

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 124 ANIMALS

BETWEEN:

JANNETTE KEEPING

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Corey Van't Haaff, Presiding Member

For the Appellant:

Jannette Keeping

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

June 6, 2016
(with written arguments June 9, 2016)

Location of Hearing:

Teleconference

I. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*).
2. The Appellant appeals both the April 25, 2016 and the May 9, 2016 review decisions issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society).

II. Brief Summary of the Current Decision Under Appeal

3. A total of 124 animals were seized from a property in Horsefly on March 15, 2016, April 26, 2016, and April 28, 2016 when they were determined to be in distress; the total number includes 23 animals born while in Society's custody and two animals that died while in Society custody.
4. Section 20.6 of the *PCAA* permits the BC Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society in its discretion to destroy, sell or otherwise dispose of the animals.
5. For reasons that will be explained in detail later, I have decided to order that the Society be permitted to keep all the animals and no animals will be returned to the Appellant.
6. I will deal with the issue of costs below.

III. The Society's Powers and Duties

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

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

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

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

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

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

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

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

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

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

IV. The Appeal Provisions

11. I am guided by the approach to appeals under the *PCAA* which is set out in detail in *A.B. v British Columbia Society for the Prevention of Cruelty to Animals*, (August 9, 2013), which decision was upheld by the Supreme Court on judicial review¹. In summary, the right of appeal to BCFIRB gives persons adversely affected by certain decisions of the Society an alternative to a more formal judicial review or judicial appeal. The reforms give BCFIRB broad evidentiary, investigation, inquiry and remedial powers upon hearing an appeal: ss. 20.5 and 20.6. The *A.B.* decision reads in part:

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

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

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

V. Preliminary Issues

12. There were three seizures (March 15, 2016, April 26, 2016, and April 28, 2016) covered by two written reviews issued by the Society (April 25, 2016 and May 9, 2016). Both the Society and the Appellant agreed that this appeal would address both review decisions. I found this to be acceptable and I dealt with all the seized animals in this decision.

13. The Appellant was unrepresented. The Appellant advised that she had no access to door-to-door delivery of documents, no ability to use the Internet (and in fact, no understanding of how to use

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

the Internet) and limited ability to drive to a postal outlet to send and pick-up documents. Nevertheless, thanks to both the Appellant's and the Society's excellent efforts (along with the able assistance of BCFIRB staff), including the personal delivery of written closing arguments by the Society to the Appellant, the exchange of documents was satisfactory. The Appellant did review the Society photos for the first time from the venue where she participated in the appeal and where she received assistance accessing the Internet and the photographs. I am satisfied that the Appellant received and had a fair opportunity in all of the circumstances to access and respond to the documents submitted in this appeal.

14. The appeal was scheduled for one day. Prior to the hearing, the Appellant applied for an order requiring four parties to be summonsed to the hearing. For the reasons outlined in my June 1, 2016 decision, I granted only one of those orders, which was an order that the Appellant's own veterinarian, Dr. Douglas Magnowski, be required to attend and give evidence. My June 1, 2016 preliminary decision letter advised the parties of the ability to re-visit that preliminary decision if the other proposed witnesses were ultimately needed. During the hearing, the issue of re-calling these witnesses did not surface and I found it was not necessary to hear from them.
15. As the hearing unfolded, testimony took longer than anticipated and the Society still had not called one of its proposed witnesses, veterinarian Dr. Ross Hawkes, as the hearing neared the end of the day. The Appellant was unable to access the hearing venue the following day (the Society said it could be available the next day) plus the Appellant said she had difficulties with her home phone service and would often be cut-off mid-call. The Society stated that it was in the circumstances content to rely on the existing record which contained Dr. Hawkes' report rather than call him as a witness. For her part, the Appellant did not object to that and did not apply to call or cross-examine Dr. Hawkes as a witness or propose any alternatives by which she might do so. The Appellant's only objection to Dr. Hawkes' reports in the record, which I have noted, was that the reports in her view contained Dr. Hawkes' assumptions and that Dr. Hawkes had spoken for Dr. Magnowski, though the Appellant did not elaborate on this. Since Dr. Magnowski did testify, was able to speak for himself, and was questioned by all parties including the Appellant, since the Appellant was given the opportunity to speak for herself, including to call into question any specific matters asserted in Dr. Hawkes' report relied on by Ms. Moriarty in her review decisions, and taking into account the evidentiary needs of the Panel and the cost implications of further hearing delays for both parties, I did not find it necessary to call Dr. Hawkes as a witness. While the evidence will be discussed further below, I will simply note here that, based on the evidence, information that was contained in Dr. Hawkes' report was corroborated by evidence the Appellant did have the opportunity to challenge - the photographs which I viewed, SPC Carla Edge's testimony regarding how thin the animals were, Dr. Brian McOnie's testimony about the thinness of animals, and Dr. Magnowski's testimony about lack of nutrition and the underweight statuses of animals, including the cattle, lambs, llamas, and horse. The Appellant herself even acknowledged that many of her animals were underweight. All this supported the statements in Dr. Hawkes' written report which detailed the low body condition scores of the cattle and sheep.
16. The parties were provided with a timeline for written closing arguments and it was agreed by the parties that the Society would go first to provide, in part, some assistance to the Appellant on what a written closing argument would look like. The Society also agreed, since it did not have an opportunity to address costs as the Appellant had, that it would address the issue of costs in its written closing arguments. Both parties did in fact produce timely written closing arguments by the deadline of Thursday, June 9, 2016.

17. As part of the first seizure, on a compassionate basis, the Society boarded the Appellant's dogs and cat on a temporary basis and has already returned those animals. The Society has requested the payment of \$200 for veterinary expenses for the compassionately boarded animals and has indicated it would include those costs in this appeal. I asked the Society to address this issue as the costs for the boarded animals were not part of this appeal, and the Society said it would do so.
18. One final and more concerning preliminary issue is that the Appellant disputed the number of animals seized, believing the number to be greater.
19. The Society stated that, as of the date of the hearing, there were 124 animals covered by this appeal including an adjustment for animals which died after seizure and animals born to seized animals while in the Society's custody. The 124 is calculated as follows:

March 15, 2016 seizure: 15 cows, 6 chickens, 6 rabbits, 22 sheep (49 animals);

April 26, 2016 seizure: 9 goats, 4 llamas, 3 pigs, 1 sheep (17 animals);

April 28, 2016 seizure: 25 chickens, 8 ducks, 2 geese, 1 horse and 1 llama (37 animals);

In addition, 10 chickens, 2 calves, 9 rabbits and 2 lambs (23 animals) were born in custody and 2 seized animals (rabbits) died in custody.

20. The Appellant said that she did not document the seizures but that, by her calculation, considering the number of cows she had, the number she had sold, and the number that had died, she should have had, at the time of seizure, 16 cows; and using that same calculation she should have had 36 sheep and 38 chickens. Other than those three discrepancies, she agreed with the other animal totals.
21. The Appellant did not suggest any plausible explanation for the Society to be less than candid or accurate about the number of animals seized, especially as documenting the seizures is a key part of the Society's duties and, importantly, the Society has a significant incentive to be accurate given the care costs that it incurs when it seizes animals. SPC Edge gave evidence under oath that she personally counted all animals seized, and that at all times the seized animals were segregated from other animals at the Society so there was no chance any could have become lost. The Appellant provided no records or other evidence, beyond her own verbal calculation, to corroborate her claim that the Society in fact seized more animals than it has claimed. On the balance of probabilities, I find that the numbers as presented by the Society (124, including animals born in custody) to be accurate and for clarity, my decision covers all the animals seized in the three seizures (and referred to in the two review decisions), as well as all those animals born to the seized animals while housed with the Society pending this hearing.
22. All affidavits and witness statements, emails, photographs, and materials submitted were entered into evidence. Parties were sworn before giving oral testimony.
23. Material Admitted Into Evidence:

Appellant:

- a) Appellant Notice of Appeal (perfected on May 6th) (**Exhibit 1**)

b) Appellant's Written Submission (239 pages) and 4 audio recordings of phone messages (May 18th) **(Exhibit 2)**

c) Appellant's Written List of "Family" (7 pages) (via fax May 31st) **(Exhibit 3)**

Respondent:

d) BC SPCA document disclosure (binder) – Tabs 1-37 (via courier May 13th) **(Exhibit 4)**

e) BC SPCA document disclosure – Tabs 38-44 (via courier May 27th) **(Exhibit 5)**

f) BC SPCA written submission (27 pages) (via courier May 27th) **(Exhibit 6)**

g) Signed Affidavit of M. Moriarty dated May 26th (via courier May 27th) **(Exhibit 7)**

h) Expert Witness Contact Form (corrected) for Dr. Ross Hawkes and Dr. Brian McOnie (via courier May 27th) **(Exhibit 8)**

i) Witness Contact Form for SPC Carla Edge (via courier May 27th) **(Exhibit 9)**

j) Addendum from Dr. Hawkes (via email June 2) **(Exhibit 10)**

BCFIRB:

k) BCFIRB May 6, 2016 correspondence to parties on accepting appeal **(Exhibit 11)**

VI. The Appeal

Brief History

24. This is an exceptionally sad case. The Appellant had a considerable number of animals on her property and cared for them by herself. She had some financial constraints, could not get adequate quantities of good quality food, and at times had limited access to water. The Appellant believed that a neighbour had caused her recent difficulties by preventing the Appellant from accessing adequate feed, by causing her personal injury, and by contacting the Society. The Appellant often had to make difficult choices, including choosing to provide water to her animals by not consuming water herself. The Appellant professed a deep love for all her animals, referring to them as family. Between February 3, 2016 and March 11, 2016, the Society attended the Appellant's property several times, issuing multiple orders and finally, the Society filed an ITO (Intent to Obtain a Search Warrant) to be executed on March 15, 2016, which was granted and executed, due to the Society's opinion and belief that animals at the Appellant's property were in distress and deprived of adequate food, water, shelter, and veterinary treatment.

