

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
8 HORSES

BETWEEN:

JOHN AND KATHY CUMMINGS

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
(Presiding Member)
Tamara Leigh, Member
Peter Donkers, Member

For the Appellants:

Self-represented

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

March 5, 2018

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 December 21, 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 8 horses from the Appellants on December 1, 2017. We note that 2 horses were left in the Appellants’ care.
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, we have decided that we will not require the Society to return the 8 horses.
5. The Society did request costs which were appealed by the Appellants, and the issue of costs is adjudicated later in this decision.

II. Preliminary matters

6. Without going into details, the Society acknowledged its error in failing to deliver its Review Decision to the Appellants until the Appellants made an inquiry to BCFIRB about their horses. As a result of discovering its error, the Society’s decision was ultimately received by the Appellants who then appealed within the time permitted.
7. Some of the email communications between the Appellant Kathy Cummings and others were in the name of Kathy Brigden. The Appellant Kathy Cummings confirmed she was one and the same person. We also note that the Society’s decision misspells Kathy as Cathy, but no issue was made of this at the hearing. We are satisfied that the Appellants John and Kathy Cummings were the individuals both on the teleconference and appealing the decision.

III. The review decision

8. The March 20, 2013 legislative reforms, set out in Part 3.1 of the *PCAA*, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: *PCAA*, s. 20.2(1), (2). If a review is requested, the Society must review the decision and must not destroy, sell or dispose of the animal during the review period unless it is returning the animal: *PCAA*, ss. 20.2(3).
9. The *PCAA* does not set out any specific process for the review. Administratively, the Society’s current process where a review is requested is to prepare a disclosure package

and then to invite submissions from the owner concerning the return of the animals and to consider these submissions in light of the investigation results to determine whether it is in the animals' best interests to be returned to their owners.

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

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

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

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

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

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

(5) The society must provide to the person who requested the review (a) written reasons for an action taken under subsection (4), and (b) notice that an appeal may be made under section 20.3.

11. Ms. Moriarty issued written reasons dated December 21, 2017 after her review of this matter. After concluding that the 8 horses had validly been taken into custody to relieve their distress, the written reasons stated, in part:

I now turn my mind to whether it would be in the best interest of the Horses to be returned. As the only submission I received from you was a few short lines that indicated you missed your Horses and that their removal was unwarranted, I am left with only the evidence of the history as set out in the ITO and the condition of the Horses as described in the veterinary report. It is clear from the ITO that you were given an opportunity to take proactive steps to address the significant concerns identified by SPC Edge regarding the health and welfare of the Horses. These opportunities were met with inaction and on more than one occasion you made reference to the fact that veterinary care was too expensive. It also is clear from reading the ITO that you are having challenges in keeping up to the day to day care of the Horses and the Property, and while I appreciate that you are going through hardship, the reality is that if you chose to own animals, you have to be able to provide them with care that prevents them from being in distress. There is a proactive duty to protect your animals from distress and this is not negated or diminished as a result of an owners personal circumstances. The option to surrender the Horses was provided to you after their seizure and prior to the seizure, SPC Edge offered to assist you in providing contact numbers for rescue organizations that could take on some of the Horses. Neither of these options were exercised.

In making my decision, I rely heavily on the veterinary report. In particular, the vet states the following:

These owners have shown that they have a lack of understanding of what is happening on their own property. Half of the horses were locked away from accessing water or food,

and the lame mare was also a surprise. Lack of long-term planning seems to be present seeing as there is no hay stored on the property with the winter only just beginning. Energy demands will only increase as the ambient temperature begins to drop and feed requirements will increase. A final concern is the body condition of the Quarter horses as it speaks to historical compliance with the level of feeding. Considering that the thin horses have been on the property the longest, and the better conditioned draft horses were a recent addition; the lack of available feed is a real concern. To have doubled the size of the horse population without addressing the supply of hay, demonstrates that there is no evidence of concern for the thin horses.

It is also clear from your comments that you are not in a position to provide veterinary care for these Horses if they were returned. All of this concerns me greatly, and as expressed by the vet, I too have concern for the horses that have been left in your care. It is my hope that you will devote your limited resources to the care of these horses so that they too do not end up in distress and require seizure. Based on a review of the file, I do not believe it would be in the best interest of the Horses to be returned.

12. Ms. Moriarty thus determined that the 8 horses would not be returned, leading to the appeal before us.

IV. The appeal provisions

13. We are 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

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

procedure followed by BCFIRB is a flexible approach specifically crafted to accomplish the intent of the legislation in the context of animal welfare and lay participation. This includes taking into account developments occurring since the Society's decision was made. This is entirely in accord with the inevitably fluid nature of the situation, and well within the powers granted by section 20.5 of the PCAA.

V. Pre-hearing matters

14. The Society requested permission of the Appellants to geld two stallions, in response to which the Appellants refused permission. This matter is not within the authority of BCFIRB to adjudicate and we make no comment on the request or response.

VI. Material admitted on this appeal

15. All affidavits and witness statements, emails, photographs, and materials submitted were entered into evidence. Parties were sworn before giving oral testimony. The Society originally provided redacted documents, but I directed the Society to provide un-redacted documents to me, as well as to the Appellants, unless the Society wished to make an application under s. 42 of the *Administrative Tribunals Act (ATA)* and explain why the Appellants should not see the redacted information. The Society provided unredacted documents to the Appellants and to me.

Exhibits:

- a) Respondent February 6, 2018 Email - decision sent to incorrect email address (**Exhibit 1**)
- b) BCSPCA February 5, 2018 Decision (**Exhibit 2**)
- c) BCSPCA February 5, 2018 request to geld (**Exhibit 3**)
- d) Appellants February 7, 2018 Notice of Appeal filed part 1 faxed (**Exhibit 4a**)
- e) Appellants February 7, 2018 Notice of Appeal filed part 2 faxed (**Exhibit 4b**)
- f) BCFIRB February 8, 2018 NOA letter (**Exhibit 5**)
- g) Appellants February 8, 2018 email response declining gelding (**Exhibit 6**)
- h) BCSPCA February 16, 2018 Initial Disclosure Submission binder (Tabs 1-28) email and couriered (**Exhibit 7**)
- i) Appellants February 23, 2018 Initial Disclosure Submission (**Exhibit 8**)
- j) BCSPCA February 26, 2018 written submission (**Exhibit 9**)
- k) Affidavit of Marcie Moriarty (February 26, 2018 by email and courier) (**Exhibit 10**)
- l) BCSPCA February 26, 2018 expert witness contact form (Dr. Ross Hawkes) (**Exhibit 11**)

