

IN THE MATTER OF THE *PREVENTION OF CRUELTY TO ANIMALS ACT*,  
R.S.B.C. 1996, c. 372  
ON APPEAL FROM A REVIEW DECISION OF THE BC SOCIETY FOR THE PREVENTION OF  
CRUELTY TO ANIMALS CONCERNING THE SEIZURE OF TWO HORSES

**BETWEEN:**

NANCY LEDUC

**APPELLANT**

**AND:**

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO  
ANIMALS

**RESPONDENT**

**DECISION**

**APPEARANCES:**

For the British Columbia  
Farm Industry Review Board:

Corey Van't Haaff, Presiding Member

For the Appellant:

David Dickinson, Representative

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

February 16, 2016

Location of Hearing:

Teleconference

## **I. Overview**

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*).
2. The Appellant appeals the January 12, 2016 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society).

## **II. Brief Summary of the Current Decision Under Appeal**

3. Two horses were seized, as the Society found them to be in distress, from the Appellant's property on December 7, 2015. The warrant named a stallion but both the stallion and a mare were taken. The Appellant disputes both seizures and all associated costs. The Appellant asserts that the seizure of the mare was not lawful as it was not named in the warrant, and further asserts that all evidence acquired without the warrant be excluded under Section 24 of the *Charter of Rights and Freedoms*. The horses were re-named by the veterinarian for identity purposes after seizure but for this decision, the male horse, named Falcon or Stanley, will be referred to as the stallion and the female horse, named Goldie or Peaches, will be the mare.
4. Section 20.6 of the *PCAA* permits the BC Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society in its discretion to destroy, sell or otherwise dispose of the animals.
5. For reasons that will be explained in detail later, I have decided to order that the two horses will not be returned to the Appellant and instead, will remain with the Society (BCSPCA) which is permitted to destroy, sell or otherwise dispose of the animals.
6. I will deal with the issue of costs below.

## **III. The Society's Powers and Duties**

7. The Society under the *PCAA* is mandated to prevent and relieve animals from situations of cruelty, neglect and distress. The Society can seize animals from the care and custody of their owners or take custody of abandoned animals, as authorized by the *PCAA*. The Society's investigation and seizure powers are set out in Part 3 of the *PCAA*, entitled "Relieving Distress in Animals".
8. The March 20, 2013 legislative reforms, set out in Part 3.1 of the *PCAA*, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: *PCAA*, s. 20.2(1), (2). If a review is requested, the Society must review the decision and must not destroy, sell or dispose of the animal during the review period unless it is returning the animal: *PCAA*, ss. 20.2(3).
9. The *PCAA* does not set out any specific process for the review. Administratively, the Society's current process where a review is requested is to prepare a disclosure package and then to invite submissions from the owner concerning the return of the animals and to consider these submissions

in light of the investigation results to determine whether it is in the animals' best interests to be returned to their owners.

10. Sections 20.2(4) and (5) of the *PCAA* set out the Society's options following a review:

20.2 (4) The society, following a review, must

(a) return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting

(i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and

(ii) any matter that the society considers necessary to maintain the well-being of that animal, or

(b) affirm the notice that the animal will be destroyed, sold or otherwise disposed of.

(5) The society must provide to the person who requested the review

(a) written reasons for an action taken under subsection (4), and

(b) notice that an appeal may be made under section 20.3.

#### IV. The Appeal Provisions

11. I am guided by the approach to appeals under the *PCAA* which is set out in detail in *A.B. v British Columbia Society for the Prevention of Cruelty to Animals*, (August 9, 2013), which decision was upheld by the Supreme Court on judicial review<sup>1</sup>. In summary, the right of appeal to BCFIRB gives persons adversely affected by certain decisions of the Society an alternative to a more formal judicial review or judicial appeal. The reforms give BCFIRB broad evidentiary, investigation, inquiry and remedial powers upon hearing an appeal: ss. 20.5 and 20.6. The *A.B.* decision reads in part:

Appeals under Part 3.1 of the *PCAA* are not required to be conducted as true appeals, and BCFIRB is not required to defer to decisions of the Society. In my view, the appellant has the onus to show that, based on the Society's decision or based on new circumstances, the decision under appeal should be changed so as to justify a remedy. Where, as here, the Society has made a reasoned review decision, BCFIRB will consider and give respectful regard to those reasons.

However, that consideration and respect does not mean the Society has a "right to be wrong" where BCFIRB believes the decision should be changed because of a material error of fact, law or policy, or where circumstances have materially changed during the appeal period. BCFIRB can give respect to Society decisions without abdicating its statutory responsibility to provide effective appeals.

The clear intent of this reform legislation was to give BCFIRB, as the specialized appeal body, full authority to operate in a way that is flexible and accessible to lay persons, and to use its expertise to ensure that decisions are made in the best interests of animals. The procedure followed by BCFIRB is a flexible approach specifically crafted to accomplish the intent of the legislation in the context of animal welfare and lay participation. This includes taking into account developments occurring since the Society's decision was made. This is entirely in accord with the inevitably fluid nature of the situation, and well within the powers granted by section 20.5 of the *PCAA*.

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<sup>1</sup> *BC Society for Prevention to Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331

## V. Preliminary Issues

12. All affidavits and witness statements, emails, photographs, and materials submitted were entered into evidence. Parties were sworn before giving oral testimony.
13. Although at the time of her notice of appeal, the Appellant did not dispute the seizure of the stallion and associated costs for that horse; the Appellant has since changed her mind and disputes both seizures and costs. The Society agrees that its understanding is that both seizures and all costs are in dispute in this hearing.
14. The Appellant also referred several times to photographs she said were submitted which were never received by the Panel or the Society. Upon questioning the Appellant and her legal advocate (who is a legal advocate with the Upper Skeena Counselling and Legal Assistance Society), the Panel learned that the photographs were given by the Appellant to the legal advocate who decided not to submit them in the interest of time.
15. The Appellant referred several times to a binder she was putting together containing the photographs and other information that might assist the Panel. The Panel explained that the time to hear and consider all matters was upon us and that a decision would be issued based on the material before it at the conclusion of the hearing. The Panel asked the Appellant if she understood that today was the day of her hearing and she agreed it was.
16. The Appellant testified that she was arrested after filing an appeal in this matter, and that SPC Bakken was a jail guard present at the time of her arrival at the RCMP detachment. SPC Bakken confirms he works part-time as a jail guard but denies being present the night of the Appellant's arrest. I find that it is not necessary for me to determine this discrepancy as this is not a matter for me to decide upon and nothing in my analysis would turn on its outcome.

### Material Admitted Into Evidence

#### **Appellant:**

- a) Appellant Notice of Appeal (perfected on January 19<sup>th</sup>) (**Exhibit 1**)
- b) Appellant Written Submission, Stat Dec, SPCA Brian Email and witness list(via email February 1st) (**Exhibit 2**)
- c) Appellant Final reply submission (via email Feb 11<sup>th</sup>) (**Exhibit 3**)

#### **Respondent:**

- a) BC SPCA initial document disclosure – Tabs 1-22 (via email January 25<sup>th</sup> and courier January 28<sup>th</sup>) (**Exhibit 4**)
- b) M. Moriarty unsigned Affidavit #1, (via email February 9<sup>th</sup> and via courier February 10th) (**Exhibit 5**)
- c) Expert Witness Contact Form (Dr. Kimberly Hunter) (via email Feb 9<sup>th</sup> and courier Feb 10<sup>th</sup>) (**Exhibit 6**)
- d) Witness Contact Form SPC Dale Bakken (via email Feb 9<sup>th</sup> and courier Feb 10<sup>th</sup>) (**Exhibit 7**)
- e) Written Submission(via email Feb 9<sup>th</sup> and courier Feb 10<sup>th</sup>) (**Exhibit 8**)
- f) M. Moriarty signed Affidavit #1, (via email February 11<sup>th</sup>) (**Exhibit 9**)
- g) Undertaking given to Peace Officer, Officer in Charge (via email February 15<sup>th</sup>) (**Exhibit 10**)

## VI. The Appeal

### Brief History

17. The Society was familiar with the Appellant's property as it had attended the property on October 29, 2014 when the Appellant had 19 horses and a donkey and where the Appellant reportedly admitted that three of the horses were underweight; and again on July 14, 2015 when the Society wrote an order for the Appellant for the grossly overgrown hooves on the donkey. On November 27, 2015 the Society received a telephone complaint regarding one of the Appellant's horses that had a poor body condition and lack of feed.
18. The Appellant was, she said, in the process of re-homing the stallion (as she had re-homed others of her horses). She wants the stallion returned so she can continue with her plan to re-home the stallion with her witness, Brian Vermeulen.
19. The Society visited the Appellant's property on November 30, 2015 and ultimately on December 7, 2015, attended with a warrant and seized the two horses it found.
20. The Appellant requested a review on December 21, 2015 and the Society performed a review. The Society issued its review decision on January 12, 2016. The Appellant appealed that review decision and perfected that appeal on January 19, 2016, meeting all deadlines required. The Appeal was heard on February 16, 2016.

