

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  
1 GOAT, 2 PIGS, 1 PEACOCK, 1 MINIATURE HORSE, AND 1 ALPACA

**BETWEEN:**

JAMES RICHARD BRUVALL,  
2012064 ALBERTA LTD dba REVELSTOKE PETTING ZOO and  
REVELSTOKE HORSEBACK ADVENTURES

**APPELLANTS**

**AND:**

BRITISH COLUMBIA SOCIETY FOR THE  
PREVENTION OF CRUELTY TO ANIMALS

**RESPONDENT**

## **DECISION**

**APPEARANCES:**

For the British Columbia  
Farm Industry Review Board:

Corey Van't Haaff, Vice Chair  
and Presiding Member

For the Appellant:

Did not attend

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

November 7, 2017

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 Appellants appeal the October 3, 2017 review decision issued under s. 20.2 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”). The review decision arose from the Society’s seizure of 1 goat, 2 pigs, 1 peacock, 1 miniature horse, and 1 alpaca (the “animals”) on September 12, 2017 from the Revelstoke Petting Zoo in Revelstoke, BC. The Appellants did not dispute the Society’s Costs of Care and as such they are not an issue in this appeal.
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 animal.
4. For reasons that will be explained in detail later in this decision, I have decided that I will not require the Society to return the animals seized on September 12, 2017.
5. Despite filing a Notice of Appeal, the Appellants did not file any submissions in support of their appeal and did not attend the telephone conference hearing despite being aware of the hearing’s date and time. I chose not to dismiss the appeal outright in order that I could hear from the Society on the issues relating to the seizure and return of the animals to confirm that the decision was in the best interests of the animals.

## **II. Brief history prior to the seizure of the animals**

6. The Society has a recent history with the Appellants in this appeal. Between the months of June 2017 and September 2017, the Society received approximately 13 animal cruelty complaints that involved the Revelstoke property, relating to underweight animals, inadequate shelter, medical needs, and mistreatment of horses.
7. On August 2, 2017, the Society attended the property in Revelstoke with a warrant and seized eight animals including a pig, a lamb, horses, and a miniature horse as the Society determined the animals were in distress as they were underweight and had varying medical concerns. A Notice of Distress was left for the remaining animals, which are, except for the chickens, the subject of this appeal.
8. No appeal was received prior to the deadline.
9. Between August 15, 2017 and September 12, 2017, the Society attempted to contact the Appellant to conduct a compliance check on the remaining animals in his care and to advise him of the post-mortem result of the dead pig. The Society made multiple phone calls and sent multiple text messages. An additional complaint was received by the Society

during this time. No contact was received from the Appellants stating that compliance had been met, and therefore a warrant was applied for.

10. On September 12, 2017, the animals that are the subject of this appeal were seized.
11. On September 13, 2017 the Society received a voicemail from T.S. claiming she was the caretaker of the animals at the property. On September 15, 2017, the Society spoke to T.S. who explained that she was acting on the Appellant's behalf as he was incarcerated, and that she was trying to find new homes for the animals. On September 17, 2017, the Society received a letter signed by the Appellants allowing T.S. access to the Society's information and providing T.S. with the Appellant's authority to act on the company's behalf with regard to the animals seized.
12. Ultimately, as detailed in the Society's written reasons, a disclosure package was sent to T.S. requesting a response prior to October 3, 2017 regarding the disposition of the animals, as part of its review decision. No response was received so the Society issued its review decision (written reasons) dated October 3, 2017.

### **III. The review decision**

13. Ms. Moriarty issued written reasons dated October 3, 2017 after her review of this matter. After concluding that the seizure of the animals took place in accordance with the *PCAA*, Ms. Moriarty issued written reasons that I include here, as the conditions found during an earlier seizure have some bearing on the part of my decision that deals with the return of the animals seized on September 12, 2017. The written reasons stated, in part:

#### *History*

*In making my decision, I rely on the history as set out in both the first and second ITO's and will reference excerpts from the same below as I feel it is important to demonstrate the significant amount of opportunities that have been provided to you to improve the welfare for your animals.*

*Between the months of June 2017 and September 2017, the BC SPCA received approximately 13 animal cruelty complaints that involved the Property and yourself, relating to underweight animals, inadequate shelter, medical needs and mistreatment of horses.*

14. After reviewing the circumstances relating to the first seizure, the Society's reasons addressed the second seizure.

#### *The Second Seizure*

*On August 15<sup>th</sup>, SPC CHAPMAN contacted Dr. Stephen Raverty, DVM at the animal Health Centre in Abbotsford in order to confirm cause of death of the deceased wiener piglet found on the Property. Due to tissue breakdown of the pig, a definitive cause of death could not be concluded. However, it was confirmed that the pig suffered from streptococcus suis (a bacterial infection that*

*is transferable to humans, and highly contagious among pigs) and had received some type of blunt force trauma injury to the head. Dr. Raverty advised that the other pigs should be put on antibiotics as it is likely these pigs are infected as well.*

*SPC CHAPMAN alerted all necessary parties who were housing the remaining animals to advise of the post-mortem results.*

