

QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2008 SKQB 150**

Date: **2008 04 03**
Docket: Q.B.G. No. 296 of 2008
Judicial Centre: Saskatoon

BETWEEN:

STEVEN FRIESEN

APPLICANT

- and -

SASKATCHEWAN SOCIETY FOR THE PREVENTION
OF CRUELTY TO ANIMALS (S.S.P.C.A.)

RESPONDENT

Counsel:

Toni L. Rempel
Patrick G. Ennis

for the applicant
for the respondent

JUDGMENT
April 3, 2008

ALLBRIGHT J.

[1] The applicant brings a motion before this Court seeking the following relief:

1. A Declaration that the Respondent and/or Respondents agents, did unlawfully enter upon the Applicant's property described as: Block 5, Lot 7 & 8, in the village of Hawarden, in the Province of Saskatchewan,

and illegally seized the Applicant's two dogs in contravention of *Canadian Charter of Rights and Freedoms*, Part I of the

Constitution Act, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 8, and in excess of the authority granted to the Respondent under *The Animal Protection Act, 1999*, S.S. 1999, ch. A-21.1;

2. An Order requiring the Respondent to disclose to the Applicant Form A and Form C in relation to the inspection and subsequent seizure of the Applicants two above-noted dogs as pursuant (sic) *The Animal Protection Regulations, 2000*, 11 Aug 2000, c A-21.1 Reg 1;
3. An Order requiring the Respondent to disclose to the Applicant any veterinarian report(s) done between February 26, 2008 to date, on the Applicant's two above-noted dogs;
4. An Order that the Respondent return and release the two above-noted dogs to the Applicant or, alternatively, an Order for a restrictive injunction that the Respondent may not dispose of the two above-noted dogs in any matter (sic) including selling such to a third party or destroying such.
5. costs of the within application, on a solicitor/client basis, to be costs in the cause;
6. such further and other relief as counsel may advise and this Honourable Court may allow.

[2] The applicant asserts the following grounds in support of the application:

1. THAT the Respondent illegally and without lawful authority did enter upon the Applicant's private property on February 25, 2008 for the purpose of conducting an inspection of the Respondent's property and dogs;
2. THAT the Respondent and/or it's (sic) agents did return to the Applicant's property the following day with a Search Warrant;
3. THAT the Applicant's two dogs where (sic) seized by the Respondent on February 26th, 2008;
4. THAT upon requesting to see the Search Warrant the Respondent's refused to release such; however did release

such the next day;

5. THAT the Applicant has not been provided any of the Veterinarian Reports, nor Form A or C pursuant (sic) *The Animal Protection Regulations, 2000*, 11 Aug 2000, c A-21.1 Reg 1;
6. THAT the Respondent has since held to (sic) dogs in their custody and has refused to release the dogs to the Applicant unless he pays \$937.00, as of March 7, 2008 with costs increasing at a rate of \$10/day per animal plus medical and groom costs;
7. THAT the Applicant did try entering into a payment arrangement with the Respondent, but the Respondent has refused to accept such arrangement;
8. THAT the Respondent has notified that (sic) Applicant that if the amounts claimed to be due by the Respondent are not received by 5 p.m. on March 12, 2008, the Applicant will dispose of the animals as provided for in *The Animal Protection Act, 1999*;
9. THAT the Applicant fears that his dogs will be sold or destroyed and seeks a quick resolution to the within matter.

[3] The applicant's notice of motion was made returnable on March 13, 2008.

[4] In conjunction with the notice of motion, the applicant brought an ex parte application requesting leave that the time for hearing the motion be abridged. The initial return date of the notice of motion was March 13, 2008 and on that occasion the court made an interim order restraining the respondent from disposing in any manner of the two animals in question and adjourning the matter to March 20 at 10:00 a.m. As a result of the unavailability of counsel for the respondent, the matter was adjourned by consent to Chambers on March 27, 2008. At that time the application proceeded with the oral submissions of counsel

and the filing of detailed written submissions.

BACKGROUND

[5] The applicant, Steven Friesen, owns two dogs, one being a Great Pyrenees and the other an Alaskan Husky. The dogs are kept in the backyard of his acreage which is located in the Village of Hawarden, Saskatchewan.

