

SUPREME COURT OF QUEENSLAND

CITATION: *Robertson v Dept of Primary Industries and Fisheries & Anor* [2010] QCA 147

PARTIES: **GERALDINE FOOI-FONG ROBERTSON**
(applicant/respondent)
v
CHIEF EXECUTIVE, DEPARTMENT OF EMPLOYMENT, ECONOMIC DEVELOPMENT AND INNOVATION
(first respondent/first applicant)
THE ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS QUEENSLAND INCORPORATED
(second respondent/second applicant)

FILE NO/S: Appeal No 13299 of 2009
DC No 2268 of 2009

DIVISION: Court of Appeal

PROCEEDING: Applications to Strike Out

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 15 June 2010

DELIVERED AT: Brisbane

HEARING DATE: 8 March 2010

JUDGES: McMurdo P and Fraser and Chesterman JJA
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. The Department's and RSPCA's applications to strike out the application for leave to appeal are granted;**
2. Ms Robertson is to pay the Department's and RSPCA's costs of their applications and of the application for leave to appeal.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF COURT – OTHER MATTERS – where an RSPCA employee appointed as an Inspector under s 143 of the *Animal Care and Protection Act* 2001 (Qld) ('the Act') entered the respondent's premises and seized 105 dogs – where an authorised delegate of the Department forfeited the dogs to the State – where the respondent applied for a review of the decisions and the forfeitures were confirmed – where the respondent appealed to the Magistrates Court and the appeal was dismissed – where the respondent appealed to the District Court, with the Department and RSPCA applying to

strike out the appeal – where the primary judge struck out the appeal as it did not disclose any arguable error of law – where the respondent applied to this Court for leave to appeal against the primary judge’s decision – where the Department and RSPCA applied for orders to strike out the respondent’s application for leave to appeal – whether the primary judge erred in striking out the respondent’s appeal at the interlocutory stage of proceedings – whether the respondent’s application for leave to appeal to this Court has any prospect of success – whether the respondent’s application is so manifestly untenable that it should be struck out as an abuse of process

Animal Care and Protection Act 2001 (Qld), s 19(2) s 19(3), s 142(3), s 143, s 144(1), s 191(1), s 152, s 154, s 154(2), s 154(2)(c), s 155, s 156, s 156(1), s 156(2), s 157, s 157(1), s 157(2), s 157(3), s 157(7), s 203, s 203(1), s 204, s 204(1), s 204(2), s 205

District Court of Queensland Act 1967 (Qld), s 118(3)

Dart & Anor v Singer [\[2010\] QCA 75](#), cited

Dart v Mulherin & Anor [\[2009\] QCA 146](#), cited

Robertson v Chief Executive, Department of Primary Industries and Fisheries & Anor, unreported, Magistrate Strofield, Magistrates Court at Charleville, No 6213 of 2008, 24 July 2009, cited

Robertson v Department of Primary Industries and Fisheries & Anor, unreported, Devereaux DCJ SC, District Court of Queensland, No 2268 of 2009, 30 October 2009, cited

Robertson v Hollings & Ors [\[2009\] QCA 303](#), cited

von Risefer v Permanent Trustee Company Limited [2005] 1 Qd R 681; [\[2005\] QCA 109](#), cited

COUNSEL: B W Farr SC for the first applicant
R Fryberg for the second applicant
The respondent appeared on her own behalf

SOLICITORS: Crown Law for the first applicant
Clayton Utz Lawyers for the second applicant
The respondent appeared on her own behalf

[1] **McMURDO P:** I agree with Fraser JA’s reasons for granting the applications to strike out with costs Ms Robertson’s application for leave to appeal. I agree with the orders proposed by Fraser JA.

[2] **FRASER JA:** On 9 January 2008 an employee of the Royal Society for the Prevention of Cruelty to Animals Queensland Inc (“RSPCA”), who had been appointed as an “Inspector” under the *Animal Care and Protection Act 2001* (Qld) (“the Act”), entered premises occupied by Ms Robertson and seized 104 dogs, purportedly under s 143 of the Act. Another dog was seized from those premises on 22 February 2008. On 5 February 2008 and 14 March 2008, the authorised delegate

of the Department of Primary Industries and Fisheries¹ (“the Department”) purported to forfeit to the State under s 154(2)(c) of the Act the dogs seized on 9 January and the dog seized on 22 February respectively.

- [3] Ms Robertson exercised her right under Ch 7, Pt 4, Div 1 of the Act to apply for review of the chief executive’s decisions to forfeit the dogs. The forfeitures were confirmed. She then appealed from the review decision to the Magistrates Court under Div 2 of Ch 7. Both the Department and (on application by the RSPCA) the RSPCA were joined as respondents to Ms Robertson’s appeal. The hearing of the appeal to the Magistrates Court occupied more than three weeks. The Magistrate dismissed the appeal and affirmed the review decision forfeiting the dogs to the State.²
- [4] Ms Robertson then appealed to the District Court under s 205 of the Act. Section 205 provides:

“205 Appeal to District Court

An appeal lies to a District Court from a decision of the Magistrates Court, but only on a question of law.”

- [5] Ms Robertson named the Department and the RSPCA as respondents to her appeal to the District Court. She subsequently applied to have the RSPCA removed as a party. Both the Department and the RSPCA applied to strike out the appeal on the grounds that most grounds of appeal did not raise any question of law and that those grounds which arguably raised questions of law were so manifestly untenable as to make the appeal vexatious. On 30 October 2009, a judge of the District Court refused Ms Robertson’s application to remove the RSPCA as a party to the appeal and acceded to the application by the Department and RSPCA to strike out the appeal. After referring to *von Risefer v Permanent Trustee Company Limited*³ and *Robertson v Hollings & Ors*⁴ the primary judge determined that this was an appropriate case in which to take the unusual and admittedly serious step at an interlocutory stage of striking out the appeal on the bases that the grounds of appeal either did not raise questions of law or those that did disclosed no arguable error of law.⁵
- [6] On 25 November 2009, Ms Robertson applied under s 118(3) *District Court of Queensland Act 1967* (Qld) for leave to appeal from the judge’s decision dismissing her application to amend her notice of appeal, striking out her notice of appeal, and ordering costs against her. The applications presently before the Court are those made by the Department and the RSPCA for orders summarily striking out Ms Robertson’s application for leave to appeal.

The proposed appeal from the summary striking out of the appeal to the District Court

- [7] Ms Robertson’s application for leave to appeal asserts numerous grounds which are said to justify the grant of leave to appeal. I have taken those matters into account

¹ Now the Department of Employment, Economic Development and Innovation.

² *Robertson v Chief Executive, Department of Primary Industries and Fisheries & Anor*, unreported, Magistrate Strofield, Magistrates Court at Charleville, No 6213 of 2008, 24 July 2009.

³ [2005] QCA 109.

⁴ [2009] QCA 303.

⁵ *Robertson v Department of Primary Industries and Fisheries & Anor*, unreported, Devereaux DCJ SC, District Court of Queensland, No 2268 of 2009, 30 October 2009.

but under the present heading the ground of the RSPCA's and Department's applications is that the proposed appeal is so manifestly untenable that the application for leave does not enjoy any realistic prospect of success. That argument directs attention to those grounds of the proposed appeal in this Court which relate to the summary striking out of Ms Robertson's appeal in the District Court. On this topic Ms Robertson proposes to argue the following grounds of appeal:

“The Appellant’s Notice of Appeal should not have been struck out.

