

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 42 HORSES, 4 DOGS,
4 PIGS, 3 SHEEP AND 1 GOAT

BETWEEN:

CARLA CHRISTMAN

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

DECISION

Appearances:

For The British Columbia Farm Industry
Review Board

Al Sakalauskas, Presiding Member
Dennis Lapierre, Member
Pawan Joshi, Member

For the Appellant

Self represented

For the Respondent

Chris Rhone, Counsel

Date of Hearing

May 13-14, 2019

Place of Hearing

Teleconference

I Introduction

1. The Appellant, Carla Christman, is a third generation rancher who until recently lived with her daughter and grandchildren on a ranch near Vernon, BC. She is appealing the April 11, 2019 review decision of the British Columbia Society for the Prevention of Cruelty to Animals (Society) pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (*PCAA*) to uphold the seizure and not return 42 horses, four dogs, four pigs, three sheep and one goat (Animals).
2. On this appeal, the panel must decide: (a) whether the Animals were in distress or (b) straying at the time of seizure and, (c) whether any or all of the Animals should be returned to the Appellant and if so, under what conditions and if not, to permit the society, in its discretion to destroy, sell or otherwise dispose of the animals. The Appellant in this case is seeking the return of all the seized Animals.
3. The Appellant represented herself, testified and called five other witnesses including her veterinarian. Through its counsel, the Society called three witnesses: the veterinarian who examined the horses following the seizure, the veterinarian who examined the deceased pigs prior to the seizure and the investigating special police constable (SPC) who had contact with the Appellant before, during and after the seizure. The hearing was heard over two long days and was recorded.
4. For the reasons outlined below, the panel orders that the Society be permitted, in its discretion, to destroy, sell, or otherwise dispose of the horses, including any foals born while in custody, the four pigs, the three sheep and the goat. The four dogs are to be returned to the Appellant upon certain conditions being met within a prescribed timeframe.
5. The Society sought to recover costs in the amount of **\$64,647.71**. The panel has decided that the Appellant is liable for those costs in their entirety incurred by the Society while caring for the Animals while in custody. As a pre-condition to the return of the four dogs, the Appellant is to pay the Society the sum of **\$4,580.40** within two days of the date of this decision, failing which the Society will be permitted, in its discretion, to destroy, sell, or otherwise dispose of the dogs.

II Pre-hearing matters

6. On April 16, 2019, the Appellant requested “leave” or an “extension” to file a judicial review of the Society’s decision. The Executive Director of BCFIRB responded that same day advising of the amendments to the *PCAA* and explaining that if the Appellant wished to challenge the society’s decision it would be through an appeal to BCFIRB.

7. On April 23, 2019, the Appellant requested that BCFIRB retain a neutral veterinarian, a pathologist, an agrologist and a nutritionist. This request was denied by the presiding member in letters dated April 30, and May 3, 2019 as he concluded that while section 20.5 of the *PCAA* allows BCFIRB to address any information gaps it may have before making a final decision in the best interest of the animals, it is the role of parties in the first instance to provide the evidence needed to demonstrate whether the animals were in distress and whether it is in the best interest of the animals to be returned.
8. On April 24, 2019, the Appellant applied for an adjournment on the grounds of late document disclosure by the Society (by one day) and to allow her to seek judicial review of the Information to Obtain a Search Warrant (ITO) and challenge the seizure. This application was dismissed with written reasons on April 30, 2019.
9. On April 30, 2019, the Appellant applied to refer certain legal and constitutional questions to the Supreme Court, which application was dismissed with written reasons dated May 9, 2019.
10. On April 30, 2019, the Appellant applied for further document disclosure; the presiding member provided further directions on May 6, 2019.
11. On May 6, 2019, the Appellant advised BCFIRB that she intended to call 49 witnesses many of whom were identified as adverse, and some of whom required summonses. In response to this request, the panel convened a pre-hearing conference call on May 8, 2019 to hear from the Appellant and the Society on the relevance of the identified witnesses to the subject matter of the hearing. On May 9, 2019, the panel issued further process directions concluding it was unnecessary to hear from the vast majority of the identified witnesses (veterinarians who had not seen or treated the Animals, police officers and attending society employees) as they had little relevant information on the issues before the panel and/or it was not proportional to call them in light of the other witnesses attending. The panel concluded it was not necessary to hear from representatives from four producer associations or the Ontario Land Owners Association. The panel decided that the Appellant and her daughter could testify along with their vet and four other witnesses with knowledge of the events leading up to the seizure.
12. The Appellant alleged that the Society wrongfully relied on complaints that had arisen out of a social media campaign regarding her care of the horses as the basis for their decision to investigate and ultimately seize her animals. She wanted to call these complainants to prove they were lying. The motivations of complainants making reports, the Society's reliance on those reports or the possible impact of any social media campaign are not relevant to the panel. The panel repeatedly advised the Appellant that the focus on this

appeal would be on the observations of those persons in attendance leading up to, and at the time of, the seizure and whether, based on that evidence, the Society made a reasonable determination that the animals were in distress at the time of their seizure.

13. The Appellant also argued that she was not provided with a full disclosure of documents from the Society in a timely fashion and that the tight time frames were procedurally unfair. The Society disputed this, saying it provided all documents in its possession, and attempted to obtain further documents from third parties as requested by the Appellant (which the Appellant could have taken steps to obtain herself). At times during the hearing, the Appellant denied having received documents but the panel was able to confirm that the documents were delivered and how. We are satisfied that the Society made adequate disclosure in this appeal. If anything, the party that was prejudiced by lack of disclosure was the Society as the Appellant sought and the panel, somewhat reluctantly, granted extensions to file her initial disclosure as well as her final disclosure with the result that the Society was receiving the Appellant's documents right up until lunch time of the work day prior to the hearing.

Warrant and Pending Charges

14. At the outset of the hearing, the Society advised that an unendorsed warrant had been issued and criminal charges approved for the Appellant and her daughter; part of the warrant includes a ban on owning animals. The Society asked the panel to consider dismissing the appeal at its outset given that such a ban would render any consideration by the panel of the return of the Animals moot.
15. The panel ruled that a criminal court order prohibiting an appellant from possessing animals does not prevent a panel from considering the validity of the seizure and whether it is in the best interests of the animals to be returned. The Appellant indicated her intention to speak to the bail conditions and have them modified. In the circumstances, the panel advised the parties it would proceed with the hearing and issue whatever order we consider necessary and appropriate under s. 20.6 of the *PCAA*. The implications of any order we may issue on this appeal on a court order are discussed in *Havelock v BCSPCA* (March 20, 2015), paras. 130 – 131.

The Appellant

16. This was a challenging hearing. While the Appellant appeared knowledgeable about animal nutrition and husbandry, she was often emotional, argumentative and loud, talking over top of witnesses and the panel. She did not listen well to the objections of counsel or the panel's rulings and had a difficult time framing questions without trying to give evidence. She would disagree or argue with witnesses, including expert witnesses. Many of her areas of questioning were unhelpful to the panel but it was difficult to get her to focus on the relevant issues. The Appellant often strayed into argument in her evidence and

questioning; her closing submissions referenced new evidence not given in the hearing. Despite these challenges, the panel's focus has been on determining whether the seizure was valid or whether the animals ought to be returned.

