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Proceedings

1 cannot find the owner immediately, and inform
2 them of the distress, then you can go ahead and
3 apply for your warrant. It is implied in that,
4 in my view, that under sub-Section (a), you must
5 make an attempt to contact the owner and advise
6 them of the animal's distress and it is only
7 then, that if they do not; that is, the owner or
8 person responsible for the animal, does not
9 properly take steps that will relieve its
10 distress, that you could then go on and apply for
11 a warrant. The officers did not do that. The
12 Act clearly does not give the officers the right
13 to go out and apply for warrants to seize any
14 animals they happen to find in distress, wherever
15 they may be. Their first obligation is to try
16 and find the owners, to try and relieve the
17 distress of the animal through the owner, and
18 only if that does not work or if they cannot find
19 the owner do they then have the right to go and
20 apply for a search warrant. There is a missing
21 step here. The officers clearly knew who the
22 owner was, made no attempt to contact her,
23 although had they had the ability to contact her
24 and her phone number.

25 In those circumstances, in my view, the
26 search warrant was improperly issued. It should
27 not have been authorized and, in my view, would
28 not have been authorized had the information to
29 obtain contained all of the information.

30 It is an insufficient answer that the
31 officers say, "Well, we knew this lady from a
32 previous incident involving a similar
33 circumstance of not properly feeding horses."
34 They would have to, in order to use that as a
35 reason for getting a search warrant, they would
36 have to be in a position to say, "Because of the
37 history with this particular person and because
38 she never responds to us or she doesn't properly
39 follow instructions, that because of that past
40 conduct, we don't believe it is appropriate to
41 contact her now," or something like that. And if
42 they could convince the Justice of the Peace that
43 it was not necessary to give her an opportunity
44 to solve the problem, then they could perhaps get
45 a warrant. But you cannot just leave all that
46 cut and go and get the warrant on the basis
47 merely that the animals are in distress.