

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *British Columbia Veterinary
Medical Association v.
MacDonald et al.*,
2004 BCSC 807

Date: 20040616
Docket: L033371
Registry: Vancouver

Between:

British Columbia Veterinary Medical Association

Plaintiff

And:

**Sylvia MacDonald and Sylvia MacDonald
carrying on business as K9 Dental Care**

Defendants

Before: The Honourable Mr. Justice Masuhara
(In Chambers)

Reasons for Judgment

Counsel for the Plaintiff:	Alastair Wade
Counsel for the Defendant:	Victoria Pitt
Date and Place of Hearing:	March 5, 2004 Vancouver, B.C.

Introduction:

[1] The British Columbia Veterinary Medical Association (the "Association") seeks an order prohibiting the respondent Sylvia MacDonald and Sylvia MacDonald carrying on business as K9 Dental Care, from carrying on the business of cleaning the teeth of dogs on the basis that she is carrying on the practice of veterinary medicine and is not authorized to do so under the *Veterinarians Act*, R.S.B.C. 1996, c. 476 (the "Act").

Background:

[2] Ms. MacDonald owns and operates a business called K9 Dental Care. She is not, nor has ever been, a member of the Association, which is the professional regulatory body for veterinarians in this province. Ms. MacDonald states in her affidavit that she has worked with dogs and has been a dog groomer for approximately 30 years.

[3] The Association became aware of Ms. MacDonald by way of numerous complaints between 2001 and 2003, from veterinarians complaining of advertisements for K9 Dental Care under the "Veterinarians" category in local yellow pages phone directories and newspapers on Vancouver Island.

[4] The advertisements made, in part, the following claims:

- "15 years experience"
- "no anaesthetics"
- "no groggy doggy"
- "scaling, polishing, flossing"
- "free consultation"
- "dental care for dogs"

[5] The respondent's website and the K9 Dental Care pamphlet make the following claims:

- "the natural alternative for your pet's dental care"
- "offer the very best dental care to the pets they love"
- "a natural alternative to traditional teeth cleaning technique for dogs"
- "the K9 Dental Care technique of scaling"

- "good dental care can help your pet live a longer and healthier life"
- "most domesticated pets need professional scaling"
- "good dental care can really help significantly reduce 'doggy breath'"
- "we assess your dog's dental health"
- "in serious cases of tooth decay and gum disease, we refer you to your vet"

[6] The Association wrote on three occasions to Ms. MacDonald requesting that she undertake not to practise veterinary dentistry or to advertise in a manner that may give the impression that she was qualified or willing to practise veterinary dentistry. The Association was not satisfied with the one response it received from Ms. MacDonald, and an investigation was launched with the hiring of private investigators.

[7] On February 26, 2003, Ms. Lloyd, a private investigator hired by the Association, brought a five-year-old Cairn terrier named Beau to Ms. MacDonald's business premises.

Photographs of Beau's teeth had been taken prior to the visit. Ms. MacDonald examined the dog's teeth, stated that the dog's teeth needed scaling and polishing, provided a written quote for the work of \$74.90, and stated that an oral hygiene solution for the dog's teeth would be used. She also stated that she did not perform "pocket cleaning" and that if a dog needed that service she would refer the dog to a veterinarian. Following the visit, Beau was taken to a veterinary clinic, where Dr. Rick Cohen examined Beau's teeth. According to Dr. Cohen, Beau's teeth had severe plaque and his gums were severely infected with gingivitis.

[8] On March 4, 2003, another private investigator, Mr. Frink, attended at the premises of K9 Dental Care, seeking an estimate for the teeth-cleaning of a ten-year-old Rottweiler named Quincy. A woman named Kim advised Mr. Frink that she had been instructed to look at Quincy because Ms. MacDonald was unable to attend that day. She gave a quote of \$74.90 for surface scaling.

[9] Kim was advised of Quincy's age and that it had been a few years since Quincy had her teeth cleaned. Kim was also advised that Quincy had recently been operated on and had been treated for an ear infection and that anaesthetics were not to be used on Quincy. Kim examined Quincy's teeth, starting by

spraying an unknown solution into Quincy's mouth. She noted tartar build-up and indicated that she could clean Quincy's teeth in about an hour. Kim demonstrated the cleaning method to the investigator, by withdrawing a plastic package containing stainless steel dental scalers from a sterilization device. She removed one of the scalers from the package and scraped briefly at one of Quincy's teeth and described this method as surface scaling.

