

ONTARIO
SUPERIOR COURT OF JUSTICE

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BETWEEN:

SYLVIA DOROSH

Applicant,

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and

VIZSLA CANADA INC.

Respondent.

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R E A S O N S F O R J U D G M E N T

by the Honourable Justice C. Herold, on the 20th day of
September 2004, at Guelph, Ontario.

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25 APPEARANCES:

K. Millikin

Counsel for the Applicant

R. Mullin and

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C. Glassford

Counsel for the Respondent

(i)

Table of Contents

ONTARIO

SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

5
10
15
20
25
30

Reasons for Judgment

Page 1

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1
Dorosh and Vizsla Canada
Reasons for Judgment, Herold J.

MONDAY, SEPTEMBER 20, 2004.

R E A S O N S F O R J U D G M E N T

HEROLD J. (Orally):

The Canadian Vizsla Dog Club was founded in or about 1992. The applicant was a founding member. It was Federally incorporated on March 11, 1999 and the applicant was an incorporating director.

In the letters patent issued by Industry Canada, a department of the Federal government, the objects of the corporation are set out and they are repeated in the Vizsla Canada Inc. constitution and bylaws, which were approved by the general membership on October 23, 1999, some six months after incorporation. The objects set out in both locations are as follows:

The objects of the corporation are:

The objects of the incorporation shall be the encouragement, improvement, promotion and protection of purebred dogs and more specifically the Vizsla breed, by:

Dorosh and Vizsla Canada
Reasons for Judgment, Herold J.

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25
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1. Developing the Vizsla breed to the highest standards possible always keeping foremost that the breed is meant to be versatile and that the field function, confirmation, and companion aspects are to be given equal stress in breed development;

2. Educating the general public in the benefits of purebred dogs;

3. Conducting Canadian Kennel Club (C.K.C.) licensed and sanctions events of any type appropriate for the Vizsla breed;

4. Encouraging participation in appropriate activities in addition to those licensed and sanctioned by the C.K.C. such as other field and tracking events and therapy and companion activities;

5. Assisting the C.K.C. in the interpretation of the Vizsla breed standard including the proposal of any required

3
Dorosh and Vizsla Canada
Reasons for Judgment, Herold J.

revisions that may from time-to-time be deemed necessary by the corporation;

6. General promotion, publicizing and protection of the Vizsla breed;

7. Ensuring that the corporation is at all times run as a *bona fide* non-profit organization.

A brief look at the affidavit material including financial statements contained therein would lead any reasonable person to conclude that however else they may have been able to comply with their objectives, the non-profit aspect has been a sure winner.

The applicant was always an officer or director from the outset.

In the Fall of 2002, Frank Lacko was elected president and the applicant's recording secretary. All board positions were filled by acclamation. Almost immediately thereafter friction developed, (or continued to develop I am not sure which) between the applicant and Mr.

Dorosh and Vizsla Canada
Reasons for Judgment, Herold J.

Lacko or amongst the applicant and all, or some of the other board members.

5 In the Spring of 2003, the board removed the applicant as a board member. She remains to this day a member in good standing of the organization.

10 The Applicant, Sylvia Dorosh, brought this application to appoint an Inspector. In submissions her position appears to have been crystallized as this, that is to say, to have an inspector appointed to examine the affairs of the corporation to see if she and other members of
15 the corporation have been prejudiced by the conduct of the board; to report back to the court the results of the inspection, after which the court could determine the appropriate remedy if
20 any.

25 The parties are in agreement with respect to many legal aspects of this application. They agree for example, that section 229 of the *Canada Corporations Act* permits the appointment of an Inspector in the case of a not for profit corporation and they agree that the threshold to be crossed is that found in the plethora of cases dealing with the oppression remedy in the *Canada Corporations Act* and the *Ontario Business*
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Dorosh and Vizsla Canada
Reasons for Judgment, Herold J.

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Corporations Act. They disagree on whether the threshold has been crossed and whether an application of this sort should be a first resort or a last resort. I have resolved both of these central issues against the applicant.

10
The Ambassador and her Counsel have taken me very carefully through the background facts and the relevant case law and I do not intend to repeat their very thorough and helpful submissions.

