PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Bingley, 2010 NSPC 72

Date: October 15, 2010
Docket: 2146727
Registry: New Glasgow

Between: Her Majesty the Queen

v.

Janice Bingley

Judge: The Honourable Judge Del Atwood

Heard: October 15, 2010 in New Glasgow, Nova Scotia

Counsel: William Gorman, for the Crown
Karen Bingley, Agent for the Defence

By the Court:

[1] [ORALLY] Karen Bingley is present as agent for Miss Janice Bingley who is also present.

[2] The court has for decision an application by Janice Bingley pursuant to Section 8 of the **Canadian Charter of Rights and Freedoms** and also Section 24 of the **Canadian Charter of Rights and Freedoms** for a determination by this court as to the legality of a search and seizure carried out at her place of residence on the 19th day of October, 2009 at 1035 Lyons Lane, Westville, Pictou County, Nova Scotia. Section 8 of the **Canadian Charter of Rights and Freedoms** states, "Everyone has the right to be secure against unreasonable right or seizure." Section 24(2) of the **Canadian Charter of Rights and Freedoms** states that,

> "where, in proceedings under subsection (1), a court concludes that evidence obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute."

[3] The commencement of a determination of a Section 8 issue begins with the decision of the Supreme Court of Canada in *Hunter et al v. Southam Inc.* [1984] 2 S.C.R. 145, where the late Chief Justice Dixon, at pages 160-168, outlines the

requirements of a constitutional search. One of the principal requirements of a constitutional search is prior authorization. The second principal requirement is that the prior authorization be granted by a judicial officer, who need not be a judge; accordingly, a justice of the peace, acting in a judicial capacity, satisfies that requirement. And the third requirement is the existence of reasonable and probable grounds under oath from an informant.

[4] Whether a search has occurred so as to engage the application of the Section 8 of the **Canadian Charter of Rights and Freedoms** requires the court to make a determination of whether there was a reasonable expectation of privacy. In circumstances when there is no reasonable expectation of privacy, then state activity involving the entering onto property would not constitute a search, and, therefore, Section 8 would not be engaged.

[5] In this particular case, it is apparent from the evidence of Cst. Hector that the search that he carried out on the 19th of October, 2009, was conducted at the residence of Janice Bingley, at 1035 Lyons Lane, Westville, Nova Scotia, upon her lands and within her dwelling. The court can draw no other inference from the investigator's oral evidence, particularly given the contents of the information to

obtain, which was exhibited before the court today; indeed, this is an unavoidable and inescapable inference that the court must draw, given that the fact that it is Janice Bingley was who was charged with the offence before the court, arising from the search carried out on the 19th day of October, 2009. While there were no title documents exhibited before the court in evidence of the ownership of the search site, and no admissions or statements made by the accused to that effect, there is no doubt in my mind that this was Janice Bingley's residence and her adjoining lands.

[6] With respect to the issue of the expectation of privacy, the court would refer to the opinion of Mr. Justice La Forest of the Supreme Court of Canada in the *R. v. Dyment* (1988), 45 C.C.C. (3d), 244 at pages 253 and 254 where Mr. Justice La Forest stated:

> *Hunter v. Southam* underlined that a major, though not necessarily the only, purpose of the constitutional protection against unreasonable search and seizure under s. 8 is the protection of the privacy of the individual: see especially pp. 159 - 160 S.C.R. of the *Hunter v. Southam* decision. And that right, like other *Charter* rights, must be interpreted in a board and liberal manner so as to secure the citizen's right to a reasonable expectation of privacy against governmental encroachments. Its spirit must not be constrained by narrow legalistic classifications based on notions of property and the like which served to protect this fundamental human value in earlier times. Indeed, it may be confusing means with ends to view these inherited rights as essentially aimed at the protection of property. The lives of people in earlier times centred around the home and the significant obstacles built by the law against governmental

> intrusions on property were clearly seen by Coke to be for its occupants "defence" and "repose".

And at this point, I'll just interject that the abstract of Mr. Justice La Forest's opinion which I'm quoting, makes reference to *Semayne's* case and *Entick v. Carrigton* and the citations are given.

[7] Justice LaForest goes on to state:

> ... the effect of the common law right against unreasonable searches and seizures was the protection of individual privacy. Viewed in this like, it should not be cause for surprise that a constitutionally enshrined right against unreasonable search and seizure should be construed in terms of that underlying purpose unrestrained now by the technical tools originally devised for securing that purpose . . . .