- m) BCSPCA February 26, 2018 witness contact form (SPC Carla Edge) (**Exhibit 12**)
- n) BCSPCA February 26, 2018 updated index (Tabs 1-29) (**Exhibit 13**)
- o) BCSPCA February 26, 2018 Tab 29 (**Exhibit 14**)
- p) BCSPCA February 27, 2018 updated expert witness contact form (Dr. Ross Hawkes) (**Exhibit 15**)
- q) BCSPCA February 27, 2018 corrected/revised Tab 6, p.26.1 (PDF) (**Exhibit 16**)
- r) Appellants February 28, 2018 re-submission of Beaver Valley Feeds invoice (**Exhibit 17**)
- s) Appellants March 1, 2018 confirmation email of no witnesses being called (**Exhibit 18**)
- t) BCSPCA March 1, 2018 Beaver Valley invoice 36783A – pg. 6 of Cummings submission (**Exhibit 19**)
- u) BCSPCA March 1, 2018 Beaver Valley invoice 42974B – pg. 7 of Cummings submission (**Exhibit 20**)
- v) BCSPCA March 1, 2018 Hi-Pro Feeds – Step 1 Start Right (**Exhibit 21**)
- w) BCSPCA March 1, 2018 Hi-Pro Feeds – Step 3 Classic Sweet (**Exhibit 22**)
- x) BCSPCA March 1, 2018 Hi-Pro Feeds – Step 4 Complete Pellet (**Exhibit 23**)
- y) BCSPCA March 1, 2018 Hi-Pro Feeds – Step 6 Senior (**Exhibit 24**)
- z) Appellants March 1, 2018 final reply submission (**Exhibit 25**)

VII. The Society's material and witnesses

Dr. Ross Hawkes

16. Dr. Hawkes provided a written report to the Society that said, in part:

2 groups of horses were present at 11410 Hwy 20 when the site was inspected on December 1, 2017. A group of 5 Quarter Horses ranging in age from 2 years to mature adults were found in the yard closest to the house. This yard contained 2 watering troughs that had electric heat to keep them from freezing (the ambient day time temperature was around -5 degrees Celsius). 3 separate areas of hay were present on the ground in the yard. This hay appeared to be the trampled down leftovers of 3 round bales that were reportedly purchased that week for the horses to eat. No other hay was present on the property, and the available ground cover was very short and overgrazed. Several salt blocks were also present around the yard for the horses to lick. All quarter horses had Body Condition Scores less than 3 out of 9 which makes them very thin.

A second group of 5 recently purchased draft horses were separated from the thin quarter horses by a fence that kept them on the other half of the property. This half of

the property also had 2 water troughs, but neither of these had an electric heater to prevent freezing, and both troughs were empty save for a small amount of ice in the bottom. One trough even contained some bale wrap from the hay bales, however; all the remaining hay from the bales was on the other side of the fence and was inaccessible to the draft horses. No supplemental feed was present on the second half of the property and all the draft horses were attempting to graze the hillside that contained sparse forage amongst the trees. No water source was available for these 5 draft horses. 4 of the 5 draft horses appeared to be in reasonable body condition (4 or 5 out of 9). However, 1 was a 3 out of 9 BCS. Also, 1 draft horse (the sorrel mare) was 3-legged lame, meaning she would not weight bear on her right front foot. Her foot was sore in the toe, and there was abnormal growth of the sole, as well as evidence of bruising of the sole in several locations. The mare was treated with an injection of anti-inflammatories at that time.

All horses in both groups had feet that were overgrown and were due for trimming by a farrier.

The owner expressed surprise at the lack of water available in the 2 watering troughs on the far half of the property. He also did not know that the draft horses were locked into that half of the property, or that there was a lame horse in the group.

Based on the results of the site inspection, all the quarter horses and 3 of the draft horses (including the lame mare) were removed from the property.

On December 6, 2017 the lame sorrel mare was examined in hospital for follow up. She was still lame, despite several treatments with further anti-inflammatories. The sole of her right front foot had a significant growth along the medial sole continuous with the heel bar all the way to the toe. The heel bars and the toes were overgrown. The white line was wider than normal. X-rays were taken of the foot to determine the positioning of the coffin bone and ensure that there was no permanent damage. A large pocket of fluid was visible on x-ray near the frog of the foot. A heel nerve block was employed and an abscess pocket was lanced and drained from the medial heel directly above the coronary band. The heel bar was pared down, and a crack packed with dirt was followed deep into the sole. This was suspected to be the source of the sole abscess. The foot was then wrapped in a poultice pad that will be changed daily until the abscess is resolved.

17. Dr. Hawkes, as part of his conclusion in his report, wrote that:

Horses require consistent access to water so that an average 1000 lb horse can drink in excess of 25 liters of water per day. 5 out of 10 horses on the property did not have access to any water at all. These same 5 horses also had no access to hay on the portion of property they were confined to. The owner of the animal seemed unaware of the fact that those horses were purposefully fenced out of the area that contained the thawed water troughs and hay.

Feeding requirements for the average 1000 lb horse are 22 to 25 lbs of hay per day. Energy requirements for growing horses are also increased above the maintenance requirements for their current weight. The Quarter Horses on the property at the time of inspection showed a body condition consistent with a long term energy deficiency (ie. lack of feed). Despite the fact that they did have hay available at that point, it was trampled down and limited in the remaining quantity. Also, there was no evidence of previously available hay, or stores of hay for the future, nor available forage. The amount of hay remaining would only have lasted for an estimated 2 to 3 days if all the horses on the property had access to it.

Horses' hooves grow continuously throughout their lives. They need to be trimmed on a regular basis depending on numerous factors. All the horses present had overgrown feet that were overdue for a trim. The lame draft mare was a prime example of how consistent maintenance hoof care could have helped to minimize the problem.

Freedom from hunger and thirst: The most obvious evidence of less than adequate available feed is the body condition of the group of Quarter Horses. On top of that is the lack of stored hay and the overgrazed nature of all the ground cover on the property with only several days left of hay in the trampled piles already on the ground. The 2 water troughs with electric heaters show an effort to ensure access to water, though the 5 horses fenced off from access to those waterers is in direct contrast. Half of the horses had no access to food or water.

Freedom from Pain, Injury or Disease: The lame mare was visibly obvious to anyone who looked at her during the inspection. No one can be certain how long she had been lame, but it is certain that she could have benefited from timely veterinary intervention had her condition been recognized.

18. Dr. Hawkes' report concluded:

These owners have shown that they have a lack of understanding of what is happening on their own property (an acreage all within site of the house). Half of the horses were locked away from accessing water or food, and the lame mare was also a surprise. Lack of long-term planning seems to be present seeing as there is no hay stored on the property with the winter only just beginning. Energy demands will only increase as the ambient temperature begins to drop and the feed requirements will increase. A final concern is the body condition of the Quarter Horses as it speaks to historical compliance with the level of feeding. Considering that the thin horses have been on the property the longest, and the better conditioned Draft horses were a recent addition; the lack of available feed is a real concern. To have doubled the size of the horse population recently without addressing the supply of hay, demonstrates that there is no evidence of concern for the thin horses. No plan appears to be in place to remedy their poor body condition, and the currently well conditioned draft horses are likely to soon join the rest. It is my professional opinion that these horses fit the definition of distress

as defined by the Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c.372 1(2) section a. I believe that the seizure of these animals was justified for these reasons.