[6] Barry Thiessen is an animal protection officer employed by the S.S.P.C.A., and on February 25, 2008 at approximately 4:07 p.m., he arrived at Steven Friesen's acreage in the Village of Hawarden to respond to a complaint that had been received that there were two dogs at that location that were not receiving proper care. The complaint had been received from Kevin Perry who is the acting animal control bylaw officer for the Village of Hawarden.

[7] On February 25, according to his affidavit, it was the intention of Barry Thiessen to speak to the owner of the residence regarding the complaint to determine if the complaint was founded in fact.

[8] Mr. Thiessen indicates that he parked at the curb and approached the house by walking up a driveway. As he proceeded up the driveway he observed a black and grey dog jumping up and down on the end of its chain that was attached to an old car garage. This was apparently the only shelter that he was able to observe which had been provided for the dog.

[9] Further, he indicates that there was no clear path to the front door, so he went around to the backdoor and when he turned the corner of the house

he observed a large white dog standing at the end of its chain that was attached to an uninsulated doghouse. He observed a container of water by each dog with the contents frozen solid. Additionally there were food dishes for each of the dogs however they were empty. It was his opinion that both dogs looked very thin. He knocked on the door however there was no response and at that time he formed the opinion that a search warrant was needed to relieve the animals of their distress.

[10] He composed an inspection notice and placed it in a plastic sleeve, attaching the document to the front door. He left the site at approximately 4:40 p.m. The inspection notice referenced the residence as belonging to Steven Friesen and gave notice that on the 25th day of February at 4:00 p.m. he observed the two animals in the yard as he had described. Under the heading “Improvements Required”, he wrote “These dogs must have daily care - fresh water, fresh food on a daily basis.” He indicated that a reinspection would occur on February 26, 2008 and he printed his name on the document, signed it and identified his badge number.

[11] In addition to the inspection notice, Barry Thiessen completed an information to obtain a search warrant under *The Animal Protection Act, 1999*, S.S. 1999, c. A-21.1. The information was in a prescribed Form A and provided as follows:

This is the information of Barry Thiessen, of Saskatoon, Saskatchewan,
Animal Protection Officer with the Saskatchewan S.P.C.A. taken
before me.

The informant says that: 2 Dogs are chained up in the back yard.
The 1st is a large white dog, the other is a large black and gray
dog. These animals are located at Block 5, Lot 7 and 8 in the

village of Hawarden, in the Province of Saskatchewan and are in distress due to the lack of care while under the care of STEVE FRIESEN contrary to Section 4 of the Animal Protection Act 1999 and / or Section 446.(1)(c) of the Criminal Code.

The FRIESEN residence is located in the village of Hawarden in the Province of Saskatchewan, hereinafter referred to as the premises.

This was brought to the attention of the informant on February 20, 2008.

Therefore between the dates of February 20, 2008 and February 25, 2008 STEVE FRIESEN failed to provide the dogs with adequate care.

And that the informant believes on reasonable grounds that the following offence has occurred:

THAT between February 20, 2008 and February 25, 2008 in the village of Hawarden in the Province of Saskatchewan STEVE FRIESEN has placed his animals in distress due to the lack of adequate care contrary to Section 4 of the Animal Protection Act 1999 and / or Section 446.(1)(c) of the Criminal Code.

THAT the recovery of the things aforementioned being one large white dog and one black and gray dog in distress, or other relevant things, or evidence to that offence.

THAT the aforementioned things are located in the above described premises of STEVE FRIESEN and includes all outbuildings at the premises described as Block 5, Lot 7 and 8 in the village of Hawarden in the Province of Saskatchewan.

My Grounds for belief are:

THAT the informant, an Animal Protection Officer with the Saskatchewan S.P.C.A.

THAT on February 20, 2008 at 10:15 A.M. the informant did receive a complaint from Kevin Perry, of Hawarden, in the Province of Saskatchewan and alleges that the Dogs have not been receiving proper care. February 25, 2008 at approximately 4:00 P.M. the informant attended the premises to find that the dogs are chained up in the backyard without food or fresh water and large amounts of feces is in the area of the dogs. They have uninsulated structures to go in for shelter.

