Citation: R. v. Haer
2025 BCPC 309

Date: 20250826
File No: 256092-1
Registry: Surrey

2025 BCPC 309 (CanLII)

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REX

v.

AMARDEEP HAER
EKAUM HAER

ORAL REASONS FOR JUDGMENT
IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 39(10) OF THE *COMMUNITY CHARTER*, S.B.C. 2003, c. 26
OF THE
HONOURABLE JUDGE R. BROWNING

Counsel for the Crown:	N. Lapper
Counsel for the Respondents A. Haer and E. Haer:	R. Breder
Place of Hearing:	Surrey, B.C.
Date of Hearing:	Oct. 22, Dec. 11, 12 & 13, 2024; Jan. 23 & 24, 2025
Date of Judgment:	August 26, 2025

[1] **THE COURT:** These are my oral reasons for decision.

Introduction

Chronology of Application

[2] On April 10th, 2024, the Animal Control Officer for the Township of Langley (the "ACO") sought, obtained, and executed a warrant for the seizure of a dog named Enzo. On May 2nd, 2024, the ACO filed an application, pursuant to s. 49 of the *Community Charter*, S.B.C. 2003, c. 26 (the "*Community Charter*"), for an order to destroy Enzo. On June 6th, 2024, the respondents, Amardeep Haer and Ekaum Haer ("the Haers"), made a first appearance following the Application. The Haers opposed the application. On July 22nd, 2024, a hearing was set for the Township of Langley's application.

[3] On September 24th, 2024, counsel for the Haers filed an application alleging wrongful seizure of Enzo, claiming their s. 8 rights, to be free from unreasonable search and seizure under the *Charter of Rights and Freedoms* (the "*Charter*"), had been infringed because of the unreasonable manner in which the seizure was carried out by the ACOs. The Haers sought the return of Enzo as a remedy pursuant to s. 24(1) and s. 24(2) of the *Charter*.

[4] Counsel first appeared before me on the application on October 21st, 2024. On October 22nd, 2024, following submissions by counsel, I ordered that the Township provide counsel for the Haers a copy of the search warrant issued pursuant to s. 49(5) of the *Community Charter* allowing entry, search of a place and seizure of the dog. I further ordered that the Township provide a copy of the information to obtain the search warrant (the "ITO") with all attached exhibits. Both were to be provided to counsel for the Haers by November 12th, 2024. Counsel for the Haers was given to Honour before November 26th, 2024, to file any amended notice of application, and counsel for the Township was to file their response within one week of November 26th, 2024.

[5] On November 26th, 2024, counsel for the Haers filed an amended application. Counsel for the Township filed their response on December 4th, 2024.

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[6] In the amended application, Ms. Breder submits that the Haers s. 8 *Charter* rights were infringed because: (1) the search and seizure of Enzo was not authorized by law, and (2) the manner in which the animal control officers carried out the search and seizure was unreasonable.

[7] In response, Mr. Lapper and Mr. Tung submits that the search and seizure of Enzo was carried out by a valid judicial authorization, issued pursuant to s. 49(5) of the *Community Charter* and that the applicants have not met the burden to establish that the search was carried out in an unreasonable manner.

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Issues

[8] The issues on this application are:

[9] First, did the animal control officers act pursuant to a valid judicial authorization? Ms. Breder challenges the validity of the warrant to seize Enzo issued April 10th, 2024, Exhibit C, both facially and sub-facially. Ms. Breder argues that the ITO, Exhibit B, was not sufficient, and that the justice could not have issued the judicial authorization.

[10] Second, did the animal control officers carry out the search and seizure of Enzo in an unreasonable manner?

Analysis

I. Manner of Search

[11] I will begin by addressing the applicant's submission concerning the manner in which the search was conducted. I remind myself that, generally, the applicants have the burden of establishing the unreasonableness of the search.

[12] The Haers submit that the manner in which the search and seizure was conducted was unreasonable for the following reasons: first, the warrant had expired prior to the completion of its execution; second, the "massive" deployment of law enforcement at the time of the execution of the warrant; third, failure to abide by the

knock and announce principle; and finally, the animal control officers employed excessive force.

[13] For the following reasons, I do not find that the search and seizure of Enzo was conducted in an unreasonable manner.