19. In his sworn testimony, Dr. Hawkes stated he was a veterinarian licenced to practise in BC, with a mixed animal practice-cattle, horse, dog, cat, rabbit and rats. He confirmed he authored the report at Exhibit 7 Tab 6 and personally attended the seizure and observed the property and horses.
20. Dr. Hawkes testified that the 5 quarter horses were in thin body condition and whatever feed was available was trampled down. He testified his main concern was a lack of feed available beyond what had become bedding.
21. The five draft horses were kept separate by a fence from water and feed and there was ice only in their water troughs. There was some scrub grass available that they had been trying to support themselves on. At this time of year, he said, scrub grass was not enough and the tufts of grass were sparse. It is not an acceptable feed source.
22. One draft horse was lame on its right foot. It had a hoof abscess and abnormal growth on the sole of its hoof and was “dead lame.” Dr. Hawkes testified it was possible that it may only have become apparent on the day of the seizure but it would have taken time to develop to that point and he correlated that with the need for regular hoof maintenance and trimming which would prevent damage. In the case of the draft horse, there were cracks in the sole which lead to the development of the abscess. He treated the horse by x-raying the bone which was good, then draining the abscess and applying a poultice regularly as well as antibiotics and pain medication. The hoof should resolve over time with that protocol.
23. Dr. Hawkes testified that along with trampled hay and scrub grass, he saw none stored other than what was trampled down and although it was not of poor quality, it was an inefficient way of feeding horses as the hay had now become bedding. It was a hygiene issue as the horses tend to defecate in the hay on the ground, and may eat it, building their parasitic burden.
24. Dr. Hawkes testified that a reasonable horse owner had at least a 1 week to 1-month supply of feed as it is not always easy to get. By the beginning of winter, a reasonable horse owner would have enough hay for the whole season as it would be a major concern if an owner ran out and could not source a supply of bales.
25. Dr. Hawkes said horses should be fed from separate piles of hay to reduce competition for feed. For these horses, there were only 3 spots where feed was, and it was trampled. He said hand-feeding was the most efficient way of feeding a horse as it maintained the feed and it was feasible to be able to meet individual horse needs.
26. Dr. Hawkes testified that 20-40 pounds of hay plus 1-2 scoops of pellets fed 3 times a day would produce fat horses and would be “insane.” A normal 1,000-pound horse would eat 22 – 25 pounds of hay, more or less, depending on energy needs for growth or to gain weight.
27. Referring to the Exhibits for pellets from Beaver Feed (19 to 24), Dr. Hawkes testified that if there were 10 horses and each was getting 1-2 scoops a day, that would be 20 pounds a day, so one could do the math to see how long the supplements would last. He pointed to the feeding instructions on the invoices for the supplements (i.e. the 40 pounds purchased

of Step 6 supplement would feed 4 horses for 1 day at .5-1% of body weight for the supplement or 5-10 pounds per day).

28. Dr. Hawkes testified that the different Steps of supplements were meant for different stages of a horse's development and he was unaware of the weights or ages of each horse, other than there were two young (1-2 year- horses according to their teeth, and he was suspicious that others were in their early teens but was not sure).
29. He confirmed the supplements could not be used as a sole food source, nor could oats. He confirmed that two items on the invoice – Liberty and Big Dawg were not horse supplements that he knew of.
30. Dr. Hawkes said that the lame horse on the day of the seizure should have been seen by a veterinarian at that point and the weight of the thin horses had taken some time to get that low. There should have been a conversation with a veterinarian regarding the teeth and other issues for the 10 horses, and for certain there should have been a farrier on standard rotation of 6-8 weeks as all the horses showed evidence that the hoof overgrowth had not been dealt with for some time. Dr. Hawkes said horse owners likely develop relationships with farriers before they develop relationships with veterinarians.
31. When asked about distress, Dr. Hawkes said the horses were hungry and thirsty. There was inadequate food and no water for the draft horses and a chronic lack of energy and stored feed for the 5 quarter horses.
32. Dr. Hawkes saw no evidence of a plan for the future care of the horses. The body conditions did not get that way overnight and without any energy reserves, the horses would be unable to tolerate cold or stress. With the mare that was lame and all 10 horses with overgrown hooves, he would expect that to lead to significant risk of disease.
33. Regarding shelter, Dr. Hawkes said there were some trees and a Quonset shed open at the ends and technically other structures which could have been accessed so the horses could have found shelter, so he was not overly concerned about that.
34. The fencing was also adequate even though there was ice and some barbed wire in some areas. The Society had to remove a piece of the fence to safely extract the 5 draft horses from the area they were in for safety reasons, and some upkeep on fences and gates was needed but this did not overly concern him.
35. Dr. Hawkes said it was his understanding that the reason two horses were left behind was that there was no room in the trailers used to remove the other horses.
36. In response to the Appellant John Cummings' questions, Dr. Hawkes said he provided the Society with 10 deworm kits per an invoice, even though 8 horses were seized, because 10 is what the Society asked for.
37. In response to Panel questions, Dr. Hawkes testified that some of the draft horses were healthy and that if only 1 or 2 horses are thin, it is different than when many horses are thin. In the latter case, it indicates a nutritional issue with the pack's inability to convert feed into energy, and that was consistent with what he found on the property.
38. Dr. Hawkes confirmed that the Appellants dropped off feces for analysis before the seizure but no examination of any horses has been performed, but the Appellants may have purchased product at his clinic.

39. Dr. Hawkes confirmed a 1,200-pound bale of hay would last 10 horses 5 days. He said that if horses were thin, then got appropriate nutrition, you would see an improvement in 3-4 weeks, and a substantial improvement at the end of 2 months. That should be adequate time to gain weight and be at a significantly improved body score. All the thin horses were below a 3, and 4-5 would be adequate.
40. Thin body weight becomes a medical concern, he said, especially when temperatures drop and the cold becomes a “massive stressor” on their ability to metabolize energy to maintain their body processes, let alone growth. If a horse was of lesser than adequate body fat it would use muscle to generate heat and when those stores were depleted, it would become a snowball effect for insulating the horses.
41. Dr. Hawkes said the horses were not coughing as a result of the wildfires in the summer. And he saw no lingering conditions due to the fires. These horses should have had ample opportunity to adequately put on weight. Dr. Hawkes said unless a horse had vast medical problems already, they should not have experienced respiratory issues being in the Cariboo or Chilcotin due to fires.
42. Dr. Hawkes testified that a horse that was thin before September would have an “absolutely predictable” body condition improvement if it got adequate nutrition, and if feed had been increased after the fires, the horses should have predictably put on weight, absent a medical issue from smoke, which he did not see in these horses.