Society's Decision Under Appeal

25. Ms. Moriarty, the Society's chief prevention and enforcement officer, issued two review decisions. The first decision, dated April 25, 2016 and delivered to the Appellant April 26, 2016, is excerpted as follows:

"I turn now to the question as to whether or not it would be in the best interest of the Animals to be returned to you. In making any determination regarding the best interest of the Animals, I consider whether you would be able to ensure the Animals remained distress-free if they were returned. This is a duty owed by an owner pursuant to section 9.1 of the Act. I also consider the history leading up to the seizure of the Animals.

History

It is clear from reviewing this file that we have had numerous conversations with you about the various requirements and standards of care for your Animals. SPC Kokoska and SPC Edge have spent countless hours discussing the various Code of Practice with you, walking your Property, viewing your Animals and going over what needs to be done to ensure that Animals in your care are free from distress. In fact, in reviewing the ITO, I would argue that we gave you more time than what normally would have been provided to an animal owner to address the significant welfare concerns on your Property. There is no doubt in my mind that you have been given every opportunity to relieve the distress of the Animals in your care, but that you are either unable or unwilling to do so. Given your heartfelt submissions and in speaking with the constables, I would conclude that it is not that you are unwilling, but rather that you are unable to either understand how to comply with the requirements or you are simply unable to comply. The reality is that whether you intended to or not, your Animals met the definition of distress when they were removed as they were deprived of adequate care, veterinary treatment and housing, among other things.

Condition of the Animals at Seizure

The veterinary report of Dr. Hawkes goes into detail regarding the health of the cows and sheep that came into our custody. In addition, Dr. Hawkes had been consulted on two previous occasions prior to the warrant regarding two animals that you owned that ended up being in such poor condition that they were deemed to meet the definition of critical distress and had to be euthanized. In making my decision, I rely on the entire report, but for the purposes of this decision I will only refer to some key comments. In summarizing his findings Dr. Hawkes states:

Physical examination and body condition scoring of the sheep seized from the Keeping residence showed on average a BCS of 1.15 while the "Sheep Code" (section 3.1) recommends a body condition score target of 35 for lambing season, which these animals have just passed through. A BCS of 1.1 represents a severe deficiency in this group of animals, and the "Sheep Code" requires that "corrective action should be taken when the body condition score for individual sheep with a score of less than 25. It is also stated that "ewe condition has a major effect on lamb development and survival." This can correlate directly with the loss of lambs within the herd this season.

Physical examination and body condition scoring of the cattle seized from the Keeping residence showed an average BCS of 25 while the "Beef Code" recommends a target body condition score of 2.5 to 3 for calving, which these animals were approaching. It also states that a producer should "take prompt corrective action to improve the body condition score of cattle with a score of 2 or less.

...Ms. Keeping acknowledged the role that poor feed has played in the problems that her animals have had recently. Despite this acknowledgement, my examination of the animals seized ...suggests that Ms. Keeping is unable to comply with repeated recommendations made by SPC Edge, SAPO Kokoska, and Dr. Magnowski that would alleviate the nutritional deficiencies present in these animals. It is my conclusion that these animals qualify as in distress as defined by the [Act]. It is my conclusion that these animals were seized for good reason. [emphasis added].

In addition to the report of Dr. Hawkes, I have taken into consideration the fact that on occasion when the constables attended your Property over these past months they have found deceased animals that would support the findings of Dr. Hawkes that you were not providing adequate nutrition for these animals.

Property

It is very clear from reading the ITO, viewing the photographs and watching the video, that the condition of your Property at the time of the warrant was woefully inadequate for housing the Animals. Problems identified included inadequate fencing, lack of proper bedding, inadequate housing, poor water source, hazards, and injurious objects. All of which contributed to the distress of the Animals. You have now had over a month since your Animals were seized to address the concerns and also to follow up on orders for animals that remained in your care. Unfortunately, the most recent inspection of your Property on April 20th showed that there were still

numerous concerns regarding the condition of your Property that would make it entirely unsuitable to send any of the Animals back to your care. In fact, the concerns are so grave that additional animals in your care could face seizure.

Conclusion

I have reviewed all of your submissions and there is no doubt that in your mind you believe that you have done everything you can for your animals. During our phone conversations, you referred to your animals as your children and family. However, it is hard for me to grapple with the very different reality that faced our constables when they have attended on your Property. I find it particularly upsetting to read the evidence pertaining to the deceased animals in various locations on the Property and ones that were in critical distress. This is not the way to treat so called "family." I appreciate that you are going through a challenging time in your life and much of your submissions have concentrated on how "other people" are responsible for the condition of your Animals. The fact remains that you are the owner and thus, you alone are responsible for keeping them free from distress.

When I asked you about your ability to financially care for these animals and also pay for costs of care (as I have a duty to inform owners that they are liable for costs during seizure), you informed me that you have thousands of dollars in a bank account and money is not an issue. If that is the case, why did you not spend that money on properly feeding and providing veterinary care and adequate housing for your Animals? I can only conclude that despite all of the advice and time invested by the constables and the veterinarians in this case to show you what the standard of care is for your Animals, you still do not comprehend the extent of the problems. Your last letter sent to me on April 16th again demonstrates this as you believe your Property is in good condition to receive the Animals and yet an inspection on April 20th paints a very different picture.

In light of all of the above, I do not feel that it is in the best interest of the Animals to be returned to you as I do not feel that you will be able to keep them free from distress pursuant to s.9.1.

I note that this decision has been somewhat delayed beyond the 28 day period allotted in the Act, however, the delay was due to your requests for more time for submissions and to work on improvements to your Property.”

26. Ms. Moriarty’s May 9, 2016 review decision said “The reasons provided in the April 26, 2016 for determining that it is not in the best interest of animals to be returned to you applies to all of the Seized Animals. In order to expedite the decision in this case, which is in the best interest of not only the Seized Animals, but of yourself due to mounting costs of care, the Society is requesting that the dispute before BCFIRB include all of the Seized Animals and not just the 48 animals mentioned in the April 26, 2016 decision.”

The Society’s Case

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

Material Submitted

28. In his April 6, 2016 written report, Dr. Hawkes reported on the condition of two animals he saw pre-seizure and documented in the summary above. Dr. Hawkes also provided his written comments on his examination of the entire sheep flock and cattle herd following the March 15, 2016 seizure. The report states, in part:

On Feb 12, 2016, SPC Edge presented a 1 year old crossbred wool sheep ram for examination at the Williams Lake Veterinary Hospital. In her report on SPCA activities pertaining to Janette Keeping, SPC Edge describes the history of the sheep, as provided by Ms. Keeping. (Appendix 1 section 6). The history was that the animal had been sick for 2 weeks and that Ms. Keeping had been supplementing it with milk replacer at a level of 2 cups per day while it had

been ill. At the time of presentation to the Veterinary Hospital, the animal was semi-comatose, laterally recumbent (laying on its side) and was groaning consistently with an expiratory grunt suggestive of pain. It had dried milk on its head, a poor haircoat with exposed skin, and a poor body condition. Its body temperature was 33.9 degrees Celsius (normal is 39.0 +/-0.5 degrees), its pulse was greater than 120 beats per minute, and its mucus membranes were pale with a skin tent suggestive of dehydration despite a normal blood Packed Cell Volume of 36%. This is all consistent with cardiovascular shock likely due to dehydration. The ram had a significant fibrous rumen fill despite being in poor body condition and being severely dehydrated. Level 3 suffering was assessed based on the SPCA Critical Distress Assessment Form and euthanasia was recommended (Appendix 2). SPC Edge authorized the humane euthanasia of the animal and requested that samples of blood be collected first for analysis by the lab. The ram was then also submitted for full necropsy by the Government of British Columbia – Animal Health Centre in Abbotsford. For full results of this necropsy please refer to the Animal Health Centre Final Report AHC Case: 16-879 (Appendix 3). A summary of the necropsy report is: the sheep was emaciated in a pattern consistent with malnutrition, and to such a degree that immunosuppression likely allowed an acute pneumonia to develop; though the emaciation alone was severe enough to result in death.

On Feb. 14, 2016 I attended to the Keeping residence in Horsefly at the request of SPC Edge to examine a bull calf that was unable to stand and to determine if it met the requirements for critical distress. The calf had originally been noticed by SAPO Kokoska on his visit to the residence on Feb 10, 2016 (Appendix 1, section 3). Ms. Keeping supplied a history for the calf as follows: One week prior she had noticed the calf was lethargic and she had brought it into the barn to monitor it more closely and to provide it with additional supplemental grain. She had been feeding it hay and a 2.84 L coffee can filled with grain twice daily. 5 days ago she had come to inspect the animal, and she noticed a chain on the ground. While pulling on the chain to move it out of the way, she managed to startle the calf, which caused him to slip and fall down onto his side after which he was then unable to rise again. Ms. Keeping put together a homemade sling which she used to support the calf in a crouched position off the ground. She was using a 5 gallon pail for water and providing a pile of hay in reach of the calf, and the calf had been producing manure and urine.

Upon inspection, the calf had slid off the back of the sling and was resting on its hind legs and rump on the ground while its front half was still suspended. There was ample water and hay available with a fresh pile of manure behind the animal suggesting that it had been eating regularly. The calf did not make any attempt to raise itself on its hind legs during my visit to the property. When the calf was removed from the sling for closer examination, the tarp which made up the bottom of the sling was soaked in urine where it had pooled. The calf's abdomen was soaked in urine and had mild urine scald on it. Manipulation of the hind limbs of the calf produced a consistent crepitation/crackling sound. The left hip also appeared to move ventrally (downward) and drop out of the socket, though it was stable with dorsal (upward) pressure that would mimic standing. When the back end of the calf was supported, it did balance for a moment on its hind legs, though its front end stayed down on the ground and it did not attempt to rise and shift its weight evenly onto its legs. A tentative diagnosis of a left hip subluxation with nutritional related weakness was made. It was assessed that the animal met all critical distress criteria, but that it may have the possibility for recovery if it was hospitalized and treated and could be further assessed at the Williams Lake Veterinary Hospital. Ms. Keeping surrendered the animal to the SPCA for further care, and the calf was transported to the Williams Lake Veterinary Hospital where it was treated with pain medications and vitamin and mineral injections based on bloodwork. The calf was bright and alert, eating and drinking, and chewing its cud, but despite being in a heavily bedded stall and being rolled over regularly to avoid pressure sores, it made no attempt to voluntarily move between the afternoon of the 14th, and the morning of the 15th. During routine manipulation to adjust the calf's position on the morning of Feb 15th, there was a very distinct and consistent bone on bone crepitation sound emanating from the pelvis. This finding was highly suggestive of a pelvic fracture which better explained the full range of clinical observations made over the previous 24 hours. In order to minimize the animal's suffering, humane euthanasia was recommended and it was authorized by SPC Edge (Appendix 4).

