

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  
COSTS

**BETWEEN:**

KENNETH MCLEOD

**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  
Carrie Manarin, Member  
Andreas Dolberg, Member

For the Appellant:

James Rempel, Counsel  
Ken McLeod

For the Respondent:

Christopher Rhone, Counsel

## INTRODUCTION

1. On July 29, 2014, this panel issued reasons for decision which dismissed Kenneth McLeod's appeal challenging the British Columbia Society for the Prevention of Cruelty to Animals' (Society) decision confirming the seizure of 96 cattle (including cows--some pregnant, bulls, a steer and calves), and reserved on the Society's assessment of the costs for which it says Mr. McLeod is liable under s. 20(1) of the *Prevention of Cruelty to Animals Act (PCAA)*:

20(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 the Act with respect to the animal.

2. At the hearing, the Society claimed total costs of \$59,988.73, pursuant to s. 20 of the *PCAA* representing \$35,097.43 for the period, March 24 – May 31, 2014 and \$24,891.30 for the period, June 1 – July 29, 2014. The majority of the claim was supported by invoices, which totalled \$41,089.78.
3. However, boarding costs have continued to accrue since May 31, 2014 and the Society is claiming a daily rate of \$460.95 per day based on the costs of care for May 2014. The boarding cost for animals (71 cattle and 28 calves) from the submitted invoices for the period May 1 to 31 inclusive was \$14,289.45, which was divided by 31 days ( $\$14,289.45/31$ ) for a per day cost of \$460.95.
4. The Society is seeking boarding costs for the 58 day period from June 1 to July 29, which was the anticipated date of BCFIRB decision (or 10 days after the July 15 hearing), in the total amount of \$26,735.10 (the panel notes that period is actually 59 days, but accepts the Society's request for 58 days). The total of the invoiced costs of \$41,089.78 for March 24 to May 31 plus the additional boarding costs from June 1 to July 29 (\$26,735.10) amounted to \$67,824.88.
5. However, the Society agreed to waive boarding costs for 17 days from May 19 to June 5, or \$7,836.15 ( $\$460.95 \times 17$  days) given the "unavoidable delays" experienced by the Society in issuing its reconsideration decision. The resulting net figure that the Society has claimed is therefore \$59,988.73 ( $\$67,824.88 - \$7,836.15$ ) for the period March 24 - July 29, 2014.
6. There was not enough time at the hearing for the parties to fully argue their positions on costs so written submissions were requested, received and reviewed.

## The Appellant's Submission

7. Both parties agree that the Society is entitled to "reasonable costs" pursuant to s. 20(1) *PCAA*, however the appellant submits that the onus is on the Society to show that the costs associated with the care of the seized animals are reasonable.
8. Mr. McLeod submitted that Tom de Waal (the rancher to whom the cattle were placed in care on April 12, 2014) was charging \$460.95 per day for the herd or  $\$460.95 \div 99 \text{ cattle} = \$4.65$  per cow per day which was greater than the second amount<sup>1</sup> charged by Iron Horse Ranch (where the animals were initially kept when they were first seized), which invoice was for \$3374 for 11 days, or \$306.74/day or 66% of what Tom de Waal is charging. Mr. McLeod submits that the Society has not provided a reasonable explanation as to why the cows needed to be moved from Iron Horse Ranch to Tom de Waal's farm.
9. Mr. McLeod relies on an unsworn statement he submitted from a resident of Quesnel, BC named Stan Hall who claims that pasture costs were \$10 - \$12 a month for a cow calf pair in the Quesnel area. Mr. McLeod submits that at this rate, the cost of feeding 99 cattle would be about \$950 - \$1140 a month. Mr. McLeod testified that when he resided in Alberta, he paid about \$4,000 for four months pasture rental for 70 cow/calf pairs, or \$14 per month per cow/calf pair.
10. Mr. McLeod also relied on a document published by the government of Alberta<sup>2</sup> and submits that market rates for pasture rental in Alberta are approximately \$20-\$30 per cow/calf pair per month. While acknowledging this was a different province, Mr. McLeod submitted that this was still in line with Stan Hall's evidence for the costs of leasing pasture in the Quesnel area.
11. Mr. McLeod submitted that as of approximately June 1, 2014, the only feed in addition to pasture that Tom de Waal was providing to the animals is some chopped hay.
12. Mr. McLeod submitted that a reasonable market rate for pasture rental is \$20/month per cow/calf pair and therefore the appropriate rate for a herd of 99 animals should be \$63.33/per day.
13. Mr. McLeod submitted that reasonable costs for June 1 to July 29 should be based on a rate of \$63.33 per day, or \$3,737 for the 59 days.