17. The Appellant submitted many photographs, videos and documents, a good portion of which were not referred to in the hearing. The panel assured the Appellant that we would review those materials in our deliberations and we did so.
18. The Appellant repeatedly expressed concern about the fairness of the process and the fact that she is not a lawyer nor did she have access to one. However, BCFIRB took the unusual step of allowing two days to hear this appeal and did its best to accommodate the appearances of witnesses. It should be noted that, except on very rare occasions, these hearings are conducted in one day, even where there are multiple witnesses. This reflects the underlying policy that while *PCAA* appeals must be fair, they must also be disciplined. BCFIRB appeals proceed on tight timelines and parties must focus on the relevant issues in order to minimize the ongoing care costs associated with animals in custody. We are satisfied that the Appellant received ample opportunity to present her case. Unfortunately, in our view the Appellant did not make the best use of her time.
19. We have reviewed all of the material submitted in these proceedings including the Appellant's 302 page initial written submission, her 67 page final disclosure, including the videos submitted, as well as the closing submissions of the Society and the Appellant dated May 16, 17 and 21, 2019. We wish to expressly note that we have carefully considered all of the evidence and submissions, even though we do not intend to refer to all of it in the course of this decision.

III Material Submitted on this Appeal

- a) BCSPCA April 11, 2019 Decision (**Exhibit 1**)
- b) Appellant April 12, 2019 Notice of Appeal (**Exhibit 2**)
- c) BCFIRB April 15, 2019 Notice of Appeal (NOA) process letter (**Exhibit 3**)
- d) BCSPCA initial disclosure (Tabs 1-40) (April 24, 2019 by email and courier) (**Exhibit 4**)
- e) BCSPCA disclosure (Tabs 41-43) (April 29, 2019 by email and courier) (**Exhibit 5**)
- f) BCSPCA disclosure (Tabs 2, 17, 29 & 38) (video & audio) (April 29, 2019 by email and courier) (**Exhibit 6**)
- g) BCSPCA disclosure (Tabs 44-65) (May 8, 2019 by email and courier) (**Exhibit 7**)
- h) BCSPCA disclosure (Tab 60) (RCMP audio & video) (May 8 by courier) (**Exhibit 8**)

- i) Appellant initial document disclosure (pages 1 to 302) (emailed May 7, 2019) **(Exhibit 9)**
- j) Written Submissions of BCSPCA (May 8, 2019 by email and by courier) **(Exhibit 10)**
- k) Affidavit #1 of Marcie Moriarty (May 8, 2019 by email and courier) **(Exhibit 11)**
- l) BCSPCA Witness contact form for SPC Ross Taylor (May 8, 2019 by email and courier) **(Exhibit 12)**
- m) BCSPCA Expert Witness contact form for Dr. Britt Mills and Brian McOnie (May 8, 2019 by email and courier) **(Exhibit 13)**
- n) BCSPCA further disclosure (Tab 66 - 70) (May 9, 2019 by email) **(Exhibit 14)**
- o) Appellant final reply submission (pages 1 to 67) (May 10, 2019 by email) **(Exhibit 15)**
- p) Appellant witness list forms (May 10, 2019 by email) **(Exhibit 16)**

IV Overview

- 20. The Appellant has lived on her ranch near Vernon since 1972. She raises livestock; pigs, cattle, horses, goats and sheep and sells horses. The Appellant is disabled and while she can walk short distances, she uses a wheel chair; she is assisted by her daughter and two hired helpers.
- 21. The Appellant has a history with the Society going back to 2007. The Society's document disclosure includes records of over 40 complaints regarding the Appellant, her property and the state of her animals. We reviewed these complaints and observe they include allegations of starving animals (especially horses); animal carcasses on the property accessible to other animals; indiscriminate breeding of animals including horses and dogs; broken fencing, debris, and hazards accessible to animals; and lack of adequate food, shelter, and water.
- 22. In 2009, the Society seized 39 dogs, 28 horses, four cats, one pig and one llama from the Appellant. She judicially reviewed the Society's decision to seize and not return her animals and the reasons for judgement in *Christman v. BCSPCA*, (24 March 2010), Vernon Registry 45121 (B.C.S.C.) formed part of the Society's disclosure in these proceedings. In that case, 73 animals were seized due to various issues causing distress including unacceptable Body Condition Scores ("BCS") of horses; mouldy hay, lack of veterinary care, garbage and hazardous debris accessible to animals, animal carcasses on the property, inadequate provision of food, water, and shelter; and inadequate compliance with Society notices and orders. The Court upheld the decision to seize the animals and confirmed the Society's decision not to return the animals with the exception of one pig.

23. As a result of the Society's 2009 investigation, in 2012 the Appellant was charged and pled guilty to animal cruelty charges and was placed on a probation order restricting the appellant's care and control of animals.

Events Leading Up to Seizure

24. The Appellant's ranch shares a common fence line with the Okanagan Indian Band (OIB). Over the past three years, there have been several instances where OIB cattle broke through the fence entering the Appellant's land and instances where her animals escaped to OIB land. In 2017, the OIB rebuilt an entire portion of the fence and the cattle broke through again in 2018. In July 2018, a domestic incident resulted in a truck being driven into and destroying 6 sections of the Appellant's fence. The fence remained unrepaired for a period of weeks; the exact number is unclear. Some of the Appellant's horses and cattle escaped, some were recovered. The Appellant was not allowed to trespass onto OIB land to retrieve the rest of her livestock.
25. On October 12, 2018, the Appellant received a registered letter explaining that the OIB had seized her horses and shipped them to auction in Kamloops. They sought compensation for capture, transport and boarding of 34 horses. The Appellant tried to negotiate a resolution with the OIB but was unsuccessful. According to a letter dated November 13, 2018 from the OIB, the horses were dropped off on Crown range approximately 26 km from Highway 97 on Pinaus Lake Road on the way back from the Kamloops auction. The letter included a map of the drop-off location.
26. Over the course of the winter, the Appellant was able to retrieve 32 horses in 6 groups: two groups at the end of November, four groups in December and a final group of two horses on January 15, 2019. The horses arrived home in varying states of health.
27. The Society began receiving complaints about the condition of the horses in December 2018. On December 4, 2018, responding to a complaint from the public, SPC Taylor attended the property unannounced to meet with the Appellant and review the property and animals. At that time, SPC Taylor observed approximately 30 horses all appearing to be in adequate condition. Seven horses were still lost on OIB land and were in the process of being located.
28. The Society received more complaints from the public in January and February about horses eating plastic bale wrapping, no hay visible, poorly kept pigs (7-8) being fed dog food with some injured or cannibalized, horses in poor condition, in mud, without shelter, and not being fed or watered properly.
29. Between February 12, 2019 and March 15, 2019, the Society continued to receive complaints about the conditions of the animals and SPC Taylor attended five times to view

the condition of the property, the animals and provide verbal instructions to the Appellant and her daughter.

