
MEMO

To: You (counsel for the Respondent City of Edmonton)

From: Senior Partner

Date: September 30, 2011

Re: *Reece v Edmonton (City)*

We act for the City of Edmonton in this appeal that raises two points of civil procedure.

The appellant's factum is due on October 21, 2011. Counsel will provide you with a copy of their factum, so that we'll have an opportunity to respond to it in our factum. I recommend that you begin researching and writing our factum before you receive the appellant's factum – you can always revise your draft to address any additional issues the appellant raises that you didn't anticipate.

Our factum is due on Friday, October 28, 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 as found by the chambers judge and set out the grounds of appeal to which we have to respond. Feel free to use any other facts mentioned in the lower courts' decisions, if you think they might be useful.

Good luck!

Facts

The City of Edmonton owns the Edmonton Valley Zoo and is responsible for the animals there. For several years now, the appellants have criticized the Zoo for its treatment of its only elephant, Lucy. Lucy is a 36 year old Asian elephant. She has lived at the Edmonton Valley Zoo for 34 years, since arriving from an orphanage in Sri Lanka.

Ms. Reece is the president of Voice for Animals Humane Society (V4A), a non-profit animal rights organization. She appeals in her personal capacity as a resident of

Edmonton. Zoocheck is a national wild animal protection charity. PETA is a non-profit American animal rights organization.

The appellants say that elephants are social and Lucy should not be housed alone. Lucy has her keepers for company and also had a companion elephant, Samantha, from 1989-2007. Samantha was moved to another zoo for breeding in 2007.

The appellants say that Lucy's enclosure is too small and the concrete floor is hard on her feet.

Lucy does have a number of different medical conditions, all of which are being treated. She has respiratory problems, arthritis, foot disorders, difficulty sleeping, pressure sores, and dental problems. She is also obese.

The appellants want Lucy moved to a warmer climate where she can be with other elephants. We had her assessed and were warned that she might not survive a long distance move.

On September 26, 2007, Zoocheck complained about Lucy's treatment to the Edmonton Humane Society. The Society's investigation concluded that "it would not be in Lucy's best interests to be transported." They declined to lay any charges under the *Animal Protection Act*, RSA 2000, c A-41.

The appellants did not let the matter go. On February 1, 2010, they filed an Originating Notice in the Alberta Court of Queen's Bench 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.

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

The chambers judge granted our application and struck out our 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 the appellants 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.

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

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

They have now appealed to the Supreme Moot Court of Dalhousie 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.