

**File No: 148923-1  
Registry: Victoria**

**In the Provincial Court of British Columbia**

**REGINA**

**v.**

**SYDNEY JAMES HASKELL**

**REASONS FOR JUDGMENT  
OF  
THE HONOURABLE JUDGE WISHART**

**COPY**

<b>Crown Counsel:</b>	<b>J. Patterson</b>
<b>Defence Counsel:</b>	<b>R. Schwartz</b>
<b>Place of Hearing:</b>	<b>Victoria, B.C.</b>
<b>Date of Judgment:</b>	<b>December 8, 2010</b>

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[1] THE COURT: Mr. Haskell is charged pursuant to s. 24(1) of the *Prevention of Cruelty to Animals Act*, in that he was the person responsible for the dog, Cosmos, that he permitted Cosmos to be or continue to be in distress from the 13th day of October to the 16th day of October, 2009.

[2] There is no issue in this case that Mr. Haskell was the owner of Cosmos and that he was the person responsible for him. The issue is whether Mr. Haskell permitted Cosmos to be in distress or to continue to be in distress.

[3] Distress is defined in s. 1(2) of the Act as follows:

. . . an animal is in distress if it is

(a) deprived of adequate food, water, shelter, ventilation, space, care or veterinary treatment,

(b) injured, sick, in pain or suffering, or

(c) abused or neglected.

[4] The facts in this case are not particularly in dispute, and I will review them for the purpose of these reasons for judgment.

[5] Mr. Haskell was the owner of the dog, Cosmos. It appears to be a lab mixed breed. He obtained Cosmos in approximately 2007 through an ad in Used Victoria. Mr. Haskell lives in a home on Richardson Road in Victoria, British Columbia. He described Cosmos as a bit of an escape artist, having escaped

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from his yard from time to time.

[6] On approximately October the 11th, 2009, Mr. Haskell noted a cut on Cosmos' front right leg. He did not know how he got the cut, but assumed it was from trying to escape from the yard. Mr. Haskell agreed that the cut on Cosmos' leg looked on that date as it did in the photos that were entered as Exhibit 1 in this trial. Those photos were taken by Dr. Russell on October 16th, 2009.

[7] On approximately October 14th, 2009, Mr. Haskell took Cosmos for a walk and ended up at the dog park on Brooke Street. There were other dogs and owners at the park at that time and one of these was Ms. Ages who testified at this trial. Ms. Ages noted a gaping wound on the front leg of Cosmos. She testified that it clearly needed stitches, and she was shocked and horrified by the wound and the fact that it had not been treated.

[8] She otherwise described Cosmos as happy and playful. She said that the wound did not appear to be bothering Cosmos. She was able to go up to him and examine his leg. She stated that the wound was not dressed in any way. Ms. Ages vowed that she would call the SPCA and she did so that evening, and again the next day.

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[9] Erika Paul is a special constable with the SPCA. She testified that a call first came in regarding Cosmos on October the 13th, 2009. She was not able to get to that call until October the 15th, due to higher priority calls that she needed to attend to first.

[10] On October the 15th, Special Constable Paul attended at Mr. Haskell's residence. Mr. Haskell was not at home, but another gentleman was there. Special Constable Paul explained why she was there and that gentleman brought Cosmos to the door. Special Constable Paul noted the laceration and determined that it needed medical attention.

[11] Special Constable Paul left an order for Mr. Haskell that he was to take Cosmos for medical attention within 48 hours or risk seizure of the dog or charges. This information was unclear as to whether or not Special Constable Paul stated that to the individual at the door or Mr. Haskell, but it appears on the face of the order that was left for Mr. Haskell. She described Cosmos as being friendly when she met him on that date.

[12] Special Constable Paul testified that Mr. Haskell called first thing the next morning shortly after 9:00 a.m. and acknowledged receiving the order. He told her that he was monitoring the wound for infection, and if any infection was

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present he would take the dog to the vet for attention. He told her Cosmos had a similar wound in the past and that he had treated it himself.

[13] He asked for an extension on the 48 hours to see if the wound would heal on its own and with his care. Constable Paul did not give Mr. Haskell that extension.

[14] Mr. Haskell testified in these proceedings and he confirmed that conversation with Constable Paul. In his testimony, he stated that Cosmos had had a previous wound, and pointed to a scar on Cosmos' leg that appears in the photos in Exhibit 2. That scar is slightly above the wound in question in this case.

[15] He stated that this was smaller than the wound in this case, about half as wide. On that occasion, Mr. Haskell called a vet's office and spoke to what he thought was a veterinarian, but much later learned that it was actually a technician. He was told at that time that the wound could heal on its own and he should check for tenderness, pain, and infection.

