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 FOUR HORSES

BETWEEN:

LYNNETTE KELPIN

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry Review Board:	Corey Van't Haaff, Presiding Member
For the Appellant:	Lynnette Kelpin
For the Respondent:	Christopher Rhone, Counsel
Date of Hearing:	April 10, 2015
Location of Hearing:	Teleconference

I. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*).

2. The appellant appeals from the March 9, 2015 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). Ms. Moriarty's decision rejected the Appellant's request that the Society return to her four horses which the Society removed on February 10, 2015 (there was an error in the number of horses that both parties confirmed correctly as four). This appeal, filed under s. 20.3 of the *PCAA*, was filed on March 13, 2015. The appeal was heard by a one-person panel in a telephone hearing on Friday April 10, 2015. Lynnette Kelpin was self-represented and called veterinarian Dr. Hermen Geertsma and Marlene Roman, who works in Dr. Geertsema's veterinary practice, as witnesses. The Appellant originally wished to call her husband but did not wish to disturb him and their sleeping child at the time of the hearing and thus did not call him as a witness. She said she felt he could not add to what had already been presented. The Society was represented by counsel and called veterinarians Dr. Eric Martin and Dr. Michael Perron, and Special Provincial Constable (SPC) Christina Auzins as its witnesses. The telephone hearing was recorded.

II. Brief Summary of Decision

3. Section 20.6 of the *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.

4. For reasons that will be explained in detail later, I have decided to order that the four horses will not be returned to the Appellant and instead I order that the Society be permitted, in its discretion, to destroy, sell or otherwise dispose of the animals.

5. I will deal with the issue of costs below but my order is that the Appellant is liable for the costs totaling $7478.01.

III. The Society's Powers and Duties

6. The Society under the *PCAA* is mandated to prevent and relieve animals from situations of cruelty, neglect and distress. The Society can seize animals from the care and custody of their owners or take custody of abandoned animals, as authorized by the *PCAA*. The Society's investigation and seizure powers are set out in Part 3 of the *PCAA*, entitled "Relieving Distress in Animals".

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

8. The *PCAA* does not set out any specific process for the review. Administratively, the Society's current process where a review is requested is to prepare a disclosure package and then to invite

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

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

> 20.2 (4) The society, following a review, must
> (a) return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
> (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
> (ii) any matter that the society considers necessary to maintain the well- being of that animal, or
> (b) affirm the notice that the animal will be destroyed, sold or otherwise disposed of.
>
> (5) The society must provide to the person who requested the review
> (a) written reasons for an action taken under subsection (4), and
> (b) notice that an appeal may be made under section 20.3.

IV. The Appeal Provisions

10. I am guided by the approach to appeals under the *PCAA* which is set out in detail in *A.B. v British Columbia Society for the Prevention of Cruelty to Animals*, (August 9, 2013), which decision was upheld by the Supreme Court on judicial review[1]. In summary, the right of appeal to BCFIRB gives persons adversely affected by certain decisions of the Society an alternative to a more formal judicial review or judicial appeal. The reforms give BCFIRB broad evidentiary, investigation, inquiry and remedial powers upon hearing an appeal: ss. 20.5 and 20.6. The *A.B.* decision reads in part:

> Appeals under Part 3.1 of the PCAA are not required to be conducted as true appeals, and BCFIRB is not required to defer to decisions of the Society. In my view, the appellant has the onus to show that, based on the Society's decision or based on new circumstances, the decision under appeal should be changed so as to justify a remedy. Where, as here, the Society has made a reasoned review decision, BCFIRB will consider and give respectful regard to those reasons.
>
> However, that consideration and respect does not mean the Society has a "right to be wrong" where BCFIRB believes the decision should be changed because of a material error of fact, law or policy, or where circumstances have materially changed during the appeal period. BCFIRB can give respect to Society decisions without abdicating its statutory responsibility to provide effective appeals.
>
> The clear intent of this reform legislation was to give BCFIRB, as the specialized appeal body, full authority to operate in a way that is flexible and accessible to lay persons, and to use its expertise to ensure that decisions are made in the best interests of animals. The procedure followed by BCFIRB is a flexible approach specifically crafted to accomplish the intent of the legislation in the context of animal welfare and lay participation. This includes taking into account developments occurring since the Society's decision was made. This is entirely in accord with the inevitably fluid nature of the situation, and well within the powers granted by section 20.5 of the PCAA.

