

Date: 20250124
Docket: CI 24-01-47224
(Winnipeg Centre)
Indexed as: Anderson v. Chief Veterinary Office
Cited as: 2025 MBKB 12

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

SHERRI ANDERSON,)	<u>Sherri Anderson</u>
)	on her own behalf
applicant,)	
)	
-and-)	<u>Darrin Fenske</u>
)	for the respondent
CHIEF VETERINARY OFFICE,)	
)	
respondent.)	Judgment Delivered:
)	January 24, 2025

REMPEL J.

ISSUES

[1] Section 10.2(1) of ***The Animal Care Act***, C.C.S.M. c. A84 (the "**ACA**"), allows the Crown to confiscate an animal based on an order of a Judicial Justice of the Peace ("JJP") without providing notice to an owner and without affording an owner a hearing or a right of appeal.

[2] Counsel for the Chief Veterinary Office ("CVO") concedes that this exact scenario played out in a matter involving the applicant Sherri Anderson

("Ms. Anderson") who is the principal of a not-for-profit corporation that operates a sanctuary for abused and abandoned animals near Teulon, Manitoba.

[3] Counsel for the CVO argues that Ms. Anderson can find some meaningful form of recourse by way of an implied right of appeal, which requires her to demonstrate to me that the CVO made an overriding and palpable error in applying for the order and then acting on it. In the alternative, the CVO argues that Ms. Anderson is entitled to judicial review of the order on the standard of reasonableness.

[4] Ms. Anderson argues that by acting on the order limiting her future rights to own animals and proceeding with the confiscation of her animals without notice and without a hearing, the CVO violated the rules of natural justice and it is therefore patently unreasonable.

DECISION

[5] I agree with Ms. Anderson's position and am quashing the order of the JJP dated June 7, 2024 limiting Ms. Anderson's right to own animals apart from a maximum of two dogs and two cats (to be spayed or neutered) for a period of three years and confiscating her remaining animals. My order will also contain a provision that it be stayed for a period of time which I will detail later in these reasons.

THE ACA

[6] The goal of the **ACA** is to protect animals from harm or neglect arising from inadequate nutrition, shelter or access to medical care (s. 2(1)).

[7] Part 3 of the **ACA** empowers animal protection officers to conduct inspections to ensure animals are receiving proper care. The seizure of animals in distress is permitted under s. 9 of the **ACA** and the destruction of the seized animal is authorized under s. 10 of the **ACA** if a veterinarian or other authorized person under that section deems it inhumane to allow the animal's life to continue. Section 10(2) provides for notices of seizure or destruction to owners as follows:

Notification of owner

10(2) An animal protection officer who provides care to or seizes an animal under subsection 9(1) or destroys an animal under subsection (1) shall take reasonable steps to locate the owner of the animal as soon as reasonably practicable and to advise the owner that the animal was found to be in distress and of any action taken by the animal protection officer in respect to the animal.

Avis au propriétaire de l'animal

10(2) L'agent de protection des animaux qui dispense des soins à un animal ou le saisit en vertu du paragraphe 9(1), ou qui le détruit en vertu du paragraphe (1), prend des mesures raisonnables pour retracer le plus rapidement possible le propriétaire de l'animal et pour l'aviser du fait que l'on estimait l'animal en détresse, et des mesures qu'il a prises à l'égard de l'animal.

[8] Two further enforcement processes are contemplated under the **ACA**. Section 10.1(1) of the **ACA** allows the "*director*" to issue an order to an owner to take action with a view to relieving an animal in distress or to carry out the defined duties of an owner (the "Order to Take Action"). An Order to Take Action can require "*the owner to take any action that the director believes is necessary, including having the animal examined and treated by a veterinarian at the expense of the owner*" (*"le directeur peut ordonner au propriétaire de prendre les mesures*

qu'il estime nécessaires et, notamment, de faire examiner et traiter l'animal par un vétérinaire à ses frais").

[9] The other enforcement process is detailed in s. 10.2(1) of the **ACA**, which is the key provision in the dispute before me. That enforcement process empowers a "justice" to make an order following an application by the director to restrict the number of animals an owner may keep in the future (a "Restriction Order").

