

IN THE MATTER OF THE *PREVENTION OF CRUELTY TO ANIMALS ACT*,
R.S.B.C. 1996, c. 372
ON APPEAL FROM A REVIEW DECISION OF THE BC SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS CONCERNING THE SEIZURE OF
2 PIGS, 1 CALF, 1 LLAMA, 4 HORSES, and 1 DOG, Jake

BETWEEN:

SARAH MARLEAU

APPELLANT

AND

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia

Corey Van't Haaff, Vice Chair
and Presiding Member

Farm Industry Review Board:

For the Appellant:

Self-represented

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

June 15, 2017, followed by two sets
of written submissions

Location of Hearing:

Teleconference

I. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*).
2. The Appellant appeals the May 12, 2017 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Prevention and Enforcement Officer for the British Columbia Society for the Prevention of Cruelty to Animals (“the Society”).
3. 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.
4. For reasons that will be explained in detail later in this decision, I have decided that I will require the Society to return Jake to the Appellant, without conditions, and I will not require the Society to return any of the other seized animals (“farm animals”) to the Appellant.
5. I will deal with the issue of costs below.

II. Brief history leading up to the removal of the animals

6. There is an extensive history of interactions between the Appellant and the Society, dating from January 2015 to the April 20, 2017 seizures of the animals at issue on this appeal.
7. Between September 14, 2015 and March 29, 2017, the Society received 32 animal cruelty complaints regarding animals in the Appellant’s care and control. According to the Society, some were unfounded; most were valid (albeit with some embellishments, at times, says the Society).
8. The complaints that the Society considered substantiated included emaciated/underweight animals, untreated medical concerns/inadequate veterinarian care, lice/parasite infestations, inadequate fencing causing livestock to get loose; livestock getting hit by cars and killed, dogs with fleas, rabbits living in unsanitary and inadequate conditions, horses with overgrown hooves, muddy living conditions/no dry ground/no bedding, flooded and wet living conditions, unsanitary living conditions, inadequate shelter, inadequate food, inadequate water, animals fighting each other, horses with rain scald, tethered animals, and hazards and debris in areas accessible to animals/in areas where animals were regularly kept.
9. On January 17, 2015, SPC Carey attended the previous (Abbotsford) property where the Appellant resided after receiving complaints from the Appellant’s neighbours and other concerned parties regarding the living conditions of animals at the property. The Appellant was issued four separate orders regarding various issues including inadequate food, shelter

and water provided to goats on the property and hazardous material found in their pens; inadequate food, unsanitary conditions and inadequate ventilation provided to a dog on the property; hazardous debris and unsanitary conditions found in pig pens; and overall unsanitary and inadequate living conditions noted for all animals at the property including limited to no access to clean, dry bedding.

10. In September 2015, SPC Carey was regularly attending the current (Mission) property in response to multiple complaints and issued various Orders and Notices to the Appellant during those visits.
11. On September 26, 2015, the Appellant was issued orders regarding the living conditions of rabbits on the Property and ultimately surrendered them. SPC Carey continued to monitor the property and regularly checked-in. The Appellant did slowly reduce, from more than 100 animals, the number of animals in her care.
12. On February 27, 2017, the Society Call Centre received a call of concern regarding the Appellant's livestock standing in mud with inadequate shelter.
13. On March 8, 2017, SPC Carey attended the Property and met with the Appellant. SPC Carey observed that the small goat barn and pig pens were dirty and needed to be completely mucked out, and that dry footing/bedding was needed. A calf was found in the barn in critical distress and was then euthanized by the Appellant with a 22-caliber rifle.
14. On March 9, 2017, SPC Carey received three photographs from the Appellant providing confirmation that she had cleaned up the pigs' living areas and provided them with dry bedding.
15. On March 28, 2017, SPC Carey attended the property and met with the Appellant. SPC Carey found the property to be in a similar condition as her previous visit. SPC Carey noted the horses' hooves to be overgrown. SPC Carey issued Notices regarding garbage and debris removal, mucking out the shelters and adding dry footing, providing horses with farrier care, providing adequate food/water/shelter for all animals; and keeping the area clean and sanitary.
16. On April 4, 2017, SPC Carey attended the Property with SPC Thomson. They met with the Appellant who was constructing an animal shelter in the front paddock. SPC Thomson observed one pony with hooves that were overgrown and flared; a black and white horse appeared underweight and had overgrown hooves; a chestnut horse appeared underweight with visible ribs and an old eye injury; one grey and white mini horse appeared in good body condition; three goats had lice and one appeared very underweight with prominent pelvis and hip bones (the Appellant said she would delouse all of the animals); one llama; two alpacas, one heavily matted; two turkeys were running loose; one calf; a pig pen containing two pink meat pigs (one appeared underweight), and two pot belly pigs, all with a skin irritation. Shelter was available but there was no potable water. One pig pen contained one pot belly pig with four piglets. The mother pig appeared very underweight and appeared to have a skin irritation. There was no water and the water trough was dry.

The piglets were observed chewing on a plastic bag. SPC Thomson observed hazards and debris throughout the property where the animals were housed including a metal push mower, machinery, rusty cans, garbage, plastic, boards with exposed nails, twine, falling down fencing, mud, branches, wood piles, and wood pallets; no adequate shelter; a barn the smaller animals could access which was full of a heavy buildup of manure; no dry, clean area available to the animals. The larger horses and alpacas could not fit in the barn; although the back of the property was tree lined on the outside of the fence, the ground was soaked and there was no protection from wind, rain, or cold - and the animals had to walk through mud and water to access food and drinking water. SPC Thompson issued an order to shear/groom the alpaca, provide water to the animals at all times, increase the weight of underweight animals; remove hazards, provide animals with dry ground to get to shelter, food, and water, provide animals with shelter, provide parasite control, and treat lice. The Appellant was provided with two weeks for compliance.

17. On April 12, 2017, SPC Thomson attended with SPC McKnight and observed from the driveway a tarp was strung up to a tree. The ground underneath was wet; the shelter was too small to fit all of the animals located in the fenced area. In addition, the sides of the shelter were not enclosed and would not provide any protection from wind or cold. There appeared to be no dry area accessible to the horse, pony and mini. SPC Thomson advised the Appellant she would re-attend in a week to ensure compliance. The Appellant stated she was not going to groom the alpaca but stated she would have a veterinarian come out and examine the alpaca. SPC Thomson then telephoned veterinarian Dr. Adrian Walton who advised that llamas and alpacas need to be shorn/groomed every year. If an alpaca or llama is matted its coat does not protect it from the elements and skin infections can occur. The mats can pull the skin causing pain and discomfort.
18. On April 18, 2017, SPC Thomson attended the property with the Society's Maple Ridge Branch Manager Jennifer Stack. The gate was locked. SPC Thomson telephoned the Appellant but her cell phone was off. SPC Thomson observed the makeshift shelter in a similar state as the previous visit - the ground wet without protection from wind or cold available to the animals. No food was visible in the feeder. The horse Torque approached SPC Thomson at the fence beside the driveway and appeared to have lost weight since the April 4, 2017 visit. The horse had prominent pelvis/hip bones. His old eye injury appeared infected with green discharge, his hooves were overgrown and flared, and he had live lice on his mane. The front area had no dry footing. Hazards and debris were observed. As SPC Thomson drove away, she saw the alpaca had not been sheared and no shelter was visible.
19. On April 19, 2017, SPC Thomson applied for and obtained a warrant to search the property on April 20, 2017. (Some of the animals seized were surrendered by the Appellant and do not form part of this appeal, despite including information about their conditions in this decision. I note as well that a second warrant was executed on April 22, 2017, at which time the Society entered the Appellant's home. The animals seized under that warrant were surrendered by the Appellant and do not form part of this appeal).
20. The Society under the PCAA is mandated to prevent and relieve animals from situations of cruelty, neglect and distress. The Society's investigation and seizure powers are set out in

Part 3 of the PCAA, entitled “Relieving Distress in Animals”. The Society can seize animals from the care and custody of their owners or take custody of abandoned animals, as authorized by the PCAA.

21. In this case, after entering the property, and inspecting the site and the animals, the Society removed 25 animals:
 - (a) Two dogs (one named “Gator” and one named “Jake”);
 - (b) One calf;
 - (c) One llama;
 - (d) Two alpaca;
 - (e) Seven pot belly pigs;
 - (f) Two commercial pigs;
 - (g) Three turkeys;
 - (h) Two horses;
 - (i) One miniature horse;
 - (j) One pony; and
 - (k) Three goats.

III. The Society’s Review Decision

22. The March 20, 2013 legislative reforms, set out in Part 3.1 of the PCAA, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: PCAA, s. 20.2(1), (2). If a review is requested, the Society must review the decision and must not destroy, sell or dispose of the animal during the review period unless it is returning the animal: PCAA, ss. 20.2(3).
23. 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.
24. 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.

25. Ms. Moriarty issued written reasons dated May 12, 2017 after her review of this matter. After concluding that the animals seized had been taken into custody to relieve their distress, the written reasons stated, in part:

This is not the first complaint received by the BC SPCA in relation to animal welfare concerns on your Property. Although some of the previous complaints were declared unfounded by the attending officer, the more recent cruelty complaints brought against you were found to be of substance. The complaint made on February 27th, 2017 which led to the eventual seizure of animals on April 20th and 22nd, was followed up on eleven separate occasions by BC SPCA officers. You have been issued multiple verbal and written notices of distress relating to vet care, environment, injurious debris, grooming and overall welfare concerns for your animals. In light of all of the above, I believe that you have been given ample time, educational resources and opportunities prior to this recent seizure to ensure that animals in your care were free from distress.

Living Conditions and Environment

Upon reviewing photographic evidence and testimonial from BC SPCA staff and veterinarians present during the time of both warrants, it is apparent that the environment that the animals were living in was far below what would be deemed adequate or appropriate. The Property was filled with all types of injurious debris, from broken wood to miscellaneous garbage. Additionally, all pastures and living areas were muddy and wet, and there did not appear to be any substantial area where any animal could have dry footing. Some of the more egregious issues included:

- a) The hound dog 'Gator' was tethered to a railing outside the front of your house. All four of his feet were several inches deep in mud and there was no dry footing for him. He was surrounded by several piles of his own feces and injurious debris and objects such as broken wooden pallets, a wrapped up hose, plastic crates and garbage. A water bowl was present but it appeared out of reach and empty.
- b) At the time of the warrant, a chestnut horse with an apparent injury to his eye and a white pony were attempting to walk through a broken down fence. The ground was saturated and covered in mud. Both horses had mud covering up to $\frac{3}{4}$ of their legs.
- c) One pig was in an enclosure that contained hazardous debris, pieces of wood and falling down fencing.
- d) There were a number of make shift shelters, which again are far below adequate, including a material-type covering over some wooden pillars within a completely mud and water soaked field. (Photograph SPC 1937) and a number of tarps covering a mud soaked area, surrounded by wood piles.

You have provided me with a number of photographs of your Property taken I presume post the seizure. While I note that there appears to be some improvements to the Property, I do not feel that they are sufficient to ensure that if these Animals were returned they would be maintained free from distress. Based on your history and some of the assertions you have made regarding the fact that you believe your animals living conditions were adequate, I am not satisfied that you would either be a) able to recognize when conditions need to be improved nor b) able to maintain your Property in such a fashion through the various seasons to ensure the Animals remained free from distress.

