

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** R. v. MacIsaac, 2008 NSPC 81

**Date:** 20081205

**Docket:** 1888664, 1888668, 1888669

**Registry:** Port Hawkesbury

Her Majesty the Queen

v.

Alice MacIsaac and Zonda MacIsaac

**DECISION**

**Judge:** The Honourable Theodore K. Tax

**Heard:** Port Hawkesbury, Nova Scotia, on December 4, 2008 and December 5, 2008

**Oral Decision:** December 5, 2008

**Charge:** **Animal Cruelty Prevention Act of Nova Scotia**  
Sections 11(2) x 3

**Counsel:** Dan McRury, Crown Attorney  
Lawrence Graham, Defence Attorney for Alice MacIsaac  
Elizabeth Cusack, Defence Attorney for Zonda MacIsaac

**By the Court:**

[1] As a result of investigations by Special Constables for the Nova Scotia Society for the Prevention of Cruelty of Animals (hereinafter referred to as the “SPCA Officers”), charges were laid under Section 11(2) of the Animal Prevention Act of Nova Scotia against Alice MacIsaac, and in a separate information against Zonda MacIsaac. These charges were sworn in an information before a Justice of the Peace on March 27<sup>th</sup>, 2008.

[2] On December 5<sup>th</sup>, 2008, Zonda MacIsaac entered a guilty plea to the following charge:

“Between January 25<sup>th</sup>, 2008 and February 4<sup>th</sup>, 2008 at, or near 189 Cenotaph Road, Glenora, Inverness County, did being the owner or person in charge of animals, to wit: 27 dogs/pups and 78 cats, caused or permitted the animals to be in distress, contrary to s. 11(2) of the Animal Cruelty Prevention Act of Nova Scotia.”

[3] In addition, on December 5<sup>th</sup>, 2008, Alice MacIsaac also entered a guilty plea o the following charge:

“Between the 6<sup>th</sup> day of February and the 8<sup>th</sup> day of February, 2008 at or near 25 Summit Drive, Port Hawkesbury, Inverness County, Cape Breton, Nova Scotia, did being the owner or person in charge of animals, to wit: 24 dogs and 1 cat caused or permitted the animals to be in distress, contrary to s. 11(2) of the Animal Cruelty Prevention Act of Nova Scotia.”

[4] Although Zonda MacIsaac and Alice MacIsaac have been charged separately, and today both entered guilty pleas to the foregoing charges, Crown and Defence counsel had advised the Court that the matters are related, and therefore the factual background of the Zonda MacIsaac matter does bear upon the factual background to the Alice MacIsaac matter.

[5] Furthermore, the Court was advised by all counsel, that after extensive discussions and review of the information disclosed by the Crown, pleas would be entered to the two charges referred to above and there would be a joint recommendation as to the disposition on sentence of these matters.

**Factual Background - Zonda MacIsaac:**

[6] On February 2<sup>nd</sup>, 2008, the Society for the Prevention of Cruelty to Animals officers entered the residence of Zonda MacIsaac, pursuant to a search warrant, and there, they located 27 dogs and 78 cats.

[7] In a statement filed after the search by the SPCA Officers, and I'll refer to

them in that manner instead of their full title, they indicated that the animals were not receiving adequate care and based upon surveillance and her assessment of the situation that day, that Zonda MacIsaac had been absent from the property for long periods of time, and that when she had attended she was only on the property for a short period of time.

[8] SPCA Officers related information that as they came into the property they could detect a strong smell of urine and faeces as well as an ammonia smell. There was barking and yelping in the house. And when they arrived in the house there was no food in view. The floor was covered with faeces and urine and there was a strong ammonia smell.

[9] The scene that is portrayed was that the smell was overpowering. The dogs were defecating in the house and laying in their own faeces and urine.

[10] When the SPCA Officers went to the basement of the house and one said that she was “absolutely shocked” by what she saw. There was sewage on the floor, no food or water apparent, and there were apparently 50 cats in this location.

[11] Furthermore, once the veterinarian had inspected the animals, there were many animals with severe respiratory problems, eye problems and diarrhea. The veterinarian was of the view that the infection rate was exceptionally high, beyond what would be normal for a kennel situation, and that steps could have been taken to lessen the impact of environmental diseases. The veterinarian went on to conclude that the infectious disease could easily spread in this environment, and that in her view, these were “appalling living conditions from neglect,” thereby causing stress to the animals. It was clear from her opinion that the animals had not been properly cared for.