### Society's Decision Under Appeal

21. In her January 12, 2016 review decision, Marcie Moriarty of the Society said, in part:

#### *Seizure of Goldie*

*You have made submissions that the seizure of Goldie was not lawful as the "information [sworn by SPC Bakken was] intended to apply to a single horse (the Stallion) suffering from a specific condition (seriously underweight)" and as Goldie is not mentioned in the warrant, SPC Bakken did not have the authority under the Act to seize Goldie. After considering your argument and reviewing the case law that has considered this issue, I find that SPC Bakken's actions were appropriate and that Goldie was lawfully removed during the warrant. Mr. Justice Chiasson provides a comprehensive review of the law in this area in his Court of Appeal decision *Ulmer v. BC SPCA*, [2010] B.C.J. No. 2277 (hereinafter, *Ulmer v. BC SPCA*.) The courts have concluded that a constable may exercise the powers of the Act and seize animals that are not named specifically in the warrant as the intent of the Act does allow just that if certain circumstances are present. I have considered your arguments that Goldie did not meet the definition of being in critical distress and agree that she could not have been seized pursuant to section 12 of the Act. Rather, as Goldie met the definition of distress at the time SPC Bakken executed the warrant and the owner could not "be found immediately and informed of the animal's distress" (s.11(b)), it was within his authority to seize Goldie.*

*In addition to the above, I would argue that SPC Bakken's actions were lawful in that he considered the history in this particular case and reasonably concluded that you would be unable to relieve the distress of Goldie given that you had been unable to relieve the distress of the Stallion at the time of the warrant and the concerns respecting the Stallion were similar to those of Goldie. It was not necessary for SPC Bakken to first issue you an order pertaining to Goldie. Mr. Justice Chiasson in *Ulmer v. BC SPCA* considered this same issue and states at paragraph 37:*

*In my view, s. 11(a) must be given a broad purposive interpretation. The words "does not promptly takes steps that will relieve ... distress" sometimes will lead to the authorized agent making orders and giving directions, in other circumstances he or she may conclude that the person responsible for the animals is*

*unable to take the necessary steps or it may be apparent that the person is unwilling to take steps to relieve the distress. The cases referred to by the chambers judge illustrate these varied scenarios*

*I do not think the cases support the notion, advanced by the appellant, that, as a matter of law, in every case the agent must give the responsible person time in which to relieve the animals' distress. In some cases, as in the present case, it will be reasonable not to do so. The word "promptly" suggests a consideration whether the person can or will take the necessary action.*

*Accordingly, I conclude that the seizure of the Horses took place in accordance with the Act.*

*I turn now to the question as to whether or not it would be in the best interest of the Horses to be returned to you.*

#### *History*

*In making any determination regarding what is in the best interest of the Horses, I consider any past history of animal care as it assists me in answering the question as to whether you would be able to ensure the Horses remained distress-free if they were returned. This is a duty owed by an owner pursuant to section 9.1 of the Act. As is set out in the ITO and the timeline of events that occurred prior to the most recent incident, you have a history with the BC SPCA and concerns pertaining to animals in your care. Between October 2014 and December 2015, the BC SPCA has received 5 calls regarding concerns pertaining to your animals. Admittedly, some of the concerns pertained to your animals running at large and while that may not directly fall within the definition of distress under the Act, it does come into play when considering your duty as an animal owner pursuant to section 9.1 of the Act to protect your animals from circumstances that are likely to cause them to be in distress. I would argue that horses running loose on the highway meet that concern.*

*It is clear from reviewing the history that we have had numerous conversations with you about the importance of ensuring your horses are in good body condition, are receiving adequate and appropriate feed and water and are receiving veterinary treatment when necessary. SPC Bakken has also provided you with a copy of the 2013 Equine Code of Practice which goes into detail on proper horse care and sets out specifically the requirements for horse care. These are the responsibility of any horse owner. You were also provided with the Prevention of Cruelty to Animals Act which outlines your legal responsibilities as an animal owner. Finally, you were provided with some information on how to care for underweight horses. It is clear from the above that you have been provided with the opportunity and the resources (in terms of knowledge) to adequately provide for horses in your care and yet you have not done so consistently. I have considered the fact that at times you have complied with certain orders and you have re-homed horses. However, it is also clear that you have a history of acquiring horses and then passing them on to other people to look after. This in and of itself is not necessarily an indication of whether you would be able to maintain these Horses in adequate condition if they were returned, but does demonstrate a tendency to acquire new animals that you are then not able to adequately look after.*

#### *Medical Condition of the Horses*

*Dr. Hunter examined the Horses and prepared a report of her findings. In making my decision, I have reviewed the entire report and note that she concludes that both the Horses suffered from "severe neglect as evidenced by undernutrition" and that there no evidence of causal disease or illness that would have otherwise explained the body condition score. Falcon was scored at a 2.5 out of 9 and Goldie as a 2 out of 9. You had an opportunity to relieve these animals of distress and were given the resources in the form of knowledge about proper nutrition and what is expected of a horse owner by law and yet you failed to do so as is evidenced by this veterinary report. Both Horses have gained weight and improved in body condition over the past month in the care of the BC SPCA.*

*You have provided submissions raising concerns regarding Falcon suffering from a contagious disease that would have explained his body condition and that the BC SPCA should have done this testing. Our obligation and authority under the Act is limited to "relieving an animal of distress." We are not permitted to undertake voluntary procedures that do not directly need to be done to relieve the animal of distress during the dispute time as the animals are not the property of the BC SPCA and any costs incurred by the Society during this time are the responsibility of the owner. In the case of Falcon, the veterinarian performed blood tests to rule out a medical cause for his body condition. In her report, Dr. Hunter concludes that "[there is] no evidence of causal disease nor anemia to support*

*Equine Infectious Anemia.” As mentioned, in the month that Falcon has been in our custody and given an adequate diet, he has gained weight and is doing much better.*

*In addition, you make the argument that if you were starving the horses then “they would all be affected and in similar condition.” This is not technically correct. There are many reasons why certain horses in a group suffer from poor body condition while others do not (eg. insufficient overall food provided to the group and more dominant horses are eating a greater share of the ration or underlying medical concerns in a particular horse.) The fact remains that it is the owner’s responsibility to determine what is the cause of the poor body condition and take steps to address it. This did not happen in this case.*

#### *Conclusion*

*After careful consideration of all of the material before me in this case, I have determined that it is not in the best interest of the Horses to be returned to you. As you are aware, pursuant to section 20 of the Act, you are responsible for all costs of care incurred during the dispute period regardless of whether your Horses were returned or not. As we did not receive a dispute from you until the final day available for submissions (14<sup>th</sup> day), this decision is regrettably being made more than a month post-seizure. All efforts were made on our part to expedite this decision in order to minimize costs of care owed pursuant s.20 of the Act. In addition, you were given the opportunity to surrender one or more of the Horses in order to minimize your costs, however, curiously you chose not to exercise that option even though within your own submissions you admit that your intention was to rehome Falcon. The costs of care as of December 24, 2015 were \$1206 and had been provided to you. Obviously, additional boarding costs have been incurred since that date and I will forward you a final cost of care shortly. The costs incurred up until December 24<sup>th</sup>, 2015 are to be paid by no later than January 31<sup>st</sup>, 2016 and the additional boarding costs will be due two weeks after (February 10<sup>th</sup>, 2016.)”*

### **The Society’s Case**

22. The Society relied on all its submitted material and submissions, and I reviewed and considered all material, submissions and testimony, whether or not I refer to it here.