[10] Surprisingly, s. 10.2(1) of the **ACA** makes no provision for notice of a hearing to an owner before the granting of a Restriction Order requested by the director. It is even more surprising to note that the scope of s. 10.2(1) of the **ACA** goes far beyond restricting the right of a person to the number or description of animals they may own for up to three years in the future, but it also provides for the forfeiture of any animals a person may own in excess of the number or description of animals described in the Restriction Order. All animals beyond the limits established in the Restriction Order immediately become the "property of the Crown" pursuant to ss. 10.2(2)(b) of the **ACA**.

[11] The key sections of the **ACA** governing restriction orders provide:

JUSTICE'S ORDER TO RESTRICT
NUMBER OF ANIMALS

Application for order —
restricting ownership of
animals

10.2(1) The director may
apply to a justice for an order
under subsection (2) in respect
of an owner, if

(a) animals have been
seized from the owner

Demande d'ordonnance

10.2(1) Le directeur peut, par
requête, demander à un juge
de rendre l'ordonnance visée
au paragraphe (2) à l'égard
d'un propriétaire dans le cas
suivant :

a) des animaux ont été
saisis chez le propriétaire en
vertu du paragraphe 9(1)
ou remis volontairement
par celui-ci au directeur;

under subsection 9(1) or the owner has voluntarily surrendered animals to the director; and

(b) the director believes on reasonable grounds that

(i) at the time those animals were seized or surrendered, the owner was unable to carry out his or her duties under this Act because the number or type of animals owned, possessed or controlled by the owner exceeded the owner's ability to carry out his or her duties toward them, and

(ii) the owner is not, or may not be, able to carry out his or her duties under this Act toward the animals that the owner presently owns, possesses or controls, or may own, possess or control, because the circumstances mentioned in subclause (i) continue to exist or may occur again.

Order

10.2(2) On an application under subsection (1), a justice may make an order

(a) prohibiting an owner from owning or having possession or control of more than a specified number or type of animals, for a period up to three years; and

(b) directing that any animals owned, possessed or controlled by the owner at the time the order is made

b) il a des motifs raisonnables de croire :

(i) qu'au moment de la saisie ou de la remise le propriétaire était incapable de s'acquitter des obligations que lui imposait la présente loi en raison du nombre ou du type d'animaux qui lui appartenaient, qu'il possédait ou dont il avait la responsabilité,

(ii) que le propriétaire n'est pas ou peut ne pas être capable de s'acquitter de ses obligations envers les animaux qui lui appartiennent, qu'il possède ou dont il a la responsabilité ou qui peuvent lui appartenir, qu'il peut posséder ou dont il peut avoir la responsabilité pour le motif que les circonstances mentionnées au sous-alinéa (i) continuent d'exister ou peuvent survenir de nouveau.

Ordonnance

10.2(2) Saisi de la requête visée au paragraphe (1), le juge peut :

a) interdire au propriétaire d'être propriétaire d'un nombre d'animaux excédant celui fixé ou d'un autre type d'animaux que celui précisé, ou d'en avoir la possession ou la responsabilité, pour une période maximale de trois ans;

b) ordonner que les animaux qui appartiennent au

(i) beyond the number of animals allowed under the order, or

(ii) other than the type of animal allowed under the order, become the property of the Crown.

propriétaire, que celui-ci possède ou dont il a la responsabilité au moment où l'ordonnance est rendue et dont le nombre excède celui qu'elle permet ou dont le type n'est pas celui qu'elle autorise deviennent propriété de la Couronne.

APPEALS UNDER THE *ACA*

[12] Seizures of animals under s. 9 of the ***ACA*** can be conducted by an animal protection officer without any form of order and the destruction of an animal under s. 9(1) can also follow without an order, provided a veterinarian or other designated persons are of the opinion it is inhumane not to do so (s. 10(1)). In either one of these circumstances s. 10(2) of the ***ACA*** imposes an obligation on an animal protection officer to *"take reasonable steps to locate the owner of the animal as soon as reasonably practicable to advise the owner of any action"* taken with respect to seizure or destruction. An appeal of a seizure under s. 9(1) of the ***ACA*** is permitted under s. 14(1) if the seizure involved a *"commercial animal"* as that term is defined in the ***ACA***.

