

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 SIX HORSES

BETWEEN:

TERESA HOGAN

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION
OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Dennis Lapierre, Presiding Member
David Zirnhelt, Board Member
(collectively the “Panel”)

For the Appellant:

Self-represented

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

March 25, 2020

Location of Hearing:

Teleconference

Introduction

1. The Appellant, Teresa Hogan, is 50 years old and rents an acreage located at Cluculz Lake, Vanderhoof, British Columbia (the “Property”). Ms. Hogan lives at the Property with her husband, who works in the forest industry and who is frequently away at camp jobs. The Hogans began residing at the Property between October 15 and November 1, 2019, bringing with them 14 horses, 6 of which are the subject of this appeal. They moved to the Property from 9247 Nazko Road, near Quesnel, BC. (the “Nazko Road Property”).
2. On January 22, 2020, the British Columbia Society for the Prevention of Cruelty to Animals (the Society) seized 11 horses and 44 fowl from the Property. On February 18, 2020 the Society issued a decision upholding the seizure of the animals and declining to return the animals to the Appellant (the “Decision”) On February 24, 2020, the Appellant filed an appeal with the British Columbia Farm Industry Review Board (BCFIRB) of the Decision. The Decision noted that the Appellant had elected at the time to surrender 5 of the 11 horses and the birds. The Decision further noted that on the date of removal a notice had also been issued to the Appellant concerning the needs of the rabbits, 2 pigs, and several dogs, which were on the Property but were not seized.
3. Section 20.6 of the Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372 (PCAA) permits 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. Under the PCAA, appeals to BCFIRB are broad in nature, as set out in detail in *BC Society for the Prevention of Cruelty to Animals v. British Columbia Farm Industry Review Board*, 2013 BCSC 2331, at paragraph (24):

Courts of law are focused on the law and legal principles. BCFIRB appeals are broader than that. There are no limits on the grounds of appeal. BCFIRB has been given broad evidentiary and remedial powers on appeal. While the legislature could have created an appeal or review “on the record”, it has not done so here. Instead, the legislature has gone the other way in these reforms. It has given BCFIRB extensive evidence-gathering powers, some of them to be used proactively. It has made the Society “party” to appeals, and it requires the Society to provide BCFIRB “every bylaw and document in relation to the matter under-appeal” (s. 20.3(4)), which will in many cases be much broader than the record relied on by the reviewing officer. Included in BCFIRB’s powers is s. 40 of the Administrative Tribunals Act: “The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.”

4. At the hearing of this Appeal, the Appellant represented herself, testified, and called 4 witnesses: Sage Gordon, Danielle Restad, Daryl Ophus, and Cathy Morrison, all of whom gave testimony under oath by telephone. In addition, at Exhibit 7 of the document disclosure binder provided to the Panel, there were emails in support of the Appellant from 5 other people: Julie McPhail, Jim West, Roxanne Gordon, Nicole Meyers, and Brian Burnes, none of whom attended to give oral evidence at the hearing.

5. The Society was represented by counsel, with sworn testimony being provided by three witnesses: Special Constable (SPC) Debbie Goodine, Dr. Cori Stephen and Dr. Jodyne Green. Both Dr. Stephen and Dr. Green testified as expert witnesses.
6. For reasons outlined below, the Panel permits the Society, in its discretion to destroy, sell or otherwise dispose of all 6 of the subject horses of this Appeal. The Panel further finds the Appellant liable to the Society for costs in the amount of \$9,434.12, being the veterinary costs incurred by the Society (\$5572.72), the costs spent on the seizure (\$273.90) by the Society, and the housing, feeding and caring costs for the 6 seized horses (\$3588.00) after seizure.