### **Witnesses**

#### *Dr. Kim Hunter*

23. Dr. Kim Hunter, a veterinarian for 35 years who has worked on horses since graduating, wrote a report dated December 7, 2015 for a stallion named Stanley and a mare named Peaches (EXHIBIT 4, TAB 5). Both horses were an SPCA seizure due to being underweight, she notes. She says she previously spoke to the owner (Appellant) about December 1 and owner was concerned about weakness, weanling deaths earlier that spring, and Equine Infectious Anemia (EIA).
24. The stallion weighed about 400 pounds but should weigh 700 pounds, is alert, with severe decreased muscle mass. Other parameters appear normal with no sign of illness. She notes a good appetite, eating hay in the transport trailer, seeming to be strong and stable. She notes severe neglect as evidenced by undernutrition and lack of illness and parasitism being mild.
25. The mare weighed an estimated 500 pounds and should have weighed 800 pounds. The mare was alert, resisting a dental exam, and had a few “paintbrush patches of hyperemia” above its upper right incisors. The skin’s entire topline and trunk have Y2 1-inch crusts non-pruritic. Normal manure. Appears pregnant but small amount of dried blood on its legs at the level of the vagina. Good appetite eating in the trailer but severe decreased muscle mass. Dr. Hunter summarized that the mare has rain scald (bacterial plus or minus fungal dermatitis), and severe neglect as evidenced

by undernutrition and no evidence of causal disease nor anemia to support Equine Infectious Anemia (EIA).

26. In her testimony, Dr. Hunter confirmed her report and added that with the stallion, there was no sign of disease. It was eating well in the trailer and was emaciated due to undernutrition not illness. Dr. Hunter said it was a remote possibility that the emaciation was due to poor quality feed because the stallion's needs were not that high. This level of emaciation, she said, was unlikely with just poor quality; it was poor quantity not quality. The parasitism was 2 out of 9, in a pooled manure sample, which showed mild parasitism, which surprised her. It meant that the presence of parasites would not explain the weight loss. The body condition score (BCS) was 2.5.
27. The mare was spirited and eating well in the trailer and showed no sign of disease. The few spots of hemorrhage on its gums were minor. The blood at its hind end could be due to abortion. The rain scald was a moist inflammatory condition easy to remedy. The mare was a little thinner than the male, with a BCS of 2.
28. Dr. Hunter testified that the two horses, if described earlier as depressed, would now appear bright and alert as their mood could change with feed in front of them; the horses could become excited. Both horses showed decreased muscle mass from lack of proper nutrition. They needed gradually more food so they would not gorge themselves, starting with hay and gradually adding supplements as their weight increased. The skin condition on the mare was caused by severe neglect as rain scald is easy to treat but there was no evidence it was attended to. The mare also had a lack of food and decreased muscle mass.
29. On cross examination, Dr. Hunter agreed she conducted no other tests to rule out disease for the underweight status and said there are very few diseases that could cause such a severe condition as this level of weight loss without other external symptoms. The horses had pink mucus membranes and no cough, and EIA should cause signs of anemia like pale gums and weakness. She did not conduct a blood test for EIA as the possibility was remote and there should have been other signs. The mare had a test for anemia and it was normal. EIA should have reflected in the protein in the blood, which instead tested normal. The mare was tested due to the spot on its gums, the stallion was not tested as it had no marks on its gums. There were no symptoms of anemia or EIA she said.
30. In response to Panel questions, Dr. Hunter confirmed that the horses were in borderline critical distress. The definition of critical distress was read to her from the PCAA. Dr. Hunter said the nature of horses is that a horse won't lay down until it is close to death and these horses would reach critical distress within a month but would not have been in critical distress on December 7, 2015. It was predictable, she said, that they would reach critical distress within a month.
31. She confirmed that a horse's manure could go from diarrhea to normal in 6 – 12 hours as a factor of the feed they received. Dry feed produces dry manure, loose grain produces loose stool. Contaminated hay, she said, is not acceptable and she acknowledged a horse would eat hay contaminated with manure if severely hungry but it would not be healthy. Dr. Hunter said these two horses were starving. She said they were supported in the trailer and even if starving they would not exhibit signs of anemia until their internal organs had exhausted their stored nutrition, and then anemia would be reflected in their gums. She said the intervention was in the best interests of the horses. She described a BCS of 3 as underweight, 2.5 – 3 getting emaciated, and 1

would be critical. She found no evidence of dehydration in the two horses, no lice, and internal parasites were mild. That mild level of parasites could live in harmony in a horse until the parasites contributed to a state of poor health. For a normal body score horse of 3 or 4 or above, there would be very little health consequence of that level of parasite load. A horse at BCS of 3 would be very thin and at that stage, parasites would add to its burden. Part of normal horse care is to address the parasite load.

32. With the mare, the hyperemia or few red spots in its mouth could be gingivitis on this aging horse, which looked pregnant but the blood spots on its hind end suggested an abortion and it would be common for a thin horse to abort but it would still appear pregnant as it would take a month for its uterus to shrink. Low BCS is a contributing factor to abortion.
33. Pooled manure tests are used as it is more affordable (mixes two horses manure into one test) plus, as both eat from the same pasture, if one tests positive usually the entire herd has the parasite, as parasites come from manure or contaminated food.

*Special Provincial Constable Dale Bakken*

34. SPC Dale Bakken confirmed he acts as a detention guard with the Hazleton detachment of the RCMP part-time [SPC Bakken testified after the Appellant, and provided this comment in response to her allegation that he was working at the jail the night she was arrested].
35. He received the November 27, 2015 complaint and already knew that the Appellant had the Equine Code of Practice as he had dealt with her in the past. The complaint call was from a female with a blocked number, concerning a couple of horses: an underweight stallion and couple of yearlings having a lack of feed. The concern was the horses could not go into winter without enough food. SPC Bakken checked Shelter Buddy (the Society's internal record-keeping system) regarding his earlier visit to check on the horses and a donkey, and was aware of a previous concern with hoof care.
36. He arrived November 30, 2015 around 10 am and said that the Appellant shared his concern that the stallion was losing too much weight. That horse has been at her ex-husband's house until a few weeks previously and was too thin. When SPC Bakken arrived, the stallion was close to the Appellant's house and the stallion had a large bale of adequate quality hay, and two yearlings were feeding with the stallion. Those two horses were thin but not enough to concern him. The stallion, he estimated, was a BCS of 2 to 3, and had lost body fat and was beginning to lose muscle mass. The Equine Code of Practice has a scale of 1 to 9 with 9 being extremely obese and 1 being extremely emaciated and 5 being the perfect weight. When a horse gets to a 2-ish, it begins to look angular with hip bones pronounced showing at the withers, the backbone and ribs although the coat might cover the ribs. A rating of 3 is underweight and 3 or less causes concern with disease or inadequate feed or conditions. Body fat is necessary in winter to keep warm along with a better coat. Cold horses burn more energy to stay warm. There was no barn or dry stall, just a few trees in the distance, for shelter for the horses.
37. The stallion was one of two horses seized. It was a young animal so the concerns were not age related. The stallion's mouth looked good but slightly pale gums indicated some weakness. The stallion was wobbly and shivering making SPC Bakken think a number of things: dehydration or lack of body fat. The stallion had a hard time staying warm and had no blanket on even though the

Appellant had blankets. SPC Bakken strongly recommended the Appellant use the blankets, testifying that if you are going to use a blanket, this was the ideal time. The feed for the horses was kept in the corner of the paddock, creating a difficult situation for all horses to feed as the dominant horse would claim that feed, even though he did not witness this. SPC Bakken said the stallion was underweight, mellow, and lethargic and often, underweight horses in the winter lose the sparkle in their eye and get depressed and go downhill.