**Factual Background - Alice MacIsaac:**

[12] On February 6<sup>th</sup>, 2008, SPCA Officers acting on a complaint attended at the residence of Alice MacIsaac. As they approached the house they indicated that there was a strong smell of faeces and urine that they noticed from the steps. After obtaining the search warrant the SPCA officers entered Alice MacIsaac’s residence on February 6<sup>th</sup>, 2008.

[13] As they entered the backdoor of the residence there was a strong ammonia smell and loud barking from the dogs. Some dogs were kept in wire kennels in the

livingroom while other dogs and cats were running loose. In one bedroom was a beige dog who could not walk and that dog was lying in his own faeces. SPCA Officers indicated that there was no water available for the animals. Several dogs' hair and fur was matted with urine and faeces. In total 24 dogs were loaded onto trucks and removed from the property. Three dogs were taken to an animal emergency hospital and the dog who could not walk was euthanised on site. It was the SPCA Officer's opinion that the dogs were filthy and that they were in need of adequate care, food, water and shelter.

**Legislative Provisions:**

[14] The relative legislative provisions that apply to these facts, Section 11(2) of the **Animal Cruelty Prevention Act** of Nova Scotia provides as follows:

“No owner of an animal or person in charge of an animal shall cause or permit the animal to be, or to continue to be in distress.”

[15] An animal is defined in Section 2(1)(a) of that **Act** as a non-human vertebrate. Distress is also defined in the **Act** in Section 2(2).

“An animal is in distress, for purpose of this Act, where the animal is:

- (a) in need of adequate care, food, shelter or water, or
- (b) injured, sick, in pain or suffering undue hardship, privation or neglect.”

[16] Section 11(2) of the **Animal Cruelty Prevention Act** creates what is referred to legally as a strict liability offence. The case of **Regina v. The City of Sault Ste. Marie**, (1978) 2 S.C.R. at 1299, defined strict liability offences and distinguished them from absolute liability offences and “true” criminal offences. The Supreme Court of Canada said in **Regina v. The City of Sault Ste. Marie** that a strict liability offence is one that does not require a *mens rea* or wilful mental element to establish liability. An accused person can, however, avoid liability by leading evidence that they took necessary steps which amounted to due diligence in order to avoid criminal liability for their actions or inactions.

[17] Strict liability offences are usually found in provisions for public safety or public welfare legislation, and the **Animal Cruelty Prevention Act of Nova Scotia** is a good example of this kind of this public welfare legislation.

[18] In this case Zonda MacIsaac and Alice MacIsaac, through their pleas to the above referenced charges, both accused have indicated that they did not exercise due diligence, at least in respect to one or more of the animals located on their properties when SPCA officials and other peace officers arrived.

**Submissions of Defence Counsel:**

[19] Defence Counsel for Ms. Zonda MacIsaac points out that she is 43 years old and has no prior involvement with the courts. Defence Counsel pointed out that her client maintained Celtic Pet Rescue as a non-profit society and that she did not gain any income or salary or make any profit as a result of running that organization.

[20] Defence Counsel indicated that Zonda MacIsaac and her husband had incurred a significant debt of almost \$100,000 to set up the shelter, buy land and build the buildings to house the animals over several years. She pointed out that over a seven-year period more than 600 animals had been placed for adoption, and during that time only three animals had died of old age and six had to be put down while in Zonda's care due to the fact that there were suffering too much.

[21] In addition, Zonda MacIsaac and her husband incurred significant veterinary medicine and professional service expenses over the last two or three years in the range of \$14,000 to \$17,000 dollars. Ms. MacIsaac still owes the sum of \$9,061.81 to a veterinary hospital in the area.



[22] Counsel for Zonda MacIsaac advised the court that her client cared very much for animals and had taken extensive efforts, including utilizing her personal resources to rescue and save animals and then place them for adoption.

[23] As a result of prior mental health issues and marital problems, Zonda MacIsaac developed persistent symptoms of depression, anxiety, inability to concentrate and short term memory loss. These pressures, and other general pressures in the community, resulted in her having a major depressive disorder over the last two years. While Defence counsel acknowledges that the animals in the care of her client were “distressed” as defined by the **Animal Cruelty Prevention Act**, this was not done intentionally. Defence Counsel describes Zonda MacIsaac as a sensible, caring and good person, especially when it comes to the treatment of animals in her care.