*Between August 15<sup>th</sup> and September 12<sup>th</sup> SPC CHAPMAN made attempts to contact you in order to conduct a compliance check on the remaining animals in your care and to advise of the post-mortem results. SPC CHAPMAN made multiple phone calls and sent multiple text messages to you. Additional complaints were received by the BC SPCA call centre during this time. No contact was received from you stating that compliance had been met, and therefore a third warrant was applied for.*

*September 12<sup>th</sup>, 2017 – SPC CHAPMAN attended the Property with BC SPCA staff and RCMP.*

*You were not present at the property, however SPC CHAPMAN was met by an individual who confirmed that you were incarcerated and that the animals were supposed to be rehomed.*

*SPC CHAPMAN observed the following at the property:*

*PEN A*

- Shelter and housing had not been amended or improved;*
- Pen contained hazards such as broken wood with nails sticking out;*
- Pen contained one pink pig in adequate condition;*
- Water was observed, but unpotable;*
- Moldy hay and one pepper was present;*
- SPC CHAPMAN believed pig was in distress and SPCA notices had not been complied with.*

*PEN B*

- Contained one black pig who acted aggressively;*
- Shelter and housing had not been amended or improved;*
- Mold and feces covered hay and food trough;*
- Pen contained hazards such as broken wood with nails sticking out;*
- Pen contained black mesh which pig was eating;*
- SPC CHAPMAN believed pig was in distress and SPCA notices had not been complied with.*

*PEN C*

- Contained, 1 goat, 1 alpaca and 1 mini horse;*
- Animals had more space than on previous visit;*

- *Moldy, wet hay was present;*
- *Pen contained hazards such as broken wood with nails sticking out;*
- *Water was present;*
- *Mini horse had overgrown hooves;*
- *Alpaca was wearing a collar that was too tight, had overgrown hooves and was severely underweight;*
- *SPC CHAPMAN believed all animals were in distress and previous BC SPCA notices had not been complied with.*

*Additional observations:*

- *Chickens previously housed in gazebo were free to roam;*
- *Food and water available and adequate;*
- *Peacock was contained within a run area and was pacing back and forth;*
- *No dry area, roosting area or perch was present for peacock;*
- *Peacock missing some toes and most tail feathers;*
- *SPC CHAPMAN believed peacock was in distress;*
- *Bails of soaked, moldy hay was found on a trailer*

*The following animals were deemed to be in distress and were seized:*

- *One goat*
- *Two pigs*
- *One peacock*
- *One alpaca*
- *One Mini horse*

*SPC CHAPMAN confirmed that RCMP would fax notice of disposition to where you were being held.*

*All seized animals were viewed by veterinarians.*

*Dr. Aaron Gibbons examined the alpaca and the goat. The goat was considered to be healthy and in adequate condition. The alpaca was considered to be very underweight and his toes are slightly overgrown but overall in good health.*

*Dr. Kim Steele examined the mini horse. The horse was considered to be overall healthy and was in need of a hoof trim. Dental care and tooth extractions were needed. He had mild conjunctivitis in his left eye which was treated with Torbex and had internal parasites which were treated with panacur paste.*

*The pigs were examined at Okanagan Equine Veterinary Services and were considered to be in overall good health.*

*September 13<sup>th</sup>, 2017 - BC SPCA received a voicemail from T.S. claiming she was the caretaker of the animals at the Property. Ms. S was requesting information about why the animals were seized.*

*On September 15<sup>th</sup>, 2017 the BC SPCA spoke with Ms. S and explained the dispute process and that you would need to submit in writing or confirm that Ms. S could act on his behalf. Ms. S explained that her job was to 'disperse' the animals, and would attempt to get permission from you to surrender them to the BC SPCA.*

*On September 17<sup>th</sup>, 2017 the BC SPCA received a signed letter from you giving Ms. S access to the search warrants and to do 'what she deems fit' with the animals. The BC SPCA at this point was under the impression that Ms. S wanted to sign the animals over and were waiting for the surrender forms.*

*On September 20<sup>th</sup>, 2017 an e-mail was received from Ms. S explaining that she had not received information pertaining to the reasons why the seizure occurred. As Ms. S made no further mention of surrendering the animals a dispute file was opened.*

*On September 21<sup>st</sup> 2017 a disclosure package, which included the August 2<sup>nd</sup> and September 12<sup>th</sup> warrants and ITO's, vet reports, and invoices was sent to Ms. S at the e-mail address of 't\*\*\*1974@hotmail.com'. Note that all previous communications had come from this e-mail address.*

*On September 26<sup>th</sup> 2017 the BC SPCA received an e-mail from Ms. S, again requesting disclosure information however from the e-mail address of '2012\*\*\*@gmail.com'.*

*BC SPCA made attempts to call Ms. S to no avail, and several e-mails were sent advising Ms. S to check her 't\*\*\*1974@hotmail.com' account as that is where disclosure documents had been sent.*

*BC SPCA received an e-mail response back from the account '2012\*\*\*@gmail.com' stating that 't\*\*\*1974@hotmail.com' was a personal account and that documents should not be sent there. It was also relayed from this e-mail address that no disclosure documents had been received. At this time, it was unclear who was authoring the e-mail as there was no signature.*