9. The learned Judge erred in law when he accepted that the learned Magistrate had heard all the evidence. Section 202 (Hearing procedures) of the Act does not state that the hearing is restricted to only the reasonable belief of the Inspectors and the forfeiture decision. Ground 28 in the Notice of Appeal that was should not have been struck out.
10. The learned Judge erred in law when he failed to consider all the Grounds. Many of the grounds related to Section 202 (Hearing procedures) of the Act, if the law is not stated should not mean the Ground is not a valid ground.
 - a. One valid ground would be sufficient for the Appeal to proceed.
 - b. Natural Justice is law, many of the grounds assert that the Appellant did not receive natural justice for a number of reasons.
11. The learned Judge erred in law when he failed to apply the General Steel test.
 - a. Under rule 171 a pleading can be **struck out** without liberty to replead, but the test is that laid down by the High Court in *General Steel Industries Inc v Commissioner for Railways* (1964) 112 CLR 125 at 130: that the case of the party in question is so clearly untenable that it cannot possibly succeed. An order is not to be made under this rule without liberty to replead just because of some defect in the pleading: *Noble v Victoria* [1999] QCA 110. The *General Steel* test would also apply to striking out for failure to disclose a reasonable defence, something which was covered anyway by rule 171 (1)(a); again, what matters is whether there was liberty given to replead, and for liberty to replead not to be given the *General Steel* test must be satisfied.
12. The learned Judge erred in law when he accepted the submission of the Second Respondent that the learned Magistrate had considered all the relevant evidence in making his review decision. There was no test or proof,

other than the learned Magistrates decision to support this assertion. The learned Magistrate restricted his decision to only the “reasonable belief” of the Inspectors when they seized the Appellant’s dogs. The learned Magistrate did not consider all the available evidence in his forfeiture decision. The learned Magistrate failed to consider nor did he allow the conduct of the Second Respondent and the effects that conduct had on the Appellant’s ability to get natural justice. The Law is Section 202 (Hearing procedures) of the Act.

- a. The Appellant was stripped of her evidence by the conduct of the Second respondent.
 - i. By Application Magistrate Bradford-Morgan struck out many grounds and evidence that raised issues related to the Grounds now pleaded in the Notice of Appeal.
 - ii. The Second Respondent seized the Appellant’s evidence and witness contact details when they seized the Appellant’s computer system and evidence, records, personal property etc just prior (22 Feb 2008) her filing her Appeal to DPI for the return of her dogs. Much of this evidence now seems to have disappeared
 - iii. Pre-trial publicity scared away the Appellant’s witnesses;
 - iv. The Appellant was vilified to her witnesses
- b. These conduct issues were detailed in the Appellant’s Grounds for Appeal and include as examples:
 - i. The pre-trial publicity scared away the Appellant’s witnesses. These witnesses included her veterinarian Dr Woo, Her Solicitors from Burns Law;
 - ii. The seizure of the Appellant’s records removed from the Appellant the contact details of all her boarders who had been to her kennels and boarded their dogs there. These people were witnesses to the conditions of the Appellant’s kennels prior to the flooding rains before seizure. The Appellant could not find these witnesses. The only way the Appellant could find these witnesses was if they contacted her.
 - iii. That the pre-trial publicity hardened and fortified the Respondent’s witnesses against

her. The Appellant is able to show evidence was fabricated and perjured and therefore the decision could not have been made with reasonable belief.

- iv. There was an improper motive in seizing the Appellant's dogs that being profit and publicity.
 - v. Witnesses were tutored;
 - vi. The Appellant was vilified to her own witnesses and attempts were made to pervert the course of justice by interfering with her witnesses;
 - vii. The Second Respondent conducted a campaign against the Appellant, the Save the Poodles Petition went to Judges and the legal profession and a save the poodles telethon in May 2008 on Channel 7.
 - viii. It is the Appellant's submission there are many valid grounds in the Notice of Appeal and therefore the Notice of Appeal should have not been struck out.
13. The learned Judge erred in law when made a finding without considering the facts of the pre-trial publicity and dismissed the pretrial publicity as irrelevant. Without a proper trial it was not possible to show the relevance of the pre-trial publicity a conduct that the Appellant can show to have undermined the proper procedure of the appeal hearing. A conduct the learned Magistrate refused to allow the Appellant to show in her hearing before him. The Law is Section 202 (Hearing procedures) of the Act.
14. The learned Judge erred in law in finding the Appellant is vexatious.
- a. At all times the Appellant has been the Appellant.
 - b. The Second Respondent seized the Appellant's dogs;
 - c. The First Respondent forfeited the Appellant's dogs which the Appellant is seeking to have returned to her. These dogs were worth \$5million.
15. It is the Courts duty to provide a remedy. In dismissing the Appeal, the Court failed to provide the Appellant her remedy. The Appellant did not get her trial and suffered a travesty of justice as she told the learned Judge. *Jago v District Court of NSW* [1989] HCA 46; (1989) 168 CLR 23 (12 October 1989)

16. The learned Judge did not provide the Appellant natural justice when he did not consider the Appellant could have a reasonable prospect of success in her Appeal. Without hearing the evidence in a trial this could not have been validated.
17. The learned Judge did not provide the Appellant natural justice when he did not allow the Appellant to identify her valid grounds and led the Appellant away from valid discussions/arguments/explanations/references.
18. The learned Judge erred in law in that he did not consider Section 17 (4) (b) of the Act, “*the steps a reasonable person in the circumstances of the person would reasonably be expected to have taken.*” Examples of things that may be a circumstance for subsection (4)(b) -- a bushfire or another natural disaster a flood or another climatic condition. This evidence was provided in the affidavit of Geraldine Fooi-Fong Robertson files in his Court on 16/10/09 that was before him on that day.”
- [8] The Department and the RSPCA accepted that the primary judge should not have struck out the appeal unless it was clearly untenable. The question for this Court is whether Ms Robertson’s proposed appeal against that decision is itself so clearly untenable that she should not be permitted to argue her application for leave to appeal in the usual course. Similarly, the power summarily to strike out a proceeding in this Court should be exercised with great care and, in a case of this kind, only if the Court is satisfied that the proceeding is so manifestly untenable as to constitute an abuse of this Court’s process.⁶
- [9] Ms Robertson’s notice of appeal to the District Court (as she proposed to amend it) was in these terms:
- “1. His Honour erred in law when he denied the Appellant Natural Justice by refusing to consider that both the Respondents denied the Appellant Natural Justice when they had abused the processes of the Court:-
- a. The Second Respondent, from 11 January 2008 to 24 July 2009, continued releases to the media for the public’s attention was designed to affect Appellant’s ability to get a fair hearing;
- b. Both the Respondents witnesses were tutored;
- c. ~~that the~~ Court processes were being employed for ulterior purposes or in such a way as to cause improper vexation and oppression of the Appellant;
- i. The Appellant suffered threats, abuse, assault, insults, harassment, and intimidation

⁶ von Risefer & Ors v Permanent Trustee Co P/L & Ors [2005] QCA 109.

consequent upon the Second Respondent's "trial by media" campaign against the Appellant;

- ii. The Appellant was vilified in public by the Second Respondent;
 - d. The Respondents breached their fiduciary duty to the Appellant and made an enormous profit from their "Save the Poodles" campaign against the Appellant raising \$millions in donations and goods;
 - e. The Second Respondent conducted a campaign against the Appellant to the public and the Courts with their save the poodles petition which was widely distributed and could or would have improperly influenced the courts, witnesses and potential witnesses against the Appellant;
 - f. The Respondents were motivated by pretrial publicity and their profits from their Save the Poodles campaign to abuse the processes of the Court;
 - g. The Second Respondent contacted the Appellant's witnesses and had discussions with them about the Appellant and her dogs;
 - h. The Second Respondent had used the information contained in letters, written by the Appellant to the First Respondent who had forwarded these letters to the Second Respondent, to fabricate evidence against the Appellant. Example:
 - i. Katie Heaton - "No dogs that I assisted in loading were overcrowded or vomiting"
 - i. The Second Respondent obstructed the due administration of justice by bringing improper pressure to bear on the Appellant in collateral proceedings so as to induce the settlement of such proceedings this being the surrendering of her dogs to the Second Respondent.
2. His Honour erred in law when he denied the Appellant Natural Justice by refusing to consider The Appellant was denied natural justice as Pretrial media publicity caused the Appellant to be unable to get a fair hearing.
- a. There was improper influence on the Second Respondents' witnesses;
 - b. There was improper influence on Appellant's witnesses, many were not prepared to help - they were scared away;