Food and Water

After reviewing all of the evidence in this file, I note that there were a number of concerns found that pertain to provision of adequate food and water for your animals. You have argued that you did have adequate and appropriate food available for your animals and that the constables simply did not find where it was being stored and that is why they found that none of the animals had access to any of this food at the time of either warrant. I do not feel the need to make a determination for the purposes of this decision on whether or not you in fact did have food on your Property, as the reality is that the medical evidence demonstrates that the vast majority of your animals were under weight. As such, they were either not receiving adequate food as you were not providing it, or they had an underlying medical condition that needed to be addressed. In either case, you as the owner were not adhering to your duties under the Act with respect to adequate food.

In regards to water, after observing photographs of the water available to the animals, it is clear this is another area where you failed to provide the proper standards of care for the animals. In several buckets that I can only assume were meant to serve as water for the animals, one bucket was filled with mud (Photograph SPC 1974), one bucket was filled with what appeared to be screws and nails (Photograph SPC 1975) and another bucket was full of what appeared to be green algae and tree foliage.

Medical Conditions

Upon reviewing medical reports from veterinarians that treated these animals post warrant, it is apparent that the majority of the animals removed from your Property had some type of medical concern. These concerns included the animals being underweight, having parasites and having skin and/or hoof concerns.

Some of the specific concerns identified by the veterinarians included:

Dr. Steele's observations of some of the pigs:

The sow was underweight at a body condition of 1/5. She appeared lethargic. Her skin appeared dry with areas of alopecia (missing hair) which may be indicative of ecto parasites. Her four piglets also appeared underweight 2/5 and also appeared to be affected by ecto parasites.

Two pot belly pigs were present in a second dirt pen. This pen also had a shelter and a trough with some water present but no feed was visible. There was a hole in the fence which lead to the larger pasture. The smaller of the two pot belly pigs was able to pass in

and out of the pen. The smaller pig appeared underweight with a body condition of (2/5), mildly lethargic and similar skin condition to the other potbelly pigs. The second larger pig appeared in better body condition (3.5/5), similar to the other pigs, appeared mildly lethargic and afflicted by ectoparasites.

Dr. Steele's observations for some of the horses:

I brown and white pinto pony was present with no visible lameness. The pony appears intact. He had a large patch of alopecia on the top of his back which was very pruritic (itchy) and appeared moderately irritated, the area of alopecia appeared self-inflicted due to pruritis. The pony also had overgrown hooves and a body condition of 2.5-3/9.

I black and white pinto gelding was present with no visible lameness. He had long overgrown hooves and areas of alopecia with lice eggs present. He had a body condition score of 3-3.5/9.

Dr. Walton's observations of some of the turkeys:

Turkey #3: Male body score 2/9. Animal had mild 1+ lice rest of physical exam within normal limits. Easily palpable sternum and very pronounced keel associated with being moderately to severely underweight.

Turkey #2: Male body score 3/9. Animal has mild 1+ lice rest of physical exam within normal limits.

Dr. O'Sullivan's overall observation of animals he observed:

The most consistent finding on examination of these animals was a low BCS, especially among the goats and camelids. A normal body condition score is 2.5-4.0. The goats and camelids varied between 1 and 2 in condition score which is an indication that managerial intervention is necessary - whether it be deworming, supplemental feeding, addressing disease, etc.

It is clear from reviewing all of the medical evidence that you are either unable to recognize at times when some of your animals need medical care or are unwilling to provide this care. While not all of the animals removed were suffering from inadequate veterinary care, I find that there were sufficient concerns amongst your animals as a group to not have faith that if the animals were returned that you would be able to maintain them in good health.

Finally, I would like to address the portion of your dispute where you state the following:

These animals all have names, it would be easy for most people to shrug and give up. Get "another" horse, llama, pig etc. But these are not my belongings. These animals all have names, they all have their own personalities, likes and dislikes. They can be difficult at times and willful. they all enjoy treats, scratches, petting and love. Not a day goes by that i do not spend time with these animals. Just hanging out and enjoying their company. Each and every one came from some sort of bad situation. They have been nursed back to health and brought out of their shells from terrified half dead things usually picked up at auctions to the loving social animals you have taken.

It suggests in this paragraph that you are making a plea to explain how you feel for the animals and that you care for them. You suggest they have all been “nursed back to health,” yet many of them have a variety of medical concerns as noted in the veterinarian reports provided to you. While I can appreciate that you may feel that you are “rescuing” these animals, the very definition of rescue suggests that you are saving them from a bad situation and providing them with a better situation. In order to do that, a person must have adequate resources and you yourself have acknowledged that you have in the past surrendered many of your animals over to the BC SPCA. I find it troubling that you continue to accumulate animals even though you are not adequately equipped to ensure that they are free from distress. It is my hope that you are able to turn your attention to the animals that remain in your custody, and Jake whom I am prepared to return pursuant to an agreement of care.

Based on all of the above, I do not believe it is in the best interest for the Animals to be returned to you.

IV. The Appeal provisions

26. I am guided by the approach to appeals under the *PCAA* which is set out in detail in BCFIRB’s decision *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

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

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. Evidentiary matters

27. The Appellant said that the Society relied on bad information in dealing with the complaints against her. While the Appellant did not specifically challenge the validity of the warrant, I will simply state, as has been found in other appeals (see *Viitre v. BCSPCA* (January 10, 2017), at paras. 154-155) that the appeal role under section 20.3 of the *PCAA* does not authorize BCFIRB to review the decisions of a provincial court judge or justice of the peace as to whether circumstances justify the issuance of a warrant. Until such time as a warrant has been set aside, I am entitled to rely on its validity and I choose to do so in these circumstances where, as here, the warrant has been issued by a court of competent jurisdiction. That said, I am obviously not bound by the information contained in the Information to Obtain the Warrant. I make my decision taking into account all of the evidence tendered at this appeal hearing.
28. The Appellant submitted about 500 screenshots of what appear to be social media posts. The Appellant also claimed that with some of her submissions, she inadvertently submitted blank files, and did not understand why. The Appellant did not discuss, in any meaningful way, how the social media posts may relate to the seizure of animals and their return, but seemed to focus on others' intent to harm her. As I focused only on the grounds for removal and the animals' best interests as they relate to the *PCAA*, I did not put much weight on the social media posts. I note that it is the duty of the Appellant to submit those materials she wishes to submit, and it is her responsibility to properly submit documents. That said, I am satisfied that, in general, throughout the submission process, and during testimony, both parties were provided with and used their opportunities to cross-examine witnesses and test or challenge materials.
29. The Appellant did not always submit her material in a timely fashion prior to the hearing. The Society objected to the Appellant's submissions and witnesses as the submissions and list of witnesses was only submitted the afternoon before. The Society says it did not have time to assess the veracity of the new property mentioned in the Appellant's submissions.
30. The Society also objected to the Appellant's witnesses J.R., R.Z., V.H., S., and C.K. as it finds their possible testimony irrelevant to the issue of distress.
31. I concluded that it was appropriate to hear from the Appellant's witnesses as their testimony may have some bearing not only on the issue of distress but also on the issue of the return of the animals and as such, a return to distress. I also find the material submitted by the Appellant to be necessary to the Appellant presenting her case, and vital to me in coming to a decision. I note that as the hearing progressed, both the Society and I were able to clarify the situation regarding the new property and the Society was able to cross-examine the Appellant and her witnesses, including on the material submitted late by the Appellant.

32. As noted above, in addition to the farm animals, two dogs were also removed on April 20, 2017. The May 12, 2017 written reasons of the Society on review make brief reference to the dog Jake, though not to the specific basis on which the dog was removed and not returned. The other dog, Gator, was surrendered by the Appellant. The Appellant seeks the return of her dog Jake, and the Society agrees that the dog Jake is part of this appeal. For reasons that will become apparent below, I will deal with the issue of Jake separately from the other animals, which I will deal with as one group (“farm animals”).
33. One day was set aside for the telephone hearing, which went long. As a result, the parties agreed (the Appellant expressed a preference) to submit written closing arguments, with the Appellant requesting the Society go first, and the Society agreeing.
34. During this post-hearing submission process, I received new information from the Society that it had executed a new warrant on June 20, 2017 and found both living and dead animals, including wildlife. The RCMP and Conservation officers were present, as was the Appellant. The Society provided a description of the living conditions. The Society, in its ITO, states it received a call from the RCMP regarding animals in distress it found while attending the property to execute its own warrant.
35. The Appellant objects to my consideration of this new information. She asserts that the Society is lying and that there was food and water available, but the RCMP had not topped up food and water during the Appellant’s arrest the previous day when she was assured, she says, by the police that they would do so. She denies the dead animals.
36. In my view, the new information is relevant to the issue whether the animals, if returned, would be returned to a state of distress. That said, I have given this recent evidence less weight in view of the Appellant’s objections (i.e. that food and water was available, and her position that there were no dead animals) and the fact that the Appellant has not been given the opportunity to cross-examine the Society’s officials with regard to the recent seizure. What does not appear to be in issue however is that many of the conditions at the June 20, 2017 seizure (for example, debris within the home and around the property) were not materially different from the conditions in April 2017. In this regard, I note that the Society did not enter the home until the second warrant, April 22, 2017, after Jake was removed on April 20, 2017. SPC Thomson’s testimony was that dog food was noted inside the home on April 22, 2017. Indeed, when it comes to the dog Jake, the conditions of the home as reported in June 2017 were not different enough to persuade me to find the dog, if returned, would be returned to a condition of distress, despite SPC Thomson saying the condition inside the home was worse than on April 22, 2017. As it related to Jake’s welfare, I find that there were no substantial changes in the house. In relation to Jake, it was substantially the presence of feces that concerned SPC Thomson, according to her hearing testimony. No such feces were mentioned in the June 20, 2017 warrant execution notes. While there was mention in the June 2017 notes about the possibility of having the house condemned, that was far from being hard evidence that the house was in fact unfit for habitation by a human, or by the dog Jake. If that had been the case, one would not have expected Ms. Moriarty to have offered, in May 2017, the dog’s return under a care agreement.

VI. Material admitted on this appeal

37. All affidavits and witness statements, emails, photographs, and materials submitted were entered into evidence. Parties were sworn before giving oral testimony.