[24] Defence counsel acknowledged that her client became overwhelmed by the number of animals that she was attempting to care for, and in a sense became a victim of her own success by taking in many more animals than she could properly care for, especially given the mental health condition in which she found herself over the last two years.

[25] As for Alice MacIsaac, Defence Counsel indicates that his client is 64 years old and also comes before the court with no prior involvement in the courts. In essence, Defence Counsel points out that Alice MacIsaac, as the mother of Zonda MacIsaac, got involved in these matters to assist her daughter and to relieve the stresses associated with the financial, marital and mental health issues that her daughter was facing.

[26] Defence Counsel indicated that SPCA Officers conducted their search at a certain point in time, but there may have been explanations other than neglect to explain why there was no food or water visible when the officers arrived. Defence Counsel acknowledges that the charge facing Alice MacIsaac is one of strict liability and that she did not exercise due diligence with respect to each and every one of the animals found on her property when the SPCA Officers arrived. Like her daughter, Alice MacIsaac was a victim of her own success and the more animals that she rescued, the more she felt the need to take in and rescue even more animals. At a certain point, the numbers involved were greater than she could handle and the situation became too difficult to manage.

**Legislative Principles of Sentencing:**

[27] Parliament has articulated the fundamental purpose and principles of sentencing in Sections 718 and 718.1 of the **Criminal Code of Canada**. Section 718 of the Criminal Code indicates that:

“The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce the unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to the victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

[28] In addition to the general purpose of sentencing specified by Parliament in Section 718 of the **Criminal Code**, courts are also expected to take into account other sentencing principles. Sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or to the offender. That’s in Section 718.2(a) of the **Code**.

[29] In the circumstances of the cases involving Zonda MacIsaac and Alice MacIsaac, the principal and primary sentencing principles that I must consider are denunciation of their conduct, specific deterrence to them and general deterrence for this type of behaviour in the community but at the same time, I must also consider their rehabilitation.

[30] The sentence that I impose on Zonda MacIsaac and Alice MacIsaac must represent a denunciation of their conduct. A denunciation that I fully expect will be emphasized by the attention this case has received through the media and in the general public. Several cases that I have reviewed to determine a fit and proper sentence, have commented on the fact that media coverage is likely to enhance the effectiveness of the denunciation and general deterrence dimension of a sentence.

[31] Having looked at the general principles and purposes of sentencing, I must craft a sentence that suits the circumstances of the specific offence and the individual offender.

[32] To assist the Court, counsel have put forward a joint recommendation that results in a \$1,000 fine under Section 18(1) of the **Animal Cruelty Prevention**

Act and a 20-year ban on owning animals or operating any commercial operations relating to animals subject to a few exceptions.

[33] One of those exceptions is an acknowledgement by both Zonda MacIsaac and Alice MacIsaac that full-time Society for the Prevention of Cruelty to Animals (SPCA) officers may inspect their residences without prior notice or a search warrant to ensure that the limited number of animals they would be allowed to keep over that period of time are being well looked after.

[34] The ban itself is not insignificant but when coupled with their acceptance of the inspection and search provisions, this reflects a significant potential for state monitoring of their care of animals for a long period of time. This is quite significant from the point of view of specific deterrence for these two individuals.

[35] The Crown Attorney, in his submissions on this case, indicated to the court that he was of the view that the joint recommendation was a fit and proper sentence because neither Zonda MacIsaac nor Alice MacIsaac had any prior record. They had entered a guilty plea at an early opportunity and that neither individual would be involved in animal rescue in the future.

[36] Furthermore, the early guilty pleas meant that the province would not be put to the additional time and expense of lengthy trials involving a great number of witnesses and expert evidence. The Crown Attorney was of the view that there was an appropriate balance in imposing the ban on the ownership of animals given the extensive care for animals that both Zonda MacIsaac and Alice MacIsaac had provided over the years. In the Crown's view, it would be fitting that they have the opportunity to continue to care for a limited number of animals as personal pets.

[37] Defence counsel have agreed with the Crown Attorney that the joint recommendation is a fit and proper sentence, and they submit that the court should accept the joint recommendation.

[38] Having considered all of the submissions and having had the opportunity to review several Nova Scotia precedents on sentencing under the **Animal Cruelty Prevention Act**, I've come to the conclusion that the joint recommendation by counsel is indeed a fit and proper sentence in all of the circumstances of this case.