Preliminary Issues

11. All statements, emails, materials, and photographs submitted were entered into evidence, including affidavits and material submitted in this matter in support of an an adjournment application made on March 25, 2015. There were no objections made about any material being entered into evidence

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

or any witnesses being called to testify. The Society did not object to the late submission of the Appellant's documents and material. The telephone hearing process does not require that all material be discussed or read into the record and I wish to expressly note that I have carefully reviewed all of the evidence and submissions referred to above, including several photographs and x-rays only briefly discussed and not all viewed during the hearing, whether or not I refer to all of it in the course of this decision.

12. I note that this appeal is a specialized administrative tribunal process. As such, I am not bound by the same rules of evidence that apply in a court of law, as made clear by s. 40 of the *Administrative Tribunals Act* and which ensures that BCFIRB can make decisions under the *PCAA* efficiently and based on reliable evidence rather than having to engage in legal discussions that may have little to do with the reliability of evidence or the best interests of animals:

> **Information admissible in tribunal proceedings**
>
> 40 (1) 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.
> (2) Despite subsection (1), the tribunal may exclude anything unduly repetitious.
> (3) Nothing is admissible before the tribunal that is inadmissible in a court because of a privilege under the law of evidence.
> (4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence.
> (5) Notes or records kept by a person appointed by the tribunal to conduct a dispute resolution process in relation to an application are inadmissible in tribunal proceedings. [emphasis added]

Brief History of the Horses

13. The February 10, 2015 seizure which resulted in the March 9, 2015 review decision was not the first time these four horses had been seized for being in distress. In July 2014 (detailed on the current appeal 'Information to Obtain' (ITO) and other evidence), five horses were seized due to being in distress; one named Quincy was deemed to be in critical distress and was euthanized, and the other four (Stanley, Cheyenne, Frosty, Duke) were ultimately returned to the Appellant under a Care Agreement dated for reference as July 30, 2014 and signed August 5, 2014. Information regarding Quincy, the horse not involved in the current seizure, is pivotal to my decision, as will be discussed later.

14. After the Care Agreement was signed, the four horses were returned to a different property as the Appellant had moved from Maple Ridge to Langley. The Langley location is the site of the February 10, 2015 seizure.

Decision Being Appealed

15. Ms. Moriarty, the Society's Chief Prevention and Enforcement Officer, issued her review decision on March 9, 2015 determining that SPC Auzins reasonably determined that the horses were in distress as defined by Section 1(2) of the *PCAA*. She satisfied herself that the horses were seized in accordance with the *Act* and then turned her attention to the Appellant's request for the return of the horses dated February 16, 2015.

