

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 6
HORSES

BETWEEN:

SHANNON SMITH

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

For the Appellant:

Shannon Smith

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

January 5, 2021

Location of Hearing:

Teleconference

I. Introduction

1. Shannon Smith resides on a ¼ section property on Dewdney Trunk Road in Mission, British Columbia (the property), a property owned by her recently deceased father. She has resided there in her off-grid cabin since 2018, having brought the six horses (the animals) which are the subject of this appeal from her acreage in Bridesville, British Columbia for the purposes of breaking and then marketing. Ms. Smith identifies herself as a horse breeder and licensed groom, and a retired Safety and Occupational First Aid Attendant.
2. On November 6, 2020, the BC Society for the Prevention of Cruelty to Animals (the Society) executed a warrant on the property and seized six thoroughbred horses: a mature stallion (Dan), a two year-old colt (Remi), a one year old colt (Sonny), and three mares (Belle, Glory, and Annie).
3. Ms. Smith disputed the seizure and the Society issued its Review Decision on December 1, 2020, outlining its reasons for the seizure and for its decision not to return the animals.
4. Ms. Smith filed an appeal of the Society's review decision with the British Columbia Farm Industry Review Board (BCFIRB) on December 4, 2020, pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (*PCAA*).
5. This appeal was held by teleconference January 5, 2020 and was recorded.
6. Section 20.6 of the *PCAA* permits the 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. Appeals to BCFIRB under the *PCAA* 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.
7. The Appellant represented herself and testified, calling no additional witnesses. The Society called two expert witnesses: veterinarians Dr. William Thomas Hodge and Dr. Hermen Geerstema. The Society also called the investigating officer, Special Provincial Constable (SPC) Vanessa Hommel.
8. For the reasons outlined below, I have decided not to return the animals to the Appellant, and the Society in its discretion, is permitted to destroy, sell, or otherwise dispose of the animals. I further find the Appellant liable to the Society for costs of care of the animals in the amount of \$25,662.27, this being the total of the veterinary costs incurred by the Society as well as the costs associated with the seizure, housing, care, and feeding.

II. Pre-hearing matters

9. On December 31, 2020, the Society notified BCFIRB that it had received a revised invoice from Total Equine Veterinary Services adjusting both the period during which the animals were kept in care and the daily costs of care resulting in a reduction in the net amount invoiced of \$7,749.00. With the agreement of the Appellant, this document was admitted as an exhibit in the proceeding.

III. Materials submitted on this appeal

10. All affidavits and witness statements, emails, photographs, records, and materials submitted were entered into evidence. All documents received by BCFIRB in advance of the hearing were identified as exhibits, the record of which comprises Exhibits 1 – 21, and the revised invoice referenced above.

IV. Events leading up to the seizures

11. According to the Information to Obtain a Search Warrant (ITO) sought by SPC Hommel, the involvement of the Society in this matter began with an RCMP complaint phoned in to the SPCA Call Centre on October 31, 2020 of two horses at large on the Dewdney Trunk Road on the evening of October 30, 2020. The horses appeared extremely thin. The RCMP member reported following the horses on foot as they returned to a muddy clearing containing two structures, a makeshift barn in which there were four horses and a shack. She reported that these four other horses were also in extremely thin condition. The RCMP member spoke to someone whom she described as a female occupant of the shack, approximately 70 years of age. The officer was not satisfied with the information provided and saw no evidence of horse feed, as the woman claimed, inside a nearby horse trailer. The RCMP officer expressed concern about both the mental health of the woman and of the horses, which appeared to be on the verge of starvation.
12. SPC Hommel, along with SPC Christie Steele, visited the property shortly after 11 a.m. on October 31, 2020, and spoke to Ms. Smith who confirmed she was the owner of six thoroughbred horses, which she then showed the officers.
13. The officers noted all six horses confined in a small, makeshift shelter in a paddock fenced with board, twine, chain link fencing and other random materials. The surrounding ground was uneven, sloped, extremely muddy to the extent that it was deeper than the officer's boots, and contained large amounts of debris. The shelter was deep in manure.
14. The officers saw no food or water for the horses. With the exception of the colt, Remi, all the horses were huddled inside the shelter which the officers described as being dark and in disrepair. The sheet metal roof was caving in, all rubber mats

were buried/covered in mud, wood inside the barn had been chewed, and hazardous chain link fencing was poking out.