- c. There was an improper effect on Respondents' witnesses themselves -
 - i. If they Respondents lost they would have been seen to have perpetrated a fraud on the public when raising funds for the ~~the~~ Second Respondent's save the Poodles campaign;
 - ii. They Second Respondent would have to give back the Appellant's dogs that had been fostered/sold out to other people, other than the Second Respondent staff who would have been very reluctant to give them back. The Save the Poodles Petition seeks people to foster/sell the Appellant's dogs;
 - iii. Or in the Alternative, Second Respondent would have to pay for the Appellant's dogs seized;
 - d. Caused prejudice or bias the public mind in favour of the Second Respondent as against the Appellant and thereby would have caused to substitute pre-judgment and pre-trial by the media for determination by the courts ~~of the land~~;
3. Her Honour Bradford-Morgan erred in law when Her Honour denied the Appellant Natural Justice by refusing to consider the Appellant was denied natural justice when Pretrial rulings of some of the Appellant's evidence were struck out as inadmissible;
- a. Witness for the Appellant - John Dougall's direct evidence related to the Second Defendant's conduct in this matter was struck out;
 - b. Geraldine Robertson Appeal Grounds filed 31/7/08 paragraphs 2,3,4,5,12,13,14 were struck out;
 - c. Witness for the Appellant - part of Margaret Watt's eye witness evidence related to the Second Defendant's conduct in this matter was struck out;
 - d. Geraldine Robertson Affidavit sworn 28/7/08 paragraphs 2,9,11,12,13,17,19,20,21,22,23,24,42,44, 45,46,47,48,49,50,51,52,56,62,63,64,65,66,67,68 were struck out. These were evidence related to the Second Defendant's conduct in this matter.
4. His Honour erred in law when he denied the Appellant Natural Justice by refusing to consider the Appellant was denied natural justice when evidence in His Honour's court

shown the Respondents evidence supporting the Appellant's Appeal was deliberately hidden from the Appellant;

- a. Imagination TV Inc. video footages. Mr Deane for the Second Respondent committed a contempt of Court when on Day 13 page 2 line 20 pronounced that he had video footage and would not make it available to the Court. Some of this video footages shows the Respondent's witnesses being tutored;
 - b. Mr Deane for the Second Respondent committed a contempt of Court when he said that ~~there~~ only one press release had been provided to the media. In fact a large amount of video footages had been provided to the media and he kept this information from the Court;
 - c. Ms Mellifont for the First Respondent misled the Court day 12, page 25 line 40 when she indicated all the available video footages had been provided to the Court;
5. His Honour erred in law when he denied the Appellant Natural Justice by refusing to consider the Appellant was denied natural justice - Witnesses were or were likely to be prejudiced by pretrial publicity;
 6. His Honour erred in law when he denied the Appellant Natural Justice by refusing to consider the Appellant was denied natural justice as the Second Respondent 2 was oppressive towards the Appellant in that:
 - a. They caused her such fear ~~and~~ with threats she was unable to conduct her business and ~~this~~ she was denied income;
 - b. The Appellant was caused physical harm, her health suffered and her ability to properly conduct her self in this hearing was impaired. She was caused fear and terror by the Second Respondent;
 - c. The Second Respondent unnecessarily caused the Appellant legal costs such that by the time of trial she was financially exhausted and had to be self represented;
 7. His Honour erred in law when he denied the Appellant Natural Justice by refusing to consider the Appellant was denied natural justice as the Second Respondent was motivated by an improper purpose other than the correct purpose - their purpose was the making of money from donations from the public and promoting themselves as caring for animals.

8. His Honour erred in law when he denied the Appellant Natural Justice by refusing to consider the Appellant was denied natural justice when the Second Respondent's witnesses were tutored and therefore their evidence was unreliable.
 - a. The Respondents withheld Imagination TV Inc. video footages;
 - b. Katie Heaton - "No dogs that I assisted in loading were overcrowded or vomiting";
 - c. The Appellant's Dogs at seizure were covered in urine and faeces;
 - d. Putrid smell in an open air concrete court yard when it had been raining continuously for the past 10 days prior 9 January 2008, the heaviest downpour in twenty years.
9. His Honour erred in law when he denied the Appellant Natural Justice by refusing to consider the Appellant was denied natural justice when the Second Respondent contacted the Appellants' witnesses and caused them to feel threatened and had a conversation about the Appellant with them.
10. His Honour erred in law when he denied the Appellant Natural Justice by refusing to consider the Appellant was denied natural justice in that she was stripped of most of her evidence and the Second Respondent's evidence was tainted:
 - a. Seizure of records on the 22nd February 2008 caused the Appellant to lose her evidence and her opportunity to contact possible witnesses;
 - b. Evidence were not returned to the Appellant included but is not limited to:
 - i. kennel boarding cards containing contact details of people who had been to the Appellant's premises and seen her kennels prior to seizure were lost to the Appellant; These people were potential witnesses;
 - ii. Sales records containing the names of customers who had been to the Appellant's premises and purchased dogs from her;
 - iii. Other breeders records containing the details of people who had been to her property and had their dogs boarded at her property and other purposes;

- iii. The Appellant's noted and other records containing information that would have been helpful to the Appellant.
 - c. Appellant's Witnesses were improperly influenced by the Second Respondent 2;
 - d. Pretrial media publicity scared away other witnesses;
 - e. John Dougall, direct evidence witness was not allowed to give evidence;
 - f. Margaret Watts, eye witness, was not allowed to give all her evidence;
 - g. The Appellant was not allowed to give all her evidence;
 - h. Imagination TV Inc. tutored witnesses, for RSPCA Animal Rescue TV show, for a good story and prejudiced witnesses;
 - i. Pretrial publicity caused witnesses to become prejudiced against the Appellant;
11. His Honour erred in law when he denied the Appellant Natural Justice ~~The Honour erred in law~~ when he ordered the Appellant was not allowed to provide evidence relating to the Second Respondent's campaign against the Appellant. This evidence was kept from the Court and the Appellant was made to believe the Court would not accept it;
 12. His Honour erred in law when he denied the Appellant Natural Justice by refusing to exercise His powers under the Animal Care and Protection Act 2001 as amended to 22 January 2008. His Honour erred in law by improperly limited himself to issues related to the evidence that might have been available to the decision maker at that time, and not otherwise, which is to be considered in determining the appeal;
 13. His Honour erred in law when he denied the Appellant Natural Justice by refusing ~~His Honour erred in law denying the Appellant natural justice in that he failed~~ to consider or allow evidence that ~~might~~ did cause a miscarriage of justice in ~~this~~ the Appeal Hearing;
 14. His Honour erred in law when he denied the Appellant Natural Justice when His Honour erred in law and in fact when he said in paragraph 8 of his decision "*The defendant claimed she had not cleaned the cage for about six weeks*".
 15. His Honour erred in law when he denied the Appellant Natural Justice when His Honour erred in law when he did

not entertain the Appellant's Application that the Second Respondent was in contempt of Court;

16. His Honour erred in law when he denied the Appellant Natural Justice when His Honour erred in law and fact when he accepted the evidence of witness Lawrence Stageman as credible when in fact it was obvious that he had lied about the condition of the entrance court yard when he said that that court yard had been cleaned before the entrance video was taken Court exhibit 2, when in fact no cleaning was done or could be heard in his audio recording Court Exhibit 25;
17. His Honour erred in law when he denied the Appellant Natural Justice when His Honour erred in law and fact, when he accepted the evidence of the Second Respondents' witnesses as credible;
18. His Honour erred in law when he denied the Appellant Natural Justice that His Honour erred in law and fact when he restricted the Appellant in her cross-examination of witnesses;
19. His Honour erred in law when he denied the Appellant Natural Justice that His Honour erred in law when His Honour accepted the First Respondent Barrister's statement that all the video was available is in the Court thus caused the Appellant to be unable to get a fair trial when His Honour refused the Appellant's Application for all the video/film footages now known to be in the possession of the Second Respondent;
20. His Honour erred in law when he denied the Appellant Natural Justice that His Honour erred in law and fact when he ignored the nature of the video evidence Court exhibit 2 being selected bits out of the total video taken;
21. His Honour erred in law when he denied the Appellant Natural Justice when His Honour erred in fact and law by refusing and ignoring the Appellant's insistence that the whole video taken should be presented to the Court in evidence;
22. His Honour erred in law when he denied the Appellant Natural Justice when His Honour erred in law and fact when he allowed obviously perjured and fabricated evidence and accepted it as credible and did not provide the witnesses with the proper warnings/cautions;
23. His Honour erred in law when he denied the Appellant Natural Justice that His Honour erred in fact when accepting the evidence of the Second Respondent veterinarians even after the Appellant had proven beyond doubt using the

Second Respondent veterinarian records Court Exhibit 33 which all the Second Respondent Veterinarians had admitted in the witness chair it was 99.99% accurate and also as the Veterinarian records dates show that the Appellant could not be responsible for the problems claimed by the Second Respondent's veterinarians as having been caused by the Appellant;