16. The review decision stated, in part:

> You have demonstrated a clear violation of not only the Act by permitting animals in your custody to be in distress, but you have also violated the terms of the Agreement. Specifically, you have breached the following terms of the Agreement:
>
> 2) **Provide the Society with access to the Property during daylight hours.**
> On Sept 2, 2014, you minimally complied with an inspection and only showed the constables to the barn to show constable Lavigne the herbs you were treating Frosty with. On February 4, 2015 when SPC Auzins arrived at the Property to enquire about Frosty's medication, which had run out by that time, you stated that she was not allowed on your Property even when you were reminded of this term of the Agreement.
>
> **4) Clean potable drinking water at all times**
> At the time of the warrant, the water provided to the Horses was mostly dirty.
>
> **5) Provide sufficient quantity of suitable food to allow normal growth and maintenance**
> After the return of the horses in August 2014, DVM Dr. Poirer attended the Property and assessed all the horses to be at a BCS of 5/9. When seized on February 10, 2015 the Horses had returned to a BCS 3/9.
>
> **7) Necessary hoof care, Lameness must be addressed**
> Frosty was not shod on February 10, 2015 as per Veterinary recommendations
>
> **8) Vet recommendations to be followed for Frosty**
> You did not follow veterinary recommendations with respect to Frosty as you were attempting your own treatment with Cats Claw bark and White Oak (Dr. Martin stated that neither was scientifically validated to treat Navicular/pain). From August 18th to September 4th Frosty went without pain medication and it was only after multiple calls and emails to you by the BC SPCA that you had the vet attend and dispense medication (120 day supply of previcox dispensed on Sept 4th.) From approximately January 4th to the time of the warrant, Frosty went again without pain medication.
>
> **9) Horses not to reach BCS 3 or lower of 8 or higher. Vet treatment/advice to be sought if animals do not respond to corrective action**
> On February 10th, Duke, Stanley and Frosty were noted to be at a BCS of 3/9 and Dr. Martin confirmed the observation on February 12th.
>
> **12) Provide adequate shelter to protect from effects of extreme weather conditions**
> An order was also issued for proper shelter within 1 month after the return of the animals. On February 10th, the Horses only had access to a tall structure with a roof and 6 posts. The area underneath the structure was wet and muddy.
>
> **13) Provide a dry area for the horses to stand/lay down**
> As noted by Dr. Perron on February 10th, the Horses did not have a dry area to stand or lay down and were sinking in the footing past their ankles.
>
> **17) Continue with registered Vet recommendations**
> (see point 8)
>
> **18) Provide necessary Vet care when the animals exhibits signs of injury, pain, illness or suffering**
> (see point 8)
>
> **19) Ensure the coat is groomed regularly and as often as necessary to ensure maintain the health**
> On Feb 10th, the Horses when removed were observed to be dirty and their fur was crusted. All Horses had scabs and hair loss around their coronet bands.
>
> Having regard to all the above, I am not prepared to return the Horses to you as I do not believe it is in their best interest to be returned. Section 9.1 of the Act requires that an owner must care for their animals and protect them from circumstances that are likely to cause the animals to be in distress in the future. In light of the history noted above, I do not have faith that if the Horses were returned to you, that you would keep

them free from distress. You were provided with an opportunity to prove that you could maintain horses in good condition and free from distress, but the breaches of the Agreement outlined above demonstrate that either you are either not willing or not able to do so.

Material Admitted Into Evidence:

Appellant:

a) Notice of Appeal (**Exhibit 1**)

b) Photos of horses emailed at 11:04 am April 9 (**Exhibit 2**)

c) Photos of fields emailed at 12:22pm and at 12:49 on April 9 (**Exhibit** 3)

d) 12 page fax including expert witness and witness forms, and the veterinary documents (**Exhibit 4**)

e) Document entitled Date and notes text (**Exhibit** 5)

f) Document entitled Kelpin vs SPCA defense (**Exhibit 6)**

g) Document entitled Horse text (**Exhibit 7)**

h) All documents submitted by appellant and her previous Counsel that relate to the application for adjournment (**Exhibit 8)**

Respondent:

i) BCSPCA initial disclosure from March 20, 2015 – (**Exhibit 9**)

j) BCSPCA documents April 2, 2015 includes the BCSPCA review decision - (**Exhibit 10**)

k) Dr. Michael Perron Expert Witness Contact Form (**Exhibit 11**)

l) Dr. Eric Martin Expert Witness Contact Form (**Exhibit 12**)

m) SPC Christina Auzins Witness Contact Form (**Exhibit 13**)

n) BCSPCA Written Submission dated April 7, 2015 **(Exhibit 14)**

o) BCSPCA documents dated March 26 dealing with cost issue on adjournment application (**Exhibit 15**)

The Society's Case

Dr. Michael Perron Evidence and Testimony

17. Dr. Perron testified that he was a DVM, registered with the College of Veterinarians of BC in good standing and worked at West Coast Equine Clinic.