38. Bakken said the stallion was standing, feeding at hay that looked acceptable with some colour in the hay, had a water container near the house that was not that large, that was heated, and that the Appellant said she had added herbs and chlorophyll and alfalfa pellets to the water that the horses were drinking. SPC Bakken said he saw this and as he and the Appellant were discussing the water, they had to step inside the house as it was that cold. He saw another horse on the property so far away he did not examine it but from a distance it appeared normal. The Appellant said three of her horses were pregnant.
39. SPC Bakken did not at that time issue orders. He and the Appellant agreed she was doing some things right, but she needed to focus on the stallion, that the heated water was not enough and the stallion needed far more than that. It needed a blanket that day and needed to be warm and dry with access to good quality water and feed supplements with high fat and protein, and that the stallion needed to be weaned onto fat and grain and monitored closely. SPC Bakken said at the time of the conversation he knew he had a written diet prepared by a well-known veterinarian that would help put weight on a horse, which he would provide to the Appellant, and he expressed concern to the Appellant about the yearlings. The Appellant said she had someone to re-home the yearlings that day. The Appellant told him the stallion was sick more from illness than malnutrition and gave him the impression someone in the area was willing to take the stallion, get it vet-checked, then take it to his property and that this exchange was imminent, in addition someone in north eastern BC who was potentially interested (but the Appellant told him the horse was in no condition to travel that distance). Before he left her property, SPC Bakken reminded the Appellant the stallion needed to be warm and dry and have increased protein and fat and be blanketed. The Appellant responded that horses do well in winter free-feeding and eating snow. Bakken responded that a horse expends tremendous energy foraging that way. In winter a horse can drink 20 litres a day, as much as a horse drinks in the summer sun, especially an underweight horse.
40. The next time he spoke to the Appellant, the two yearlings had been re-homed and the north east BC person had backed out. The Appellant was persistent in telling him the stallion had a disease. She said the stallion had not been de-wormed lately and SPC Bakken said that a heavy worm load could be a problem.
41. On December 3, 2015, SPC Bakken dropped off the written material when the Appellant was not home but did not walk over and check the stallion, which was in the same area but now alone as the yearlings were gone, and still without a blanket, but with water.
42. On December 4, 2015, SPC Bakken visited the Appellant. It was raining and lightly snowing. The Appellant showed him the stallion, which was now in the greenhouse structure, like a Quonset, looking depressed and lethargic. Bakken felt the horse went in there to get out of the rain. Its back was wet and SPC Bakken asked if he could take photographs as a reference point. He determined the stallion's body condition score had decreased and he told the Appellant to blanket the horse. The Appellant did, but the blanket was too big and inside out so she decided not to use it and got a

nylon slicker instead and laid it on top of a bed sheet she put on the horse without drying the horse first. He and the Appellant tried to use a weight tape on the horse but that did not go well. He gave written orders for the horse to be kept warm, dry, blanketed, and fed with higher protein and higher fat feed. He did not rule out a heavy worm load. He felt on December 4, 2015 that if the Appellant cleaned up some of the tripping hazards in the greenhouse, at least the stallion had some shelter and its feet were dry, and if she provided some straw for bedding and hay and pelleted feed and a water bucket, that those things would solve a lot of issues, if she also made arrangements for a veterinarian. He determined that the greenhouse was acceptable for this horse on this day, because it was better than outside even though not a proper shelter. When he gave her orders, he asked if she would be willing to surrender the stallion and she said yes.

43. SPC Bakken testified he thought the Appellant viewed his role with the Society akin to the Salvation Army for a horse, offering owners without financial means assistance paying for vet care and feed. In fact, he could barely keep up with cruelty complaints, let alone help with welfare. He said the Equine Code which he provide her a few years earlier when he outlined education and enforcement, suggested owners without money could sell or euthanize a horse they could not afford to keep. Even if this was not an ideal outcome, it would definitely relieve distress.
44. SPC Bakken phoned Dr. Hunter who explained the Appellant had convinced herself the stallion had EIA. The Appellant left a phone message without requesting a call back for SPC Bakken saying in broad terms that she was convinced the stallion had EIA and she would surrender the stallion to anyone who would take it. Dr. Hunter told SPC Bakken EIA was unlikely as what was described sounded more like malnutrition and left it at that. SPC Bakken said he mulled over his options and allowed one more week to pass but the horse worsened and looked depressed and the only positive thing was the dry area in the greenhouse. His most realistic option was to get an ITO. He agreed a lot of the information in the ITO pertained to just one horse: the Society uses a template and he purposefully drafted 95 % of the contents of the ITO about one horse but, SPC Bakken said, where the Justice of the Peace signed, it says animal or animals.
45. SPC Bakken admits he does not always return calls promptly as he tried to take weekends off and he does not answer every call from the Appellant or anyone as he gets a lot of calls. He was driving on December 4, 2015 and saw a call come in from the Appellant and let it go to voice mail but she did not leave a message. SPC Bakken said that when he is entering with a warrant, it does not necessarily mean he would seize animals; it's just an option. He doesn't arrive with a hauler; it's just on standby. Maybe things could have transpired between getting the warrant and arriving on a property, he said.
46. Describing photos in Exhibit 4, SPC Bakken said the photos from page 38 – top of page 42 are from December 4, 2015 and the rest are from December 7, 2015. In the December 4, 2015 photos, the feces of the stallion were not normal. Items in the greenhouse could fall on the stallion, and the horse was angular and appeared wet. There was water in the bucket and it was the only water the horse had access to and he estimated the bucket to be 30 litres. It was also the only bucket serving the two horses present on December 7, 2015. The water did not look potable but it was good the water was heated.
47. Bakken described additional photos of the stallion in the slicker, standing behind the mare which was the more assertive and aggressive horse, and which was protecting the feed in the corner. The mare's withers and back bone and hip bones were prominent and the mare had rain scald on its

back which you do not see in a properly fed horse. The rain breaks down the skin causing scabs and open wounds. He pointed out a photo of the rain scald.

48. On December 7, 2015, SPC Bakken said he saw two horses in distress, with the underweight pregnant mare with rain scald dominating the hay, preventing a lethargic stallion from eating. There was urine and feces in the hay. Horses need 30 pounds of hay per day each but that was all the hay present on page 48. It was not enough for one day and it should have been thrown out as it was contaminated with urine and feces. Page 49 showed lack of shelter which could lead to constant wetness, fungal infections and thrush. There was no evidence on December 7, 2016 of higher protein and higher fat feed, and the stallion still had inappropriate blanketing. SPC Bakken determined the two horses were deprived of adequate food, water and shelter, and were depressed, and lacked veterinary care, and were kept in unsanitary conditions, and were not protected from excessive cold.
49. In response to an allegation from the Appellant, SPC Bakken said he was not working at the detachment the day of the Appellant's arrest. He was called at home as a prisoner was being brought in and he learned indirectly that it was the Appellant so he declined to go into work.
50. SPC Bakken also said the two horses were together at the time of seizure, and he has been in contact with the boarding place where the two horses are now, and the horses have filled out to an acceptable body condition score.
51. On cross-examination, SPC Bakken said seeing urine and feces in feed was a common problem easily alleviated by placing feed in a structure. SPC Bakken admitted he still had some concern about how the horses were being fed with feed in a corner at the horses current boarding facility, but the feed did not look wet or matted down even though there was some manure present in it. There was a structure there where the two horses could go to get dry.
52. SPC Bakken agreed that in July 2015, when concern was shown over the donkey's hooves, the Appellant resolved the situation without seizure or additional Society actions. It was the same with the two yearlings – the Appellant re-homed them without need for seizure or additional society actions.
53. SPC Bakken said he did not get the sense that re-homing the stallion with the north east BC buyer was imminent.
54. SPC Bakken said when he attended with the warrant, he had reasonable belief the stallion was in distress at the time the warrant was applied for but he had no knowledge at the application time that the mare existed. SPC Bakken said his understanding was that the warrant allowed him to seize animals in distress other than the stallion. A warrant is his call to freedom to go unfettered into a property, he said, and if he sees distress in plain sight, he can remove. When asked if the mare was seized under section 13 of *PCAA*, he said yes.
55. He said he was concerned with the small amount and poor cleanliness of the water as horses need a sizable amount of water, especially a cold underweight horse. He has seen animals as compromised as the stallion and mare suddenly go into critical distress as they are dehydrated. His concern regarding hydration began November 30, 2015 with the stallion who had symptoms of some level of dehydration with tacky gums.