THAT the informant believes a search warrant is necessary to search the STEVE FRIESEN premises described as Block 5, Lot 7 and 8 in the village of Hawarden, in the Province of Saskatchewan, and the recovery of a large white dog and a large black and gray dog, or any other relevant things and to relieve the large white dog and a large black and gray dog of their distress.

THAT the informant believes to the best of his ability, this information is true.

Wherefore the informant prays that a search warrant may be

granted in order to relieve the aforementioned dogs, from their distress and to collect and record evidence.

This information to obtain a search warrant was sworn by Barry Thiessen before a justice of the peace on February 26, 2008 at Warman, Saskatchewan.

[12] A search warrant was authorized by the justice of the peace on February 26, 2008 and was directed to Barry Thiessen as an animal protection officer with the Saskatchewan S.P.C.A. That search warrant, issued under *The Animal Protection Act, 1999* provides in part as follows:

Whereas it appears on the oath of Barry Thiessen, of Saskatoon, Saskatchewan,

There are reasonable grounds for believing that:

Between February 20, 2008 and February 25, 2008 in the village of Hawarden in the Province of Saskatchewan STEVE FRIESEN has placed his animals in distress due to the lack of adequate care contrary to Section 4 of the Animal Protection Act 1999 and / or Section 446.(1)(c) of the Criminal Code.

The residence is located in the village of Hawarden in the Province of Saskatchewan, the STEVE FRIESEN premises is described as Block 5, Lot 7 and 8, hereinafter referred to as the premises.

There is a large white dog and a large black and gray dog, or other relevant things. The recovery of the aforementioned items will provide evidence that the animals were not receiving adequate care and that an offence has been committed. The search will include all outbuildings, on the aforementioned premises of STEVE FRIESEN.

[13] Barry Thiessen returned to the location the following day, February 26, 2008, and formed the opinion that the situation which he had observed the previous day had not changed. This attendance occurred at approximately 5:40 p.m. The animals continued to be in distress in his opinion and he observed that the inspection notice was still attached to the door. He knocked on the door

however there was no response and the two dogs in question were seized. The respondent retained control of the two dogs and continues to have the dogs in their possession, and while there have been attempts to do so, the applicant and the respondent have been unable to reach a satisfactory repayment arrangement for the amount which the respondent claims is outstanding and owing by the applicant as a result of the seizure and attendant veterinary and grooming care provided to the animals as well as sustenance.

[14] In his affidavit, the applicant, Steven Friesen, deposes to the following relevant facts:

3. THAT I love my dogs and have always fed and watered them. They are not ill treated nor were they in distress at any time while in my care.
4. THAT I take good care of my dogs. My Alaskan Husky can only be groom (sic) twice a year, otherwise Alaskan Huskies tend to become unconditioned to the climate.
...
7. THAT my two dogs where (sic) seized by the Respondent on February 26th, 2008.
8. THAT when I arrived at my property I did not know where my dogs were. There were no notices posted.
9. THAT while I was out looking for the dogs my girlfriend from my cell called the Outlook RCMP regarding them.
10. THAT I called the S.P.C.A. the next morning and found out that the S.P.C.A. had come and taken my dogs.
11. THAT the S.P.C.A. told me that if I wanted my dogs back I had to pay them \$800.00 by Friday February 29, 2008.
12. THAT I (sic) although I work, I earn just above minimum wage and could not come up with \$800.00 within 3 days.
13. THAT I proposed a payment arrangement to the S.P.C.A. and they refused to accept such.

...

17. THAT I have not been provided any invoice, or any of the Veterinarian Reports, or any information on who it was who made the complaint against me or why they came to inspect my dogs on my property.
18. THAT the S.P.C.A. has since held to (sic) dogs in their custody and has refused to release the dogs to me unless I pay them \$937.00, as of March 7, 2008 with costs increasing at a rate of \$10/day per animal plus medical and groom (sic) costs.

[15] The most recent advice from the respondent to the applicant was that they require the applicant to pay \$1,700 as of March 18, 2008 with thereafter the daily cost increasing at the rate of \$10 per animal plus medical and grooming costs.