On March 16, 2016, I examined the sheep and cattle seized from the Keeping residence on March 15. All animals were assessed for body condition, identified with ear tags, and treated for internal and external parasites. Twenty-two sheep were examined. The average body condition was 1.1 out of 5 (1.1/5) as described in the National Farm Animal Care Council Code of Practice for the Care and Handling of Sheep (The Sheep Code) (Appendix 5). Only 2 of 22 animals reached a body condition of 2/5; all others were 1/5 meaning they had no fat covering and muscle wasting of most major muscle groups.

Examination of the cattle resulted in an average body condition score of 2/5 for the 15 animals based on the National Farm Animal Care Code of Practice for the Care and Handling of Beef Cattle (The Beef Code) (Appendix 6). With

some as low as 1/5 and the most conditioned at 3/5. Five of the cows and heifers were found to be between 180 and 240 days pregnant (gestation is typically 280 days). One of the pregnant cows was scored with a bodily condition of 1.5/5.

Opinion

The sheep that was presented for critical distress on the 12th of February was determined to be starved to the brink of death based on a necropsy by a pathologist. Based on the available history on the care of this animal, Ms. Keeping was supplementing a 1 year old sheep with Milk replacer in an effort to keep it alive. Sheep are typically weaned off milk around 60 or so days of age. An adult animal has no need for milk, and it would have difficulty attaining sufficient energy for maintenance requirements. The rumen is designed to digest available carbohydrate sources and turn them into energy for the animal. If the volume of 2 cups per day of supplemented milk replacer was correct, then this is by no means enough to provide enough energy or water to sustain life in that animal, particularly as the sheep became progressively more depressed and reduced its own voluntary intake of feed and water. The Sheep Code recommends that ewes on dry feed in the winter have 3.8 liters of water daily. These requirements would by no means be met with only a small supplemental feeding of lamb milk replacer daily.

The pelvic fracture suffered by the calf could be argued to be a highly preventable injury and could be directly linked to the conditions in which it was housed. A loose chain on the ground was the source of the surprise to the animal while Ms. Keeping was attempting to move it. It was this surprise which caused the calf to startle and lose its footing, resulting in the fall and injury. Following this injury, despite Ms. Keeping's substantial efforts to support the animal in the intervening 5 days prior to the critical distress examination on the 14th of February; no veterinary attention was sought for this animal, and no pain control, etc. was administered. The report provided by SPC Edge (Appendix 1, section 3) clearly states that SAPO Kokoska was told by Ms. Keeping that she suspected a broken hip in the calf.

Physical examination and body condition scoring of the sheep seized from the Keeping residence showed an average BCS of 1.1/5 while "the Sheep Code" (section 3.1) recommends a body condition score target of 3/5 for lambing season, which these animals have just passed through. A BCS of 1.1 represents a severe nutritional deficiency in this group of animals, and "The Sheep Code" requires that "corrective action should be taken when the body condition score for individual sheep with a score of less than 2/5. It is also stated that "ewe condition has a major effect on lamb development and survival." This can correlate directly with the losses of lambs within the herd this season.

Physical examination and body scoring of the cattle seized from the Keeping residence showed an average BCS of 2/5 while "The Beef Code" recommends a target body condition score of 2.5 to 3 for calving, which these animals are approaching. It also states that a producer should: "Take prompt corrective action to improve the body condition score of cattle with a score of 2 or less (out of 5)."

29. Dr. Hawkes' report also referenced SPC Edge's interactions with the Appellant where she acknowledged the role that poor feed has played in the problems that her animals have had recently. Despite this acknowledgement, Dr. Hawkes opined that his examination of the animals seized suggested that the Appellant was unable to comply with repeated recommendations made by SPC Edge, SAPO Kokoska, and Dr. Magnowski that would alleviate the nutritional deficiencies present in these animals.
30. He wrote that he concluded the animals were in distress and that the animals were seized with good reason.

Witnesses

Dr. Brian McOnie

31. Dr. Brian McOnie, a veterinarian, wrote a report dated April 29, 2016 which was submitted as part of the Society's submission. The report covered his examination of an intact male llama, three female llamas, and a herd of goats.
32. Dr. McOnie found the male llama was very thin (body condition score (BCS) 1.5 of 5) with fighting teeth present, toe nails overgrown, and not yet castrated. Dr. McOnie recommended:

“This animal should be castrated as he is not of 'stud' quality. At that time fighting teeth and feet may be trimmed. He should be shorn as his dense hair coat is matted and may contribute to heat stress in the hot Okanagan summer. A fecal sample was negative for internal parasites. Additional free choice grass-alfalfa hay may be fed until such time as his body condition score is improved to a score of 2.5 / 5 at which time it may be limit fed.”
33. Dr. McOnie found the three female llamas to be closely bonded, thin with BCS of 1.5 of 5, requiring nail trims. He recommended:

“These animals require additional feed. Access to free choice grass alfalfa hay may be fed until their body condition scores return to 2.5 out of 5. A fecal test was negative for internal parasites.”
34. Dr. McOnie found the goats (three intact males and a herd of does and kids, observed distantly) to be in good flesh with long horns beyond the limit of practical removal, and without signs of distress. He recommended:

“These animals may be grazed while grass is available and supplemented with grass alfalfa hay otherwise. The herd should be restrained more closely for examination and any buck kids should be castrated; all kids should be dehorned. A fecal sample was found to be POSITIVE for internal parasites- specifically the potentially pathogenic *Nematodirus battus*. These animals should be dewormed with fenbendazole (Panacur), once daily for three consecutive days. While restrained for deworming, any necessary hoof care may be provided at that time. Dehorning and castration will require sedation and analgesia.”
35. In his oral testimony, Dr. McOnie confirmed he wrote the April 29, 2016 report and it contained his opinions. He said 2.5 would be an ideal BCS and 1.5 was a very thin animal, less than ideal. 1 is emaciated. He said the problem with a BCS of 1.5 is it is not as urgent at this time of year but if the animals have no fat reserves and if there are further food restrictions, the animals will be additionally compromised and their BCS could precipitate their demise. Dr. McOnie said there was no cause noted for their BCS and the most likely cause was poor access to feed. Dr. McOnie saw the animals three days after seizure and did not do a hands-on assessment of the goats but that their internal parasites could be quite debilitating to young animals and the eggs produced by parasites can re-infest animals.
36. In response to questions from the Appellant, Dr. McOnie confirmed that the Strongid drug recommended by Dr. Magnowski may or may not work if only given once or if given inadequately. He said that if hay was of poor quality it could be supplemented by grain which might improve the BCS but that the critical issue is the total calories consumed. Llamas are not suited for grain diets he said and poor quality hay would affect their BCS. He also said that the horns on the rams were very large and not used for protection and his concern would be that they would get entangled in things.

37. In response to my questions, Dr. McOnie said the very large horns could become entangled or be used to hurt another animal. The length of the nails on the llamas was indicative of poor management and could splay the toes as they become overgrown. They could also damage the foot pad so they must be trimmed. He noted they were not yet at the point of causing damage.
38. Dr. McOnie said the BSC was an issue as the animals headed into winter as a higher body mass was needed to regulate body temperature and more feed would be needed to maintain a “thermo neutral plan” or the animals would get cold. The BCS of 1.5 reflected that the animals were not consuming adequate calories to maintain a neutral plan and he expected them to be heavier.
39. Dr. McOnie said it was highly unlikely the animals could have been a higher BCS at seizure and deteriorated in three days to that level, even if they were tremendously ill and not eating. The animals had access to abundant food when he viewed them, so nothing suggested they were deprived of food while at the Society.
40. Dr. McOnie stated that the goat’s horns, to be removed, would require heavy sedation or general anesthesia and their removal would leave a hole toward the sinus at the base of the horn where it meets the skull. In summer in particular flies could get into the wound and lay eggs. Eventually the wound would heal but removal now is a significant procedure for the animal to go through. The horns were now in excess of two feet and with brush or wire fencing, the animal was at significant risk of entanglement.
41. In response to additional questions from the Appellant, Dr. McOnie said one ram looked like its horns had been cut at some point but all horns were much longer than what is consistent with good practice. Removal would require after care including bandage changes and pain control. Dr. McOnie explained the male llama was too small to be good stud material and had small fibre hair and thus, the absence of quality would make its offspring highly undesirable.

Special Provincial Constable Carla Edge

42. SPC Edge is a SPC appointed under the *Police Act* and is an employee of the Society.
43. SPC Edge swore an ITO on March 15, 2016 and confirmed it was true and she wrote it, and I will not repeat it all here except I will say the ITO in its entirety was assistive in my decision.
44. In the interest of time, the Society did not go through the SPC’s information in detail, deferring instead to the Appellant’s and my questions. The Appellant agreed I should ask my questions first. My questions were about the photographs and the Appellant was able to view the photos at the same time I was asking about them.
45. Regarding the calf in the sling, SPC Edge testified that it was a good solution initially as it immobilized the calf but the sling construction was not supportive and the calf slipped and had urine scalding on its belly. On February 12, 2016 SPC Edge issued a 24-hour notice for the calf to see a veterinarian and on February 13, 2016 no such visit had occurred so on February 14, 2016 Dr. Hawkes attended at SPC Edge’s request. Two days earlier he had seen a sheep which was severely starved.