Appellant

- a) Appellant May 16, 2017 Notice of Appeal (2 pages) **(Exhibit 1)**
- b) Appellant June 5, 2017 dropbox screenshots, 581 pages **(Exhibit 2)**
- c) Appellant June 7, 2017 email with attached from D Omand with picture **(Exhibit 3)**
- d) Appellant's email received at 3:33 pm June 14, 2017 **(Exhibit 12)**
- e) Appellant's email dated June 14, 2017 with a drop box link to document (email and content of dropbox link **Exhibit 13)**

Respondent

- a) BCSPCA Binder (Tabs 1-28) (May 25, 2017 by email, May 26 by courier) **(Exhibit 4)**
- b) Affidavit of Marcie Moriarty (June 12, 2017 by email) **(Exhibit 5)**
- c) BCSPCA written submission (June 12, 2017 by email) **(Exhibit 6)**
- d) Expert witness contact form for Dr. Kim Steele **(Exhibit 7)**
- e) Witness contact form for SPC Leanne Thomson and SPC Christine Carey **(Exhibit 8)**
- f) Pages 339, 341 and 343 (June 12, 2017) **(Exhibit 9)**

BCFIRB

- a) Letter regarding order to castrate... (June 9, 2017) **(Exhibit 10)**
- b) BCFIRB summons decision and summons to SPC Carey (June 9, 2017) **(Exhibit 11)**

VII. The Society's evidence

38. The Society did not call veterinarian Dr. Joseph O'Sullivan who provided a written report regarding some of the farm animals.
39. Dr. O'Sullivan's report stated that one goat was severely underconditioned, still healthy, hooves slightly overgrown, visibly pruritic with seborrheic skin and visible biting and sucking lice; a second goat was severely underconditioned, still healthy, hooves slightly overgrown, visibly pruritic with seborrheic skin and visible biting and sucking lice; an older goat was severely underconditioned, still healthy, hooves slightly overgrown, visibly pruritic with seborrheic skin and visible biting and sucking lice; a female alpaca was severely underconditioned, still healthy, visibly pruritic and visible biting and sucking lice; a male alpaca was emaciated, otherwise healthy, visibly pruritic with biting lice noted; a

male llama underconditioned, otherwise healthy, pruritic with no lice seen; mother pig with four piglets was very slightly underconditioned with adequate weight on the piglets, appeared healthy but temperament prevented exam, marked alopecia and visibly pruritic on mom and babies, Dr. O'Sullivan suspects sarcoptic mange; two black pot bellied pigs one adequate weight and one slightly underconditioned, healthy with evidence of mange and alopecia; two grower pigs "incredibly food motivated" but noted aggressive, normal behaviour, one adequate weight, one slightly underconditioned, one with corneal ulcer possible traumatic, "infectious?" but appears well otherwise.

40. In his narrative, Dr. O'Sullivan wrote:

The most consistent finding on examination of these animals was a low BCS, especially among the goats and camelids. A normal body condition score is 2.5-4.0. The goats and camelids varied between 1 and 2 in condition score which is an indication that managerial intervention is necessary - whether it be deworming, supplemental feeding, addressing disease, etc.

Physical examination yielded little or no signs of systemic disease in the vast majority of animals apart from a low BCS, ectoparasitism and in some cases anemia.

Three faecal samples were taken from the enclosure holding the goats and camelids. All faecal samples appeared grossly normal in texture, colour and consistency however all three samples yielded a worm burden - on a qualitative scale 2+ and 3+ (scale from 1+ to 4+). When looking at faecal samples we count worm eggs present in the faeces and determine how heavy a worm burden there is present in the animal judging from that. The method I used was a qualitative method which does not give an Egg/gram measurement. One such strongyle worm that we see in ruminants and camelids is called *haemonchus contortus*. This worm is a "blood sucker" and can cause blood loss through the gut and subsequent anaemia. It is possible that this was contributing to the clinical anaemia and ill-thrift seen in the goats. Goats tend to be more susceptible to parasitism by gastrointestinal worms.

The two most likely causes for the low condition score in these cases is parasitism or inadequate nutrition, be it type, quality or amount. It is hard to comment further as I do not have knowledge of the nutrition that was being provided.

2) Ectoparasitism

All goats and camelids were noted to have evidence of pediculosis (both biting and sucking lice) - pruritis, unkempt/rough coat, dandruff/seborrhoea, visible lice.

Pediculosis is not an uncommon finding on goats especially in autumn to early spring depending on weather and environment.

Given the fact that there were sucking lice present on the coats of these animals it is possible that these too could have contributed to the clinical anemia seen in the goats. Small ruminants can normally tolerate quite a burden of sucking lice, and I would not classify the burden noted in these cases as severe, however it cannot be ruled out as a contributing factor.

All the pigs displayed clinical signs of sarcoptic mange. *Sarcoptes scabiei* var *suis* is a common ectoparasite found in pigs. The mite causes pruritis, hair-loss, dry skin, excoriations and ulcerations, secondary bacterial infection can result. It is easily transmissible by contact.

Treatment with injectable ivermectin (anthelmintic drug) 14 days apart is the treatment of choice.

3) Hoof Care

The majority of the hoofs were very mildly overgrown. No lameness noted to be caused by such overgrowth and trimming will easily be corrective.

4) Behaviour

All of the animals displayed normal behaviour. The goats were accustomed to human interaction and handling - approaching happily however they were also incredibly food motivated. The Alpacas and Llama displayed normal camelid behaviour - allowing handling with resistance but curious, non-aggressive, suspicious and displaying normal visual and vocal cues.

41. On April 26, 2017 Farrier Keith Dixon authored the following note:

The morning of Wednesday, April 26, 2017, I attended the BCSPCA Good Shepherd Barn at the Surrey Shelter to evaluate and trim two animals recently seized. Both the stallion and the gelding had about 6 to 8 months of hoof growth. Signs of neglect were evident in the hooves of both the gelding and stallion. There were large flares on both front feet of the stallion. The gelding had a small crack in his left hind. The gelding's hoof length was very long but the hoof withstood the extra length well. Both cases trimmed up fine and no serious problems requiring therapeutic correction or veterinary treatment were observed.

42. The Society submitted a report dated April 22, 2017 from Dr. Eldon Reynolds of Little Mountain Veterinary Clinic concerning the calf that said, in part,

He was very thin (body condition score of 1.5 out of 5. I would estimate his weight to be 375 lbs. He had long licked hair with minor ring worm lesions and large rumen fill giving the animal an unthrifty appearance. The animal was not filthy with manure caking often seen when living in dirty wet environments- only the carpus had manure caking. However this animal was very bright, alert, had excellent appetite and cud chewing, with evidence of at least 3 recent normal grass fed bowel movements in his pen. It is noteworthy that this calf had good height, bone structure, mobility and did not have the appearance of a stunted animal from chronic malnutrition or disease.

Physical Exam; Temperature / Respiration / Heart rate was all within normal range. The only physical concern I had was the poor body condition and hair coat.

43. The report went on to conclude that: "I would expect this animal to gain weight and improve hair coat very rapidly with a higher plane of nutrition like that from grain or lush pasture. Ring worm lesions are normally self limiting when nutrition and exposure to sunlight (pasture setting). It must be noted that this animal is of the Holstein breed and as such need high planes of energy to grow rapidly and get subcutaneous fat."

Dr. Kim Steele

44. Dr. Kim Steele is a DVM, graduating in 2010, practising in a mixed animal, livestock and equine practise since then. She gave evidence at the appeal hearing, confirmed she authored the report and stated it is accurate.
45. Dr. Steele's report said:

On initial examination of the property there were two males and one female turkey at large. There was debris scattered all over the property creating multiple hazards for the animals both at large and in pens. There was no visible storage of feed for any animals and the grass present in either horse pasture was not sufficient to be considered the only feed source.

Pen 1:

-One potbelly sow with 4 piglets was present in a small dirt floor pen. There was shelter available but there was no visible feed or water. The sow was underweight at a body condition of 1/5. She appeared lethargic. Her skin appeared dry with areas of alopecia (missing hair) which may be indicative of ecto parasites. Her four piglets also appeared underweight 2/5 and also appeared to be affected by ecto parasites.

Pen 2:

-Two pot belly pigs were present in a second dirt pen. This pen also had a shelter and a trough with some water present but no feed was visible. There was a hole in the fence which lead to the larger pasture. The smaller of the two pot belly pigs was able to pass in and out of the pen. The smaller pig appeared underweight with a body condition of (2/5), mildly lethargic and similar skin condition to the other potbelly pigs. The second larger pig appeared in better body condition (3.5/5), similar to the other pigs, appeared mildly lethargic and afflicted by ectoparasites.

Pen 3:

- A large field contained 1 holstein calf, 1 brown llama, 1 white alpaca, 1 black alpaca, 2 commercial pigs, 1 black and white gelding, 1 pinto pony and 3 goats. There was deep mud and lots of miscellaneous farm equipment and sharp objects which may have the potential for animals to become injured on. There was two dirty stalls that could be used for shelter but would not provide sufficient shelter for all the animals in the paddock if needed.

-The Holstein calf appeared emaciated (body condition 1.25/5) and depressed. There was no visible lameness. Skin appeared pruritic and suggestive of ectoparasites.

-1 brown male llama was bright but coat appeared matted, there was no visible lameness. Full body condition was difficult due to thick coat but he appeared underweight.

-1 white alpaca was bright but appeared thin with a body condition score of 1/5. The coat was soaked with rain and underlying skin was visible. There were large matts present in the coat. No skin abnormalities were visible.

-1 black alpaca was also bright but appear thin with a body condition of 1.75/5. The coat was matted and rain soaked but no visible skin abnormalities were noted. No lameness was noted.

-1 black and white pinto gelding was present with no visible lameness. He had long overgrown hooves and areas of alopecia with lice eggs present. He had a body condition score of 3-3.5/9.

- 1 brown and white pinto pony was present with no visible lameness. The pony appears intact. He had large patch of alopecia on the top of his back which was very pruritic (itchy) and appeared moderately irritated, the area of alopecia appeared self inflicted due to pruritis. The pony also had overgrown hooves and a body condition of 2.5-3/9
- 2 white goats were both emaciated with a body condition score of 1/4 and appeared moderately depressed. No visible lameness was noted. Both goats had patches of alopecia and dermatitis.
- 1 black and white goat was also thin with a body condition score of 1.75/4. There was hair loss and evidence of dermatitis.
- 2 pink commercial pigs were present. They appeared very hungry vocalizing for feed. They were a body condition of 2-2.5 /5.

Pen 4:

- Two horses were present in a large field with a small attached paddock, there was moderate amount of mud and debris throughout the pen. There was no visible shelter in the pen and the horses had to step over broken boards to access the paddock.
- 1 chestnut gelding with a body condition of 3/9 was present in the paddock. He had overgrown feet that were due for trimming. His right eye was apparently absent or atrophied. There was a mild conjunctivitis with a small amount of mucoid discharge. The eye did not appear painful at this time. Topical BNP was recommended for daily treatment to clear up ocular discharge. He appeared pruritic likely due to ectoparasites.
- 1 appaloosa mini pony was also present. He had a body condition of 5/9 and no visible lameness. He was intact. He had overgrown feet although the toe was worn down with a long heel. He had similar signs of dermatitis from the other horses.

46. On May 1, 2017 Dr. Steele authored an additional report as follows:

I examined the chestnut gelding Torque and the appy mini pony on April 28th 2017 at a foster location in Deroche.

-The chestnut gelding Torque was sedated for further ophthalmic examination. Under the third eyelid an atrophied orbit was present. There was a large corneal scar and what appears to be conjunctiva adhered to the cornea. These findings are likely the result of severe corneal ulceration or trauma and corneal perforation. The eye is not painful at this time. Advise application of BNP once daily to reduce the risk of conjunctivitis. On oral exam Torque had moderate sharp dental points but no oral ulcers or malocclusions. He had long toes with underrun heels. There is the possibility of previous laminitis but mild dish may be related to chronic long toe and mechanical separation. Torque received a tetanus vaccination and a fecal was taken to evaluate internal parasites.