ISSUES

[16] The issues are:

1. Was the warrant issued to Barry Thiessen on February 26, 2008 regarding the applicant's property in Hawarden, Saskatchewan lawfully obtained pursuant to *The Animal Protection Act, 1999*?
2. Were the observations of Barry Thiessen, made during his initial visit to the applicant's property on February 25, 2008, such observations subsequently leading to his obtaining a search warrant, obtained in a manner that violated the rights of the applicant guaranteed under s. 8 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule

B to the *Canada Act, 1982* (U.K.), 1982, c. 11 (the *Charter*)?

3. If the answer to issue no. 2 is in the affirmative, was the evidence obtained admissible under s. 24(2) of the *Charter*?
4. Does the applicant owe the S.P.C.A. moneys for expenses incurred for caring for his dogs pursuant to *The Animal Protection Act, 1999*?

ANALYSIS

1. *Was the warrant issued to Barry Thiessen on February 26, 2008 regarding the applicant's property in Hawarden lawfully obtained pursuant to The Animal Protection Act, 1999?*

[17] The respondent, Saskatchewan Society for the Prevention of Cruelty to Animals (S.S.P.C.A.), is governed in this Province by *The Animal Protection Act, 1999* and *The Animal Protection Regulations, 2000*, R.R.S. c. A-21.1 Reg 1.

[18] The individual, Barry Thiessen, works as an animal protection officer duly appointed under s. 3 of the Act which provides as follows:

Humane societies

3(1) Subject to the regulations, the minister may:

(a) approve as a humane society for the purposes of this Part any organization that:

(i) is incorporated or registered as a corporation pursuant to an Act; and

(ii) has as a principal object the prevention of cruelty to animals; and

(b) suspend or revoke the approval mentioned in clause (a).

(2) Subject to the regulations, the minister may appoint any person as an animal protection officer for the purposes of this Part who:

- (a) meets the prescribed criteria; and
- (b) demonstrates to the minister that he or she is suitable to be appointed as an animal protection officer.

[19] As earlier noted, late in the afternoon on February 25, 2008, Barry Thiessen in his capacity as an animal protection officer, attended to the applicant's property in the Village of Hawarden, Saskatchewan. This attendance was in response to a complaint which had been provided to the respondent that there were two dogs at the applicant's property which were not receiving proper care. This information had come from Kevin Perry of Hawarden, Saskatchewan. Kevin Perry served in the role as the acting animal control bylaw enforcement officer for the community of Hawarden.

[20] Barry Thiessen had attended at the property with the primary purpose of speaking with the owners of that property and to that end approached the house over the driveway. He found that the front door was snowed in and was not being used so he attended to the rear entrance of the premises. It was at that time as he walked along the side of the house that he observed a dog chained to the garage. It had been his observation again as earlier noted, that there was no food visible and the water was frozen in the dish. More significantly, to him the dog appeared malnourished. He then observed in his walk to the rear entrance, a second dog chained to an uninsulated doghouse also with no evidence of any food and water frozen in the dish. This dog in turn appeared malnourished as well.

[21] It was at this point that Barry Thiessen formed the opinion that both dogs were in distress. The concept of "animals in distress" is found under s. 2 of *The Animal Protection Act, 1999, supra*, and the relevant provision provides:

2(1) In this Part:

...

(2) Subject to subsection (3), for the purposes of this Part, an animal is in distress if it is:

- (a) deprived of adequate food, water, care or shelter;
- (b) injured, sick, in pain or suffering; or
- (c) abused or neglected.

(3) An animal is not considered to be in distress if it is handled:

- (a) in a manner consistent with a standard or code of conduct, criteria, practice or procedure that is prescribed as acceptable; or
- (b) in accordance with generally accepted practices of animal management.

(4) For the purposes of this Part, a person responsible for an animal includes a person who:

- (a) owns an animal;
- (b) has custody or control of an animal; or

...

[22] Section 4 of the Act in turn provides:

No person responsible for an animal shall cause or permit the animal to be or to continue to be in distress.

[23] The animal protection officer knocked on the door of the applicant's residence but received no answer.