18. Dr. Perron confirmed his written report which read:

> On 10 Feb 2015 at approximately 6:00pm I accompanied Constable Christy Auzinns to a property at 22078 40th Avne, Langley B.C. for the purpose of inspection and examination of the horses at that property. There were four horses on the property being kept together in a single enclosure, the condition being unsuitable for keep horses (sic)in this area. The ground was a mixture of cedar waste and deep mud with the horse (sic) sinking to their ankles. There was a single high roofed opened sided shed which would offer somewhat limited protection from any blowing and rainy weather. The cremello coloured gelding which Constable Auzins identified as Frosty was examined. It was evident that when he was walked out on to the driveway out of the muddy enclosure that he was not shod with horseshoes and that he was painful in both front feet. Do (sic) to the pain he was given an injection of a pain killer (Banamine). I also dispensed oral pain killer (Previcox) so that the treatment could be maintained. I also was shown xrays by Constable Auzins that she

> said had been taken by Dr Eric Martin of Frosty's front feet which indicated disease of his front feet which would be consistent with the signs of pain Frosty was showing. One of the other horses, a bay coloured Thoroughbred looking gelding was also show (sic) signs of front limb, likely foot pain, when walked on to the driveway. The two other horses a bay Standardbred looking gelding and a pinto coloured (sic) Draftbred looking mare were also inspected but did not show any signs of pain.

19. Dr. Perron testified that his first concern with the horses was the mud, which posed a problem for them (described further below). The horses were slender but feed was not his primary concern. He commented that lack of shelter was not unusual in the area. He said he had been made aware by SPC Auzins that the horses had been seized before and there was concern about Frosty's pain due to a front foot navicular disease and he acknowledged he knew the horses had been returned to the owner who was to continue treatment.

20. When Frosty was brought to the driveway to be examined (he said it was impossible to examine the horse in the mud) Dr. Perron said it was evident the horse was lame as it was limping and it was evident the front foot problem was not under control. He gave it IV banamine to help with the pain, and dispensed painkillers.

21. He said the other horses were in the same environment of mud, and Duke also showed foot pain while on a hard surface.

22. Dr. Perron said the cedar waste surface was an attempt to allow the horses to keep dry but they sank into the mud underneath, which is not uncommon in this climate but not ideal. The wetness causes soft feet and skin problems and less resistance to pressure. The fact others do it does not make it suitable, he said, referring to the Equine Code of Practice that deemed thin horses could be kept if properly sheltered but a lack of shelter meant horses expend more energy to stay warm. That in turn impacts their weight. The general standard of care, he said, was that horses needed to be able to get out of inclement weather.

23. Dr. Perron said he also found himself up to the ankles in mud. He said he did not see areas of solid footing but did not walk the entire enclosure. However, he noted the food was in a muddy area and the horses would stand and eat in the mud. He noted the big pile of hay was muddy. He said the four horses all seemed to be in the same muddy environment.

24. Dr. Perron acknowledged that the two horses with foot issues would be more sensitive to pain on a harder surface, and that different breeds' feet differed tremendously in shape, thickness and susceptibility to foot problems. He said he has examined a lot of horses and they should be able to tolerate being on a firm surface while staying comfortable.

25. His assessment was that the cremello gelding had noticeably painful feet and was sensitive to pressure on the bottom of his feet, consistent with navicular disease. The other horse had a less severe limp and he did not notice an infection. The other two horses walked normally.

26. In response to Panel questions, Dr. Perron explained that the Body Condition Score (BCS) was a standard numeric assessment out of 9 with a variety of criteria published to support the BCS assessment such as the contours on the back or rib exposure or fat deposits on palpation. An ideal score is 4 or 5 but he did not assess body scores on the horses. His impression was that he was not overly concerned that the horses were overly skinny; he was not concerned that he was dealing

with starving horses. He said his concern would start at a BCS of 3 though there may be a reason for a horse to be at a 3. A 6 or 7 would be fat and could be a health issue.

27. Mud in and of itself is a problem, Dr. Perron said, to the hoof and skin, and cracks could occur and bacteria enter. Deep abscesses could happen. Horses evolved from a dry climate and here in this climate we should strive to keep the horses' environment as dry as possible.

28. Dr. Perron testified that limping always is associated with pain. Treatment of a horse in pain, by other than a veterinarian, would be dependent on the knowledge and skill of the horseman. If a client could not resolve a problem, he would expect the client to call a veterinarian.

29. Navicular disease pain can be managed with pain medications, he said, but the condition is not curable, just manageable. The horse could be made comfortable with trimming, proper shoes and pain medications, and with appropriate treatment, the horse would stop limping as an indication that the treatment was working.