-The Little appy pony was bright and in good body condition. His skin appeared mildly improved since treatment with cyence for ectoparasites. He appears to be approx. 4 years of age. He has long heels from lack of hoofcare but has been able to wear his toe. He had two normal testicles present. He received a tetanus vaccine and a fecal was taken to evaluate internal parasites.

47. Dr. Steele testified that she attended the property on April 20, 2017. She repeated much of what was in her report. Dr. Steele said that there were metal pieces and nails in pieces of wood and multiple obstacles and debris that presented especially dangerous living

conditions that increased the risk of injury such as lacerations to limbs and trauma, plus animals could become entangled in the debris and run into it trying to escape other animals. One pig she said had a corneal injury potentially caused by trauma from property issues. The horse environment was wet and muddy and offered little opportunity to the horses to get out of it as the shelter with a tarp offered minimal windbreak. Wet muddy areas are not uncommon but horses would require a way of getting out of the mud onto dry land. In the back field where several types of animals were, there were risks including sharp metal and a two-stall shelter that was not clean and could only house one animal at a time due to access. The pigs were housed in poor conditions, like the horses, and were housed with horses and alpacas, which should not occur.

48. Dr. Steele testified there were minimal water sources and of those available, the water was not clean. Horses may refuse to drink if clean water is not available to them. There was quite a bit of mud and debris and although the pigs had shelter, there were hazards in every pen. Only one pig pen has a small source of water.
49. Dr. Steele did not see food on the property and saw no evidence of hay; if hay had been fed recently she would see small scraps remaining for about 24 hours but saw no feed for the animals.
50. Dr. Steele testified that animals should not drink water from water tubs containing nuts and bolts due to swallowing and choking hazards. Intestinal injuries could ensue. Horses stepping over debris could result in cuts and slipping on mud. Meat wrappers in the pig pen could pose an issue for animals as you cannot feed ruminants to ruminants as it increases the transmission of diseases. The skeleton present could introduce disease especially if it leeches into a water source. The pasture offered enough room for animals to escape the debris present; not so in the pens.
51. Generally, all the animals were underweight. A lot had poor coats and evidence of ectoparasites on their skin, which causes irritation and missing hair and causes the skin to itch. It is not uncommon but needs to be treated very regularly.
52. She observed symptoms of ectoparasites in the horses and they responded to treatment. She said it is difficult to see parasites hence the importance of the clinical exam of the skin, and to watch their response to treatment. The treatment can be topical and treatment is very effective and reasonably priced. There needs to be two treatments to get live bugs and eggs. The skin improvements are obvious after pone treatment.
53. A lot of horses have a zero egg count, especially if routinely treated. The one chestnut horse scored 725 which is the highest reading she'd seen in the past year. All the horses had ectoparasites. That tells Dr. Steele that there is poor animal management or husbandry practises and no routine checks or treatments or routine dewormers.
54. The calf was emaciated. On cows, a BCS (body condition score) goes from 1-5 with normal 2.5 to 3. The calf was depressed, and its skin was itchy suggesting ectoparasite

infestation. The calf's condition indicated illness or lack of energy which related to a lack of feed.

55. The llama was bright but its coat was matted making BCS assessment difficult. It appeared underweight and was assessed by Dr. O'Sullivan off-site as being underweight.
56. The commercial pigs had a BCS of 2.5 out of 5 which is mildly underweight and Dr. Steele said you don't see commercial pigs underweight. The pigs she saw were vocal and forceful about wanting food and appeared very hungry.
57. Looking at the animals collectively, Dr. Steele said the horses were underconditioned with light BCS, were suffering from ectoparasites and skin conditions, and had overgrown feet and were due for some care from a farrier.
58. There appeared to be no routine health care, she said, and no evidence of feed in the pens or on the property. They had access to some grass but grass is inadequate feed.
59. In response to questions from the Appellant, Dr. Steele acknowledged the meat wrappers appeared outside of the pig pen in some photographs. Dr. Steele said the hazards to the mom and baby pigs were the tin edge and the debris in the paddock, the sharp edge on top of the metal, the exposed tin on the pen beside the door, and the debris. Dr. Steele agreed pigs like toys but said she does not commonly see commercial pigs kept together with other animals. Dr. Steele agreed it was overcast and had rained. She said the horse's eye had an old injury which would no longer be painful. She did not see the pig's eye injury. Dr. Steele said that despite the rain, there should be built up areas, and there may have been some slightly built-up areas that were wet because they were "pretty much flush." Dr. Steele agreed some debris might be building material. Dr. Steele confirmed she saw trampling hazards like metal even though she did not see any nicks or cuts on the horses. Some paddocks had less debris. Dr. Steele said that even if an animal were raised around such hazards, there is still a risk.
60. Dr. Steele agreed that horses blow out their coats in spring but said the horses were underweight and that BCS refers to fat stores, not coat. BCS is based on weight, not hair. Ectoparasites can cause weight loss, but poor feet don't affect body score.
61. Dr. Steele agreed there was not a lot of mud in the pig pen. She agreed transportation of animals could cause stress. Dr. Steele confirmed that owners should provide windbreak in forms other than trees.
62. In response to my questions, Dr. Steele said the horses had a moderate risk of being cut by exposed tin, which could be life-ending depending on where they were cut. She did not see adequate food. Horses need fresh clean water at all times. Dirty water was present and can cause disease and can lead to decreased intake. The one water source for some horses was green.

63. The llama was at risk of injury and had no clean water. Its body was underconditioned and a common cause of under-conditioning was lack of feed, which can lead to emaciation.
64. The pigs had a mild to moderate risk of injury from debris and although they were close to ideal weight, the pigs had ectoparasites and one had an eye ulcer that was untreated and would lead to edema and swelling and ocular discharge which would be painful if not treated medically. There would be potential to lead to corneal rupture, which would be very painful. Dr. Steele said the pig was squinting and tearing which indicated the pig was in pain.
65. Dr. Steele said that no animal was provided with even minimal medical management.

Special Provincial Constable (SPC) Christine Carey

66. SPC Carey is a Special Police Constable appointed under the *Police Act*. She has worked with the Society since 2009.
67. She did not attend the April 20, 2017 seizure but attended this property and the previous property prior to the April 20, 2017 seizure.
68. The previous property on Townline Road in Abbotsford had multiple animals. She said those animals had poor living conditions, inadequate food, shelter, daylight. She had written orders in the past for such things.
69. SPC Carey had followed-up to determine compliance and attended four times in 2015. The bulk of issues were living conditions, sanitation, and poor animal husbandry. The Appellant was given opportunities to comply. SPC Carey recalls telling her multiple times about issues such as exposed nails in the pig pen.
70. At the Abbotsford property, the Appellant surrendered an underweight ewe and ram, and underweight rabbits. SPC Carey explained that she would warn the Appellant and then return to check conditions and if there was no improvement, she would suggest surrender, and the Appellant did surrender 6-7 animals during that time.
71. In September 2015 at the Mission property, rabbits were kept in cages without shelter from the weather, lacking water and living with excessive mud and feces.
72. SPC Carey saw the same conditions in Mission that she saw in Abbotsford, all conditions that could be easily rectified with good animal husbandry practises.
73. SPC Carey said she would “rubberneck” the Appellant’s property as she drove by, and in Mission saw a muddy pasture and multiple animals.
74. SPC Carey said she had been working with the Appellant to get the number of animals down, and the Appellant had agreed to no more rabbits, which created some success for a while. There were no orders in 2016.

75. In early 2017, SPC Carey noticed a deterioration in the property and an unusual amount of garbage accumulating. She saw the dog Gator tethered and tangled and when she showed up on the property, everything was a mess: the field was torn up. The Appellant had a new horse, which it was pawing at water on the ground as conditions were so poor. SPC Carey saw moldy hay which the Appellant said she was using as bedding.
76. SPC Carey had multiple concerns due to hazards and risks where the animals were located. SPC Carey said her orders, submitted as evidence, adequately reflected her concerns such as unclean water, insufficient food, moldy hay, overgrown feet, inadequate shelter, and poor footing.
77. SPC Carey said she believed legal action was imminent as there was a drastic downfall in the condition of the Appellant's property and animals. She felt the file needed another set of eyes so she asked SPC Thomson to get involved as SPC Carey felt she may not have adequately educated the Appellant given no changes had been made. She had expected to see a more significant improvement. She agreed that had she attended the execution of the warrant, from her assessment of the evidence, she would have also seized the animals.
78. SPC Carey expressed the view that it would not matter if the Appellant moved to a new address if she does not understand enough to make changes in how she cares for the animals.
79. In response to questions from the Appellant, SPC Carey said that up until the fall of 2016, things were relatively smooth; whenever an issue was brought up, it was rectified and the Appellant worked on her orders pretty quickly until SPC Carey identified something else. SPC Carey said in the past, the Appellant had fed her animals but she did not agree on the type of food she was feeding. She agreed that the Appellant had complied with a pre-2016 order regarding the horses' feet.
80. SPC Carey said there had been many earlier complaints regarding lack of dry ground but had determined that if the fetlocks were dry and there was no foot rot, the horses must have had access to dry ground. Up until the fall of 2016, the animals had adequate shelter.
81. SPC Carey recalled the Appellant digging a drainage ditch by hand out in the field and specifically recalled telling the Appellant not to put animals in the field until it had been improved. The Appellant then obtained the Arabian horse in fall 2016 after she had been told not to get more animals until the field was improved. SPC Carey agreed the Appellant had downsized the number of animals she had owned in the past.
82. In response to my questions, SPC Carey said there are codes of practice to assist animal owners, and but the Society is not a consultant or babysitter. SPC Carey said she thought the Appellant would have become familiar with good animal husbandry practises by now. She explained that having fewer animals does not change the burden of care; people should not have more animals than they can reasonably care for.

Special Provincial Constable (SPC) Leanne Thomson

83. SPC Thomson is a Special Provincial Constable who has worked for the Society since 2006. She attended the execution of the warrant on April 20, 2017.
84. SPC Thomson confirmed she swore the ITO and reviewed the file. She had attended with SPC Carey on April 4, 2017 and saw the pony with overgrown feet, the horse Spirit which was underweight, and the Chestnut horse which was underweight with visible ribs and a blind eye. A mini in good shape, three goats with lice, one underweight. She recalled the Appellant saying they had been deloused. SPC Thomson saw the alpacas and llama and one calf and the pigs and piglets, with the skinny pig mom and pigs with irritated skin, and the turkey. She did not see potable water. The piglets were chewing on a plastic bag but the Appellant told her that pigs like that. There was a children's pool with green water—it was the only water source.
85. SPC Thomson said there was no adequate shelter for the animals due to mud, debris and hazards, no dry clean place, no trees inside the fence line for shelter (they were outside of the fence and inaccessible to the animals, she said), no protection from wind, rain or cold, and every animal was outside, not in the barn.
86. SPC Thomson confirmed seeing mud and feces and a decomposing animal carcass.
87. SPC Thomson said that when given water, the mom pig drank heavily.
88. On April 12, 2017, SPC Thomson attended the property again with SPC McKay. The ground was still muddy, there was no protection from the weather and there was still debris on the ground. She called the Appellant and was told not to drop by unannounced. SPC Thomson advised the Appellant the time was up for compliance with the previous hoof order and advised the Appellant that she would follow up again in a week. She told the Appellant if she would not shear the alpaca it needed to be groomed and clean and dry. The Appellant told her a vet was coming out to see the alpaca.
89. On April 18, 2017 SPC Thomson attended and saw the Appellant had put up a tarp but it did not offer any protection from wind or cold or rain. It was not big enough for the animals, plus a round bale feeder was taking space under the tarp. The chestnut horse looked like it had lost weight and when it came to the fence, SPC Thomson saw green discharge in its eye that was not present April 4, 2017. The horse still had overgrown hooves which had flared, and she could see live lice on its mane. She saw garbage and pallets and machinery and debris where the animals were.
90. SPC Thomson explained that the reason she applied for a warrant after the April 18 visit and not after the April 4 visit was because the time line for outstanding notices was not yet up and in her experience judicial justices of the peace want all notice periods to have expired.