Pre-Hearing Matters

7. This Appeal was originally scheduled to be heard on March 20, 2020 but was rescheduled to March 25, 2020 at the Society’s request because of its workload and the unavailability of its witnesses. As a result of the change of the hearing date, the Society further requested an extension of the due date for written submissions from March 13 to March 17, 2020. The Panel granted the Society’s request, and the Appellant was given an extension to her final reply submissions to March 20, 2020.
8. On March 11, 2020 the Society requested the Panel accept into evidence the unsigned affidavit of Marcie Moriarty, the Chief Prevention and Enforcement Officer for the Society via e-mail. The Panel accepted the unsigned affidavit based on Ms. Moriarty’s confirmation that she had reviewed the content of the Affidavit and that it was in fact true and accurate.
9. On March 24, 2020, BCFIRB received three additional documents, all relating to supplementary costs that had been submitted to the Society by attending veterinarians, primarily for dental examinations and treatments for the 6 horses involved in this Appeal. Because these documents were submitted past the submission deadline, the Appellant was given the opportunity prior to the commencement of the hearing to express her position on whether or not these documents should be accepted into evidence by the Panel. Although she had not read the documents, the Appellant accepted the Society’s explanation as to the nature of the documents and the evidence contained therein and offered no objections. The Panel ruled that the additional documents could be included as exhibits for the record and relied upon as evidence in the Appeal.

Materials Submitted on this Appeal

10. The following documents were entered as Exhibits:

Exhibit #	Date	Received from	Document
Exhibit 01	Feb 18, 2020	BCSPCA	BCSPCA Decision
Exhibit 02	Feb 24, 2020	Appellant	Notice of Appeal (NOA)
Exhibit 03	Feb 24, 2020	CSNR	Filing fee Receipt

Exhibit #	Date	Received from	Document
Exhibit 04	Feb 25, 2020	BCFIRB	NOA Process Letter
Exhibit 05	Mar 02, 2020	BCFIRB	Email re: Hearing Costs
Exhibit 06	Mar 03, 2020	BCFIRB	Email: re: Reschedule Hearing and Decision Dates
Exhibit 07	Mar 03, 2020	BCSPCA	SPCA Initial document disclosure (Tabs 1-26)
Exhibit 08	Mar 09, 2020	BCFIRB	Email: Revised Submission Schedule
Exhibit 09	Mar 10, 2020	Appellant	Pictures 1-4
Exhibit 10	Mar 10, 2020	Appellant	Witness Contact Forms
Exhibit 11	Mar 10, 2020	Appellant	Customer Approval Form
Exhibit 12	Mar 11, 2020	Appellant	Confirmation letter- hay buyer
Exhibit 13	Mar 11, 2020	Appellant	COOP statement 2019
Exhibit 14	Mar 17, 2020	BCSPCA	Affidavit #1 Marcie Moriarty
Exhibit 15	Mar 17, 2020	BCSPCA	BCSPCA Undertaking - Marcie Moriarty's Affidavit
Exhibit 16	Mar 17, 2020	BCSPCA	Witness Contact Form
Exhibit 17	Mar 17, 2020	BCSPCA	Expert Witness Form
Exhibit 18	Mar 17, 2020	BCSPCA	Written Submissions
Exhibit 19	Mar 18, 2020	BCSPCA	Tab 26, page 195 Invoice from Dr. Green dated February 14/2020
Exhibit 20	Mar 24, 2020	BCSCPA	Tab 26, p. 196-202 Additional invoices from Dr. Green dated March 16, 2020
Exhibit 21	Mar 24, 2020	BCSPCA	Tab 27 Additional records from Dr. Green dated March 23 & 24, 2020
Exhibit 22	Mar 24, 2020	BCSPCA	Supplementary Cost Submissions (BCSPCA Affidavit) dated March 24, 2020

Events leading up to the seizure

11. The Information to Obtain a Search Warrant prepared by SPC Debbie Goodine (the "Information") included a history of her previous experiences with the Appellant. Her initial contact began on December 4, 2017 as the result of a complaint that the Appellant's horses had been regularly getting onto the highway and that one of the horses had recently been struck and killed. At the time of this complaint the Appellant was living at the Nazko Road Property.
12. The Information further states that on April 9, 2018, SPC Goodine visited the Appellant at the Nazko Road Property. She noted that there were several horses on the property, four of which were in emaciated body condition. The Appellant stated these were rescued horses. SPC Goodine issued a Notice to the Appellant on that date to provide the horses adequate food, water, shelter, and veterinary care.
13. On June 1, 2018 the Appellant left SPC Goodine a message stating that she had gotten rid of the horses that were the subject of the Notice issued on April 9, 2018 due to the stress of trying to care for them.