[24] I have no reason to doubt the assertion by the applicant, Steven Friesen, that when he did arrive at his property, no notices were posted or in any event observable by him. However, I also accept the assertion by Barry Thiessen that at the time of his initial attendance at the applicant's residence, he composed an inspection notice, placed it in a plastic sleeve and attached the document to

the back door. It is obviously unclear what may have happened to this document, but I am satisfied that the animal protection officer undertook this posting.

[25] Barry Thiessen's actions were and are subject to the parameters found in ss. 6 and 7 of the Act. These provisions provide in part as follows:

Relieving animals in distress

6(1) Where an animal is found in distress in a public place or, subject to section 7, in any other place, an animal protection officer may take any action that the animal protection officer considers necessary to relieve the animal's distress where the person responsible for the animal:

- (a) does not promptly take steps to relieve the animal's distress; or
- (b) cannot be found immediately and informed of the animal's distress.

(2) Without limiting the powers of an animal protection officer acting in accordance with subsection (1), the animal protection officer may:

- (a) take custody of the animal;
- (b) arrange for transportation, food, water, care, shelter and veterinary treatment for the animal; and
- (c) deliver the animal into the custody of:
 - (i) a humane society; or
 - (ii) a caretaker, if there is no humane society near the location where the animal is found or if the humane society does not have an appropriate facility in which to keep the animal.

...

Authority to enter

7(1) A justice of the peace or a provincial court judge may issue a warrant in the prescribed form authorizing an animal protection officer to enter and search any place or premises named, or stop and search any vehicle described, in the warrant if the justice or judge is satisfied by information on the oath of the animal protection officer in the prescribed form that there are reasonable grounds to believe:

- (a) that an animal is in distress in any place, premises or vehicle; or
- (b) that an offence against this Part has occurred and evidence of that offence is likely to be found in the place, premises or vehicle to be searched.

(2) With a warrant issued pursuant to subsection (1), an animal protection officer may:

- (a) enter at any time and search any place or premises named in the warrant for the purpose of taking any action authorized by this Part to relieve the animal's distress;
- (b) stop and search any vehicle described in the warrant for the purpose of taking any action authorized by this Part to relieve the animal's distress;
- (c) open and examine any trunk, box, bag, parcel, closet, cupboard or other receptacle that the animal protection officer finds in the place, premises or vehicle; and
- (d) seize and remove from any place, premises or vehicle searched anything that may be evidence of an offence against this Part, including the carcass of a dead animal.

[26] In this instance, the animal protection officer obtained a warrant from a justice of the peace and returned to the applicant's premises the following day in possession of such warrant.

[27] The animal protection officer, in the process of seeking the warrant, deposed to the existence of the requisite facts as set forth in ss. 6 and 7. There was before the justice of the peace at that time a sufficient basis upon which the warrant could be issued.

[28] Accordingly, in considering all of the above, I am of the opinion that the warrant issued to Barry Thiessen on February 26, 2008 regarding the applicant's property in Hawarden, Saskatchewan was lawfully obtained pursuant to the provisions of *The Animal Protection Act, 1999*.

2. Were the observations of Barry Thiessen, made during his initial visit to the applicant's property on February 25, 2008, such observations subsequently leading to his obtaining a search warrant, obtained in a manner that violated the rights of the applicant guaranteed under s. 8 of the Canadian Charter of Rights

and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (U.K.), 1982, c. 11 (the Charter)?

[29] It is the position of the applicant that the animal protection officer had no authority to conduct the “inspection” which he undertook upon his initial attendance at the applicant’s premises in Hawarden. The applicant suggests that this inspection was unlawful and that Barry Thiessen, as an animal protection officer, acted outside of the scope and authority which was granted to him pursuant to the Act.

[30] The respondent suggests that the actions of Barry Thiessen on that occasion were comparable to or tantamount to the activities of a postal carrier or a meter reader in approaching a home for a limited but legitimate purpose. With respect, I do not share this perspective of the attendance of the animal protection officer, as the postal worker or the meter reader is possessed of an implied consent from the owner of a residence to deliver mail to that residence or read the meters associated with that residence for the purposes of levying an appropriate utility surcharge. By accepting postal delivery and by receiving utilities from a public utility agency, an owner of a residence or an occupant of a residence has impliedly entered into a “social contract” in which such peripheral attendances at the premises in question are authorized. In this instance, there is no similar foundation for a “social contract” and therefore no implied authority granted by the occupant or owner of the premises for an animal control officer to conduct such an inspection.