15. The horses were notably underweight. Their ribs were prominently visible, as were their spines, hips, and tail docks. One had swelling in her lower left leg (Glory). Another walked with a limp (Belle). Sonny, a yearling colt, was shivering.
16. SPC Hommel summarized her conversation with Ms. Smith as follows:
 - a) She has no running water or electricity;
 - b) She lives in a small log cabin on the property;
 - c) She used to breed/sell thoroughbred horses;
 - d) She owns 30 acres of land near Bridesville, BC;
 - e) She had been on the property for about two years;
 - f) She wanted to move but her father recently passed away;
 - g) She had limited finances and her truck needed repairs;
 - h) Dan and Glory were the horses that wandered onto the road the previous evening;
 - i) The horses were wormed about four months ago;
 - j) She trimmed the horse's feet herself;
 - k) Her veterinarian was Dr. Lekos but there had been no recent veterinary exams on the horses;
 - l) She fed the horses two to two and half bales of local hay and one and half cans of cooked barley/oats daily;
 - m) She had no hay, but some was arriving later in the day; and
 - n) She allowed the horses to wander the property daily, two at a time, monitored, as the property is not fully fenced.
17. SPC Steele issued Ms. Smith a BC SPCA Notice, giving her 72 hours to address the food, dry shelter, safety, hoof, dental and environmental needs of the horses. She added instructions to have the horses examined by a veterinarian within that time frame or sooner should a horse show sign of further health decline.
18. The afternoon of the next day, SPC Carey visited the property and reported seeing horses eating from a hay net and seeing a truck with a stock trailer containing four or more bales of hay.
19. On November 4, 2020, SPC Hommel and SPC Steele visited the property to check on the horses and to see what progress had been made with the compliance notice.

20. Some progress was noted. One horse (Glory) had been moved to a separate makeshift pen and was eating hay from a hay net. The ground was muddy underfoot. The remainder of the horses, Ms. Smith reported, were wandering the 160 acres and she was intending to move one of the horses to another pen where she would be putting down bark mulch because it, too, was muddy. She had not contacted a veterinarian but had instead contacted her racing steward.
21. The SPC's ITO summarized her rationale for seeking the warrant:
 - The shelter was dilapidated and not all of the horses could comfortably fit inside;
 - The mud and terrain made the property hazardous and difficult for the horses to move around;
 - The shelter was hazardous;
 - The property was inadequately fenced;
 - The horses were in need of care; and
 - Ms. Smith had chosen to disregard the opportunity the Notice provided to correct the plight of the animals.
22. Acting on the authority of a warrant issued November 5, 2020, SPCA officers, accompanied by a veterinarian, Dr. Hodge, took the six horses into custody.

V. Review Decision

23. On December 1, 2020, Marcie Moriarty, Chief Prevention and Enforcement Officer for the Society e-mailed her review decision to Ms. Smith. In it, she identified her role was to review evidence respecting the seizure of Ms. Smith's six horses and decide whether it would be in the best interests of the horses to be returned.
24. Ms. Moriarty reviewed the following file history:
 - Warrant and ITO,
 - Notice of Disposition,
 - Notice B28098 issued October 31, 2020,
 - Dr. Hodge Seizure Report,
 - Dr. Geertsema Veterinary Report,
 - Hematology and fecal results,
 - Various photos,
 - Various invoices, and
 - Various e-mail submissions and attachments from Ms. Smith.