30. On February 27, 2019, SPC Taylor attended the property with RCMP officers to follow-up on his verbal notice of February 12, 2019 and issued written Notices requiring the Appellant and her daughter to provide immediate access to drinking water, sufficient quantity and quality of food at all times, ensure food and water containers were clean and disinfected, provide necessary veterinary care and shelter that ensures protection from heat, cold and dampness within 24 hours, separate animals appropriately and have a veterinary check for “herd health” within 24 hours.
31. On March 1, 2019, SPC Taylor attended the property again with the RCMP and confirmed that Dr. Sheila McDonald, DVM was scheduled to attend and check on the horses. Many of the itemized deficiencies had not been addressed and minimal steps had been taken to comply with the Notices.
32. On March 14, 2019, SPC Taylor again returned to the property accompanied by RCMP and observed that the only compliance with the Notices was that the yearlings had been separated in a round pen beside the house. The mares and stallions were grouped together and hazardous material still littered the ground. Some hay was observed.
33. On March 15, 2019, the RCMP advised the Society that the Appellant’s house had been destroyed by fire. Society staff attended and noted that animals remained at the property and the Appellant and her daughter were residing elsewhere.
34. On March 18, 2019, RCMP members contacted the Society and advised that three of the pigs on the property had been discovered deceased despite being alive in the morning. Society investigators arranged for Dr. McOnie, DVM to attend the scene to examine the deceased pigs and conduct a necropsy.
35. On March 23, 2019, SPC Taylor applied for and was granted a search warrant.
36. On March 25, 2019, SPC Taylor along with other Society employees, the RCMP and Dr. Mills, DVM attended the property and seized the horses, pigs and dogs.
37. On March 26, 2019, after the initial seizure, the Society was contacted by a neighbour who reported that one goat and three sheep had escaped from the Appellant’s property. The Society attended and seized those animals.

V Review Decision

38. The Society’s review decision notes that it received almost 200 e-mails from the Appellant but found her submissions argumentative and failed to provide a plan about how she would rectify the Society’s concerns about the care of her animals. The decision states “you

would have been better served making a case for future care. As I explained to you on the phone, your submissions should concentrate on the condition of the Property where the Animals were living, your management of the Animals and the veterinary report findings”.

39. With respect to the dogs, it found that despite the fact that these were livestock protection dogs (used to being outside and getting water from creeks), the Appellant was responsible to keep them free from distress. While the veterinarian did not find any medical concerns, she concluded that the environment was unacceptable and met the definition of distress.
40. With respect to the pigs, the decision notes the deceased pigs found on the property and concludes regardless of how they died, the Appellant allowed the carcasses to remain on site, exposing the other animals to potential bacteria or infection or disease. The four live pigs that were removed were deemed to be in distress by the veterinarian as they were underweight, extremely itchy (potential lice was noted) and not being provided with an adequate living environment.
41. With respect to the horses, the review decision notes that two rotting horse carcasses were found in a barn on the Appellant’s property. While the decision did not hold the Appellant responsible for those deceased horses’ state of emaciation, it concludes that it was irresponsible to just leave the carcasses due to the risk they posed to other animals. The live horses were removed for various reasons, including inadequate and unsafe living conditions. Dr. Mills’ concluded that the basic care provided to the animals on the property was inadequate to meet their needs, characterizing the neglect as extreme and the hazards unacceptable. The decision rejects the Appellant’s excuses that many of the horses starved while on OIB land, concluding that enough time had passed since the return of the horses for there to have been more marked improvements. While the Appellant provided numerous submissions that adequate feed was provided, the decision concludes “whatever you were doing, it clearly was not enough”.
42. In considering whether it was in the best interest of the horses to be returned, the Society noted the numerous challenging events identified by the Appellant, including her home burning down and challenges related to hauling in feed due to the size of her vehicle, that impacted her abilities to provide for her animals. The Society concluded it was clear that the Appellant was unable to adequately care for the horses she had and now there were even more horses as a number of the seized horses were pregnant.
43. The goat and three sheep that were found straying were examined by a veterinarian; the goat was underweight with a lice infestation, localized dermatitis, overgrown hooves and the sheep were thin, some had matted and tangled fleece with lice present.
44. The decision concluded that it was not in the best interests of any of the Animals to be returned to the Appellant.

VI Witness Evidence

45. The evidence of SPC Ross Taylor, as outlined in the ITO (**Exhibit 4, Tab 5**) is that the Society has investigated no less than 45 separate complaints of animal cruelty and/or neglect by the Appellant and her daughter since 2007. Complainants have reported animals without food, adequate shelter, dangerous environmental conditions and lack of veterinary care. (**Exhibit 6, Tab 29**)
46. SPC Taylor visited the property on December 4, 2018 and February 12, 2019 in response to complaints. In the December visit, his primary concern was the welfare of the pigs but he was also visiting in response to the Appellant's complaints that the OIB had taken her horses and put them in distress. SPC Taylor observed an absence of feed and water, there was no dedicated trough for the pigs; he was advised the pigs were being fed primarily table scraps and dog food. He observed 20-25 horses in adequate condition.
47. On February 12, 2019, he attended with the Society's new Regional Manager and their primary concern was the horses. He observed thin foals and mares and made verbal recommendations to the Appellant and her daughter about the need for horse blankets, shelters and better feed for the estimated 49 horses. The Appellant indicated she was open to assistance from the Society as she could not afford blankets. Consistent with previous observations and the complaints, SPC Taylor saw only remnants of hay, lots of debris and garbage strewn about the property, including mechanical parts, household garbage and diapers. He sought verbal compliance with his concerns on this date.
48. SPC Taylor attended the property again on February 27, 2019 responding to more complaints. His evidence is that he would not have issued a Notice had he seen some improvements based on previous directions. Instead, he saw decreased BCS on the horses and increasing deterioration of living conditions including debris strewn about the property and poorer quality (mouldy) hay, some of which was being used as bedding. There was also an accumulation of feces in the hay. A chainsaw had to be used to break ice on the pond to access water. There was no adequate shelter for the animals and they were struggling in the -15° conditions. Stallions were amongst the mares and feed competition was observed. He walked through the herd with the Appellant but she was argumentative, disputing the BCSs of various horses.
49. The Notices issued to the Appellant and her daughter (**Exhibit 4, Tab31**) contained the following directions:
 - Provide access to clean, potable water at all times (hand written "immediately"),
 - Provide sufficient quantity of suitable food to allow for normal growth and the maintenance of normal body weight ("immediately")

- Ensure food and water containers are clean and disinfected and located as to avoid contamination by excreta,
 - Provide necessary foot, nail, hoof, horn or beak care
 - Provide shelter that ensures protection from heat, cold and dampness appropriate to the protective outer coat and condition of the animal (hand written “within 24 hours”)
 - Separate animal(s) placed with inappropriately matched cage/pasture mates (“within 24 hours”)
 - Hand written comments: Adequate hay provided at all times/every day. Herd Health check by veterinarian within 24 hours.
50. When SPC Taylor returned on March 1, 2019 to follow up on the Notice, he observed minimal compliance. Adequate shelter was not yet in place; all the horses were still together and hay was spread where there were dangerous objects including wood with nails, plastic haylage wrappers, and household garbage. A vet had not yet attended but was due that evening.
51. Returning again on March 14, 2019 with RCMP members, one of whom videotaped some of the visit and interactions (**Exhibit 6, video**), SPC Taylor observed that five yearling horses had been separated but the rest of the herd remained intermixed. A lean-to tarp shelter had been constructed. He did see adequate quality hay scattered among the debris and haylage wrappers. When he asked the Appellant’s daughter why the debris was still on the ground, she responded “they were working on it”.
52. On March 15, 2019, SPC Taylor was contacted by the RCMP and advised of the house fire. He attended at the property and observed the remnants of the house foundation; the animals were not separated and were loose on the property. Debris had not been cleaned up and there was no visible hay at 1:00 pm.
53. On March 18, 2019, he was told of dead pigs on the property by the RCMP. The Appellant suspected they had been poisoned. Dr. McOnie arrived that evening to assess the dead pigs.
54. SPC Taylor obtained the warrant on March 23, 2019 and, with the assistance of RCMP members, society employees, horse haulers and Dr. Mills, seized 42 horses, 4 dogs, and 4 pigs on March 25, 2019 (**Exhibit 4, Tab 11, Photos**).