And that concludes my quotation of Mr. Justice La Forest's opinion.

[8] In this particular case, the court is satisfied, and I find as a fact, that the search that was carried out on the 19th of October, 2009, was conducted at the home of Janice Bingley and on the adjoining lands.

[9] Investigators entered onto the lands of a private residence, made observations, and then seized Ms. Bingley's dogs. These animals were apparently examined following the seizure and the court draws the necessary inference that it was based on this collection of evidence that the charge that is now before the

court was laid against Ms. Bingley. I am satisfied that Ms. Bingley has a litigable and cognizable privacy interest in respect of the search that was carried out on her property on the 19th of October, 2009, so as to engage the application of Section 8 of the **Canadian Charter of Rights and Freedoms**. And therefore, the court will examine the criteria set out in *Hunter and Southam* to aid, in part, its determination as to the constitutional validity of that search and seizure.

[10] I am satisfied, based on my review of *voir dire* Exhibit 2, that there was a prior authorization for this search, in that there was a warrant to search issued by a justice of the peace. That warrant states, in part:

> whereas it appears on the oath of Steven Hector, a Peace Officer and Special Constable with the Nova Scotia Society for the Prevention of Cruelty, Province of Nova Scotia, that there are reasonable grounds for believing that a large number of dogs and pups that will afford evidence of an offence under a Nova Scotia enactment, namely: The Animal Cruelty Prevention Act, Section 11(2), is in: on the property and in the dwelling and buildings at 1035 Lyon's Lane, Westville, Pictou County, Nova Scotia, hereinafter called the premises, this is therefore to authorize and require you between the hours of 9 am to 9 pm on October 19th, 2009, to enter into the said premises and to search for the said things and to seize them and to bring them before me or some other justice or make a report in respect thereof to me or some other justice."

[11] Accordingly, the court is required to make a determination, in furtherance of the Section 8 determination, as to the sufficiency of the warrant application. As

was noted by Justice Fish in the recent decision of *R. v. Morelli,* [2010] 1 S.C.R. 253, and I am referring to paragraph 40 of his opinion:

> "In reviewing the sufficiency of a warrant application, however, the test is whether there was reliable evidence that might reasonably be believed on the basis of which the authorization could have issued."

And here, Justice Fish is referring to the earlier decision of the court in *R. v. Araujo* reported at [2000] 2. S.C.R. 992, at paragraph 54.

[12] And, then continuing on, Justice Fish states:

> The question is not whether the reviewing court would, itself, have issued the warrant but whether there was sufficient credible and reliable evidence to permit a justice of the peace to find reasonable and probable grounds to believe that an offence had been committed and that evidence of that offence would be found at the specified time and place. The reviewing court does not undertake its review solely on the basis of the ITO as it was presented to the justice of the peace, rather "the reviewing court must exclude erroneous information" included in the original ITO ...

... and here Justice Fish is referring to the *Araujo* decision at paragraph 58:

> Furthermore, the reviewing court may have reference to amplification evidence; that is, additional evidence presented at the *voir dire* to correct minor errors in the ITO, so long as this additional evidence corrects good faith errors of the police in preparing the ITO rather than deliberate attempts to mislead the authorizing justice. It is important to reiterate the limited scope of amplification evidence, a point well articulated by Justice LaBelle in *Araujo*. Amplification evidence is not a means for the police to adduce additional information so as to retroactively authorize a search that was not initially supported by reasonable and probable grounds. The use of amplification evidence cannot, in this way, be used as a means of circumventing a prior authorization requirement.

[13] And here Justice Fish is referring to *Araujo* at paragraph 59. I would interject parenthetically, at this juncture, that Mr. Justice Fish is clearly making the point that *ex post facto* evidence–that is to say, evidence that is collected by the police or by an investigating authority, an agent of the state, at the site of a search pursuant to a search warrant, cannot be used to bootstrap a deficient information to obtain.

[14] Justice Fish goes on to state,

> reviewing courts should resort to amplification evidence on the record before the issuing justice only to correct some minor technical error in the drafting of their affidavit material so as not to put form above substance in situations where the police had the requisite reasonable and probable grounds and had demonstrated investigative necessity but had, in good faith, made such errors. In all cases, the focus is on the information available to the police at the time of the application rather than information that the police acquired after the original application was made."

