**48** In addition to the evidence adduced on the Charter application, the following evidence was introduced on the trial proper: The testimony of Dr. Lawrence Woodley, Lynne Barrington, Sarah Beauregard, various photographs, reports, etc. As well, the defendant, Nancy Wilson, testified.

**49** At the relevant time, Ms. Lynne Barrington and Sarah Beauregard, were employees of the OSPCA in the Toronto region; Ms. Barrington, as an agent, and Ms. Beauregard, as an inspector.

**50** Ms. Barrington's involvement with the particular case commenced February 17th, 2006, a Friday. As she was on her way home, after her day of work, at about 5:00 p.m., she received a radio call from dispatch to attend at the address of 55 Maitland Street, as a result of a complaint having been made about the residents' care of animals.

**51** She was familiar with that address and the tenants of that address i.e. the two defendants, as a result of past dealings with them.

**52** She attended that address and made certain observations, which included the smell of urine emanating from the apartment. No one responded to her knock so she left a note.

**53** On February 21st, the Tuesday, as a result of further developments, she and Ms. Beauregard attended at the Old City Hall and obtained a warrant authorizing entry onto the premises at 55 Maitland Street, pursuant to Section 12(1) of the OSPCA Act, Exhibit 3.

**54** On February 20th, Ms. Stewart had left a phone message saying she and her husband were up north and the earliest she could meet with Ms. Barrington was on the 24th.

**55** The warrant authorized a search for and seizure of any animals found to be in distress within apartment 1208, the Wilsons' apartment.

**56** She and Ms. Beauregard attended with two police officers of the Toronto Police Service. In response to a knock on the door, Mr. Wilson opened the door. He called for his wife, Agnes Stewart, and she appeared from within the apartment. She and Ms. Beauregard were allowed entry.

**57** Once the apartment door was opened, they noticed an overwhelming smell of cat urine. They entered a one bedroom apartment which contained dozens of cats; at least 50 or more and a couple of dogs.

**58** The apartment was a mess; feces all over the place, a couple of dirty litter boxes that were overflowing. There were soiled newspapers and towels on the floors. Many of the cats were showing signs of discharge from the eyes and noses, dried blood, missing fur. There was no water visible for the cats and dogs, however, there was some dog food in bowls in the kitchen.

**59** One crate contained a Collie dog with no food or water. A two week-old kitten was in a crate with no direct source of heat. Most cats seemed to have more than one problem, i.e. missing fur, ear mites, caked and closed eyes, discharge from eyes and nose, the sounds of wheezing cats was obvious.

**60** The cats were all over the place. Some cats were very thin; skin and bone. One cat had severely burned paws. Diarrhea and urine was clearly visible in some areas of the apartment and on some of the cats. The second of the two dogs, they put in a locked room due to a concern over the aggressive nature of the dog.

**61** In their opinion, many of the cats had to be removed immediately due to their poor state of health and obvious discomfort and distressed condition. All these cats were subsequently handed over to the two vets. Photos were taken of the apartment and cats and entered as Exhibit 5A to 5N.

**62** Discussions took place between the two defendants and the defendants agreed that many of the animals required medical attention from a vet. At one time, Peter Wilson indicated that all this had to do with his co-accused, his wife, not him.

**63** One of the conversations that took place was as follows, and I'm reading from the transcript. I believe this is a conversation between Ms. Barrington and it is with Ms. Wilson, Nancy Wilson:

**64** "I asked, "What is the yellow liquid?" And the response from Nancy Wilson was, "Amoxicillin, banana flavoured. I water it down" I then asked, "So the cats saw a vet?" And the answer again from Nancy Wilson was, "Well, no. It's human medication, children's. My doctor gave me some or prescribed it to me for the cats, like for the cats." Then I asked another question, more of a statement I suppose, "Nancy, you could not administer medication like that to kittens, especially human, without knowing the dose or medical diagnosis." And then I inquired, "Why are you doing this?" The answer I received from Nancy Wilson was, "I have an animal care diploma. I know how and have been treating the cats. I know they are sick."

**65** Within the apartment, children's medication was located but no children were residing there. Most of the animals were removed (or surrendered). Some required immediate attention while others were seen by a vet the next day.

**66** Doctor Lawrence Woodley was the next witness to testify. He is a veterinarian, licensed to practice in Ontario, and has been doing so since 1981. His CV is Exhibit 7. He was accepted as an expert in veterinarian medicine.

**67** On February 21st, 2006, late in the day, his presence was requested at the OSPCA Society's Woodbine facility. Pictures were taken of several of the cats that had been brought by the OSPCA from 55 Maitland Street by Ms. Barrington and Beauregard. These were marked as Exhibits 8A through N and Exhibits 11A through C at the trial.