91. After the warrant was issued, SPC Thomson attended on April 20, 2017 with five Society staff, Dr. Steele, and a photographer, as well as two RCMP members. The warrant was executed at 12:44 p.m. The Appellant was not home. SPC Thomson observed Gator tethered to the front standing in mud and without shelter, food or water. Jake was loose with two loose turkeys.
92. SPC Thomson confirmed earlier testimony about the condition of the animals. She confirmed there was no food visible, and the goat barn was filled with feces. She found a deceased goat and llama.
93. While the Society was loading animals, the Appellant arrived home. She sprayed a noxious substance at the Society and was arrested and detained. The substance irritated SPC Thomson's eyes and made her cough. One of the horses got some substance on it as well.
94. SPC Thomson provided the Appellant with the notice regarding dispute. At that time, a social worker attended and warned her there was a deadly "boobytrap" on the property but the SPC had already gone through the property.
95. SPC Thomson stated that there was inadequate space for the animals on the property. There was inadequate shelter and no food for most, with many animals underweight, many animals with parasites, multiple hazards on the property and no clean dry areas. Based on those factors, she seized the animals.
96. SPC Thomson explained a photo of trees that were all missing the bottom bark. She stated that the horses won't eat bark unless no other food is available - and all the bark from the trees had been removed up to the height the horses could reach. She said bark is inadequate food.
97. SPC Thomson that confirmed she walked the property with SPC Hall. The hay feeder was empty. She went into the barn and only saw a few flakes of hay and nothing available for the animals to eat. She did not enter any areas where there were no animals, including the house.
98. SPC Thomson expressed her view that if the animals were returned to the Appellant they would be returned to a state of distress due to a lack of food and shelter and the underweight status of most animals.
99. On April 21, 2017, the day after the first warrant was executed, the Society received a call regarding animals in the home while the Appellant was in the hospital. No one was home. On April 22, 2017, the Society applied for and received another warrant. They attended with the RCMP. They entered the home and found two red-ear slider turtles in an aquarium with no UV light, and no way to exit the water. A ring neck dove had no food or water. Two northern alligator lizards were determined to be "native species" and were seized by conservation officers.
100. The Appellant also arrived at the property during the execution of this warrant.

101. SPC Thomson testified that there was a full bowl of dog food and feces on the floor. There were feces in a dog crate. No dog was found. Orders were issued for the turtle and doves. The Appellant surrendered the animals as well as a thin turkey.
102. SPC Thomson said the Society had never been inside the home before. It was unsanitary with “feces throughout”. She stated that if the animals were returned to a different property she does not know if they would receive the proper vet care.
103. The Appellant questioned SPC Thomson regarding cameras on the property and a lack of photos submitted by the Society of all equipment on the property. SPC Thomson could not answer a question about how long it would take a horse to gain weight and was unsure in the case of Spirit, and the photographer did not photograph everything.
104. SPC Thomson confirmed she completed WCB forms regarding the spraying of the noxious substance on April 20 but did not feel she needed to attend the hospital.
105. SPC Thomson confirmed there were multiple pastures and there were animals in a field where bark was missing on trees.
106. SPC Thomson said it was difficult for her to determine what was mud and what was feces in some areas outside.
107. In response to my question about the Society review decision suggesting the dog Jake could be returned with conditions given SPC Thomson’s assertion of distress and unsanitary living conditions, she said that the feces would be a “simple clean-up” and that was her major concern – the feces. She was also concerned with hazards outside and was not sure what type of conversation took place between the Appellant and Ms. Moriarty regarding access to the outside.

VIII. Evidence on behalf of the Appellant

J.R.

108. J.R. is the Appellant’s employer. He sells livestock and the Appellant’s job is to handle and organize baby calves. She has worked for him for 6-12 months (once or twice per week) and he has no problem with her. She shows up on time and is good with animals in that she is gentle and calm. She has not hurt any animals and he has not received any customer complaints.
109. He keeps a large storage of hay and the Appellant takes some when needed and it is not an issue.
110. On cross examination, J.R. confirmed that has never been to the Appellant’s property and has never seen her care for her own animals on her property.

R. Z.

111. R.Z. testified that he has attended the Appellant's property as his horse was kept there when it was sick. It was well-cared for, its feet were done and it always had feed. The Appellant dug a drainage ditch or was building a fence or enclosure or fixing a roof; she was always busy.
112. In response to questions from the Society, R.Z. said he had moved his horse before Christmas to S.'s house. The reason he moved his horse was that it was not doing well at the "bottom of the totem pole" in horse hierarchy. Since moving his horse, he was at the Appellant's house about two months ago. He saw wood to build shelters and there were puddles and dry spots for the animals to get away from the wet. He saw debris and said it was not ideal but was not dangerous.
113. In response to my questions R.Z. stated he visited the Appellant (to see his horse) once a week for 3-4 hours and would spend some of that time helping feed animals or brush them or just talk with the Appellant. He noticed how thin the baby calf was but they have a high loss rate and it is hard to gain weight and they are hard to look after and he had seen thin cows before. When he had seen Gator that dog was either tied up or let off the lead on the farm.

V. H.

114. V.H. had in the past boarded her horses with the same person as the Appellant did, and she got them back thin. During this period, she and the Appellant went back to visit and feed their horses but the gates were padlocked. She brought her horse food and the man let her in once in a while. The man went on vacation and the horses were getting skinny. The man didn't give them access for days.
115. V.H. recalled that the Appellant called a veterinarian in the winter but she was not sure why. She said the Appellant had difficulty getting her horses back from the man as there was too much snow in his driveway.
116. V.H. recalled the Appellant had dry hay in her barns, many times over the winter.
117. In response to questions from the Society, V.H. said she did not know the name of the man caring for hers and the Appellant's horses, it might be Mutbak. She did not know the address. She took her horses there, one to sell and one to board for 30 days, as the man may have wanted to buy a horse. She did not know how to care for horses. He loved animals however. V.H. took her horses back at the end of the agreed upon 30 days. V.H. said her horses got insufficient care.
118. V.H. said she often provided hay to the Appellant, all the time.
119. When she went back with the Appellant to retrieve the Appellant's horses when enough snow cleared, they were skinny.

The Appellant

120. The Appellant testified that she can offer her animals an excellent life. She said things did get out of control but they are not as bad as has been reported. Some complaints were unfounded and some of the things said were untrue.
121. The Appellant stated that she has had health issues. Her Mission property is trashed and the basement is filled with her septic waste. She has no heat, no oven and she battled to make the inside of her house livable. The outside has suffered.
122. The Appellant pointed to evidence showing she had added two loads of hog fuel to cover the mud and provide a dry place for animals to stand (Ex 4 page 16). Pages 18-21 show unflooded shelter in a field and some dry spots, and a round bale feeder. She stated that the mud is an ongoing issue with this property. Photo 21 shows the fence is fixed but the tree won't be removed despite her requests to the landlord. She will find a new place to live.
123. The Appellant stated that when her goats got wet, they dried fast.
124. The Appellant said she has done her best to improve the property over two years and has had no help from anyone. She has done her best to provide food. She gets harassed by people up the road and has screen shots from those people—it's ongoing. She is happy to be moving.
125. She said has been unable to get the landlord at her current place to fix the leaks on the roof of her goat shelter and bedding costs are extraordinary as it is getting wet and adds to her workload.
126. She acknowledged that there is a lot of garbage on the property: eight vehicles, a couple of piles of garbage as tall as she is, the carport inside was floor to ceiling garbage and feces and she tried her best but took on too much. She said she has had hardship after hardship.
127. She has got rid of sheep and goats and has three fewer horses. The goats used to get out as the neighbour with dementia let them out. One horse got out and was killed because of a break in.
128. The Appellant said she does go to the vet and has found a new place to live. Her new property is 50 acres and there's no garbage. There are thick trees for shelter, tons of pasture, a forest area and the Quonset (currently in pieces) can be built at the new place.
129. She said she had had a neighbour look after her horse and when she got it back, it was half dead. She had asked Dr. O'Sullivan to attend but did not have any receipts. She did her best to put weight back on her animals feeding them alfalfa and hay.

130. The Appellant said she purchased the new horse from the auction as it would have been slaughtered. She was aware of the lice spreading amongst her animals and had purchased medicine for that and it was in the trunk of her car but her car got stolen.
131. The Appellant said she had seen her pig's eye the day of seizure and there was nothing wrong with it – that the issue must have happened during Society transport. The horses had been fed at the back fence, and animals fed in the goat shed - as all the food was gone they must have eaten it. She had not fed the animals properly just that morning as she was late for an appointment.
132. Regarding the dead calf, the Appellant stated that a coyote had dug it up and she was unaware of it and it had since been removed. Any debris showing in photographs was in areas where there were no animals. She cannot burn the garbage as it is wet.
133. The Appellant stated that the bucket of water filled with nuts and bolts was not for drinking. It contained pieces that were going to be used to put up the arched building and it takes more than two people to put up and it was “just impossible.” She stopped trying after the seizure and said she would put it up at the new place.
134. The Appellant said she had a “crappy landlord on crappy property” and he won't allow any improvement and won't remove machinery or even let her group debris and fence it off.
135. The Appellant testified that Gator was not tied on the back porch. Her dogs are kept inside and let out in the morning. The landlord or the “crazy neighbour” who is the landlord's 95 year old mother sometimes moves or feeds her animals and this is an ongoing problem.
136. The Appellant noted that SPC Carey had told her she had improved the property and to keep up the good work.
137. The Appellant refused to groom the llama as it was cold and there was no place for the llama to get warm. She will groom and bathe him but will not shave him.
138. The Appellant stated that her dogs were of good weight and did not have fleas. The dogs free feed and she uses Revolution which is why they don't have fleas. They are in good health.
139. She stated that the turkey was not double breasted but a heritage breed and the weight was simply inaccurate; that horses in the spring just blow out their coats and the Society just makes it sound bad; that the pigs were fed a controlled diet and play and root and were not kept in a small cage to get fat; that the calf was never aggressive and she does not wrestle with the calf; that the pony and mini were not aggressive and a three-year old can ride them with a halter and no saddle; that the pigs are friendly and they were not too aggressive to do a physical exam, as previously indicated. The Appellant said she wouldn't throw a kid in with them but they were friendly as pigs.