[13] Owners of seized *"companion animals"* are also afforded a right of appeal under Part 4 of the ***ACA***. The right of appeal is also granted to operators of kennels, breeding facilities or retail stores under Part 5 of the ***ACA*** if they wish to challenge an order made by the director.

[14] All appeals provided for by the ***ACA*** are made to the Animal Care Appeal Board established under Part 6 of the ***ACA***. Any appeal authorized by the ***ACA*** must:

- a) Be conducted orally (including via telephone or video) or in writing or a combination thereof (s. 33.12);
- b) Provide an owner with the opportunity to make a written submission before the appeal board can dismiss an appeal (s. 33.13(1)); and
- c) Include written reasons for the dismissal of an appeal (s. 33.13(3)).

DUE PROCESS UNDER SECTIONS 10.1 AND 10.2

[15] Orders under s. 10.1 of the **ACA** require the director to provide reasons (s. 10.1(2)) and grant an owner the right of an appeal to the Animal Care Appeal Board (s. 10.1(6)). In contrast, orders made by a JJP under s. 10.2 do not require notice to an owner or provide for the right to any form of hearing or an appeal.

[16] Given that orders under s. 10.2 have more significant consequences than orders under s. 10.1, one might reasonably assume that the complete lack of due process to owners was an oversight. It is not hard to imagine that a business person could be deprived of their livelihood or a source of income without notice, reasons or a right of appeal by virtue of a Restriction Order by virtue of s. 10.1.

THE RESTRICTION ORDER ISSUED TO MS. ANDERSON

[17] In this case the Restriction Order issued by the JJP on June 7, 2024 and given to Ms. Anderson by animal protection officers several days later (the "Order") restricted her right to own no more than two dogs and two cats (spayed or neutered) for a period of three years and thus immediately rendered all the remaining animals at her farm the property of the Crown. By virtue of the Order

the animal protection officers started the labour-intensive process of removing all of the remaining animals on Ms. Anderson's farm which included:

- 80 equine, including horses, ponies, mules and donkeys;
- Five cattle;
- Two camelids, including one llama and one alpaca;
- Three sheep;
- One goat;
- 23 chickens;
- Two geese;
- One turkey;
- 15 ducks;
- Six rabbits; and
- Two potbellied pigs.

[18] The Information to Obtain ("ITO") submitted to the JJP who issued the Order was sworn by Lisa Joachim who is an animal welfare veterinarian employed by the CVO. The ITO details an extensive history of complaints and concerns raised by the CVO about the level of care Ms. Anderson and the not-for-profit corporation she controlled was able to offer the animals under her care from January 2018 through to May of 2024. The concerns detailed in the ITO include the same litany of issues tied to the fact that Ms. Anderson and her volunteers did not have adequate financial or human resources to care for the vast numbers of abused and neglected animals that were brought to them.

[19] There were many recurring issues raised by the CVO over those years pertaining to inadequate feed, bedding and water available to the animals and inadequate access to sanitary shelters and medical treatment. I do not think it is necessary to review the detailed and unhappy history between Ms. Anderson and the CVO. It was clear from the submissions of counsel for the CVO that they viewed Ms. Anderson as a well-meaning person who genuinely cared about the welfare of all of the animals under her care, but she repeatedly got overwhelmed by the vast needs of too many animals, which often arrived at her farm in desperate conditions due to the horrible abuse or neglect they had suffered at the hands of their previous owners.

[20] The view of the CVO about Ms. Anderson's motives probably explains why she was never charged or prosecuted for an offence under Part 7 of the **ACA**, which provides for substantial fines for owners found guilty of neglecting their defined duties as animal owners.

[21] I am satisfied that the Order came about due to the high level of frustration the CVO reached after repeated warnings and recommendations failed to persuade Ms. Anderson to scale back the number of animals she accepted into her animal sanctuary and to meet the standards set by the CVO for an adequate level of care for the severely ill or malnourished animals she took into her care in the hope that she could save their lives. However, this does not mean that the CVO can obtain an order without allowing Ms. Anderson any form of a hearing or right of appeal.