SPC Carla Edge

43. SPC Edge has been a Special Provincial Constable throughout 2017 and was at the time of seizure, appointed pursuant to the *Police Act*. The December 2, 2017 seizure was pursuant to the warrant reproduced in Exhibit 7 Tab 2 dated November 30, 2017. She confirmed her notes and the notes entered into the Shelter Buddy database system.
44. SPC Edge testified she became aware of the Appellants as a result of complaints about underweight horses with no shelter or food.
45. She attended on November 16, 2017, a two-hour drive from Williams Lake, and saw 5 horses in a pasture, looking thin. She could see the horses’ ribs, spines, hip bones visibly. She exited the vehicle, photographed the back of a truck, and two dogs were out.
46. She was advised by Kathy Cummings that she could not inspect the horses. SPC Edge called John Cummings who told her they had purchased an additional 5 Canadian draft horses and two stallions had died and although they had two sources of hay, both were bad.
47. SPC Edge had scheduled an appointment but had to reschedule when her attendance was required on another matter. She later scheduled to inspect the horses on Friday, November 24, 2017 at 1 pm and she asked to be alerted to any change in that appointment before she started the two-hour drive to the Appellants’ property.
48. There was no answer when she arrived at the property, but she observed the quarter horses with no feed in their pasture and an inch of ice in the water trough. This was all beside the driveway. She drove to the Quonset and viewed 5 draft horses in the pasture with no feed and a large bale of hay in a lean-to which was inaccessible to the draft horses. As she was

early, she left and then returned at the designated time and the gate was still open. She testified she was concerned for the horses, so she searched outside for a bucket to bring them water but found none. She left and when she was back in cell phone range she heard a cancellation voice mail from the Appellants.

49. On November 25, 2017, she called John Cummings and asked if he got the notice and he said yes. He said he had gone to the pharmacy for his wife and did not water the horses before he left and the bale of hay she saw was the same as on November 16, 2017. He told SPC Edge that when he got home from the pharmacy at 2:30 pm he felt sick so he did not feed or water the horses that day. SPC Edge testified that she did not say the Appellants could not hand-feed.
50. SPC Edge estimated the horses were a BCS of 1 or 2, more of a 2 and said that it is possible for a horse to score less than a 1 and she was really concerned with how the Appellants were feeding the horses as she could visually tell some were thin. SPC Edge said the Appellants blamed the quality of hay available and said the horses always had water which is not what she observed. She confirmed she told the Appellants that they must have a veterinarian see the horses. John Cummings asked her what would happen if he did not comply and she said possible escalation and removal and charges. He told her he would call the veterinarian on Monday. She advised him the Society does not take horse surrenders and he could sell them or give them to a rescue group. Livestock surrenders were a “huge” resource challenge and it is up to the owner to relieve distress.
51. On November 27, SPC Edge left a message for the Appellants.
52. On November 28, she called, and Kathy Cummings answered and said they had not sought veterinary care for the horses, but a farrier named “K” was coming out to assess them. Kathy Cummings later accused SPC Edge of contacting the farrier and scaring her off, which Edge said she did not do. Kathy Cummings told her a fecal was done November 30, 2017 and a veterinarian was not necessary, after they called the veterinarian to discuss the horses’ health.
53. SPC Edge called the veterinarian who said the Appellants had not called and spoken to anyone, so Edge called her superior officer to discuss getting a search warrant.
54. On December 1, 2017 SPC Edge and Chapman executed the search warrant and she testified the photos at tab 20 speak for themselves. The quarter horses looked like they had got even thinner, but she was also closer to them than in the past. Only some quarter horses had access to water. She was concerned over the condition of their feet and their thin body condition. The draft horses were locked into the hillside area where the scrub grass was. There was no indication they had been spooked and just ran there as they were not sweating, not breathing heavy and did not appear nervous. Two did not want to come to her but the others did.
55. She determined the 5 quarter horses were in distress as their weight had not improved and their feet were very poor and there was no other hay around except what was under their feet and she determined there was not enough hay to sustain the horses for the day.
56. She testified one draft horse was dead lame – a mare, and as they led her out she was eating snow so SPC Edge was concerned about dehydration. That horse was seized after the veterinarian provided medication for pain.

57. The remaining 4 draft horses were examined and 2 were found to have very poor feet and one of those was quite thin. She had no room to trailer all 4 out or all 4 would have been seized for inadequate food, water, shelter, poor feet and poor body condition. She left 2 horses behind with a notice of disposition and a second notice about care of the 2 remaining horses. That notice was at Tab 25 B10025 ordering the Appellants to keep sufficient food and constant water available and deal with the 2 horses feet and provide necessary veterinary care if there were any signs of pain, illness or injury, and provide adequate shelter.
58. At the time of the hearing, SPC Edge testified the horses currently looked great and had put on significant weight and one was pregnant and due in about two weeks. The 2 younger horses had improved as well, one dramatically. The horse with the abscessed foot had been x-rayed and had a nerve block and the infection “squirted out” and, after 9 days of treatment and wrapping, is now “sound and fabulous.”
59. Under cross examination SPC Edge testified that she had to arrange for trailers beforehand in the event of a seizure, and the trailers were waiting at a meeting point and were not aware of the address. As there was no cell service, haulers parked and awaited instructions by VHF radio to come to her location. As she had visually seen 5 horses that were thin and possibly one draft horse, she thought potentially she might need transport for 5-6 horses. The trailer accommodated 8 horses as the 2 colts were small.
60. In response to Panel questions, SPC Edge testified that it was her belief that the Appellants did not comply with any part of the order. She made her decision to seize after the veterinarian completed his inspection of the horses.

VIII. The Appellants’ material and witnesses

61. The Appellants John and Kathy Cummings submitted written material and invoices, and each provided testimony and was subject to cross examination.

John Cummings

62. Mr. Cummings testified that he already submitted a submission. He said he started supplementing his horses at the end of September, regularly handfeeding them. The bales of hay that were trampled was because SPC Edge told him to remove the hay from the corrals and free feed the horses. Previously he controlled the feeding and wasted food by hand feeding.
63. He therefore let loose the hay, so it got trampled, \$540 of hay wasted but he was trying to comply with SPC Edge.
64. He testified that he has a huge Quonset, 30 x 60, for shelter and there are also several large trees the horses could use for shelter.
65. Mr. Cummings testified that they always looked after the horses properly as the horses are not commodities, but they have relationships with the animals and are constantly interacting with them. These were happy horses and he testified that the lame draft horse’s

leg was fine when he gave it a carrot treat and it had galloped with the “matriarch” and there was no lameness in “any way, shape or form.”