140. In response to the Society's questions, the Appellant agreed she surrendered the turkey, goats an alpaca, pigs and Gator and had been looking for a permanent home for them.
141. She testified that in response to the March 2017 orders, her priority was to get lice medications. She stated that she had booked foot care but could only catch the mini, and her view was that one horse's feet "just grow funny".
142. The Appellant said she had not got any new animals after April 4, 2017. She had the lice medicine but her animals only got one dose - the second dose was due at the time of seizure (the day before the 19th she recalled) but her car got stolen with the lice medicine in it. The car was stolen in the afternoon - no stores were open and the animals were seized.
143. She recalled SPC Thomson pointing out the issue with large debris but she explained she was unable to move the machinery. The landlord moved it a bit but not enough to make a difference.
144. She acknowledged that one horse was losing weight but she was feeding alfalfa to help it gain weight.
145. The Appellant said she was trying her best to comply with the notices and was working toward rectifying them.
146. The Appellant stated that the Society did not look at where she kept her animal food and maintained she was feeding her animals.
147. The Appellant said the debris was there when she moved in. There was junk in the house and shed. There was metal everywhere. It was a "gong show to fix this up." She rented the property two years ago and moved her animals there but did not move in herself until August 2016 as she was attending everyday to care for her animals and improve the property.
148. The Society asked the Appellant why she rented such a bad place. The Appellant said she was being sexually abused where she lived and she feared that her pets which were not food would be slaughtered. The Appellant said she was "freaking out" and so she felt she had no other option. Some of the damage like the broken fence she did not see in advance.
149. The Appellant said she saw the potential and had great plans with the current place but there were problems with the house. The septic was leaking though not into the water though that could happen, and she had no idea how bad it was until she moved there. She had to dig two ditches and she had put so much time and work and money into the property she wanted to see it through. The Appellant said if things were as bad as the Society said, her animals would have been seized in the first place. She has done improvements and constant downsizing.

150. The Appellant said her basement was a “river of human feces and mold”. She painted the walls and floors but the windows were not attached to the frame and the toilet spewed water. She said she is sick from living there.
151. The Appellant said she has a ten-year lease on a new property and a trailer is coming and she has a new partner to help her out and he helps a lot. She said in response to the Society’s questions that she did not ask him to be a witness as he did not have a phone of his own and she did not think they could share a phone and she did not think a person in a relationship with her could be her witness.
152. The Appellant does not know the address of the new property but it is across from Sue Road and shares a common driveway with a nursery. The Appellant and the new landlord have had conversations over the past two years. She originally had a friend stay there to do some improvements but that failed. She is working on improvements there herself and she said she can take the Quonset shelter with her. She said she did not include a copy of her lease in her materials.
153. The Appellant said she did not read the entire Society review decision as she has an anxiety disorder and she agreed it was an important document but she tried to read it section by section and was having panic attacks and was hospitalized.
154. Regarding Jake, she does not know where he is so cannot pick him up, and nowhere in the material does it say where she can get Jake. As she filed her appeal, she thought all the animals were now under appeal including Jake and she did not think Jake could come back in the mean time. Jake is a high energy dog and is probably not enjoying being in custody.
155. The Appellant said she goes to the new property every day and is waiting to do the fence but said it is better than she thought and she needs to patch it up. She did not move her animals there prior to seizure as she was not aware there was a fence.
156. The Appellant said she signed the deal six months ago and she has put in a septic field and trailer pads and has rented machinery and is awaiting a trailer.
157. She said she can pay for her animals’ care because of her job and the neighbour has given or sold hay to her at the new place plus there is 50 acres of pasture.
158. In response to my questions regarding her new property, the Appellant said she was in talks with the landlord and they had agreed on the lease. When I pressed her, she said it was a free lease for ten years and she just has to insure the property and she is not permitted to make a mess. The Appellant confirmed she signed a lease that requires no payment and that she is also required to obtain farm status for the landlord. However she does not know how this will happen. When pressed some more about the signed lease, the Appellant said it is not a signed lease but an agreement established by email. She did not produce any emails.
159. The Appellant named her veterinarians but said she had no records.

160. When asked about the emaciated calf, the Appellant said it had a very heavy worm load and lice and she had treated it and it had access to lots of alfalfa and hay. She does her own fecal float and treats them with medicine. She said the calf did gain weight and the lice that were visible were dead.
161. I asked the Appellant what her plan was should any of the animals be returned. She said if they were returned while she lived at her current place, she would improve their shelter and if she had moved they would be okay. She said the Quonset would be moved to the new place.
162. She said at her current place she has two full shelters which will fit the four horses and the llama when it is constructed. The two pigs have their own shelter and the calf will be in the Quonset when it is built or otherwise under a tree.
163. The Appellant said there is no house at the new property but she has a 23-foot trailer and needs a hitch to pull it. When I asked where the camper was right now, the Appellant said it was at her house, but it does not belong to her but they can get it whenever they need it and it is actually just up the road, and since they just filled in their driveway yesterday they can now go get it.
164. The Appellant also said, when I asked about the “river of human feces” that they stopped the flow of human excrement and scooped it all out and sealed the room and sealed the mouldy room.
165. The Appellant also clarified for me that when she sees the veterinarian, she would mostly go and speak to him without her animals and would take pictures and buy medications.

IX. Submissions

The Appellant's Position

166. The Appellant's position is that she has done the best she could, in a property that she was unable to adequately improve, so she found alternate living arrangements but the animals were seized prior to being moved.
167. The Appellant submits that the Society attended her property based on false information, and she already agreed to surrender some animals. She disagrees that the animals were in distress as when she did fall behind in some aspects of their care due to her own health, she always managed to have food for the animals, as she is resourceful. She submits that after receiving multiple notices about hazards on her property, she removed them as best she could, even through inclement weather. The Society told her she was doing a good job, and she submits that she believed she was making progress despite many setbacks. She says the parts of her property that are unsuitable for animals are also inaccessible to animals. She has put in shelters in two fields and had dug many drainage ditches.

168. She denies that there were any reports about skin conditions; nor did the animals have skin conditions, only lice.
169. She submits she has rescued many animals and found better homes for them, and has many medications on hand on the advice of her veterinarian.
170. She believes that if she is given a last chance with “whatever and however strict conditions”, she would excel and prove that she can provide the level of care the animals all deserve.

The Society’s Position

171. The Society submits that despite multiple visits to the property over a number of years with Society staff members issuing multiple verbal warnings and written notices and orders, the Appellant failed to properly care for the Animals. The Animals lacked adequate food, water and shelter, were under-conditioned or emaciated and were suffering from untreated or undertreated medical conditions. The property was entirely inadequate for the all of the animals present. There was injurious debris and hazardous material accessible to the animals and no dry areas were provided to the animals as respite from the severely wet and muddy conditions noted at the Property.
172. The amount of lice and ectoparasites present in the animals was indicative of the unsanitary conditions and poor disease control on the part of the Appellant. While the Appellant had indicated that she had “deloused” all of the animals, the vet reports indicate that this was either untrue or wholly inadequate as almost all of the animals continued to be infected at the time of the seizure.
173. In addition, despite the Appellant’s claim to have obtained farrier care, both Torque and the mini were found to have overgrown hooves. In the Society’s submission, the Appellant has clearly demonstrated either an unwillingness or an inability to maintain her animals in a state free from distress.
174. The Appellant made submissions to the Society that food was actually present at the property; however there was no evidence of recent feedings and many of the animals were underweight or emaciated.
175. The Society submits that the Appellant is unable to care for her animals and is either unable to recognize at times when some or her animals need medical care or is unwilling to provide this care. It submits that while not all of the animals removed were suffering from inadequate veterinary care, there were sufficient concerns amongst the animals as a group to not have faith that if returned, the Appellant would be able to maintain them in good health.

X. Analysis and decision

176. 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.

Seizure of the Farm Animals

177. My first task is to determine whether the Society justifiably formed the opinion that the farm animals were in distress when they were removed.
178. “Distress” in s. 1(2) of the PCAA, a protective statute, is a specialized term. The criteria listed in s. 1(2) – any one of which is sufficient to satisfy the definition – constitute “distress.” The first three of those factors reflect serious risk factors that foreseeably give rise to suffering and harm if protective action is not taken. While they must not be trivialized in their application, they also do not require the Society to wait until the worst happens.
179. In my view, the removal of the farm animals was justified.
180. I agree with Ms. Moriarty that a majority of the farm animals were deprived of adequate food and/or veterinary attention. While the Appellant argued that there was food on the property, the objective veterinary evidence was that the majority of the farm animals were underweight, some very much so. Dr. O’Sullivan reported that his most consistent finding with the farm animals, especially the goats and camelids, was a low BCS. Dr. O’Sullivan said that there were no signs of systemic disease apart from low BCS and ectoparasitism and some cases of anemia. He commented that with the BCS, managerial intervention is necessary. All the pigs had sarcoptic mange, easily transmissible, and causing itchy hair loss and ulcerations.
181. In short, the underweight farm animals were either not getting adequate food, or they had underlying medical conditions that needed to be and were not being addressed. While some of the animals were more severely underweight than others, the presence of numerous severely underweight animals satisfies me that the problem was not a “one off”; it was a systemic problem - it concerned the Appellant’s capacity to feed and care for the farm animals, and therefore it was a significant risk factor to all of the farm animals.
182. I also conclude, based on Dr. Steele’s evidence, that many of the animals were deprived of adequate water. Dr. Steele reported on a lack of water or food present for many of the animals. She noted minimal water sources and of the water available, it was not clean and posed health risks.
183. As noted in the definition of “distress”, being deprived of adequate food or water is itself “distress” – this protective definition does not require the Society to wait for injury,

suffering and medical conditions and to develop as a result. That said, it is no surprise that many of the animals also had medical conditions, as reflected in Dr. Steele's evidence, which I accept. While I will not repeat every medical condition reflected in the reports, I agree with the Society that the lice and ectoparasites present in the animals "was indicative of the unsanitary conditions and poor disease control on the part of the Appellant."

Dr. Steele said all the horses had ectoparasites, and one horse had an egg count of 725, when zero was often seen. She concluded there was poor animal management practises and no routine checks or treatments. She said no animal was provided with even minimal medical management. While the Appellant stated that she had "deloused" all of the animals, or was in the process of doing so when her car was stolen, the veterinary reports satisfy me that her efforts were wholly inadequate as almost all of the animals continued to be infected at the time of the seizure.