Veterinarian Evidence

55. The Appellant’s veterinarian Dr. McDonald prepared a report dated March 11, 2019 (**Exhibit 9, pp 129-131**) and testified. She examined the Appellant’s herd of 49 horses on March 1, 2019 to assess their condition, make recommendations and offer advice on a

feeding program. She found the horses in varying degrees of body condition, with about a dozen horses showing a BCS of 5 and above, multiple animals showing a BCS between 2-4, and three showing at 1. She noted no serious injuries or illnesses except for a draining wound on one horse. She saw six or seven mares with foals and at least that many that were pregnant. She saw five round bales in two locations, scattered, and being used by cattle for bedding. Some of the hay was good; some was mouldy and of poor quality.

56. Dr. MacDonald offered detailed weaning, grouping, and feeding recommendations according to ages, state of condition, and sex of the horses, their need for clean water and access to some type of shelter. She recommended that the colts be gelded and the stallion separated from the herd (**Exhibit 9, pp129-131**). She also commented that the Appellant was able to capably body score her horses.
57. She expanded on her recommendations in her testimony stating she was concerned about the condition of the property, the cattle being with the horses, the need for horses to be separated and foals to be weaned. She was also concerned that there was not enough shelter space, that the horses needed feed in front of them at all times, and that the stallions needed gelding as any over 10 months of age were capable of impregnating mares. She was concerned about the indiscriminate breeding.
58. She confirmed she had an external parasite medication on order for the Appellant. With respect to the effectiveness of using Ivermectin for deworming, her evidence was that if worms showed up following treatment (as occurred here), the treatment might not have been strong enough.
59. Dr. MacDonald stated that the purpose of her visit was to assess the horses and she did not have prior contact with the Appellant before March 1, 2019; she did not conduct a close exam but did a herd walk-through only. Because of the Society's investigation, she conducted no follow-up as she "was out of the picture at that point".
60. Dr. McOnie provided written reports dated March 18, 2019 and April 15, 2019 and testified at the hearing. On March 15, 2019, he performed a field necropsy on the dead pigs (**Exhibit 5, Tab 41**) on the Appellant's property at the request of SPC Taylor. In his report, he noted that in addition to seeing outdoor-dwelling pigs, free-ranging dogs, some sheep and a goat and about 45 horses in various body conditions, he saw three dead and one ataxic and disoriented pig. There was no obvious source of food and water on what he described as a decrepit property, littered with garbage and debris. He described the pigs as free-range with no obvious place to be fed or housed. The lab report on tissue pathology supported his conclusion that the pigs were, in essence, suffering from lack of calories. There was significant atrophy caused by a sustained period of inadequate nutrition. In other words, he stated they were starving although the immediate cause of death was not certain.

61. Dr. McOnie was cross-examined at length on his opinion. The Appellant suggested that the deceased pigs did not have BCS of 1 relying on textbook pictures. She suggested other interpretations of the lab results and that the pathologist was influenced by field notes. Dr. McOnie's opinion was that starvation disposes animals to a range of problems and while there is no pathological explanation for the pigs death, their serious atrophy and lack of fat was terminal. The fire event may simply have pushed them over the edge.
62. In his April 15, 2019 report, Dr. McOnie noted that the four pigs seized from the Appellant and put into foster care had been administered deworming medication and showed improved condition and behaviour. His report included photos of the pigs. (**Exhibit 4, Tab 37**).
63. Dr. McOnie's examination revealed the sheep were thin and primarily in need of treatment for surface parasites and the hind feet of the goat were overgrown (**Exhibit 5, Tab 42**).
64. Dr. Mills provided two written reports (**Exhibit 4, Tab 15, Exhibit 5, Tab 63**) and testified. Consistent with her written report, she described the property as in extreme disrepair, many horses were showing a low BCS, and there were many hazards accessible to the horses. She described a property that did not seem to have adequate handling facilities for proper medical treatment. Seeing five to seven ungelded stallions in the herd, she felt no effort was being made to develop a breeding program. In her view there should only have been one stallion. She counted 15 pregnant mares.
65. In her written report, she described seeing 42 horses in a 20 acre plus field, four pigs, nine cows, four dogs, three sheep, and one goat, piles of rotting garbage, many dilapidated buildings, two sharp knives laying on the ground, and broken glass and a set of harrows in the middle of the field. There was a large dead pig near one of the outbuildings and two partly scavenged horse carcasses, extremely emaciated with very little muscle tissue, inside one of the open outbuildings. Pigs were feeding on the horse carcasses.
66. She described body condition scoring as a 1-9 evaluation (1 being the lowest) defined by an assessment of six different parts (body landmarks) of the animal best done both visually and through palpation (hands-on). She personally palpated the body landmarks of all the seized horses. Her opinion was that the horses were not being fed sufficient feed. Given that the horses came off the range in November, December and January, she expected to see improvement in their condition. Generally speaking, refeeding syndrome, a period of vulnerability for a starved horse, lasts for about two weeks during which time feed is limited to allow the body to adjust. Following that period, horses should be allowed to free feed and supplements are necessary. The fact that these horses did not gain weight is because, in her view, they were not fed sufficient food.
67. On March 27, 2019, Dr. Mills conducted a closer physical examination of the horses, identifying each horse (**Exhibit 7, Tab 44**) and the pigs. She noted in her written report

(Exhibit 4, Tab 14) and her testimony that results from blood analyses on the four horses with the lowest BCSs showed a high likelihood of parasitism. A qualitative fecal analysis of all the horses showed all had a strongyle infestation, while some of the younger horses had ascarid infestations and all were in need of a careful deworming program. Her opinion based on the lab analyses was that no adequate deworming had occurred since last year.

68. She described the majority of horses as difficult to catch and halter and that while some of the mature horses seemed trained, none of the younger ones were. Among the horses were 11 geldings, 19 mares, six stallions, and six young horses. Three had a BCS of 1, six were between 1 and 2, two were at 2, 14 were between 2 and 3, seven were at 3, and ten were over 3. Five mares were visibly pregnant. No feed was visible on the premises until the owner brought one bale in later in the day. She saw no adequate shelter and when the Appellant cross-examined her on the tarped lean-to structures seen in videos and photographs, her evidence was she did not recognize those as shelters and she felt more shelter was necessary. When questioned about the use of natural shelter (like trees), Dr. Mills felt these horses needed more.
69. In her assessment, the pigs seemed alert and their BCS was thin to moderately thin. She saw no feed for the pigs except for horse carcasses. She could not score the sheep and goat.
70. She described the four dogs as thin to moderate in condition and said they were removed because there seemed to be no food available and because they were interfering with the horse capture.
71. In her written report, Dr. Mills concluded the care provided to the animals on the property was inadequate and the degree of neglect extreme. She reiterated this view in her oral testimony. She provided photos of hazards **(Exhibit 4, Tab 15)**, and explained in detail the potential environmental and health effects of leaving carcasses and debris around. In her opinion, a severe biologically challenged environment can cause herd health issues.
72. Referring to the photos of six horses **(Exhibit 7, Tab 63)** which were fed according to her refeeding protocol after the seizure with clean, low-sugar hay, then alfalfa pellets, she indicated that the horses had made significant improvements. In a three to five week period, all horses made measurable improvements in condition and appearance. **(Exhibit 14, Tab 66)**

Lay Witnesses

73. Walter Ulansky is in his eighties and has known the Appellant for 20 years, transporting horses for her roughly a dozen times per year. He has never brought new animals in, but has trailered lots of the Appellant's animals to pasture. Of the horses he brought out of Pinaus, he says two or three were in poor shape. He was not involved in the January return but the last two groups in December were in poorer shape. On March 24, 2019 (the day

before the seizure), he removed five horses selected by the Appellant that were in good condition; he paid \$1,000.00 in total for them. He had no complaints about any of these horses; one mare had a foal. In his opinion, all but four of the horses he saw that day were in good winter condition. Concerning the condition of the ranch, he did not observe any problems describing it as a normal barnyard, muddy, and the horses looked fed. He did not see any dead horses, or horses eating feces or plastic wrappers. Mr. Ulansky says he was shocked and amazed that the Society seized every horse; he saw no reason for them to be removed.