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<sup>1</sup> Iron Horse submitted two invoices with different rates, the rate of the second invoice was reduced because the Society had to hire its own help for 11 days.

<sup>2</sup> Custom Rates Survey, Crop and Pastureland Lease and Rental 2011. Alberta Agriculture and Rural Development, Economics and Competitiveness Division, Statistics and Data Development Branch.

14. Mr. McLeod also submitted that prior to the cows being on pasture, he should only be responsible for a rate that was charged by Iron Horse for the period, April 1 – 11, 2014. In other words, Mr. McLeod submits that the reasonable costs of care from April 12 - June 1, 2014 = (48 days) should be \$14,723 (or \$306.74 per day x 48 days) (the panel noted Iron Horse's unadjusted rate was \$372 per day for the herd).
15. Mr. McLeod submitted that he was grateful for the reduction of 17 days boarding costs that occurred between March 24 to July 29 however he suggested the reduction should be 28 days, as his April 29 submission to the Society for a reconsideration of its decision was met with Ms. Moriarty's response that she needed time to gather further information. This further information ended up being the letter from Tom de Waal and the second report from Dr. Green, which was not received by Mr. McLeod until May 26, 2014. Mr. McLeod suggested that the animal owner should not shoulder the financial burden for the delay and asks for an additional 11 days of costs of care to be waived.
16. Mr. McLeod submits that the Society has provided no evidence to support transportation costs for a second time, from Iron Horse to Tom de Waal, and therefore argues that this is not reasonable. He also submits that the costs associated with the first move are significantly higher than the second move. Bar K Ranch charged  $\$2069.72 + \$1386 + \$1039.50 = \$4495.22$  while an invoice for the second move was for only \$500. Mr. McLeod submitted that a reasonable cost would be  $\$500 \times 2$  (2 moves) for a total of \$1,000.
17. Mr. McLeod also submitted that there was no evidence as to unavailability of a closer veterinarian than Dr. Green (who is located in Prince George), who charged \$3/km for mileage for a total of \$663.00. He submits that a reasonable rate would have been the government mileage rate is \$0.54/km.
18. Mr. McLeod agreed that an additional amount for grain for the bulls should be included as should the hay supplement, but that a feed charge of \$4.65 per day for each cow was unreasonable compared to \$0.66 which he submits is the market rate. Mr. McLeod's evidence was that it would cost him \$1.60 to feed one animal per day when not on pasture.
19. In summary, Mr. McLeod submits that he should not have to pay costs of care above market rates unless a reason is shown. He submits that the costs claimed by the Society are excessive when compared to the income he receives as a truck driver and that fairness dictates that the Society should provide reasons why its costs are reasonable. Mr. McLeod submits that the following amounts are unreasonable and should be deducted from those requested by the Society:

20. Costs to deduct from costs sought by Society

costs on pasture	\$23,459
costs off pasture	\$7402
mileage	\$663
transportation	\$3995
further deduction regarding delay	\$4374.62
TOTAL	\$39893.62

Consequently, Mr. McLeod submits that the reasonable costs of care should be \$20,095.11 (or \$59,988.73 – \$39,893.62).

**The Society Submission**

21. The Society’s position is that for the period, March 24 – May 31, 2014 it incurred costs of care of the seized cattle in the total amount of \$41,089.78, which is supported by invoices attached as exhibits to Ms. Moriarty’s affidavit sworn June 19, 2014. The Society also submits that the costs related to feed and board continued after that date at a rate of \$460.95/day and on this basis the Society seeks \$18,898.95 for the period, June 1 – July 29, 2014 for a total of \$59,988.73 which amount it wishes to recover from the sale of the animals. The Society submits that the total amount claimed includes a deduction for boarding costs waived for 18 days (from May 19 to June 5) given delays experienced by the Society in issuing its reconsideration decision under appeal.

