

2007 CarswellOnt 6972
Ontario Superior Court of Justice

Brock (Township) v. White

2007 CarswellOnt 6972, 161 A.C.W.S. (3d) 356, 39 M.P.L.R. (4th) 241, 40 M.P.L.R. (4th) 229

**Her Majesty the Queen The Corporation of the Township of Brock (Respondent)
and Matthew White, William Leslie White, Markus White (Applicant)**

D. Salmers J.

Heard: August 9, 2007

Judgment: August 9, 2007

Docket: Whitby 11321/07

Counsel: L. Crawford for Crown

D. Lakie for Defendant

Subject: Property; Criminal; Torts

Related Abridgment Classifications

Criminal law

[XXXI Trial](#)

[XXXI.9 Miscellaneous](#)

Personal property

[I Animals](#)

[I.4 Miscellaneous](#)

Headnote

Personal property --- Animals — Miscellaneous

Return of pending destruction hearing — On June 27, 2007, township seized two dogs without notice to owners, under Dog Owners' Liability Act ("**DOLA**") — On June 29, 2007, justice of peace made ex parte order purportedly under s. 13(1) to 13(3) of **DOLA** that dogs be kept in pound until decision was made on township's application to have dogs destroyed — Owners were served under Provincial Offences Act ("POA") requiring their attendance on July 9, 2007 regarding township's application to have dogs destroyed, and hearing date was later set for September 13, 2007 — Owners applied to quash ex parte order and for order returning dogs to them — Application granted in part — Section 13 of **DOLA** does not require notice to owners — **DOLA** does not specify time limit for detention of seized animal, and therefore, POA applies by default — POA provides for maximum detention of three months for seized items, unless warrant or court order provides otherwise — If matter were to proceed on September 13, 2007, that would be within three months of **seizure** — However, it was unfair that property could be seized without notice and that person had no means to promptly object to **seizure** and request return of property, particularly where item was dog — Neither **DOLA** nor POA provided for interim review — Dogs were ordered returned to owners pending hearing of township's application, with restrictions placed on owners to minimize risks to other people, including leashing and supervision conditions.

Criminal law --- Provincial offences — General

Interim review — On June 27, 2007, township seized two dogs without notice to owners, under Dog Owners' Liability Act ("**DOLA**") — On June 29, 2007, justice of peace made ex parte order purportedly under s. 13(1) to 13(3) of **DOLA** that dogs be kept in pound until decision was made on township's application to have dogs destroyed — Owners were served under Provincial Offences Act ("POA") requiring their attendance on July 9, 2007 regarding township's application to have dogs destroyed, and hearing date was later set for September 13, 2007 — Owners applied to quash ex parte order and for order returning dogs to them — Application granted in part — Section 13 of **DOLA** does not require notice to owners — **DOLA** does not specify time limit for detention of seized animal, and therefore, POA applies by default — POA provides for maximum detention of

three months for seized items, unless warrant or court order provides otherwise — If matter were to proceed on September 13, 2007, that would be within three months of **seizure** — However, it was unfair that property could be seized without notice and that person had no means to promptly object to **seizure** and request return of property, particularly where item was dog — Neither **DOLA** nor POA provided for interim review — Dogs were ordered returned to owners pending hearing of township's application, with restrictions placed on owners to minimize risks to other people, including leashing and supervision conditions.

Table of Authorities

Statutes considered:

Dog Owners' Liability Act, R.S.O. 1990, c. D.16

Generally — referred to

s. 13 — considered

s. 13(1)-13(3) — referred to

s. 13(5) — considered

Provincial Offences Act, R.S.O. 1990, c. P.33

Generally — referred to

APPLICATION by dog owners to quash ex parte order that dogs be kept in pound pending decision on township's application to have dogs destroyed, and for order returning dogs to them.

