

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
ONE HORSE

BETWEEN:

KELLY BOOKER

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Tamara Leigh, Presiding Member

For the Appellant:

Kelly Booker

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

August 3, 2021

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*) related to the seizure of one horse (the Animal) from the Appellant, Kelly Booker at her property located at 45166 Raveen PI in Chilliwack, BC (the Property).
2. The Appellant is appealing the June 29, 2021 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society).
3. Section 20.6 of the *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society, in its discretion to destroy, sell or otherwise dispose of the animal. The Appellant in this case is seeking the return of the Animal.
4. On August 3, 2021 a BCFIRB hearing panel (the Panel) held a hearing via teleconference. The hearing was recorded.
5. The Appellant was not represented by counsel. The Appellant did not call any witnesses.
6. The Society was represented by counsel and called three witnesses: a veterinarian, a farrier, and the special provincial constable (SPC) who led the investigation and seizure.

II. Decision Summary

7. In brief, this appeal involves the seizure of one young horse, Hazel, from a property where she was boarded with two other horses. For reasons explained in detail later, the Panel has decided not to return the animal in dispute to the Appellant. Pursuant to s. 20.6(b) of the *PCAA*, the Society is permitted, in its discretion, to destroy, sell or otherwise dispose of the Animal.
8. The Society sought to cover costs in the amount of \$4,036.04. The Panel has decided that the Appellant is liable to the Society for costs in the amount incurred by the Society with respect to care of the Animal while in custody.

III. Preliminary Matters

9. The hearing was initially scheduled for August 4. Respondent counsel requested the hearing be rescheduled due to counsel availability and suggested alternate dates. After hearing from all parties, the date of the hearing was changed to August 3. The submission schedule remained the same.

10. The Appellant mistook the submission dates and did not provide an initial submission on July 22. The Appellant requested an extension which the Respondent counsel did not object to as long as they were received by noon on July 26.

IV. Material Admitted on this Appeal

11. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record initially comprised Exhibits 1-17 noting that the exhibit log was sent to parties prior to receiving the Appellant's final submission. The Appellant did not provide a final submission and as such the documents received comprise Exhibits 1-16 and are attached as Appendix A to this decision.

V. History Leading to Seizure of Animals and the Day of Seizure

12. On February 21, 2021, the Society received a complaint from a member of the public regarding four horses located on a property in Surrey, BC. The Complainant reported the horses to be underweight, one had a leg injury and there was no apparent access to suitable shelter or food. SPC Brittney Collins attended the property and tried to make contact with the horses' owner, who at that time was unknown. SPC Collins left a BCSPCA Notice on the pasture gate requesting contact from the owner.
13. On February 23, 2021, after no contact was received, SPC Collins returned to the Surrey property with SPC Christine Carey. They observed four horses that they determined to be in distress. One young horse was in very poor body condition. The property owner identified the Appellant as the horse owner and provided her phone number. SPC Collins left a second BCSPCA Notice attached to the gate requesting contact.
14. The Appellant contacted SPC Collins by telephone on the afternoon of February 23, 2021. She confirmed ownership and acknowledged the smallest horse had been injured. SPC Collins requested to meet with the Appellant later that afternoon after she finished dealing with an emergency call. When she returned to the property the Appellant was gone. SPC Collins left BCSPCA Notice B36373 on the gate which instructed the Appellant to ensure the horses had adequate shelter, food and necessary veterinary and hoof care. Additionally, she left instructions that the horses were not to be removed from the Property without informing the Society.
15. At 1709h on February 23, 2021 SPC Collins spoke with the Appellant by phone and made arrangements to meet the Appellant at the Surrey property the following day at 1700h to discuss the concerns noted in the BCSPCA Notice and Posting that had been left on the gate.