46. SPC Edge confirmed that she personally counted all animals seized and at all times, the seized animals were segregated from other animals at the Society so there was no chance any could have become lost.
47. SPC Edge responded to my questions about specific photos in Exhibit 4, what the photos were of and her impression of the subject matter of those photos. The paragraphs that follow summarize her evidence.
48. On review of page 3, photo 2, the three pigs had to climb over debris (injurious objects that were hazardous to them) to get to a piece of carpet where they could rest. The pig area was open to the elements at both ends and the roof was not complete. There were exposed nails and the amount of space was insufficient. SPC gave evidence that pigs in a communal setting need more room and while the pigs could turn around, they couldn't turn without climbing over or maneuvering around the debris.
49. Page 5, photo 5, showed three dead sheep exactly where SPC Edge found them. Their body condition suggested medical issues. They were underweight with significant hair loss.
50. Page 6, photo 7, showed an unacceptable food source (bread) which was processed for human consumption and can be fed to some animals but is not recommended.
51. Page 6, photo 8, showed the hay the Appellant had purchased which she believed contained toxins. A sample was tested and indicated no toxicity.
52. Page 8, photo 12, showed an underweight horse eating cracked barley with no hay or forage available.
53. Page 10, photo 15, showed the inside of the pig barn which was wet with a wall falling down and significant pig rooting in the pallets.
54. Page 11, photo 17 showed wire cages with significant build-up of feces and not enough room and not the appropriate number of animals for the size of cage. The rabbits were thin and there was no food in the cages. There was open grating at the bottom of the cages and one wall and roof was the only barrier to the elements. There was no bedding and insufficient protection from weather.
55. Page 11, photo 18, was unacceptable chicken housing with no bedding. It was open to the elements with chickens walking on open wire cages without perches, all being poor for their feet.
56. Page 15, photo 25, showed 5 cows with hips and spines evident.
57. Page 16, photo 27, showed cows with hips, spines, and tails heads very prominent indicating they were not eating enough food. Two were not as thin as the rest but their hips and spines were also showing. There was no food available to them 24/7 which Dr. Magnowski said was required.
58. Page 18, photo 31, showed the long horns on the rams plus the animals were standing on boards that were supposed to be containing them. There was sharp metal jagged roofing at eye level.
59. Page 20, photo 36, showed rattleweed in the hay.

60. Page 26, photo 48, showed a male rooster and chicks. The rooster had a severely injured foot likely from frostbite or bumble foot due to mites. Its spurs were incredibly long. The rooster's feet were in horrific condition and there is no way to repair feet as you can treat mites but cannot grow a toe. The birds did not have perches to strengthen their feet.
61. Page 29, photo 54, showed another rooster with the same foot situation.
62. Page 32, photo 60, showed hens confined to a dirty cage with dirt and feces on the bottom and sides and mites on their feet (causing the scales and lumps).
63. Page 35, photo 65, showed a rabbit with matting on the belly, long claws and underweight even though it looked rotund due to its fur. The build-up of feces discoloured its feet and it was confined in its own urine and feces.
64. Page 56, photo 2286, showed a very skinny sheep where you could see its spine. Its coat was in rough condition. It had shed its coat in an odd pattern and it was very skinny. There were feces built up inside the barn that wasn't dealt with and the animals needed fresh bedding.
65. Page 65, bottom photo, showed a sheep in critical distress covered with a blanket.
66. Page 68, photos 110034 and 110041, showed the sling design which was not supporting the calf properly as the calf was partially sitting out of the sling.
67. Page 70, photo 111554, showed Dr. Hawkes with the slinged calf and its spine was evident and it was very underweight.
68. Page 74, photo 98, showed a dead goat that had recently died in the mudroom.
69. Page 74 photo 99 showed dead goats in the mud room which were very underweight.
70. Page 116, photo 193, showed a sheep in the barn that was skinny with odd hair loss.
71. Page 121, photo 202, showed the ammonia test strip the Society used to test ammonia levels, which indicated a range of 20 – 50 ppm which was a very poor reading. Humans are affected at 2 ppm and animals are more sensitive to smell. The barn smelled very much for the short time SPC Edge was inside.
72. Page 122, photo 204, showed a goat with significant hair loss and open wounds and malnutrition housed in an area where the animal could be injured easily.
73. Page 126, photo 212, showed the hip bones of the sheep sticking out which was not normal and blotchy hair loss.
74. SPC Edge testified that the llamas got thinner and thinner, and she could see the deterioration, from February 12, 2016 to the day of seizure.

75. Under cross-examination, SPC Edge noted that there was one photo showing that even the Appellant had cut herself coming out of the barn. SPC Edge said that the pigs were included in the seizure as the condition of their housing was poor. SPC Edge acknowledged in photo 223 that the Appellant had changed the front of the rabbit cage by adding a board that partially covered the front of the cage but testified that this did not prevent exposure. SPC Edge also noted that the photo of Harry the oldest llama showed a dirty coat and you could see his spine. SPC Edge confirmed she originally told the Appellant she would not take the dogs, horse, or llamas, but later determined the horse and llamas were in distress.
76. SPC Edge said that on April 26 the Appellant was taken to the hospital and on April 28 the Society took the rest of the animals while the Appellant was still in the hospital. The Society was unable to catch all the cats but did leave food and water out for them in the house. SPC Edge confirmed she seized the animals as she believed them to be in distress and was not acting on anyone else's orders.
77. In response to the Society's final questions, SPC Edge confirmed that, in photo 247, the two bottles were of medicine given by Dr. Magnowski and that one bottle of medicine indicated it had barely been used.

The Appellant's Case

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

Witnesses for the Appellant

Jannette Keeping

79. The Appellant submitted that the allegations of having animals in distress resulted from a dispute with neighbors who were trying to force her from her home. The Appellant stated that she normally purchased her hay from someone for seven years, who suddenly sold her bad hay. She fed her animals grain and was unsuccessful at the time of filing her notice of appeal in finding a good source of hay. She believed the allegation is an attack on her character and her neighbors have been trying to force her out since day one. She emphasized that her animals are her life and that they are more important to her than her own wellbeing at times. She takes care of her animals before caring for herself. She submitted that she had the income to care for her animals. She has receipts for grain and had previously paid more for hay from Chetwynd so her animals would not be in distress. That receipt/invoice was dated 2007.

80. The Appellant submitted the following:

“My animals are my whole life. They give my life meaning. I was doing whatever I could to try to make sure they got as much grain as I could feed them without over-graining them: 2 ½ pounds each feeding. When they got sick I called the vet for help if I didn't know what to do. I have all the receipts. Yes I know they dropped weight due to the hay I got, so I fed them grain and bread, and turned them into the fields so they could munch on whatever they could find in the willow area. I tried to find another source of hay but had no friends or family to help me. In January I phoned everyone I knew that sells hay or buys hay when it became evident that what I was doing was not enough and was not working. When I get my animals back I know a hay broker now and will buy my winter feed from Royce Cook and know that it's safe, healthy hay.

In regards to the dangerous objects around my animals and the farm: I have moved all my farm equipment and usable wood, and metal into the fenced areas.

My barns and pens are stripped down every spring and every fall, disinfected and cleaned before the start of winter, and given a basic cleaning on a daily basis. If something requires cleaning or moving I do it immediately.

The water I get for my animals is from a creek that runs through my property. Sometimes there is sediment in this water. My house well only supplies me with 50 gallons of water per day, so my creek and rain barrels are my basic source to water for my animals at the barn. The creek is a quarter mile from my house. I water my animals with new water two times a day from the rain barrels, the creek or my house tap. My dishes and laundry get left regularly because the animals' water comes first.

My hay is stored on wood on the ground by two pen areas. This is used as dunnage to stop the hay from sitting on the ground and absorbing water and molding into the bails.

When my pig pen got wet and my pig's foot got foot rot from the moisture I moved them into my wood shed, as I cut my wood in the wood shed and the sawdust covers the floor. While I was unloading 950 kg's of grain from my truck (and other animal food from the interior of my truck), my recently purchased new boar found a piece of old, rotting carpet behind a bench and then grabbed the plastic wrapped around the grain out of the back of my truck. It was important that I unloaded the grain first before I dealt with the pig's mess. The sawdust, plastic and carpet were on the ground but there was no garbage. I removed the plastic right away. I medicated the pig's food and I gave her antibiotics to fight any infection.

Again I have to stress that my animals come first. If the weather or climate conditions are a problem for the animals then I do everything I can to make sure that they are clean, safe and healthy, and if possible, I change the conditions of the barn or area affected so that it doesn't happen again.

Yes the last year has been a hard time for me due to my [hip] operation and I had to rely on hired help. I still went out every day to feed and water my animals, and maintain the barns and areas even when I was supposed to be in bed. I did not stop what was required of me due to pain or discomfort. It might have caused me to do it a little slower and take a little more time to reach the end result.

As I have been raising animals steady for the last sixteen years it has been my practice to do things right away because sure enough if I don't, something will happen that is preventable. When I drop my gates in the fall I leave one side attached and I cover the writing with wood so that when we walk over it we don't trip. I can't trip or fall without taking the change of serious injury. I leave the one far side of the fence attached so that I can find and put it back up if need be. I usually have to break through snow and ice to do so and find the wood underneath.

My rabbits were in cages in a carport-type building, with a heat lamp in the winter. The cages were three section wire cages, and two wood cages; I did not know that I could not keep pet rabbits in wire cages if they were not meat rabbits. They all had hollow logs in each cage and could chase each other around in the cages. I clean the cages on a regular basis. Due to the freezing around here I could not clean the edge of the cages when frozen, leaving some on the bottom and added new hay. Now I have built new wood cages larger and higher so they should not freeze so easily, though the heat lamp will not penetrate the wood siding.

I purchased new lights for the winter barn, installed a new floor for the chicken pen, a new gate for the summer sheep barn, added wood siding for the cattle winter shelter, purchased plywood and a window for a new door for the goats shipping container (winter shelter only), repaired the snow damage all over the farm, rebuilt the rabbit cages, and will repaint the metal water trough and add an exhaust fan for the sheep barn.

I removed all unusable wood from the hay area and fenced it. I removed metal and fenced it or I fenced metal that I could not move yet. I repaired where I dropped the fence for easy access to get into my horse.

I wish to have all my family animals to come home as my farm only works because of the diversity of the cattle, sheep, goats, pigs, rabbits, chickens and lamas. They are all eyes and ears against intruders and predators and they watch out for each other. They all have their natural jobs of maintaining the eighty acres of land and treed area that I own.

I guarantee on my life and soul that I will never let what happened this year happen again. I guarantee that all issues, whether they be fact or assumptions or part of the notes not completed in regards to dangerous objects or unsafe conditions will be addressed and they will no longer be an issue. If they have not been addressed and corrected it is due to the incomplete and confusing notes taken by the SPCA. I will continue to seek vets advice when required. I will no longer medicate, bandage or use topical antibiotics without a vets advice; I will no longer buy medications to have on hand and will take my animals directly to the vet at any sign of discomfort, if that is what's required.