25. Ms. Moriarty confirmed SPC Hommel was acting as an authorized agent of the Society as a duly appointed SPC and confirmed that Ms. Smith was the owner and person responsible for the seized horses. She was satisfied that SPC Hommel reasonably formed her opinion that the horses were in distress, as defined by the PCAA, and that the Notice of Disposition with respect to the horses was properly served in accordance with the PCAA.
26. Ms. Moriarty noted that while Ms. Smith was both cooperative and in full agreement with the concerns expressed by the constables, she had not obtained the services of a veterinarian as directed, nor had she taken adequate steps to address the mud issues the horses were facing. Ms. Moriarty further referenced Dr. Geertsema's report prepared after examining the horses following the seizure. He found all of the horses to be in poor to grave body condition, exhibiting muscular atrophy, and suffering from rain scald and some degree of mud fever. He stated "these horses have shown physical and behavioral evidence of starvation. As they have slowly been reintroduced to feed over the past 10 days, it has become apparent to our staff the desperation these horses have shown in order to have access to feed."
27. Ms. Moriarty acknowledged the complications arising out of Ms. Smith's father's very recent death, her representation that she had adequate funds to care for the horses, and her intention to move the horses to a different location before returning with them to her home in Bridesville. However, Ms. Moriarty concluded it would not be in the best interests of the horses to be returned. She outlined three determining circumstances: the serious conditions in which the horses were found, the absence of an adequate explanation for their condition, and while asserting she had adequate funds to care for them, Ms. Smith's failure to move them.

VI. Key Findings of Fact and Evidence

28. The Appellant's evidence summarized below comes from her testimony, written submissions, and photographs, all of which were exhibits in the hearing.
 - She described herself as a horse breeder since 1981 and has worked at the Hastings horse racetrack in Vancouver as a licensed groom.
 - She has her Industrial First Aid and Occupational First Aid Attendant certification.
 - She brought her horses to the property in September/October 2018 from her rangeland acreage in Bridesville for breaking and getting ready for marketing.
 - She also wanted to visit her 90-year-old father, the owner of the property.
 - Her herd of horses derive from two thoroughbreds, Dan and Glory, which she imported from the United States in 2013. She has not marketed any horses.
 - She has been the horses' primary caretaker since their birth.

- She provided their hoof care, having apprenticed for hoof care since 1981.
- She acknowledged the property's ground conditions were muddy when she brought the horses to the property in 2018 but was not as bad as when the horses were seized. The mud became an issue beginning in 2020, which resulted in her having to move the paddocks around.

29. The Appellant's plan for return of the horses is set out in her submission:

PLAN FOR ANIMALS

1. Relocate them to a self-boarding facility and work with their veterinarian.
2. Facility to contain a barn with box stalls; fenced area for turnout.
3. Restore their health and begin socializing with new environment.
4. Animals not broke to ride will begin breaking.
5. Training will depend on the individual horse.
6. Training locations Greater Vancouver or Osoyoos.
7. Competition would be the ultimate achievement.
8. Lay ups and retirement to home at Bridesville.

FINANCIAL ABILITY

1. Approved \$15,000 Line of Credit
2. Inheritance in excess of one million dollars after probate
3. Work from Home Office and Gemologist

30. The Appellant indicates she is a beneficiary to her father's estate which includes the 160 acres in Mission. She has no debt and owns a 30-acre parcel in Bridesville. Both she and her daughter are financially prepared to provide the horses with nonhazardous living conditions, quality feed, and water on the Bridesville acreage. It produces timothy hay with good quality water for the six horses. Her daughter is a licensed groom and has spent her life with these horses. The Appellant attached pictures of the horses in 2018 and 2019.

31. In response to questions from the Society and the Panel, the Appellant confirmed:

- She brought the horses to the property in 2018, her daughter helped her take three loads of hazardous garbage to the land fill. In 2020, she had made unsuccessful efforts through her brother to address the water/mud problem and provided receipts of the land fill deliveries as evidence.
- She purchased horse pain relief and worming medications during 2016, 2017, and 2019 and provided receipts. Specifically, for Belle, she provided invoices for medications from April to August 2020.
- She has no monthly income except for her Canada Pension Plan income of \$206.00/month but has two lines of credit, one of which is for living expenses.