*In response to this e-mail, BC SPCA re-sent the disclosure package and erroneously advised that submissions were due no later than October 28<sup>th</sup>.*

*On September 28<sup>th</sup> a return e-mail was received stating that disclosure documents had been received and were being sent to you. The BC SPCA realized the erroneous submissions date of Oct 28<sup>th</sup> and quickly corrected and re-sent this to read that submissions were due by Oct 2<sup>nd</sup>. BC SPCA also sent additional disclosure documents. No reply was received.*

*As of today October 3<sup>rd</sup> 2017, no submissions have been received from either yourself directly or on your behalf suggesting why the animals should be returned to them.*

### **Conclusion**

*In light of all of the above, it is clear that:*

- *You were given multiple chances to rectify the inadequacies of the Property and the medical concerns of the animals, to no avail;*
- *Your blatant disregard of BC SPCA notices has prolonged distress in the animals located at the Property;*
- *You appear to have no proper understanding of farm animal husbandry, nor are you willing to take direction on it;*
- *Throughout the entire investigation you were aggressive, hostile and disrespectful suggesting you have no regard for animal welfare legislation or those enforcing it. This leads me to believe that all further interactions between you and the BC SPCA would result in the same outcome and therefore animals would continue to be in distress on the Property;*
- *Tammy was specifically on the Property to disperse the animals and was in discussion with the BC SPCA to surrender them, suggesting that you no longer wanted or could care for the animals.*

*Based on this, I believe it is in the best interest of the animals to not be returned. It is my hope that you do not acquire anymore farm animals, continue to educate yourself on the Codes of Practice and best practices for the care of farm animals and remove yourself from the business venture you were pursuing.*

15. Ms. Moriarty thus determined that the animals would not be returned, leading to the appeal before me.

#### **IV. Pre-hearing matters**

16. I summonsed one witness, T.S., who had acted on behalf of the Appellant immediately after the seizure, and had been caretaking the animals just before and at the time of the seizure.
17. The Society submitted a September 17, 2017 letter signed by the Appellants authorizing T.S. “to act on the company’s behalf in regard to the animals seized by the BCSPCA from the Revelstoke Petting Zoo and Revelstoke Horseback Adventures. As I am unavailable and have been incapable of receiving any communication since August, I request that all communication and documentation regarding the animals and their whereabouts be shared with [T.S.] until further notice. [T.S.] also has my approval to deal with the animals as she feels is necessary and appropriate.”
18. T.S. confirmed she had not received any further notice about any change to her acting on behalf of the Appellants. The Society confirmed it had not received anything cancelling the authority for T.S. to act. T.S. stated she is not acting on behalf of the Appellants on this appeal hearing and was only appearing as she had been summonsed to do so. I am satisfied that T.S. is not representing or speaking on behalf of the Appellants at this hearing.
19. As mentioned above, the Appellants did not attend the hearing. BCFIRB staff member A.K. confirmed under oath that she sent an email on October 13, 2017 at 12:06 pm containing the Notice of Appeal letter and package to the Appellants and she received a

call from Mr. Bruvall about ten minutes later acknowledging the email. On October 23, 2017, she emailed the Appellants with a question regarding witness T.S. and received a call back from the Appellant regarding that email. Based on the foregoing, I am satisfied the Appellants were properly aware of the date and time and purpose of this hearing.

20. Given the Appellants' failure to appear, I asked the Society for its position on how to proceed. The Society took the position that the onus is on the Appellants to prove that the Society is wrong in its decision and that without any submissions from him, he would not be able to meet that onus. However, the Society indicated it was willing to proceed if that was my decision. Given that the Society and witnesses were in attendance and ready to proceed, I decided to hear the appeal.

## **V. Material admitted on this appeal**

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

### **Exhibits :**

- a) Appellant October 10, 2017 NOA (**Exhibit 1**)
- b) Society October 3, 2017 decision (**Exhibit 2**)
- c) BCFIRB October 13, 2017 NOA Process Letter (**Exhibit 3**)
- d) Society Binder (Tab 1-29) October 20, 2017 (by email and courier) (**Exhibit 4**)
- e) Tammy Sutherland Summons October 25, 2017 (**Exhibit 5**)
- f) Tammy Sutherland email confirming receipt of summons October 30, 2017 (**Exhibit 6**)
- g) Society's updated document index and (Tabs 30-33) October 30, 2017 (**Exhibit 7**)
- h) Society written submission October 31, 2017 by email and courier (**Exhibit 8**)
- i) Affidavit of Marcie Moriarty October 31, 2017 by email and courier) (**Exhibit 9**)
- j) Witness contact form for SPC Daniel Chapman & Angela Threatful (**Exhibit 10**)
- k) Email to Sarah Cleary and Response to BCFIRB re Witnesses (**Exhibit 11**)
- l) Expert witness contact form for Dr. Matt Henrie (**Exhibit 12**)
- m) BCFIRB November 1, 2017 email to Society requesting further information (**Exhibit 13**)
- n) BCFIRB October 13, 2017 email to parties issuing NOA Process Letter (**Exhibit 14**)
- o) BCSPCA November 3, 2017 Affidavit #1 of Sarah Cleary and exhibit A (**Exhibit 15**)
- p) Additional submission on costs (**Exhibit 16**)
- q) BCSPCA November 1, 2017 email from Wise and Langley re: clinical records (**Exhibit 17**)
- r) BCSPCA November 3, 2017 Tab 34/35 re: Drs. Gibbon and Steele Records (**Exhibit 18**)
- s) Email November 1, 2017 Invoice Okanagan Equine Veterinarian services (**Exhibit 19**)

