

Citation: *Scheer v. Howe and Foesier*, 2006 YKTC 72

Date: 20060721  
Docket: 06-11032  
Registry: Dawson City

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Lilles

Aedes Scheer

Applicant

v.

Debbie Howe and James Foesier

Respondents

Appearances:  
Aedes Scheer  
Debbie Howe  
James Foesier

Appearing on own behalf  
Appearing on own behalf  
Appearing on own behalf

**REASONS FOR DECISION**

[1] This is an application pursuant to s. 810 of the *Criminal Code* for a recognizance, commonly referred to as a peace bond. The applicant, Ms. Aedes Scheer, is President of the Dawson City Humane Society. One of the respondents, Mr. Foesier, lives in Dawson City, but also kept a large number of dogs at a location approximately eight kilometers up the Dempster Highway. The other respondent, Debbie Howe, is Mr. Foesier's spouse and lives and works in Calgary.

[2] The incident underlying this application occurred on April 13, 2006. There had been an ongoing investigation relating to Mr. Foesier's treatment of his dogs. On April 13, 2006, the local veterinarian along with Ms. Scheer attended at the Dempster Highway location to examine and seize 15 dogs owned by Mr. Foesier.

I understand that, pursuant to the applicable Yukon legislation, Mr. Foesier was given advance notice of their attendance.

[3] Ms. Scheer and the veterinarian arrived to find Mr. Foesier sitting near or on the edge of a pile of dead dogs. He had shot all 56 of his dogs. He told Ms. Scheer and the vet, "How do you like what I've done? If I can't have them, no one can". He was also quite argumentative. He accused them of trespassing on private property, although it was Crown land subject to a placer mining claim.

[4] Ms. Scheer is President of the Dawson City Humane Society. No doubt, she took this civic responsibility because of her concern and affection for animals. Observing the 56 dead dogs must have been frightening, if not traumatic for her. She and the veterinarian immediately turned and left. Ms. Scheer said that she was very frightened. Her fright and concern was based on her view that anyone who could methodically kill that many animals could also be dangerous to people. She said that she has not slept well since that date.

[5] Subsequent to this incident, it became apparent to the complainant and to others on the Dawson Humane Society Board, that the Yukon and Dawson City legislation dealing with animal abuse is inadequate. In order to gather support for changing the relevant legislation, a decision was made to publish the circumstances of the April 13, 2006 incident. I was advised that the media gave the incident a considerable amount of coverage.

[6] Debbie Howe is the common law spouse of Mr. Foesier, and she lives in Calgary. She was aware of the April incident and resulting publicity as a result of discussions with Mr. Foesier. She believed that Mr. Foesier had been treated unfairly by the media and decided to conduct an investigation of her own, for what purpose is not readily apparent. She stopped in Whitehorse on July 4, 2006 on her way to Dawson City to visit Mr. Foesier and contacted Ms. Andrea Lemphers, the Past-President of the Yukon Humane Society. Ms. Howe misled

Ms. Lemphers by telling her she was associated with the Calgary Humane Society, that she was in the Yukon on holidays and wanted more information about the April incident in order to have a “story to take back”.

[7] Ms. Howe also telephoned Ms. Scheer under the same pretext and pressed her for details. She also wanted permission to contact the staff at the shelter in Dawson City. Ms. Scheer told her she should not speak to the staff. Shortly after this conversation ended, Ms. Scheer received an e-mail from Ms. Lemphers advising that Ms. Howe was not whom she claimed to be but was in fact the spouse of James Foesier.

[8] Ms. C.J. Russell, the Manager at the Dawson City Humane Society Shelter, testified that Ms. Howe attempted to interview her around noon on July 6, 2006, again pretending that she was associated with the Calgary Humane Society. Ms. Howe attended again on July 7, 2006, but on this occasion she was confrontational. Ms. Russell told her staff to call the RCMP if Ms. Howe returned.

[9] On the afternoon of July 6, 2006, Ms. Scheer was leaving her house and encountered Ms. Howe at her gate. Ms. Scheer accused Ms. Howe of misrepresenting herself in their previous discussions. She also told her she was going to go to the RCMP to get a restraining order. As Ms. Howe followed Ms. Scheer to her car, she stated, “If Jim (Mr. Foesier) wanted to, both C.J. (Russell) and you could be wiped out”.

[10] I am satisfied that this statement by Ms. Howe in the context of all of the surrounding events was intended to frighten Ms. Scheer, and it did. It provided a reasonable basis for Ms. Scheer and Ms. Russell to believe that Ms. Howe would cause them personal injury. Ms. Howe was Mr. Foesier’s spouse, and it was not unreasonable for Ms. Scheer and Ms. Russell to believe that she could influence Mr. Foesier. Based on the April 13, 2006 incident, they were already fearful of him.

[11] In the circumstances, I am granting Ms. Scheer's s. 810 application for a peace bond. I am satisfied that the statement by Ms. Howe, viewed objectively, gave Ms. Scheer reason to be concerned for her personal safety. Ms. Howe will be required to enter into a six-month recognizance without sureties on the following terms:

Report to the RCMP within 12 hours of arrival in Dawson City;

Have no contact directly or indirectly or communication in any way with Aedes Scheer and the Dawson City Humane Society (not to telephone, not to send messages, no email);

Not attend at or loiter near the residence of Nancy Anne (Aedes) Scheer.