184. Dr. Reynolds reported that the calf was very thin and apparently other than hair coat and poor conditioning, had no other concerns. He concluded that now that the calf was receiving adequate care by someone other than the Appellant, he expected the calf to gain weight and improve hair coat very rapidly with a higher plane of nutrition. Dr. Steele reported and testified on the low weight of the pig mom. She reported on missing hair on several animals. She testified that the llama was matted and the calf emaciated. Lice were present on many of the animals and hair loss, itchy skin and irritation was present. The goats were emaciated and the alpaca was thin. Farrier Dixon reported that the two horses (stallion and gelding) had 6-8 months of hoof growth and showed signs of neglect with flared hooves. Dr. Steele reported that the horses had no visible shelter and had to step over broken boards to access the paddock.
185. The Appellant, who cross-examined the witnesses, was unable to provide proof of any medical management in the form of veterinary receipts or medications. She stated that she could either not get receipts or medications were stolen, but neither of these things prevents or permits her to withhold care from her animals. She claims to have had food available and had not intended for some animals to drink from the bucket of nuts and bolts, or enjoying the green water, but again, she did not do enough to provide adequate food, water, care (lice and skin issues), or veterinary care (low BCS, lice, skin irritations, eye infection).
186. Added to all this was the farm animals' inadequate living conditions. Dr. Steele reported that the property where the non-penned farm animals were had deep mud, no sufficient shelter. She listed multiple obstacles, debris, sharp metal, exposed nails, slippery mud, inadequate shelter, minimal windbreak, poor conditions in the pens, inability for animals to raise themselves off of the muddy surfaces, inappropriate mixing of animal types. She noted minimal water sources and of the water available, it was not clean and posed health risks. She saw no evidence of animal feed or hay, or evidence of recent feedings. Lack of adequate shelter was apparent and even the Appellant herself tried to construct a trap covered area, which was not able to provide protection from the wind or a large enough area to protect her farm animals.
187. Having considered all of the evidence before me, I have no hesitation in concluding that each of the farm animals was justifiably removed as being in distress, either because it was

actually sick and suffering, or because it was subject to a foreseeable risk of injury, sickness, pain and suffering as a result of the risk factors set out in ss. 1(a), (a.1) and (a.2) of the definition of “distress”.

188. I also have no hesitation in concluding that, having found distress, the Society validly removed the farm animals rather than giving the Appellant a further opportunity to relieve their distress. The Society gave the Appellant numerous opportunities, by way of verbal warnings, notices and orders, to relieve the animals’ distress. While there was a period of time when she made some progress, this was not the case in the visits leading up to the seizure. As made clear in *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at paras. 37-38, section 11 of the *PCAA* allows the Society to consider the circumstances as a whole. It does not require the Society always to give a person a “second chance” or numerous “second chances”. In this case, the Society was right to remove the farm animals when it did.

Return of the Farm Animals

189. Having determined that the seizure of the farm animals was justified, I now consider the return of these animals.

190. 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.

191. 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.

192. I recognize that the Appellant was challenged by her personal circumstances. She explained how she came to have rented this particular property (from which her animals were seized), and referred to her brief incarceration after the seizure. I want the Appellant to know that I heard her as she described the horrendous living conditions and situations she has experienced in the past, which all combined to bring her to the place and the time of seizure.

193. I do not, in making my decisions, ascribe any blame to this Appellant for the difficulties she has experienced in her life and in her housing. My function in this appeal is ultimately to determine the best interests of the farm animals seized, and whether those best interests are served by being returned to the Appellant, with or without conditions, or remaining permanently with the Society.

194. In determining the farm animals' best interests, my focus is on whether or not the animals would be returned to a situation of distress. It is not whether a particular home is the best home in a perfect world; rather, it is whether the conditions for the animals at a particular property with a particular person will keep the animals from being in a state of distress. In any case, and certainly in this case, the fact an Appellant may desire to live in better circumstances and may even try to find better living conditions, does not exempt her from her obligation to her animals.
195. Listening to the Appellant describe her abysmal living conditions with a "river of human feces" running underneath the house was difficult. The Appellant tried and made some progress with fixing the inside of her home. However, as she acknowledged, the outside suffered. The property was highly problematic from the start and has only fallen into a greater state of disrepair. This does not, however, excuse the Appellant from the obligation of keeping her animals out of distress.
196. The Society, through its material and the testimony of SPC Thomson and SPC Carey, both of whom provided detailed testimony and notes, which I accept and rely on, describe multiple encounters with the Appellant where she was either told or ordered to relieve her animals' distress. The Appellant seems to believe that if she tries, and if the Society hadn't already seized the animals, then she should be exempt from seizure.
197. The Appellant is wrong. Despite her efforts, her property is not a safe haven for her farm animals, given that they spend their lives outside. She said she is capable of providing her farm animals with excellent care but I have not seen evidence of that; in fact, I have not seen evidence of even minimal care. Dr. Steele remarked that there was not even minimal medical management. Dr. O'Sullivan wrote that medical intervention was necessary. I have no confidence that with her farm animals, the Appellant would be able to provide a minimal level of management and in any event, her animals, being deprived of that minimal level of management, had now found themselves to be in distress.
198. The tarp shelter constructed was woefully inadequate to provide her farm animals with escape from inclement weather. The amount of mud, while not directly the fault of the Appellant, is nevertheless her responsibility to mitigate, and despite bringing in sand, she has failed to adequately mitigate the mud. The two-stall shelter is not suitable for two horses, as Dr. Steele testified. Although the Appellant has, at least, pieces of a Quonset, she has thus far been unable to erect it, and I have no confidence she will erect it properly at this or any other property.
199. While Appellant has likely spent countless hours trying to improve the property, she has not improved it enough to meet any appreciable level of adequacy. I think the Appellant may continue to try, and has requested more time, but her time with these farm animals is up. She cannot, at the expense of her farm animals' health or safety, continue to put them into a state of distress.

200. The Appellant has relied heavily it seems on the generosity of others when it comes to feeding her farm animals, and despite such generosity, many of her farm animals were underweight. I am not persuaded that the Appellant has the ability to provide enough quality and quantity of feed for her farm animals. I am not persuaded by the Appellant's view that the pigs have room to move so are not fat, or that the weight of her turkey is simply wrong.
201. The Appellant also appeared, in my view, to downplay the conditions of some of her farm animals in that she denied the pigs were underweight, denied her turkey was underweight, and denied the ectoparasites. She disagrees her animals are not properly fed, contrary to their weights, and denies they are not given adequate water, contrary to a lack of available water and lack of clean water. Whatever other challenges her property provides, she should have, at the very least, been able to provide a continual source of clean water to her farm animals.
202. Despite the fact that the Appellant has had many chances, and apparently made some progress prior to the end of 2016, it is my view based on the totality of the evidence, including the subsequent return to inadequate conditions, that the farm animals, if returned, would foreseeably fall once again into a state of distress. I agree with the Society when it says it is not its job to proactively assist animal owners to meet their requirements under the law.
203. I believe SPC Carey when she testified that she saw a deterioration in both the Appellant's property and the condition of her animals late 2016 and I commend her for asking her colleague to be a second set of eyes on this file, as SPC Carey was worried she had not adequately conveyed the realities of the situation to the Appellant. SPC Carey had in fact adequately conveyed to the Appellant the seriousness of the situation and the actions required. Regrettably, the situation did not improve.
204. I also accept SPC Thomson's testimony that by the time of her April 2017 visit, the Appellant had been given hoof orders and she advised the Appellant that follow-up would occur in the following week regarding delousing animals, hoof care, alpaca grooming, creating dry shelter, cleaning up debris. I believe SPC Thomson that the only reason she did not seek an ITO earlier was to allow for time limits to expire.
205. As noted, the Appellant herself commented on the inadequacy of her property. I am not persuaded that she will be able to make enough changes to be permitted another chance with respect to the farm animals.
206. I am also not persuaded that the Appellant has another property. I find her evidence on this point unconvincing. She said she signed a lease but then said she had not, it is only an email agreement. She described it as a ten-year signed lease without a requirement to pay rent, but could not show this with a copy of any of the mails. She described the new property as being without any home and says she has a trailer that is on her current property but when I asked her exactly where, she admitted it is not her trailer and is not on her property but she can get it.

207. Given this and the lack of any evidence of any other property, I do not accept that the Appellant can move her farm animals to a better place where she would have a concrete plan, the means and the knowledge to keep them distress-free.
208. In all the circumstances of this case, I dismiss the appeal with respect to the farm animals. .

The Dog Jake's Seizure and Return

209. Ms. Moriarty's May 12, 2017 written reasons make only one mention of the dog Jake: "It is my hope that you are able to turn your attention to the animals that remain in your custody, and Jake whom I am prepared to return pursuant to an agreement of care."
210. An Agreement for Care is found in Exhibit 4 page 348. It is unsigned and undated (says only May (blank), 2017). It seeks agreement that the Appellant pay costs of \$420, provide the Society reasonable access and cooperation, attend to Jake on a daily basis to ensure his health and well-being and provide him with an adequate diet and daily exercise, keep Jake in an environment safe and free from injurious objects, ensure Jake has protection from the elements and excess heat and cold, seek immediate veterinary care, and follow the recommendations of Dr. Walton to treat Jake for parasites, add Omega-3 fatty acids to Jake's diet as prescribed by a veterinarian, and "take a close assessment [of] the epididymis [duct behind the testes] to rule out neoplastic process [tumour]". The Society also wanted Jake neutered within 6 months.
211. The Society was unable to provide me with proof that an agreement had been provided to the Appellant. The Appellant denies getting the agreement.
212. The Society said the onus was on the Appellant to have read the written reasons and make further enquiries. The Appellant said she could not have come and got her dog Jake as she did not know where Jake was being kept, and thought that once she filed the appeal, she had to await a decision on all the animals.
213. I find it surprising that neither party acted on the offer. It is not clear to me why the Society did not proactively follow up with the Appellant given that it was prepared to return the animal on terms. With regard to the Appellant, one would have expected her to at least follow up on the offer to have her dog returned.
214. Jake was seized as part of the larger seizure. He was found outside when the other animals were removed. It is reasonable to conclude that the Jake's removal at that time was based on one or more of the factors that informed the risk assessment that resulted in the removal of the farm animals, including the health conditions of the farm animals, the external conditions of the property and the condition of the dog "Gator", who was tethered to a railing with no dry footing, surrounded in his feces.
215. This is a close case as it pertains to the removal of Jake. However, I am satisfied that the Society, based on the circumstances it confronted at the time, acted reasonably in removing

Jake given the clear substandard treatment of the farm animals, the condition of the other dog that it witnessed on the property and the property conditions generally.