14. On October 26, 2018 SPC Goodine attended the Nazko Road Property and noted seeing 9 horses in good condition.
15. On October 29, 2018 SPC Goodine spoke with the Appellant and learned the Appellant had rehomed some of the horses that SPC Goodine had observed on October 26, 2018. Having no further concerns at that time, SPC Goodine then closed the Appellant's file.
16. Approximately one year later, on September 9, 2019 SPC Goodine mistakenly attended the Appellant's property while dealing with an unrelated matter and spoke to the Appellant. At that time SPC Goodine noted the horses that were at the Nazko Road Property were in good condition.
17. On January 11, 2020 the BCSPCA Call Centre received a complaint of animal neglect involving the Appellant from one of her neighbors. The complainant stated that the horses on the Property had only been fed two round bales since October and that the horses had lost weight. That same day the Society received two additional complaints regarding 12 horses on the Property that looked underweight and that only had trees for shelter at a time when temperatures were consistently reaching -30 Celsius and colder.
18. On January 13, 2020 SPC Goodine attempted to follow up with the Appellant by phone. SPC Goodine spoke with the Appellant's husband and, finding the conversation adversarial and unproductive, terminated the call.
19. On January 16, 2020, the Society received a complaint regarding a dead horse on the Property. That same day, a separate complainant reported seeing a dead horse and 15 starving horses on the Property. SPC Goodine went to the complainant's property to observe the horses on the Appellant's Property, but a severe storm and dangerous road conditions prevented SPC Goodine from getting close enough to properly observe the horses.
20. On January 17, 2020, according to the Information, the local dog catcher contacted the RCMP to report horses starving to death on the Property. The RCMP contacted SPC Goodine, to report the dog catcher's concerns.
21. On January 20, 2020, SPC Goodine sought a search warrant for the Property, which she executed on January 22, 2020.

Review Decision

22. On February 18, 2020, Marcie Moriarty issued the Decision concerning the seizure of 6 horses via e-mail to the Appellant. In it, she reviewed the BCSPCA file history with the Appellant and the evidence supportive of the seizure of the horses. She also referenced the test set out in *Brown v. SPCA [1999] B.C.J. No. 1464 (S.C.)*, where, at paragraph 22, the judge stated as follow:

The goal and purpose of the Act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as plaintiff's counsel suggests. In the interest of preventing a recurrence

of the cause or causes leading to the animal being in distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain in the good condition in which it was released into its owner's care.

23. The file history reviewed by Ms. Moriarty includes the events outlined in SPC Goodine's Information and additionally the circumstances of the subject horses and the Appellant's other animals when the Warrant was executed on January 22, 2020. In particular Ms. Moriarty notes as follows:

- Eleven live horses were located on the property.
- There was no water or feed available to the horses.
- The only type of shelter for the horses was a sparse tree line at the top end of the pasture and a patch of trees to the bottom east side of the Property opposite of where they would have been fed or watered.
- The horses had a body of condition score of between 2.5 or 2 out of 9. A few ponies scored 3 and two miniature horses were a 6.5.
- Three deceased horses were located on the pasture and had been partially consumed by wildlife. The deceased horses were all in an emaciated body condition.
- One live horse and one deceased horse were located on the west side of the property in pens behind to barn/dwelling. Both of these horses scored a body condition of 2.
- A coop was located with 44 live birds and one deceased bird. (Turkeys, ducks, geese and chickens) The birds were thin, and had no access to clean water or feed. The floor of the shelter was inches deep in feces with a heavy buildup of ammonia.
- One dog was confined to a kennel with no water but had adequate body condition. He had broken into an attached green house and utilized it for shelter.
- Half a dozen rabbits were in hutches with no food or water and feces build up on the floor. Two pigs were living in a small pen with feces build up, a small amount of hay for bedding, no water, torn tin protruding into the pen and plastic and insulation had been chewed and possibly consumed.
- There were several cats, 2 birds, 2 hedge hogs, and approx. 6 small dogs inside the residence.
- The house was small and very cluttered. There were soiled pee pads and some feces and urine on the floor, the animals were in adequate condition but had no access to water. The cages were soiled with feces.