[15] The contents of a proper information to obtain have been referred to in a number of authorities but perhaps never more comprehensively than in *Church of Scientology and the Queen (No. 4)* (1985), 17 C.C.C. 3d 499, a decision of the Ontario High Court; specifically, a properly drafted information to obtain must describe the offence that is alleged to have been committed. It must describe adequately the location sought to be searched. It must specify the property that is sought to be seized. The information to obtain must spell out reasonable and

probable grounds that an offence was committed. It must contain reasonable and probable grounds establishing that the property that is sought to be seized actually exists. The information to obtain must specify the reasonable and probable grounds that establish that the property sought to be seized is located at the place where the search is to be conducted. The information to obtain must demonstrate reasonable and probable grounds that seizure of the specified property will afford evidence of the commission of an offence. And the information to obtain must set out reasonable and probable grounds demonstrating that the location identified in the ITO is in fact the site that the state agent wishes to search, so as to avoid those well documented tragedies when, for example, a warrant is issued authorizing a search at 13 West *Avenue* where a child's birthday party is on the go, when, in fact, the informant was seeking to target the crystal-meth cookery at 13 West *Street*, ending up in chaos as the backup team bursts in at the address shown on the warrant just in time for ice cream and cake, right after the piñatas.

[16] In this case, the information to obtain, which was tendered as *voir dire* Exhibit No. 1, consists of a bare-bones Form 5 in which the informant, Cst. Hector, states that his grounds for belief are contained in an attachment headed "Appendix A". In fact, the attachment that forms part of the Exhibit before me is

headed “Statement of Steven Hector Provincial Investigator for the Society for the Prevention of Cruelty to Animals October 16, 2009.” The heading of this document makes no reference to “Appendix A”; although, this is a significant drafting error, I am prepared to draw the inference that the statement of Steven Hector that is attached to Form 5 is in fact the document that is referred to in Form 5 as “Appendix A”.

[17] The statement of Officer Hector includes information that predates the date of the search by some considerable period of time. This earlier information is intended clearly to amplify the officer’s statement of facts as to the circumstances he observed October 13th, 2009. In the statement of Officer Hector, the officer refers to receiving three complaints about some Great Danes and some smaller dogs between April and May of 2009. There is no reference as to the exact dates that those complaints were received. There is no indication as to whether the complaints came from sources with firsthand information or whether the sources were merely relaying information that they had received from other parties. There is simply no way that an issuing justice would be able to look at the recital in the third paragraph of the statement of Officer Hector and make any determination as to whether an offence was being committed under the **Animal**

Cruelty Prevention Act, or, indeed, whether there was any reason to engage the investigative provisions of the **Animal Cruelty Prevention Act** in any way, shape or form.

[18] The officer goes on to state that he issued a letter of warning to Janice Bingley of 399 Marsh Road on June 12th, 2009. There is no evidence that is contained in the statement of Officer Hector that would provide an issuing justice, to any degree of requisite legal certainty, that 399 Marsh Road was a property owned or occupied by Janice Bingley. Clearly, the officer reached that conclusion and that is why he included this recital in his statement. However, it is only his conclusion. No evidence is offered by the informant to support a determination that 399 Marsh Road was a property occupied, let alone owned, by Janice Bingley. It is a conclusion that is not supported by the evidence recited in the ITO.

[19] The officer goes on to recite in his Statement, "during the months of July and August, I made four rechecks and nothing was being done". What does this mean? Unfortunately, the statement does not provide the issuing justice with Officer Hector's observations as to the conditions that prevailed at 399 Marsh Road on the dates that he made his four rechecks. What could an issuing justice

conclude from the vague, generalized assertion that "nothing was being done" , without being provided with facts about the *status quo ante*, so to speak? There is no evidence as to what the officer actually observed. The officer goes on to say:

> I did my last recheck in August. Janice Bingley, the dogs and all her belongings were gone. I spoke to a neighbour who said that the people just picked up and left and they did not know where they moved to. I placed a business card along with a note on the door asking her to call me. I have never received a call back.