[10] Later on the same day, Quincy was taken to a veterinary hospital to have her teeth examined by a veterinarian named Dr. Gurney. He stated that it was apparent to him that Quincy should immediately have been referred to a veterinarian due to the severity of the plaque and inflammation of the gums around the dog's teeth.

Issues:

[11] The two issues in this proceeding are:

1. Has the respondent been engaged in the practice of veterinary medicine; and
2. If so, what sanction should be imposed against the respondent.

Parties' Submissions:

[12] The Association argues that there is ample evidence that the respondent has practised veterinary medicine in

contravention of section 27(1) of the **Act**. It points to such things as:

- Claims in her advertising, both in her printed material and her verbal comments,
- Use of dental tools, including a scaler and tooth polish, and
- Use of Oxyfresh spray in a dog's mouth prior to cleaning its teeth.

[13] The respondent argues that her services are essentially cosmetic and that although she uses a dental scaler, her services are basically an augmented form of brushing a dog's teeth. She also states that her service fills a gap in veterinary practices because veterinarians do not perform surface cleaning. Rather, veterinary teeth cleaning involves cleaning beneath a dog's gums ("pocket cleaning"). She notes that veterinarians only perform teeth cleaning when an animal is anaesthetized. This fact is confirmed in Dr. Legendre's affidavit, where he deposed:

In my opinion, it is not possible to do a proper or thorough cleaning of a dog's teeth while the animal is awake. If an animal is not sedated, all that it is possible is a surface brushing of the animal's teeth [*sic*]. The cleaning of the crowns of a dog's teeth does not address any dental pathology that may exist below the gum line. It is not possible to assess an animal's dental health without probing beneath the gum lines.

...No meaningful dental treatment of a dog can be achieved without anaesthetic.

[14] Ms. MacDonald states that her method allows her to surface clean a dog's teeth without the use of anaesthesia. This provides, in her view, a unique option for dog owners who have an animal that is too old or too ill for anaesthesia, or owners who are unwilling to accept either the risk or the cost associated with anaesthesia. I note that the materials before me did not fully indicate the range of cost for a dental cleaning by a veterinarian; however, the materials and comments from counsel suggest it would be considerably more than that charged by the respondent.

[15] The respondent says that she does perform diagnoses, but merely refers animals to veterinarians if, as a matter of common sense, she sees a physical problem. She submits that she observes for any obvious infection or soreness, because if she were to touch on such points during cleaning, it would irritate the animal so that it would not cooperate with the procedure. She analogizes to a dog groomer who notices a rash on the dog's back, or a farrier who sees an infection while shoeing a horse.

Law:

[16] Section 1 of the **Act** defines veterinary medicine as follows:

"veterinary medicine" means the art and science of veterinary medicine, dentistry and surgery, and includes

- (a) the application of medicine, dentistry or surgery to any animal,
- (b) diagnosing, prescribing, treating, manipulating and operating for the prevention, alleviation or correction of a disease, injury, pain, deficiency, deformity, defect, lesion, disorder or physical condition of or in any animal, with or without the use of any instrument, appliance, medicine, drug, anesthetic or antibiotic or biologic preparation, and
- (c) the giving of advice in respect of anything mentioned in this definition with or without a view to obtaining a fee or other reward.

[17] Section 27(1) of the **Act** restricts and limits activities to persons registered under the **Act**, and s. 27(2) deems certain activities to be "veterinary medicine", as follows:

- (1) A person not registered under this **Act**, or who is suspended from practice, must not practise or offer to practise veterinary medicine.
- (2) Without limiting subsection (1), a person is deemed to practise veterinary medicine within the meaning of this **Act** if the person does any of the following:

- (a) by advertisement, sign or statement of any kind, written or verbal, alleges or implies that the person is or holds himself or herself out as being qualified, able or willing to diagnose, prescribe for, prevent or treat any animal disease, ailment, deformity, defect or injury or to perform any operation to remedy any animal disease, ailment, deformity, defect or injury, or to examine or advise on the physical condition of an animal;
- (b) diagnoses or offers to diagnose an animal disease, ailment, deformity, defect or injury, or who examines or advises on, or offers to examine or advise on, the physical condition of an animal;
- (c) prescribes or administers a drug, serum, medicine or any substance or remedy for the cure, treatment or prevention of an animal disease, ailment, deformity, defect or injury;
- (d) prescribes or administers a treatment or performs an operation or manipulation or supplies or applies any apparatus or appliance for the cure, treatment or prevention of any animal disease, ailment, deformity, defect or injury;
- ...
- (f) operates, manages or controls the operation and conduct of an animal hospital, treatment centre or place where veterinary medicine is practised.