24. The Decision further noted the statements of Dr. Cori Stephen, the veterinarian who attended the search, who noted evidence of significant distress as a result of starvation in the deceased horses.

25. Finally, in her Decision, Ms. Moriarty acknowledged the Appellant's apparent past ability to take care of animals, but noted that since the Appellant had moved to the Property, which coincided with a period of physical and mental health difficulties for the Appellant, those abilities had lapsed. Ms. Moriarty was not satisfied that the horses that are the subject of this Appeal would remain free from distress if returned to the Appellant, and noted that the Appellant had not provided any evidence of the steps that she had taken to ensure the health of the horses if they were returned. As a result, Ms. Moriarty's decided that the horses would not be returned to the Appellant and would be disposed of by the Society in accordance with the PCAA.

Key Findings of Fact and Evidence

26. The e-mailed letters of support from friends and acquaintances of the Appellant: Julie McPhail, Jim West, Roxanne Gordon, Nicole Meyers, Brian Barnes, and Cathy Morrison (who also provided testimony during the Hearing), all provided information about the Appellant properly caring for her horses for a number of years. They noted that she was knowledgeable about horses, and helpful to them in various way including but not limited to her help with their horses. In her testimony during the Hearing, Cathy Morrison admitted that while she had been to the Nazko Road Property in July, 2019 and had seen horses at that time, she had not been to the Property. Ms. Morrison stated that the horses did not seem distressed when she saw them at the Nazko Road Property.
27. Danielle Restad testified as a witness for the Appellant that she had been to both the Nazko Road Property and the Property, having last been to the Property on January 17th or 18th for a visit. She stated that she had helped take water out to the horses at that time and saw nothing out of the ordinary with respect to their condition. However, she wasn't familiar with the use of body condition scores to grade horses' health and while she has leased horses in the past she has never in fact owned horses Ms. Restad knows the Appellant from having worked on a ranch near Quesnel, and now lives on a 13-acre property with her husband and two children. Both Ms. Restad and her husband are unemployed, with her husband being on a disability pension. She offered to take the Appellant's 6 horses if returned and to look after them until the Appellant found more suitable facilities for them. Her property is a 3-hour drive from the Property. She further stated that if the Appellant couldn't pay for feed and any necessary veterinarian costs, she would cover the costs until she was repaid. Ms. Restad admitted to not knowing how to monitor horse condition and that she would take the guidance of the Appellant on those matters. She knew there was a dead horse on the Property when she visited but stated that she did not want to see it as she has a queasy stomach. She did not know there were in fact 4 dead horses on the Property, nor did she know how much a horse eats, nor the potential costs of veterinary services.