## **VI. The Society's material and witnesses**



22. The Society submitted, as part of its initial disclosure, the ITO for both the previous seizure and this current seizure, including a veterinary report from Dr. Horsley in relation to the first seizure (Exhibit 4, pages 128-132) that noted:

“the alpaca was quite thin with a BCS of 2 (based on a 5-point scale). The worm status of the alpaca was unknown and there were no mineral supplements in the pen. Underfeeding, worm burdens and mineral deficiencies are three common reasons for underweight alpacas. The alpaca’s hooves were overgrown and needed trimming. I was concerned with the welfare of the alpaca based on its body condition; however, no warning had been given to Mr. Richards regarding the alpaca, so the SPCA constables decided not to seize the alpaca at the time of my examination.”

23. Dr. Horsley also mentions the miniature horse had slightly overgrown hooves, and that the pigs had an “accidental” water hole created by spillage, not design. Dr. Horsley also mentioned her concern for the chickens and peacock due to the difficult access the birds had to water.

24. Dr. Horsley’s report of the first seizure concluded with her observations:

It is my opinion that the miniature horse, Doug, along with the horses, Sassy, Mac, Roxy and Gunther were all in distress as defined by the Act. They were all malnourished indicating a deprivation of adequate food. As outlined above, they were also deprived of adequate shelter, and were not protected from excessive heat. It is my opinion that Mr. Richards neglected proper care by commercially trail riding Sassy, Mac, Roxy and Gunther. They were malnourished and had damaged feet and were not fit to be trail riding horses. I have had previous experience with Mr. Richards with regards to Doug and have found him to be unreliable when it comes to recommendations. The lamb and the alpaca were also in distress as defined by the Act. They were malnourished indicating a deprivation of adequate food or neglect of their underlying health needs (deworming, mineral supplementation).

It is also my opinion that the pot-bellied pig, Penny, was in distress as defined by the Act. She was not protected from excessive heat. It is especially important that pigs are protected from the heat because they are very sensitive to heat stress. Penny was not provided an effective method to cool down (as outlined previously) and this was a form of neglect. I am concerned about the chickens and peacock on the property. My concern is with the availability of water. While there was water provided, it was not easy to access. Mr. Richards needs to provide easier access to water for these birds and ensure that he has a backup water feeder in case the one provided clogs up.

Another major concern of mine was Mr. Richards's uncooperative nature. I found it alarming that he insisted on a warrant for our presence on his property. This lack of cooperation would make it difficult to ensure that recommendations were being complied with on the property. As stated earlier, I have also found Mr. Richards to be unreliable with recommendations and communication. My previous experience with him makes me question his honesty. It is my opinion that the horses, Sassy, Mac, Roxy, and Gunther, along with the miniature horse, Doug, the potbellied pig, Penny, and the lamb had to be removed from the property in order to alleviate their distress.

25. Regarding the goat and the alpaca, a report signed by Dr. Aaron Gibbons dated September 14, 2017 stated:

“On Thursday September 14, 2017 I examined 2 animals at the BCSPCA. Both animals are from file number 454015.

Alpaca #443188

I performed a physical exam on a white male intact alpaca approximately 6 years old. He was nervous and was not used to being handled by people. Heart and lungs auscult normal, mucous membranes pink and capillary refill time less than 3 seconds, teeth are in normal wear, normal gut sounds, normal temperature. His fiber is in good condition with no evidence of external parasites. Body condition score 1.5/5. His toes are slightly overgrown and will need to be trimmed. A fecal sample was collected and tested for the presence of internal parasites. This test came back negative for internal parasites. In my opinion this alpaca is generally healthy and should be able to gain back proper weight from proper nutrition.

Goat #443184

I performed a physical exam on a black and white male wether Nigerian Dwarf goat approximately 3 yrs old. He was very nervous and hard to restrain for the exam. Heart and lungs auscult normal, mucous membranes pink, capillary refill time less than 3 seconds, teeth are in normal wear, normal gut sounds, normal temperature. His fur is in good condition with no evidence of external parasites. Body condition score 3.5/5. A fecal sample was collected and tested for the presence of internal parasites. This test came back negative for internal parasites. In my opinion this goat is generally healthy.”

