DATE: 20060404
DOCKET: M33114 (C43937)

COURT OF APPEAL FOR ONTARIO

WEILER, LASKIN and ROSENBERG JJ.A.

B E T W E E N :	)	
	)	
ROY BEVAN	)	
	)	**Kenneth C. Hill**
Appellant	)	**for the respondent**
(Respondent)	)	**The moving party**
	)	
	)	
- and -	)	
	)	**Donald R. Good**
	)	**for the appellant**
ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS	)	
	)	
Respondent	)	
(the Moving Party)	)	**Heard: January 9, 2006**

ROSENBERG J.A.:

[1] The sole issue on this motion to quash an appeal is whether the appellant has a right of appeal from the order of a Superior Court Judge under s. 18 of the *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36.

[2] On December 24, 2003, the Animal Care Review Board upheld, in part, a compliance order made against the appellant, but also required the Society to pay the costs of care of the horses and required that the appellant and the Society each bear half of the costs for care of the sheep. The Board also ordered that the animals be returned to the appellant on certain conditions.

[3] The appellant and the Society appealed that decision pursuant to s. 18 of the *Act*. On June 20, 2005, Langdon J. dismissed the appellant's appeal and allowed the Society's

appeal. The appellant seeks to appeal the order of Langdon J. It appears from the notice of appeal that the appellant challenges that part of the order relating to removal of certain of the animals as well as the requirement that he pay the costs of care of the animals.

[4] The Society has now brought a motion to quash the appeal on the basis that there is no right of appeal to this court and, alternatively, since the appeal is therefore frivolous and vexatious, for security for costs. For the following reasons, I would dismiss the motion.

[5] The appeal provisions under the *Act* are found in ss. 17 and 18. Section 17 provides for an appeal from an inspector's order to the Animal Care Review Board. Section 18 provides for a further appeal to a Superior Court Judge in part as follows:

> 18(1) The Society or the owner or custodian may appeal the decision of the Board to a judge of the Ontario Court (General Division).
>
> …
>
> (4) The appeal shall be a new hearing and the judge may rescind, alter or confirm the decision of the Board and make such order as to costs as he or she considers appropriate, and *the decision of the judge is final*. [Emphasis added.]

[6] The reference to a judge of the Ontario Court (General Division) is now to be read as meaning a judge of the Superior Court of Justice: *Courts of Justice Act*, R.S.O. c. C.43, s. 11 and *Courts Improvement Act, 1996*, S.O. 1996, c. 25.

[7] The Society submits that since s. 18(4) provides that the decision of the judge is "final" there is no right of appeal and the appellant must proceed by way of judicial review. I do not agree with this submission. The fact that the decision of the judge of the Superior Court of Justice is final does not oust the appellate jurisdiction conferred by the *Courts of Justice Act* under ss. 6 and 19 of that Act. Under the *Courts of Justice Act*, an appeal lies from a "final order" of a judge of the Superior Court of Justice.

[8] When used in the context of decisions of administrative tribunals the use of the term "final" may limit the scope of judicial review. However, when acting in an appellate capacity under s. 18 of the *Act*, the judge of the Superior Court of Justice is acting as a judge, not as a *persona designata* or administrative tribunal. The law in that regard has been clarified by the Supreme Court of Canada in *Minister of Indian Affairs and Northern Development v. Ranville et al.*, [1982] 2 S.C.R. 518 at 527, where the court held that "whenever a statutory power is conferred upon a s. 96 judge or officer of a

court, the power should be deemed exercisable in an official capacity as representing the court, unless there is express provision to the contrary". Thus, since the judgment under s. 18(4) of the *Act* is a decision of a superior court judge, judicial review is not available.

[9] The moving party referred us to *Sheets v. Ontario Society for Prevention of Cruelty to Animals* (1984), 5 O.A.C. 309 – a decision of the Divisional Court on judicial review. At that time, the Act provided for an appeal from the decision of the Board to the County or District Court: R.S.O. 1980, c. 356, s. 18(1). Thus, judicial review was theoretically available; although, see s. 34 of the *County Courts Act*, R.S.O. 1980, c. 100. It is not apparent that the *Ranville* decision was drawn to the Divisional Court's attention in *Sheets.*

[10] As the term is used in s. 18(4) of the *Act*, "final" demonstrates that the Superior Court Judge's order may be appealed as a final order under the *Courts of Justice Act* to this court or the Divisional Court, as the case may be. Much clearer language would be required to oust the broad jurisdiction conferred by the *Courts of Justice Act.* [1]

[11] Since Langdon J.'s order is an order of a judge of the Superior Court of Justice and is a final order, an appeal lies to this court under s. 6(1)(b), unless the appeal is from a final order referred to in s. 19(1)(a) of the *Courts of Justice Act*, in which case the appeal would be to the Divisional Court. As it appears that the appellant is not simply appealing an order for payment of not more than $25,000, but is also appealing the removal order, the appeal is not covered by s. 19(1)(a) of the *Courts of Justice Act* and lies to this court.

[12] Accordingly, I would dismiss the motion to quash with costs to the appellant fixed in the amount of $2,500 inclusive of disbursements and G.S.T.

Signed: "M. Rosenberg J.A."

"I agree K.M. Weiler J.A."

"I agree J. I. Laskin J.A."

RELEASED: "MR" April 4, 2006

[1] We need not determine the standard of review of Langdon J.'s decision. That will be a matter for the court hearing the appeal.