28. Daryl Ophus testified as a witness for the Appellant and is a nearby neighbor of the Appellant whom the Appellant had contacted to remove a dead horse on January 14, 2020. He testified that he had seen the Appellant's horse, but that it was not something that caught his attention. On the day the Appellant contacted him, he was unable to start his skidsteer due to the cold weather to pick up the dead horse. Mr. Ophus explained that he is a hobby wolf trapper and had once been to the Property at least a month or two prior to the hearing to put down what was described to him by the Appellant as a mean horse. He stated that his plan was to use the carcass as wolf bait. He knew that 4 horses had died, that he didn't question why the horses had died and didn't look at the other horses to see their condition. He stated that while he understood from the Appellant that one scavenged horse carcass had been predated on by wolves, there were in fact no wolf tracks leading to the carcass. This, he testified, was according to his daughter who helped to pick up that carcass and noted that there were only dog tracks coming from the neighbor's yard to the carcass.
29. Sage Gordon testified as a witness for the Appellant and stated that he has known the Appellant for years and hauled 13 horses for the Appellant on October 19, 2019 from the Nazko Road Property to the Property. He knows that the number is accurate because he filled out a hauling manifest, as is legally required. At that time, he saw nothing to be concerned about with the horses. He stated he had been to the Property since that date and saw no issues with the Property but did hear that the Appellant was having issues with the landlord. He also testified knowing the Appellant had health issues and that she had to pace herself and take her time feeding the horses because she has diabetes and had some previous problems with the H1N1 virus and that it took a while for her to get back onto her feet. He stated that the Appellant has a 2-horse trailer and offered to move the horses for her if she gets them back.
30. In giving evidence on her own behalf, the Appellant testified that she had just moved to the Property when things started to go awry. She had inquired about the services of a local veterinarian between the end of November and January 2020 and had learned that the veterinarian was taking no new patients. She said that she was feeding the horses hay and grain when the weather got cold. She stated that she had acquired all the horses at different times and has had all of them for several years. She stated that she works part-time at a grocery store, 20-30 hours/week, normally from 2:00 to 10:00 pm and looks after the animals daily unless friends come over to help. Her daily routine is to be up at 7-8AM, feed the animals, and haul water to them on a sleigh, all which takes her 1-1 1/2 hours. She stated that she buys feed by the ton every week, sometimes two times/week and provides mineral supplements as well as locally bought oats and barley. She stated that she had feed in a feed room and had hay stored in a horse trailer outside at the time of the seizure.
31. A confirmation letter submitted March 2, 2020 from TopHay Agri-Industries Inc. (Exhibit 12) indicates that the Appellant has been a hay buyer from TopHay since November 2019. However, neither the letter, nor a Top-Hay Customer Approval Form, dated November 14, 2019 (Exhibit 11) indicates what volume was purchased, when the purchases occurred, or the amount that was spent. The Approval Form stipulated the transactions were to be cash. Exhibit 13 is apparently a Co-op statement for 2019 which shows expenditures, but doesn't

identify what was purchased. These exhibits were submitted on March 11, 2020 by the Appellant, however, no reference was made to these documents during the hearing.

32. The Appellant stated that her and her husband moved to the Property because it was closer to her husband's workplace. She said the landlord changed their agreement once they arrived, resulting in her not having access to a barn as promised. She stated that she is now looking for a place to board her horses and is looking for another place for her and her husband to live, in the Quesnel area. Because the Property is apparently being sold, they have to vacate by May 1, 2020. She stated that she didn't think that she needed a veterinarian when she moved to the Property in October and that she monitors the horses' condition by observing. She stated that she uses a measuring tape that goes around the horse's stomach to determine if a horse is too thin, and also looks at their hip bones, eyes, and feces. She stated that she didn't think the horses were in as bad a condition as the veterinarians said. Of the horses that died she noted that the one with the blanket was old and that another horse, a pony, had been taken down by predators in the middle of the field. Of the 4 horses that died, she stated that two had died of old age, one was taken down (by predators), and one got stuck in the snow. She stated that she had spoken to Danielle Restad's landlord, and that she would keep her returned horses at the Restad's property and then place them elsewhere once she was able. She stated that she had two places near Quesnel to look at in terms of relocating.
33. With respect to her health, she admitted that she had been in the Vancouver hospital for a period of time a year or so prior with the H1N1 virus but had since completely recovered.
34. Dr. Cori Stephen, a veterinarian whose focus is equine and small animals, gave evidence as an expert witness. She is the owner of Nechako Valley Animal Health Services. She attended the Property throughout the execution of the search warrant. In her report, she noted two enclosures, the first on the north side of a barn in which there was one live and one dead horse. She noted that in that enclosure there was less than 1" of water in a 20 litre bucket and a small amount of hay on the ground. In the second, a large, pasture-like enclosure containing a clump of trees, there were 10 live and 3 deceased horses. All of the gates were frozen shut and the barbed wire fence had to be cut to create an exit. The water troughs present in the pasture were buried under snow and frozen solid, with no tracks or pathways leading to the troughs. The pasture was littered with debris and the amount of hay that was on the ground being consumed by the horses was not enough to sustain them. She also noted food aggression being exhibited by the horses during her inspection as the horses were aggressively competing for feed.
35. Dr. Stephen's written report also included observations of 2 pigs living in unsanitary conditions, poultry in unkept and grossly unsanitary conditions, 7 rabbits in hutches, and a dog confined to an outdoor run. In her written opinion, all of the horses, pigs and poultry were found to be deprived of adequate food, water and shelter. She further noted that there was evidence of distress present in the deceased horses as a result of starvation due to neglect, and that these horses had a body condition score at the times of their deaths of no greater than 1.5 out of 9 (9 being obese).