74. Marie Van der Wilk has known the Appellant and her family for eight years. Her background includes having hauled hundreds of horses, rehoming many, and working at an auction. She has hauled horses both in and out for the Appellant, the last two being horses in terrible condition from Pinaus Lake on January 15, 2019. She returned in the first week of March to get paid and to take pictures in part to help the Appellant sell her horses. She observed one round bale of hay. In her opinion, the condition of the coats on the horses she saw eating were okay but the seven horses separated and behind the Appellant's house, were in poor condition and extremely thin.
75. She was also one of three haulers hired to transport seized horses on March 25, 2018. She loaded them from outside of the property gate and did not go onto the property. She took videos of the horses she loaded and said they handled okay given the kind of horses they were, fairly wild. She saw no hay on the property when she arrived. She did see a haylage bale with both horses and cows eating from it. In response to the Appellant's questions, she stated she was concerned about how the horses were handled and chased during the seizure. One horse was injured on barbed wire.
76. Ms. Van der Wilk did not see dead animals on the property but she did not look around. She has been to the property maybe four times. She did not think there was any value to the Appellant's herd and stated "three horses were maybe worth being paid money to own." There was risk of disease and the need for quarantine which she stated, turns people away. She kept two horses in lieu of her hauling debt of \$125.00 but paid considerably more than that on their veterinary bills. She says she "did it for the horse".
77. Carly Marchand-Jones runs a non-profit horse rescue operation. She testified that she was first contacted by the Appellant about a month prior to the seizure and asked to help get horses out of the Pinaus area. Sometime between January and February 2019, she saw a photograph of the Appellant's horse on social media with a "maybe 1" body score. The Appellant contacted her looking for a heated barn but she did not have access to one. She was concerned about getting involved with the Appellant given concerns about exposure to a contagious neurological disease which creates a challenge for placing horses. People do

not want to risk bringing disease onto their property. Ms. Marchand-Jones stated she had been to the Appellant's ranch maybe once before; only driving by, and seeing maybe five or six horses, none of which were drastically underweight.

78. On the date of the seizure, she was called by Ms. Van der Wilk to help. She was concerned with how the horses were rounded up and handled when seized. The horses were very stressed, frightened and scared. All of the horses looked underweight (BCS 1-4 at most) and all needed more food. There were half that she was not alarmed about.
79. She said the pigs were already loaded when she got there. She did not pay attention to the sheep, but was alarmed at the condition of the property. She did not see shelters; there were boards with nails, twine, and barbed wire around. She saw one round hay bale at the top of the property and in her view, there should have been five or six. She had heard about there being dead animals, but did not look for them as she did not want to see them. Her own feeding practice is to put out one whole large (round) bale of hay per every four horses but she agreed that if the bale was rolled out, more horses could be fed. In response to a question from the panel whether these horses needed rescue, her response was a good lot of them needed more assistance.

The Appellant and her Daughter

80. In her testimony Ms. Christman referenced parts of the substantial volume of written disclosure (**Exhibit 9, pp.1- 358**) and spoke to, or responded to questions asked about photos and videos from among the exhibits. (**Exhibit 8, RCMP audio and video**). She testified that she was able to recover 19 of her horses and her cattle when they escaped from her property through the broken fence. These animals were not on the range at Pinaus and were in good shape. By January 2019, when her horses had all been recovered from Pinaus, she says the horses received hay every day. She was feeding between 1500-2500 lbs of hay/day for 55 head of animals. She described feeding haylage as it was easier to digest with more protein, and alfalfa.
81. She referred to a chart she compiled (**Exhibit 15, p.64**) listing each horse by name, her BCS for horses retrieved from the Pinaus and those that had stayed on her ranch and tracked those scores over four dates: February 27, March 1, March 14, and March 25. She compared her BCSs to Dr. Mills' scores taken at or shortly after the seizure in an effort to refute Dr. Mills' assessments.
82. Ms. Christman testified at length about how she was following the recommendations of Dr. McDonald (**Exhibit 9, pp 159-161**) and Dr. Carolyn Stull, Ph.D., an expert in refeeding starved horses from California. She independently sought and received Dr. Stull's advice by e-mail (**Exhibit 9 pp 5-7**) with respect to improving the condition of the horses retrieved from Pinaus Lake. She described buying hay and haylage from a range of sources as required daily or near daily instead of stockpiling it. She stated it was easier to

bring hay in every day. She referenced some invoices for hay purchases but explained that most of her records were destroyed in the fire. (**Exhibit 9, pp 94-108**)

83. Concerning a question about how she paid for hay in 2018 to 2019, the Appellant outlined a family income of roughly \$15,000/month: \$7,700 from an Interior Health Authority care contract paid to her daughter as a care aid for her father, a disability pension of \$1,200/mo., monthly sale of firewood and logs of \$5-6,000/mo., and rental income of \$800/mo. She acknowledged that she needed to sell some of the horses because the costs were getting too high, but stated that none of the horses were given away. She sold five horses the day before the seizure.
84. While there were no foals or yearlings lost, she testified to putting down a 24 year old horse due to ringbone. She pointed out the remains (bones) in some of the photos stating “there was nothing left of her”. She says two adult mares died in February 2019. She stated she did not agree with how they were disposed of, but it being winter and not having a tractor or backhoe and with her being crippled and not able to move about much, she had few disposal options. Normally, they would put carcasses in a burial pit.
85. She took issue with the Society’s February 27, 2019 Notice stating she complied as best she could, but that some of the orders were unreasonable. As an example, she points to the order for the herd to be vet checked within 24 hours (**Exhibit 4, Tab 31**). She testified that when SPC Taylor returned March 1, 2019 for his compliance check, she showed him three workers who were working on a shelter, erecting tarps.
86. In outlining her more recent circumstances, Ms. Christman stated that on March 6, 2019, her dad died. On the evening of March 14, 2019, her home burned to the ground in an apparent arson. The Appellant, her daughter and her daughter’s two children were hospitalized from the fire and treated for smoke inhalation. She stated that despite everything, she brought in hay bales, dog food and pig feed on March 15, 2019. The dog food was placed in a pickup truck where the pigs could not get at it. She says from March 18 to March 25th, they continued to do their best under the circumstances.
87. She described her approach to raising pigs and stated they were “free-ranging”, to help avoid confinement competition. She says this explains the obvious spread of the household garbage strewn about which she indicated was a two day accumulation. She explained that they did have a garbage pit, noting it in the background in one of the photos. She said the pit would be addressed once winter was over. She denied that any animal was harmed by the garbage.
88. Ms Christman addressed the bones and debris noted in the photos and stated that they get scraps from slaughterhouses and leftovers from neighbors who did their own slaughtering. The debris was to be cleaned up by her employees.