[18] The authority for the petitioner seeking relief to this Court is found in section 35 which states:

The Supreme Court may, on the application of the association and on being satisfied that there is reason to believe that there is or will be a

contravention of this **Act**, grant an injunction restraining a person from committing the contravention and, pending disposition of the proceeding seeking the injunction, the court may grant an interim injunction.

Analysis:

1. Has the respondent been practising veterinary medicine by advertisement or holding out?

[19] Pursuant to s. 27(2)(a), if the respondent has been advertising or holding out to be qualified or willing to examine and advise on the physical condition of an animal, she is deemed to have been practising veterinary medicine. In my view, the petitioner has succeeded on this aspect of its argument. Ms. MacDonald's advertising, both written and verbal, has implied a greater expertise than she has.

[20] Ms. MacDonald has advertised her services under the "Veterinarians" category in the Yellow Page Directories in Victoria (in 2001) and Duncan (in 2001 and 2003). Her written advertisements, including her website and her brochure, make various claims, which have been set out above. In my opinion, this written advertising is misleading on its face. I think that readers of the website or brochure would be, at least, left in confusion as to the distinction between veterinary teeth-cleaning and Ms. MacDonald's method.

[21] The essential message of Ms. MacDonald's advertising is that her method provides an "alternative" to veterinary teeth cleaning. However, the evidence is that surface scaling is not in any real sense an alternative or replacement for veterinary care. Ms. MacDonald points out the benefits of her method, mainly that it circumvents the need for anaesthetics. This argument, which reflects the broad import of her advertising, fails to acknowledge that without anaesthetic, her method cannot hope to provide meaningful dental health benefits of pocket cleaning, which only is made possible by the use of anaesthetic. Drs. Saefkow and Legendre stated that a visual examination of the dog's teeth cannot suffice to indicate a dog's dental health; that teeth must be cleaned and inspected in the area between the tooth and the gum; that dental x-rays are sometimes required; and that to do these examinations and cleaning properly, dogs must be anaesthetized. Clearly, a surface cleaning is not a meaningful substitute or alternative for the teeth cleaning performed by veterinarians.

[22] The evidence shows that the advertising has led at least some customers to believe that they could substitute veterinarian teeth cleaning with Ms. MacDonald's method without compromising the health of their dogs. I note in

particular a client testimony on Ms. MacDonald's brochure,
which reads:

I am the owner of two Bichon Frise dogs...recently the
7 year old had been advised to have his teeth
cleaned. Upon visiting Sylvia's business I was
pleasantly surprised to witness the calm and
willingness that my dog displayed as Sylvia examined
him. There was no preparation or prior
administration of any drugs...I am happy to say that
his teeth were beautifully cleaned with no trauma.

[emphasis added]

[23] The most plausible understanding of that testimonial
is that a veterinarian advised the owner to have the dog's
teeth cleaned, intending that the teeth should be cleaned
using the veterinary pocket cleaning method. The owner was
led to believe that Ms. MacDonald's service was an acceptable
method of meeting that health requirement. The testimonial
also implies that Ms. MacDonald had some special skill in
"examining" the dog.

[24] In addition to Ms. MacDonald's written advertising,
I also think that her verbal representations have been
misleading or purported that she has some special expertise.
Ms. MacDonald submits that she verbally advises her clients
that she does not perform veterinary services, and informs
them that she will refer a veterinarian where she observes
health problems. Nevertheless, I cannot help but note a

letter from Ms. Dittrich attached to Ms. MacDonald's affidavit, which although testifying to Ms. MacDonald's doubtless superb manner with dogs, left me with reservations. Ms. Dittrich states that her veterinarian advised her that her dog's teeth "were fine but would need a cleaning in the future". To meet that cleaning requirement, she took her dog to Ms. MacDonald. Ms. MacDonald advised her that she was not a veterinarian and would refer to a veterinarian for treatments such things as extractions and gum disease. In response to that information, Ms. Dittrich states that she "explained that [she] had already taken Bijou to Dr. Bass, Bijou's teeth had been checked and a cleaning was all that was needed."