66. Mr. Cummings testified that the horses had become spooked so found themselves in an off-limits area and were brought back by the Society into a rocky area after they dismantled the section of fence. He said they could have damaged the fence and their actions explain the lameness.
67. He testified that had the horses not been seized they would have improved. They had gone through smoke with the wildfires. The fires affected his ability to get good quality hay. As their hay supplier is only two hours away, he did not stockpile hay. He did not foresee the highway washing out.
68. His current horses are in beautiful condition and one is pregnant which is why he started the Step Right program.
69. He said the smoke affected the seized horses’ recovery by up to 8 months due to the smoke’s “profound effect on their metabolism.”
70. He said he had fecal test done at the veterinary clinic and does not have a specific vet there, but he had already dewormed the horses – or his wife had as she had 50 years working with horses and they both respect all animals. They look after all their animals with love and miss the personal interaction they had with their seized horses.
71. Mr. Cummings testified he and his wife wanted to start a breeding ranch and that is why they bought their herd, a stallion broke its leg and he had a “local horse guru” from the “rez” whom he always consulted with. That “guru’s” assessment was that it would be cost prohibitive to have a veterinarian come out, so euthanasia was recommended.
72. Mr. Cummings said the smoke had been so bad he couldn’t see the horses 50 feet from his front door. The military was air-lifting in food and the closed roads limited his access to hay. The hay they could get was moldy or bad and he had not anticipated not being able to get hay from his reliable hay provider. He spent the extra money to ensure his horses were well-fed and cared for.
73. He said SPC Edge was “unreasonable” in her assessment because they themselves recognized their horses were in distress and were doing everything to bring them around. He disagreed with Dr. Hawkes regarding his view on the effects of smoke on a horses’ metabolism being predictable as it was unpredictable according to print outs from the Internet. Those print outs said 8 months.
74. Mr. Cummings said the complaints leading to the Society’s attendance were from a complainant having friends and relatives complain as the Society won’t do anything unless it is bombarded. Of course, he said, they found thin horses.
75. He said he totally disagreed with the finding of distress as they interact daily and the horses were always fun to be around. The horse with the bad foot must have damaged it on the wire fence. They only did not have access to hay and water because those horses were in an area where they should not have been.
76. He said that the fact that the horses were found in an area that had no feed is because they got spooked. Then they went through a temporary fence (smooth wire, not barbed wire). They were found in an area that they aren't allowed in.

77. The trampled hay was as a result of the Society's demand that the horses be free-fed and they walked on the hay.
78. The Quonset did not have doors at the ends but that did not affect the shelter value as the doors would have been opened anyways, if they existed, in order for the horses to enter. There was a corral, but nothing grew there last summer. There was no grass.
79. He said there was a "coincidence" with the timing of the fire and the "whole nine yards" and he had instituted a "program" on September 30, 2017 and if the Society has just left the horses they would have shown substantial improvement in their own home as they are sensitive to change.
80. For whatever reason, the SPC Edge did not like him, he said, and she took everything personally. The last time they conversed, it was a screaming match on her part.
81. The reason their regular farrier bowed out was he did not have enough customers and when they tried to find another, SPC Edge called to check her credentials and that farrier didn't want the hassles so she would not come out. He has a list of farriers now and "I am sure we will find one. We're so isolated but I'm sure we will get another one." It is his wife who knows horses, he is just a rookie, he said.
82. Under cross examination, Mr. Cummings confirmed he still had two draft horses: Koumie and Helena, and that 8 horses were seized: draft horses Muenuie, Jorane, Deschambo, and quarter horses Susie Q, Penny, Jade, Cinder, and Dooley. He acquired the 5 draft horses while there was a break in the road closures at the end of July. The draft horses were in good health. They first moved to this property in October 2015 with two horses and acquired the rest later.
83. In 2017, in addition to the horse with the broken leg that was euthanized, he had a draft horse stallion that must have become over-excited when it saw a mare. Another stallion – a wild horse - got "into a scrap" with his stallion which got "banged up." He fed it the next morning and it was fine. Then it lay down and stopped responding. It had tried to sit up. Eventually it passed away. There were two horses that died in October 2017, leaving him with 10 horses.
84. He used to get wild horses coming into his corral when they would jump the fence, but he has since put up a gate at the entrance.
85. He has a barn kit but it is not yet erected as he cannot get cement due to the fires. He does have plans to get more horses and it will be just him and his wife managing the breeding farm.
86. His wife was in the hospital for a total of 6 surgeries from June 2017 and a neighbour looked after the horses during her heart surgery. In October 2017 and November 2017 his wife was again in the hospital and he looked after the horses and if he went out of town, his neighbours who board horses would look after his horses. Mr. Cummings again said that he would get "B", a horse man in his 70s who drops by periodically to look over the horses and make suggestions. "He's a very knowledgeable good guy" who volunteers his time and is not paid. The last time his horses saw a farrier was in June 2017. They have still been unsuccessful in getting a farrier for the horses they still have, and have never had a veterinarian out to the property.

87. He said the roads opened after the fires on September 30, 2017 and he picked up more feed then. The fire started July 6 or 9, 2017. And at the end of August 2017 the dam broke washing out the roads.
88. He said he had noticed the low weights of his horses prior to September 30, 2017 so he bought supplements and was slowly introducing them into the diet as supplements were not an “instant cure.” He got more hay when the highway opened. He paid cash and did not get invoices. He said he had enough food by December 2017 except that SPC Edge ordered free feeding and the feed got trampled. Apart from the trampled hay, he had no bales on the property. He said the supplements were in sufficient quantities. He confirmed the two troughs front and back had water heaters in them.
89. Mr. Cummings was taken through some of the photographic evidence and explained the photographs. He confirmed he saw hay trampled down. He confirmed he saw ribs sticking out on some of his horses. He understood, he said, that some of the horses were thin as they could visibly see the ribs. He did not believe it was getting worse at that point. In the n December 1, 2017 photographs he could still see they were thin. He had instituted his supplement program September 30, 2017 and he believed they were improving as they were thinner when his program started. Change doesn’t happen overnight he said. He saw a small improvement.
90. He testified he had called Dr. Hawkes clinic but when he explained his horses condition and his feeding and supplement program, the clinic staff said they spoke to the veterinarian who advised that Mr. Cummings was doing what was necessary.
91. Mr. Cummings said it was almost trial and error what results were seen in his horses but in any event, his view was that they were doing everything correctly.
92. On November 30, 2017 the day before the seizure, his wife made a call to the veterinarian.
93. Of course, he testified, he had concerns over the horses’ hooves but when they were trimmed in June 2017 it was not done properly and he had called a few farriers and couldn’t get one. He said he still acquired more horses without having a farrier as he figured he could get one.
94. He said he still had supplement left over from the November 2017 purchase.
95. Mr. Cummings confirmed one stallion was injured in a fight and died because of it, and that he still had not built his barn because of the fire and road closures. He said he was 67 and had an artificial leg but could get around fine, and his wife was 54 and she was fine to operate the farm.
96. He said again that he was simply caught off guard with the fire and a lack of a stock pile of food.
97. In response to Panel questions, he got advice from “B” the horse advisor after he thought his horse sprained its leg. “B” said give it a day or two and if not improved he’d have to make the difficult decision to euthanize the horse. Considering the cost, it was not prudent to bring out a veterinarian. He had “someone on the reserve” euthanize the horse.
98. Of the two stallions that died, Mr. Cummings said that the stallion that had been in a fight with the wild horse was thin and he could see its ribs. He did not consider finding out why the horse died since it was already deceased. And since he had personally witnessed the

fight with the wild horse, he concluded, after the stallion died, that it must have died from internal injuries.