16. On February 24, 2021 SPCA Collins and SPC Vanessa Hommel attended the property. Both notices were gone and the horses were no longer at the property. SPC Collins was unable to reach the Appellant by phone. The property owner advised that the Appellant had removed all four horses that morning.
17. SPC Collins was unable to locate the Appellant and the file was closed.
18. On June 5, 2021 the BCSPCA Provincial Cruelty Call Centre received a call of concern from a member of the public regarding three horses located at 7025 Hesslea Crescent, Abbotsford, BC (the Property). The caller reported the horses to be “scruffy, emaciate and badly matted.” The caller expressed concern that the horses did not have adequate food.
19. On June 8, 2021 SPC Carey reviewed the file which included photographs of the horses and immediately recognized the smallest horse as being the same young horse she had observed and photographed at the Surrey property in February when she attended with SPC Collins.
20. On June 9, 2021 SPC Carey attended the Property and spoke with the owner. She observed three horses, a mare, stallion, and a young horse that was very underweight. The property owner confirmed that the owner of the horses was the Appellant.
21. Based on her observation of the condition of the horses and the Appellant’s previous evasive behaviour, SPC Carey immediately sought a warrant to enter the premises and relieve the distress of the animals in question.
22. On July 10, 2021 SPC Carey attended the Property with veterinarian, Dr. Joscelyn McKenzie. Based on Dr. McKenzie’s assessment of the animals on the Property, the decision was made to seize the youngest horse, Hazel.
23. It is noted that the Appellant has a history of complaints with the Society. From December 2015 to June 5, 2021, the Society has received multiple animal cruelty complaints against the Appellant in multiple municipalities in British Columbia, including Forest Grove, Chilliwack, Surrey, and Abbotsford. The complaints were mostly regarding horses that were injured, underweight, emaciated and having overgrown hooves.
24. Each appeal must be heard and decided based on its own facts and merits without regards to the past. However, if the Panel finds that the animals in question were in “distress” as defined under s.1(2) of the *PCAA*, and were legitimately removed, then the Appellant’s history will play a factor in assessing whether the animals will be returned.

VI. Review Decision

25. On June 29, 2021, Ms. Moriarty issued her review decision in which she outlined her reasons for not returning the Animal to the Appellant (the “Review Decision”). She reviewed the various Notices issued, the Animal’s Status List, the complaints received, the warrant related documents, the veterinary records, invoices and reports, the farrier report, as well as various photos, historical cruelty complaint summaries, and various email submissions from the Appellant and letters of support sent on her behalf. Ms. Moriarty was satisfied, based on the evidence, that the SPC reasonably formed the opinion that the Animal was in distress, as defined in section 1(2) of the PCAA, and her action to take custody of the Animal to relieve them of distress was appropriate.
26. Ms. Moriarty decided that it was not in the best interest of the Animal to be returned to the Appellant, stating:

All in all, you have evaded the efforts of the officers to follow-up on the notice that was issued to you regarding the welfare of the remaining horses. You made no attempt to maintain contact with the officers after you moved the horses in February and if not for the complaint received June 5th, we would have not been able to follow-up regarding the previous notice and concerns regarding the wellbeing of Hazel and the other horses. I find your lack of transparency and cooperation deeply troubling and therefore I cannot rest any trust in your good intentions. Given all of the above, and in particular the findings of farrier Clemente and Dr. McKenzie, I do not believe that if Hazel were to be returned to your care and control that she would remain in good condition and free of distress.

VII. Key Facts and Evidence

27. In an appeal under the PCAA, the Panel must determine whether the Animals were in distress when seized and if they should be returned to the Appellant. Below is a summary of the relevant and material facts and evidence based on the parties’ written submissions and evidence presented during the hearing. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

The Hearing of this Appeal

The Appellant’s Evidence:

28. The Appellant’s evidence summarized below comes from her testimony, written submissions, and photographs, all of which were exhibits in the hearing.
- The Appellant has had horses for many years and is considered an accomplished horse person by many. She provided submissions from 15 different people with letters of support regarding her knowledge and care for horses.