56. In response to Panel questions, when asked why, if the Appellant was willing to surrender the stallion on December 4, 2015, he proceeded with the ITO application on December 6, 2015. SPC Bakken said that horse owners cannot surrender horses as the owners might change their minds and the only way he can take a horse is by warrant. Society policy, he said, is not to take surrenders and only recently did the Society build a facility for horses. He agreed owners who surrender would have to sign a document agreeing to surrender. SPC Bakken said an owner would not incur further costs if the animal was surrendered after the notice of disposition is issued and at that time, surrender is an option.
57. When asked about the greenhouse shelter SPC Bakken said it was better than outside and like a lean-to, it would provide protection from the outside and excessive cold, and would reduce cold and moisture and wind which wicks away body temperature. The greenhouse would be adequate if cleaned.

### **The Appellant's Case**

58. The Appellant relied on all her submitted material and submissions, and I reviewed and considered all material, submissions and testimony, whether or not I refer to it here.

### **Witnesses for the Appellant**

#### *Brian Vermeulen*

59. Mr. Brian Vermuelen testified that he spoke to the Appellant at the beginning of November and said he had space and a place for the stallion. The Appellant said she would get back to him when he could make arrangements to get the horse. He and the Appellant chatted about meeting in the middle at Prince George as he was in Fort St John. His experience with horses is that he has owned them at his property for ten years, and he is not inexperienced with preparing horses for winter, especially if there are health issues. He said that sometimes, a change of locale makes a difference for a horse in poor health. He has five horses on 160 acres of river valley and his environmental farm plan says he can have up to 12. He keeps horses for his own personal purposes.
60. On cross-examination, Mr. Vermuelen said that the Appellant told him that the stallion was not responding well and was losing weight, but she wanted to keep the stallion another week and see how it came along. During that time, the stallion was seized so there was no opportunity to set a date for picking up the horse. He never saw the horse or the Appellant's property and has had no contact with the Society. There was a tentative arrangement for him to take the stallion but not a plan.
61. In response to panel questions, when asked what he would do if he had a stallion losing weight, he said he would talk to his local veterinarians and either talk or visit depending on what the vet said. He has vets to the property each spring for a quick exam, has the horses' teeth done, and has the horses vet-checked (he has one with arthritis). He has vet checks annually to make sure he is not blindsided with anything or he has the vet make a house call -- they will always come out and have a look if there is an issue.

62. The Appellant confirmed that Exhibit 2 was her statutory declaration confirming her Linked In text conversation with Brian Vermeulen, beginning in October when they discussed re-homing the stallion in Fort St. John. They had several conversations and emails about moving the stallion and the Appellant asserts that SPC Bakken was aware of this. She does not understand why SPC Bakken feels she backed out of this deal as Mr. Vermeulen is still interested in taking the stallion.
63. The Appellant said she was in communication with SPC Bakken prior to the December 7, 2015 seizure and he was aware of the amount of hay and feed upon her property. The Appellant said the SPC told her the quality was good yet he now states one bale was covered in feces. She mentioned she has photos proving that he took the mare illegally and had assumed the photos would have been submitted but they were not. The Appellant accused the SPC of using corrupt words and statements. On December 4, 2015 after they spoke, the SPC left and she called her veterinarian Dr. Hunter and offered \$300 for Dr. Hunter to come out and examine the stallion. Dr. Hunter told her the cost was \$600 - \$700. The Appellant then called another vet (Babine Vet) who returned her call Monday December 7, 2015 and said he would examine the horse for \$150 for the Coggins test but she needed to transport the horse to him. The Appellant said she left a message for SPC Bakken Friday afternoon December 4, 2015 and again Monday morning, December 7, 2015. She asserted that SPC Bakken knew her cell and email and full contact details and that she had no access to the internet and that she could “potentially be in town” so it was he who could not be gotten a hold of, not her. He was sloughing her off because he had not confirmed his next visit, she thought. She had asked him to consider the potential of disease or parasite load as reasons for the stallion’s weight loss. The Appellant said she did re-home the two yearlings and took a bag of feed in exchange for them. She did what she said she could all along. She was reducing her number of horses. She was using the shelter as a nursery with plenty of hay, a wood stove, plenty of shelter. She has pictures to prove this.
64. On cross-examination, the Appellant confirmed she is disputing the seizure of both horses as she did not agree to either of them being taken. The mare was acquired as a rescue in 2013, perhaps in October, from an elderly friend who did not want the horses to go to meat buyers. The stallion was born in 2009 on her property and was now 4 or 5. The horses do have access to the Hydro right of way on her property and do sometimes get out onto the road. She believed SPC Bakken felt that she was trying her best since 2014 and that she had wanted to work with him on a business proposal to create an area for horse riding and a healing centre. The Appellant thought such an enterprise might create income for local people.
65. The first SPC visit regarding the stallion was November 30, 2015 as the Appellant thinks it was she who called SPC Bakken at the beginning of November, and she believed the stallion at that time was wobbly and off balance, and she put its BCS at a 7 or 8, which she was unhappy with as it meant the condition was not perfect, adding the stallion was a bit thin in her books, and she wanted the stallion to be a 9 or 10 as a 9 or 10 was good. She knew though that something was not right and had concerns in late October. She was not aware there had been a complaint on November 27, 2015 when SPC Bakken came out to look at the stallion and feed. She showed SPC Bakken the stallion and he told her he wanted to keep the case open. She agreed that the stallion was shivering, shaking, cold and wet, “sure,” but there was shelter and food and water in the greenhouse. She had a coat for the stallion on her deck but she did not have a washing machine

so she couldn't wash it and put it on him. She was aware there were "catty" people in the community who cause problems.

66. She agreed there was some clutter showing in the photos of the greenhouse and that there was no building code for the structure or a fire inspection. She said she has plenty of pictures of hay. She said the stallion was thinner than what she would have liked and was concerned he was off balance. She agrees SPC Bakken told her she was responsible for the stallion's veterinary care as she was the owner, and she tried to seek veterinary care on December 4, 2015 as she had \$300 but the SPC ignored her calls and the vet wanted more money than she had. During her testimony the Appellant said she preferred to focus on the week prior to the seizure, when she called two veterinarians and when SPC Bakken did not return her calls. After speaking to the vet she realized she was better off letting the stallion go but still wanted to find out what other vets had to offer. Now she wants the two horses back as the stallion is spoken for in Fort St. John and, at the moment, that person is unable to take the mare but she has another place for the mare.
67. The Appellant testified that after the dispute (after the seizure) she was arrested for the neglect and abuse of animals and that SPC Bakken was working at the jail that night and SPC Bakken had Crown issue a warrant for her arrest, and now she cannot have animals due to an undertaking. The mare, she said, can go to where her other horses currently are, and she does not feel the need to say the location and refuses to identify where the horses or donkey are as it is not needed. It's a better location than where SPC Bakken told her to take them. She does visit the horses not in her possession.
68. The Appellant continues to be concerned about disease with her horses as several horses died in the community and people blame poor feed, but she thinks this is a bigger issue that needs to be investigated deeper as there is lots of pestilence and disease that the Society does not look into so they create victims out of victims.
69. The Appellant has tons of proof in photos that she had extra supplements and food and grain and hay and alfalfa but just pictures, no invoices. She agreed she read the vet-approved diet sheets and followed the guidelines related to percentage of protein but she could not recall that percentage during her testimony. She did not see rain scald or a rash on the mare and had previously checked the mare out thoroughly. She asserted that she takes care of her horses regularly when she has them in her presence and she was not present at the time of seizure.
70. She assumed the mare was pregnant and looked in good condition though she would want the mare to weigh more. The mare looked a bit thin but not as thin as the stallion. The Appellant disagrees that the mare or stallion had severe decrease in muscle mass. She said the natural environment has trees to provide shelter in the rain, like it has for thousands of years for horses. One side of her barn is open and provided access to the horses but not for the stallion and mare which were instead in her front yard with access to the greenhouse.
71. In response to Panel questions, the Appellant said all Society costs regarding the stallion were completely unjustified as she is a responsible horse owner and does not see why the Society did what it did. It was the Society's wrongdoing to begin with. She said her photos should have been submitted but her legal advocate said it was a time issue, there was not enough time to submit them and then it was past the deadline to submit.