- Prior to the time the horses were seized, three were supposed to be on their way to the Hastings racetrack for marketing. One other was not because it had a nail in its foot. But finances, and then the Covid-19 issue, prevented the horses from being taken to the track. Her intentions were to then take them back to Bridesville but she had transmission problems with her truck. She submitted a receipt for a November 12, 2020 transmission repair.
- She did not know that body condition scoring applied to athletic horses. She expressed the view that these thoroughbred horses were athletes and were naturally lean, but she agreed that the horses were too thin and in need of more nutrition.
- She monitored the condition of the horses by viewing them. She knew their conditions by seeing them.
- She did not agree with the veterinarian's evaluation of the mare, Belle, as being in critical condition, and explained that the muscle atrophy noted was a result of a hoof injury (a nail in her foot).
- Her feeding practice was to provide each horse one and a half cans (large coffee cans) of cooked oats and half a can of barley twice daily, and hay, fed daily. The horses were fed local hay and had been getting turned out (released) two hours at a time to adjust to a change in feed (diet) before returning to Bridesville.
- She felt the horses were gaining weight as a result of her feeding program but conceded that she sought no feeding advice. She entered receipts as evidence of her purchase of 14 bales/first cut local hay on October 31, 2020 and a bag each of oats, barley, and soya meal on October 28, 2020.
- She practiced pasture breeding of her horses (essentially uncontrolled breeding) instead of barn (controlled) breeding.
- A veterinarian conducted a herd assessment in 2016 at Bridesville. She has used the same veterinarian, who is now retired, since 1986.
- She did not comply with the BC SPCA's Notice, requiring her to have a veterinarian attend within the 72-hours. She had tried to obtain the services of the track veterinarian but was not successful. She tendered an e-mail directed to the track steward dated November 3, "invit(ing) the Stewards to inspect and have the track veterinarian prevail over any recommendations necessary for the SPCA order." There is no record of any response to this email.
- Ms. Smith's intentions are to return the horses to her Bridesville property and to that end and had delivered gates and panels to the property in preparation. She provided gas and food receipts dated September 18, 2020 from purchases made at the fuel station in Princeton, BC as evidence of her efforts.

Veterinarian Evidence.

32. Dr. Hodge was qualified as an expert in the field of veterinary medicine, with particular expertise with horses. He provided both oral evidence and a written report (Tab.7, Exhibit 6) dated November 6, 2020. He has been a veterinarian for 14 years, specializing in sport horse medicine and care, primarily in the U.K. He has been involved in 10-12 animal cruelty cases. He accompanied the Society's officers at their request as they executed the search warrant, in order to provide an assessment of both the environment and condition of the horses onsite.
33. His observations of the property recorded in his report and given in oral testimony are consistent. Entering the property required walking down a debris-laden road, and that the majority of which was knee high in mud, uneven, and filled with debris, scrap metal, and other objects. There was no sign of food or clean water. The first two horses he saw were being confined in very unsanitary conditions, in an enclosure that was both dangerous and unsuitable. These animals were weak, extremely hungry, and in poor condition. His report contains a similar observation of a third horse, kept adjacent to the house. It had no food or water, was in poor body condition and extremely hungry. It was unkempt and had poor foot care. Similar observations were made of the remaining horses collected loose on the property. Dr. Hodge's assessment was that this was an emergency situation and that the horses needed to be immediately evacuated.
34. Dr. Hodge testified that all the horses were exhibiting body condition scores of 1-2 and were not being managed in a way in which they could survive and thrive. He says they were surviving, but not thriving. Though the horses were not at risk of dying, they were susceptible to disease if left on the property. He could see that the horses were carrying no fat and their ribs were protruding. Some were exhibiting signs of rain scald; a bacterial skin infection which results in hair loss. The way they were being kept was unsuitable.
35. Dr. Geertsema was qualified as an expert in the field of veterinary medicine, with particular expertise with horses. He is the owner and head veterinarian at Total Equine Veterinary Services and has been a qualified veterinarian since 1994, having a special interest in horse nutrition and training. He gave oral evidence and provided a written report dated November 17, 2020 (Tab #13, Exhibit 6).
36. Dr. Geertsma made the following assessments of each horse:
 - Belle, an 8-year-old thoroughbred mare arrived in critical condition, displaying a body condition score of 1-2, meaning she was carrying almost no body fat. She was exhibiting severe muscular atrophy, revealing ribs, pelvis and spinal bones. She presented severe hoof distortion and was suffering from rain scald. Blood work showed mild anemia and low total protein. An SAA reading (a protein marker for infection) indicated she was suffering from an infection. She spontaneously aborted a foal, determined to be at about the 5th month

stage of development, a week after arriving at Dr. Geertsema's clinic. After a week, this horse passed large amounts of sand in her manure, which was either indicative of it lacking minerals and calories in its diet, or from incidentally scrounging bits of grass and leaves from the dirt.