[31] While I express this disagreement with the respondent’s view of the nature of the animal control officers’ attendance at the residence, I similarly do not share the view expressed by the applicant as to the nature of this initial

attendance. The applicant views the February 25, 2008 inspection by Barry Thiessen at the premises as the foundation for the warrant and subsequent search of February 26, 2008. Following from this, the applicant relies upon the Supreme Court of Canada's rationale in *R. v. Kokesch*, [1990] 3 S.C.R. 3. On that occasion the Supreme Court opined that police officers under the unique circumstances in *R. v. Kokesch, supra*, cannot enter onto private property without a search warrant for the purpose of obtaining evidence that would assist in establishing the reasonable and probable grounds required to justify the issuance of a search warrant. The applicant equates the actions of Barry Thiessen with the actions of the officers in *R. v. Kokesch*. I am of the view that the underpinning facts in *R. v. Kokesch, supra*, are somewhat different than the circumstances which are before me. In *R. v. Kokesch, supra*, the police, suspecting that the accused was involved in the cultivation of marijuana, had entered the accused's land and attempted to peer inside the windows of his home. While they were not able to see anything, the officers detected the odour of marijuana. Based on these observations, they were then able to obtain a search warrant. At the trial stage, the judge held that what was referred to as a "perimeter search" was unlawful because it had been conducted without a search warrant and that the search warrant subsequently obtained was based on illegal evidence and was also invalid. The trial judge then held that the evidence was inadmissible pursuant to s. 24(2) of the *Charter*. The Crown appealed this decision and on appeal the Court of Appeal held that the search was not unreasonable and that even if there was a violation of the *Charter* the evidence obtained was real evidence and not to have been admitted. The Court of Appeal allowed the Crown's appeal and directed a new trial. It was from this decision that the accused then appealed to the Supreme Court of Canada.

[32] The essence of the Supreme Court of Canada's adjudication was that the accused's rights under s. 8 of the *Charter* were violated by the warrantless search of the perimeter of the dwelling house as the police had no authority to conduct that search. The court further held that the nexus between a warrantless and unconstitutional search of the perimeter of the dwelling house and the subsequent discovery of the evidence was sufficiently close that it could be concluded that the evidence was "obtained in a manner that infringed or denied s. 8 of the *Charter*". The majority of the Supreme Court concluded that the evidence ought not to be admitted and granted a remedy under s. 24(2).

[33] In this instance, the animal control officer had a legitimate reason to come to the property of the applicant. Information had come to his attention which triggered his obligation to undertake some investigative procedure. The purpose in his attendance at the residence, and I accept this as a fact, was to make inquiries of the owner or person in control of the dogs to determine what if anything further ought to be done in relation to them. The physical presence of snow restricted the manner of approaching the home, and the front door appeared to be unused and was blocked by snow. Barry Thiessen's decision to then approach the home from the rear to attempt to speak with some occupant of the residence of necessity required him to walk to the back door. It was at this time that he observed the two dogs which were in "plain view". Their circumstances were also in "plain view" so far as food, water and shelter were concerned. The animal control officer knocked on the door however he received no response. The legislation under which he was acting then entitled him following the formation of his opinion as to the condition of the dogs, to conclude that in addition, a search warrant was needed to relieve the animals of their distress. He composed the appropriate inspection notice and placed it on the

back door (the door which appeared to be normally utilized). The officer did not attempt in any way to approach the animals nor did he undertake any other activities which could be said to have exceeded the limited authority which he had and was exercising at that point. A fundamental distinguishing feature between this and the actions of the officers in *R. v. Kokesch*, is the existence of the statutory legislation enabling the officer; indeed requiring the officer to under certain circumstances undertake an investigation. His activities on the applicant's property were minimal and restricted to those actions which he has deposed to. In addition, the observations of the animal control officer, Barry Thiessen, raised in his opinion violations of the legislation relating to animal care. I am of the view that it cannot fairly be said that in examining the actions of the animal control officer, that he was purposely entering upon the property for the purposes of obtaining evidence to obtain a subsequent search warrant.