24. His Honour erred in law when he denied the Appellant Natural Justice when His Honour erred in fact when he accepted the evidence given by Lesley Vlahos as truthful when it was clear that Tracey Jackson tutored this witness and typed Lesley Vlahos affidavit for her as admitted by Lesley Vlahos in cross examination;
25. His Honour erred in law when he denied the Appellant Natural Justice when His Honour erred in law and in fact when he accepted the evidence given by Lesley Vlahos as truthful when it was clear that the Appellant wanted to keep her dogs handed to Vlahos for clipping services when she had an order from Paul Ho for the puppies to be born from those dogs;
26. His Honour erred in law when he denied the Appellant Natural Justice when His Honour erred in fact and law in that he never considered that Lesley Vlahos may have had malice, or an improper motive, towards the Appellant and that this malice was reflected in the manner of her photographs and the presentation of the dogs for the photographs. Having accepted the dogs and consideration from the Appellant for grooming the dogs and then surrendering them to the Second Respondent 2 was a breach of the contract between the Appellant and Lesley Vlahos. Having breached this contract placed Lesley Vlahos in a conflict with the Appellant that would have to be defended by Lesley Vlahos. Her evidence was contaminated;
27. His Honour erred in law when he denied the Appellant Natural Justice when His Honour erred in fact and law in that he unfairly rejected the Appellant's evidence that the dogs were not on her premises at the time of seizure. With all the extra people there seizing her dogs and the Appellant had a Second Respondent Inspector accompanying her throughout that day, it was inconceivable that the dogs would not have barked and alerted the Second Respondent to their whereabouts. The Second Respondent Witness Shayne Towers-Hammond had work experience in searching for evidence and bodies it was inconceivable that dogs could have been hidden from the Second Respondent 2;
28. His Honour erred in law when he denied the Appellant Natural Justice that His Honour erred in law in that he has

clearly stated he is not administering the Animal Care and Protection Act 2001 and that he is only reviewing the decision of the Department of Primary Industries and Fisheries of Forfeiture of Appellant's dogs seized by the Second Respondent and considering the question of reasonable belief by the Second Respondent's Inspectors when they seized the animals;

29. His Honour erred in law when he denied the Appellant Natural Justice when His Honour erred in fact and law in that he accepted Second Respondent saying that 105 dogs were seized in total from the Appellant;
30. His Honour erred in law when he denied the Appellant Natural Justice when His Honour erred in law when he accepted that the photocopied records provided to the Appellant were the complete set of records seized by the Second Respondent 2;
 - a. His Honour did not allow the Appellant to lead evidence from her witness Margaret Watt to her witnessing three dual cab cabins full of records and property being seized;
31. His Honour erred in law when he denied the Appellant Natural Justice that his Honour erred in law when he took control of the Appellant when she was giving evidence deciding what evidence she could lead;
32. His Honour erred in law when he denied the Appellant Natural Justice that his Honour erred in fact when he concluded that the Appellant's property and kennels were not affected by the weather event prior to seizure on the 9th January 2008;
33. His Honour erred in law when he denied the Appellant Natural Justice that His Honour erred in law in that he did not remedy and/or make an order to the Second Respondent to properly identify the Appellant's dogs seized on 9th January 2008. S 150 Animal Care and Protection Act 2001 as amended. The Appellant was unable to know which dog was being discussed when cross-examining witnesses.
34. His Honour erred in law when he denied the Appellant Natural Justice that his Honour erred in law in that he did not remedy and/or order that the receipt for the 109 dogs seized on the 9th January 2008 be properly provided to the Appellant. S 150 Animal Care and Protection Act 2001 as amended;
35. His Honour erred in law when he denied the Appellant Natural Justice that His Honour erred in law in that he did not remedy or order that the Second Respondent to allow the

Appellant to inspect her dogs seized on 9th January 2008. S 151 Animal Care and Protection Act 2001 as amended;

36. His Honour erred in law when he denied the Appellant Natural Justice that His Honour erred in law in that he did not remedy/or order to the Second Respondent to properly identify the Appellant's dogs surrendered by Lesley Vlahos on 11th January 2008. S 150 Animal Care and Protection Act 2001 as amended;
37. His Honour erred in law when he denied the Appellant Natural Justice. His Honour erred in law when he refused to note, accept, consider or identify the puppies expected to be born and was born from the planned matings of which the First Respondent had informed the Second Respondent of S 150, S 151 Animal Care and Protection Act 2001 as amended;
38. His Honour erred in law when he denied the Appellant Natural Justice that his Honour erred in law in that he did not remedy and/or order that the receipt for the 109 dogs seized on the ~~11th~~ 9th January 2008 be properly provided to the Appellant. S 150 Animal Care and Protection Act 2001 as amended;
39. His Honour erred in law when he denied the Appellant Natural Justice that His Honour erred in law in that he did not remedy/or order that the Second Respondent to allow the appellant to inspect her 109 dogs seized on ~~11th~~ 9th January 2008. S 151 Animal Care and Protection Act 2001 as amended;
40. His Honour erred in law when he denied the Appellant Natural Justice that His Honour erred in law in that he did not make or remedy or order the Second Respondent to properly identify the Appellant's properties and dog seized on 22nd February 2008. S 150 Animal Care and Protection Act 2001 as amended;
41. That his Honour erred in law in that he did not remedy and or order that the receipt for the Appellant's properties and dog seized on 22nd February 2008 to be properly provided to the Appellant. S 150 Animal Care and Protection Act 2001.
42. His Honour erred in law when he denied the Appellant Natural Justice that His Honour erred in law in that he did not remedy or order that the Second Respondent to allow the Appellant to inspect her property and dog seized on 22nd February 2008. S 151 Animal Care and Protection Act 2001.
43. His Honour erred in law when he denied the Appellant Natural Justice that His Honour erred in law in that his failure to properly apply the Animal Care and Protection Act 2001 as

~~amended, which caused the Appellant hardship; and the denial of Natural Justice.~~

44. ~~His Honour erred in law by denying the Appellant Natural Justice~~ His Honour erred in law: That had appeared to support because of the continuing bad behaviour of the Second Respondent, and the Second Respondent's supporters and their attempts to pervert the course of justice using media, web forums, email campaigns, Legal letters, ~~lies~~ proveable perjury in the court and failure to act properly under the Animal Care and Protection Act all now seen to be an impossibility it is not possible for the Appellant to get a fair trial or Natural Justice;
45. ~~That his Honour erred in law: That his Honour has demonstrated bias in that he has knowingly allowed witnesses to tell obvious and provable lies and considered those lies as evidence.~~
46. ~~That his Honour erred in law: That his Honour has acted to protect witnesses from being exposed as liars when he interfered made orders denying the Appellant the opportunity to deduce the evidence that showed that the witnesses was lying. (Towers Hammond, Heaton, Chester, Lomax)~~
47. ~~That his Honour erred in law: His Honour has not properly applied that Animal Care and Protection Act 2001 to ensure the Appellant can access her property and know what is being referred to in the court.~~
48. ~~His Honour erred in law when he denied the Appellant Natural Justice~~ that his Honour erred in law: that His Honour has made no orders relating to the puppies born to the Appellant's mated dogs since seizure;
49. ~~His Honour erred law when he denied the Appellant Natural Justice~~ That his Honour erred in law: that his Honour has failed to properly deal with the Second Respondent's theft of the Appellant's properties and records on seizure of 22nd February 2008. The Appellant has a witness and this witness was not allowed to give her evidence on this matter. In the appellant's cross examination issues were referred to that could only have been learned from property seized that was not provided for on the warrant and was not receipted. This also means that the Barrister for First Respondent had privilege knowledge of this and since it has been raised in the trial this knowledge should have been ordered to be made available to the Appellant;
50. ~~That his Honour erred in law: That the First Respondent licenses veterinarians and with the pretrial publicity were in fear of losing their livelihood these veterinarians are not~~

~~willing to give evidence for the Appellant. They are in fact hostile to the Appellant.~~

51. ~~That his Honour erred in law: That the second Respondent's campaign against the Appellant using the media, web forums, RSPCA's Petrescue web site, other web sites, email campaigns, lies to the media has caused the Appellant such prejudice that potential witnesses for the Appellant have been scared away from helping the Appellant in case the Second Respondent does the same thing to them.~~
52. His Honour erred in law when he denied the Appellant Natural Justice ~~That his Honour erred in law:~~ that His Honour has demonstrated bias in that he ~~has~~ allowed the trial to continue when the Second Respondent has clearly been interfering and or intimidating the Appellant's witnesses;
53. His Honour erred in law when he denied the Appellant Natural Justice ~~That his Honour erred in law:~~ that his Honour has denied the Appellant the full use of the Second Respondent's veterinarians records for each dog referred to as in the Veterinarians Records, Court Exhibit 33 when cross examining the Second Respondent's witnesses (veterinarians);
54. His Honour erred in law when he denied the Appellant Natural Justice ~~That his Honour erred in law:~~ The identity of the Appellants dogs was in issue in the Court as the Second Respondent's witnesses RSPCA veterinarians are referring to dogs that the Appellant does not recognize as her own dogs. This is caused confusion and difficulties in cross examining the witnesses;
55. His Honour erred in law when he denied the Appellant Natural Justice when His Honour refused to resign from her hearing at the request of the Appellant because of His bias on a number of occasions, and, when His Honour after consideration of the written Application for His Honour to resign filed by the Appellant, did again refused to resign, the Appellant appealed to the District Court where it was explained clearly why the Appellant must return to the Magistrates Court to suffer the travesty of Justice."