99. Mr. Cummings confirmed that he did tell SPC Edge the cost of veterinary care at his property was prohibitive but he said he could always take a horse to the vet in his trailer, but he did not. He said the SPC only assumed bad dentals and ticked off the box. He said he did not take his horses into a veterinarian as they were doing everything to address the weight loss. He said the horses did not need to be at the veterinarians.
100. He confirmed the road was closed, but opened on August 30, 2017 the day he got the horses and bought 5 bales of hay for the now 10 horses. He clarified the 20-40 pounds a day of hay was not three times a day but split into three parts during the day.
101. He has no documents regarding breeding horses as he is not at that stage yet, it's only a dream. He confirmed there is no written care plan for the 10 horses as he did what his wife told him to do and they would make sure the horses were well.
102. They did not consider the thinness of the horses to be illness, just due to the fires so they never considered taking the horses to the veterinarian.
103. He testified he supplemented the horses gradually using the same amount of supplements for the quarter and the draft horses, and his wife fed in the day and he did the evening feeding. He fed 10-15 pounds of hay per horse and the same supplement regimen for the 8 weeks between September 30, 2017 and the seizure. He really didn't change anything, he kept his feeding routine the same. He only ever made the two purchases of supplements.
104. The fire was the only difference in the routine plus the poor quality of hay due to the road closures.
105. As the horses had no issue with eating, he assumed their dentals were fine.
106. The farrier was supposed to have come and it was due, but the information about his horse hooves was overstated by the Society.
107. When asked why he did not comply with the Society orders to see a veterinarian within 7 days, Mr. Cummings said he did not comply as he did not think the horses needed veterinary care as he did not think they were sick.
108. Mr. Cummings said he hadn't considered the road closures but now that he knew that was a possibility, he would keep a one-month supply of hay.
109. He confirmed that the body condition of the horses started to decline in September 2017 after the highway had been reopened but he didn't notice until it became extreme because "this is a learning curve for me."
110. He testified that he knew he could lose his horses as a consequence of not following SPC Edge's orders but he did not think a veterinarian was needed and he would have brought in a veterinarian if the thinness persisted, and he did do the fecal and he should have drawn blood.
111. He currently has one bale of hay for his two horses.
112. Under final cross, Mr. Cummings confirmed he has intentionally bred his pregnant mare and is hoping for two foals but has no plan.

113. He confirmed SPC Edge's command to free feed was verbal not written.

Kathy Cummings

114. Mrs. Cummings testified she does not agree with the reason why her horses were seized. They were rectifying the underweight situation and that can take up to months to come around. The SPC said to free feed the horses and she knew the horses would trample the feed and pee and defecate in it.
115. She testified that the fecal samples sent to the veterinarian came back good, that her health and finances had nothing to do with the condition of the horses and that the lack of farrier was SPC Edge's fault and they did not comply with the order about getting a farrier. She testified that she should have taken blood but did not think of it.
116. In response to Panel questions, she agreed that a farrier should come every 3 months and that they had some phone numbers for new farriers and have contacted a couple in the last few years. Now the situation is not drastic with only 2 horses but it's important to get it done, but they are waiting to hear about the disposition of the 8 seized horses before moving forward with finding a farrier.
117. She testified that filing the hooves is something she could do but had not done as they need to be professionally cut first then filed and the quarter horses were filed in June 2017 and she did not know when the draft horses had seen a farrier.
118. She testified it was not "trial and error" bringing back the horses condition after the smoke as her husband testified, but they had introduced a better supplement plan after September 30, 2017 trying to find the right supplements for smoke and they were following the proper steps to bring back the horses weight.
119. She said the draft horses were brought home in October 2017 (not July) and that's when the breeding was done. The program she had for the teeth and coat and hooves was according to what she thought they needed.
120. They pick up hay when they go into town and they don't stockpile hay as it goes bad. Once the roads were open the hay they obtained was good enough and earlier hay was poor quality which was at fault for the horses' condition. She confirmed it takes months for horses to come around after the effects of smoke – up to 6 months according to internet articles written by 2 horse people who are not veterinarians.
121. The horses were coming around once they got good hay and supplements and having a veterinarian attend was "ridiculous."
122. Mrs. Cummings said she did not intend to hurt her horses and thought they were thin because of worms.
123. Had her horses not been seized, she would have taken them two at a time to the veterinarian, that would have been her next choice, but they were coming around well. The farrier was set up until the SPC interfered.
124. Mrs. Cummings said that she will get the farrier when she feels it needs to be done and the SPC lacks the credentials to say the things she said.

125. She acknowledged the draft horses were not subject to smoke at her property and were in fine condition when she got them. She was unaware of their status on deworming or farrier, but the people she got them from lied about their ages.
126. She said she would have called a veterinarian if her horses had not turned around, but she did not call a veterinarian before her two horses died as they were not trailer-able, plus she knows “full well” what a veterinarian would have said. If her horse was hit by a car she would take it to the veterinarian.
127. She clarified her husband was mistaken about when the draft horses came, it was the first half of October 2017.

IX. Submissions

The Appellants’ Position

128. The Appellants’ position is that the seizure was unwarranted and if the SPC was less confrontational it would have been better. In summary, they submit that SPC Edge misinterpreted some statements made and she was not reasonable. They could have prevented the seizure if they had been given an adequate chance to bring the horses around and do what was best for the horses. They disagree that it was necessary to comply with the Society’s order.

The Society’s Position

129. The Society’s position is that Dr. Hawkes personally attended and found several of the horses too thin with the cause being lack of quantity of feed. The supplement program was grossly inadequate given the amount of supplements purchased and those required at the recommended dosage. The hooves were of concern as disease could occur, as it did with one horse that developed an abscess. Such maladies could occur in all the horses due to lack of maintenance. The quarter horses had not had their feet looked at for about 4 months, far greater than the 6-8 weeks recommended and incredibly, today, no farrier had yet to attend the property. The hoof care in June 2017 was insufficient and inadequate and nothing had been done by the Appellants to alleviate the distress of the horses regarding their hooves.
130. A prudent caregiver needs to take appropriate precautions for the horses and none were evident by these Appellants. They did not stockpile hay and as the horses started to lose weight and suffer, there was no program for care and the Appellants permitted the horses to fall into distress. An example is the 24-hour period where the horses were all given no food or water while Mr. Cummings was at the pharmacy or sick. The environment was not distress-free. Scrub was not sufficient food source. There was a lack of proper care and maintenance of the horses and if the Appellants were having difficulty keeping weight on their horses, why did they acquire 5 more and why did they permit 2 to die yet not call a veterinarian?

131. Proper inspection would have foreseen the abscess and alerted the Appellants to a pending situation. When the Appellants did see an issue with the hooves, they took no action.
132. The Appellants have no plan for the development of their farm, yet they are acquiring horses with an intent to breed, all the while the horses are starving. This would have continued as Dr. Hawkes testified that the horses would have needed an improved body condition score and more with to meet the metabolic needs during winter to keep warm.
133. The Society, which also relies on its written submission, submitted that the finding of distress and the decision not to return the 8 horses was reasonable. These Appellants could have taken their horses to a veterinarian, but instead chose to ignore the Society's orders and recommendations. And that bodes poorly for any future interaction.