I did not put stitches in my horse. I told the SPCA that the horse did not need stitches and that I could fix the wounds from the wolves with the topical antibiotic.

Please return my family. I would like to address each point in your report individually but you have not given me enough time, but would like to do so in the very near future. I have a court appearance on April 20th for a broken hip and gun charges by the neighbour (the same neighbour that broke my hip September 2012, and hit my dog in July 2015). If required and more time allowed I would be happy to write a letter addressing each individual point."

81. The Appellant testified that she had immediately tried to get reimbursed for the bad hay in November and had to subsist on three turkeys and one ham for the entire winter for herself as she had to pay a higher price for hay. She testified that she put her animals before herself and would limit her own groceries and propane to put her animals first.
82. The Appellants said her rifle was confiscated so she was forced to chase wolves with a broom after they went after her horse as it was more important to protect her animals than herself.
83. The Appellant said her neighbour has tried to intimidate her and she put herself in danger to protect her sheep from his car and that when he hit her with his car, her first response was to check on her dog and sheep.
84. The Appellant said her llamas were thin, but had access to much hay and grain so must have parasites. When the sheep started giving birth to dead, blind, or weak lambs, she stopped feeding them the same amount of hay and gave them more grain as she was concerned the hay was toxic.
85. The Appellant said that she moved the pigs out when the pig barn began to flood, and administered proper care on the pig's foot: a shot of three-day penicillin. The Society showed up a short time later and then Dr. Magnowski came, and she did not want to give the pig another injection just in case the veterinarian wanted to do something else.
86. The Appellant stated that she got a new boar and was told it was not a destructive animal but it pulled up the carpet and "got into a few things". She added that when she unloaded grain the horse pulled back the plastic covering, so she moved it to the back of the property. She stated that she typically would move all the animals together for safety but had to start doing things differently after the neighbour hit her with his car in September 2012.
87. She said she is starting to make arrangements to turn an outbuilding into a second residence so she can acquire some help. She said she can maintain the feeding and taking care of animals herself but cannot care for all the fencing.
88. The Appellant said the area where the goats were kept at the time of seizure had wire fencing and they could not get their horns stuck.

89. The Appellant said her property has a creek running through it and her house gets 50 gallons of water per day so she uses that to give her animals water and if she has any left over, she uses it for laundry and clothes. She stated that last year, the water froze and she had no propane and wood was not always sufficient to keep the water flowing. She has heaters in rain barrels and electricity in the barns but the pigs pulled out the line and broke it. She put extra hay in the pen for warmth in lieu of a heat lamp.
90. The Appellant said the sheep, llama and goat barn is next to the creek so if the water container gets low and dirty at the bottom she pulls water from the creek but it contains sediment.
91. She said that she wheelbarrows the manure on a daily basis into a hollow on the property.
92. She stated that there were two nails in the barn at Dr. Hawkes' head level but he is tall and the nails are still above his head.
93. The Appellant explained that she fed the cattle four wheelbarrows of hay in winter twice a day plus grain but the hay was such poor quality this past winter she doubled the amount and tripled it on cold days, plus she was told by the feed supplier not to feed the cattle more than three pounds of grain per days or they could get sick.
94. On January 20, 2016 she said she filed a lawsuit against her neighbour.
95. The Appellant testified that on February 10, 2016, the Society came out and found two dead kittens and other dead animals and that she told the Society that the feed supplier sold her bad feed and wouldn't compensate her unless she gave them a calf for free. She told the Society that once, her power went out and she waited more than 24 hours, and she was the only one whose power went out.
96. She testified that after a large "dump of snow" when her animals were sick, she asked the Society for help to get feed for her animals to no avail. She said she managed to break through some ice to get water for her animals, breaking several bones in her hand in the process. When she could not get water for two days, she wheel-barrowed water from her home and went without any drinking water personally or toilet flushing for two days. She said she also asked for assistance from the Society when she had her hip operation but was instead told the Society would seize her animals while she was in hospital.
97. The Appellant testified that in February 2015, she could not get a hay truck into her property; she found some hay but it was unable to be delivered. Instead she got pellets and alfalfa at the feed store. She was prepared, she said, to get pellets but her animals went 1.5 weeks without pellets as she was busy dealing with the Society so her animals were still getting the bad hay and grain.
98. The Appellant tried or considered various ways to get more protein into her animals and was not concerned with her own financial crisis as she could sell three calves and go into her line of credit and also has term deposits. She stated that she purchased silage with oat hay to add to the goat and pig feed as well as for the horse and sheep and pig. She stated that all her animals relied on hay and started dropping weight at the end of January 2016.

99. The Appellant said she started bringing in day old bread to supplement her animals' feed which was "okay" to feed to her cattle, pigs, ducks, chickens and goats, but not for the llamas. All were also on grain so she had to be careful of how much bread they got.
100. The Appellant stated that she trailered in some hay but the tractor broke as she tried to force it through the snow. The snow removal people piled the snow at the front of her driveway as they are friends with her neighbour – a three-to-four foot mound of snow. The hay was ultimately put in a truck and driven into the field where the cattle were by a tree that protects them from rain, snow, and wind. They have 24-hour access to water but the cattle were not as interested in the hay as they also had silage and Timothy-hay. The cattle also had protein tubs. On the day the Society arrived, some of the food had frozen to the ground.
101. The Appellant testified that when the Society took the cattle, she had a major panic attack, and when the Society took the sheep and cattle and threatened to take other animals, she had chest pain and numbness in her arm, was hyperventilating, and couldn't stand. Her dog Natasha grabbed her arm and pulled her home and licked her.
102. The Appellant said she hugged all her animals every day and every night.
103. The Appellant said this was the first year she has had hay problems and that it will never happen again. She stated that she will never purchase local hay and will only use a hay broker. She said she purchased a tractor so she can move feed around as she doesn't want her animals hurt for any reason, especially because of anything she did. She said she has repaired her barn and she will turn the outbuilding into a second home for farm labour so if she is ever down for a period of time, there will be someone there for her. She stated that she has built new rabbit cages and has repaired things as advised by the Society. She stated that she will make sure her animals are never in distress again. She takes the situation totally on her shoulders. She will never be in this position again. She said she is a hard worker and will do anything for her animals.
104. In response to Society questions, the Appellant said she did have help when she was injured but that lady stole her painkillers and billed her for food and a hotel while the Appellant was in the hospital.
105. The Appellant stated that she originally acquired the two bales of hay at the end of October or early November. She sought reimbursement right away when it was poor quality. She did not buy more as she had paid vet bills for her own cow which was injured when the neighbour's bull "raped" it, and she thought her neighbour would reimburse her for that as it was caused by the neighbour's bull, and thus she was out of money. Because she had no money then she could not purchase more hay. Last year, hay prices went from \$45 per bale to over \$100 and the meadow hay she buys went from \$25 to \$35 a bale. She spent \$1,800 in November for 57 bales. When asked by the Society why she did not buy 80 bales as she would need, the Appellant said 57 bales were all they had.
106. The Appellant said the neighbour knocked over her fence. She said her pigs and chickens and rabbits got more heat with the extra hay she provided. She said she did not stitch up her horse's injured inner thigh from the wolf attack, but she said she applied ointment but did not call a veterinarian. When she probed and prodded to see how deep the wound was, the horse did not act like there was a problem and without any symptoms, she did not call a veterinarian.

107. The Appellant said that the building she will re-purpose as a second home just needs new siding and re-done plumbing and electrical, which she will do in the future as she doesn't want to be in this position again.
108. In response to my questions, the Appellant said she has arranged to buy hay from a broker and will pay \$115 for a bale and has \$4,000 in a term deposit and has told the broker she will need 50 – 70 bales a year.
109. I asked the Appellant why she did not notice her animals were all thin, in light of her statement that she hugged them all twice a day. She said she did not see the sheep were thin until after they calved and didn't see the llamas were thin until January 4, 2016 when they felt thin. That alerted her to check all the animals and some were a little low and that normally they were fat in the winter and they were not fat at that time. By the end of January she thought "oh my god" something is seriously wrong. Since the locals wouldn't sell her hay, she got feed store cubes and set up a line of credit but actually didn't get the cubes until a week and a half later when she purchased the cubes on February 18, 2016. She bought two tons of cubes but only brought one ton home as she said the veterinarian said one ton would last ten days. On February 28, 2016, hay was delivered so she did not pick up the second ton of cubes.
110. The Appellant testified that from October 2015 to January 2016, none of her animals were losing weight. She stated that she was not aware they were getting thin until she checked them on January 4, 2016. She fed the animals grain with the hay, and grain makes a leaner animal. The Appellant said she had copies of the pig, sheep, and cattle codes.
111. The Appellant said there was a board in the middle of the rabbit cages to hold the feces but allow the urine to drain. She did not know that it was bad to keep rabbits in wire cages.
112. The Appellant said now she has finished cleaning the sheep barn and has re-walled the pigpen and floor and cleaned up all metal outside and she said she will not do her own veterinary work but will use Dr. Magnowski as soon as she notices anything wrong.
113. She said she does not hug the llamas so that is why she didn't notice their thinness. She said she did not know in January that the cattle were thin as she thought nursing cows were supposed to be thin and only two cows were thin. The rabbits were fat. She did not notice the chickens' feet were curled up and thought, in any event, that curled-up feet were age-related.
114. The Appellant said that she will purchase a second exhaust fan as one went missing, will always keep the pond open as it freezes and will put bales of hay in different areas so the cows can always access them, even when it is freezing. She stated she will purchase hay ahead of time from the broker and make sure she has extra hay. If the veterinarian agrees, she will have a veterinary check of animals done before the winter. She has not moved forward with hiring someone and fixing the second residence as she will not proceed with that if she does not get her animals back. She plans to sell three calves and lambs, and in August and will cash a term deposit to pay the Society and use what money is left for other work.
115. Regarding costs, the Appellant disputes all costs and states that some costs are unreasonable as various treatments were already given to the animals before seizure, such as worming. The Society, she said, knew that and could have identified which animals had been previously treated as they

were tagged. She stated that some of her animals were taken without just cause such as the chickens, rabbits, goat, and some cattle and sheep. Some cattle were thin, she said, and she needed to have done better but she did the best she could and the Society didn't have to take them all and didn't have to take the pigs. The Appellant said she does have a problem paying for the animals which are being fostered and she has a problem paying for the veterinarian as he is a friend of SPC Edge. She has no evidence but her opinion is the costs are unreasonable.