The Warrant Had Expired Prior to Completion of its Execution

[14] The warrant to search and seize allowed for entry into the place located at 20073 42nd Avenue on April 10th, 2024, between 17:00 and 19:00 hours. Counsel for the Haers initially submitted that the search and seizure was not completed within the time parameters set out in the warrant. Ms. Breder ultimately conceded that, as long as the search commenced within the time parameters set out in the warrant, which I find occurred in this case, the search can lawfully continue past the time specified in the warrant: see *R. v. Anderson*, 2020 BCSC 2195, and *R. v. Veranski and Bellotti*, 2012 BCSC 220.

[15] Ms. Breder further argued, as I understand, that the applicants were entitled to the right and opportunity to review the warrant. While I agree that the subject of the judicial authorization is entitled to be provided with a copy of the warrant, those executing the warrant are not obliged to hold off execution to allow the subject of the search to assess their legal position. In many instances, execution of a search warrant can occur in the absence of the property owner where a copy of the warrant is left at the residence.

[16] In any event, here, the evidence is that the animal control officers attempted to provide a copy of the warrant to the Haers. It was refused. I do not accede to the applicant's submission on this point.

The "Massive" Deployment of Law Enforcement at the Time of the Execution of the Warrant

[17] The applicants submit that the *Community Charter* speaks to authorization for a warrant limited to a single animal control officer and a single accompanying police

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officer. Exhibit C authorizes three named animal control officers, and up to four members of the Langley RCMP, to accompany for the purposes of keeping the peace. There is further authorization that a locksmith accompany the animal control officer to enter the dwelling.

[18] Counsel for the Haers submits that "there is a massive and unnecessary deployment of police officers". However, I find that the number of police officers in attendance did not exceed that authorized in the warrant. There is no evidence to support the applicant's submission on this point.

Failure to Abide by the Knock and Announce Principle

[19] In this case the applicant has provided no evidence that the animal control officers failed to announce their presence. I find that, upon attending to execute the warrant, the animal control officers did knock on the front door and announce their presence: see the Affidavit of Greg Willhite, dated October 11th, 2024, para. 44.

The Animal Control Officers Employed Excessive Force

[20] In the course of attempting to seize Enzo from within the basement of 20073 42nd Avenue, the animal control officers used a "catch pole" through an unlocked sliding door. This is an extendable pole with a loop at one end. The loop can be manually secured around the animal's neck to allow for control of the animal.

[21] Video evidence of part of the interaction between the animal control officers and Enzo depicts the pole entering the basement area through a partially open sliding glass door, followed by Enzo biting at the pole. During this interaction, Enzo suffered physical injuries, including a fractured jaw bone, fractured teeth, and injuries to his gum and facial areas.

[22] Counsel for the Township directs me to the evidence that the use of a catch pole when dealing with a dangerous animal is a standard practice and was used appropriately in this case: see Affidavit of Gregg Willhite, dated October 11th, 2024, para. 44; and Affidavit of Sarah Jones, dated October 11th, 2024, para. 30.

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[23] Counsel for the Haers direct me to the affidavit of Gary Gibson, dated October 18th, 2024. In summary, Mr. Gibson deposes that, at the time of the attempted seizure of Enzo, he believes the dog was frightened rather than aggressive. He believes that, given the nature of the injuries sustained by Enzo, the animal control officers were using the catch pole in a "offensive" way.

[24] Mr. Gibson concludes that the animal control officers should have used a "gentle" method before employing the use of a catch pole. This proposed method would involve creating a calm, non-threatening environment with calming signals and non-threatening body language. This would be followed by putting "a loose noose around Enzo's neck" and "gently tugging on it while they were attached to a longer leash". Once secured in this manner, a catch pole could be used to get closer to Enzo and walk him to the animal control officers' van.

[25] In essence, the evidence before me suggests a different starting point for the use of a catch pole. I note that the information provided to Mr. Gibson does not seem to include consideration of the physical layout where the seizure was attempted, that is relatively tight, close quarters in the basement of the residence. Further, Mr. Gibson's expressed belief does not seem to recognize the belief at the time by animal control officers that they were dealing with a dangerous dog.

[26] While I accept that there is a difference between the parties concerning what attempted method to seize Enzo was preferable, this does not lead to the conclusion that the method chosen by the animal control officers was unreasonable. Neither, in my view, are the injuries sustained by Enzo determinative of the unreasonableness of the manner of the seizure. The evidence does not satisfy me that the animal control officers were using the catch pole in a manner akin to a weapon. I find that the injuries were caused by Enzo biting at the catch pole. I do not agree that the animal control officers employed excessive force.

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II. Challenge to the Judicial Authorization

[27] The applicants challenged the judicial authorization issued pursuant to s. 49(5) of the *Community Charter* on April 10th of 2024. The applicants challenged the issuance of the warrant both facially and on a sub-facial basis.