[10] Those grounds of appeal were marked by repetition, prolixity, confusion, and inadequate particularisation. Importantly, s 205 of the Act limited Ms Robertson's appeal to the District Court to questions of law but, as the primary judge concluded, most of the grounds were not capable of raising questions of law, despite the common assertion added by the proposed amendments that the Magistrate erred in law. In order to explain why I conclude that the primary judge was plainly right in holding that such grounds as arguably raised questions of law were clearly untenable it is necessary to advert to the legislative provisions governing the forfeitures, the evidence accepted by the Magistrate, and the grounds of the appeal to the District Court.

Legislative provisions for forfeiture of animals

- [11] Section 144(1) of the Act empowers an Inspector who had under Ch 6, Pt 2 of the Act entered a place to seize an animal at the place “if the inspector reasonably believes - (a) the animal - (i) is under an imminent risk of death or injury; or (ii) requires veterinary treatment; or (iii) is experiencing undue pain” and that the inspector reasonably believes that the interests of the welfare of the animal require its immediate seizure. Section 154(2)(c) empowers the chief executive to decide to forfeit an animal if an inspector “(c) reasonably believes it is necessary to keep the animal or other thing to prevent it from being used in committing, or becoming the subject of, an animal welfare offence.”
- [12] The expression “reasonably believes” is defined in the Schedule in the Act to mean, “to believe on grounds that are reasonable in the circumstances.” “[A]nimal welfare offence” is defined to include an offence against the Act, subject to exceptions which are not presently relevant. One such offence is created by s 19(2) of the Act. It provides that a person must not breach the duty of care owed by a person in charge of an animal to that animal. Subsection 19(3) provides that a person breaches the duty only if the person does not take reasonable steps in accordance with that subsection. Relevantly those steps include providing, in a way that is appropriate, the animal’s needs for accommodation or living conditions and the treatment of disease or injury.

The evidence accepted by the Magistrate

- [13] Many of the grounds of appeal to the District Court and many of Ms Robertson’s arguments involved strong criticism of the Magistrate’s findings of facts. Ms Robertson asserted that there was no evidence to justify some findings and that the evidence upon which some findings was based was wrong, unreliable, perjured or corrupt. Ms Robertson harbours an apparently unshakeable belief that she had not breached her duty to look after the dogs properly, so that she therefore must have been the victim of a miscarriage of justice. Nevertheless, there was a large body of evidence adduced in the Magistrates Court to the effect that she had not properly cared for the dogs and that she was not capable of doing so.
- [14] Referring to the condition of the dogs which the Inspector saw when he entered Ms Robertson’s property on the occasion upon which he seized 104 dogs, the Inspector said:

“I then started to inspect the property. Just off to the left of the entrance I sighted a number of poodle dogs in an outside yard. It was lightly raining and I saw that there was a large amount of dog faeces all over the ground. The dogs there had matted hair and were covered in the faeces on their coats. There was a strong smell coming from the dogs’ coats.

Just forward of this location I saw a number of other dogs in a narrow pathway with a makeshift barrier, I saw that they were in a similar condition as the first dogs sighted and the area had a very large build up of sloppy faeces in this area. I saw that the dogs did not have any real place to lay without being covered in excrement.

I then entered the house. I was disgusted at what I saw, The inside of the house had the same pungent smell which was intense. I saw that

this was a type of office but there was a large build up of what I would call rubbish in it. I saw a very dirty cage on the office floor which contained an adult poodle type dog inside it. The base and the outside of the cage were covered in faeces on built up rotting newspaper. It appeared to be a large number of pages thick. [The defendant] claimed she had not cleaned the cage for about six weeks. I felt the dog was living in terrible conditions.

I then moved into the lounge room area. Again the smell intensified. I saw that there were a number of other dirty cages on the floor with a number of small poodle puppies in them. I did see one of the cages appeared to have been cleaned, but the excrement and the filth had spilled out onto the floor of the room. I also saw a makeshift barrier in the laundry where there were four black in colour pups located on the floor. There were faeces all over the floor and no apparent water. There were four smaller puppies in the bathroom in similar living conditions. I was disgusted at what I saw.

As I proceeded out of the rear of the house I saw there were compound type enclosures at the back of the house. This sight really surprised me. I saw a number of full grown Standard Poodle dogs in this yard area. The yard ground was covered in faeces and most of the dogs were in a shocking condition. I saw their hair was extremely matted and in some cases in large clumps being carried by the dogs. The smell was horrible and each dog also carried the similar smell.

I then moved to the rear of the property where a kennel compound was located. As I approached it I could see a large number of dogs in the individual pens. I saw there were in some cases animals paired up in the runs and at times more than two. This compound was approximately 50 metres from the main house but the smell was constant. As I entered the kennel the sight was appalling. I could see that there was no bedding for the dogs and there were faeces all over the pens. The build up of discarded dog hair was inside the pens and outside the cage doors. There was rubbish strewn outside the kennel and inside the front entrance. The animals inside had filthy coats from the conditions and there was what I would call stagnant water in the drainage ducts.”

- [15] The Magistrate referred also to photographs and video recordings taken at the time at the direction of the Inspector which, the Magistrate concluded, strengthened considerably the evidence by the Inspector. Ms Robertson argued before the Magistrate that the condition of the dogs was due to rain and extensive flooding shortly before the Inspector entered the premises. That proposition was rejected by the Department’s witnesses. The Magistrate was not bound to accept it and did not. The evidence of the Inspector was corroborated by the evidence of other witnesses including, for example, the evidence of a Beaudesert Council Officer, Ramsay, who said that upon entry of Ms Robertson’s premises she encountered “*a strong stench of wet dog, faeces, urine*” and she observed -

“(i) the walkway between kennels to be “*covered with a thick coat of dog faeces mixed with urine and mud.*”

- (ii) dogs in the rear kennel block covered in dog faeces with their tails fused to the back with faecal matter.”

[16] In addition, there was the evidence of Dr Covill, an experienced veterinarian who examined the dogs when they arrived at the RSPCA shelter on the day upon which they were seized. For example, Dr Covill gave the following evidence in cross examination:

“Would you please--?-- There was a large number of animals with conjunctivitis. At that stage a lot of these animals had severe conjunctivitis and that was evidenced by a large amount of matting of discharge around both eyes and the conjunctiva of both the - of the - of both eyes in most animals are extremely red and inflamed. At that stage, the treatment was necessary was we put them on a course of antibiotic eye appointment (sic) to reduce the swelling and it was only after that stage with so many of them that we identified that they had a condition called entropion and ectropion, which is an in rolling - rolling---

I’m very familiar with that----?- ...of the eyelids.

They get eye specialist treatments or - or rather they get examined - you keep a - yeah, keep going?- There was a large number of animals that were suffering from ectropion that had developed chronic conjunctivitis as a result of that. There was also a number of animals with otitis extema - inflammation infection in external air (sic) canal.

That was once again evidenced by a large amount of [indistinct] and some of these animals had a large amount of [indistinct] fettered discharge from their ear. There was one animal that actually had maggots from its ears and the discharge had matted over the entire pinner of the ear of the dog, the whole pinner was inflamed, the auditory meatus was inflamed and infected. A lot of the dogs also had severe dental disease~

Dandruff disease?- Dental disease.

Dental disease?- Dental disease, yes.

Mmm?- They had fettered discharge come from around the calculus of the teeth and---

Mmm-hmm?-- --a number of the teeth were relatively easy to remove because they’d just been rotting, yeah, rotting in place, in situ basically for so long.