POSITION OF THE CVO

[22] The CVO argues, in the main, that *The Provincial Offences Act*, C.C.S.M. c P160 (the "**POA**") outlines a process for appeals where the legislature has not explicitly enacted an appeal provision of an offence under any particular legislation. This argument focuses on s. 79(1) of the **POA** which provides

Right to appeal — defendant

79(1) A defendant may appeal the following to the Court of King's Bench:

- (a) a conviction;
- (b) a penalty imposed on the defendant, but only if the proceeding was commenced by an information;
- (c) subject to subsection (5), any other order made by a justice against the defendant in a hearing or other proceeding under this Act.

Droit d'appel du défendeur

79(1) Le défendeur peut interjeter appel auprès de la Cour du Banc du Roi des décisions suivantes :

- a) une déclaration de culpabilité;
- b) la peine qui lui a été infligée, si les procédures ont été introduites par dénonciation;
- c) sous réserve du paragraphe (5), une ordonnance rendue contre lui par un juge dans le cadre d'une audience ou de toute autre procédure sous le régime de la présente loi.

(Emphasis added)

[23] Given the fact that a Restriction Order was issued by a JJP and therefore constitutes a court order, the CVO argues that Ms. Anderson has a right to appeal to this court and that the standard of review is that the JJP made an overriding or palpable error.

[24] In the alternative, the CVO argues that if the **POA** does not apply, Ms. Anderson is entitled to seek judicial review of the Order and the standard of review is reasonableness.

ANALYSIS

[25] I do not accept the argument advanced by the CVO that an appeal is open to Ms. Anderson under the provisions of the **POA**. A careful reading of s. 2(1) of the **POA** confirms that the **POA** applies only to persons who have committed an offence or are suspected of having committed an offence. That section of the **POA** provides:

APPLICATIONS OF THIS ACT

When this Act applies

2(1) Subject to section 2.1, this Act applies to every case in which a person commits or is suspected of having committed an offence, unless another Act provides otherwise.

CHAMP D'APPLICATION

Application de la présente loi

2(1) Sauf disposition contraire d'une autre loi et sous réserve de l'article 2.1, la présente loi s'applique dans tous les cas où une personne commet ou est soupçonnée d'avoir commis une infraction.

[26] "Offence" is defined in the **POA** as:

DEFINITIONS

Definitions

1 The following definitions apply in this Act.

...

"offence" means

- (a) an offence under an Act or regulation;
- (b) a municipal offence; or
- (c) a First Nation offence.

DÉFINITIONS

Définitions

1 Les définitions qui suivent s'appliquent à la présente loi.

...

Infraction

- a) Infraction créée par une loi ou un règlement;
- b) infraction municipale;
- c) contravention à un texte législatif d'une Première nation.

[27] On a plain reading of the **ACA** it is clear that one of the cornerstones of the **POA** is the prosecution of offences created by provincial statute. The evidence is abundantly clear that Ms. Anderson was never charged with an offence under the **ACA** and no charges against her are pending. The ITO submitted to the JJP also makes no reference to existing or pending charges against Ms. Anderson under the **ACA**. I am satisfied that the **POA** does not apply to administrative orders such as Restriction Orders under the **ACA**.

[28] The overview sections that begin Parts 2 and 3 of the **POA** bolster my conclusion that the **POA** does not apply on the facts before me. These overviews describe the process of how charges under provincial legislation are laid and how a person charged must respond. It is clear that a Restriction Order under the **ACA** does not constitute an offence that can be prosecuted and that the **POA** cannot apply in these circumstances:

PART 2
COMMENCING
PROCEEDINGS BY
TICKET

Overview

A person can be charged with an offence in one of two ways — by a ticket issued under this Part, or by a more formal process that compels the person to come to court, which is set out in Part 3.

. . .

PARTIE 2
PROCÉDURE PAR PROCÈS-
VERBAL D'INFRACTION

Aperçu

En cas de perpétration d'une infraction, une personne peut être poursuivie de deux façons : par procès-verbal d'infraction sous le régime de la présente partie ou selon une procédure plus officielle qui l'oblige à comparaître devant le tribunal, sous le régime de la partie 3.

. . .

PART 3
COMMENCING PROCEEDINGS
BY INFORMATION

Overview

This Part deals with offences that must be brought before a justice of the court to be resolved.