Law

Community Charter

[28] Section 49(1) of the *Community Charter* as it applies in this case states:

> "dangerous dog" means a dog that
>
> (a) has killed or seriously injured a person, … or
>
> (c) an animal control officer has reasonable grounds to believe is likely to kill or seriously injure a person.

[29] Section 49(2) and (4) of the *Community Charter* states:

> (2) In addition to the authority under section 48 but subject to this section, an animal control officer may seize a dog if the officer believes on reasonable grounds that the animal is a dangerous dog.
>
> …
>
> (4) An animal control officer may enter a place to exercise the power under subsection (2),
>
> (a) in any case, with the consent of the owner or occupier of the place,
>
> (b) in any case, in accordance with a warrant under subsection (5) or (6), or
>
> (c) if the circumstances referred to in subsection (8) apply, in accordance with that subsection.

[30] Finally, sections 49(5) and 49(8) of the *Community Charter* state:

> (5) If satisfied by evidence given under oath or affirmation that there are reasonable grounds to believe that there is a dangerous dog in a

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> place, a justice may, by warrant, authorize an animal control officer to enter and search the place and to seize the dog.
>
> …
>
> (8) Subject to subsection (9), an animal control officer may, without a warrant, enter and search any place, except a place that is occupied as a private dwelling, and seize a dog, if the officer believes on reasonable grounds that
>
> (a) the dog is a dangerous dog,
>
> (b) the dog presents an imminent danger to the public, and
>
> (c) the purpose of seizing the dog cannot reasonably be accomplished if the officer is required to obtain a warrant.

[31] Pursuant to s. 49(5), the preconditions for the issuance of a warrant are reasonable grounds to believe that a that there is a dog that meets the definition of dangerous dog under s. 49(1), and reasonable grounds to believe that the dog will be found in the place. In this case, a finding that the ITO is either facially or sub-facially insufficient necessarily results in the warrant being invalid.

Legal Principles for Challenge to Facial Validity and Sub-Facial Validity

[32] The applicable principles in assessing the sufficiency of facts set out in an ITO necessary to satisfy an issuing justice with the preconditions for granting a warrant have been made out were summarized by Mr. Justice Riley in *R. v. Belanic*, 2019 BCSC 1411 at paras. 6-10:

> [6] Focusing on Ms. Cross's facial challenge to the validity of the warrant, the issue before me is whether, on the facts set out in the ITO, the issuing justice could have granted the warrant to search Unit 4, Unit 6, and the basement storage area at 512 Albert Street. To be clear, the question is not whether I would have issued the warrant, but whether the issuing justice could properly have done so: *R. v. Araujo*, 2000 SCC 65, citing *R. v. Garofoli*, 1990 CanLII 52 (SCC), [1990] 2 S.C.R. 1421 at p. 1452; *R. v. Morelli*, 2010 SCC 8 at para. 40.
>
> [7] In applying this test, I am obliged to consider the totality of the circumstances set out in the ITO. The ITO must contain facts that could satisfy the issuing justice that the statutory preconditions for granting the

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> warrant were met. The two statutory preconditions for obtaining a search warrant under s. 487 of the *Criminal Code* are the requirement to show reasonable grounds to believe that an offence has been committed, and the requirement to show reasonable grounds to believe that evidence of that offence will be located at the place to be searched: see *R. v. Morelli* at paragraph 39. In the case at bar, I am dealing with a warrant issued under s. 11 of the *Controlled Drugs And Substances Act*, S.C. 1996, c. 19 [the *CDSA*]. In this context, I would restate the key statutory requirements as follows: (i) the requirement to show reasonable grounds to believe that there has been a contravention of the *CDSA*, in other words that a drug offence has been committed; and (ii) the requirement to show reasonable grounds to believe that a controlled substance and/or evidence of a controlled substance will be located in the place to be searched.
>
> [8] The reasonable grounds standard does not require proof of a *prima facie* case, much less proof beyond a reasonable doubt. Rather, the reasonable grounds standard contemplates a credibly-based probability or reasonable probability. It has been described at the point at which suspicion gives way to credibly-based probability: *R. v. Vu*, 2011 BCCA 536 at para. 39, affirmed on this point, *R. v. Vu*, 2013 SCC 60 at para. 9 to 18; see also *R. v. Liu*, 2014 BCCA 166 at para. 37.
>
> [9] The requirement to consider the totality of the circumstances means that I cannot simply examine each aspect of the grounds in isolation. I must consider whether, in light of all the grounds taken together or viewed cumulatively, the issuing justice could have granted the warrant: *R. v. Whitaker*, 2008 BCCA 174 at para. 41. As explained in *R. v. Lam*, 2002 BCCA 99 at para. 10, “[i]t is important that the Information be examined as a whole and not one piece of evidence at a time, because each piece of evidence colours other pieces of evidence and a fuller picture emerges by considering all the evidence together.”
>
> [10] The reviewing judge must also take into account that an authorizing justice may "draw reasonable inferences from the evidence in the ITO". In keeping with the deferential standard that governs the review, the question is not whether the reviewing judge would draw a particular inference, but whether the issuing justice could reasonably have drawn the suggested inference, based on the contents of the ITO: *R. v. Vu*, 2013 SCC 60 at para. 16 to 17.

