

In the Court of Appeal of Alberta

Citation: Onischuk v Alberta, 2013 ABCA 129

Date: 20130422
Docket: 1201-0014-AC
Registry: Calgary

Between:

Daniel W. Onischuk

Appellant
(Applicant)

- and -

**Her Majesty the Queen In Right of Alberta
and Town of Canmore**

Respondents
(Respondents)

The Court:

**The Honourable Mr. Justice Clifton O'Brien
The Honourable Mr. Justice Peter Martin
The Honourable Mr. Justice Brian O'Ferrall**

Memorandum of Judgment

Appeal from the Order by
The Honourable Mr. Justice G.C. Hawco
Dated the 7th day of December, 2011
(Docket: 1101-14786)

Memorandum of Judgment

The Court:

[1] The few domestic rabbits released in Canmore decades ago by some perhaps well-intended albeit misguided people, are now many . . . far too many. They are blamed for decimating lawns and gardens and inadvertently attracting predators, including cougars and wolves, to town for an easy meal. Town officials felt something had to be done.

[2] They began by issuing a request for proposals (RFP), so that they might consider all options and make a fully informed decision on the best way to remediate the problem, within the budget allocated for that purpose. The RFP's went out in early August 2011, with a closing date of September 13, 2011.

[3] Mr. Onischuk responded to the invitation in late October 2011, first by corresponding with a town official and then by tendering a reply to the RFP.

[4] Sadly, after considering all options, Town officials decided the best course was to trap and euthanize the rabbits. That concerned Mr. Onischuk, as he thought there were better, more humane options, such as trapping, sterilizing and then releasing them; or, better yet, trapping and simply relocating them intact to a designated rabbit sanctuary to enjoy more productive lives.

[5] Upset with the Town's proposed solution, Mr. Onischuk went to the Court of Queen's Bench to seek an injunction to stop the program until a full consultation process could be conducted. The Town challenged Mr. Onischuk's standing to make such an application and argued the application was an abuse of process.

[6] At the hearing, the court was advised that Mr. Onischuk had no ties to, or interests in, Canmore that would be affected by this program. Indeed, it was agreed that other than the rabbits, Mr. Onischuk had no interest in Canmore at all, that he was, and still is, a permanent resident of Edmonton. Justice Hawco dismissed the application, finding that Mr. Onischuk lacked standing and that, coming from him, it was an abuse of process.

[7] Before us, the Town of Canmore maintains its position and defends Justice Hawco's decision. We have had the opportunity to review the large volume of material, including the numerous applications to introduce fresh evidence filed by Mr. Onischuk in support of his appeal, and we have considered his submissions. We disagree with Mr. Onischuk that any of his *Charter* rights have been implicated, including those he enumerated: ss 2, 7, 8, 15, 24 or 32. Nor do we find that the Town of Canmore entered into any kind of contractual agreement with Mr. Onischuk when it received his RFP, or when a town official discussed the matter with him in October 2011.

[8] As the Supreme Court recently noted in *Downtown Eastside Sex Workers United Against Violence Society v. Canada*, 2012 SCC 45, [2012] 2 SCR 524, one aim of the standing rules is "to

screen out the mere “busybody” litigant”. Another is to ensure that the case raises a serious justiciable issue so that scarce resources are not wasted. Both concerns are applicable here.

[9] Ultimately, we agree with Justice Hawco’s conclusions: Mr. Onischuk has no standing to bring his application, and coming from him, it is an abuse of process.

[10] The appeal is therefore dismissed.

[11] Before concluding, we note that Mr. Onischuk has demonstrated a tendency to relitigate matters. We think we should address that prospect, and we do so by directing that he not be allowed to file any further appeal or materials relating to this matter without prior approval of a judge of this court.

[12] Judgment accordingly.

Appeal heard on April 3, 2013

Memorandum filed at Calgary, Alberta
this 22nd day of April, 2013

O’Brien J.A.

Martin J.A.

O’Ferrall J.A.

Appearances:

K.F. Mason

M.D. Aasen

for the Respondent, Town of Canmore

Appellant Daniel W. Onischuk In Person