[20] Officer Hector goes on to state that the Society received two complaints on October 13th, 2009, about a Janice Bingley by then residing at the last house on the lefthand side of Lyon's Lane, Westville, Pictou County, Nova Scotia. The complainants responded to an ad on Kijiji about some pups for sale. There is nothing in the information to obtain that would allow an issuing justice to be satisfied as to how Cst. Hector came into that information. One of the prime principles set out in *Church of Scientology* , *supra,* is that factual assertions contained in an information to obtain must be sourced back to the originator of that evidence; this is so that an issuing justice can make a determination of whether the ITO informant is acting on firsthand knowledge, secondhand knowledge, or thirdhand knowledge. All that an issuing justice would know, looking at Officer Hector's statement, is that the "Society" received two complaints. Who at the

Society received those complaints? That information is not provided. The statement of Officer Hector goes on to state that the complainants responded to an ad on Kijiji, which I understood to be an internet networking site, about some pups for sale. There is no evidence contained in the officer's statement as to when it was the complainants responded to the ad. Was it in close proximity to October 13th, 2009 when the complaints came forward or was it a date prior to that? The court does not have the ability to draw inferences that complainants make timely complaints. In fact, the court is fully aware of the fact that in many cases, complainants do not make timely complaints; it is simply impossible to determine from this ITO when it was that the complainants made their observations. There is no indication that there was an effort made to go online and check Kijijji to determine whether the information provided by the complainants was accurate. There was, later on in Officer Hector's statement, a bald assertion that the two separate complainants did not know each other. However, there is no way for the court to be assured of that point, other than the mere fact that the officer asserted it. The statement of Officer Hector goes on to state:

> "When the complainants were at the property, they saw some Great Danes and some smaller dogs there. One of the complainants stated that one of the Great Danes had just had pups and it looked like it was a walking carcass and you could see all the bones on all the dogs. The complainant stated that **there was a small** dog there with pups being kept in a small guinea pig cage. One of the complainants has a Great Dane herself and was shocked at the conditions of these

> dogs and where the mother and the pups were being kept. Both the complainants said they contacted their vets and were told that no dog should be in that kind of shape after having pups."

[21] There is nothing in the in formation to obtain that specifies where, on the property–presumably the last house on the lefthand side of Lyon's Lane–the complainants made their observations. Was it inside the residence, inside the dwelling, or was it out on the surrounding lands? This is significant because of the fact that the information to obtain refers to the property sought to be seized as being "in the dwelling and buildings at 1035 Lyon's Lane, Westville, Pictou County, Nova Scotia, hereinafter called the premises."

[22] Again, there was no evidence before the issuing justice as to how the informant determined that this site at 1035 Lyon's Lane belonged to Janice Bingley. There's no indication in the information to obtain that the two complainants even met with Janice Bingley.

[23] Now, the officer, Officer Hector, follows up with the Westville Police, or, at least his co-worker follows up with the Westville Police, and there is an assertion in the statement of Officer Hector that

> "my co-worker was in contact with the Westville Police Department on October 15th, 2009, around 6:30 p.m. and a constable went out to the property to check the number for the house and check to see if the dogs were still there."

Unfortunately, given the vague property description contained in the statement attached to the ITO, it would not have been possible for the issuing justice to have ascertained where it was that the constable was actually sent. Cst. Hector relates that the constable calls back and says that he looks at a house, its house number 1035. He knows that it's the old John Nelson MacDonald house. He says that there were dogs outside. Dogs the height of a small horse. A small black and white dog came running out of the house while he was in the driveway. There is nothing in the description that's provided by the officer to, presumably, Constable Hector, (although, again, there is no indication whether it was Constable Hector to whom the constable spoke or whether it was Officer Hector's co-worker) that would have allowed the issuing justice to conclude that the site checked by the constable was the site visited by the two complainants who were Cst. Hector's key sources. There's no information provided as to the number of dogs seen by the officer, the breed, and in the court's view, none of this would permit an inference to be drawn that the property observed by the Town of Westville officer was the same property observed by the two complainants used by Cst. Hector as his ITO sources.

[24] Once again, there is no evidence whom the complainants met with when they went to the vaguely described residence on an unknown date. There is nothing allowing the court to conclude that the two complainants made their observations within a dwelling or within a building or on adjoining lands. In the court's view, the information to obtain in this particular case is so bereft of content and reliable information as to essentially constitute no information to obtain whatsoever; therefore, applying the test described by Justice Fish in *Morelli* and not seeking to substitute my view for the judgment of the issuing justice, I am satirised that there was no evidence before the issuing justice upon which prior authorization for a search of 1035 Lyon's Lane, Westville, Pictou County, Nova Scotia might have been granted.