22. The Society submitted that its entitlement to costs is outlined in [Parkinson v. BCSPCA](#) (BCFIRB, December 10, 2013). In *Parkinson*, the BCFIRB panel explained that “[14] . . . an owner is liable only for reasonable costs incurred by the Society. If BCFIRB finds that the Society has made charges for what BCFIRB finds were not reasonable costs incurred, BCFIRB may vary the amount of costs for which an owner is liable or must pay under s. 20.”

23. The Society submitted that the animal owner, as appellant, has the onus of proving costs incurred by the Society are unreasonable. The Society submits that during the hearing, its counsel informed the appellant that SPC Goodine could speak to the invoices if the appellant took issue with them; however, the appellant declined the opportunity to question SPC Goodine on them. The Society also submits that its counsel asked Mr. de Waal (foster-rancher) who had appeared as a witness for the Society to verify his invoices, which he did and that the appellant's counsel did not cross examine him on the issue of his costs (except to the extent he explored the level of care afforded to the animals while in Mr. de Waal's custody).
24. The Society maintained that the costs it seeks to recover from the appellant are reasonable, given the large number of animals that were seized and had to be transferred from the initial ranch (Iron Horse Ranch) to Mr. de Waal's ranch (Harvest Angus). Mr. de Waal testified to the unique nature of his operations, which differ from that of other ranches in that he is able to separate a large number of seized animals from his own animals (he noted the need to separate a seized herd given issues that may exist respecting lice, disease, etc.). He explained that other ranches in the area lack this ability. He also discussed his own lengthy experience caring for cattle.
25. The Society submitted that Dr. Green, veterinarian, recommended the transfer, and underscored Mr. de Waal's unique ability to care for the animals. Attached to Ms. Moriarty's affidavit is an email from SPC Goodine to Ms. Moriarty (April 10, 2014), in which SPC Goodine explained as follows: "I have also found a specialized place to move the cows and have started transferring this week. He [Mr. de Waal] was recommended by the vet, he is very experienced and will give these cows the rehab they need. His dad's passion was 'skinny cows' and he has learned many tricks and tips to care for compromised cattle. I will sleep better at night. We have many calves and at least a dozen emaciated calves about 7.5 months pregnant. These skinny moms are NOT making enough milk for the calves and I am sure we continue to have issues associated with this. 2 calves are currently being bottle fed in foster. This is one expensive nightmare."
26. The Society submits that it understood care costs would be high but concluded it was in the animals' best interests to incur these costs to rehabilitate them while this hearing was pending.
27. The Society submitted that all of the evidence presented by the appellant concerned costs of care paid by others for healthy cattle whereas the cattle in this case, due to their extremely poor condition, required intensive monitoring, care and attention and segregation of the herd from other animals. Consequently, the Society submits that the appellant's evidence

regarding Alberta's tenant rates for pasturing are of no assistance and not a realistic indicator that the Society's costs in this case are unreasonable.

28. The Society submitted that the appellant had not compared "like with like", i.e., a rancher similarly situated to Mr. de Waal, willing and able to care for the animals at less expense than that paid by the Society.
29. The Society disputes that a further 11 days of costs should be deducted from the amount it seeks due to delays as it is the Society's position that there was no such delay in the submission process. The Society submits that Ms. Moriarty sought to act fairly towards the appellant, and to ensure she had all necessary information in hand before rendering a reconsideration decision, which took time.
30. The Society submitted that it was unnecessary to consider the appellant's micro-analysis and questioning of the other costs, such as transportation and related issues given that the costs were incurred by the Society, are supported by invoices, and the appellant refrained from cross examining the Society on the costs claimed despite having an opportunity to do so. The Society submits that the costs it incurred are reasonable and it seeks reimbursement of \$59,988.73 to be recovered from the sale of the animals.

### **Analysis and Decision**

31. Section 20 of the *PCAA* provides as follows:

- 20** (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.

32. The appellant submits that the costs for feed and boarding are not reasonable as he has found costs to lease pasture to be less expensive according to his neighbour Stan Hall, which he suggested was substantiated by the published data from Alberta. The appellant also submitted

that a different veterinarian should have been secured who lived closer to his property to reduce or eliminate travel charges.