- She has training and certificates for Level 1 and 2 Equine First Aid.
- The Appellant reports that she has been in a couple of car accidents and her memory is not good.
- The filly, Hazel, came into her care in November 2020 from a breeder in the Dawson Creek area while the Appellant was living in Alberta.
- Hazel arrived in a condition that the Appellant describes as “emaciated.” She had severe worms and was put on a deworming program.
- The Appellant did not call a veterinarian for an exam. She said that “if she was sick or not moving around, I would call a vet, but she was improving.”
- The Appellant provided photos and a written statement from Charlie Rohra, the horse hauler who brought Hazel from Dawson Creek, as evidence of her poor condition, as well as text messages from the person that she bought Hazel from.
- The Appellant moved to British Columbia in late January or early February 2021.
- The Appellant says her history with the Society goes back to when she owned her own property near 100 Mile House, where there were complaints about the condition of her horse. She says those complaints were resolved.
- She eventually sold the property in 100 Mile House and moved to Alberta.
- She moved back to BC in 2019 onto a property at Keith Wilson Road. During that time she lived on the same property where her horses were kept along with several other boarders. She says that the complaints about the animals at that address in 2019 were related to animals owned and cared for by another one of the boarders and did not involve her.
- After the issue on Keith Wilson Road was resolved, the Appellant had health issues. She sold her horses and moved back to Alberta.
- When she recovered from her health issues, the Appellant bought more horses, including the two adult horses that were present at the Property along with Hazel at the time of seizure.
- She moved to Chilliwack in early 2021 but the only place that she could find to board her horses was in Surrey.

29. With respect to the complaints made to the Society regarding the Surrey Property, the Appellant gave the following evidence:

- The Society was called to the property in Surrey because Hazel was limping. She spoke with the Special Constable a couple of times and explained that Hazel had been kicked and was taking time to get better. She says the limping was not severe and there was no swelling or heat at the site of the injury.
- When the Special Constables left the second notice on the fence, they said they needed to come see the horses because they were concerned about food, shelter and water. She told the Special Constable that she was having issues with people coming in and out of the field and letting horses out. She says she had special food for Hazel that was kept separate from the other

horses. She told them that she was looking for another place to keep the horses.

- When she was called about the door being closed on the barn, the Appellant called the property owner to ask her to open the barn door and was told that she would send her son down to make sure the door was open. Text messages were submitted to support the conversation with the landowner.
- The Appellant says that she told the Society that she wanted to move her horses, and when she found a suitable property, she jumped on it.

30. Regarding Hazel's care and condition, the Appellant gave the following evidence:

- Hazel was a yearling (exact DOB unknown). She had a rough start and was late to develop because of it, including shedding out her coat.
- She had administered a "5-way shot" to Hazel when she arrived and started her on a half dose of deworming medicine.
- She had a farrier trim Hazel's feet once while she was in Surrey.
- She had noticed Hazel limping a couple of days before it was reported to the Society. She believed the injury was the result of being kicked.
- Hazel was on a deworming program that included diatomaceous earth in her feed, as well as orally administered deworming pastes, including panamectin, equivan and equivalan gold.
- At the Property where she was seized, Hazel was in a pasture with green grass for grazing and was being supplemented with hay and special feed.
- She had free access to mineral and salt blocks.
- The Appellant acknowledged that Hazel's feet were "horribly long" and maintains that she was scheduled to have her feet trimmed the day after the seizure.
- Overall, the Appellant maintains that Hazel was "on the mend".
- She challenged the lab results performed after the seizure, saying that Hazel was not anemic, her hemoglobin was fine, and that the lack of selenium is common for horses in the Surrey area.

31. Regarding the general care of her horses and the conditions at the Property, the Appellant gave the following evidence:

- She usually deworms her horses three times a year but has done it more since moving to BC as she has struggled to find a permanent facility to keep her horses at and has been moving them more often.
- She does not have a regular hoof care schedule and does not have a regular farrier.
- The horses had access to grass and hay, at least 1¼ of a round bale.
- There was a shelter available in the field, though the back half of it was blocked off to keep the horses out of debris left there by the owner.
- The water trough was dumped regularly and refilled. Any mosquito larvae could have appeared quickly.