[33] In *R. v. Liu*, 2014 BCCA 166, at para. 39, Madam Justice Garson summarized the trial judge's rule as follows:

- The trial judge’s role in reviewing the validity of a search warrant is to consider whether the material filed in support of the warrant, as amplified on review, could support the issuance of the warrant.

- The trial judge should examine the information in its totality, not on a piece meal basis, in a “practical, non-technical, and common sense basis”.

- The question is not whether the reviewing judge would have granted the order, but whether there was an objective basis on which the issuing justice could have done so.

- The appropriate standard is one of “reasonable probability” rather than “proof beyond a reasonable doubt” or “*prima facie* case”. The phrase “reasonable belief” also approximates the requisite standard.

- Reasonable grounds may be said to exist at “the point at which credibly-based probability replaces suspicion”.

[34] In the assessment that I must undertake in the case before me, the rule against conclusory statements in an ITO is also engaged. That law is clearly set out by Mr. Justice Riley in *Belanic* at para. 14:

> Another important concept is the rule against conclusory statements. As stated in *R. v. Sunner*, 2017 BCSC 2445 at para. 31, “[i]t is trite law that an affiant cannot simply recite conclusory statements that are material to the application without setting out any factual underpinning allowing the issuing justice to evaluate the factual basis for the conclusion”, citing *Restaurant Le Clémenceau Inc. v. Drouin*, 1987 CanLII 54 (SCC), [1987] 1 S.C.R. 706.

[35] Where an affiant runs afoul of the rule against conclusory statements, the result is excision of the offending information from consideration in the ITO.

Analysis

Facial Validity

Summary of the ITO

[36] The grounds for belief of the affiant, ACO Greg Willhite, contained in the ITO are comprised of 11 paragraphs and four attached exhibits. Paragraphs four through 11 set out the grounds seeking to establish that the preconditions to issue the warrant have been satisfied.

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[37] Paragraph four, as summarized, states:

(a) The affiant received a verbal report from the Langley RCMP.

(b) That the dog owner, Amar Haer, hired a contractor to come and do work in the backyard of the property.

(c) That the contractor had an agreed time with the dog owner.

(d) That the contractor arrived at 20073 42nd Avenue at approximately 10 o'clock -- or 10 hours to begin work.

(e) That upon entering the backyard, the contractor was attacked by the pit bull-type dog as described above (there is no description of a "pit bull-type dog" contained in the earlier portions of the grounds for belief).

(f) That the attack caused serious injuries to the victim's arm, requiring multiple surgeries.

[38] From the information I summarized, I find that the information "the dog owner, Amar Haer" is material to the application. That is, the relationship between the dog and Amar Haer. The affiant provides no factual underpinning to this statement from which a justice can assess the factual basis for this conclusion stated. This statement will be excised from the consideration for sufficiency.

[39] As noted earlier, there is no description of a pit bull-type dog provided from which a justice can assess the factual basis for this conclusion. That part of paragraph 4, stating "a pit bull-type dog as described above" will be excised from consideration for sufficiency.

[40] The affiant attached as Exhibit A to the ITO a title search of 20073 42nd Avenue, Langley, British Columbia. The title search disclosed the registered owner to the residence at that address was Joseph M. Deneault, with no association to Amar Haer.

[41] Paragraph 5 and 6, as summarized, states:

(a) That on February 29th, 2024, Langley Animal Protection Society received photos from Brandon Fox that exhibit the injury to the arm.

(b) That Brandon Fox says the photos were taken by them on February 29th, 2024, and show the severity of the injuries caused by "Enzo".

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(c) That, in the photos the affiant observed, the photos exhibit serious injury, as per the definition of a "dangerous dog" in the Township of Langley *Animal Control Bylaw* (2005) No. 4440: see Exhibit C.