[16] With respect to the wound that is the subject of these proceedings, Mr. Haskell treated the wound in the same manner. He washed the wound, kept it clean, and monitored it for

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infection. He checked the wound for pain or tenderness and stated that there was none. As with the prior wound, it was healing on its own. That was the evidence of Mr. Haskell.

[17] Mr. Haskell testified that he continued with this treatment up to October the 16th, 2009, and it appeared to be closing and healing.

[18] When Special Constable Paul denied Mr. Haskell's request to see if this wound would heal on its own, he asked her if he could surrender Cosmos to the SPCA. She indicated yes, and Mr. Haskell immediately brought Cosmos to the SPCA and surrendered him to their care.

[19] There are discrepancies in the evidence as to what Mr. Haskell told the SPCA staff as to his reasons for surrendering Cosmos. These reasons are not important for my decision as to whether Cosmos was in distress within the meaning of the Act.

[20] I am satisfied that Mr. Haskell, in surrendering the dog, knew that the SPCA would seek the medical treatment they felt necessary and they did so. Cosmos was taken to the Elk Lake Veterinary Hospital that same day and received stitches. Dr. Russell testified and described the wound and treatment he provided. He also took the photos that appear in Exhibit 2.

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[21] Dr. Russell described the wound as seven centimetres long and one centimetre in width. He described the cut as through the dermis into the subcutaneous tissue. He stated that the underlying tissue was therefore exposed to the environment and there would be a concern with infection. He described granulated tissue forming and that this was part of the healing process. In his view, the wound was approximately three to five days old. On cross-examination, he agreed that it could be as old as seven days.

[22] He also described a mucopurulent discharge. This discharge contains white cells and is present to protect against infection. Again, Dr. Russell described this as a natural response in the healing process, and it occurs in any wound after about 12 hours.

[23] Dr. Russell treated the wound surgically. He debrided the wound, by which he meant that he cleaned the wound. He cut the edges, removed any discharge or infected tissue, and sutured it. After the surgery, Cosmos was given antibiotics and painkillers. Other than the wound itself, Dr. Russell stated that Cosmos did not exhibit any signs of distress. He agreed that the following could be signs of distress in a dog: vocalization, favouring a limb, not eating, not sleeping well, excessive panting, excessive grooming, growling, pacing,

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restlessness, lethargy, or listlessness.

[24] I take it from his evidence that Dr. Russell did not note any of these symptoms or signs in Cosmos, other than licking at his wound. This is consistent with the evidence of Mr. Haskell, in terms of his observations of Cosmos' behaviour. Dr. Russell further stated that dogs react differently, depending on the dog and the stimulus.

[25] Two other witnesses testified for the Crown. These were employees of the SPCA, Ms. Stone and Mr. Robinson. Their testimony largely relates to the surrender of Cosmos by Mr. Haskell to the SPCA, and I will deal with the surrender issue in a moment. Of particular relevance is the evidence of Mr. Robinson, who took a brief history from Mr. Haskell at the time of Cosmos' surrender and had the opportunity to observe Cosmos at that time as well.

[26] Mr. Robinson stated that he has worked for the SPCA for 19 years, the last eight years as a kennel technician, and before that he was an investigator and after-hours emergency care person. Cosmos was present at the time that Mr. Robinson had his dealings with Mr. Haskell, and he had an opportunity to observe the wound on Cosmos. Mr. Robinson testified that it was an obvious wound, saying that it was not bleeding and that it was a fairly clean cut. By this, I take it he meant



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that the edges of the wound were a clean cut. He stated that you could see the underlying flesh. He could not tell if it was infected, and there was no indication of distress in Cosmos, but then stated that Cosmos was in a strange environment. Mr. Robinson stated that the wound would likely need stitches, but that he was not a vet, so he could not say for sure.

[27] Ms. Stone also testified, and she is the branch manager of the SPCA. She dealt with Mr. Haskell, along with Mr. Robinson, when he surrendered Cosmos. She stated that the wound was obvious and needed immediate attention, and Cosmos was taken to the vet after the surrender was complete. Ms. Stone stated that Cosmos just stood there during her dealings with him and it was her opinion that he appeared somewhat nervous. She agreed that it was fair of Mr. Haskell to assume that in surrendering Cosmos to the SPCA, that he would be treated.

[28] I now turn to the law in relation to the charge against Mr. Haskell. I have indicated that pursuant to s. 24 of the *Prevention of Cruelty to Animals Act*, that subparagraph (1) reads as follows:

A person responsible for an animal who causes or permits the animal to be or to continue to be in distress commits an offence.