[25] In my view, Ms. Dittrich may have seriously misunderstood her veterinarian's advice, and Ms. MacDonald acquiesced, perhaps unwittingly, in this misunderstanding. The weight of evidence suggest that when a veterinarian tells an owner that a dog's teeth needs to be cleaned, a veterinarian is saying that the dog needs the pocket cleaning procedure, including anaesthetic. There are medical reasons for this veterinary cleaning method. Ms. MacDonald's method cannot be meaningfully substituted - yet, that is the understanding that at least some of Ms. MacDonald's clients

may take away. I would attribute this confusion to Ms. MacDonald's advertising or her failure to make sure that her customers clearly understand how her method falls short of the veterinary dental standard, or both.

[26] A similar situation was described by Dr. McTaggart in her affidavit, in which she deposed that a client cancelled a dentistry appointment in favour of Ms. MacDonald's less expensive service.

[27] I also note that although Ms. MacDonald asserts that her services are primarily cosmetic and only incidentally health-related, her advertising material portrays the services as primarily health-related. For instance, her company includes the words "Dental Care" in its name; and her brochure and website describe the health aspects of gum disease. I do note that her advertising material also has elements that suggest mere cosmetic treatment, such as a picture of a dog holding a toothbrush. Nevertheless, looking at the material as a whole, the broad import is that Ms. MacDonald's method has clear health benefits.

[28] In sum, Ms. MacDonald's activities constitute a violation of s. 27(2)(a) of the **Act**

2. Has the respondent been practicing veterinary medicine by diagnosis, dentistry or administration of treatment?

[29] The key services at issue are as follows:

- Alleged dentistry [s. 1 and s. 27(2)(c)] - Ms. MacDonald cleans dogs' teeth using dental tools, namely scalers.
- Alleged diagnosis [s.1 and s.27(2)(b)] - Ms. MacDonald states, in her advertising and verbal instructions to clients, that she can "assess [a] dog's dental health" and identify "serious cases of tooth decay and gum disease".
- Alleged administration of treatment [s. 1 and s.27(2)(d)] - Ms. MacDonald uses Oxyfresh spray when cleaning dogs' teeth.

[30] Turning first to the question of the alleged dentistry, I note that the parties characterize the respondent's actions in widely divergent ways. The petitioner asserts that these actions are animal "dentistry" and thus essentially veterinary and medical in nature. Analogizing to grooming, the respondent argues that her services are essentially cosmetic and should not be called "dentistry".

[31] The **Act** does not define "dentistry". In **Laporte v. College of Pharmacists of Quebec**, [1976] 1 S.C.R. 101, 58 D.L.R. (3d) 555, the Supreme Court of Canada held that statutes which create professional monopolies should be

strictly construed so that anything which is not clearly prohibited to non-members of the professions may be done by them. That case was followed by the B.C. Court of Appeal in **British Columbia (Attorney General) v. Infomap Services Inc.** (1990), 68 D.L.R. (4th) 1, [1990] B.C.J. No. 780 (Q.L.). In that case, the Court was faced with the question of whether a person was holding out to be a "land surveyor" in contravention of the **Land Surveyors Act**, R.S.B.C. 1979, c. 217. The term "land surveyor" was not defined in the statute. In discussing the principles of construction, the Court referred to **Architectural Institute of British Columbia v. Lee's Design & Engineering Ltd. et al.** (1979), 96 D.L.R. (3d) 385, [1979] B.C.J. No. 1439 (Q.L.) (S.C.), where Trainor J. outlined the use of other statutes in statutory interpretation. The Court of Appeal quoted with approval the headnote to that case, and then continued with its own analysis, at 5:

The Court in interpreting a statute must have regard to its perspective and context. ...

... [B]efore adopting any proposed interpretation, the Court should have regard to the consequences flowing therefrom and should not adopt it if it would alter radically a prevailing business or professional practice, unless the language is unequivocal. For this purpose the Court may admit evidence of the nature of such practice to determine whether it falls within the statutory definition. Furthermore,

where the legislation applies to a large trade or business, it should be construed according to a reasonable and business interpretation, but so that, where the legislation creates a professional monopoly and is thus in a sense a private Act, it must be strictly construed so as to permit any activity which is not clearly prohibited. This is so even though the legislation contains penal provisions, if the impugned activity is within the language and spirit of the legislation.

[32] Public policy concerns regarding the welfare of animals may require some latitude in allowing the provision of services to animal owners by persons providing cosmetic or grooming services for animals, who may incidentally be caught by the broad definition set out in the **Act**. I can imagine a host of persons in everyday situations who could be caught by the extremely broad language of s. 27 of the **Act**. If I were to construe the **Act** broadly, it would certainly lead not only to unreasonable business consequences, but also to consequences out of step with everyday life. Modern reality is that the many businesses which provide truly cosmetic services to animals need not be governed by the Association.