**68** His job that day was to examine all the cats and decide which cats were treatable and which were not. As well, he had to decide which, if any, were to be euthanized. Upon examination, all cats had various degrees of infections; ear mites, eye, nose and respiratory problems. Many had viral with secondary bacterial infections. Some cats had corneal ulcers, which if untreated, can lead to blindness. The respiratory difficulties that some of the cats suffered from can reduce the sense of smell, which in turn can cause a cat to lose its appetite, which then makes the cat more susceptible to disease, etc.

**69** One cat in particular, Exhibit 8K, was grossly underweight with badly scalded feet pads, and hair matted with feces and urine.

**70** He reviewed photos depicted in Exhibit 5A to 5N and Exhibit 8A to 8N, and described the various ailments and conditions to which the cats were exposed. He summarized his findings in Exhibits 9 and 10, two reports that he prepared.

**71** Exhibit 10 reads as follows, and it is dated March 15th, 2006:

"To whom it may concern: On February 21st, 2006, I examined several cats from a single household, as requested by the OSPCA. These examinations are referenced in case number 014082. All these cats had respiratory infections at varying degrees of severity. All the older kittens and adults had severe ear mites; some so severe the ears were very painful. Two of the older kittens had severe eye infections, probably related to the respiratory infections; both probably will lose their right eyes. The one was severely ulcerated, the other had conjunctival overgrowth. I recommend Ivomec, Clavamox, and Tetracycline eye ointment for these cats.

Due to the severity of their conditions, I had to euthanize eight animals. (1) An adult cat was severely dehydrated, emaciated, and was covered in its own feces and urine. It had diarrhea and a respiratory infection. The pads of the back paws were ulcerated from standing in a soiled kennel.

(2) An older kitten had so much overgrown conjunctiva that it would be blind and would require surgical removal of both eyes.

And finally, (3) Six kittens had a mild respiratory infection and were mildly dehydrated. There was no nursing queen available and the kittens required frequent care."

**72** Doctor Woodley also testified that cats normally require lots of food and water, and litter boxes. The problem when the food and water is limited is that the older, stronger cats tend to get more of the food and water at the expense of the younger. As well, ideally, there should be one litter box per cat as cats tend to be very clean animals and when exposed to an unclean environment, their stress and anxiety levels rise, leading to additional problems.

**73** Kittens need either, (1) a mother, or (2) to be bottle fed for the first few weeks.

**74** He did acknowledge that some of the medication located in the apartment was okay for the cats and that very few of the cats could be described as being severely dehydrated or emaciated. But ideally, there should only be one to two cats per room, not approximately 50 cats that resided in the one bedroom apartment at 55 Maitland Street.

**75** Both Ms. Barrington and Ms. Beauregard were recalled as witnesses and testified at the trial proper. Each testified that based on their experience and training, that much more water and food was necessary for the large number of cats present in the apartment. As well, the risk of infection and disease spreading is far greater with the large number of cats confined to such a small space.

**76** In addition, Ms. Stewart did provide the name of a vet she says provided care for the animals. This did not include prescribing medication for the animals based on a diagnosis. But she decided herself what to get for them.

**77** Each defendant indicated that they were aware the by-law governing the number of cats per household, i.e. six. An explanation was proffered that some cats were found on the street, others were dropped off, and they took them in to provide shelter.

**78** The last witness presented by the Crown was a Doctor Baer, a vet with the OSPCA Veterinarian's Hospital. Her evidence was introduced to the court via Exhibit 19. On February 22nd, 2006, she examined a total of 36 cats that were seized from 55 Maitland Street on February 21st, 2006.

**79** The report contains her observations and opinions and contains reference to the numerous afflictions that were present on a majority of the cats, such as eye infection, poor oral health, ear infections, respiratory problems, lack of weight. Overall, many were in distress and in need of proper medical care. Exhibit 20 outlines in detail what each cat was suffering from.

**80** The last witness to testify at this trial was the defendant, Nancy Agnes Stewart/Wilson. She is 60 years of age with a B.A. from Carlton, followed by a diploma from an institute in 1996 as an animal care specialist in Montreal. As well, according to her, she apprenticed with a veterinarian in Toronto for some 26 years on a part-time basis doing house calls.

**81** She testified that in February 2006, there were approximately 45 cats and 2 dogs living in the apartment; of which, 15 were theirs, 13 cats and 2 dogs. The remaining cats came from: (1) vet referrals, (2) strays, (3) drop offs, (4) the building superintendent.