89. Ms Christman described her plan is to bring a trailer onto the property and her longer term intention to build a log home. Water, power, the septic field are all still there and she would tear down old buildings and rebuild for the livestock.
90. She explained that she wanted the seized animals back; the dogs were their friends, the seizure of the horses was unjust, and that they have buyers for ten of the horses. They want to get down to a herd of 25 horses.
91. Chelsea Beluse-Christman is the Appellant's daughter and she testified that she is responsible for the care of the horses because her mom cannot do it. She spends quite a bit of time looking after the animals. It was her decision to put the money she earned looking after her grandfather towards the animals.
92. In her evidence about the ranch environment on the day of the seizure, she said that the horses do not go near the garbage pile. Now that it is summer they can dispose of the garbage. She had no issue with the apparent mess. When asked what the farm would look like if the animals were returned, she replied that it was already being worked on and being cleaned up. Their plan is to live in a trailer and look after the animals as always.
93. Concerning the dogs, she said the dogs were used to their freedom and had 110 acres to roam on. They are used to a whistle and respond to the command "no". The dogs usually sleep at the entrance to the house.
94. She stated she was upset with SPC Taylor, saying they (he and other officers) were impatient, arrogant, and had tried to find fault with everything they did. She was upset at the way the horses were handled during the seizure and the way they were run around. She handles horses with the use of a squeeze and a round pen and by being gentle. She has never had a problem handling or deworming her horses, though she acknowledges some horses are troublesome. She will be training them if they have the time. It was her understanding at the time of the seizure that the society was only going to take the skinny horses but then decided to take them all.

VII Analysis

A Were the Animals in Distress?

95. The first issue for the panel to consider is whether the Animals were in distress at the time of the seizure. The definition of "distress" found in s. 1(2) must be read together with s. 11 of the *PCAA*:

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.

11 If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal

- (a) does not promptly take steps that will relieve its distress, or
- (b) cannot be found immediately and informed of the animal's distress,

the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

96. The Appellant's main argument is that none of the animals seized were in distress. She denied harming or neglecting her animals. She says the carcasses of the two horses found dead on the property died of natural causes; they came off Pinaus very thin, could not thermo-regulate and died. She denies starving her horses and says they came home in a starved state (as a result of the actions of others). She claims the horses had adequate feed and that she had sought and followed veterinary advice on their refeeding. She says she dewormed her horses and provided shelter. She argues that the pigs were not in distress and the reason they were seized was because of the pigs that died. She says those pigs did not die of starvation and their cause of death is unknown. The pigs that were seized have recovered. She says the dogs were not in distress either and the reason they were removed and seized was because they interfered with the rounding up of the horses.
97. We have considered the evidence and observe that some witnesses were less alarmed at the condition of the horses than others. Walter Ulansky was the least alarmed, saying the horses looked okay for the time of year and the barnyard looked typical to him. His opinion was in sharp contrast to that of others. SPC Taylor, Ms. Marchand-Jones, Dr. McOnie, Dr. Mills, (to some extent acknowledged by the Appellant and her daughter), at the date of seizure described the property as extremely unsanitary and hazardous. The photos and video evidence depicts the many hazards referred to in the witnesses' testimony including a significant volume of household waste, diapers, garbage, food and other assorted containers on the ground, hazards on the ground near the livestock; chain harrows, knives, metal panels, haylage wrappers, boards with nails, barbed wire and paper litter, fuel tanks, apparently broken down trucks partially disassembled, baling twine, and animal bones. There was also a downed metal panel covering a dead pig and scavenged horse carcasses in an open building. The extent of the mess was upsetting to some of the witnesses.

98. There are minor differences of opinion between Dr. McDonald and Dr. Mills about the condition of the horses when examined. Similarly, there are differences of opinion between Dr. Mills and the Appellant on the BCS of each horse. But there was little dispute that many of the horses were in very poor condition when viewed and examined and were in need of special care and treatment. Given that Dr. McDonald made her assessments based on a one time walk-through of the herd 24 days before the seizure and Dr. Mills performed a detailed hands-on examination shortly after the seizure, the panel places more weight on Dr. Mills' assessment of the horses' distressed condition at the time of seizure.
99. The Appellant provided her own BCS but offered no evidence as to how she made her assessments. Given Dr. Mills' qualifications, her detailed examination of each horse, the blood work and fecal sampling, the panel prefers Dr. Mills' assessment of the distressed condition of the horses over that of the Appellant.
100. There are similarities in the evidence of Dr. McDonald and Dr. Mills about the adequacy of worming treatments the horses may have received. Dr. McDonald suggested that if evidence of worms was continuing to show up, a previous treatment may not have been adequate. Dr. Mills was more pointed, saying the evidence suggested the horses had not been treated since 2018. We prefer this evidence to that of the Appellant. While the Appellant may have undertaken a deworming program, her efforts were not enough to address the parasite issue.
101. That the Appellant sought care advice from an expert to address the needs of starving horses is commendable, especially in her efforts to obtain email advice on refeeding syndrome from Dr. Stull. We observe that Dr. Stull is not a veterinarian and was offering essentially research-based advice from some distance away. The panel also observes that it was not until the Appellant received the Notice from SPC Taylor on February 27, 2019 that she arranged for an actual visit from her vet. Unfortunately, the Appellant did not follow Dr. MacDonald's recommendations including the need to separate weak horses or to allow the horses to free feed (have food in front of them 24 hours a day).
102. Dr. Mills found the Appellant's care of her animals inadequate. She described a biologically and physically hazardous environment accessible to the animals and horses suffering serious health issues. Significantly, she stated that in her more than 30 years of experience, this was the worst situation she had ever had to deal with. Like Dr. MacDonald, Dr. Mills was very concerned that the horses were not properly separated allowing dominant horses to out compete weaker ones, making the weak ones weaker. The cattle were also competing for feed, chasing the horses away from the hay. Significantly, Dr. Mills presented before and after photographs of six horses showing the significant improvement of horses in foster care after receiving treatment under her direction.

103. Her main concern for the dogs was that they were thin and they did not appear to have any food. There was a part bag of dog food in a pickup truck with an open door but as the owners were not on site, she felt they were in unacceptable distress.
104. There was some dispute over the cause of death of the two pigs on March 15, 2019. The Appellant suggested the cause of death was related to the fire. The uncontroverted evidence of Dr. McOnie, supported by lab results, showed that while the specific cause of death might be undetermined, there was no doubt starvation was a factor. The panel prefers his evidence on this point to that of the Appellant. Further, Dr. McOnie's photographs taken April 15, 2019 of the four seized pigs showed significant improvements while in foster care. The pigs were moved from their free-ranging environment prior to the seizure, apparently rustling for table scraps, sorting through house garbage, eating some hay, and scavenging meat from dead horses, to a limited enclosure area where they were treated for worms and parasites, and fed formulated pig feed.
105. Veterinary examination of the dogs revealed no problematic abnormalities although they were described as somewhat fearful, shy, aloof, and somewhat reactive to being handled. Given that these were all livestock guardian dogs, the panel considers this behavior likely typical of the breed. According to the evidence, the dogs were seized mainly because they were agitated, chasing the horses, and otherwise interfering with the investigation. Other factors included the conditions of their environment and lack of access to food.
106. The panel concludes that from January to March 25, 2019, the Appellant's horses remained thin and worsened. While we accept her evidence that she was providing hay for her animals, the amount and quality of feed was inadequate. The horses were not able to free feed as recommended by both Dr. MacDonald and Dr. Mills. In our view, there were too many instances of witnesses attending the property observing no visible hay. On the Appellant's own evidence, they hauled in feed in the morning and the evening leaving long periods of time when the animals had no access to hay. The fact that weak horses were not properly separated made the situation worse. Significantly, in the short time since the seizure, the horses and pigs have seen significant improvement.
107. The fact that horses and pigs died of starvation and were simply left on this property cannot be ignored. Hazards and rotting carcasses remained on the property for months; shelter was lacking and inadequate for the number of horses especially weakened horses. All animals including the dogs were exposed to these hazards. These circumstances alone are sufficient for the panel to make a finding of distress. In addition, we find that the Animals have all been deprived, from time to time and on an ongoing basis, of adequate food, water, care and kept in conditions that are unsanitary. The horses, pigs, sheep and goat were deprived of veterinary treatment and the weak horses were not protected from excessive cold. The weak horses and pigs were not provided adequate shelter. Many of the horses and pigs were injured, sick, and suffering. They were neglected.