33. The Society submits that its costs are reasonable as they are supported by invoices and the second move to the foster-rancher chosen was at the recommendation of the veterinarian. The Society submits that the appellant failed to cross-examine its witnesses on the invoices and also failed to account for the extensive care and rehabilitation needed by the seized cattle in his cost of care submissions.
34. The panel has already found (in its decision dated July 29, 2014) that the cattle seized from the appellant had suffered distress under his management and would continue to be at risk if they were returned to the appellant. The panel heard evidence that the herd was starving and an unusually large proportion of the herd was emaciated. The panel heard evidence that at the time of the seizure, the appellant had failed to get veterinary treatment for those cattle that needed it. The cattle had suffered from extremely cold temperatures, lack of water, lack of shelter, lice infestations, poor farm management especially around breeding cycles, poor quality of feed, and lack of sufficient water. The panel found that the cattle required intensive rehabilitation to be returned to good health. The panel heard that as of the date of the hearing, some bulls were continuing to get additional feed and care. The panel accepted the evidence of the Society that mother cows could not produce sufficient milk for their calves and that those calves which survived had to be bottle fed, which is a labour intensive practise. The panel also heard evidence and made a finding that the cattle had improved tremendously under the care of Mr. de Waal, according to both Mr. de Waal and the veterinarian.
35. After reviewing the parties' submissions and the Society's supporting invoices, the panel is not persuaded that any of the costs incurred by the Society during the period, March 24 – May 31, 2014, are unreasonable. The panel finds that due to the extremely poor condition of the animals at the time of seizure, they required the additional care, feed and veterinary treatment and that this would have contributed to a higher cost of care than would be the case for a healthy animal. The panel also finds that the calculations relied on by the appellant as representing a reasonable cost of care are not accurate. In particular, the appellant submits that the 2nd invoice of Iron Horse farm represents reasonable costs of care, however, the panel notes that the cost per day per animal on that invoice was reduced by \$0.50 per animal per day (as shown on the invoice) to reflect that the Society had to incur additional costs for help with the animals because the operator of the ranch was not present to do so. The first invoice submitted by Iron Horse, however, indicates that its unadjusted rate is \$4.00 per animal per day (whether a mature animal or calf) which is approximately 80% of that charged by Mr. de Waal at \$5.00 per day for a mature animal and \$3.00 per day for a calf rather than the 66% alleged by the appellant.



36. However, the panel finds that for the period, June 1 – July 29, 2014, a cost of care of \$460.95 per day for the herd of 99 animals is not reasonable. In particular, the panel finds (based on the evidence of Mr. de Waal) that 17 yearlings were put out to pasture on May 26th, 5 bulls continued to get fed pellets and chopped hay and the balance were put to pasture on June 1st. He also testified that the calves would be taken off of grower rations sometime within the week (of July 15th). However, he also noted that as of the date of the hearing, there was a shortage of grass in the pasture which required him to supplement the feed in the pasture with chopped hay.
37. The panel finds that the health of the herd has improved under the care of Mr. de Waal such that the cattle's needs and degree of care are not as great as they were for the period preceding June 1, 2014. The panel concludes this from Mr. de Waal's evidence that most of the herd has now been turned out to feed in the pasture and that this would be sufficient for their needs but for a recent shortage of grass which necessitates that he supply them with supplemental feed (i.e. chopped hay).
38. The appellant submitted that a reasonable rate should be based on market pasture rates which he submitted are \$63.33 per day for the herd and that for 58 days this would amount to \$3,737.00. However, the panel accepts Mr. de Waal's un-contradicted testimony that due to a shortage of grass, he still has to feed the cattle chopped hay and also has to provide supplemental feed to 5 bulls. Consequently, the panel finds that the amount suggested by Mr. McLeod does not account for these circumstances. Mr. McLeod also testified that his cost to provide feed to cattle when they are not in pasture was \$1.60 per animal per day which would amount to \$8,816.00. The feed costs suggested by Mr. McLeod for the period June 1 – July 29 are for feed alone and do not factor in an amount that should be paid to Mr. de Waal to compensate him for his labour and for any wages he pays to others.
39. The Society submits that the Alberta rates relied on by the appellant are not reliable for a number of reasons. The panel gave the Alberta rates no weight as they did not include care or supplemental feeding but were solely for pasture lease. While the panel may also consider the unsworn evidence of Mr. Hall as to local pasture rates, it declines to do so in this matter given that Mr. Hall did not attend the hearing to be questioned on his statement and therefore we cannot determine its reliability.
40. The panel, on its own, was left to determine the appropriate reduction in boarding costs (if any) for the period June 1 – July 29, taking into account the improved health of the herd. The Society did not provide an invoice or quote on actual boarding costs and instead used the same amount it was charged when the cattle required additional care. The appellant did not provide a reasonable estimate of the cost of boarding for the cattle considering some still needed care and that the feed still required some supplement.