**82** What she and her husband were involved in was an animal rescue operation to some extent. She says that for 42 years of her life, she has been assisting unwanted and abandoned pets on a not-for-profit basis. She maintained that every two weeks, she purchased about \$450 worth of food from Pet Valu so that there was lots of food for the cats and dogs in the apartment.

**83** According to her, the water bowls were normally full but on February 21st, 2006, she had not gotten around to replenishing them when the two OSPCA persons arrived on scene.

**84** She also explained how the kittens were cared for. The various types of medication and the use thereof were also mentioned by her. She agreed that the state of the apartment was somewhat less than desirable but she put that down to the fact that she was overwhelmed by the sheer numbers at that time and the fact that her husband, the co-accused, was in ill health and somewhat distressed as his mother had recently passed away.

**85** Some of the meds she obtained through a prescription from her family doctor, not a veterinarian, and without a diagnostic checkup on the animals. She also went to great length to describe the various meds that she had, their uses, and how it was that she applied them. She also testified that some of the medication that was unlabeled in fact came from a vet, a Doctor Felix, to whom she did at times seek treatment for the ill cats, although the treatment and meds he prescribed was done so without his actually examining the animals. According to the defendant, he relied upon her passing on to him the symptoms that she observed.

**86** Under cross-examination, she did display a seemingly great deal of knowledge about animals, diseases, medication, treatment, etc.

**87** According to her, she and the co-accused existed on savings, pension, and the odd donation.

**88** Ms. Stewart did not really dispute much of what was proffered by way of evidence by the Crown's witnesses, but she had her own reasons, justifications, excuses, for the presence for most of the cats, the condition of the apartment, the

apparent lack of food and water, the apparent lack of medication and treatment for the cats, the various diseases and afflictions present in the cats. The opinions and observations of the two vets were not seriously challenged.

**89** The charges that the two defendants are facing are found in Sections 446(1)(a) and (1)(c) and read as follows:

"Everyone commits an offence who: (a) wilfully causes or being the owner, wilfully permits to be caused, unnecessary pain, suffering, or injury to an animal, (c) being the owner or the person having the custody or control of a domestic animal wilfully neglects or fails to provide suitable and adequate food, water, shelter, and care for it."

**90** Section 446(3) reads as follows:

"For the purposes of proceedings under paragraph (1)(a) or (b), evidence that a person failed to exercise reasonable care or supervision of an animal, thereby causing it pain, suffering, damage, or injury is, in the absence of any evidence to the contrary, proof that the pain, suffering, damage, or injury was caused or was permitted to be caused wilfully or was caused by wilful neglect, as the case may be."

**91** Both the Crown and defence counsel presented to the Court several cases dealing with these sections and the relevant case law. In addition, Section 429(1) defines the term 'wilfully,' and it reads as follows:

"Everyone who causes the occurrence of an event by doing an act or by admitting to do an act that it is his duty to do, knowing that the act or omission will probably cause the occurrence of the event and being reckless, whether the event occurs or not, shall be deemed, for the purposes of this part, wilfully to have caused the occurrence of the event."

**92** It is the position of the Crown that all the essential elements of the offences have been proven with respect to each defendant.

**93** It is the position of the defence that although it is not disputed that the cats were not necessarily in the best of shape, that one cannot necessarily conclude that the omissions and commissions here reached that of criminal conduct simply because the two defendants fell short of the OSPCA standards. As well, it is submitted that the Crown must establish beyond a reasonable doubt that the conduct of the two defendants was deliberate and intentional, not accidental or out of negligence. As well, the fact that the bowls for water and food may have been empty and the litter boxes dirty at the time the two OSPCA representatives entered, does not mean that this was an ongoing situation.

**94** It is submitted that the motive of the two defendants, i.e. to care for strays, drop-offs, etcetera, was an honourable one, and, although they may have fallen short of certain standards that this does not constitute criminal conduct on their part.

**95** I have reviewed the evidence adduced at this trial, the relevant sections of the Criminal Code, and the relevant case law. As in any criminal trial, the onus rests with the Crown to prove its case beyond a reasonable doubt before a finding of guilt can be made. This applies to the actus reus and mens rea. It is not for the defence to prove or disprove anything.

**96** The reliability and credibility of certain witnesses have been put in issue at this trial, specifically Ms. Barrington and Ms. Beauregard, and the defendant, Nancy Stewart. However, this is not your classic "he said, she said," type of case, but I must still be guided by the Supreme Court of Canada's decision in *W.D.*, [1991] 1 S.C.R. 742, in the sense that the defendant, Nancy Stewart, did testify and she did provide explanations, reasons, justifications to account for the situation she and her co-accused found themselves in.