36. Referring to photographs taken at the time, Dr. Stephen testified the cause of death was a product of being in a neglected nutritional state. As an example, pointing to a photograph of teeth visible on one dead horse's skull (Exhibit 7, Tab 23, p.#149), she noted that this horse had an impaired ability to chew. Another photo (Exhibit 7, Tab 23, p#169) showing a dead horse wearing a blanket around which, in the snow, were indications the horse had struggled prior to dying. The doctor felt this horse died from exhaustion. She saw no wounds on the carcasses to indicate any of the horses had been killed by predators. In her opinion, their deaths were caused by being in a neglected nutritional state.
37. Respecting the living horses, Dr. Stephen noted there was no free-choice hay available for the horses to eat as should be the case with a group of mixed-age horses and that there was not enough feed in sight to sustain them. Further, she noted a low volume of manure around the horses, indicative of the horses eating their own manure, signifying hunger. She stated that there was no hay observed in the barn.
38. Dr. Stephen also testified as to the volume of food that is essential for an average 1,000 lb. horse, the shelter conditions that are required to properly raise horses, the means of determining a body condition score, the needs of older horses and how horses will compete for food when there is not enough available. She stated that on average, horses need 20 lbs./day of forage, more if the weather is colder and that if they are well fed, tree shelter would suffice. In response to a question about whether it is normal for horses to lose condition during winter, she responded by stating that horses should be in a higher score condition going into winter and that if they were in such a condition and fed free-choice, then they would do alright. However, she stated that older horses required more care and that proper individualized feeding in mixed-age group circumstances would be very difficult to achieve. With respect to body condition scoring, she noted that if it is not done hands-on, then it is difficult to tell the horse's condition and that a horse's hair response to cold weather (pileoerection, where cold air makes the hair stand straight up) makes it difficult to assess its condition visually.
39. In Dr. Stephen's opinion, all of the horses seized were in distress metabolically, physically, and mentally.
40. Dr. Jodyn Green, a veterinarian and owner of Green Mobile Veterinary Services gave evidence as an expert witness. She examined all 11 of the seized horses on January 29, 2020 at the Prince George Equine Rescue facility and re-examined the 6 horses that are the subject of this Appeal again on March 18, 2020. In all but three cases, the body condition scores ranged from 2/9-3/9, indicating being under conditioned, thin, and suffering from an insufficient plane of nutrition. The remaining three, either ponies or mini-horses, showed a 4 or 4.5/9 body condition score. All of the horses were suffering from a significant lice infestation, visible to the trained eye, and all were suffering from moderate to heavy parasitic intestinal worm loads. Of the horses that Dr. Green was able to examine for dental issues several had dental problems.