[34] Accordingly for the foregoing reasons, I am of the opinion that the observations and activities of the animal control officer, Barry Thiessen, which occurred on February 25, 2008 leading to his obtaining of a search warrant did not occur in a setting where it could be said that he had violated the s. 8 *Charter* rights of the applicant.

3. *If the answer to issue no. 2 is in the affirmative, was the evidence obtained admissible under s. 24(2) of the Charter?*

[35] In light of my conclusion on the foregoing issue, it is not necessary to address the question of whether the evidence is admissible or whether the evidence should be excluded under s. 24(2). A *Charter* remedy is unavailable in the absence of a *Charter* breach.

4. Does the applicant owe the S.P.C.A. moneys for expenses incurred for caring for his dogs pursuant to *The Animal Protection Act, 1999*?

[36] I share some of the applicant's concern in relation to this issue. I am advised that no details of the amount purportedly owing by the applicant to the respondent were provided to the applicant. I am further advised that the initial amount, which has subsequently increased significantly, involved a component of professional veterinary expenses, grooming expenses and sustenance expenses. I am of the view that the respondent had and has an obligation to provide the applicant with a breakdown as to how the purported amount owing is made up. It may be that the bulk of the initial assessment related to veterinary expenses and/or veterinary expenses and grooming expenses, however neither I nor the applicant is aware of what that breakdown is. In attempting to assess the amount owing by the applicant to the respondent, I am mindful of s. 12 of *The Animal Protection Act, 1999, supra*, which provides:

Liability for expenses incurred

12(1) The person responsible for an animal taken into custody pursuant to subsection 6(2) is liable to the humane society for the expenses reasonably incurred by the humane society, or by a caretaker on behalf of the humane society, pursuant to this Part with respect to the animal.

(2) The humane society may require the person responsible for the animal to pay the expenses for which he or she is liable pursuant to subsection (1) before returning the animal to that person.

[37] In my view the respondent is entitled to claim from the applicant the reasonable expenses incurred in taking the two dogs into care and providing them with veterinary care and other necessary care. Assuming that the veterinary expenses were disbursements incurred by the respondent, it is appropriate that

the applicant pay these disbursement costs. Similarly if the grooming charges were expenses incurred by the respondent where these services were provided by someone outside of the employment of the respondent, then the respondent is entitled to receive repayment of these expenses. In the event that the expenses were incurred “in house” and not disbursements to an outside agency, then I am of the view that the respondent under the unique circumstances of this situation and the lack of details as to the amount owing by the applicant, ought not to receive payment of them from the applicant and I direct that the applicant is not responsible for such grooming costs in the event that they were not paid to some outside person or agency.

[38] In addition, the applicant is required to pay to the respondent a sum equal to the daily sustenance care cost for each dog from the 27th day of February through to Thursday, March 13, 2008, the original return date of the notice of motion. It is my understanding that the unavailability of counsel for the respondent until the adjourned date of this motion (being March 27, 2008) accounted for a portion of this time. I am of the view that it would not be appropriate to hold the applicant responsible for the care of the animals from March 13 to March 27 and I direct that he is not so responsible. The applicant is however responsible for the daily sustenance, care and cost for each of the dogs from and after commencing on March 28, 2008 and continuing until payment of the full amount of the outstanding indebtedness by the applicant to the respondent. The applicant is within three days of this judgment to provide a detailed statement of account to counsel for the applicant setting forth the particulars of the amount owing in accordance with this judgment. In the event

that the parties are unable to agree on this amount, either has leave to request the matter be returned to me for further consideration in conjunction with written submissions by the parties.

[39] On the occasion of the hearing of the motion I inquired of Mr. Ennis, counsel for the respondent, what his view was as to the matter of costs. Mr. Ennis did not indicate that he was seeking costs from the applicant in the event that the respondent was successful in opposing the applicant's motion and the respondent's brief of law does not seek to be awarded costs of the Chambers motion. Accordingly I make no order as to costs.

J.
G.N. ALLBRIGHT