41. While we appreciate that the task of determining a reduction in costs may seem arbitrary in these circumstances, we have approached this exercise from the perspective that the cost of care is comprised of both the cost of feed and the level of care required. As the herd health has improved, the need for care has decreased and, as the animals are on pasture, so too has their need for supplemental feed decreased. We have already accepted \$4.65 as the appropriate per diem for the herd for the post seizure period. Taking into account the evidence of the appellant for the cost of pasturing a healthy herd which did not include any amounts for any extra care that might be needed, and Mr. de Waal's evidence that he supplied additional feed to supplement the short supply of grass, the supplemental feed for the 5 bulls, as well as the potential for additional care the cows may require from Mr. de Waal, the panel feels that a reduction of about 25% of the boarding fees from June 1 to July 29, 2014 is fair.
42. The panel also finds that a transfer of the animals from Iron Horse ranch to Mr. de Waal's ranch was reasonable given that he was recommended as a result of his unique facilities and expertise in caring for the cattle which was considered necessary to rehabilitate these cattle. With respect to the appellant's claim that costs of transportation for the first move were significantly higher than the 2nd move, the panel does not find this unreasonable given that the first moving expense involved the costs of transporting 3 loads of cattle from the Quesnel area to the Prince George area whereas the 2nd move involved the transportation of the cattle from one ranch to another in the Prince George area. Furthermore, in the panel's view the appellant had the opportunity to question Special Constable Goodine for the Society on the transportation costs as the hearing but failed to do so and cannot now assert that the Society failed to justify these amounts.
43. Similarly, with respect to the veterinary fees (including a claim for mileage expenses), the panel also finds that the appellant had the opportunity to question not only SPC Goodine but also the veterinarian, Dr. Green, at the hearing about her expenses but failed or declined to do so. Consequently, the panel finds that it is not appropriate for the appellant to now assert that those expenses are unreasonable because the Society failed to justify why it did not select a veterinarian from Quesnel. In any event, the panel is mindful of the evidence at the hearing that Mr. McLeod himself claimed to have difficulty finding a local veterinarian that was able to attend his property on short notice when he was ordered by the Society to do so.
44. The panel also considered the appellant's argument that the costs sought by the Society should be reduced by 11 days because Ms. Moriarty delayed for that period of time before issuing her reconsideration decision. The panel does not find this delay unreasonable in the circumstances of this case, which involved the seizure and subsequent care of a large number of animals in extremely poor health. Furthermore, the panel finds (as the Society has

submitted) that as of May 31st, some of the animals still required rehabilitation, additional feed and other care and all would have required feed and board no matter whose care they were in. Consequently, the panel finds that a further reduction in the costs of care for the 11 days during which the Society took to provide its response to the appellant is not warranted.

45. In summary then, the panel finds that the costs of care claimed by the Society for the period, March 24 – May 31, 2014 in the amount of \$35,097.00 are reasonable and it confirms that amount. The panel finds that the cost of care claimed by the Society for the period, June 1 – July 29, 2014 in the amount of \$24,891.30 are not reasonable and the panel finds it fair to reduce that amount by about 25 per cent or \$6,000.00 so the amount owing for June 1 – July 19, 2014 is \$18,891.30.

### **ORDER**

46. For the reasons outlined above, the panel orders pursuant to s. 20 (1) of the *PCAA* that the appellant is liable for the reasonable costs incurred by the Society, which, in this case, total \$53,988.30.

47. The Panel finds it is not necessary to make any deduction for the proceeds of the sale of these animals as the *PCAA* already outlines the process for the appellant to claim such amounts.

Dated at Victoria, British Columbia this 21<sup>th</sup> day of August, 2014

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

**Per:**



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Corey Van't Haaff, Presiding Member



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Carrie Manarin, Member



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Andreas Dolberg, Member