[39] On the basis of the analysis that I have just undertaken I am imposing the following sentence on Zonda MacIsaac:

(a) Under Section 18(1) of the **Animal Cruelty Prevention Act**, I impose a fine of \$1,000 to be paid on or before December 5, 2009.

(b) I'm exercising my discretion under Section 18(2) of the **Animal Cruelty Prevention Act** to restrain Zonda MacIsaac from owning or continuing to have custody of animals for a period of 20 years subject to the following terms and conditions which have been agreed upon by all counsel. And I will just recite the Schedule A to the order which I will sign which indicates the conditions and exceptions. Zonda MacIsaac is prohibited from possessing or owning animals except as outlined by the following conditions:

(1) Zonda MacIsaac shall not have custody of any animals on 189 Cenotaph Road, West Bay, Nova Scotia.

(2) Zonda MacIsaac shall not own or operate or participate in a commercial operation or volunteer operation involving animals, including commercial kennels, animal rescues, boarding of animals, grooming of animals or any other commercial or volunteer operation involving animals.

(3) Zonda MacIsaac shall only be allowed to possess animals under the following conditions:

(a) she is allowed to possess the five dogs that are presently in her possession;

(b) the full-time members of the Provincial SPCA or their successors, staff investigators shall photograph the animals presenting in the possession of Zonda MacIsaac;

(c) the full-time staff investigators of the Provincial SPCA or their successors and staff investigators shall have the right to enter 189 Cenotaph Road, West Bay, Nova Scotia and Number 312, Highway 4, Port Hastings, Nova Scotia or any address where Zonda MacIsaac may reside to ensure that this order is complied with and that the animals are being cared for pursuant to the **Animal Cruelty Prevention Act**;

(d) Zonda MacIsaac must ensure that full-time staff investigators of the SPCA investigators or their successors can enter these properties at any time. Failure to allow the Provincial SPCA staff investigators access to the properties will result in Zonda MacIsaac giving up her right to possess the animals currently in her possession or any other animals;

(e) when all of the animals currently in her possession are deceased, Zonda MacIsaac can possess only one dog;



(f) full-time staff investigators of the Provincial SPCA or their successors shall have the right to photograph one animal she may have in her possession and have the right to enter her property at any time to ensure that the provisions of the **Animal Cruelty Prevention Act** are complied with;

(g) failure to allow entry will result in Zonda MacIsaac giving up her right to possess any animals.

[40] This order shall remain in force and effect for a period of 20 years.

[41] And those are the terms and conditions of the prohibition order which I will sign. I believe the court clerk has the original. I am reading a copy. I will sign it after.

[42] In addition, on the basis of the analysis that I've undertaken I am imposing the following sentence on Alice MacIsaac.

(a) Under Section 18(1) of the **Animal Cruelty Prevention Act**, I impose a fine of \$1,000 to be payable on or before December 5, 2009.

(b) I'm exercising my discretion under Section 18(2) of the **Animal Cruelty Prevention Act** to restrain Alice MacIsaac from owning or continuing to have

custody of animals for 20 years subject to the following terms and conditions which have been agreed upon by all counsel. And this is the Schedule A to the order against Alice MacIsaac. Alice MacIsaac is prohibited from possessing or owning animals except as outlined by the following conditions:

(1) Alice MacIsaac shall not have in her possession any animals on 189 Cenotaph Road, West Bay, Nova Scotia;

(2) Alice MacIsaac shall not own, operate or participate in a commercial operation or volunteer operation involving animals, including commercial kennels, animal rescues, boarding of animals, grooming of animals or any other operations commercial or volunteer operation involving animals;

(3) Alice MacIsaac shall only be allowed to have the cat presently in her possession and the two dogs returned to her by the SPCA. The dogs' names are Stewy and Missy. When those animals have deceased, she will only be allowed to possess one dog;

(4) Full-time staff investigators of the Provincial SPCA or their successors, have the right to photograph the animals in Alice MacIsaac's possession.

(5) Full-time staff members of the Provincial SPCA or their successors shall have the right to enter her property at 25 Summit Drive, Port

Hawkesbury, Nova Scotia or any residence where she may residence at any time to ensure that the animals are being cared for pursuant to the Animal Cruelty

**Prevention Act.**

(6) Failure to allow entry will result in Alice MacIsaac giving up her right to possess any animals.

[43] This order shall remain in force and effect for a period of 20 years.

**Theodore K. Tax, J.**