72. The appellant said she did not contact the veterinarian in November as she had no money and December 4<sup>th</sup> was her first opportunity and at that time, the stallion was a BCS level 8 or 7 not level 2.
73. When she was taken to jail, the Appellant said she was shocked at her arrest and she found it “bizarre” that the officers, while she was in the back seat, would call ahead and say ‘let Dale know we have the suspect in question contained’ and she said Dale? and they said yes, the guy you have a court case with, and we are letting him know.’ The Appellant said SPC Bakken worked at the jail as a guard and he just sat back and had her arrested two days after the seizure appeal decision was filed, and she finds it baffling that he is a prison guard at 9 at night when she is arrested. The only way she could get released was to sign an agreement to not have animals. This was January 21, 2016.
74. The Appellant said she has a 200-page document she is working on regarding the charges and it is near completion.
75. The Appellant said that her property is 86 acres and 75 acres are fenced and now she has no horses to worry about getting on the road. Moose and bear break her fence regularly and now there are no broken fences, except for a few sections. It is fully fixed now, she asserts.
76. The Appellant said the costs requested by the Society are not reasonable because SPC Bakken lied regarding not getting a hold of her and his statement is false and she should not be responsible as he lied in several statements. He did not comply with the Society’s rules. She did not see that \$400 to remove and transport the horses was reasonable as they didn’t need to be hauled away. \$15 per day for boarding she agreed was reasonable. She disagreed with the vet invoice as she was willing to pay \$300 and the vet said \$600 - \$700 yet the same vet only charged the Society less than \$400 to look at two horses, which makes her suspicious that the horse did not get the testing she asked for.
77. On final questioning by the Panel the Appellant agreed the horses were in distress and she wanted to see them gain weight and she had been pumping them with tons of feed and was concerned they were getting a lot of nutrients but still not gaining weight. This was why she called the SPC to check out her horses. She said she believes it is the job of the Society to care for the welfare of animals period and when she informed them of other cases in the local area where animals died due to bad feed or disease, the Society should have done something to prevent this. She is fighting this appeal on behalf of all animals in the area and did her best with nutrients and care and did her best “under the circumstances” in making arrangements with Mr. Vermeulen, so taking the mare was uncalled for. The mare was thin at level 7 or 8 but not that thin and she did not notice any loss of muscle mass.

## **VII. Submissions**

78. The Appellant’s position is that, concerning the mare, it was proven that previous concerns with the donkey and two yearlings were properly resolved without seizure. The Appellant also claimed it was proven that SPC Bakken’s ITO indicated reasons to believe the stallion was in distress but not the mare, so the warrant applied only to the stallion. Once it was determined the mare was in distress, the Society should have applied for another warrant. The Appellant noted that in other

cases cited by the Society, the warrants applied to a community of animals whereas in this case the warrant applied only to one animal.

79. The Appellant's other submission was that section 11 of the *PCAA* deals with the situation of an authorized agent finding an animal in distress when then the owner can't be found, but the Appellant asserted that the facts show she could have been found immediately and it was only through SPC Bakken's actions in avoiding the Appellant that she could not be found.
80. The Appellant further asserts that although the greenhouse shelter was not ideal for one or two horses, there was water albeit unpalatable for human, but fine for horses. The issue of urine and feces on the feed could not be a true concern as it was only brought up in relation to the Appellant and did not apply to the boarding facility where photos showed feces in the feed. The Appellant asserted that there has been little improvement in the conditions where the horses are kept since the seizure, and that provides strong grounds to return the horses to the Appellant.
81. Finally, due to deficiencies in the warrant, the Appellant asserted that she should not be held responsible for costs associated with the mare.
82. The Society's position is that it is true that by all accounts, there had been a decent relationship between the Appellant and SPC Bakken and that past conduct is reflective of current conduct; that SPC Bakken was fair and impartial while looking out for the best interests of the stallion which had gotten worse and worse, and it was the Appellant's failures such as the failure to blanket the horse properly or remove contaminants from feed or improve the greenhouse conditions that contributed to the decline of the horses' health. The Society asserts there is no one to speak to current conditions where the horses are now being kept, and that photos show the horses now have dry feed and it is unknown if other feed exists elsewhere but the point is, at the new premises, the body condition scores of the horses has improved since seizure.
83. The Society argues that the Appellant had not been properly caring for her horses. Both the veterinarian and SPC Bakken found the two horses to be in distress and the Appellant did not promptly take steps to relieve the distress and had ample opportunity to reduce distress but did not. The Appellant knew in early November that the stallion needed veterinary care but lacked the funds. The Appellant said she did not notice an issue with the mare except that it was a bit thin but never once checked over the mare which a good caretaker would have checked on, and did not ask for veterinary advice at least annually and on a per issue basis, as did her witness Mr. Vermuelen.
84. It appears to the Society that the primary issue is the Appellant's focus on the warrant (and it has outlined the law at Tab 8) but the warrant referred to animals plural, and the Justice of the Peace issued a warrant with respect to animals plural. Even if the warrant did only apply to one animal, in *R v Jones* para 70 page 19 – 8 the Court said in the execution of a warrant, if another crime is in plain view, the police are entitled to seize. In this case, the SPC saw the mare in distress in addition to the stallion, and seized the animal. It is in keeping with the doctrine of plain view. The purpose of that doctrine is so as to not call into disrepute the administration of justice.
85. Regarding the issue of the surrender, it is true that the Society does not accept surrenders of horses until they reach the state of seizure but Appellant did not surrender on seizure and instead contested the decision.

## VIII. Findings and Analysis

86. The *PCAA* sets out the following definition of “distress” in section 1(2):

- 1 (2) For the purposes of this Act, an animal is in distress if it is
- (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
  - (a.1) kept in conditions that are unsanitary,
  - (a.2) not protected from excessive heat or cold,
  - (b) injured, sick, in pain or suffering, or
  - (c) abused or neglected.

87. In the circumstances of this case, I will first deal with the issue of whether or not the two horses were in distress. I will address the arguments about the warrant next.

### A. Distress

88. On the issue of distress, when SPC Bakken attended the property and examined the stallion on November 30<sup>th</sup>, he found a cold, shivering, wet, very thin stallion. He advised the Appellant to improve the nutrition of the stallion, blanket the stallion, and seek appropriate veterinary care for the stallion. He did not see the mare.

89. When SPC Bakken returned on December 3<sup>rd</sup>, the stallion was still not blanketed. When he returned on December 4<sup>th</sup>, he found the stallion looking more thin, lethargic, and depressed. He had not seen any improvement and detected a decline in the condition of the horse.

90. When SPC Bakken returned with a warrant on December 7<sup>th</sup>, he found the stallion with a slicker on it (no blanket), still too thin, without clean feed, and outside in the cold. At that time he also found a mare close to the stallion. The mare was too thin, unblanketed, and had rain scald on its back. He determined both horses to be in distress and seized them.

91. The horses were seen that same day by Dr. Hunter who determined that the horses were starving, with no symptoms of disease that would cause this type of thinness and muscle wasting. Dr. Hunter determined the cause of the thinness was lack of nutrition and testified this was primarily due to lack of volume of food. Upon the horses being fed in the trailer, she noted their mood immediately improved.