Dr. Douglas Magnowski

116. Dr. Magnowski is a veterinarian licensed to practice in BC. As noted above, he was summonsed as a witness for the Appellant. Dr. Magnowski had been asked by the Society to attend the Appellant's property on February 25, 2016 to assess the animals.
117. Dr. Magnowski said that Glenda Mae, the pig, injured her foot and it was infected and was being treated with penicillin and a topical spray. He said that with the infection being in a digit of the foot, in many cases, a single dose treatment and topical sprays are not effective with this extent of infection. Coppercare, he said, was not effective with this degree of infection so the medication needed to be changed; the foot had Coppercare on it. Glenda Mae he said was housed in a lean-to off the trailer porch and it could possibly be called "a shed."
118. Dr. Magnowski said the chicken coop was loosely described as a chicken coop and had wet conditions. It was barely a chicken coop, was run-down and had some dry manure packed in areas, and could fairly be classed as in disrepair. There was a large area open to the elements.
119. He testified that the rabbit cages were in a carport in front of the pig pen. Again, he stated that it was "loosely described" as a carport where the cages were located; it was a type of lean-to. It was half full of packed manure and had very little windbreak or protection from exposure to the elements other than the fact it had a roof. The pens were dirty. He stated that rabbits need to ingest a portion of the manure to get adequate nutrition and being housed in a wire-bottomed cage was not in the animals' best interests.
120. Dr. Magnowski said the llamas were quite thin and getting poor hay but could not be caught to determine a BCS.
121. Dr. Magnowski confirmed that he had said that rattlebox weed in hay was toxic to the llamas as it can cause abortion and birth defects, with a similar concern in sheep eating rattlebox weed.
122. Dr. Magnowski confirmed he said all the things listed on page 86 of Exhibit 5 (re-produced here as follows):
 - That the lamb in the house had a possible dislocation in its leg and that it most likely happened at birth as it could not use the leg properly and stated the lamb was not suitable as a breeding male.
 - That the dogs in the house were in good condition
 - That upon examination of the bodies of the two lambs that died he noted both very skinny and had not received proper nutrition from the beginning
 - That the pig's injured foot was similar to foot rot in a cow and required veterinarian treatment
 - That the other sow had a sand crack in her right front foot
 - That the chicken coop required cleaning and a dry spot for chickens, loose metal cages and wood needed to be removed, and exposed to the elements and had no wind breaks or way to get out of the cold weather

- That the horse's body condition, using the Henneke Body Condition Scale which scores horses between 1 and 9 and is the industry standard with 1 being emaciated and 9 being obese, is a 1.5 out of 9
- That the hay currently being fed did not have any nutritional value in it including the hay recently purchased
- That the llamas by the pole barn were both quite thin
- That the downed goat in the sheep barn was very thin and required veterinary treatment
- That the cows were very thin and were basically 'skin and bones' and required having hay in front of them 24 hours a day, seven days a week. That the body conditions of the cows were rated at 1.5 out of 5 and some were 1 out of 5 and that his concern is that if it gets colder the cows will go down and die
- That Ms. Keeping needs to get good quality hay on the property and free feed it to the animals
- That Ms. Keeping needs to improve the living conditions for the rabbits, chickens and pigs
- That the llamas require consistent feed and that rattle box week is toxic to llamas and alpacas.

123. Dr. Magnowski said he discussed with the Appellant the poor prognosis of the downed goat and she elected treatment rather than euthanasia. He confirmed that his file for the Appellant goes back to 2009 and that he was not consulted frequently prior to 2016. In response to the Appellant's question about the lamb, Dr. Magnowski said that the antibiotic on the foot of the lamb was not appropriate treatment.
124. Dr. Magnowski said upon entering the sheep barn, both doors were closed even though the Appellant said one was left open for ventilation. He testified that there was definite evidence of manure and urine odour. He said did examine a cow in July 2015 with a prolapse, and he did copy those invoices for the Appellant who had asked for them to provide to a neighbour. The Appellant had expressed concern to him regarding her neighbour a number of times.
125. Dr. Magnowski said the Appellant did have a relationship with her animals that was more "pet" than "production", such as the time "Jersey Boy" was in his clinic and she kept in touch with him on an ongoing basis.
126. Dr. Magnowski confirmed for the Appellant that when assessing BCS, he does make allowances for breed characteristics.
127. In response to the Society's questions, Dr. Magnowski said he did not observe any assistance on the Appellant's farm, but added that many farmers have a variety of animals at a greater number than this without help.
128. In response to my questions, Dr Magnowski explained that rabbits eat some of their own pelleted feces as it is digested better the second time. If they are kept in wire cages, their pellets fall through and they can only eat their fresh pellets as they are expelled. The main concern, he said, was that the rabbits were not housed in a clean environment and that even if they did have access to their own fresh pellets, they still needed a warm, clean bedded area so they are not exposed to feces and ammonia in their cages. If not housed appropriately, a rabbit's risk of disease and infection is greater.
129. With respect to the downed goat, Dr. Magnowski said it needed to be isolated and not compete for food. It was in very poor shape. It was thin and had diarrhea and Dr. Magnowski spoke to the Appellant about nutrition and parasites, and made special recommendations on changes to the nutritional status of the whole farm in terms of both quality and quantity of feed.

130. The quantity of feed, he said, was extremely inadequate, and he gave guidelines on the number of animals and volume of hay. The Appellant's daily needs for hay were 500 – 600 pounds, translating into 50 bales of hay by the end of the season.
131. The quality of feed at the time of his visit was also entirely inadequate. Rattlebox was present, and rattlebox weed is a contaminant in older field hay.
132. In response to final questions from the Society, Dr. Magnowski confirmed he did a visual inspection of the food supply and determined there was inadequate quality, limited supply of marginal grass-type hay with a bunch of weeds in it, all out in the open. In general, he said, it was very poor quality hay.

VII. Submissions, Analysis and Decision

133. The Appellant's position is that she loves her animals and would not knowingly harm them. The Appellant's written closing argument was handwritten and contained a mix of evidence and submissions (some of which was new photographic evidence I declined to consider, as noted below). In her submission, the Appellant expressed the view that Dr. Magnowski had told her some of what she was doing with her animals previous to the seizure had been okay, and she was now surprised that he would say something different at the hearing. She also said she thought one of her animals was injured by the Society during transport.
134. The Appellant stated she has now been refused a line of credit as someone told her bank she was getting a large bill from the Society. She said she was also told she could no longer get bread and could no longer have credit at the feed store; that she could no longer receive service at the Horsefly service station where she gets gas; that the post office was now returning all her mail, and that the hardware store where she gets nails for repairs as well as animal food would no longer provide service to her. She blamed the Society for doing this to her as well as for contacting the Women's Society so that she can no longer have documents typed there or to use their fax.
135. The Appellant's written submission disputed the number of animals, as she said the number on the original seizure notices does not agree with current numbers. She accused the Society of rifling through her closets while she was in the hospital and that her puppy, which was in compassionate care at the Society, came home injured. She submitted that she saw the Society whip her cows as they were being loaded, and does not think the ammonia test was done on her property. The Appellant expressed concern that the Society was working with her from February 10 to March 15, 2016 then bankrupted her and removed her animals. The Appellant said she feels the Society caused her stress and hospitalization with their demand to fix "everything now" and that the Society was trying to find anything wrong with her animals. The Appellant said that some items billed are simply a money grab.
136. The Society's position is that the Appellant obtained insufficient quantities of bad hay in October/November 2015 and was then surprised to notice her animals were losing weight by January 2016. On February 10, 2016, the Society attended the Appellant's property and found three dead adult sheep and two dead lambs. Conditions continued to worsen. On February 12, 2016 the Society seized a sheep due to critical distress, and euthanized the animal later that day. On February 14, 2016, the Appellant surrendered a cow in critical distress which was euthanized the following day. On February 25, 2016, Dr. Magnowski said that, as at that date, hay on the property

was of insufficient quality. Animals were emaciated and injured, requiring veterinary treatment. Animals were kept improperly housed and in dirty environments with attendant health risks. More than two weeks had gone by since the Society's February 10 attendance, yet conditions were getting no better. Photographs from the Society's multiple attendances at the Appellant's property also revealed numerous hazards. The Society submits that the Appellant's failure to recognize, in a timely way, or to promptly address and alleviate clear signs of distress with her animals, was troubling.

137. The Society submits that when she received an insufficient supply of low quality hay in October or November 2015, the Appellant should have realized her animals would suffer distress over the winter. Yet she was unable or unwilling to act proactively to rectify the situation. The Society submits that even after it became involved and attempted to work with the Appellant, she continued to fail to alleviate the situation of distress. The Society submits that the Appellant acknowledged a need for assistance on her farm but to date she has failed to hire any help or complete renovations to an area where a farm hand may reside. It submits that she acknowledged issues with her property, but has not yet completed work to ensure animals can be properly accommodated on her property without distress. It submits that she testified she had addressed some issues, but she produced no photographs to demonstrate whether changes have been made to a level which would be necessary to safely accommodate the animals. It submits that she claimed that henceforth she will make arrangements for good quality feed with a broker, but notes that the Appellant did not call the broker as a witness, or secure a statement from him or her. The Society submits that the Appellant also noted a lack of funds as one reason for failing to secure good quality feed after the delivery of poor quality feed, but has not sufficiently evidenced a change in her circumstances for the coming winter season, particularly if she has to also hire help and undertake repairs at her property.
138. The Society argues that, given the Appellant's history, and the reasons noted above and in the Society's opening submissions, there is a serious risk that if animals are returned to the Appellant they will again fall into a state of distress.