[12] Ms. C.J. Russell advised the Court that she too is frightened of Ms. Howe. I find that her fear is based on reasonable grounds. Based on the evidence, I am satisfied that a common law peace bond should issue with respect to her, for a period of six month, on similar terms as follows:

Have no contact directly or indirectly or communication in any way with Christine (C.J.) Jane Russell;

Not attend at or loiter near the residence of Christine (C.J.) Jane Russell.

[13] I understand Ms. Howe to say that she did not object to being bound by a peace bond. She did, however, object to a peace bond binding Mr. Foesier.

[14] The application for a peace bond to bind Mr. James Foesier is not without difficulties. It is evident that the incident of April 13, 2006, when Mr. Foesier shot all 56 of his dogs, greatly upset Ms. Scheer and indeed upset many individuals in Dawson City and the Yukon. I have no doubt that many people are wondering

what kind of person would treat his dogs in this manner. His statement to Ms. Scheer that, "if I can't have [the dogs], no one can" would likely make many people anxious. It certainly has made Ms. Scheer anxious about her safety. I have no doubt that Ms. Scheer is subjectively fearful of Mr. Foesier. The recent media coverage of the April 13, 2006 incident has, in all likelihood, added to her anxiety. And, Ms. Howe's arrival on the scene, her deception and her statement to Ms. Scheer increased her apprehension even more, resulting in the application for a peace bond that is now before the Court.

[15] It is not enough that Ms. Scheer is fearful of Mr. Foesier. That fear must be based on reasonable grounds. Reasonableness will be measured objectively. Reasonableness implicitly requires that there be a "nexus" or causal link between the respondent's actions and the subjective fear held by the applicant. In other words, the respondent must have said or threatened to do something or caused a third person to say or threaten to do something that resulted in the applicant fearing for her personal safety, the personal safety of her immediate family, or that her property would be damaged.

[16] Thus, in a typical s. 810 peace bond application, the applicant will allege that the respondent has threatened her directly, or indirectly by telling a third person that he intends to harm the respondent or damage her property. A s. 810 peace bond is not available against the respondent if a third party, without the respondent's knowledge and directions, tells the applicant that the respondent will or may harm the applicant or her property. While a peace bond may, in these circumstances, be available to bind the third party who uttered the threat, it would not be available to bind the respondent who may not even have known that the threat had been made.

[17] On the facts of this case, Ms. Howe suggested to Ms. Scheer that Mr. Foesier could "wipe her out" if he wanted to. No evidence was presented that indicated that Ms. Howe was acting on behalf of or even with the knowledge of

Mr. James Foesier. The respondent, James Foesier, has not done or said anything that would cause the applicant, Aedes Scheer, to believe on reasonable grounds, that he will cause personal injury to her, to her immediate family, or that he will damage her property.

[18] Although Ms. Howe described herself as Mr. Foesier's (common law) spouse, she lives and works in Calgary. They effectively live separate and apart most of the time. She was upset with the media coverage of the April 13, 2006 incident. The evidence indicates that she took it upon herself to find out more about it, starting in Whitehorse on July 4, 2006 as she was passing through on her way to Dawson City. Her actions as well as her evidence on this application indicated to me that she is a strong-willed and independent woman. All of the evidence is consistent with Ms. Howe acting on her own, and not pursuant to the direction of Mr. Foesier.

[19] As I mentioned earlier, Ms. Scheer, along with other like-minded individuals in the Yukon, is anxious, upset and fearful as a result of Mr. Foesier shooting his dogs. His actions speak to his "character" and have contributed to his "reputation". Some might argue, and I believe this is Ms. Scheer's position, that his actions suggest a possible propensity to violence towards people as well.

[20] I note that s. 810.2, a related section of the *Criminal Code*, permits any person who fears, on reasonable grounds, that another person will commit a serious personal injury offence, to apply for a recognizance to bind that person over to keep the peace with conditions. The facts of this case seem to be more appropriate to an application pursuant to this section, as there is no requirement for the respondent to have said or done anything directed at the applicant.

[21] An application pursuant s. 810.2, however, requires the consent of the Attorney General. And as the recent decision for a peace bond binding the former Karla Homolka, upon her release from jail, *Teale v. Noble et al*, [2005]

Q.J. No. 17295 (Que. S.C.), points out, a general concern based on past actions or reputation in the absence of a “serious and imminent danger” is insufficient to justify a peace bond pursuant to this section. In other words, this section is not available to Ms. Scheer as the evidence does not substantiate that she is in “serious and imminent danger” from Mr. Foesier, and even if it did, she does not have the consent of the Attorney General.

[22] On the facts of this case, I find that the application for a s. 810 recognizance against Mr. Foesier by the applicant, Ms. Scheer has not be made out.

[23] In the result, a six-month s. 810 recognizance without sureties will issue binding Ms. Howe on conditions previously set out including not to have contact with Ms. Scheer. Ms. C.J. Russell has satisfied the requirements for a common law peace bond with similar conditions, except that the no contact order would apply to her. The application pursuant to s. 810 of the *Code* for a peace bond binding Mr. Foesier is dismissed.

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Lilles T.C.J.