[33] Examining the evidence in light of those policy considerations and principles of statutory interpretation, I find that the petitioner has not made out its claim that the respondent's surface cleaning of dog's teeth constitutes "dentistry" or "veterinary medicine" under the **Act**. I find that Ms. MacDonald's services are properly characterized as

essentially cosmetic. She cleans only the visible portion of a dog's teeth, which I find is an advanced form of grooming or tooth brushing. Even the Association's own evidence establishes that Ms. MacDonald's method is cosmetic and has no significant health benefits. The essence of the Association's position, in fact, is that Ms. MacDonald (despite her advertising) is not providing a health service to dogs. For instance, I quote again from Dr. Legendre's affidavit:

In my opinion, it is not possible to do a proper or thorough cleaning of a dog's teeth while the animal is awake. If an animal is not sedated, all that it is possible is a surface brushing of the animal's teeth. [sic]...

...

Those who claim to offer dental care without anaesthetic are, at best, only cleaning plaque above the gum line. Cleaning in this manner does not address infection or disease below the gum line. Cleaning or brushing of teeth above the gum does not stop or slow the progression of established periodontal disease. Proper and correct cleaning of teeth requires removing tartar and plaque below the gum. The removal of tartar or plaque below the gum requires the use of sterilized hand instruments.

[emphasis added]

[34] The benefits of Ms. MacDonald's method are limited to the purely cosmetic. The teeth cleaning itself does not pose any health risk to the dogs; the public safety concern is rooted in the advertising rather than the actual cleaning. Further, I am not satisfied that the use of scalers in the

manner described is sufficient evidence in itself that a person is practising "dentistry".

[35] Turning next to the question of whether Ms. MacDonald was performing "diagnosis", the respondent submits that she does not diagnose disease, but merely refers animals to veterinarians if she sees a physical problem as a matter of common sense. I have already found that her advertising and verbal representations amount to diagnosis in the sense that she offers to "examine or advise on the physical condition of an animal" within the meaning of s. 27(2) (b) of the **Act**. Her statements are clearly misleading because they give the impression that she is qualified (beyond mere common sense) to diagnose "tooth decay and gum disease" and to "assess" dental health. This activity can be corrected by proper modification of her advertising and verbal representations.

[36] I find that the respondent's administration of Oxyfresh and prophy paste does not amount to "administration of treatment" within the meaning of the **Act**. Prophy paste is purely cosmetic, meant to smooth out the lines left by the scalers during polishing. Oxyfresh is available over the counter to pet owners and is meant to be used to deodorize and condition dogs' breath and gums.

Conclusion:

[37] It is clear that the respondent has through her advertising made claims that imply she has greater expertise than she has in fact. Her advertising under the "Veterinarians" section of the yellow pages, her website, her pamphlet and her verbal comments to customers, and her own trial materials containing customer affidavits, all indicate that she has made such claims and that those claims have been misleading or confusing to the public. I find that she is deemed to have practised veterinary medicine by reason of her advertising contrary to section 27(2) (a) of the **Act**, and accordingly make such a declaration.

[38] Further, Sylvia MacDonald and Sylvia MacDonald carrying on business as K9 Dental Care is prohibited and enjoined from:

- (i) by advertisement, sign or statement of any kind, written or verbal, alleging or implying that she is or holds herself out as being qualified, able or willing to diagnose, prescribe for, prevent or treat any animal disease, ailment, deformity, defect or injury or to perform any operation to remedy any animal disease, ailment, deformity, defect or to examine or advise on the physical condition of an animal;
- (ii) diagnosing or offering to diagnose an animal disease, ailment, deformity, defect or injury, or examining or advising on or offering to

examine or advise on the physical condition of an animal.

[39] Further, Ms. MacDonald is to be prohibited from holding out that she is involved in canine dentistry by :

- removing the words "Dental Care" from her corporate name, her work premises, advertising and public relations materials;
- removing from her advertising the concept of her service as an "alternate" to teeth cleaning by a veterinarian;
- removing from her advertising anything which may leave the public with the impression that she is qualified to examine dogs to determine even general health, including omitting the statements that "we assess a dog's dental health" and that "in serious cases of tooth decay and gum disease, we refer you to your vet"; and
- removing any advertising for her services from the "Veterinarian" section of directories or like advertising services.

[40] In regard to Ms. MacDonald's actual activities in cleaning dog's teeth, based on the materials, I am not persuaded that they constitute the practice of veterinary medicine.

"D. Masuhara J."