Seizure of the animals

139. My first task is to determine if the animals were in distress when they were seized. The *PCAA* sets out the following definition of "distress" in section 1(2):
- 1 (2) For the purposes of this Act, an animal is in distress if it is
- (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
 - (a.1) kept in conditions that are unsanitary,
 - (a.2) not protected from excessive heat or cold,
 - (b) injured, sick, in pain or suffering, or
 - (c) abused or neglected.
140. It is important to note that, for the purposes of this definition, it is not necessary to conclude that an animal is "injured, sick, in pain or suffering". While that is *one* definition of distress (and is one that the evidence makes clear applies to several of the seized animals) the remaining definitions identify *conditions* that are sufficiently serious on the facts that the *risks* they pose warrant the removal of the animal for its protection: see *Krecul v. British Columbia Society for the Prevention of Cruelty to Animals*, June 26, 2014, paras. 86-89.

141. In the circumstances of this case, I am satisfied that all of the animals that were subject to the seizures at issue on this appeal were in distress as defined by s. 1(2) of the *Act*. In particular, I am satisfied on the balance of the evidence that the conditions of lack of adequate quantities and quality of feed, the absence of proper protection from the elements, the inadequate shelter and the lack of veterinary care created distress in respect of all of the animals. I have made this determination taking into account the number of animals, the size of the property, the general conditions of the property as made clear by the witness testimony and photographs, the financial ability of the Appellant and the poor quality and quantity of feed on the property.
142. I note, in support of this conclusion, that when the animals were seized, the cattle and sheep were found to be thin or very thin. Dr. Hawkes' report (which was not contested by the Appellant on this point) reported that his examination of the cattle disclosed an average BCS of 2/5 for the 15 animals, with a pregnant cow scoring 1.5. The Code required prompt corrective action to improve the body condition score of cattle with a score of 2 or less. Dr. Magnowski testified the llamas were quite thin and getting poor hay but could not be caught to determine a BCS. Dr. McOnie testified that the llamas were very thin with BCS of 1.5 with 3 being ideal. Dr. Hawkes reported that 22 sheep were examined with the average BCS of 1 (out of 5). He said (and the Appellant did not deny) this represented a severe nutritional deficiency in this group of animals. The rabbits were described by SPC Edge as thin, as was the horse. As noted above, the Appellant herself described an "oh my god" moment when she realized how thin her animals were. Dr. Magnowski testified that he made special recommendations on changes to the nutritional status of the whole farm in terms of both quality and quantity of feed. The quantity he said was extremely inadequate.
143. The evidence satisfies me that the animals on the Appellant's property were deprived of adequate food. That inadequate nutrition was clearly demonstrated in many of the animals as noted above, and the evidence leads me to conclude it would just be a matter of time before most animals began to suffer from a lack of adequate food, especially given the poor quality of feed on the property.
144. In addition to the nutrition issues, I am satisfied on the evidence was that the chickens and rabbits were living in very poor conditions with insufficient space, extreme filth and feces and urine present. There was not enough room in their cages, which were constructed of inappropriate material and lacked protection from extreme weather. The photos and testimony satisfied me that pigs' barn area where they could sleep was so small that the pigs were lined up nose to rear in a single file amidst extreme clutter of material that provided serious falling risks and risks of injury. Chickens had deformed and damaged feet due to how they were housed.
145. I find that these animals were deprived of adequate shelter, space, and ventilation and were therefore in distress. I also find for the above reasons that the animals were kept in conditions that were unsanitary and that the animals were not protected from excessive cold.
146. The lack of care and veterinary care was also evident in many animals. One could see the spines and hip bones and odd hair loss patterns and foot mites that had caused scaling and lumpiness, all of which should have alerted a responsible animal owner to seek veterinary advice and to provide proper administration of medications and appropriate follow up.
147. Chickens had deformed feet and missing digits due to how they were housed. They had mites. Dr. McOnie said the goats tested positive for an internal parasite, and there was no evidence that treatment has been sought by the Appellant. Dr. Magnowski said some of the treatment choices the

Appellant made regarding the pig, such as Coppercare, were not appropriate for the infection the pig had. There was some testimony that the medicine given to the Appellant for her animals had not been used, evidenced by the volume of medicine still in the bottle compared to what should have been there if correct dosing had been administered.

148. Although these next two examples were not of animals included in the seizure, they are nonetheless relevant as part of the overall context of this case, as they were in fact seen by the veterinarian as a result of Society's intervention, and both animals were euthanized. Dr. Hawkes described one sheep ram as being reportedly sick for two weeks, semi-comatose, laterally recumbent (laying on its side) and was groaning consistently with an expiratory grunt suggestive of pain. Up until his visit at the direction of the Society, there was no evidence any appropriate veterinary care had been sought. After euthanasia, Dr. Hawkes reported that the necropsy showed that the sheep was emaciated in a pattern consistent with malnutrition to such a degree that immunosuppression likely allowed an acute pneumonia to develop (though the emaciation alone was severe enough to result in death). Dr. Hawkes also described a calf being unable to stand and lethargic which caused the Appellant to bring it into the barn and treat it herself for two weeks including through the use of a homemade sling which was not appropriately supportive and caused the calf to slip, and which caused urine scalding. The calf had a fractured pelvis and met critical distress protocols. The Appellant had not sought out veterinary care on her own initiative and instead had chosen to treat the animals herself – ineffectively I might add. She also did not provide any pain relief.
149. I also find, from the evidence I heard and read, that several animals were injured, in pain, sick, suffering, or neglected. This included the pig with the infection, the ram lying on its side groaning in pain and not given pain relief or treatment, the chickens with damaged feet, the animals with inappropriate hair loss and the animals with internal parasites and feet mites. All these animals were injured, sick, in pain, neglected, or suffering.
150. Finally, I have no difficulty concluding, on the evidence presented in this case, that there were several injurious objects on the property. There was a bed frame used as a gate, jagged metal and nails, stacked debris evidenced in photographs with pigs lying against it unable to turn around without crawling over the debris and goats standing high off the ground on unstable debris. Despite this evidence of injurious objects, the Appellant took inadequate steps to remove these injurious objects.
151. I therefore find that the animals, collectively, were in distress and that the correct and reasonable decision was to seize all the animals that the Society seized.
152. I will add finally that insofar as any of the seized animals were pregnant at the time of the seizure, the finding of distress would be properly applied to the unborn animal which was, at the time of the seizure, part of the seized animal and subject to all of the same risks. Further and in any event, no further seizure would be necessary of an animal already validly in the Society's custody when that animal has given birth.

Return of the animals

153. Having determined that the seizure of the animals was justified, I turn now to the best interests of the 124 animals, and whether their best interests are served by returning them to the Appellant or by having them remain with the Society to dispose of at its discretion.

154. I note that the legislative framework was described in *Eliason v SPCA*, 2004 BCSC 1773 where Mr. Justice Groberman (as he then was) stated:

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

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

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

156. I have already determined that the shelter and food and veterinary care, amongst other things, were inadequate to serve the best interests of these animals.

157. I also find that the Society, acting on a complaint, made several visits to the Appellant, issuing several orders including some 24-hour orders for veterinary care. The Appellant did not act on these in a timely fashion.

158. The Appellant said she did the best she could, and I am inclined to believe her. I believe she feels deep love for each and every one of her animals. I am sincerely moved by her expressions of love for these animals. I know she sees her animals collectively as her family and I find that she is sincere in her stated belief that she will do anything for them. But the objective evidence has shown me that her subjective stated belief is not enough. She has in fact proven by her actions and inactions that there is actually much she won't or can't do for them. Her animals were collectively in distress and the Appellant was either unaware of the distress or unable to take steps to prevent the animals from continuing to suffer from distress.

159. The Appellant states that she purchased, through no fault of her own, bad hay. Yet it remains that the Appellant was responsible for these animals and did not take adequate steps to secure adequate feed in order to prevent her animals from losing enough weight to reach thin body scores. She may not have had the financial resources to secure non-local hay due to increased cost and having already invested in the poor hay, but that does not excuse her from finding adequate food for her animals or taking some other step, from relinquishing her animals, selling her animals, or humanely euthanizing her animals, to prevent their suffering.

160. The Appellant did not notice, in a timely fashion and in the best interests of the animals, that her animals were getting thinner and thinner despite her claim to hug all but the llamas twice a day. I do not believe she was able to be alert to the condition of her animals, possibly due to the number of animals she had, the extreme weather conditions, or her own compromised physical health. I am not suggesting there was any maliciousness or deceptiveness on her part. I do not believe she was inattentive purposefully. However the end result was that her inability to detect her animals' weight loss caused her animals to suffer.

161. I note as well that the Appellant also, believing her hay was toxic and causing birth defects and abortions in her animals, continued to feed them the supposedly toxic hay, albeit in lesser amounts

and supplemented by cubes and protein and grain, but she still, knowingly in her own mind, fed her animals a toxic substance.