92. I find that the stallion and the mare were in distress. The veterinarian describes them as starving. Further the veterinarian found no indication of disease that would cause weight loss - which, if it existed, would beg the question why the Appellant did not seek veterinary care for the disease. I accept the opinion of Dr. Hunter that the very low body score of each of the two horses was caused by lack of volume of food. They simply were not getting enough food. I accept the evidence of the SPC that the horses as unstable, wet, shivering, cold, and insufficiently blanketed. In the circumstances, I find that the two horses were in distress as they each were deprived of adequate food, shelter, care, and veterinary treatment. I find they were each in distress as they were not protected from excessive cold. Indeed, during the SPC visit on November 30, 2015, while discussing the stallion, both the SPC and the Appellant found it too cold to stand outside, yet the stallion was left outside, alarmingly thin without fat stores, and with its muscles wasting while trying to stay warm), wet, shivering, and looking lethargic. The Appellant had a blanket but felt it

was not clean and she did not have a washing machine to clean the blanket. Her later choice of a sheet and slicker was abysmally deficient.

93. I note that even the Appellant does not dispute the fact the two horses were in distress. In response to panel questions, she said yes, they were in distress, and she wanted to see them gain weight and despite pumping them full of “tons” of feed, she was concerned they were not gaining weight. She agreed the two horses needed to see a veterinarian but she had no money. She instead believed it was the job of the Society to care for individuals’ horses, a matter I will discuss more fully below. I note as well that the Appellant was careful to qualify some of her comments saying she did her best “under the circumstances” and that the mare was thin but not as thin as the stallion, as if somehow that made it okay.

## **B. Objections based on the warrant**

94. As I turn to this issue, I note at the outset that there was no dispute that the entry onto the property in relation to the stallion was clearly covered by the warrant. I conclude that in every aspect, the seizure of the stallion was justified.
95. With respect to the mare, the Appellant’s notice of appeal argued that “the search warrant was authorized for the male horse only, and the female horse was not in such a level of distress which would have justified it being seized without warrant”.
96. In its written submission, the Appellant emphasized that it does not argue that the warrant was invalid, but only that the warrant authorized the seizure of one particular animal under s. 13 of the *PCAA*. The Appellant disputes the “plain view” doctrine relied on by the Society, argues that the case law relied on by the Society is not applicable, and submits that the Society has not provided any authority for the proposition that it may seize an animal that is not in critical distress without a warrant. The Appellant argues that if, in executing a warrant to seize one animal, the Society finds another in distress but is not critical distress, the appropriate process is to go back before a JP and obtain a new warrant. The Appellant also refers to section 15 of the *PCAA*, which states that “An authorized agent may, without a warrant, during ordinary business hours enter any premises, other than a dwelling house, where animals are kept for sale, hire or exhibition for the purpose of determining whether any animal is in distress in the premises.” The Appellant argues that all of this constituted a breach of her *Charter* rights and therefore evidence tendered with regard to the mare is inadmissible in this hearing.
97. I do not accept the Appellant’s argument.
98. The Appellant’s argument, in my view, misunderstands the nature of the authority granted by a “warrant” issued under s. 13. A section 13 warrant is warrant to enter property, not authority to seize that animal or any animal. The authority to seize for protective purposes comes independently from s. 11 of the *PCAA* (a provision whose constitutional validity I cannot challenge), and not from the warrant. The decision whether to take custody of a particular animal for that regulatory protective purpose must be made onsite in accordance with the legislative test.
99. If a constable is lawfully on the property for the purposes of assessing the distress of one animal, it would in my view be contrary to the animal welfare purposes of the *PCAA* to conclude that the constable could not act under the legislation to take custody of another animal that is in plain sight and is found to be in distress under the *PCAA*, as the mare clearly was in this case.

100. In *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at paras. 2-4, a warrant was issued on the grounds that there were “animals” in distress on the property. The result was the seizure of 70 cats and a chicken. No suggestion was made by the Court in that case that the s. 11 seizures of those animals were constitutionally invalid because the specific animals ultimately seized were insufficiently identified in the warrant. If the seizures in *Ulmer* were valid, it can only have been because the entry onto the property under the warrant was understood to be a separate question from whether any particular animal should be taken into custody under s. 11.
101. The Society has argued in this case that while the warrant authorizes entry “to take any action authorized [by the *Act*] to relieve the animal’s distress” [singular] and while the majority of the ITO is focused on the condition of one animal [the stallion], both the ITO and the preface to the warrant itself make reference to the reasonable belief that there is an “animal/animals” in distress [plural]. While there is ambiguity here, I think there is a good argument that, where there are specific grounds reflecting concern for one animal, and multiple animals are known to be on the property, it is only common sense to read the warrant as covering entry for the purpose of allowing the constable to do his or her job under s. 11 with regard to any animal in distress on the property.
102. However, even if I were to read the warrant as being focused on concerns about distress for one animal, I fail to see how that lawful right of entry limited or fettered the Society’s ability and its duty to do its job under s. 11 in respect of other animals in plain sight and in clear need of protection. In this regard, I find that the Society’s reference to the case law regarding “plain view”, albeit in a police context, to be helpful. I note that the Appellant has cited no authority in support of her contrary view.
103. The Appellant refers to section 15 of the *PCAA*, which allows warrantless entry onto private property (other than a dwelling house) where animals are kept for sale, hire or exhibition. To the extent that the Appellant is suggesting that her intention to “re-home” animals meant she was keeping animals for sale, hire or exhibition, the result would be that a warrant was not even necessary in this case. However, if a warrant was necessary, I have found that the seizure of the animals under s. 11 was valid and did not give rise to any breach of the Appellant’s rights.
104. If I am wrong, and the Society’s actions in taking custody of the mare breached the Appellant’s *Charter* rights because the warrant to enter was insufficiently broadly worded, I would still reject the argument that all the evidence regarding the mare in this proceeding should be excluded. In this regard, I make reference to section 40(1) of the *Administrative Tribunals Act* and section 24(2) of the *Charter*:

*Administrative Tribunals Act*

40 (1) The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

*Canadian Charter of Rights and Freedoms*

24(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if

it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

105. BCFIRB is an administrative tribunal. It is not bound by the rules that apply in courts of law, and that is especially so where, as here, the proceeding here is not a criminal case but rather a regulatory decision being made under legislation with a strong protective purpose. If there was a breach of *Charter* rights, that breach was limited to an authority to enter, which was valid for another purpose. The breach did not have any impact of the reality, reliability or validity of the independent statutory finding under s. 11 that the mare was in distress. There is no evidence that the constable obtained the warrant for one purpose (the stallion) as a subterfuge for another (the mare). No further privacy intrusion was involved in assessing the mare, which was in plain sight. The only outcome of the constable leaving the property to obtain yet another warrant would have been additional suffering to the mare which, while perhaps not in “critical” distress, was in great distress and needed immediate attention. The Society has justified the seizure of both animals based on the test set out in the legislation and there is nothing in its actions leading up to the seizure to suggest bad faith. To exclude the evidence in this regulatory appeal would, in my opinion, be the height of technicality. In my opinion, it would be the exclusion, not the admission, of the evidence regarding the mare that would bring the administration of justice into disrepute.
106. Given my conclusions on the arguments based on the warrant, and the fact that I have determined that the two horses were each in distress, I turn now to the issue of the return of the animals to the Appellant.