- Sonny, a one-year old thoroughbred colt arrived in critical condition, exhibiting a body score of 2. He was small for his age, perhaps resulting from malnutrition. He suffered from rain scald and was missing patches of hair over his entire body. His abdomen was encrusted with a heavy layer of mud. He exhibited a mild deformity in his hind, likely due to a lack of muscle and poor nutrition. He suffered several bouts of mild colic due to trying to adjust to eating again. Bloodwork showed a low total protein.
 - Annie, a four-year-old bay thoroughbred mare arrived in a body condition score of 2-3 and had a mild swelling in a back leg likely due to mud fever. She needed deworming.
 - Dan, a 14-year-old thoroughbred stallion exhibited the best body condition score (2-3) of the horses. His feet needed trimming and he exhibited mild rain scald throughout his body. He was feed aggressive and needed teeth treatment and deworming.
 - Glory, a 17-year-old thoroughbred mare exhibited a body condition score of 2 and rain scald across her body and mud fever on all four legs.
 - Remi, a two-year-old thoroughbred stallion exhibited a body condition score of 2-3. While his coat was in good condition, he exhibited rain scald throughout his body. His feet needed trimming and he suffered bouts of colic as he adjusted to eating better feed. He needed deworming.
37. Dr. Geertsma's report concluded that the horses showed behavioural and physical evidence of starvation. His prognosis was that with careful feeding and monitoring, all, except for Belle and Sonny, would fully recover.
38. Dr. Geertsema expanded on his report in his testimony. In his view, the condition the horses were found in would have taken months to develop. They would have started to show a negative energy balance when the grass stopped growing in the fall. When horses go without adequate feed for a long time, they cannot easily recover.
39. Concerning specific horses, he stated that Belle's foot condition had likely developed since the summer and that Annie had an abscess exuding pus in one foot. The reason Belle aborted at five months of fetus development while in custody would have been due to her receiving an insufficient nutritional intake.
40. In response to questions by the Appellant about whether body condition scoring applied to athletic horses, Dr. Geertsema explained that while a racehorse appears lean, it is not thin. Its leanness and muscle mass may result in a body condition score of around 4 and it may appear to have a smaller abdomen, but that

is a product of conditioning and eating rich feed. The horses he examined were thin and exhibiting a reduced muscle mass which is the product of an inadequate diet.

41. In responding to the Appellant's pasture breeding approach, he stated that anyone serious about producing an athletic horse needs to provide close care of the horse. Pasture breeding is not the usual scenario for achieving that kind outcome.
42. Dr. Geertsma explained his reasons for reducing his bill for the cost of caring for the horses. His normal hospitalization rate for horses is \$120.00/day, costs of boarding are normally \$60.00/day, which includes feed and bedding. The higher rate is based on the need for a higher level of veterinary monitoring. These horses all required hospitalization at the outset. However, he reduced his rate in this case out of consideration to the BC SPCA. He did not want to appear punitive and he has been able to further reduce his fee by putting the horses in a less intensive care facility. At present, the remaining horses are now on free-choice hay and mineral supplements. He felt they would look good in about another 6 weeks. He continues to have grave concerns, however, for the recovery of Belle and Sonny.

Special Provincial Constable Evidence

43. SPC Hommel testified at the hearing and her evidence is consistent with that outlined above in the ITO (paragraphs 11-22). In addition, she testified that when she first saw the horses on October 31, five were inside the enclosure and one horse, Sonny, was being kept out by Dan, the stallion. All the horses looked to be in bad shape and appeared desperate and starving.
44. In speaking to the Appellant, she learned all of the horses had been confined since Thanksgiving. In issuing a Notice to the Appellant, she understood the Appellant wanted to use the track veterinarian to conduct an assessment. Her reason for seeking the warrant was that the horses appeared to be in a dire situation and the Appellant had not had a veterinarian examine them. She asked Dr. Hodge to monitor the seizure and assess the environment and condition of the horses so they could be safely loaded and removed from the property.