(d) That on April 10th, 2024, Langley Animal Protection Society received photos from Brandon Fox that exhibit the injury to the arm after infection and during medical attention.

(e) That the photos taken between February 29th and April 10th, 2024, show the severity of the injuries caused by "Enzo".

(f) That in the photos, the affiant observed that the photos exhibit serious injury, as per the definition of the Township of Langley *Animal Control Bylaw* (2005) No. 4440: again, see Exhibit C.

[42] In both paragraph 5 and 6, the affiant includes a statement material to the application, that the picture received "show the severity of the injuries caused by 'Enzo'". However, nowhere in the grounds for belief does the affiant set out the factual underpinnings for his expressed belief in the causation of the injuries for which a justice can assess the factual basis for this conclusion. The statement "caused by Enzo" will be excised from consideration for sufficiency.

[43] Also, in both paragraphs 5 and 6, the affiant states that his observation of the pictures of the Brandon Fox injuries exhibit "serious injury", as defined in the Township of Langley *Animal Control Bylaw* (2005) No. 4440. That is, the affiant sets out "serious injury" as a defined term. The significance of the finding of serious injury in this case is that it is necessary to meet the definition of "dangerous dog" under the *Community Charter*, and as a precondition for the issuance of a warrant pursuant to s. 49(5). The affiant attached this bylaw as Exhibit C. However, the attached exhibit does not contain any definition of the term "serious injury".

[44] I find that, when considered in its entirety, and with the excisions indicated, the ITO does not contain information sufficient for a justice to be satisfied that the preconditions necessary for granting the warrant existed. I find, first, that given the absence of information as to the definition of serious injury in the Township of Langley *Animal Control Bylaws*, a justice could not have been satisfied that the injuries of Mr. Fox or any injuries were "serious injury", and therefore that the dog met the definition of

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a dangerous dog necessary for the issuance of a warrant pursuant to s. 49(5) of the *Community Charter*.

[45] I further find that, when considered as a whole, a justice could not have been satisfied that the dog would be located at 20073 42nd Avenue, Langley, British Columbia, when the warrant was sought. The incident giving rise to the seizure occurred on February 28th, 2024. It would be necessary to have established some connection between the dog involved in the attack and the residence at 20073 42nd Avenue. I find that, neither directly nor by inference, was such a connection available to be made. There was no articulated connection between the dog and Amar Haer, and nor articulated connection between Amar Haer and the residence. The registered owner of the property was someone other than Mr. Haer. Other than the attack occurring in the backyard of 20073 42nd Avenue, there was no link between the dog and the address. Given the absence of any other link, and given the passage of time between the attack and the application for the warrant, a justice could not have been satisfied that the dog would have been located in the place.

[46] The preconditions necessary for a warrant not capable of being met by the issuing justice, I find the warrant to be invalid.

Sub-Facial Validity

[47] Counsel for the Haers submit that, on a sub-facial basis, the ITO does not provide a sufficient basis for issuing -- for the issuing justice to issue the warrant. Ms. Breder identifies the lack of identification of the dog, failing to disclose that the dog was an imminent threat, and overstating facts in relation to Mr. Fox's injuries. Ms. Breder submits all occur in the context of the affiant failing to disclose relevant information or attempting to mislead the justice.

[48] In my view, the ITO, overall, was poorly drafted. In *R. v. Sunner*, 2017 BCSC 2445, the reviewing judge faced a similar drafting problem. At para. 30, the reviewing judge stated:

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> In any event, I question whether the complaints about bad drafting or inclusion of irrelevant material are particularly helpful to the analysis. If the affidavit is so unclear that the grounds cannot be discerned, that is one thing, but a reviewing judge's opinion that an ITO is poorly drafted or contains irrelevant material would not necessarily advance the ultimate inquiry, which is whether the ITO contains sufficient reliable information on which the issuing justice could have granted the warrant. See *R. v. Araujo* at para. 51-53. In my view, the only relevance of bad drafting is where it actually impacts upon the reliability of the grounds set out in the document.

[49] I do not find that the affiant was intentionally attempting to mislead the justice. I note that this was the first ITO drafted by this affiant. Nor do I find that any errors identified by Ms. Breder further impacts the reliability of the grounds set out in the ITO. Having already found that the justice could not have granted a warrant on a facial basis, any further sub-facial assessment does not advance the result any further.

[50] In summary, I find that a justice could not have properly issued the warrant, and I find a breach of s. 8 of the *Charter*.

[51] Those are my reasons.

(ORAL REASONS FOR JUDGMENT CONCLUDED)

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