26. On an invoice dated September 14, 2017 from Wise Equine Veterinary Services for a horse, with a regular call-out fee for Dr. Steele as an invoice line item, was this paragraph:

File #254015

Bright, alert and responsive. Appears to be about 2.5 years of age, miniature colt. Both testicles are present. He is in good body condition 5/9, appears sound at the walk. He has a very long toe on all four limbs and is due for a trim. He has a normal digital pulse and no heat in his feet. There are no visible ectoparasites. His temperature, pulse and respiratory are all within normal limits. On oral exam he appears to have caps on 306/406 which are ready for extraction and therefore due for dental care. He had a mild conjunctivitis in the left eye which I recommend be treated with Torbex ophthalmic ointment. He had an egg count of 350 eggs per gram of strongyle eggs, a moderate count, recommend treat with panacur paste.

27. The Society also included many photographs of the animals and their living conditions. These were helpful to me in making a decision.

*Witnesses for the Society*

*Dr. Matthew Henrie*

28. Dr. Henrie is a large animal veterinarian at Shuswap Veterinary Clinic, having graduated from WCVN in 2009, working in BC ever since.

29. Dr. Henrie testified that he was aware of the property as he had driven by occasionally and seen it from the highway. He read Dr. Horsley's report at Tab 8 beginning on page 128 but could not find a date on the report.
30. Dr. Henrie said he agreed with Dr. Horsley's opinion at the end of her report regarding animal husbandry practises as when he had driven by in the past he was concerned about the look of the property with pallets and a tarp and what looked like garbage and poor fencing. It looked like fencing was made with a lot of spare boards and pallets with nails protruding and he saw in photos baller twine in hay which was a hazard to the animals if ingested as it could impact their intestines or "saw" right through their intestines.
31. Dr. Henrie saw from photos that there was no gate for quick exit from the one pen in the event of an emergency. He described the shelter was ramshackle and there was no shade. The smaller pen had a lean to which was inadequate for animals. And the creation of a box against a fence would create heat and poor air flow.
32. Dr. Henrie expected to see shelter for the goat to get out of the rain and direct sun but said that a shelter against the pallet fence would not provide enough air flow and the height of the shelter would need to be 4-5 feet. It would need to be physically stable. Upon viewing the photographs of the property, Dr. Henrie testified that the shelter he saw would provide protection from the sun but not from wind and could be sturdier, but the pallets prevented airflow. In the feed manger, he said that exposed nail heads could cause lacerations during feeding and could cause open wounds which could get infected. The mesh over the enclosure was sharp and should be behind the boards. The plastic mesh with the pig was dangerous if eaten and a pig will root around anything not securely fastened down, which this was not. There was no evidence the pig was eating the mesh.
33. Dr. Henrie explained that pigs have less pigment in their skin so burn easily and require areas of shade away from the sun. They like to root so need securely fastened shelters. Pigs, he said, would need adequate water to form an area to wallow in.
34. The alpaca is not as susceptible to sun and burning but still needed an area to get out of the sun. According to photographs, Dr. Henrie's main concern with alpaca shelter was its height, it would be too cramped for an alpaca which would need to crawl to get under it, which could discourage the alpaca from using it.
35. The peacock needed ample room, to wander and this peacock was confined in a large dog crate and he had never seen such confinement for a peacock before. Peacocks need to nest in trees. The end of the box in the pen was inadequate for the peacock and there was no elevated area or perch for the bird.
36. Dr. Henrie testified that with the goat, long hooves would affect the feet and could lead to lameness and if an animal was lame, they wouldn't walk as much which would lead to them consuming less food and water, so hoof care, he said, was paramount. Most goats need an extra mineral supplement. He saw no evidence of supplements from photographs

or the report. Supplements would also assist in increasing the weight of the alpaca which was not seen.

37. From the photographs, Dr. Henrie said the peacock's water looked dirty and like it had been defecated in. It needed continual access to clean water. He noticed buckets of water which were difficult to keep clean as compared to piped in water. When water sources were dirty, animals could stop drinking and become dehydrated.
38. Dr. Henri said the mini horse needs good quality hay to eat and there should be a salt lick or mineral supplements. Good managers would get the hay tested, but if not, would provide minerals to be sure of adequate nutrition.
39. Dr. Henrie said the photographs indicated what appeared to be manure on the hay, both dried manure and fresh manure, which would re-introduce internal worms if digested. In a small pen this would increase the opportunity for contact with infected manure. The pen needs to be cleaned out more than once a day. He explained that when an animal has internal parasites, the gut lining gets inflamed and the body needs to keep its energy level up to allow the immune system to deal with then inflammation, which in turn robs the body of nutrients. Controlling for worms comes down to management. He said a clean environment is preferable to treating worms with drugs.
40. Dr. Henrie explained that poor quality feed meant it was less digestible and would take more time to break down in the gut meaning the animal would need to have continual access to food to continually replenish its body.