32. On cross-examination, the Appellant gave the following evidence:
- At the time of the complaint to the Society in 2020 about 12 horses on a property in Chilliwack, the Appellant owned two horses.
 - She does not have a bill of sale for Hazel because it was left in Alberta where she can't access it.
 - She has had many horses in the past with worms and felt that it did not require the attention of a veterinarian. She did not call a veterinarian for Hazel because she didn't have a veterinarian in Alberta, and she was in the middle of moving back to BC.
 - The driving time from her home in Chilliwack to the property where the horses were boarded in Surrey was 60-90 minutes. She provided photos of the horses at the property with access to food and a barn on the property.
 - The Appellant says she contacted the Society by phone between February 21 and 23 and spoke with someone who she assumes was SPC Collins.
 - The Appellant disagrees with Dr. McKenzie's assessment of Hazel's body condition score (BCS) of 2.5 out of 9. She says that she was thin, but did not have a protruding backbone, and points to photo submissions that show Hazel's condition improved in her care between November 2020 and June 10, 2021.
 - She removed the horses from the Surrey property on February 24, 2021 and took them to the Property in Abbotsford. She maintains that she told the Society that she had planned to move the horses because the conditions at the Surrey property were muddy and there were people coming and going.
 - She attended the Property every day or every second day depending on the advice of the property owner. If the owner said the horses were fine, she might skip a day.
 - She had arranged to have all of the horses feet done by a farrier on June 14 prior to the seizure. She does not recall the name of the farrier.
 - The other horses, particularly the stallion, was not bullying Hazel. She argued whether the male horse was really a stallion.
 - If Hazel were returned to her, the Appellant says she would be kept at a boarding facility in Chilliwack near her home. The facility has a stable, riding arena and 15 acres. She was not able to provide an address, contact or information about the owner of the property. She indicated that boarding at the facility will cost \$500 per month.

Expert Evidence:

33. Cherish Clement was qualified as an expert farrier who provides regular hoof care husbandry to horses and looks after the trimming and shoeing of horses' feet. She was educated through the farrier program at Kwantlen Polytechnic and has been working in the field since 2016.

34. Ms. Clement gave the following evidence in the hearing and her farrier report was included in the Society's submissions:
- A horses' foot grows continuously throughout the year just like human fingernails. The difference is that the horses are walking on the hooves that get trimmed. If they get too long it can put pressure on tendons and ligaments. Regular trimming provides proper support.
 - Ms. Clement provided an examination and trim for Hazel on June 11, 2021. She describes Hazel's feet as very long and overgrown. She took off an abnormal amount for a trim, and expects it will require 3-4 trims to get her feet to where they should be.
 - She offered the opinion based on her examination that Hazel had not received farrier care: "Her age and length of her feet as well as multiple growth rings around her hoof indicates her foal hoof transitioning to her adult hoof. Due to the rings at the bottom of her feet, I believe she had never been trimmed."
 - Under cross-examination by the Appellant, Ms. Clement said that rings on the feet can also be caused by changes in the environment or changes in feed. She added that the rings she saw were generated from Hazel's foot capsule and were very old.
35. Dr. Joscelyn McKenzie was qualified as an expert in the field of veterinary medicine with specialization in the field of equine ambulatory medicine. She is a veterinarian licensed to practice in British Columbia and practices as an equine veterinarian at Wise Equine Veterinary Service in Langley, BC.
36. Dr. McKenzie attended the Property with SPC Carey on the day of the seizure with respect to executing the search warrant. She examined the conditions at the Property and assessed the condition of all three horses present at the time.
37. Dr. McKenzie gave the following evidence at the hearing and in her veterinary reports and documentation was provided in the Society's submissions:
- There were three horses located in a field at the back of the Property, including one mature mare, one mature stallion and one juvenile, Hazel.
 - The mare was observed at a distance. She was bright, alert and responsive. She was moderately thin and assessed with a BCS of 4/9. Her hooves were overgrown and had cracks in the hoof walls. She appeared sound at a walk.
 - The stallion was observed at a distance. He was bright, alert and responsive. He was thin, with a BCS of 3.5/9. His hooves were overgrown with cracks. He appeared sound at a walk.
 - The juvenile, Hazel, was physically examined on site. She was very thin with a BCS of 2.5/9. Her ribs were very easily palpated, her tail head was prominent, her shoulder was faintly discernable, and her withers and neck were accentuated. She also had a pot belly appearance. She had a severely matted and patchy hair coat. There was a superficial abrasion on

her nose and a small 1 cm long superficial skin abrasion present on her ventral neck which appeared fresh. Her hooves were overgrown with long toes and under-run heels. There were cracks in her hoof walls.