X. Analysis and decision

Assessment of witness evidence

134. We will at the outset outline our assessment of the evidence of witnesses.
135. We accept the evidence of SPC Edge. Her testimony before us was consistent with the information contained in the ITO information, was supported by the veterinary testimony, and was not shaken on cross-examination. Further, Mr. Cummings confirmed much of what SPC Edge testified to, though he sometimes interpreted events differently.
136. We also accept the report and testimony of veterinarian Dr. Ross Hawkes, the validity of which was not challenged or undermined in any meaningful way.
137. We also find that the Appellants themselves presented their information clearly, although they disagreed between themselves on a few details. For example, we find that it was more likely that Kathy Cummings was correct in her recall of the dates about the arrival of the draft horses. It is the conclusions and decisions of the Appellants we disagree with, as we will elaborate on shortly.

The seizure

138. Our first task was to determine whether the Society justifiably formed the opinion that the 8 horses were in distress when they were removed.

“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.

139. The criteria listed in s. 1(2) – any one of which is sufficient to satisfy the definition – constitute “distress.” The first three 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.
140. We find that all 8 horses under appeal were in distress. We note at the outset that any one of the findings of distress, set out below, would be sufficient to ground our decision on this issue.
141. The 5 quarter horses were so thin that their ribs and spines and hips were showing, and they lacked so much fat and muscle, according to Dr. Hawkes, that they would have struggled to stay warm as winter approached. Only 1 of the draft horses was thin, but both SPC Edge on more than one occasion, and Dr. Hawkes at the time of seizure, found these draft horses to be penned in an area devoid of feed or water, with only an inadequate supply of scrub grass – an inappropriate food source for sustenance. The fact these other 2 draft horses had not yet shown signs of starvation was possibly luck but was not the result of good horse management. We find that all 8 horses were deprived of adequate food and thus were in distress. The definition of distress does not require an individual horse to be starving to be deprived of adequate food, particularly when the consequences of such deprivation is evident on other horses in the same group.
142. We find as well that many of the horses were deprived of adequate water. The thin horses did appear to have access to heated water (but not enough food) and the draft horses were found more than once in an area without any access to water, an inch or so of ice instead forming in the trough. Mr. Cummings himself described a day where he failed to feed and water his horses before running an errand, and upon returning home felt ill so chose not to feed or water his horses, thereby leaving them without water for a day. In all the circumstances, the Panel is satisfied that the Appellants failed to provide adequate water to all their horses, which should have been constant according to the SPC’s orders and according to veterinary advice.
143. These horses, and the 2 dead horses before them, were denied any veterinary care at all, other than a last-ditch effort to have fecal analysis done the day before seizure. The Appellants acknowledge that they knew the Society ordered veterinary treatment but instead asked about the consequences of refusing Society orders. The Appellants claimed to have called the veterinary clinic, contrary to the testimony of the veterinarian himself. We prefer the veterinarian’s testimony in that and all regards.
144. It was particularly disturbing to the Panel that the Appellants repeatedly claimed they would seek veterinary care and had the ability to take their horses to a veterinarian in their trailer, but then offered what in our view amounts to excuses every time this should have happened. They concluded that they could best decide what caused their horses’ weight loss by using an internet search, then decide that they would use a time frame for recovery that was not veterinarian approved.
145. They decided they would follow a program for weight gain that included supplements, yet failed to properly give adequate supplements to put on weight, and when they did not see a significant reversal of weight loss, they decided to wait it out rather than seek veterinary advice. One horse was described as “dead lame” while the Appellants deny seeing any

lameness. At the same time, they admit to not having a farrier come for hoof care which would have disclosed a need for veterinary attention to one horse's hoof. When ordered by the Society to get veterinary care, thereby removing any doubt as to the necessity, the Appellants still chose to ignore that order, finding instead that their own assessment that no veterinary care was required was satisfactory. These 8 horses, we find, were in distress due to a lack of veterinary care.

146. We also find these horses were all in distress due to neglect for the Appellants' failure to secure reliable farrier care. In June 2017, the Appellants stated the hoof care their horses got was inadequate and they only made a few phone calls to get a new farrier. They blamed the Society for scaring off the farrier "C". They stated that they remain cognizant of the continuing need for farrier care, saying that they will get one. Yet the plain fact is that they still haven't got a farrier for the 2 remaining horses. One of the horses seized had a deep abscess due to poor hoof care, while every other horse showed signs that it was overdue for hoof care. In our opinion, the Appellants neglected to secure a farrier, and this amounted to neglect in the circumstances of this case in relation to these horses.
147. Finally, the Panel finds that 6 of the horses were suffering due to the cold weather and their seriously thin conditions and continued lack of sufficient feed and supplements. One of those 6 was injured with a cracked hoof and deep infection and abscess that was untreated, and pain medications were required at the time of seizure. These horses were in distress on these grounds also.

Return of the 8 horses

148. Having determined that the seizure of the 8 horses was justified, we now consider the return of these animals.
149. 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.
150. We 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.
151. We 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.

152. 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".
153. Having concluded that the Society was right to remove the 8 horses, we also conclude that the 8 horses should not be returned.²
154. These Appellants simply do not appreciate the state their horses were in. In our judgment, they seem to be adept at coming up with excuses that support their decisions, to the detriment of the health and welfare of their animals.
155. We find that the Appellants have no meaningful plan for the return of their horses, should we have been inclined to otherwise return their horses. There was no plan for their breeding facility despite already beginning to intentionally breed their horses. This lack of planning is made worse, much worse, by the fact they were breeding starving horses. The idea that a horse unable to keep itself warm for lack of energy stores can somehow support life is unconscionable. Despite the veterinarian's testimony and their own ostensible acceptance that all the horses need a farrier, and despite still owning 2 horses that are in need of a farrier, the Appellants have failed to secure a farrier for their horses and did not act in the best interests of their animals.
156. The Appellants seem to have no realistic idea of the nutritional needs of their horses. The Panel is not persuaded that it was the fires that are responsible, in December 2017, for the low weights of 6 of the 8 seized horses, nor, of course, was the fire a cause of the abscessed hoof of 1 horse. The Appellants may have hand-fed their horses prior to the visit by the SCP but even at that point, these horses were very thin, as evidenced by the complaints, the SCP's visual inspection and assessment in November, the veterinarian's testimony that the starvation found on December 1, 2017 did not happen overnight, and his testimony that recovery from a period of smoke exposure would have been predictable and in the 2 months since the highways were open, would have permitted a significant improvement in their weight.
157. The Appellants seemed content with their own assessment that their starving horses, in that same two months, had stopped losing weight. By the Appellants' own testimony and evidence, they purchased an inadequate supply of supplements to feed according to instructions, preferring to instead slowly introduce low amounts of supplement and then, according to Mr. Cummings, continue on those low amounts unchanged for 2 months. The Panel has no confidence that these Appellants would be able to address the nutritional needs of their horses and had no faith that the Appellants would perform appropriate veterinary consultations.
158. The Panel is of the view that these Appellants would not avail themselves of necessary or timely veterinary care. The Appellants had one horse with a broken leg that had been broken for a day or two. Rather than call a veterinarian, they instead called a man who

² Note that the decision regarding the non-return of the 8 horses necessarily includes any foals born to any of the pregnant mares seized.

knew horses and did not charge a fee. On a second occasion, the Appellant Mr. Cummings watched another horse get attacked by a wild horse, and knocked to the ground, but get up again. He watched that horse later that day lie down, and he chose to watch it rather than seek veterinary advice and treatment. That horse died on its own.