108. In these circumstances, we have no hesitation in concluding that the horses, pigs and dogs meet the definition of distress and they were properly seized.

B Were the Animals Straying?

109. The evidence was that a day after the seizure on March 25, 2019, the Society responded to a call that the Appellant's sheep and goat had escaped onto a neighbour's property. The definition of abandoned animal in the *PCAA* includes animals found straying: s. 10.1. Given that we accept the evidence that the animals were found straying, we accept that the sheep and goats were properly taken into custody.

C Return of Animals

110. Having determined that the seizures of the Animals were justified, the panel turns now to consider whether it is in their best interests to be returned to the Appellant.

111. The courts have considered the legislative framework provided by the *PCAA*. In *Eliason v BCSPCA*, 2004 BCSC 1773 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.

112. In *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.) the court explained:

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 [in] the good condition in which it was released into its owner's care.

113. The Appellant is seeking the return of all of the animals seized. She outlined her plan for caring for the horses relying on the Code of Practice for the Care and Control of Equines. She explained that she has set up a care team for the livestock including Mr. Ulansky and three other people to ensure the wellbeing of all of the animals. She says she will have a veterinarian attend quarterly to monitor animal health and Dr. McDonald will provide care for the horses. She also says that with her care team and three other local people will monitor to ensure bail conditions are met. She will follow the direction of her "Ulysses Team" made up of child caregivers, doctors, early childhood educators, therapists and elders. She says the Society is welcome to come in and ensure compliance with a member of the care team present and agrees that a Society officer could attend with her vet quarterly and the visits would be videotaped.

114. The Appellant's daughter indicated if the animals came back, everything would be tidied up. They are already working on getting water and a trailer onto the property. They would separate the animals and move the pen away from the house.

D Return of Horses and Pigs

115. The panel acknowledges that the circumstances leading up to the seizure, especially relating to the horses, were the result of a series of events over which the Appellant did not have full control. Several of her horses were seized by the OIB, when those horses escaped through a destroyed fence in July 2018. Based on her daughter's evidence, the fence remained unrepaired for a considerable period of time. While the intervening events involving the OIB may not have been the fault of the Appellant, the failure to ensure her animals remained on her property is. As a result, she lost control of her animals in the winter months and found herself in a very difficult position.
116. Despite these difficulties, the panel cannot ignore the Appellant's very troubling history and the substantial number of complaints investigated by the Society going back to 2007. There is a persistent history of animal neglect, feeding, shelter and care violations reported and investigated. Madam Justice Ker's decision in *Christman, supra* recounts an astonishingly similar set of facts and non-compliance, for example paragraphs 188 and 189:

[188] In the present case, the Society attended numerous times to Ms. Christman's property and issued orders directed to alleviate the distress of Ms. Christman's animals. Ms. Christman failed to comply with many aspects of the orders, including separation of the horses, providing sufficient feed and nutrition to improve the body condition of the animals, and ensuring adequate ventilation for the dogs. Although some horses improved slightly in the spring and early summer, the Society received further complaints about thin horses on Ms. Christman's property.

[189] In light of the lengthy history of this matter and the many orders given requiring adequate food, water, shelter, sanitary conditions, and veterinarian and farrier care, which were either not complied with or prompted only short-term improvements, the Society and its representatives was entitled to conclude that after this history Ms. Christman could not reasonably be expected to then take proper steps for the animals' care and to promptly relieve their distress: see also *Baker*.

117. At paragraph 247 she states:

[247] I accept that Ms. Christman was concerned about her animals, but it is apparent that she was simply incapable of providing such a large number of animals all with the minimal care they required. This inability, whether it was physical due to the sheer number of animals, or financial given the number of animals, or both, is apparent from the affidavits of Dr. Lemiski, the many veterinary reports of Dr. Greenwood, Dr. Scott and Dr. Foukal, the reports and notes of SPCs Price and Woodward, and the other materials included in the record, including Ms. Christman's acknowledgement to others that she had too many animals.

118. The history of complaints is summarized at paragraph 21 above. At various times, the Society's logs show directions being given to the Appellant to improve feed, shelter and water for the animals with minimal compliance. Even criminal charges and a conviction do not appear to have had much impact.
119. This appeal is yet another example of the Appellant, whether through her own physical or financial limitations, finding herself in a position where she simply cannot provide adequate care for her animals. The condition of the 19 out of 42 horses, from the time they returned to the Appellant's property, did not significantly improve while in her care and inadequate efforts were made to improve their living environment. The same applies to the pigs. Necropsies on the pigs concluded they were suffering from starvation. The four pigs that were seized were free-ranging and for the most part, inadequately fed.
120. There is sufficient evidence to suggest the Appellant, while clearly knowledgeable and conversant with animal husbandry, is simply incapable of raising and providing for her horses and pigs. While she professes a desire to reduce her herd, she has allowed indiscriminate breeding. Her daughter is supportive but her assistance has not been nearly enough. It is not really clear to the panel what the Appellant's intent is with her horses. She did not claim to be in the horse business now but does acknowledge buyers for some of her horses. There were transactions where horses were sold inexpensively and/or traded for hauling debt or feed. This seemed to be more about downsizing than a business enterprise. We did hear some mention from the Appellant that she hoped to get knee surgery and then return to training horses.
121. The problem for the Appellant is that far from being able to demonstrate to the panel that she has made sufficient improvements on her property to support a return of the horses and pigs to her care, the reality is that she no longer has a home on this property. Further, the Appellant indicated her house was not insured. Even if a trailer was to be put on the property, there work to be done in order to address the environmental hazards observed at the time of the seizure. The Appellant's history of non-compliance, the cost and amount of work required to restore this property and the lack of any real evidence of adequate financial resources to undertake the work, leads this panel to conclude that the horses and pigs should not be returned.
122. Further, based on the Appellant's unwillingness to accept that her horses and pigs were in distress and the lengths she went to try and blame others or advance other explanations for the deaths of animals and her animals condition at the time of seizure, we have little confidence that she will take the steps necessary to ensure her horses and pigs do not return to a state of distress. She has demonstrated a complete lack of insight into the reality of the conditions on her property, despite the evidence of expert witnesses and many of her own witnesses to the contrary. The panel sees and heard nothing in the evidence to provide

confidence that the Appellant is motivated or able to implement her care plan. She has been given many opportunities to improve living conditions for her livestock but was either unwilling or unable to do so in the months leading up to the seizure.