- She observed the conditions at the property and noted that a large proportion of the field contained buttercups which are inedible to horses. A small shelter was present at one end of the field that was not large enough for three horses to stand in together. The only additional shelter were a few trees at the back of the pasture. A water trough was present, but the water was contaminated with several mosquito larva and plant debris, indicating fresh water had not been supplied in several days to weeks. A red mineral block was present. No supplemental feed was seen in or near the pasture.
- She witnessed the stallion being aggressive toward Hazel – chasing, biting and kicking at her.
- Dr. McKenzie said it can take some time to move a horse up in BCS, and offered an opinion of a month or two in a case like Hazel's. In her most recent visit to see Hazel (the week prior to the hearing), she scored her at 4.5/9 BCS.
- On first exam, Hazel's physical temperature was assessed as high, and it increased to a fever over the first few days in care after she was dewormed. She was treated with anti-inflammatories and antibiotics and her temperature came back down to normal.
- An equine screen blood test was done to see if there were any disease processes and found that Hazel was anemic and had low blood albumen protein. Her blood glucose level seemed high, and she had a mild increase in ALP and Potassium – both of these things were not urgent and could be caused by her age and increased handling. Low mineral levels of copper, molybdenum and selenium in her blood resulted in her being placed on a mineral supplement. She was also put on injectable vitamin B12. An equine screen performed the week prior to the hearing showed that red blood cells had increased to normal.
- Hazel had a moderate to severe gastrointestinal parasite load. A fecal egg count performed on fresh manure showed 25 strongyle eggs per gram and 25 ascarid eggs per gram. She was dewormed with fenbendazole for five consecutive days to address the ascarids, then dewormed with ivermectin four weeks later to address strongyles, bots and pinworms.
- The large parasite burden likely contributed to her poor body condition and distended abdomen as well as anemia and poor hair coat. Foals and young horses are more susceptible to parasite infections than adults. Ascarids are the most significant parasites in foals, causing impaired growth and poor condition. A large adult population of ascarids can cause intestinal impactions and rupture.
- Deworming with the wrong product can kill too many ascarids at once and result in ascarid intestinal compaction, which is why deworming foals with fenbendazole is recommended prior to treating with other classes of dewormers.

- Hazel was kept in the pasture with a stallion, and there was a chance that she could have been pregnant. Because of her young age and small size, it would have been high risk. Dr. McKenzie gave her medications to abort a potential pregnancy as a proactive treatment.
- Under cross-examination by the Appellant, Dr. McKenzie said it was better to give the medication proactively than it was to perform a rectal ultrasound or wait for blood test results, which can take 2 weeks to come back, and are not effective until after 40 days. In an early pregnancy, most of the material would be absorbed by the body and not pass.
- Dr. McKenzie said that she has many clients contact her to ask about parasites and how to treat them, or who submit manure samples. She said young horses should be treated more frequently than adults – at least four times in their first year and more if they are turned out in pasture with other horses. The treatment that they did for Hazel was not aggressive, it was the recommended treatment for ascarids in foals.
- Dr. McKenzie noted that diatomaceous earth is not effective to treat internal parasites. It is usually used externally on hair coats to treat lice.