159. Kathy Cummings testified that one of the reasons she did not call a veterinarian is that she knew “full-well” what he would say. She testified that the SPC told her to seek a veterinarian but bringing one to the horses would be “ridiculous.” She testified that the SPC lacked the credentials to make some of the assessments the SPC had made, yet this same Appellant, Mrs. Cummings, ignored the veterinarian’s advice (and he had credentials to make assessments) and instead turned to an Internet report written by 2 non-veterinarians. Mrs. Cummings only used the issue of credentials selectively (and poorly) to make a point she wanted to make.
160. Further, the Appellants, upon learning from the veterinarian’s testimony that 2 months was enough time for a horse to put on significant weight, and that the weight gain after smoke exposure was predictable, continue to conclude that that information is incorrect, and that they prefer an Internet report stating otherwise (written by a non-veterinarian). The Panel concludes that not only would these Appellants not seek veterinary advice, should they come to receive veterinary advice, they would not necessarily accept or even believe it.
161. Each Appellant took the view, even after hearing the veterinarian’s testimony, that if not for the interference of the Society, the horses would have been just fine. The Panel cannot conclude the same having regard to the thinness of the horses, the untreated abscess, the Appellants’ disinterest in seeking qualified veterinary advice, and the two dead horses that did not have the opportunity to benefit from veterinary advice.
162. The Panel finds that these Appellants were aware in the summer of 2017 that their horses were losing weight and were very thin. They chose a course of action that was not working, yet they did not alter their actions. When the Society ordered them to provide adequate food and water, they did not do so reliably and continually, having excuses for each of their failures.
163. When the Society ordered veterinary care for the horses, the Appellants chose to disregard that order, and even at the hearing were of the view veterinary care was not needed and would have been accessed under certain circumstances, despite never having accessed it before (again the Panel comes back to the 2 dead horses).
164. These Appellants, one experienced and one entering a steep learning curve according to his own testimony, consistently chose to follow their own unsupported and unwise choices for their horses, to the detriment of their horses.
165. In all the circumstances of this case, the Panel concludes that these Appellants, having already failed to provide for their horses at the order of the Society, would foreseeably continue to fail to provide for their horses if the horses were returned to their care and custody with or without conditions. With regard to the latter (return with conditions), we have no hesitation in concluding that we have no confidence, for the reasons we have set out at paragraphs 151-162, that the Appellants would comply with conditions imposed on any return.

XI. ORDER UNDER SECTION 20.6(b)

166. 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).

167. It is our order, pursuant to section 20.6(b) of the *PCAA*, that the Society be permitted in its discretion, to destroy, sell or otherwise dispose of the 8 horses. The Panel understands the health and condition of all 8 horses has improved dramatically and it is our sincere hope that the Society finds new owners for these horses.

XII. COSTS

168. 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:

- (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).

169. Based on a **March 19, 2018** BCFIRB decision release date, the Society is seeking costs in the total amount of **\$9,503.82**, pursuant to s. 20 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 as follows:

- a) Veterinary, farrier, hauling and feed costs: \$3,002.07
- b) SPCA time attending to seizure: \$204.75
- c) Housing, feeding and caring for Horses: \$6,297.00
- d) TOTAL: \$9,503.82

170. The veterinary, farrier, hauling and feed costs are found in the Binder as follows totalling **\$3,002.07**:

Tab 25, p. 186	\$500.00
Tab 25, p. 187	\$600.00
Tab 25, p. 188	\$1,143.49
Tab 25, p. 189	\$160.97
Tab 25, p. 191	\$154.52
Tab 25, p. 192	\$80.00
Tab 29, p 196	\$258.09
Tab 29, p 197	\$105.00
Total	\$3,002.07

- 171. The Society also incurred labour costs respecting its special provincial constables’ investigation and seizure of the Horses. We estimate costs associated with investigating, seizing and transporting the Horses on the seizure date at approximately \$204.75 (\$22.75 per hour x 3 hours (approx.) x 3 Society staff).
- 172. In addition, the Society’s costs to house, feed and care for the Horses exceed the claimed \$6,297.00, calculated below. Attached as Exhibit “A” is a true copy of email correspondence from Louise Lathey, Seized Animal Liaison Administrator, setting out further details on per day costs, as well as foster information. As outlined in Exhibit “A”, three of the horses had to be moved from foster care into the Society’s shelter in Surrey, BC. These three horses required additional care and attention and it was determined that this would better be provided at the Society’s shelter.
- 173. Costs for the Horses between December 1, 2017 (being the date of the seizure) and December 21, 2017 (being the date of the written review by the Society): 21 days x \$6/day x 8 horses = \$1,008.00 [Tab 27, p. 190].
- 174. Costs for 5 Horses between February 7, 2018 (being the date of the commencement of this appeal) and March 19, 2018 (being the anticipated date of the BCFIRB decision): 41 days x \$6/day x 5 horses = \$1,230.00 [Tab 27, p. 193].
- 175. Costs for 3 Horses between February 7, 2018 and March 19, 2018: 41 days x \$33/day x 3 horses = \$4,059.00.
- 176. Regarding costs of care, Mr. Cummings submitted that the horses would have been fine if left in their care, and expenses for feeding, hauling or veterinary care would not have been incurred. He said they would have fed their own horses at about a third of the cost of the Society’s feedings. The Appellants only agree to pay their share of the hay and supplements but other than that, they contest the costs.
- 177. The Society relied on the Affidavit of Marcie Moriarty with respect to costs, paragraph 13-16 at Exhibit 10 and noted that during the period between the Society’s decision on December 21, 2017 and the receipt of its decision by the Appellants on February 7, 2018, the Society is not requesting care costs (other than any veterinary bills).
- 178. Beyond the position summarized at paragraph 167, the Appellants did not provide any evidence that the costs of care for their horses, incurred by the Society, were not reasonable. As noted, the Appellants’ only opposition was that these horses did not need to

be seized and therefore none of the costs of care including veterinary expenses would have been incurred, but for the Society's interference and the attitude, according to the Appellants, of the SPC.

179. The Panel finds absolutely no merit to any of these arguments and finds that the Appellants are responsible for the costs of care requested by the Society, none of which has been shown to be unreasonable, and which the Panel finds to be reasonable. The Panel notes that the Society reasonably and wisely did not claim any costs which it incurred as a result of the error in the timely delivery of its decision.

XIII. ORDER UNDER SECTION 20.6(c)

180. It is our order that the Appellants are liable to the Society for the amount of \$9,503.82 in respect of costs of care.

Dated at Victoria, British Columbia this 19th day of March 2018.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Vice Chair
Presiding Member



Tamara Leigh, Member



Peter Donkers, Member