A charge under this Part is begun by a person giving information under oath to a justice about an alleged offence (referred to as "laying an information"). If the justice is satisfied that there is sufficient information to support a charge, he or she will issue a summons to the person alleged to have committed the offence. The summons describes the offence and requires the person to come to court at a specified time.

A person can appear before a justice to admit the offence and make a submission about the appropriate penalty. If the person wishes to dispute the charge, a hearing is scheduled before a justice. A person who does not appear in court to respond to a summons may be arrested, or the justice may decide the matter in the person's absence.

PARTIE 3
PROCÉDURE PAR
DÉNONCIATION

Aperçu

En cas de perpétration d'une infraction, une personne peut être poursuivie de deux façons : par procès-verbal d'infraction sous le régime de la présente partie ou selon une procédure plus officielle qui l'oblige à comparaître devant le tribunal, sous le régime de la partie 3.

Les procès-verbaux sont généralement remis pour les infractions moins graves et ne peuvent être utilisés que pour les infractions sanctionnées par une amende prédéterminée.

La personne qui reçoit un procès-verbal peut payer l'amende qui y est mentionnée, demander une diminution du montant de l'amende ou demander d'être entendue pour contester l'accusation, sous le régime de la partie 6. La personne qui ne fait rien après avoir reçu un procès-verbal est réputée admettre avoir commis l'infraction et est déclarée coupable par défaut.

[29] While s. 34(1) of the **ACA** creates offences under the *Act*, no charge was laid against Ms. Anderson under this provision.

[30] The alternative argument advanced by the CVO that this court has jurisdiction to review the Order issued by the JJP on the standard of reasonableness must also fail.

[31] The CVO cites rule 68.01 of the ***Court of King's Bench Rules***, M.R. 553/88, in support of its position which gives a judge discretion to "*grant an order of mandamus, prohibition, certiorari or quo warranto.*" The standard of reasonableness on judicial review is well defined in ***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65, at para. 13:

[13] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

[32] The CVO relies on ***Vavilov*** (at para. 136) in support of its submissions that an administrative body need not issue reasons for its decisions in all circumstances. Although ***Vavilov*** contemplates judicial review of the decision of an administrative body in the absence of reasons, that does not mean that the administrative body has no obligation at all to provide some form of due process to the person or party affected by the order.

[33] To be sure, within constitutional parameters, the legislature has the authority to stipulate that an affected person has no right to a hearing, notice, reasons or an appeal. But it can only do so by way of clear and explicit language to that effect. If a statute does not provide for due process, then the administrative

body should afford a person subject to its orders some form of due process, commensurate to the degree that the order impacts or harms the affected person.

(See ***Baker v. Canada (Minister of Citizenship and Immigration)***, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, at para. 25.)

[34] ***Vavilov*** clearly speaks to the principle enunciated in Baker with respect to the degree of responsibility that rests on administrative bodies, at para. 135:

[135] Many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law.

[35] During oral argument I asked counsel for the CVO as to why no form of hearing was provided to Ms. Anderson in these circumstances. The response I received was simply that the **ACA** does not provide for one. With respect, I cannot agree that the absence of a provision for a hearing should automatically lead an administrative body to conclude that hearings without notice are somehow sanctioned under their operating legislation.

[36] In assessing the reasonableness of the JJP's Order in these circumstances, the issue is not whether the Order would have substantive merit based on the evidence, but rather if the absence of natural justice was reasonable. In my view, the Order was not reasonable.

CONCLUSION

[37] For all of these reasons I am quashing the Order issued by the JJP.

[38] I am alive to the fact that there was strong evidence before me that the animals in Ms. Anderson's care were in distress and in need of a high level of care that she had difficulty meeting given her limited budget and the availability of volunteers. Returning all of the surviving animals seized by virtue of the Order in one fell swoop may create further stress or risk to them.

[39] I am therefore staying the operation of my order for a period of sixty days to allow the CVO to reapply to the JJP for a Restriction Order with notice to Ms. Anderson and allowing her an opportunity to be heard.

[40] The parties can speak to costs if they cannot agree, provided they file written briefs in advance.

_____J.