41. Dr. Green offered instructive information about the problems for horses stemming from lice infestations, internal parasites, and dental issues. Lice can play a role in contributing to poor body condition as they are blood sucking insects. It is normal for some horses to carry some lice, but unusual for a whole group of horses to carry a load. Treatment consists of a topical (pour-on) treatment that must be repeated after 14 days. Internal parasites are common, with a count of fewer than 200 eggs/gm considered mild, and an excess of 500 eggs/gm considered to be a strong infection. All of the horses were examined and all showed strong infection, with egg counts ranging from just under 500 to over 1,800 eggs/gm. Dr. Green stated that if the horses had in fact been treated in January, this level of density would not be as high unless the treatment was poorly conducted. Concerning the dental issues, Dr. Green explained that the manner in which horses chew results in uneven tooth wear and the development of sharp points on the teeth that can inhibit proper chewing and digestion. If the horse ingests insufficiently chewed particles and the particle size remains large, the gut cannot properly digest it. While this was not likely the key cause of the horse's poor body condition, it was a contributing factor. All but one horse exhibited moderate dental needs.
42. In re-examining the 6 horses, that are the subject of this appeal, on March 18, 2020 and after providing dental treatment to 5 of the 6, Dr. Green noted that the condition of all the horses had improved.
43. In response to a question about whether a horse owner could conduct a dental exam or see these dental issues, Dr. Green suggested an owner could conduct a dental exam, if he or she were to conduct it carefully.
44. SPC Debbie Goodine testified as to her previous experiences with the Appellant as outlined in the Information, adding that she did not have the resources to seize the pigs and dogs at the time the horses were seized. With respect to any subsequent interaction with the Appellant following the seizure, she stated that she had re-attended the Property on February 7, 2020 as a follow-up visit and found the small animal cages and rabbit houses were cleaned and the pigs had been moved.

Analysis and Decision

Distress

45. The definition of "distress" is set out in s. 1(2) of the PCAA which must be read together with s. 11:
 - s. 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.

- s. 11- If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal (a) does not promptly take steps that will relieve its distress, or (b) cannot be found immediately and informed of the animal's distress, the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.
46. The Panel heard a substantial amount evidence that all of the animals seized, as well as those not seized, on January 22, 2020 from the Property including the 6 horses that are the subject of this Appeal were suffering from distress. While the Appellant claims that she was feeding the animals and produced some evidence of having purchased feed and supplements, there was little reliable evidence that the horses were being properly fed. To the contrary, the evidence of the expert witnesses and the evidence of SPC Goodine showed that the horses were suffering from starvation. Further, the evidence of the expert witnesses showed all the horses were otherwise suffering from neglect as the whole group was carrying a substantial load of lice, all were suffering significant and damaging loads of intestinal parasites and all 6 of the contested horses were in need of dental treatment. In addition, Dr. Stephen pointed out the obvious dental issues of one of the dead horses as exhibited in a photograph of its skull, which explained how it was unable to properly chew food. The evidence suggests that in all likelihood, all of the horses on the property were in need of dental treatment.
47. The Panel also heard about the Appellant's unfortunate circumstances: her health, her property rental situation, and her admitted lack of knowledge about horse care. While claiming to be in good health during her sworn testimony, she later admitted to having to move more slowly because of her health problems. Having heard the instructive information from both expert witnesses about horse feed, water, and care needs, the Appellant volunteered that this was all new information to her, and contritely accepted some responsibility for the horses failed condition.
48. The Panel accepts the evidence of SPC Goodine, and of the expert witnesses and therefore confirms the Decision that the animals seized were in distress and that the seizure was warranted in the circumstances.