VII. Analysis and Decision

45. There is no disagreement between the Appellant, SPC Hommel, and Dr. Hodge, about the conditions in which the horses were found and being kept at the time of the seizure. There is also no significant disagreement between the Appellant and Dr. Geertsema about the physical condition of the horses when seized.
46. The Appellant did not dispute that the horses' environment was inadequate and for that reason, she had been making plans to relocate them. What little disagreement there was, related to the assessment of their physical condition and whether the

horses' thinness was attributable to their being athletic (thoroughbreds) and whether body condition scoring measurement should apply to racehorses. Where there is disagreement, I prefer the evidence of Dr. Geertsema. An athletic horse, he explained, can exhibit a body condition score of 4 and show a thin abdomen, but at the same time be muscular, a product of a rich diet. I accept his evidence that all six horses examined were thin and exhibiting varying degrees of muscular atrophy and showing clear signs of starvation.

47. With this evidence in mind, I will now turn to consider whether some, any, or all of the animals were in distress at the time they were taken into custody, following which, I will address whether it is in the best interests of some, any, or all of the animals to be returned.

48. The definition of "distress" is set out in s. 1(2) of the *PCAA*:

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.

49. This definition must be read together with s. 11 of the *PCAA*:

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.

50. At the time of the seizure, the animals were being kept in exceptionally unsanitary and unhygienic conditions. Much of the property was knee high in mud and littered with hazardous objects, piles of manure and puddles of freestanding water. There was no access to food or clean water. Upon examination, the horses were found to be exhibiting behavioral and physical signs of starvation, and suffering from a lack of basic care, from their hooves to their teeth.

51. The Appellant testified about her efforts to care for her horses. Records show that she had purchased pain relieving, and treatment medications for the horses. She had purchased feed (hay and grain) on October 28 and 31, 2020. One other receipt shows a purchase of grain and feed supplement in June 2020. She purchased wood chips in compliance with the BC SPCA's Notice requiring her to alleviate the problems caused by the weather and deep mud. She moved the paddock areas and attempted to obtain the services of a veterinarian through the Hastings racetrack steward but was unsuccessful. None of these efforts however, rose to the level required to adequately address the Society's concerns raised in the Notice.
52. The condition of the horses at the time of seizure and the Appellant's limited compliance in meeting the conditions outlined in the Notice is, however, clear evidence that the Appellant had not done enough to meet her horses' basic needs. Further, Dr. Geertsma's evidence was that the horses' condition was the result of a slow-developing situation (of weeks, if not months) of exposure to deteriorated and hazardous conditions. The Appellant's loss of her father, and truck repairs, do not explain the condition of these horses at the time of seizure. I can only conclude that these horses were in distress having been denied access to food and water, adequate shelter, care and veterinary treatment, and were being kept in wet and unsanitary conditions, for extended periods of time and well beyond the day they were seized.
53. The Appellant's photographs from 2018 and 2019 show at least some of the same horses to be in fit and fine condition. Unfortunately, at the time of seizure, all the horses were found to be in very poor condition, as described by all of the Society's witnesses and as evident in the Society's photographs.
54. Based on the totality of evidence, I find these animals were deprived of food and clean water. They were provided inadequate shelter; they were housed in unsanitary conditions and were exposed to rain and cold. They were suffering from inadequate care and had been without veterinary treatment for a significant period of time. As a result, I find that all six horses were in distress as defined by s. 1(2) of the *PCAA* and that the seizure was necessary to relieve them of their distress.

VIII. Return of the Animals

55. Having determined that the seizure of the animals was justified, I now turn to the question of whether it would be in the best interests of the animals to return any or all of them to the Appellant. In doing so, I am guided by the courts, which considered this question in *Eliason v BCSPCA*, 2004 BCSC 1773. In it, 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.