15
From all of the material I have concluded that there was a severe and probably irresolvable personality clash between or amongst the applicant and Mr. Lacko and or the applicant and other board members. The response of the applicant was in my respectful view, rude, high handed and inappropriate. The board decided, (remembering that it is after all, a truly volunteer organization) that as a concession to the shortness of human life a board member must go. They had two possible routes in the constitution - possibly inconsistent - not an unusual fact in constitution and bylaws of a volunteer organization. Those two potential routes were found in article 3(6) and article 6(5). They followed article 6(5). The only complaint is that there were more seconders than necessary. No one was, in fact however,

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Dorosh and Vizsla Canada
Reasons for Judgment, Herold J.

prejudiced by that and they voted the applicant off the board.

They also voted to confirm Mr. Lacko's version of the minutes, rather than the applicant's version. The membership was kept fully apprised of all of events. There has been no apparent opposition to the actions of the board other than by the applicant. The board in my respectful view has acted fairly and democratically throughout. It appears that only the applicant, (as is her right) feels otherwise.

Ms. Dorosh, the Applicant, complained to the Canadian Kennel Club. They said it's not their area of interest. She complained to a branch of the Federal government and got a similar response. She did not, as was her right, seek to have a special general meeting convened. She did not ask the board to appoint an Inspector, nor did she appoint one herself and ask the board to fund the Inspector either absolutely, or at the least initially, rather she brought proceedings to the court by way of this application. Neither the respondent nor I take great issue with paragraph 18 of the applicant's factum, which reads as follows:

Dorosh and Vizsla Canada
Reasons for Judgment, Herold J.

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"A court is entitled to make an investigation order if it appears on the face of the material submitted to the court that there is good reason to think that the conduct complained of may have taken place. It need not be satisfied that the conduct in fact took place or that such conduct has been proven. To require such a standard of proof would make any investigation unnecessary."

The citation given as support for that proposition by the applicant and it appears to be a fair proposition taken from the case *Consolidated Enfield Corp. v. Blair* [1994] O.J. No. 850, Ontario Court (General Division) at page 20. That was a judgment of Mr. Justice Logan and there is a subsequent case also referred to by the applicant, in the Divisional Court with respect to the costs of the Inspector and it is a judgment of Justice Steele, with Justice McFarland and Justice Feldman, [1996] O.J. No. 383. The proposition is not really disputed. The words that perhaps cause a parting of the ways are the words, "good reason to think". There must be something more than a complaint of oppression to generate the response of the appointment of an Inspector. There must be "good reason to think" that there has been conduct

8
Dorosh and Vizsla Canada
Reasons for Judgment, Herold J.

which is oppressive and thus triggers the court's response.

5 I see no such good reason in this case, indeed I see no reason at all. Whatever the burden may be in crossing the threshold it rests with the applicant. Hurt feelings, or feelings even of great disappointment are not, and cannot be held to be tantamount to oppression as that term is known in corporate law. They are the unfortunate facts of life of many, if not most, volunteer organizations and accordingly the application is dismissed.

10 THE COURT: Costs? Mr. Mullin?
...discussion regarding submissions as to costs recorded but not typed.

E N D O R S E M E N T

15 THE COURT: Keith R. Millikin for the Applicant, Robert M. Mullin and Cheryl L. Glassford for the Respondents.

20 For oral reasons given today this application is dismissed. For supplementary oral reasons given today the issue of costs is reserved. The respondent is to make submissions within 30 days;

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Dorosh and Vizsla Canada
Reasons for Judgment, Herold J.

the applicant within 15 days thereafter; and
brief reply, if necessary, within five days.

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FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

Evidence Act

I, we BARBARA E. MCCRAE, certify that
(Please print name of authorized person(s))

this document is a true and accurate transcript of the recording of _____
ONTARIO
in the **SUPERIOR COURT OF JUSTICE**
(Case name) (Name of Court)

held at 74 WOOLWICH STREET, GUELPH, ONTARIO, N1H 3T9 taken from Recording No.
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01-40-04, which has been certified in Form 1.

Oct 5, 2005
(Date)

B.E. McCrae
(Signature of authorized person(s))
CERTIFIED COURT REPORTER 1