*SPC Daniel Chapman*

41. SPC Chapman has been a Special Provincial Constable with the Society since 2014, after starting as a casual worker in 2009. He has worked at both the Kelowna and Vernon shelters. He testified about the seizure at the Revelstoke property.
42. SPC Chapman testified that the trail ride business and the petting zoo business were operated by the Appellant Mr. Bruvall and he was the person responsible for the animals. SPC Chapman testified in detail about the history of his visits at the property including a July 12, 2017 call-out where he found animals without adequate shelter, without adequate living conditions, lacking food and water, and underweight animals, and poor fencing for the animals.
43. The warrant was executed on July 14, 2017. SPC Chapman detailed the condition of all the animals and the notices issued that day. SPC Chapman tried to follow up on July 24, 2017 with a phone call but the Appellant said he only needed shelter for the animals in the winter according to the Equine Code of Practise and the issue of veterinary care and hoof care had not been complied with.
44. After no further communication between the SPC and the Appellant, on August 2, 2017 SPC Chapman executed a warrant at the Appellant's property. Most of the animals were

seized for being in a state of distress, and the animals left were one alpaca, three goats, one mini-horse, one peacock, two pigs, and ten chickens.

45. SPC Chapman testified that he made the decision to leave those animals on August 2, 2017 as it was not safe to take the alpaca as there was no entrance to the pen and it was underweight. Also he wanted to give the Appellant another opportunity to address concerns. He gave another notice on August 2, 2017 to provide care for the remaining animals.
46. SPC Chapman testified that between August 2 and the seizure on September 12, 2017 there had been no compliance. He applied for a warrant which was executed September 12, 2017.
47. SPC Chapman testified that upon observing the conditions of the property, the fence was in the same condition, the nails were protruding from the same pallets.
48. The pig was chewing on black mesh, and there was dirty drinking water.
49. The peacock was kept in a very small area, the living condition for it was unacceptable. There was no dry area for the bird, no perch. There were feces in its food and the pellets were dirty. All its tail feathers had fallen out and were seen in the cage. The peacock was pacing and its tail was stuck in the crate and it was in distress.
50. The two pigs were kept in a poorly conditioned pen with nails and twine. The pigs were bigger now and jumping on top of the fence with nails protruding, causing concern. There was no feed for the pig in pen A, only bad quality wet brown warm hay. There was inadequate food for any animal, he said. Pen B had poor quality mouldy hay mixed with feces. The fence was broken. The weight of the pig was thin but acceptable.
51. In Pen C, the goat and alpaca were given more space, but they had poor quality wet mouldy brown hay with twine in it. The tent was ripped and no longer adequate to provide shelter or protection from hot or inclement weather. The height was too low for the alpaca, but rips made it inadequate for any animal. The pen had nails protruding and inadequate fencing. The alpaca's hooves were overgrown as were the mini-horse's. The items listed in the Notice of Distress had not been dealt with.
52. The goat, in front of him, jumped the pen and got loose. The fencing was not adequate to secure the animals. There is a major highway beside the property.
53. SPC Chapman made the decision most of the animals were in distress and seized the animals subject to this this appeal. He left the chickens as they were running free, foraging naturally.
54. SPC Chapman confirmed that Dr. Steele saw the mini horse, Dr. Gibbons saw the goats and alpaca, and Dr. Sheila McDonald in Kelowna saw the two pigs. No veterinarian saw the peacock, as it ceased to be in distress once it was removed from the site.

## **VII. The Appellants' Notice of Appeal**

55. The Appellants did not provide any submission beyond the initial Notice of Appeal which sought the return of the animals alleging that they were in good health and that the seizure was made “more from the frustration from the lack of return calls and texts from James Richard Bruvall when he was incarcerated and without access to his phone, rather than based on the welfare of the animals themselves”. The Appellants took issue with the Society’s communication efforts and stated that only one complaint was received after the August 2, 2017 notice was received which local RCMP followed up on (by request of the Society) and was unfounded. The Appellants disputed that feed hay was moldy saying that it was bedding. The Appellants also say this it is noteworthy that these animals were rescued and some came in with severe neglect.

## **VIII Witness Summoned by the Panel**

56. T.S. testified that she believed that the Appellant Mr. Bruvall was the owner of the company. T.S. said she had been looking after the animals as necessary and was in the process of finding them homes until they were taken away by the Society. She said the Appellant was fine with her finding the animals new homes and that he no longer would own them.
57. On September 12, 2017, at the time of the seizure, she was working elsewhere. Although she had seen the animals, she did not notice long hooves, and did not notice or look at anything wrong with the horse’s mouth or cheek. She said she had no veterinary training and did not know the signs of an animal having a problem with its mouth or nails.
58. T.S. confirmed that the two wiener pigs and two pigs were actually the same and only two pigs. There had been four pigs but Penny was seized in an earlier seizure and one pig died. She said the pigs were not babies but also were not old. She had “no clue” as to the age of the mini horse which she called Coco [referred to elsewhere as Cooper].
59. In response to question from the Society, T.S. confirmed she was not responsible for the animals nor was she acting on the Appellant’s behalf. She was an employee and a friend of the Appellant’s since February or March of 2017.
60. Her job was to water, feed, walk, and brush the horses, and get the horses ready for trail rides, and talk to the public about the petting zoo animals such as their names. She would place tack on horses but did not go on rides.
61. She testified that petting zoos hours of operation were generally 8 am to 5 pm with bookings for trail rides but she was not always there. There was at least one other employee but she did not know if there was more than one. Both had fulltime jobs elsewhere and between the two of them, they would split the animal chores and the hours someone needed to be doing these chores.