### **C. Return of Animals**

107. Considering the best interests of these two horses, I must decide whether the stallion’s and mare’s best interests are served by returning them to the Appellant or having them remain with the Society to dispose of at its discretion.
108. I note that the legislative framework was described in *Eliason. v SPCA*, 2004 BCSC 1773 where Mr. Justice Groberman (as he then was) stated:

*The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of.*

109. I also note the following passage from *Brown v. BC SPCA*, [1999] B.C.J. No. 1464 (S.C.):

*The goal and purpose of the act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as the Plaintiff’s counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in the distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain the good condition in which it was released into its owner’s care.*

110. I further reference to comments made by the British Columbia Court of Appeal in *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at paras. 37-38, in responding to the argument that the Society must always given an owner “another chance” before it seizes animals:

*In my view, s. 11(a) must be given a broad purposive interpretation. The words "does not promptly takes steps that will relieve ... distress" sometimes will lead to the authorized agent making orders and giving directions, in other circumstances he or she may conclude that the person responsible for the animals is unable to take the necessary steps or it may be apparent that the person is unwilling to take steps to relieve the distress. The cases referred to by the chambers judge illustrate these varied scenarios.*

111. I note that the word "promptly" suggests a consideration as to whether the person can or will take the necessary action.
112. I find it necessary first to clarify a few issues for the Appellant.
113. First is her belief that she was not starving her horses but instead her horses were losing weight due to disease. The fact the Appellant feels that the presence of disease somehow relieves her from any responsibility to alleviate suffering of her horses baffles me. She testified that she fed her horses "tons" and they still lost weight, so it must be disease making them thin. Period. If it was disease (which it appears from all evidence it was NOT), the Appellant is still responsible for seeking veterinary investigation to determine whether there is disease and then, how to treat it. She is not permitted to skip this investigation for any reason, including her lack of funds.
114. It further baffles me that the Appellant accepts the limits of her financial situation as something that can be negatively visited on her horses. The stallion does not get a blanket as the Appellant has no washing machine or ability to wash the blanket. The stallion does not get veterinary care as the Appellant wishes to pay \$300 for \$600 of service and cannot find a supplier at that price. As the SPCA said, the Equine Code of Practice outlines options for horse owners finding themselves in the unenviable position of not being able to care for their horses, and one option, as sad as it is, is humane euthanasia. It is never an option, contrary to the Appellant's belief, to do nothing and it is never appropriate for the Appellant to defend herself on the allegation of starving by saying no, it must be disease, then doing nothing about the disease.
115. It also baffles me that the Appellant feels the funded-by-donation Society should bear the financial burden of caring for someone else's animals, including her horses. There is nothing in the evidence that would suggest that that is the Society's mandate but it chose not to fulfill its mandate in this instance. Instead the Society disagrees that its job is to pay for the care of other people's animals. I must add, though, that I find it confusing and disappointing that at some point, the Appellant was ready to surrender the stallion but the Society could not accept it and instead had to apply for a warrant and seize it. The end result, on the surface, seems to be the same in that the stallion is in the custody and care of the Society. However that is the business of the Society and I have no resolution for this problem.
116. Regarding the stallion, the Appellant had noticed the horse losing weight and getting thinner than what she would like to see as early as late October or early November, yet did not take adequate steps to alleviate the situation. Nor does the Appellant appear to understand how to correctly understand or interpret or assign a body conditions core. Rather she convinced herself that she was giving the horse tons of food, contrary to the veterinary evidence. The Appellant agreed her actions were not working yet still failed to try something else to stop the weight loss. Further, the Appellant did not even provide a proper blanket to help the stallion stay warm. Her excuses, such as no washing machine, or the fact that nature provided trees for shelter for thousands of years, is insufficient and resulted in her stallion being and continuing to be in distress. The Appellant states

she does not have money for veterinary care but also does not recognize or has convinced herself to ignore the stallion's muscle wasting or outward signs of cold or poor health. She did not seek veterinary advice until December 4<sup>th</sup>, and I am unclear whether that delay was only for financial reasons or other reasons as well; in any event her ability to prevent her stallion from continuing to be in distress was so dearly lacking, her horse, as the veterinarian said, was within a month of becoming in critical distress. What baffles me even more is that the Appellant had a place to send the stallion yet chose to keep it to watch it as it was losing more weight, rather than give the stallion a chance at a healthy life.

117. Regarding the mare, the Appellant also noticed the mare getting thin, but did not link it to any failure or lack of care on her part. When asked about the severe muscle wasting, she denied it existed, when it was so obvious to the veterinarian and to the SPC. The Appellant failed to seek any veterinary advice for her mare who was possible pregnant, losing weight, had a rash on its back (which the Appellant also denied noticing) and was wet and cold.
118. Further, concerning both horses, the Appellant acknowledged the greenhouse was not a proper horse stable, and stated that trees have been sufficient for thousands of years as shelter, that she thinks horses do well foraging for themselves including eating snow, that disease is an adequate excuse for not properly feeding her horses, and that she needn't do anything to prevent her horses from urinating and defecating in their own food.
119. In all the circumstances, I find that the best interests of the horses are served by allowing them to remain with the Society. For clarity, it is my decision that the two horses not be returned to the Appellant as I believe there is ample evidence to show she would not take appropriate action to prevent the horses from falling into distress again and would likely not even notice they were in distress. In fact, she did nothing to relieve the two horses' distress in the first place. It would not be in the best interests of the stallion or the mare to be returned to the Appellant and even though I took into consideration the fact that the Appellant did appropriately re-home the two yearlings she could not care for, and in the past, she followed Society instructions to properly care for the hooves of her donkey, I do not believe these incidences are sufficient to convince me that she could or would care properly for the stallion and mare, if returned to her.

## **IX. ORDER**

120. Section 20.6 of the *PCAA* reads as follows:

20.6 On hearing an appeal in respect of an animal, the board may do one or more of the following:

- (a) require the society to return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
  - (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
  - (ii) any matter that the board considers necessary to maintain the well-being of that animal;
- (b) permit the society, in the society's discretion, to destroy, sell or otherwise dispose of the animal;
- (c) confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2).

121. It is my order that pursuant to section 20.6(b) of the *PCAA*, the Society, in its discretion, may destroy, sell or otherwise dispose of the stallion and the mare. I note it is the Society’s intent to adopt the horses to an owner or owners who can provide them with appropriate feed and veterinary care.

## XI. COSTS

122. Section 20 of the *PCAA* provides:

- (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.
- (2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.
- (3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.
- (4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.
- (5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.

123. Section 20.6(c) provides that on hearing an appeal the board may “confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2)”.

124. The Society has asked for its costs with respect to the two horses, including costs associated with providing the horses with food, shelter, and other care. Therefore the Society is seeking costs in the total amount of \$3,366.68, pursuant to s. 20 of the *Act* as follows (assuming boarding to March 1, 2016, anticipated date of BCFIRB decision):

Veterinary costs (Tab 10)	\$386.38
Hauling costs (Tab 11)	\$400.00
SPCA time attending seizure	\$60.00
Boarding costs: 2 x \$15/horse x 84 days (Dec 8/15 to March 1/16)	\$2520.00
<b>Total:</b>	<b>\$3,366.68</b>

125. In relation to the Society’s costs to board the horses, the sum of \$15.00 per day per horse was set out in Tabs 11 and 22.

126. In relation to SPCA time attending to the seizure, these were estimated labour costs respecting its special provincial constables’ investigations and seizure of the horses, at approximately \$60.00 (\$12 per hour x 5 hours (approx.) x 1 SPC).

127. The Society explained it is a non-profit organization, almost exclusively funded by means of donations from private individuals. Operations such as relieving animal distress by taking animals into the custody of the Society are part of the organization's statutory mandate. However, holding animals strains the Society's resources (particularly large-breed animals like the horses).
128. The Appellant does not dispute the reasonableness of the cost of boarding each of the two horses. Instead, she disputes that she should not have to pay the boarding costs of the mare as that horse should not have been taken.
129. The Appellant disputes the reasonableness of the cost of transporting the horses but provides no reasons or support of her assertions.
130. The Appellant disputes the reasonableness of the veterinary costs as the veterinarian charged the Society less than the vet quoted the Appellant. The Appellant provided no other reason or material to support her notion of unreasonableness.
131. I find that the cost of boarding, the costs of transportation, the cost of the attendance of the SPC, and the veterinary costs are reasonable and are rightfully borne by the Appellant. Of course, the veterinarian is free to charge whatever she wishes to charge the Appellant and the Society and is free to offer the Society a discount; such matters are not covered by the *PCAA*.
132. It is reasonable to me that the veterinary costs should be borne by the Appellant. The veterinary care provided was required and was provided immediately in order to prevent further suffering and to alleviate distress for these two horses. It is reasonable to me that the horses needed to be transported from the Appellant's property to the veterinarian especially given the extreme state of starvation the horses were in, and just as reasonable to then be transported to where they are being boarded. I also find the cost of boarding to be reasonable.

## **ORDER**

133. I order that the Appellant pay the amount of **\$3,366.68** to the Society as the reasonable costs incurred by the Society with respect to the animals.

Dated at Victoria, British Columbia this 1<sup>st</sup> day of March, 2016

## **BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**



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Corey Van't Haaff, Presiding Member