Yes?- There was also a large degree of matting on the animals that had---

Yes, thank you, Dr Covill?- ---resulted in~

BENCH: No, allow the doctor to finish. The doctor - you asked a question, Mrs Robertson.

APPLICANT: Yes. Let - let her finish, okay?- There was also a large amount of matting on - on these animals and that precluded a lot of the animals for me having a normal gate and the - the matting had also resulted in infections underneath the skin and it was a tight pulling on the skin which caused the animals a large amount of discomfort as well. There was a number of animals that had maggots as a result of--

Mmm?the - the matting that hadn't been addressed for such a long period of time.

Maggots because of the matting?- Yes, generally.

Mmm?- Yes, 'cause flies get attracted to organic material. A lot of these animals had dags which consisted a lot of dried faecal material and urinary matter which was very attractive to the blow flies. So, they would be attracted to that area and then could initiate primary, secondary or tertiary fly strike."

- [17] Dr Covill also gave evidence that with a single exception of one dog, which appeared to be "show clipped", the coats of the dogs were in "appalling condition and in need of immediate clipping or at the minimum grooming within a short time period"; they were "severely matted with the mats tight against the animal's skin and large areas impacted with dried faecal material and other organic matter"; and many poodles had "extreme degree of tight matting around their bodies including their neck which precluded the secure use of a lead". She referred in detail also to severe and apparently chronic cases of conjunctivitis of the animals' eyes, significant dental disease, and other ill health. Another veterinarian, Dr Anne Chester, gave evidence of widespread health concerns in the dogs which were seized. The Magistrate considered that the challenge by Ms Robertson in cross examination to this evidence had little, if any, effect.
- [18] The record also includes a transcription of an audio tape which recorded statements by and to the Inspector who seized Ms Robertson's dogs on 9 January 2008. Ms Robertson's argument that the transcript evidences a conspiracy to seize the dogs from her without justification was plainly untenable. The primary judge rejected other arguments by Ms Robertson in which she asserted that the Magistrate had wrongly disregarded certain records and gave weight only to records which favoured the Department. As the primary judge also observed, these arguments concerned only the way in which the Magistrate dealt with the evidence and the findings made with respect to it.
- [19] After reviewing the evidence adduced in the appeal the Magistrate said:
- "After observing and assessing the evidence, including observing the cross examination of witnesses, and in relation to the s 144 power in an appeal of this kind, the belief of the RSPCA Inspectors (that it was necessary to seize the 105 dogs) was, on both occasions, reasonable. More significantly, the review decisions to forfeit the 105 dogs to the State were reasonable in the circumstances. Accordingly the review decisions are confirmed."
- [20] It is not necessary to refer in more detail to the evidence upon which the Magistrate's decision was based or to Ms Robertson's repeated and emphatic

criticisms of the findings. It is not arguable that there was no evidence to justify the Magistrate's findings or that the findings were unreasonable. On the contrary, it is quite clear that the findings were amply supported by the evidence.

Did the Magistrate address the correct question?

- [21] The primary judge rejected appeal ground 12, which alleged that the Magistrate denied Ms Robertson natural justice by limiting himself to issues relating to evidence that might have been available to the decision-maker. It is clear that the Magistrate did not misdirect himself. The Magistrate referred to the provisions of the Act which provided for the appeal, including s 202(2), which provided that an appeal is by way of re-hearing unaffected by the review decision, and observed that in conducting a re-hearing, unaffected by the review decisions, the Court was to consider all of the available relevant evidence, placing it at a considerable advantage to the original decision-maker. The Magistrate observed that the Court "sits in the shoes of the decision maker."
- [22] Ms Robertson did not have an arguable appeal to the District Court on this ground.

Did the RSPCA's or the Department's lawyers mislead the Magistrate?

- [23] The primary judge referred to the assertion by Ms Robertson that certain video footage was not made available and that counsel had wrongly told the Magistrate that all of the available video evidence was in Court. The primary judge observed that the only possible relevance of the availability of other video could be that it showed the animals in a condition different from the video the Magistrate saw; but the Magistrate based his conclusions upon evidence of the observations of the Inspector and, importantly, on the evidence of a veterinary surgeon as to the condition of the dogs. The primary judge was persuaded that it was impossible to conceive any prospect in the ground of appeal concerning the availability of the video and that it was difficult to see how it could be articulated as a question of law. The contention concerning the video was repeated by Ms Robertson in this Court. I would add to the primary judge's reasons for rejecting it that the transcript of the hearing in the Magistrate's Court demonstrates that counsel did not tell the Magistrate that all the available video evidence was in Court. What counsel said was that her understanding was that all possible relevant video film footage had been provided to the appellant, "but if there is a lingering concern as to that, then arrangements can be made for Mrs Robertson to attend, I think at the premises of one of the solicitor's office to work out what she says she is missing and copies can be provided." There is no arguable merit in Ms Robertson's allegations that her opponents' lawyers misled the Magistrate.

Publicity

- [24] The transcript of the audio tape which recorded statements by and to the Inspector who seized Ms Robertson's dogs on 9 January 2008 reveals that the Inspector, after identifying himself as an Inspector and producing a warrant which entitled him to enter the property and inspect Ms Robertson's premises and boarding kennels, told Ms Robertson that, "the media is coming with me to film anything that I require for evidence". When Ms Robertson complained that she was not used to being filmed the Inspector said, "well I'm sorry but they will be coming in". A heated argument ensued, in which Ms Robertson insisted on the right to obtain legal advice before the Inspector entered. The Inspector subsequently repeated that he was going to

invite the film crew in to take evidence and said, “[s]o could you come in”. A member of the media contingent sensibly decided to check the lawfulness of her entering over the express objection of Ms Robertson. Her employer apparently obtained and communicated legal advice that the media representative had no entitlement to enter over the objection of Ms Robertson.

- [25] The Inspector’s assertion that the warrant authorised an intrusion by media representatives into private property over the expressed objection of the occupier was so outlandish as to be likely to upset the most reasonable occupier. It is not surprising that it provoked a strong reaction from Ms Robertson. As the Department’s senior counsel accepted, the Inspector executing the warrant on Ms Robertson’s premises should not have attempted to justify the entry of media representatives into Ms Robertson’s premises.
- [26] However the evidence of that unfortunate episode, like the evidence of widespread media publicity adverse to Ms Robertson, was manifestly incapable of establishing any legal error in the Magistrate’s decision. The primary judge concluded that whilst the media attention and publicity were intense and no doubt distressing to Ms Robertson, they were irrelevant unless shown to have undermined the proper procedure of the appeal hearing in the Magistrates Court. Ms Robertson did not present an arguable appeal on that basis. The primary judge referred by way of example to the appellant’s first ground of appeal and noted that Ms Robertson gave no particulars of any of the grounds. She was unable to identify, for example, the particular witnesses who were said to have been scared away by the conduct of the RSPCA before the hearing. The appeal to the District Court on this ground did not enjoy any worthwhile prospect of success.

Other grounds of appeal concerning the merits of the forfeiture

- [27] It is not necessary to discuss the numerous other grounds of appeal in the District Court which raised only evidentiary and factual questions, none of which arguably rose as high as an error of law. In relation to other grounds of appeal to the District Court which might arguably have raised questions of law I will make some brief observations:

Ground 3: This ground did not allege any particular error in the decision of the Magistrate to exclude the evidence upon which Ms Robertson sought to rely and nor did Ms Robertson submit or provide particulars of the submission that the excluded evidence would have been admissible in the Magistrates Court.

Ground 22: As to the first aspect of ground 22, the ground raised a question of fact rather than law; as to the second aspect of the ground, there is no reason to think that the Magistrate was obliged to give any warning to a particular witness or that the failure to give any such warning amounted to an error of law, or error of law which had bearing upon the result.

Ground 11: The “evidence relating to second respondent’s campaign against the appellant” was irrelevant to the issues before the Magistrate.

Ground 13: As the primary judge pointed out, ground 13 was one of many of the grounds of appeal to that Court which was so vague as

to convey no real meaning. An error of law might be found in a refusal by a Magistrate to consider relevant evidence, but that it is not what the ground alleges. Ms Robertson did not identify any relevant evidence which the Magistrate refused to consider.

Ground 18: An error of law might be found in an unjustifiable restriction on a cross examination, but Ms Robertson did not identify any unjustifiable restriction on cross examination.