62. Days would typically start at 5:30 am feeding the animals. Sometimes the Appellant would be there. T.S. would be there maybe four times per day to perform chores. She said that the Appellant was there “practically every day he could be.” Sometimes he was in Nakusp at his other property which had no animals.
63. She was not aware of the Appellant’s experience with animals but he seemed to know the animals well. She stated when he would talk about things like hoof care it was “over my head.”
64. T.S. confirmed she was not at the property on July 14, August 2 nor September 12, when the seizures and warrants were executed.
65. She was aware the Society had attended in July as the Appellant told her the Society had come and seized animals, and a dead pig, and she does not recall him saying why they were seized other than a comment about conditions or something, saying she “can’t recall three days ago.”
66. After July, she had assisted with some repairs reinforcing fencing for the chicken and peacock. The goat and pigs stayed in the pen but the goat often jumped the fence and would escape. The goat liked to see people and get close to them. The Appellant had tried to make the fence more secure by adding another pallet to make it higher but that was not always successful. The goat also snuck under the metal in August.
67. The other animals also could get out under the metal and she tried to put up boards but that didn’t always work. The animals found cracks. Despite this the goat wouldn’t leave the pen as he was like a house pet.
68. The chickens and peacock got away once as she saw the peacock near the highway, but it returned.
69. T.S. testified that a shelter had been built from plywood and a tarp for shade but more for coverage and shelter from the rain. The pigs and alpaca and goat and pony used this but not the horses which were taken into the trees for shelter.
70. When the animals were seized in August the Appellant said he was not given reasons, but she can’t really recall. She also can’t recall changes made to the property except trying to fix the shelter and fencing.
71. In July, the horses were fed grain and oats and hay but generally no supplements for any animals. The mini horse got oats and hay and no supplements. She had never seen any evidence of supplements. The pigs were fed scraps from the hotel and oats. It was possible the pigs ate cooked meat and they sometimes got milk or water and the wheat was mostly for bedding not food.
72. The alpaca got hay and oats and apples, and the goats were fed the same as the alpaca, but she did not know if they got supplements.

73. The animals were fed three if not four times a day at varying times depending on their schedules. There were no set times, but usually at 5:30 am, lunch, dinner and sometimes after dark.
74. On September 12, 2017 when she arrived to feed the animals they were gone, and she learned from the property owner's son that the animals had been seized. She said she "lost [her] mind" as she thought she had been taking care of them okay and didn't understand so she called the Society and RCMP. She did not get answers and was devastated.
75. The Appellant was in jail, so she could not call him and she cannot recall how the two of them got in touch except she knows he sent a letter. He had been incarcerated August 26 and she had written to the Society that she was working on finding new homes for the animals. She said she "can't look after them 24/7" and thought the animals were fine. She had potential homes lined up for the animals and once the Appellant was out of jail he took care of things himself.
76. She has not spoken to the Appellant but did tell him she had been summonsed as she "freaked out" but he wouldn't talk to her and said nothing about the animals.
77. Under final questioning by me, T.S. said she had been on the property taking care of the animals pre-seizure at least once a day, at some point every day, sometimes more than once a day.

## **IX. Submissions**

78. As stated earlier, the Appellant did not attend the hearing and made no submissions.

### *The Society's Position*

79. The Society submits that the Appellant has not met the burden of proof that the Society decision was improper. The evidence of T.S. indicates that the Appellant was aware of Society concerns and that the Appellant left the care and feeding of the animals to people including her, who knew little about animal care.
80. The Society submits that Dr. Henrie, driving by, noted the poor condition of the property. He reviewed the photographs and agreed with expressed concerns about nails and inadequate fencing.
81. Although the goat's physical condition was good, the mini-horse needed dental work and had an eye infection, the alpaca was significantly underweight and had lost weight since the first seizure.
82. SPC Chapman had provided ample opportunity for the Appellant to correct deficiencies, and had tried to work with the Appellant many times in addressing lack of appropriate care



and shelter. SPC Chapman testified he saw no compliance regarding food, water and shelter.

83. The intent of the Society is to rehome the seized animals which is exactly what the witness T.S. was trying to do when they were seized. The same end result was achieved.

#### **X. Analysis and decision**

84. My first task is to determine whether the Society was correct in its determination that the animals were in distress.

“Distress” in s. 1(2) of the PCAA, a protective statute, is a specialized term. The PCAA defines “distress” as follows:

- 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.

85. The criteria listed in s. 1(2) – any one of which is sufficient to satisfy the definition – constitute “distress.”

86. In my view, the decision to take custody of the animals was correct and reasonable as I too come to the conclusion that these animals were in distress at the time of seizure.

87. I reviewed all the Exhibits and have benefitted from hearing the Society’s evidence. I find I do not need to rely on the veterinary evidence in detail as, rather, I can rely heavily on the evidence and testimony of SPC Chapman who saw the animals and who made the determination of distress, and who saw the living conditions and the lack of significant improvements in the living conditions between the first and second seizures. I come to the conclusion that I only need to find that these animals were in distress due to lack of adequate food, water, and shelter, and poor living conditions, and neglect, and I do not need to await their descent into poor health medically to act in their best interests.