30. When asked about his knowledge of alternate therapies used by the Appellant and referred to in submissions, Dr. Perron said he practices acupuncture and manipulation therapy in conjunction with other treatments and he has some experience with herbals but in his experience, pain control with herbal remedies is not successful.

31. He said with foot problems, the first course of action would be to remove the cause of a foot problem and the second would be to treat the problem with something topical or systemic.

32. The cremello, on a pain scale of 0 – 5 with 3 being quite noticeable, and 4 being severe, was close to a 4, and the other limping horse was a 2, which is still quite painful.

33. On redirect, Dr. Perron explained that the Equine Code, which he agreed with, said that a horse must be able to have access to a dry area, even if kept in a muddy environment, which is not unusual. He would think the horse should be fed in a dry environment as a horse will stay where it is fed. Dr. Perron also explained that the Code said corrective action should be taken when a BCS of a horse reached 3 or lower. When asked if it would be acceptable to leave one horse that had been part of a pack alone, he explained horses were herd (the correct term is herd not pack) animals and a horse wouldn't like being alone.

Dr. Eric Martin Evidence and Testimony

34. Dr. Martin testified he is a veterinarian registered and licensed in BC, has a DVM and practices equine medicine.

35. Dr. Martin confirmed his clinical file on each horse, dated February 12, 2015: Cheyenne a draft horse, mare, had a BCS of 5. Duke, a thoroughbred gelding, had a BCS of 3 with notes: underweight, and Diagnosis and treatment plan notes: matted hair, rough dull hair coat, LH old injury fetlock hock, intermittent cow pie manure. Frosty, gelding, BCS 3 underweight and lame; started on previcox schedule yesterday and was given banamine the day before because he was walking sore, today he was walking okay but is sore when turning. Barefoot, hot feet with mild digital pulse, LF sensitive a coronet. Soak feet in ice water 2x daily. Rough dull hair coat with

matted hair. Stanley, standardbred gelding, BCS 3, rough dull hair coat with matted hair, intermittent cowpie manure, swollen LF fetlock sensitive to manipulation, walks ok. Old injury.

July 2014 Findings on Horses' Conditions

36. Dr. Martin testified he was at the July 2014 seizure of five horses, and he had seen the four horses at issue on this seizure at that time. He noted that a BCS of 3 means there is some reason for the horse to be thin; even a naturally thin horse at 3 needs improvement. He said wet environments for horses here can be expected but horses need to be able to get out of a wet environment if they want to.

37. Dr. Martin said at the time that Frosty's hooves had been trimmed recently but the horse was very lame. It would be difficult for Frosty to trot and if the herd he was with started running, Frosty could not keep up. Dr. Martin said the navicular disease was through no one's fault but bone pain was pretty uncomfortable in this well-known disease, and there were a litany of things one could try to get the horse comfortable. Shoes could relieve the concussive effect, anti-inflammatories for pain, and specifically designed shoes which would protect the heel. He did not see any shoes on Frosty in February 2015.

38. Duke had some skin disease and his hoof was untrimmed, he had chronic arthritis but no treatment was needed. There was some foot sensitivity. The horse was bright and alert with good mental attitude. Duke needed access to dry areas.

39. Stanley had a dermal growth which was cosmetic, but his BCS of 3 made Dr. Martin want to look into nutrition or internal disease or parasites as the cause of the lower weight. Typically he would also look at teeth and caloric intake.

40. Cheyenne was in good shape with bright coat and body, needed a foot trim, cracks were not uncommon so it's important to keep trimmed (4 – 8 week window for trims).

41. Quincy was the horse who had been euthanized. Quincy was thin with a skin condition, and poor hoof quality, significantly more lame than Frosty. Quincy's condition was inhumane with severe demineralization of the feet.

February 2015 Findings on Horses' Conditions

42. In February 2015, Dr. Martin saw the four horses again for the first time since July 2014. He noted that Duke's manure was not what it should look like, Duke was at BCS of 3, and the horse should have been kept on dewormer (as noted in July 2014) as he had parasites.

43. Frosty was slightly sore on circle, was barefoot, elevated pulse indicating inflammation most likely a foot problem as sensitive above the hoof. The 3 was just below the BCS of 3.5 and Dr. Martin wanted more food for him.