56. 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.
57. This case is somewhat unusual, given the very limited history between the Society and the Appellant. The seizure resulted from a complaint from the RCMP on October 31, which when investigated by the Society that same day, led to a Notice being issued to the Appellant. As the Appellant took limited steps to comply with the Notice, the Society sought a warrant and seized the animals on November 5, 2020.
58. In light of its decision to act so quickly, the Society argues that these are not appropriate circumstances to warrant giving the Appellant a second chance. The Society's mandate is not to educate animal owners through the issuance of orders; rather, it is the owners' responsibility to ensure they are capable of caring for their animals to prevent them from falling into distress. The Society's primary responsibility is to ensure the wellbeing of all animals. If the Society reasonably believes an owner cannot promptly relieve an animal's distress, then issuance of orders is unreasonable as it simply prolongs the animals' distress.
59. The Society argues that in the circumstances of this case, it acted reasonably in refusing to give the Appellant a further chance by returning her animals to her. Despite the Appellant's experience and qualifications with horses, the Appellant failed to take immediate and appropriate action to ensure her horses were not in distress. Given her experience with horses, the Appellant ought to have known the animals were suffering and required immediate assistance, especially when most of the animals were so underweight their poor BCS could be observed with the naked and untrained eye.
60. I am in agreement with the Society. The Appellant spoke highly of her horse-related qualifications and experience, including the fact she is a licensed groom. It is difficult to reconcile her self-professed expertise with the dire conditions her horses were living in and their extremely poor body condition scores. Her expressed intentions to move the horses to a nearby boarding facility before returning home to Bridesville appear to be too little too late.
61. Although the Appellant relies on her experience and qualifications, the reality is that she allowed the horses in her care to deteriorate over an extended period of time. This deterioration cannot be adequately explained away by the untimely death of her father, or her vehicle breakdown. The deteriorated condition of the animals and the muddy, wet and unsanitary conditions in which they were being

kept resulted in their visibly obvious state of distress. It defies reason that the animals' distress was not visible to someone with her background. These horses were desperately hungry and while some have recovered, Dr. Geertsma has grave concerns for Belle and Sonny. Clearly, the Appellant's care for her horses, despite her professed expertise, was grossly inadequate.

62. I heard the Appellant's evidence that, in September, she had begun to take some steps towards returning the animals to Bridesville. She had to address vehicle problems, and her longer-term plans were made more difficult by the COVID-19 pandemic. But the fact remains that the Appellant was not meeting the most basic needs of the animals.
63. Further, the Appellant has not met the onus on her to demonstrate that she has the means or the capability to care for her animals. The Appellant's promising-sounding plans appear to have been in the works since September. However, the Appellant's intention to return the horses to Bridesville where they would be cared for by both her and her daughter (a licensed groom) is not well-supported by evidence. Her preparations to date (involving delivery of gates and panels) are minimal. Her daughter did not testify. The Appellant has fallen far short of convincing me that she has a viable plan to care for what are now six very vulnerable horses, especially given Dr. Geertsma's opinion that it will require another six weeks of supported care for four of the horses to "look good" and, despite that care, two may never recover.
64. In what appears to be a fallback position, the Appellant tendered a letter from her daughter dated December 3, 2020 expressing an interest in the horse, Dan, and a desire to become his primary caregiver. She outlines her history and her care intentions.
65. Under section 20.6 of the *PCAA*, I am tasked with deciding whether it is in the best interests of the animals to be returned to their owner, with or without conditions. It is not my place to consider a plan by the owner to place animals in the hands of a third party. Once a decision is made that animals will not be returned to an owner, the animals become the property of the Society and any further disposition considerations are for the Society alone.
66. Under the circumstances, I am unable to accept it is in the best interest of the animals to be returned to the Appellant. Given all the evidence and despite the Appellant's best intentions, the care of these animals is beyond her present capabilities in all respects, financially and otherwise.

IX. Order

67. 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;
- (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).

68. In this case, as Presiding Member, I permit the Society, in its discretion, to destroy, sell or otherwise dispose of the animals.

X. Costs

69. 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.

70. The Society is seeking to recover its costs associated with caring for the animals in the amount of \$25,662.77, as outlined in the December 18, 2020 affidavit of Ms. Moriarty and as revised by an e-mail dated December 31, 2020 to reflect changes to the invoice of Dr. Geertsema (see paragraph above) to address both the timing of the care and the rate charged. His invoice, which includes housing, feeding and caring costs, was reduced from \$14,760.00 to \$7,749.00. Added to that is the Society's costs associated with the seizure (\$684.75) and veterinary and caring costs (\$17,229.00) for a total of **\$25,662.77**.

71. The Appellant did not challenge the reasonableness of the Society's costs.

72. I find that the Society's costs are reasonable, and pursuant to s. 20.6(c) of the PCAA, I confirm that the appellant is liable to the Society for the amount of **\$25,662.77**.

Dated at Victoria, British Columbia this 18th day of January 2021

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in cursive script, appearing to read "D Lapierre".

Dennis Lapierre, Presiding Member