D. Salmers J. (orally):

- 1 All right, so we're here on the Township of Brock and White matter.
- 2 Interesting issue counsel. Nice little issue.
- 3 All right, here are my reasons.
- 4 On June 27th, 2007, the Township seized two dogs owned by Matthew and Marcus White, respectively.
- 5 The **seizure** was without notice to the owners. It's conceded that it was a valid **seizure** under the *Dog Owner's Liability Act*.
- 6 On June 29th, 2007, Justice of the Peace Griffiths made an order, purportedly, under Section 13(1) to 13(3) of the *Dog Owner's Liability Act*, without notice to the owners and without any person appearing on their behalf.
- 7 In that ex-parte order, the dogs were ordered to be kept in a pound until a decision was made on the Township's application to have the dogs destroyed.
- 8 Subsequently, the owners were served with process, under the *Provincial Offences Act*, requiring them to attend in court on July 9th, 2007, with respect to the Township's application to have the dogs destroyed.
- 9 On July 9th, 2007, the matter was adjourned until July 17th, so that counsel could attend.
- 10 On July 17th, the presiding Justice of the Peace declined to conduct a hearing because she was of the view that Justice of the Peace Griffiths was seized of the matter. Accordingly, a hearing date of September 13th, 2007 was set.
- 11 The owners submitted that the June 29th, 2007 order was made without jurisdiction because it was made without notice to the owners. Therefore, the owners request that the order be quashed and the dogs be returned to their owners.
- 12 Further, relying on Section 13(5) of the *Dog Owner's Liability Act*, the owners submitted that because the dogs have been impounded for more than 30 days, the warrant has expired and the dogs must be returned.

13 I disagree with both submissions. Section 13 provides for the issuance of a warrant for dog **seizure**, if the Justice of the Peace is satisfied, by information on oath or affirmation, that there are reasonable grounds to believe that the **seizure** is necessary. All that the Justice of the Peace has to see or hear is a sworn or affirmed information. There's no requirement for notice to the owners. Accordingly, the owners first ground is dismissed.

14 Further, I accept the Crown's submission that a warrant under Section 13 of the *Dog Owner's Liability Act* is analogous to a search warrant, and therefore, pursuant to Section 13(5), it must be executed within 30 days of its issuance.

15 The 30 day time limit in Section 13(5) refers to the date by which the dog must be seized, not the time limit for detention of a seized dog.

16 The *Dog Owner's Liability Act* does not specify a time limit for detention of seized. Again, I agree with the Crown's submission that when a specific provincial act, like the *Dog Owner's Liability Act*, is silent on an issue, the *Provincial Offences Act* applies by default.

17 The *Provincial Offences Act* provides for a maximum detention of three months for seized items, unless the warrant or court order provides otherwise. If the hearing in this matter proceeds on September 13th, 2007, that is within three months from the **seizure** of the dogs.

18 For those reasons, the owners second ground is dismissed.

19 However, it's simply unfair that a person's property can be seized without notice, and that the person has no means to promptly object to the **seizure** and request return of his property.

20 This may be even more true with respect to the **seizure** of a dog. Many people are very attached to their dogs, and dogs are often an important part of peoples' lives, often regarded as members of the family.

21 In the present case, the owners have never had the opportunity to object to **seizure** of their dogs. While the hearing of the Township's application is scheduled for September 13th, 2007, the presiding Justice of the Peace may not make an order that day, or the hearing might not proceed that day for a variety of unknown reasons.

22 The *Dog Owner's Liability Act* does not appear to provide for interim review of an order that a dog be seized. No section of the *Provincial Offences Act* was pointed out to me that provided for such interim review.

23 In order to be fair, the owners of property, that is seized without notice to them, should have the opportunity for a review of any such **seizure** order.

24 The owner's notice of application, herein, asks for return of the dogs. Accordingly, I regard today's appearance before me as a review of the order made June 29th, 2007.

25 The Township has notice of the owner's application and is represented today by counsel, and therefore, I found the Township is not prejudiced.

26 On the filed materials, including the transcript of the June 29th, 2007 intake proceeding, before Justice of the Peace Griffiths, I'm satisfied that there are reasonable grounds for safety concerns, if the dogs were returned without conditions that strive to ensure safety of people, other than the owners.

27 I note as well that these dogs have never bitten anybody. Also, the owners are willing to take significant steps to ensure the safety of others.

28 In these circumstances, I'm satisfied the dogs can be returned to the owners, pending hearing of the Township's application, provided that suitable restrictions are placed on the owners, to minimize the risks to other people.

29 For these reasons, order to go.

1. The dogs are to be returned to the owners, pending further court order or decision on the application for destruction of the dogs.

2. At all times, when outside the owner's residence, the dogs shall be leashed, unless the dog's owner is also:

i) outside;

ii) directly supervising the dog;

iii) within 50 feet of the dog; and

iv) both the owner and the dog are on lands leased or owned by the owner, and on which lands the owner's residence is situated.

30 Anything further.

MR. LAKIE: No, thank you Your Honour.

THE COURT: Ms. Crawford.

MS. CRAWFORD: No, nothing. Thank you Your Honour.

THE COURT: All right, so you'll both get copies of the endorsement, and if there's nothing further, I thank counsel very much for your submissions today.

MS. CRAWFORD: Thank you Your Honour.

THE COURT: And that would complete court for today.

31 *ADJOURNED*

Application granted in part.