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# MEMO

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**To:** You (counsel for the Appellant Reece)

**From:** Senior Partner

**Date:** September 30, 2011

**Re:** *Reece v Edmonton (City)*

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We act for Tove Reece, Zoocheck Canada Inc. and People for the Ethical Treatment of Animals (PETA) in this appeal to save Lucy, an elephant at the Edmonton Zoo. Ms. Reece is the president of Voice for Animals Humane Society (V4A), a non-profit organization dedicated to protecting animals from neglect and abuse. She appeals in her personal capacity as a concerned resident of Edmonton. Zoocheck is a national wild animal protection charity. PETA is a non-profit American animal rights organization.

I filed the notice of appeal and will prepare the appeal book, but I need you to write the factum and argue the appeal for me.

Our factum is due on Friday, October 21, 2011 between 9:00 a.m. – 11:00 a.m. in Room 407. We must file three copies with the Court.

The appeal will be heard during the week of February 6-9, 2012. I am scheduled to be out of town that week. You will need to check the Court's docket to determine the exact date and time of the appeal.

I've summarized the facts of the case below and set out our grounds of appeal. Feel free to use any other facts mentioned in the lower courts' decisions, if you think they might be useful.

Good luck!

## Facts

Lucy is a 36 year old Asian elephant. She has lived at the Edmonton Valley Zoo for 34 years, since arriving from Sri Lanka. The Edmonton Valley Zoo is owned by the City of Edmonton.

Despite the fact that elephants are social animals, she has frequently been housed alone at the Zoo, first from 1977-1989, and more recently since 2007. The size and structure of her enclosure are problematic, particularly the enclosure's small size and concrete floor. Lucy continues to suffer from a number of debilitating medical conditions, including chronic respiratory problems (aggravated by Edmonton's cold winter temperatures), arthritis, foot disorders (arising from the concrete floor in her enclosure) and obesity (aggravated by her diet). Asian elephants typically weigh about 6,700 pounds. Lucy weighs 9,400 pounds. She has difficulty sleeping and suffers from pressure sores and dental problems.

Our clients have mounted a campaign to have Lucy moved to a warmer climate where she can be in the company of other elephants. On September 26, 2007, Zoocheck complained to the Edmonton Humane Society about Lucy's conditions. After investigating, the Society concluded that "it would not be in Lucy's best interests to be transported." No charges were laid.

The City opposes the campaign to move Lucy. They concede that Lucy has some health problems but deny that her facilities or treatment are inadequate or illegal. They cite medical evidence suggesting that she might not survive a long-distance move. We don't accept this evidence.

On February 1, 2010, our clients filed an Originating Notice seeking a declaration that the City's treatment of Lucy is in violation of section 2 of Alberta's *Animal Protection Act*, RSA 2000, c A-41. Section 2 reads:

s.2(1) No person shall cause or permit an animal of which the person is the owner or the person in charge to be or to continue to be in distress.

The penalty for violating section 2 is contained in section 12 of the *Animal Protection Act*. It reads:

s.12(1) A person who contravenes this Act or the regulations is guilty of an offence and liable to a fine of not more than \$20,000.

s.12(2) If the owner of an animal is found guilty of an offence under section 2, the Court may make an order restraining the owner from continuing to have custody of an animal for a period of time specified by the Court.

The City responded by bringing an application to have the originating notice struck out on the basis that our clients have no standing, that the proceedings are an abuse of process, and that alternatively, our clients used an incorrect procedure to bring the matter before the court.

The chambers judge granted the City's application and struck out the originating notice. He concluded that the proceedings were an abuse of process because a private litigant cannot seek a declaration that the City is in breach of a penal provision in a statute. He also concluded that our clients have no private interest standing and there were barriers to them being awarded public interest standing. Finally, he ruled that the application should have been brought by statement of claim, not originating notice.

We appealed. A majority at the Alberta Court of Appeal concluded that our proceeding was an abuse of process and was properly struck out. They did not need to consider the standing issue. They dismissed our appeal. Chief Justice Fraser wrote an excellent dissent. She would have allowed the appeal and given us leave to amend our pleadings to proceed to trial by way of statement of claim.

We appealed further to the Supreme Court of Canada. The Supreme Court of Canada also dismissed our appeal, essentially on the same grounds as set out in the decision of the majority of the Alberta Court of Appeal.

Lucy's last chance lies with the Supreme Moot Court of Dalhousie. We appealed on two issues:

**First Issue:**

1. Do the appellants have standing to seek a declaration that the City is in violation of section 2 of the *Animal Protection Act*, RSA 2000, c A-41?

**Second Issue:**

2. Should the application be struck as an abuse of process?

**Sources**

You will want to start by looking at the chambers judge's decision at 2010 ABQB 538 and the Alberta Court of Appeal's decision at 2011 ABCA 238.

(Note: We have assumed a judgment at the Supreme Court of Canada for the purposes of this exercise. You will not be able to locate this judgment. The appellants sought leave to appeal to the Supreme Court of Canada on September 28, 2011 and that application is pending.)

The Supreme Moot Court of Dalhousie prefers that counsel cite only the most relevant cases and authorities. You may cite up to five cases on each issue, any relevant legislation you feel should be brought to the Court's attention, and up to two secondary sources (such as journal articles). Lower court decisions in this matter do not count towards the five-case limit.