Ground 28: Ms Robertson's complaint under this ground was that the Magistrate wrongly restricted himself by focussing upon the reasonableness of the Inspector's beliefs. So far as the validity of the seizure was concerned, the Magistrate was right to focus attention upon those issues. That was required by the terms of s 144(1) of the Act. It is also apparent that the Magistrate appropriately focussed both upon the reasonableness of the beliefs of the Inspector relating to forfeiture, as required by the terms of s 154(2)(c), and also found that on the whole of the evidence in the appeal the forfeiture was reasonable.

Grounds 45 and 46: These grounds asserted that the Magistrate was biased and had protected the witnesses from being exposed as liars. No particulars were given and no basis appeared for these contentions. They were appropriately crossed out in the amended notice of appeal to the District Court.

Ground 52: Ms Robertson gave no particulars of the allegations of bias or interference with or intimidation of her witnesses.

- [28] In argument on the application in this Court, Ms Robertson emphasised the failure of the Inspector or others to properly identify the dogs by micro-chipping each dog or otherwise. She argued that this led to difficulties in the identification of those dogs in the subsequent proceedings. The record does not support Ms Robertson's argument that any difficulty in identification of a particular dog was productive of a miscarriage of justice. Her arguments raised only evidentiary and factual questions. They could not justify an appeal to this Court from the decision in the District Court in an appeal concerned only with questions of law.

Conclusion as to the proposed appeal from the summary striking out of the appeal to the District Court

- [29] I am satisfied that Ms Robertson's proposed appeal from the primary judge's decision summarily to strike out the appeal to the District Court is clearly untenable. Her application for leave to appeal from that decision is doomed to fail for that reason.

The primary judge's refusal to remove the RSPCA as a party in the District Court appeal

- [30] Grounds 1 to 8 of Ms Robertson's notice of appeal relate to the primary judge's decision to refuse to remove the RSPCA as a party to her appeal to the District Court:⁷

⁷ I omit ground 1, which made the uncontentious point that Ms Robertson had standing to appeal.

- “2. The learned Judge erred in law when he accepted the submission from the Second Respondent that a prescribed entity may have property in an animal, this being the Appellant’s dogs.
- a. Section 154 Power to forfeit sub section (2) states *“The chief executive may decide to forfeit the animal or thing to the State”* The Appellant’s dogs were forfeited under this section. The Second Respondent did not and could not have property or a vested interest in the Appellant’s dogs under the Act.
- 2.(sic) The learned Judge erred in law when he accepted the submission of the Second Respondent that Sections 156 and 157 of the Act seem to apprehend that a prescribed entity could have property in an animal.
- a. Section 156 (1) *“An animal or other thing becomes the State’s property if, under section 154(2), it is forfeited to the State”* The Appellant’s dogs were forfeited under section 154(2) and as such is the property of the State, not the Second Respondent.
 - b. Section 156 (2) is not relevant as the Appellant, at no time, agreed in writing to transfer the ownership of her dogs to the State or to the Second Respondent.
 - c. Section 157 *“How property may be dealt”* is not relevant except for sub section (3) *“However, the State or entity must not deal with the thing in a way that could prejudice the outcome of an appeal under this Act of which it is aware.”* The Respondents have been advised since seizure 9 January 2008 of the Appellant’s intent to seek all legal avenues available for the return of her seized dogs including this intended Application to the Court of Appeal. The Respondents should not deal with the Appellant’s animals under this section till this Appeal is concluded.
3. The learned Judge erred in law when he accepted the submission from the Second Respondent that the Second Respondent was an interested party and was entitled to be given an information notice.
- a. Section 155 Information notice about forfeiture *“(1) If the chief executive decides, under section 154(2), to forfeit an animal or other thing, other than a seized thing mentioned in section 150(1)(c),²⁷ the chief executive must promptly give the person who owned it immediately before the forfeiture (the former owner) an information notice about the decision.”*

Forfeiture transfers the ownership from the former owner to the State. The former owner is the Appellant, The Second Respondent was not the former owner of the Appellant's dogs and does not receive an information notice under the Act.

- b. Only the Appellant was entitled to be given an information notice at time of seizure: section 150 (2) *“The inspector must, as soon as practicable after the seizure, give the person from whom the thing was seized-*
 - (a) *a receipt for the thing that generally describes the thing and its condition; and*
 - (b) *an information notice about the decision to make the seizure.”*
 - c. Section 194 Who may apply for review *“An interested person for an original decision may apply to the chief executive for a review of the decision (a review application).”* The Appellant applied for a review of the decision to forfeit her animals to the State. The Second Respondent did not apply for a review of the decision.
4. The learned Judge erred in law when he concluded that the RSPCA had charge of the animals and was therefore entitled to an information notice. Section 155 clearly states it is the former owner who receives the information notice, not the RSPCA.
5. The learned Judge erred in law in that he did not properly consider the Appellant's submission that the Second Respondent should not be a Party to this Appeal because the Second Respondent has a definite conflict of interests.
 - a. The Second Respondent an incorporated organisation since 23 December 1999, is a business trading in pets with a profit and publicity motive.
 - b. The Second Respondent inspectors are under contract with the First Respondent to administer the inspections and seizures under the Act.
 - c. The Second Respondent became an incorporated trading entity within meaning and interpretation of section 51 (xx) of the Commonwealth Constitution and section 4 of the Trade Practices Act 1974 on 23 December 1999 within meaning and interpretation of law established by the Honourable High Court of Australia in R - v - Federal Court of Australia; ex parte W. A National Football League (1979) HCA 6

(1979) 143 CLR 190 or in the alternative; on 05 July 2002 within meaning and interpretation of law established by the Honourable Federal Court of Australia in Orion Pet Products Pty Ltd - v - Royal Society for Prevention of Cruelty to Animals (Vic) [2002] FCA 860 (5 July 2002).

- d. The Appellant is a competitor to the Second Respondent in the pet market. The Second Respondent inspectors can abuse the powers granted to them under the Act to seize animals at “no cost” to sell for profit.
 - e. The Second Respondent’s Inspectors under the Act have duties under the Act to ensure animals are not subjected to cruelty and breaches of duty of care.
 - f. If not properly supervised by the First Respondent the Second Respondent Inspector’s may seize animals not the subject of cruelty and breaches of duty of care offences and sell them for the Second Respondent’s own profit and publicity for donations and then fabricate evidence and perjure to support their seizure of animals.
 - g. The Appellant submitted that the seizure of her dogs was a criminal act of stealing for profit and publicity aided and abetted by the First Respondent. It is improper for the Second Respondent to be a party as it can act to cover up and protect its interests in this crime.
6. The learned Judge erred in law in that he did not properly consider the Appellant’s submission that the Second Respondent should not be a Party to this Appeal because the Second Respondent is acting outside of its supervision by the First Respondent.
- a. In being a Party the Second Respondent was wrongly asserting some control over the Administration of the Animal Care and Protection Act.
 - b. The Second Respondent’s employees are appointed as inspectors under the Act and the Second Respondent has control over its employees, it should not have any control over the Act and the decision to forfeit.
7. The learned Judge erred in law in that he did not properly consider the Appellant’s submission that the Second Respondent should not be a party because it acts as a servant

to the First Respondent under contract from the First Respondent.

- a. This contract establishes a Master (First Respondent) and Servant (Second Respondent) relationship.
- b. A Servant cannot claim ownership of property belonging to its Master.
- c. The Master is responsible for the actions performed by its servant under their contract. The Servant's paid staff performed the seizure of the Appellant's dogs for the Master on behalf of the Servant, not the Second Respondent section 150 of the Act.
- d. Because the Second Respondent's inspectors are "administering" an Act of Parliament the Second Respondent cannot be investigated for breaches of trade practices under the Trade Practices Act Section 51. The supervision of the Second Respondent's conduct in the market place and its abuse of its Inspector's powers must be the responsibility of the State through First Respondent. When the Second Respondent steps in as a Respondent this means the First respondent is no longer supervising the Second Respondent. The Second Respondent is then free to abuse its powers delegated to it under the Act, The Second Respondent in acting outside of its supervision by the First respondent, it is acting outside the law.

8. The learned Judge erred in law by not considering that the Second Respondent, by being a party to this Appeal has placed an additional, unnecessary and onerous burden upon the Appellant and has acted oppressively towards the Appellant."