216. However, I also find that Jake's case raised, and raises, special considerations with regard to the issue of return.
217. Ms. Moriarty's willingness to return Jake on conditions reflects that the Society itself, on reflection, viewed the ongoing risks to Jake as being different from the ongoing risks to the other animals. There was no mention of the dog Jake in any of the March or April 2017 SPC visits. The review decision does not mention any risk factors unique to Jake.
218. Jake is an inside/outside dog, not a tethered dog or a farm animal. When SPC Thomson entered the home in June 2017, a full bowl of dog food was found inside the Appellant's home. The veterinarians did not bring up dehydration so I assume from the evidence adequate clean water was not a concern (as it was for the farm animals).
219. Jake was taken to veterinarian Dr. Adrian Walton who produced a report dated April 20, 2017. He said the dog was bright, alert and responsive and estimated the dog to be between 8 and 24 months. He remarked that the dog's coat was dry and brittle with "No external parasites noted." He remarked in the report that the dog's heart and lungs were within normal limits. And the dog had "mild inflammation on sternum and ventral neck, with good muscling and a body score of 4 out of 9. No neck or back pain noted. Dog is intact male with right testicle showing a mild enlargement of the epididymis. Dr. Walton remarked "underweight but appears healthy."
220. Dr. Walton made a few recommendations including "recommend omega-3 fatty acids for the coat as well as Revolution or Advantage Multi in case sarcoptic mange or other external parasite on none noted. Dog is mildly fearful but warms up to people relatively quickly. If animal is neutered take a close assessment the epididymis to rule out neoplastic process given the dog's age it seems unlikely" [all grammatical errors were in the report].
221. In summary, Jake was not unfed. There was no suggestion he was unwatered. He may have been underweight but at 4 out of 9, the veterinarian did not raise any alarms. The veterinarian did not find external parasites. The only veterinary issue of note was a dry brittle coat for which the veterinarian recommended omega-3 fatty acids. There was no evidence presented to suggest that the Appellant was not already providing Jake with an adequate diet, basic exercise, protection from the elements or excessive heat and cold. Clearly, Jake was provided with these things, and was being treated as the Appellant's house pet, and was in a better position than the other animals.
222. Should Jake be returned, and if so, should that be with conditions or without conditions? In this regard, I must have regard to all of the evidence, including the evidence brought to my attention from the June 2017 warrant.
223. The *PCAA* describes the duties of persons responsible for animals:

9.1 (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.

(2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.

224. I have considered the conditions that Ms. Moriarty had put on her proposed return of Jake.
225. I note first that Ms. Moriarty was aware of the conditions of the property arising from both the April 20 and 22 warrants, and did not let those stop her from proposing the return on May 12. While adding a condition to keep Jake safe and free from injurious objects, Ms. Moriarty did not impose any conditions regarding the clean up of the property. I can only assume and agree that Ms. Moriarty, on reflection, did not find that the property conditions for the farm animals to be an ongoing significant risk to Jake, particularly in the absence of the farm animals, the fact that Jake lived inside and the fact that he was not tethered (as Gator was found).
226. I have noted that in its closing submission, the Society said that: “regarding Jake, SPC Thomson confirmed that it is her opinion that he should not be returned to the Appellant even pursuant to a Care Agreement. This is in light of the Appellant’s testimony regarding the current condition of her home including sewage back up in the basement. The Society agrees with SPC Thomson’s position in this regard.” However, I must also note that the Appellant testified that she blocked the flow of sewage, cleaned the area out, and sealed the mouldy room, none of which is contradicted by any of the Society’s warrant execution information from April or June 2017. I note as well that the Appellant continues to occupy the house, regarding which there has been no evidence of the house being condemned. While SPC Thomson in her June 20, 2017 notes writes that other individuals were pursuing the health status of the house, no such evidence is before me. Surely if the house was condemned, the Appellant would find another place to live with her dog.
227. When I asked SPC Thomson directly about her view on the return of Jake given Ms. Moriarty’s statements about the return of Jake in Ms. Moriarty’s proposed Care Agreement, SPC Thomson said her “major concern” was the feces, and that the feces were a “simple clean-up.” I also note in the Society’s post-hearing submission of new evidence regarding the June 20, 2017 warrant, SPC Thomson’s notes made mention of the “Dwelling home filled with more debris than the warrant in April. Difficult to walk in the living room (too much debris piled up). Tools, furniture and garbage etc. all over the floors.” There was no mention of feces, again which was SPC Thomson’s major concern. As of this June 20 visit, the feces that SPC Thomson described during her testimony were not referenced. Again, I am not saying this home was clean; far from it. However, the *PCAA* does not make the government the arbiter of cleanliness: see *Krecul v. BCSPCA* (BCFIRB, June 16, 2014), paras. 79-92. There was no veterinary evidence about unsanitary conditions inside the home posing a risk to Jake, and Ms. Moriarty only referred generally to keeping Jake safe and free from injurious objects; with no mention in her proposed Care Agreement any conditions regarding the cleanliness of the home where Jake was kept.

228. In my view, the Appellant's evidence about the previous condition of her basement is not a valid reason to refuse return today. The real issue is whether or not the return should be with conditions, in particular, the conditions referenced in the Care Agreement proposed by the Society.
229. With regard to those proposed conditions, there was no evidence that the dog had been denied food or water and there was no indication that Jake had suffered any effects from such a denial so I don't think it is reasonable to add as a condition an action already being performed by the Appellant. Likewise, I find that there was no evidence presented to suggest that the Appellant was not already providing Jake with an adequate diet, basic exercise, protection from the elements or excessive heat and cold.
230. I also cannot conclude from the evidence that the Appellant would deny veterinary care to Jake should he need it. While I find the Appellant did a very poor job of providing veterinary care to her farm animals, I cannot, without some specific evidence, conclude she would do the same with Jake, given that Jake is her pet and given the animals' differing treatment and living situations.
231. Regarding Dr. Walton's recommendation that Jake take Omega-3 supplements, it was only a recommendation. While I hope and expect that the Appellant will follow the recommendation, I am not satisfied that this must be a legal condition of return.
232. I also cannot support Ms. Moriarty's condition that Jake be neutered and that the Appellant follow Dr. Walton's recommendation to have a close assessment of his epididymis. That was not the recommendation of Dr. Walton. Dr. Walton only said that if Jake was neutered, there should be a close assessment done to rule out neoplastic process. Dr. Walton also said such a neoplastic process seemed unlikely given the dog's age. I therefore find this condition to be unreasonable.
233. Ms. Moriarty also proposed the condition that the Appellant pay \$420 and allow the Society to have reasonable access and cooperation. While I would prefer to see such reasonable and respectful access permitted, I am not persuaded this must be required from the Appellant as a condition of getting her dog back. I will only state that if she fails to cooperate with the Society, the Society's only option in the event it sees a reasonable risk is to apply for an ITO, leading to the sort of formal process that led to this appeal. Nor do I think the Appellant should be required to pay \$420 as a condition of return. The reasonable costs that the Society should be allowed to recover will be addressed below.
234. What about the new information presented by the Society as a result of the June 20, 2017 warrant, which caused the Society to enter the home and find feces throughout the home? As noted above, when I asked SPC Thomson how I might marry apparently conflicting information between Ms. Moriarty's willingness to return Jake, and SPC Thomson's assertion of distress due to living conditions, she testified that her major concern regarding Jake was the presence of feces and that was a "simple clean-up." I am satisfied that the Appellant is willing and able to undertake this "simple clean-up" for Jake.

235. In all the circumstances therefore, I find that Jake will not foreseeably be returned to a condition of distress if he is returned without conditions. I therefore do not find the conditions suggested in the Agreement of Care to be required as a condition of return.
236. I have concluded that it is in the best interests of the dog Jake to be returned to the Appellant. I will not let the payment of a debt for which the Appellant is liable (namely the costs associated with the farm animals and some costs for Jake) to stand in the way of the best interests of Jake.

XI. ORDER

237. 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).

238. With regard to the farm animals, it is my order, pursuant to section 20.6(b) of the *PCAA*, that the Society be permitted in the Society's discretion, to destroy, sell or otherwise dispose of all of the farm animals.
239. With regard to the dog Jake, it is my order, pursuant to section 20.6(a) of the *PCAA*, that the Society be required to return the dog Jake to its owner or the person from whom custody was taken, without conditions.
240. It is my hope that the Appellant does not continue to be met with, as she describes, hardship after hardship, and that in some small way, the return of her dog Jake allows her to begin a new journey to find a suitable living situation for her and Jake.

XII. Costs

241. Section 20 of the *PCAA* states:

20 (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.

(2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.

(3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.

(4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.

(5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.

242. 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)”.

Cost of Care – Farm Animals

243. The Society incurred and continues to incur expenses with respect to Jake and the farm animals, including costs associated with providing them with food, shelter and other care.

244. Therefore the Society is seeking costs in the total amount of \$12,680.99, pursuant to s. 20 of the PCAA, as follows:

Veterinary, Hauling and Farrier Costs: \$3,776.52

SPCA time attending to seizure: \$273.00

Housing, feeding and caring for Jake and the Animals: \$8,631.47

TOTAL: \$12,680.99

Position of the Parties

245. The position of the Appellant is that the costs are completely unreasonable. The cost for one horse on page 6 is “insane” and she pays less than that including a trainer. She said she does not know how the Society would expect her to pay the costs. The cost for feed is “insane” and the cost would mean they are feeding 1.5 bales a day which is “insane.” The Appellant said the cost for alfalfa is \$12 for 120 pounds and how can a calf eat \$16 a day? There is no way it could eat 160 pounds of food a day.

246. The Appellant said the costs were all so inflated there was no possible way she could pay. It might as well be \$1 million. She might be able to volunteer or do a million things but she could not pay. She said the horse has seen the vet three times according to the Society and that is ridiculous.

247. The position of the Society is that as the Society continues to care for the animals, the Society incurs costs to provide food, shelter and other care for the animals. The costs claimed by the Society total \$12,680.99 and the Society has not increased its request based

on the longer time for BCFIRB to deliver its decision based on the extended submission schedule.

248. The Society was able to place one of the horses and the miniature horse into foster care. This has significantly reduced the costs of care in the case.
249. The Society says the remaining costs claimed are reasonable and notes that the costs claimed for the remaining horse, pony and calf do not include costs of overhead, which are incurred by the Society. Instead, only the costs of feed and staff time to care for these animals are being claimed in addition to any related veterinarian services. If any of the animals are returned to the Appellant, the Society seeks the payment of the costs claimed prior to their return.
250. The Appellant has provided no evidence concerning the reasonableness of the costs, only her distaste for them.
251. In view of the Appellant's position, and having independently considered the Society's claimed costs in this case, it is my view the costs claimed are reasonable regarding the farm animals, including the veterinary costs which are supported by actual invoices.

Costs of care - Jake

252. The Society breaks down all costs, and I have pulled out those costs for Jake as follows:

- Costs for boarding for Jake: 71 days x \$17.07/day x 1 dog = \$1,211.97
- Cost for veterinary care for Jake was \$80 less a 30% discount plus 5% GST = \$58.80

253. In my view, the Society's reasonable care costs for Jake must reflect that while the initial removal was reasonable, and the veterinary check was reasonable, the Society should have returned him without conditions no later than May 12, 2017. As a result, the Society's reasonable care costs for Jake are limited to the following:

- Cost for boarding Jake: 22 days x \$17.07/day x 1 dog: \$375.54
- Cost for veterinary care: \$58.80

XIII. COSTS ORDER

254. Pursuant to s. 20.6(c) of the *PCAA*, I have varied the reasonable costs owing by the Appellant the Society to be of **\$11,844.56**. I have calculated this amount by taking the total cost of care claimed by the Society (\$12,680.99), and reducing the boarding costs claimed by the Society for Jake from 71 days to 22 days (49 days x \$17.07/day – total cost reduction of \$836.43).
255. So that the Appellant understands my order, the Appellant owes this amount but is not required to pay this amount before retrieving Jake.

Dated at Victoria, British Columbia this 7th day of July, 2017.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read "C. Van't Haaff". The signature is written in a cursive, flowing style.

Corey Van't Haaff, Vice Chair
Presiding Member