88. Further, there is ample evidence before me to establish that the alpaca and the mini-horse were denied veterinary treatment, contrary to s. 1(2)(a). The alpaca was severely underweight and since it had no parasites, the most likely cause was insufficient quality or quantity of food compounded by a lack of necessary supplements. There was no evidence of the use of any supplements seen on the August 2, 2017 seizure, nor on the September 12, 2017 seizure. There were no remnants of supplements or salt licks seen. The alpaca’s weight had appeared to decline but definitely did not increase, which it should have if the Appellant had heeded the August 2, 2017 notice of distress about the alpaca. The mini-horse had dental issues and required dental treatment which the Appellants should have and would have known if they had checked its mouth himself or if they had a veterinarian

check the mini horse's mouth. The mini horse also had an eye infection which required treatment, and there was no evidence it had received any treatment. The mini-horse also had a moderate load of internal parasites requiring treatment.

89. I find that these animals did not have a consistent reliable source of adequate food and water. On this point I rely heavily on the complete and uncontradicted testimony of SPC Chapman whose recollections were consistent, detailed, and supported by the veterinary evidence. Water was described as dirty, sparse, or filled with feces, none of which constitutes adequate water. The Appellant chose to provide his animals with water buckets which, according to Dr. Henrie, required frequent cleaning as opposed to a line-fed watering system. Since the Appellant chose the bucket method of watering, the onus was on him to provide the necessary frequent cleaning, with was lacking according to the condition of the water.
90. Much of the food was described as poor condition and lacking supplements. In addition to a severely thin alpaca, the two pigs were described as thin, though not medically adversely thin. The peacock food was filthy. There was no evidence the restaurant food garbage provided adequate nutrition for the pigs.
91. I find that collectively, the animals were denied adequate shelter and living conditions. The fencing for the animals was made of wooden pallets held together, with exposed nails. The pallets themselves obstructed good air flow. The placement of some structures to pallets obstructed air flow. The pallets in some cases were not sufficient to contain the animals, on a property located next to the TransCanada Highway. The shade structures were non-existent or too short for the animals using them.
92. One tent or gazebo shade structure had torn providing inadequate protection from the sun. The pigs were denied mud and water for wallowing, which they need for temperature control and burn prevention. The poor peacock was kept in a dog crate that caught and tore out its tail feathers which could be seen lying in the cage in photographs. The goat escaped its enclosure on multiple occasions. The pigs were photographed chewing plastic mesh which, if consumed, could have blocked or even "saw"ed through their intestines.
93. As noted in the definition of distress above, an animal deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment, being kept in conditions that are unsanitary, or not being protected from excessive heat or cold is in "distress" – this protective definition does not require the Society to wait for injury, suffering and medical conditions and to develop as a result. The fact that the pigs, goat, and mini-horse to a large extent were found to be healthy does not mean that they were not in distress due to other reasons, and I find these animals were all in distress for reasons of neglect and inadequate living conditions, and lack of care, food, water, and shelter.
94. Not surprisingly, the presence of more than one of the definitions of distress in this case also reflect the animals' neglect, contrary to s. 1(2)(c) of the *PCAA*. The animals' care was left to the witness T.S. who was unaware of how to check an animal's eyes or mouth for signs it needed veterinary care, who did not use supplements when feeding the animals,

who attended at least once a day, who was unsure how often the other carer attended, and who felt responsible for the fact the animals were found to be in distress, the blame for which I assign to the Appellants and only to the Appellants.

95. It was the Appellants and specifically Mr. Bruvall who failed to secure adequate care for his animals during his incarceration and it was his responsibility to do so, or to find someone else to do so, or to surrender his animals to the Society voluntarily so they would be sure to get the necessary care.
96. I find that the Appellants failed to properly care for the animals and I find that their lack of care culminated in neglect. I am further horrified at their lack of concern for the animals which were used for commercial purposes, a petting zoo. Children should not have had to see animals kept in those conditions.

#### *Return of the animals*

97. Having determined that the seizure of the animals was justified and as the Appellants did not attend and give any evidence as to how they have addressed the concerns of the Society, there is no basis upon which I could return the animals.
98. I have no difficulty, based on SPC Chapman's evidence which was not contradicted by the veterinary evidence, in finding that the animals would be returned to a situation of distress if returned to the Appellants.
99. I am satisfied that if the animals were returned to the Appellants, especially in light of the fact that the seized animals were already under Orders, that the Appellants would continue to fall far short of providing the necessary care that these animals require, and these animals would surely fall into distress once again.

## **XI. ORDER**

100. 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).

101. 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 the animals named in this appeal. I understand from the Society that it intends to find suitable homes for each of these animals, and it is my sincere wish that it is successful in that endeavour.

## **XII. COSTS**

102. As I have concluded that the Notice of Appeal does not put the Society's costs in issue, I decline to make any order as to costs.

Dated at Victoria, British Columbia this 22<sup>nd</sup> day of November 2017.

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

Per:



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Corey Van't Haaff, Vice Chair  
Presiding Member