[31] The contentions in grounds 5 to 7 concerning supposed invalidity or inefficacy of the appointment as Inspectors of employees of the RSPCA did not appear in Ms Robertson's notice of appeal in the District Court and are insupportable. The Court has previously rejected similar contentions as untenable.⁸

[32] More generally, it should be noted that it was Ms Robertson who made the RSPCA a party to her appeal in the District Court. Presumably she did so because the RSPCA was a party to her appeal in the Magistrates Court, pursuant to an order joining it as a respondent on 2 July 2008. Ms Robertson had opposed that order but she did not appeal against it and none of her numerous grounds in her District Court appeal contended that the RSPCA was not a proper party in the Magistrates Court proceedings. Any error by the primary judge in refusing to remove the RSPCA as a party to the District Court appeal can have no conceivable bearing upon the correctness in law of the Magistrate's decision to confirm the forfeitures. In this

⁸ See *Dart v Mulherin & Anor* [2009] QCA 146 and *Dart & Anor v Singer* [2010] QCA 75.

situation there is no realistic prospect that this Court would grant leave to permit Ms Robertson to bring an appeal simply to challenge the propriety of the primary judge's interlocutory order refusing to remove the RSPCA as a party in the District Court. So far as Ms Robertson's application for leave to appeal is premised upon a challenge to that order I would strike out the application for that reason.

- [33] It is therefore not necessary to examine the arguments concerning joinder of the RSPCA which were foreshadowed in Ms Robertson's draft notice of appeal and in her application for leave to appeal. That is inappropriate for another reason: Ms Robertson's arguments took a very different tack when, at the hearing of the application for leave to appeal, counsel for the RSPCA tendered copies of letters from a Departmental officer to the RSPCA dated 8 February and 15 March 2008 relating to the forfeiture of the dogs seized on 9 January 2008 and the dog seized on 22 February 2008 respectively. Each letter included the following statement:

“Under s 157 of the Act, I am transferring the animals to the RSPCA.”

- [34] After the hearing of the application Ms Robertson delivered a “supplementary submission”, which was premised upon the State having transferred property in the dogs to the RSPCA by way of gift. Ms Robertson argued that this transfer by the State to the RSPCA rendered her appeal to the Magistrate and the subsequent proceedings pointless and invalid. In order to explain why that is not so it is necessary to refer to provisions of the Act concerning the effect of forfeiture and subsequent transfers of property in forfeited animals.

- [35] Section 152 applies where an Inspector has, under Ch 6, Pt 2, or under a warrant, seized an animal. Subsection 152(2) provides that the Inspector must, within 28 days after the seizure, return the animal to its owner unless one of six stated conditions are satisfied. Relevantly, the conditions include, “(b) the animal has been forfeited to the State under this part”. Section s 154 empowers the chief executive to decide to forfeit an animal where certain conditions are satisfied. Section 155 then obliges the chief executive promptly to give an information notice about such a decision to the person who owns the animal immediately before the forfeiture (the “former owner”). Sections 156 and 157 provide:

“156 When transfer takes effect

- (1) An animal or other thing becomes the State's property if, under section 154(2), it is forfeited to the State.
- (2) If, under section 142(3), the owner of an animal or other thing agrees in writing to transfer ownership of it to the State or a prescribed entity, it becomes the property of the State or entity when the Chief Executive or entity agrees in writing to the transfer.

157 How property may be dealt with

- (1) This section applies if, under section 156 an animal or other thing becomes the property of the State or a prescribed entity.

- (2) The State or entity may deal with the thing as it considers appropriate, including, for example, by destroying it or giving it away.
- (3) However, the State or entity must not deal with the thing in a way that could prejudice the outcome of an appeal under this Act of which it is aware.
- (4) Subsection (3) does not limit an inspector's power under section 162 to destroy the animal.
- (5) If the State or entity sells the thing, it may, after deducting the following, return the proceeds of the sale to the former owner of the thing—
 - (a) the costs of the sale;
 - (b) any costs it may recover from the person under section 189.
- (6) The chief executive may deal with the thing for the State.
- (7) This section is subject to a decision, direction or order under chapter 7, part 2 or 4 about the animal or other thing.”

[36] Subsection 157(7) requires reference to the provisions concerning reviews and appeals in Ch 7, Pt 4. Div 2 of Ch 7, Pt 4 sets out the powers of the Magistrates Court on appeal in ss 203 and 204. Section 203(1)(c) empowers the Magistrates Court, in deciding an appeal, to set aside the decision and return the matter to the chief executive “with directions the court considers appropriate”. Section 204 provides:

- “(1) If the Magistrates Court confirms an internal review decision about forfeiture, it may also give directions about the sale or disposal of the animal or other thing.
- (2) If the court sets aside an internal review decision about seizure or forfeiture, it may also—
 - (a) order the return of the animal or other thing; or
 - (b) make another order it considers appropriate for its disposal; or
 - (c) make an order under section 191.
- (3) However, the court must not order the return to a person of any of the following seized things—
 - (a) an animal or other thing that may be evidence in a proceeding started in relation to the thing seized;
 - (b) a thing that has been destroyed because it has no intrinsic value;

- (c) a thing that has been disposed of because it was perishable;
- (d) a thing the person may not lawfully possess.”

- [37] The dogs were forfeited to the State under s 154(2) so that by operation of s 156(1) those dogs became “the State’s property”. One effect of the dogs becoming the State’s property under s 156(1) was that, under s 157(2), the State was empowered to deal with the dogs as it considered appropriate, including by giving them away to the RSPCA. That provision was subject, however, to s 157(3): the State could not give away the dogs so as to prejudice the outcome of an appeal of which the State was aware. Moreover, the State’s power to give the dogs away under s 157(2) was qualified by the powers given to the Magistrates Court in ss 204(1) and (2).
- [38] The status of the RSPCA as a “prescribed entity” was in that respect irrelevant. That is so because there was no evidence that Ms Robertson had agreed under s 142(3) to transfer ownership of the dogs to the RSPCA as a “prescribed entity”, in terms of s 156(2). Section 157(1) does not have the effect that s 157(2) and subsequent subsections of s 157 are to be construed as imposing rights and obligations upon a “prescribed entity” otherwise than one which has obtained the benefit of a transfer of ownership to it under s 156(2). Accordingly, s 157(7) rendered the power of the State to give the dogs to the RSPCA subject to the exercise by the Magistrates Court of its powers under s 204(1) (in the event that the Magistrates Court confirmed the forfeiture) and s 204(2) (in the event that the Court set aside the seizure or forfeiture).
- [39] If, as the draft letters suggest, the State gave the dogs to the RSPCA, then that gift took effect subject to the power of the Magistrates Court to vindicate any decision on appeal in favour of Ms Robertson by ordering the return of the animals to her or by making orders for compensation under s 191 of the Act⁹. The Magistrate, having instead decided to confirm the forfeiture of the dogs to the State, invited submissions as to any necessary directions in relation to the sale or disposal of any of the dogs under s 204(1). Had the appeal been decided in Ms Robertson’s favour, the Magistrate would no doubt have sought submissions from her about the appropriate orders, whether as to the return or other dealing with the dogs or as to compensation. The State’s apparent transfers of the dogs to the RSPCA would not have stood in the way of such orders and did not in any way invalidate or render pointless Ms Robertson’s appeal. That appeal was the appropriate mode of challenging the forfeiture of the dogs, but Ms Robertson lost the appeal on the facts.

Conclusion

- [40] The insurmountable difficulty for Ms Robertson in her proposed appeal is that the evidence accepted by the Magistrate amply justified the seizure and forfeiture of the dogs. Her proposed grounds of appeal to the District Court did not raise any matter of law which could arguably overcome that hurdle. This Court would not grant leave to appeal to facilitate a hopeless appeal or merely to permit a challenge to the primary judge’s interlocutory decision not to remove the RSPCA as a party in the District Court. The application for leave to appeal has no prospect of success. It is so clearly untenable that it should be struck out as an abuse of process.

⁹ Section 191(1) allows a claim for compensation for costs, damage or loss “other than because of a lawful seizure”.

Proposed Orders

- [41] I would order that the applications of the Chief Executive, Department of Employment, Economic Development and Innovation and the Royal Society for the Prevention of Cruelty to Animals Queensland Incorporated to strike out Ms Robertson's application for leave to appeal be granted and that Ms Robertson pay those parties' costs of their applications and of her application for leave to appeal.
- [42] **CHESTERMAN JA:** I agree with the orders proposed by Fraser JA for the reasons given by his Honour.