[25] That does not end the analysis. Before it makes a determination as to the exclusion of evidence, the court is obviously obligated to consider the application of sub-section 24(2) of the **Canadian Charter of Rights and Freedoms** which, to restate it, provides:

> "Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having

> regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute."

[26] Based on my conclusions as to the insufficiency of the ITO used to obtain the 16 October warrant, I find that the search and seizure were done without proper prior constitutional authorization, and so I do find that there was a breach of the accused's Section 8 *Charter* rights.

[27] The court must then go on, in applying the provisions of sub-section 24(2) of the **Canadian Charger of Rights and Freedoms**, to turn its mind to the recent decision of the Supreme Court of Canada in the *R. v. Grant*, [2009] 2 S.C.R. 353. In the *Grant* decision, the court referred to previous tests applying sub-section 24(2) of the Charter as being broad and imprecise. But the court went on to state that "the words of Section 24(2) capture its purpose to maintain the good repute of the administration of justice", and that is found at paragraph 67 of *Grant*. In the subsequently decided decision of the *R. v. Stanton* reported ... the neutral citation is 2010 B.C.C.A. 208, the British Columbia Court of Appeal stated at paragraph 52:

> the revised framework under *Grant* for the admissibility of evidence under Section 24(2) of the Charter recognizes that trial judges continue to have a broad discretion in determining whether evidence obtained in breach of a Charter right will nevertheless be admitted but the exercise of that discretion is to be informed and guided by the words of Section 24(2).

[28] In the Decision of *R. v. Ngai*, a Decision of the Alberta Court of Appeal reported at 2010 A.J. No. 96, the court stated that:

> the import of *The Queen and Grant* was to refocus the Section 24(2) analysis and *Grant* directed courts to balance the effect of admitting the evidence on society's confidence in the judicial system.

[29] In the case of *R. v. Wong*, reported at 2010 B.C.J. No. 557, the British Columbia Court of Appeal stated at paragraph 15 as follows:

> As a result of the decisions in *Grant* and *Harrison*, trial courts have been directed to take a view of all relevant circumstances in making the decision about admissibility of evidence under Section 24(2) of the Charter, the distinction between conscriptive and nonconscriptive evidence set out in *Stillman* is no longer as significant in analysing admissibility. Reliability, which is often hallmark of real evidence, will always be conjent consideration but will not be dispositive.

[30] In *The Queen and Grant* at paragraph 71, the Supreme Court stated that there are three avenues of inquiry which must always be considered when applying Section 24(2) of the Charter, and these are as follows:

- The seriousness of the *Charter*-infringing state conduct with particular concern being given to the fact that the admission of illegally obtained evidence may send the message that the justice system condones serious state misconduct.

- The impact of the breach on the *Charter*-protected interests of the accused, noting that admission may send the message that individual rights count for little,

- and finally, the third factor, "society's interest in the adjudication of the case on its merits".

[31] I'll deal with the third factor first. Obviously, the public have a serious interest in the adjudication of cases involving animal cruelty. The **Animal Cruelty Prevention Act** has now been completely revised and updated and the successor legislation brought into effect on January the 18th, 2010. It demonstrates an unambiguous legislative intent to provide protection for animals; this is a proper legislative concern in that domesticated animals, in particular, are completely dependent upon human beings to care for them. When they're not cared for properly, there's very little they can do about it, themselves. They can be restrained, misused, maltreated, starved, and they will endure it without a word of complaint. That obviously goes without saying. Nevertheless, the court is obviously cognizant of the fact that the prosecution of this particular case is a summary-offence prosecution under a provincial statute. This is not to suggest that animal protection under a provincial public-welfare statue is any less worthy a legislative objective than the

targeting of criminal misconduct under a federal statute, but obviously the court is cognizant of the fact, that in the hierarchy of the offences, an offence involving animal cruelty, while certainly serious, does not rank in the same order as an offence involving the infliction of cruelty or deprivation or distress upon a human being. I would note also that it was clear from the *viva voce* evidence of Constable Hector here today, that what he saw of Ms. Bingley's dogs in June, and then in July of 2009, when he performed his rechecks, did not lead him to conclude that these animals were in distress within the definition of Section 2(2) of the **Animal Cruelty Prevention Act**. What clearly prompted the officer to take the action that he did, was hearing about the two complaints that were received by the Society on October 13th, 2009.