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[29] This offence is what is described as a strict liability offence. This means that if the Crown has proven the *actus reus*, that is that the animal was in distress, beyond a reasonable doubt then the burden shifts to the accused to prove, on a balance of probabilities, that all reasonable care was taken or that that person was operating on the basis of a mistake of fact.

[30] The first step, therefore, is to determine if the Crown has proven, beyond a reasonable doubt, that Cosmos was in distress. It is important to distinguish this burden of proof from the powers given to a special constable to assist animals. Section 11 of the same Act provides that a special constable can do certain things, such as give an order for the animal to be taken to a vet within 48 hours or an order that an animal's living area be cleaned or that it be given adequate food or water or other such orders within a specific time period. That order can be made if the special constable is of the opinion that the animal is in distress.

[31] This is much different than proof beyond a reasonable doubt and distinguishes between the separate aspects of the Act; one which deals with the special constable's ability to assist animals, and the other, penal sanctions against those responsible for animals where it is found beyond a reasonable

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doubt that the animal was in distress.

[32] The fact that a special constable does or does not do anything under s. 11 in terms of taking steps or giving any orders does not affect a determination under distress pursuant to s. 24, other than the facts are likely going to be the same.

[33] The first step then is to look at the definition of distress in the Act, which I have read out earlier in this decision. It is contained in s. 1. Again, that is "distress" is defined if an animal is:

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

[34] This section must be interpreted within the meaning and purpose of the Act, otherwise it would lead to an absurd result. For example, to use an example of a dog that comes up lame after trying to catch a frisbee, and the dog is injured, the owner rests it for a few days, and then it is fine. Should that person be prosecuted under the Act because the dog was injured, and should that person then be required to raise a defence of due diligence to escape liability? The answer must be no.

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[35] Similarly, if one looks at the deprivation of adequate food, water, shelter, ventilation, space, care or veterinary treatment, the word "adequate" is contained in that sentence. In my view, that must modify more than just the word "food". In determining what that definition means in the context of distress must take into consideration that word "distress", along with the title of the Act, *Prevention of Cruelty to Animals*.

[36] In my view, it simply cannot apply to every situation where an animal is injured or sick, as that would lead to, as I have indicated, an absurd result.

[37] In this case, there is no question that Cosmos had an obvious laceration; that is evident in the photos. It was not an insignificant wound, being some seven centimetres in length. I accept the evidence of Mr. Haskell that he was caring for Cosmos by cleaning the wound, checking it for tenderness, pain, and monitoring it for infection. I accept his testimony that he would have taken it to the vet if it got infected.

[38] It is apparent from the photos, the wound was clean. I also take into consideration the evidence of Dr. Russell that he did remove some infected tissue when he was cleaning the wound. I also take into consideration the evidence of

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Mr. Robinson that he was unable to tell if the wound was infected when he dealt with Cosmos at the time of surrender.

[39] It is the evidence of Mr. Haskell and Ms. Ages that Cosmos was happy and showing no signs of distress on October the 13th. None of the witnesses saw any signs -- and I will use the word "discomfort", as we are actually dealing with the legal definition of "distress" -- none of the witnesses saw any signs of discomfort on Cosmos. I do appreciate that some of those witnesses were seeing Cosmos in an artificial setting in which he may not necessarily show typical signs of distress, nor did they have an opportunity to view him for particularly lengthy periods of time.

[40] It is the evidence of Mr. Robinson that the wound might need stitches. He could not tell because he was not a vet. It is the evidence of Mr. Haskell that Cosmos had a similar wound in the past that he treated the same way on the advice of a veterinary technician.

[41] Based on the fact that Mr. Haskell was treating the wound and that Cosmos showed no signs of discomfort whatsoever, I am not satisfied beyond a reasonable doubt that Cosmos was in distress within the meaning of s. 1(2) and s. 24 of the Act. I have been careful in my interpretation of "distress" within that section to not import an aspect of reasonableness into

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that definition, as this is a strict liability offence and the reasonableness comes into play once that distress is proved beyond a reasonable doubt.

[42] In considering "distress" within the meaning of the Act and the purpose of the Act, I am not satisfied beyond a reasonable doubt that Cosmos was an animal in distress within that definition and s. 24.

[43] There will therefore be a finding of not guilty.

[44] I do want to make it clear that this does not relate to the actions of Special Constable Paul. She was entitled to be of the opinion that Cosmos was in distress within the meaning of s. 11 of that Act, and she was entitled to require Mr. Haskell to seek the veterinary treatment as she did. That is a separate matter from this prosecution, and while I can understand why the witnesses who testified from the SPCA, who were all obviously upset with Mr. Haskell's decisions to surrender Cosmos, it is simply not relevant to these proceedings.

[45] That concludes this matter.

(REASONS CONCLUDED)