123. For the above reasons, the panel has decided that the horses and pigs should not be returned to the Appellant. We agree with the Society that “there is no viable basis upon which to conclude the animals will remain in good condition if returned to her custody.”

E Return of Sheep and Goat

124. Concerning the three sheep and one goat, the panel finds the circumstances of the sheep and goat are very similar to the circumstances of the horses and pigs. The Appellant’s lack of insight in how to raise livestock extends to these animals as well; they were kept in the same unsanitary conditions and were quite apparently being deprived of adequate care. The coat on the sheep was matted and infested with parasites. The goat had an untreated hind foot condition. While we agree these conditions are minor, we are not required to wait for the circumstances to worsen. We conclude that these animals too would return to a state of distress if returned to the Appellant’s custody

F Return of Dogs

125. We have considered the issue of the return of the dogs at length. We see the Appellant’s treatment of the dogs in a different light than that of her livestock. The dogs were not reliant on hay and as such, did not suffer in the same way as the livestock. From our review of the evidence, it appears that the primary reason the dogs were taken into custody was in large part due to the disturbance they created at the time of seizure. With respect to feeding, we acknowledge that leaving the dogs unattended with a bag of food in an old pickup truck is far from ideal. But we do accept this was a band-aid solution made by the Appellant in the aftermath of her house fire and likely made in recognition that these were livestock protection dogs and there was a need to protect the cattle while the Appellant was off property.
126. A veterinary review did not find much wrong with these dogs. The dogs were in good condition when examined and exhibited normal behavioral responses for their breed to shelter handlers. While we concluded above that the dogs were in distress as they had been left on the property (and exposed to all the hazards contained therein), we observe that Society did not remove all the livestock and the cattle remained on this property.
127. In light of the above, the panel’s decision is that the four dogs can be returned to the Appellant upon certain conditions being met to the satisfaction of the Society. These conditions include that the Appellant must pay the Society’s costs of care for the dogs before they can be returned. Second, the Appellant must clean up the property of garbage, debris and other hazards on her property to the satisfaction of the Society. On this point, the

panel notes that both the Appellant and her daughter testified that work had been done to clean up their property since the seizure on March 25, 2019. Accepting that evidence, in our view allowing two days to finalize arrangements for return of the dogs is reasonable in the circumstances. Third, the Appellant must provide access to proper food, water and shelter recognizing that these are livestock protection dogs which are used to spending long periods of time outdoors not household pets, to the satisfaction of the Society.

VIII Return Order

128. The panel has concluded that the horses (including any foals born while in the custody of the Society) and pigs were in distress, that their removal was appropriate and that it is likely and foreseeable that their living conditions would not improve and they would return to situations of distress if returned to the appellant.
129. The panel has found that the sheep and goats were straying within the meaning of s. 10(1) of the *PCAA* and their removal was appropriate
130. Consequently, and pursuant to s. 20.6(b) of the *PCAA*, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the horses, pigs, sheep and goat.
131. The panel has concluded that the four livestock protection dogs were in distress, that their removal was appropriate. However, we are satisfied that the dogs can be returned to the Appellant on or before 4:30 pm, May 31, 2019 upon the following conditions being met:
 - a) payment of the Society's care costs as set out in paragraph 141 below;
 - b) the Society's confirmation that the Appellant has taken appropriate steps to clean up the property of garbage, debris and other hazards;
 - c) the Society's confirmation that the Appellant has established appropriate feeding arrangements and shelter for the dogs until such time as she re-establishes a home on the property.
132. If the Appellant fails to meet the foregoing three conditions to the satisfaction of the Society, in accordance with the timeline set out above, the Society will be permitted, in its discretion, to destroy, sell or otherwise dispose of the four livestock protection dogs.

IX Costs

133. The May 8, 2019 affidavit of Ms Moriarty sets out an itemized account of the costs associated with providing the Animals with food, shelter, care, veterinary care and associated transport costs.

134. The Society costs are outlined as follows:
- Veterinary costs and additional invoicing (\$11,269.86)
 - SPCA time attending to seizure (\$958.65)
 - Housing, feeding and caring for animals (\$52,419.20)
 - Total: **\$64,647.71.**
135. The affidavit provides a breakdown of \$11, 269.86 in veterinary costs and supporting documents. The Society's investigation time is calculated as 7 Society staff x \$27.39/hour x 5 hours. The bulk of the costs relate to the Society's costs to house, feed and care for the Animals:
- a) Dogs: 66 days (March 25 – May 29, 2019) x \$17.35/dog x 4 dogs = \$4,580.40 (where the sum of \$17.35 per day is calculated based on food costs, staff time, kennel cleaning and feeding time and overhead costs).
 - b) Horses: 66 days x \$15.00/horse x 42 horses = \$41,580.00 (where the sum of \$15.00 includes bedding, hay and feed costs, staff time and boarding costs).
 - c) Pigs: 66 days x \$11.60/pig x 4 pigs = \$3,062.40
 - d) Sheep: 61 days x \$13.10/sheep x 3 sheep = \$2,397.30
 - e) Goat: 61 days x \$13.10/goat x 1 goat = \$799.10
136. The evidence of Ms. Moriarty is that these costs are conservative and she anticipates the actual costs to be much higher as the calculation does not take into account the actual time necessary to find adequate foster homes or to coordinate veterinary care and other care for the horses. Also she advises that owners do not usually pay the Society the costs after animals are returned and the cost to pursue collection outweighs possible recovery.
137. The Society, relies on an earlier decision in *Tsin v BCSPCA* (BCFIRB ,February 2, 2017) at paragraph 198:
- ... we are not prepared to interfere with the Society's right under s. 20(2) to claim some or all of its reasonable costs ... before returning the Group 1 animals to the Appellant under our Order. These animals are essentially business assets, and there are no circumstances in this case that would warrant an order stating that our order is not conditional on the payment of care costs.
138. The Society argues that should this panel order a return of any of the Animals, then consistent with *Tsin*, and as the Appellant testified that the horses were essentially business assets, the Society seeks an order that the Appellant make full payment of its costs by

certified cheque or money order within two business days of the date of the panel's return order, failing which the Society may in its discretion, destroy, sell or otherwise dispose of the Animals.

139. The Appellant disagrees with the costs claimed by the Society and says they are unreasonable. She says six weeks of feed for the Animals should be \$4500. She does not agree that the veterinary expenses were necessary and says the Society used the veterinarians to advance their investigation. She says the Society's approach to the seizure increased their expenses. They did not have a place to take the Animals on the day of the seizure and had no plan. They ended up using party tents to provide shelter at the Falkland rodeo grounds. She does not think it is reasonable that she be charged for the cost of trailering horses to Merritt.

X Costs Order

140. The panel confirms, pursuant to s. 20.6(c) of the *PCAA*, that the appellant is liable to the Society for the amount of **\$64,647.71** to the Society as the reasonable costs incurred by the Society with respect to the Animals.
141. The Appellant is directed to pay to the Society, as a pre-condition to the return of her dogs, the sum of **\$4,580.40** that being the portion of the costs of care allocated to the four dogs for the 66 days in the Society's custody.
142. If the Appellant fails to provide payment to the Society, by either certified cheque or money order on or before 4:30 pm, May 31, 2019, the Society may in its discretion, destroy, sell or otherwise dispose of the four dogs.

Dated at Victoria, British Columbia this 29th day of May, 2019

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Al Sakalauskas, Presiding Member



Dennis Lapierre, Member



Pawan Joshi, Member