Return of the Animals

49. The Panel now turns to the question of whether any or all of the 6 horses being contested by the Appellant should be returned to her with or without conditions or to permit the Society, in its discretion, to destroy, sell, or otherwise dispose of the animals.
50. The Panel heard evidence that the Appellant has a history of BCSPCA interventions with respect to her care for horses and that she has also demonstrated the ability to keep horses in good condition in the past. That history includes complaints of her horses running at large in the wintertime with one being killed on the highway. It also includes complaints about her horses being emaciated and her previous acknowledgments that she had to dispose of horses

as they were causing her too much stress. After the Appellant relocated to the Property more complaints arose of the Appellant's horses being neglected, underfed, and losing weight. It was this last complaint, and SPC Goodine's subsequent follow-up actions that led to the seizure of the 11 horses and all of the fowl on the Property, as well as the issuance of a Notice regarding the other animals on the Property, which SPC Goodine wasn't equipped to seize at the time but also could have easily ended up in the care of the Society.

51. Other evidence that weighs on whether the 6 horses should be returned to the Appellant is whether the Appellant is both sufficiently knowledgeable and physically capable of caring for 6 horses. The Panel finds that she isn't. She admits to having learned about horse dental issues, which were contributing to the distress experienced by her horses, from the expert witnesses at the hearing. She also learned about the proper feeding of horses at the hearing, which she hadn't been practicing prior to the seizure. Furthermore, while she claims to have de-wormed the horses in January 2020, and at some time treated them for lice, based on the expert evidence presented at the hearing the Panel finds that the de-worming and lice treatment either never happened or weren't properly done. The Appellant didn't properly detect the lice problems which were problems that Dr. Stephen stated were visible to the trained eye. It was, in the opinion of the expert witnesses, the aggregation of these issues that led to the deaths of 4 of the horses and the very diminished condition of the remainder. The Appellant also, admittedly, has medical issues that negatively affect her ability to care for animals generally, and in particular for horses given the amount of time and effort that is required to properly attend to horses' day to day care. The Panel finds that it is very unlikely that the Appellant would be able to care for the horses if they were returned to her without the horses ending up back in a position of distress.
52. The Appellant has thoughtful and supportive friends, but only Danielle Restad offered to help care for the horses while the Appellant searched for a new home for both herself and her horses. However, Ms. Restad's tenancy is based on an unwritten, month to month lease and the rental property is a three-hour drive from the Property. The Panel finds that Ms. Restad has inadequate knowledge regarding the costs of caring for horses and an inadequate setup for accommodating 6 horses. Ms. Restad has two young children and both her and her husband are unemployed. Her offer is surely a kindly gesture, but the Panel finds it to be unreasonable and likely to become problematic quickly, inevitably putting the horses back into a situation of distress. The Appellant doesn't know with any certainty when she will find a new residence and where she will be living next. The Panel finds that the Appellant has not provided a reasonable plan for the return of the 6 horses that are the subject of this Appeal that would ensure that the horses are not put back into a situation that would cause them distress.
53. After determining whether a seizure was initially justified in the circumstances, the issue before the Panel at a PCAA appeal is to determine what is in the best interests the animals that are the subject of the appeal. In this case, for all of the reasons set out above, the decision of the Panel is that it is in the best interests of the horses that they not be returned to the Appellant as to do so would put the horses in circumstances of neglect and harm that would cause the horses further distress.

Order

54. Section 20.6 of the PCAA reads as follows:

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;
- (b) 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).

55. In this case, the Panel permits the Society, in the Society's discretion, to destroy, sell or otherwise dispose of the 6 contested horses.

Costs

56. Section 20(1) of the PCAA states:

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

57. The Society is seeking to recover \$9,434.12 which includes all seizure, transport, and care and treatment costs as they apply only to the 6 contested horses from the time of seizure. The Appellant did not dispute the Society's additional claim as outlined in the March 24/2020 Affidavit by Marcie Moriarty. The Panel has reviewed the Affidavit of Ms. Moriarty and the additional claim for costs, records for which were provided the Society on March 24/2020 as disclosed in Tabs 26 and 27 and finds the Society's costs reasonable. As such, we confirm, pursuant to s. 20.6(c) of the PCAA, that the Appellant is liable to the Society for the amount of **\$9,434.12**.

Dated at Victoria, British Columbia this 8th day of April 2020

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Dennis Lapierre, Presiding Member



David Zirnhelt, Member