**97** In deciding what evidence to accept, I am entitled to accept all, part, or, none of the evidence proffered by any one

witness.

**98** With respect to the two Crown witnesses, I found their evidence to be credible and reliable. For the most part, their evidence was consistent one with the other and compared to prior statements. I thought they gave their evidence fairly, without bias or favour.

**99** The testimony of the defendant, Nancy Stewart, fell far short in that regard. Although there are parts of her testimony I accept, there is much that I reject as not credible or reliable. Her testimony is riddled with inconsistencies and often defies common sense and logic. For one who puts herself forth as being a caring, loving, experienced animal lover, the facts speak for themselves, and in reality, show her and her husband to be exactly the opposite.

**100** Who knows what their motive is, but to subject the cats to living conditions that existed in that apartment at the relevant time is nothing short of criminal. No right thinking, loving, caring person, could live in the same space as did the two defendants with all those animals in such deplorable conditions. The living conditions, the various diseases, obvious to anyone, let alone experts, the sheer number of cats in such a confined area, cannot be the result of anything but wilful conduct by acts of omission and commission on the part of the two defendants.

**101** Excuses, reasons, justification, was offered by Ms. Stewart but that all amounts to nothing more and nothing less than sheer nonsense. There is no suggestion that the two defendants are unintelligent, of limited capacity, and therefore could not comprehend or not be aware of the plight of the 50 plus cats and 2 dogs.

**102** The horrible diseases and living conditions were obvious and preventable. It is true that some of the animals were better off than others but most were suffering from one disease or another, and all were exposed to horrible living conditions. Some of the cats may have had adequate food and water but it is obvious from the evidence that many did not.

**103** I find based on the evidence, which I do accept, that the Crown has proven beyond a reasonable doubt that: (1) the conduct of the two defendants was wilful at and around the relevant time, (2) that they own and/or had custody and control over most of the cats at the relevant time, (3) that they caused unnecessary pain and suffering to the cats, (4) that they failed to provide adequate food, water, and shelter for most of the animals.

**104** I find that the Crown has proven beyond any doubt that the two defendants had the necessary control, were in a position to make choices, exercise options, limit the number of animals they took in. The fact that Nancy Stewart obviously has better than average knowledge and experience in the field of animal care and chose not to take advantage of it, makes the Crown's case even stronger. I therefore conclude that the Crown has proven beyond a reasonable doubt each count on the Information with respect to each defendant.

**105** Both defendants are equally responsible according to the evidence adduced at this trial. It was not submitted at trial, by way of a defence for Mr. Wilson, that he was less responsible, had little or no control, or was not aware somehow of the situation.

**106** Therefore, each of the two defendants is found guilty of each of the counts with which they are charged.

**107** Did you want to deal with sentencing today or put the matter over?

**108** MR. ZOPPI: I'd be prepared to address it today.

**109** THE COURT: I, quite frankly, would like a Pre-Sentence Report for each of the two.

**110** MR. ZOPPI: So then we will have to schedule a date to come back for sentencing. What's the timeline for a, a Pre-Sentence Report?

**111** THE COURT: Four to six weeks for out of custody.

**112** MS. JOHAL: I'm sorry, Your Honour, I was just also in 501 and I left my agenda in that courtroom. If I could just attend to get it and come back. Thank you.

**113** MONITOR'S NOTE: At this time, proceedings are paused to accommodate Ms. Johal.

**114** THE COURT: All right. I am gone the last week of July.

**115** MR. ZOPPI: I am gone the first two weeks of August. I'm in this courthouse on the 20th of August if that works for Ms. Johal.

**116** MS. CARBONNEAU: That works for me.

**117** MR. ZOPPI: It doesn't for Ms. Johal.

**118** MS. CARBONNEAU: Oh, okay.

**119** MR. ZOPPI: There's the 21st. How's that for people?

**120** THE COURT: I'm sorry, the 21st?

**121** MR. ZOPPI: Mm-hmm.

**122** MS. CARBONNEAU: That's fine.

**123** THE COURT: Could you please check and see if say an hour for sentencing on the 21st?

**124** CLERK OF THE COURT: That's fine.

**125** THE COURT: Okay. Apparently, August 21st is available. So the matter will be adjourned to August 21st and the PSR ordered.

**126** MS. CARBONNEAU: Thank you very much, Your Honour.

**127** MR. ZOPPI: Thanks, Your Honour.

**128** THE COURT: Thank you.

**129** MR. ZOPPI: Thanks for your consideration in this matter, sir.

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