[32] Nevertheless, I am satisfied that there is a state interest in the adjudication of this case, although it does not rank of the same order as offences involving serious offences against persons.

[33] With respect to the first criterion of the *Grant* analysis, in my view the seriousness of the *Charter*-infringing state conduct here is very substantial. A search was carried out at a private residential property, a search that included an authorization to enter a dwelling and buildings on the basis of an information to obtain, that, in the court's view, was wholly insufficient. In my view, the deficiencies

in the information to obtain were substantial and significant; in my view, the seriousness of the *Charter* -infringing state conduct is amplified by the fact that the location of the search, based on the evidence presented to me and from the description contained in the information to obtain, was clearly someone's private residence. The warrant authorized entry into a dwelling house in the absence of any evidence in the information to obtain that would have allowed an issuing justice to conclude that there was anything of evidentiary value inside that dwelling.

[34] The Supreme Court of Canada, in *R. v. Feeney*, [1997] 2 S.C.R. 13, underlined the high level of privacy and protection adhering to private residences. In the *Feeney* case, the police weren't investigating animal cruelty, they were investigating a murder. The house in question was nothing more than a shed, an outbuilding where Mr. Feeney slept; it wasn't good for much more. Nevertheless, in the *Feeney* decision, the Surpeme Court of Canada concluded that the arrest of Mr. Feeney, and the searches and seizures incidental to arrest ,were unconstitutional, given the high level of protection afforded a person's residence, as mean and uninhabitable as it might be. It follows from this that the seriousness of the infringing conduct in Ms. Bingley's case is very substantial.

[35] Turning to the second *Grant* criterion, the impact of the breach on the *Charter* -protected interests of the accused, again, in my view, the impact is significant. As the Crown has indicated, the Crown's case essentially turns on the validity of the search. In my view, that amplifies the impact of the breach on the *Charter* -protected interests of the accused, and while the evidence that was collected by the investigators in this particular case would clearly appear to be real evidence as opposed to self-conscripted evidence, the court is nevertheless satisfied that the impact, given the nature of the search, given the importance of the collected evidence arising from the search to the Crown's case, leads the court to conclude that the impact upon Ms. Bingley is significant.

[36] Applying the final step in the *Grant* analysis, that being the balancing exercise, in the court's view, the deficiencies in the information to obtain are so substantial and the violation of privacy is so significant, that the court is drawn inevitably to the conclusion that the admission of the seized evidence–viewed reasonably and from a long-term perspective–would have a significantly negative effect on the repute of the administration of justice. Therefore, having made the determination that there was a Section 8 violation in the issuing and the execution of the warrant of October 16th, 2009, the court will exclude from evidence any material that was seized as a result of

that search, and that would apply also, pursuant to *The Queen and Burlingham,* to any fruit of that poison tree. So, that is the court's determination in relation to the Charter issue.

[37] The *voir dire* is now at an end and it's now one o'clock so I'm not sure what the Crown ...

[38] **Mr.Gorman**: Well, I guess just a point of clarification just to make sure I understand it correctly. As I understand it, the decision of the exclusion extends not only to what was found in the house, but everything associated to that property.

[39] **The Court**: *Burlingham*, in my view, leads to that inevitable conclusion.

[40] **Mr. Gorman**: I just wanted to make sure I understood you correctly.

[41] **The Court**: Thank you.

[42] **Mr. Gorman**: That's the Crown's case. I offer no more evidence.

[43] **The Court**: Well, Ms. Bingley, based on the fact that the Crown is offering no more evidence, there is no evidence essentially before the court, and, therefore, the court will entertain your motion to dismiss this charge.

[44] **Ms. Bingley**: We would like it dismissed. Your Honour, it has been very traumatic here for Janice, her family, and even for myself to have this invasion where seven family pets and puppies were taken, and publicly our time, and put for sale and sold, adopted, prior to the charge even being laid. It's absolutely wrong.

[45] **The Court**: Well, all the court can do is make the order dismissing the charge. You may have other legal avenues available to you but unfortunately those would not be available in this court. Ms. Bingley, I guess all I can say is that the caution that I gave you at the outset of the trial turns out to have been wholly unneeded. You were very ably defended in your case here today by your sister. So, the charges are dismissed out of this court.