162. The Appellant's actions in getting cubes as nutritional supplements for her animals does not support her claim that she would do anything for her animals. In fact, knowing she needed the cubes, she waited an additional week and a half as, in her mind, she believed the Society was at her property daily, which it disputes, and somehow that prevented her from purchasing additional supplements.
163. The Appellant did not seek veterinary advice when clearly she was aware that one of her animals was so sick that she covered it in a blanket to keep it warm, that another so immobile she fashioned a sling to keep it upright, and that another had a torn inner thigh from a wolf attack that was serious enough that she was compelled to probe the wound looking for a reaction from the horse. In my opinion, any or all these situations would be enough to send a responsible animal owner immediately to the veterinarian, yet in these cases, pre-seizure, it wasn't until the Society's involvement that the Appellant allowed anything to be done for the two animals relinquished pre-seizure and nothing was done by a veterinarian pre-seizure at all for the horse.
164. The Appellant did not seek veterinary advice for her chickens whose feet appeared, in photos, to be mangled as they were so damaged and deformed from the terrible conditions in which they were housed. Additionally, foot mites caused scaling and lumpiness which was visible, as were the damage and missing toes, and that should have caused the Appellant to seek veterinary advice.
165. The Appellant did not seek veterinary advice for her animals after her "oh my God" moment when she realized how thin they were. In addition to knowing their nutritional needs had to be properly met, a responsible animal owner would in my judgment seek veterinary advice on how to meet the nutritional needs of an undernourished animal. I accept SPC Edge's evidence that even after Dr. Magnowski provided the Appellant with a nutritional assessment and recommendations for her animals, they continued to deteriorate. For certainty they were still too thin at seizure.
166. The Appellant failed to address the ram's growing horns which were now at a size that they need to be surgically removed, which will leave a hole that will be open to infection and parasites and which will require bandage changing and aggressive aftercare, none of which I have any confidence the Appellant will either provide or perhaps be aware of.
167. The Appellant did not seek veterinary advice for the animals which were losing hair in odd patterns. The SPC had not seen such hair loss and one would think that with all the animals she had seen, the hair loss that caught SPC Edge's attention would also have caught the attention of the Appellant.
168. The Appellant also did not appear to be able to follow or even understand the advice of her own veterinarian, Dr. Magnowski. She said she was surprised at his testimony as he had told her different things. I do not believe Dr. Magnowski changed his testimony from what he previously advised her. Instead, I find that the Appellant did not satisfactorily understand his advice and that caused her to improperly use the medicine he prescribed.
169. The Appellant did not provide support for her claim that she had cleaned up the farm during the hearing but she did provide some additional photographs as part of her final written arguments. I

declined to view these as the time for tendering evidence had long passed. Further, even if I were accept some areas in her 80 acres had been cleaned, I was not provided with any evidence of how she would keep the property clean and sanitary, providing adequate shelter and space, while 124 animals were on the property producing urine and manure, amongst other messy endeavours. Dr. Magnowski did testify he had seen other farms with more animals and with only one caretaker, but of course, we have no evidence that those other animals were denied adequate food, shelter, or veterinary care; which was my finding in the circumstances of this case. This Appellant has proven to me that she cannot care for this number of animals, and this Appellant provided me with no persuasive evidence about the number of animals she could care for. I find that all the animals were sufficiently compromised permitting me to conclude she cannot look after any of the seized animals.

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

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

171. The word "promptly" suggests a consideration as to whether the person can or will take the necessary action.

172. I have no confidence at all that the Appellant would be able to prevent her animals from returning to a situation of distress if they were returned to her. I am also not persuaded that she deserves yet another chance. She ignored earlier Society orders for a very sick animal. I have no confidence she would not ignore evidence of other sickness in other animals.

173. I have no confidence she could adequately monitor the health of her animals. I have no confidence that she would know when to call a veterinarian and how to adequately follow the veterinarian’s instructions, especially with medicine application. Dr. Magnowski did in fact provide her with some guidance to follow and the Appellant did claim to have read several animal care codes, yet she lacked basic knowledge on rabbit and chicken housing, animal nutrition, and medication application. The Appellant, after her horse was attacked, poked and prodded the wound herself looking for signs of discomfort in the horse, which may not have been the best course of action, but in any event, the Appellant failed to seek veterinary care for the wound or for any subsequent pain.

174. The Appellant does not have an adequate plan for dealing with feed or veterinary issues in the future. Her stated plan to hire someone after she turns an outbuilding into a second home lacks any concrete specifics other than her good intentions. I have no confidence, in light of her not having a plan, that she could get the home built and staffed in time for winter.

175. I also cannot let it go unsaid that when the Appellant describes that she always put her animals first, even putting her body in harms way to protect them, she - as a sole care provider for her animals - placed her herd at risk when she put herself at risk. The Appellant gave moving testimony that after she was hit by a car, she immediately checked her dog and animals, which I fully understand the sentiment thereof, but the reality is her dog and animals were where a car

could hit them. More upsetting was that the Appellant, when water was short, chose to give her animals water and deny herself drinking water for a few days. Although the Appellant's health per se is none of my concern as the presiding member at this hearing, there is a concern to me that as a sole care provider to 124 animals, any deterioration of her own health puts all her animals at risk.

176. Finally it can also not go uncommented on that if I had had doubt about returning any or all of the animals, which I do not; the Appellant's final written argument erased that doubt. The Appellant stated that she has been refused a line of credit, cannot get bread, cannot have credit at the feed store, cannot receive service at the gas station, cannot get mail and cannot buy hardware or feed at the hardware store. Without access to such basic services, I have no idea how the Appellant realistically intends to provide her animals with the necessities of life to prevent them from being in distress and the Appellant has provided none. I was not provided with any supporting evidence, other than the Appellant's testimony, that she suffered these things she has attributed to others, and it is not necessary for me to make any finding as to the validity of her allegations; it is enough that she believes them and despite her beliefs, she has not made adequate and proven alternate arrangements to ensure the best interests of her animals are met.
177. The Appellant may believe she has fixed everything and can now receive her animals back, but she has not shown she has fixed the critical issues of a steady, adequate food and water source, adequate shelter offering protection from extreme weather, sanitary shelter, adequate care of her animals, the provision of veterinary care both when to seek it and how to properly follow instructions, and adequate monitoring of her animals overall health and conditions, especially given the large number of animals she had, which were seized. It is clear to me that the Appellant cannot handle such a large number of outdoor animals which require appropriate food and water to prepare them for the weather they will encounter, or veterinary care as a result of the conditions and risks they encounter, or even basic care to prevent distress, such as manure management, appropriate caging and maintenance, appropriate bedding, appropriate space for each animal's needs. The Appellant has not convinced me that she could handle the return of any of her seized animals, given her testimony and her evidence and all the witness testimony and evidence. I do not believe it would be in the animals' best interests, any of the animal's best interests, to be returned to the Appellant.
178. I sincerely hope the Appellant understands that I heard her when she professes her love for all her animals. I understand the Appellant has her three dogs and one or more cats with her and I urge the Appellant to carefully and diligently and adequately care for those animals and to take all her love for all her animals and re-focus that love on just her dogs and cats, which no doubt love her back and need her care.

VIII. ORDER

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

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

180. It is my order that pursuant to section 20.6(b) of the *PCAA*, the Society be permitted in the Society’s discretion, to destroy, sell or otherwise dispose of all of the animals.

Costs

181. Section 20 of the *PCAA* provides:

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

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

183. The Society’s costs as claimed are evidenced in the affidavit of Ms. Moriarty with the addition of extra days as the decision will now not be released until June 22, 2016 rather than June 17, 2016 (five additional days). The costs of care are therefore modified from \$30,631.33 to \$31,489.77 to account for the additional days. The revised calculation is set out below:

Rabbits				
Item Description	# of days	quantity	Cost	Total to June 22, 2016
Daily group board (≥ 5 offspring – 13 Rabbits held) (March 15)	100	1	\$45.00	\$4,500.00
Vet care / medical treatments				\$560.23
Revolution (done in shelter)				\$30.00
Total				\$5,090.23
Birds (includes chickens, roosters, duck, geese)				
Item Description	# of days	quantity	Cost	Total to June 22, 2016

Daily board (≤ 10 birds: Mar 15)	100	1	\$5.00	\$500.00
Daily board (≤ 10 birds: Apr 28)	56	3	\$5.00	\$840.00
10 Born in care April 30, 2016	54	1	\$5.00	\$270.00
Chicken feed				\$479.24
Vet care / medical treatments				\$518.73
Total				\$2,607.97
9 Goats / 4 Llamas				
Item Description	# of days	quantity	Cost	Total to June 22, 2016
Daily board (April 26)	58	13	\$3.50	\$2,639.00
Daily board (April 28)	56	1	\$3.50	\$196.00
Vet / medical care				\$527.63
Vet Invoice for goat				\$348.75
Total				\$3,466.38
Cows (boarded)				
Item Description	# of days	quantity	Cost	Total to June 22, 2016
Daily board (excl. hay) – Mar 15	100	15 ⁸	\$2	\$3,000.00
Hay				\$4,800.00
Vet / medical care				\$991.39
Livestock Inspection				\$28.35
Total				\$8,819.74
Sheep (boarded)				
Item Description	# of days	quantity	Cost	Total to June 22, 2016
Daily board (per herd) – Mar 15	100	1	\$20.00	\$2,000.00
Vet / medical care				\$1,555.20
Sheep Feeder				\$389.65
Total				\$3,944.85
Horse (boarded)				
Item Description	# of days	quantity	Cost	Total to June 22, 2016
Daily board of horse – Apr 28	56	1	\$5.00	\$280.00
Total				\$280.00
Pigs				
Item Description	# of days	quantity	Cost	Total to date
Vet / medical care				\$307.26
Pig Feed				\$156.90
Total				\$697.60
Other Costs				
Hauling & Handling				\$4,495.00
SPC investigation / seizure time				\$2,088.00
TOTAL: s. 20 cost June 17, 2016:				\$31,489.77

184. The Appellant position is that the costs claimed are unreasonable, that veterinary costs are questionable due to the friendship of the veterinarian with the SPC, that the animals did not need to be seized, that some veterinary treatment was a duplication of treatment she already provided to her animals, and that SPC Edge ought to have known that.
185. I am of the view that the costs as proposed by the Society are reasonable in totality. The Society did not request boarding fees for the pigs as it could not determine a fair rate. The Society is entitled to its veterinary costs as it expended those funds to care for the Appellant's animals and as much as possible bring them back into health. There was no credible evidence from the Appellant that any of the veterinary costs were inflated due to any friendships that may have existed. There was no credible evidence that the boarding fees or feed costs were unreasonable and, in fact, the Appellant did not dispute the costs of transportation and costs of SPC investigation and seizure time.
186. Finally, as already noted in this decision, I have had no hesitation in finding that the animals, all the animals, needed to be seized for their own best interests and to prevent these animals from suffering under distress, which I have also found to be the case, and surely would have continued if they had not been seized.
187. However, there appears to be a mathematical error in the totals calculated in the table above. Therefore I have adjusted the amount owing to be 31,501.33 which is the true total of the amounts in the table.
188. Therefore it is my decision that the Society is entitled to its reasonable costs, as amended, in the amount of \$31,501.33. It does not appear to me that the Society included the \$200 it said the Appellant owed for compassionate care but should this total amount include that \$200, it is to be deducted as the \$200 cost of compassionate care is not part of this appeal and is not related to the seizure of animals in this appeal.

COSTS ORDER

189. I order that the Appellant pay the amount of **\$31,501.33** to the Society as the reasonable care costs incurred by the Society with respect to the animals.

Dated at Victoria, British Columbia this 22nd day of June, 2016

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Presiding Member