SPC Christine Carey

38. Christine Carey is a Special Provincial Constable (SPC) appointed pursuant to the Police Act. She has been an employee of the Society since February 2009 and a SPC since September 2009.
39. SPC Carey attended the Property to investigate a complaint by a member of the public about three horses in poor condition and without adequate food. While reviewing the file, she noticed photographs of the horses and immediately recognized the smallest horse as the same young horse from a complaint in February 2021 in Surrey, that had been moved before the issue was resolved.
40. SPC Carey gave the following evidence in the hearing, and her notes and documents were submitted as part of the BCSPCA submissions:
 - On February 23, 2021 SPC Carey attended a property in Surrey with SPC Brittany Collins regarding a call about four horses. While they were there, SPC Carey noticed a smaller horse in quite poor body condition. She could feel the bones putting her hands across the horse's body and noted that the animal seemed to be less alert and energetic than you would expect a young horse to be.
 - At that visit, SPC Carey did not speak with the Appellant. When the property owner provided a phone number for the owner of the horses, they ran it through the BCSPCA's ShelterBuddy system, and the Appellant's name came up with a past history of incidents and complaints. The notes in the system indicated that previous officers had had a hard time contacting and working with the Appellant.
 - SPC Collins left a BCSPCA Notice on the gate for the Appellant to contact her to discuss the complaint. SPC Carey states that she was aware that

SPC Collins had spoken with the Appellant on the phone but did not know the substance of the call. She advised SPC Collins to leave a posting on the gate instructing the Appellant not to move the horses without permission from the Society, which she did.

- The following day, February 24, 2021 SPC Collins and SPC Vanessa Hummel attended the Surrey property to meet with the Appellant at the agreed upon time and the horses were gone. They were unable to contact the Appellant by phone. The case was considered resolved for the time being.
- When the June 5, 2021 complaint was received, the file included photos of the horses. SPC Carey immediately recognized the horses as those from the February complaint and attended the Property in Abbotsford.
- When she arrived on the Property, she spoke with the new owner who had moved in 5 days prior. He gave SPC Carey permission to go through his yard to see the horses, and went to find the contact information for the horses' owner.
- She immediately recognized the filly, who she described as having the "same look of not being well. Her coat was long and matted. I could feel the prominent hip bones and topline. I was able to watch her walk, and didn't notice any lameness."
- She noted that the other stallion's condition was light and the mare was in adequate body condition. All of the horses had long feet. The pasture had sufficient grass and there were enough trees to shelter the two healthy horses, but it was not adequate for three, and not adequate for the filly (Hazel) who was so poorly conditioned. A large water trough was available but filled with mosquito larvae.
- Before she left the Property, SPC Carey spoke to the property owner again, who confirmed that the Appellant was the owner of the horses. She asked the property owners not to inform the Appellant that she had been there and elected not to post a Notice because she was concerned that the Appellant would move again and prolong the distress of the young horse.
- Based on her observation of Hazel, SPC Carey determined there was distress and sought a warrant to enter the Property for the purposes of seizing the Animal.
- On June 10, 2021, SPC Carey returned to the property with Dr. McKenzie. She said that ultimately made the determination to seize Hazel based on the veterinarian's expert opinion that the Animal was in distress.
- During the execution of the warrant, they found a shelter structure that was not adequate for three horses.
- On cross-examination the Appellant put a number of photos of the Surrey property to SPC Carey for comment. There was significant discussion about what she was being asked to look at and whether or not she would have seen it the same way since the photos were taken in summer, and SPC Carey attended the Surrey property in winter.
- When asked by SPCA counsel whether Hazel's condition had improved between when she saw her in February and June, SPC Carey said that it

was hard to tell because the horse was wearing a blanket in February and not in June. She said that she could tell by looking at Hazel both times that something was wrong, and that she was underweight at both visits. Looking at the conditions, she remarked that the filly should have been doing better on the grass pasture.

- She said the usual protocol in a situation like this would be to call the owner or leave a posting and then meet with them to discuss and address the concerns.
- When it comes to horses, they follow an equine code of practice. According to the code, when a horse is under BCS 3/9, corrective action has to be taken. SPC Carey believed that Hazel was in distress based on body condition, matted hair coat, lack of clean drinking water, and because the stallion in the pasture with her was kicking and biting at the filly. Once the veterinarian advised that she believed Hazel was in distress as well, SPC Carey decided to seize the animal.
- In addition to the seizure, she left a BCSPCA Notice for the adult horses directing that they have their feet trimmed, be provided with adequate shelter and clean, potable water, and that the Appellant provide an address so they could follow up. The Appellant sent photos of the horses' feet and pasture but did not provide an address for SPC Carey to attend to follow up. At this time, she still does not know where the adult horses are being kept.
- SPC Carey says that in this case, history played a role in how the case was managed because she was concerned that the Appellant would not cooperate or comply. She says it is always managed on a case-by-case basis, and that she prefers to work with animal owners. "Removing animals from owners is the last thing we wish to do."

IX. Analysis and Decision

41. Part 2.1 of the PCAA establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:

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.

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.

42. The definition of “distress” provides:
- 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.
43. We have also proceeded on the basis that the Appellant has an onus to show, that the remedy they seek (return of the Animal) is justified. The first issue to consider is whether the Animal was in distress at the time of seizure. Depending on the answer to that question, the next issue is to decide whether to return the Animal or whether doing so would return it to a situation of distress.
44. The Appellant argues that Hazel arrived in her care in poor condition and that she was making progress. She says that she always provides the nutrition and supplements that her horses need. She feels targeted and harassed by the Society, and that by providing photos of the animals and issues in question that she is complying with their requests. “It’s not like I’m avoiding them. I am providing them with photos, but I didn’t provide them with the place that they are at because not everyone loves the SPCA in their neighbourhood.” She says that if Hazel is returned to her that she will follow through with whatever needs to be done.
45. The Society argues that Hazel met the definition of distress due to lack of adequate shelter, lack of veterinary treatment and farrier care, and that her condition was so poor that she was in a state of pain and suffering. They also suggest that the animal was neglected because the owner lived so far from where the horse was kept, and she did not attend to the horses every day. They argue that the Appellant had Hazel for over six months, and that she was still in extremely poor condition. In contrast, in the care of the Society Hazel has improved her BCS by two full points in less than two months.
46. Assessing the conditions of shelter on the property is difficult. The Appellant relies heavily on photos that are difficult to corroborate or give weight to. The Society has provided few photos or descriptions of the conditions. While the details of the adequacy of shelter can be argued, it seems that the environmental conditions in which these horses were kept are less significant than the lack of care provided to them, particularly Hazel.
47. While the Appellant gave evidence that she provided adequate food and nutrition, Hazel’s physical condition at the time the veterinarian examined her indicates that there was a larger problem that needed to be addressed. The Appellant is insistent that she could manage deworming this young horse, but she did not put forward a coherent treatment plan and refused to consult a veterinarian. Dr. McKenzie gave evidence that the tools being used in the Appellant’s treatment, like diatomaceous

earth, were not appropriate or effective. Ultimately the condition of the horse at the time of seizure speaks to the effectiveness of the treatment she had received previously – she had a persistent and heavy parasite infestation that was adversely affecting her ability to get adequate nutrition, gain condition and grow.

48. On the matter of hoof care, the Appellant gave evidence that Hazel's feet had been trimmed once while she was in Surrey, though she could not provide receipts or the name of a farrier. The farrier offered the opinion that Hazel had never been trimmed and that the overgrowth of her feet could affect her future soundness. In the absence of evidence from the Appellant, I must give greater weight to the expert opinion of the Society's farrier. Further the Appellant's lack of a regular hoof care schedule and the poor foot condition of the adult horses, indicates that it is unlikely the situation will improve in the future.
49. Based on the totality of evidence, I find that Hazel was deprived of necessary veterinary and farrier care, and in the absence of adequate care, was in state of physical distress that resulted in sickness. As a result, I find that Hazel was in distress as defined by s. 1(2) of the PCAA and that the seizure was necessary to relieve her of that distress.

XI. Return of the Animals

50. Having determined that the seizure of the animals was justified, I now turn to the question of whether it would be in the best interest of the animal to be returned to the Appellant. In doing so, I am guided by the courts, which considered this question in *Eliason v BCSPCA*, 2004 BCSC 1773. In that case, 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.

51. In *Brown v BC SPCA*, [1999] B.C.J.No. 1464 (S.C.) the court explained:

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 [in] the good condition in which it was released into its owner's care.

52. This case is somewhat unusual in that the Society elected to seek a warrant and seize the horse without first giving notice to the Appellant. In her evidence, SPC Carey addressed the matter clearly, stating that her decision was influenced by the Appellant's previous pattern of behaviour, particularly evading Society action by moving her horses following contact related to animal cruelty complaints.

53. The Appellant's behaviour and failure to produce an address, name or location related to where Hazel would be kept if she were returned is consistent with the pattern described by the Society. Even during the hearing, when the Panel explained that the onus was on the Appellant to demonstrate a plan, and that the detailed information was needed to make an informed decision about returning the horse, the Appellant refused to provide any detail.
54. The Appellant provided letters of support speaking to her expertise at keeping, training and rehabilitating horses, and spoke to her qualifications, but her expertise was not reflected in the conditions that Hazel was found in. Not only was she in poor health, but she was at significant physical risk from bullying and premature pregnancy by keeping her in a pasture with a stallion.
55. In the absence of any detail regarding where Hazel would be kept, or how her care would be improved or maintained, there is no basis upon which to suggest that the Appellant would provide a standard of care that would prevent Hazel from returning to a state of distress. For this reason, I find that it is not in the best interest of the animal to be returned to the Appellant.

XI. Costs

56. Section 20 of the *PCAA* states:

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

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

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

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

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

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

58. The Society is seeking costs as follows:

(a) Veterinary, hauling, boarding and feed costs:	\$ 2,864.09
(b) SPCA time to attend seizure:	\$ 136.95
(c) Housing, feeding and caring for the Animals:	\$ 1,035.00
(d) Total:	\$ 4,036.04

59. On the matter of costs, the Society's submissions provide detailed cost accounting, including invoices for veterinary care and detailed estimates on the daily operating costs associated with the care the Animal. The calculation of these estimates has been reviewed and supported in previous appeals.

XI. Order

60. I conclude that the horse at issue on this appeal was in distress, that its removal was appropriate and that it is likely and foreseeable that it would return to situations of distress if returned to the Appellant. Consequently, and pursuant to s. 20.6(b) of the *PCAA*, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the horse.

61. I also find the Society's costs are reasonable, and confirm, pursuant to sections 20(6)(c) of the *Act*, that the Appellant is liable to the Society for **\$4,036.04**.

Dated at Victoria, British Columbia this 16 day of August 2021.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Tamara Leigh, Presiding Member

Appendix “A”

Exhibit #	Date (Received)	Received from	Document
Exhibit 01	June 29, 2021	BCSPCA	BCSPCA June 29, 2021 Decision- Booker
Exhibit 02	July 5, 2021	Appellant	Notice of Appeal (NOA)
Exhibit 03	July 6, 2021	BCFIRB	NOA Process Letter
Exhibit 04	July 9, 2021	BCFIRB	Preliminary decision_Hearing date
Exhibit 05	July 9, 2021	BCFIRB	Preliminary decision_Addition
Exhibit 06	July 14, 2021	BCSPCA	LT all encl document disclosure
Exhibit 07	July 14, 2021	BCSPCA	BCSPCA Document Disclosure Tabs 1 – 44
Exhibit 08	July 26, 2021	Appellant	Email: Kelly spca. (6 screenshot photos)
Exhibit 09	July 26, 2021	Appellant	Email: RE Booker v BCSPCA – Prelim Decision_addition (10 attachments)
Exhibit 10	July 27, 2021	BCSPCA	Copy LT all encl submissions
Exhibit 11	July 27, 2021	BCSPCA	Submissions of the BCSPCA
Exhibit 12	July 27, 2021	BCSPCA	Affidavit #1 of Marcie Moriarty
Exhibit 13	July 27, 2021	BCSPCA	BCSPCA witness contact form
Exhibit 14	July 27, 2021	BCSPCA	BCSPCA expert witness contact form
Exhibit 15	July 27, 2021	BCSPCA	Updated BCSPCA Document Disclosure Index Tab 1 - 45
Exhibit 16	July 27, 2021	BCSPCA	Tab 45