44. Cheyenne was a normal BCS of 5.

45. Stanley was a BCS of 3 with rough hair, swollen fetlock (due to arthritis, "it is what it is") and loose manure.

March 17, 2015 Findings on Horses' Conditions

46. Dr. Martin wrote his most recent report after re-examining all horses on March 17, 2015 and generally noted Frosty was walking better on Previcox and BCS improved to BCS of 4, hair had improved and fecal egg count was normal. Duke was still a BCS of 3 but manure was normal and hair looked better. He noted thoroughbreds can take longer to gain weight and additional feedings with more caloric intake had been recommended. Stanley was a BCS of 3 but improved and multiple increased caloric content feedings recommended. Cheyenne was a BCS of 5, normal as before and doing well.

Dr. Martin Testimony Continues

47. On cross examination, Dr. Martin confirmed there were scabs on the feet and legs of the horses. This may not have been noted when the horses were first viewed as they were covered in mud.

48. In response to Panel questions, Dr. Martin said Frosty showed some improvement after only three days on medication and when asked what role the wet mud played, Dr. Martin said that Frosty's condition could degenerate and likely will if returned to a muddy environment. Frosty's overall improvement was as a result of deworming and increased caloric content.

49. Dr. Martin agreed there was an herbal remedy that could decrease inflammation (traumeel) but it is not used for bone pain or navicular disease.

50. Dr. Martin explained that when a herd loses weight, it would be determined through veterinary care whether the cause was lack of care or lack of nutrition; horses are very tolerant. All systems would need to be evaluated such as dentistry, nutrition, blood work. He said it was very discouraging not to try to give the horses a better quality of life as we are stewards to make the horses more comfortable.

51. Dr. Martin explained that stagnant water was unhealthy. When asked about clean water, he said it shouldn't be covered in mud or moss or dead animals. There was no need to clean it each day; and rain water would be okay.

52. Dr. Martin said that horses bond to each other more than to humans and that there should be no distress if the horses were moved together as a herd and were still cared for. A horse may miss the other horses but wouldn't miss the owner. Horses like to be with other horses though some horses may be okay alone.

53. Under redirect, Dr. Martin agreed with Dr. Perron's assessment that living in mud could soften feet and lead to infection. Dr. Martin said that horses need the option to get out of the wet; it needed to be their choice. He is unaware any details about the two herbal remedies "white oak bark" and "cats claw bark" the Appellant had used.

SPC Christina Auzins Evidence and Testimony

54. SPC Auzins is a SPC with the Society, appointed under the *Police Act*. She attended both the July 2014 and the February 10, 2015 seizures. She provided a history of the four horses, plus Quincy, dating back to April 2013.

55. SPC Auzins detailed the history in the 2014 ITO. She attended at the Appellant's property on May 6, 2014 in response to a telephone complaint and noted Quincy's right rear leg was swollen and hot to touch and a BCS of 3. Cheyenne had a swollen left eye with discharge and was housed in a muddy paddock with no access to dry ground. Stanley was a BCS of 2 with ribs, spine and pelvic point visible and suffered hair loss. Duke was BCS of 2.5 with ribs visible and pelvic point prominent.

56. SPC Auzins said two orders were issued to the Appellant on May 6, 2014 (prior to the 2014 seizure). One was for Quincy, Duke, Stanley, and Cheyenne with various boxes checked about food, water, veterinary care, and shelter that protects from heat, cold and dampness, with a handwritten note – Ensure quality feed to ensure adequate weight and weight gain (Quincy, Duke, Stanley) and treat Cheyenne for lice within 1 week. The second order also had a handwritten note, Ensure access to dry area and dry shelter at all times – within two weeks.

57. On May 26, 2014, SPC Auzins returned to the property and advised the Appellant that she observed Quincy's front left foot was flat and hot to touch and the sole of his foot extended beyond the wall of his hoof so he was weight bearing on the sensitive part of his foot. SPC Auzins shared her observations with the Appellant but the Appellant replied that her horses were fine.

58. SPC Auzins's ITO said that on that same day, she called the Appellant's farrier Candace Giesbrecht who told her that Quincy's feet were always a problem and there was no treatment for him. The farrier said Quincy's feet were causing him pain and that he should be euthanized, though she had not shared her view recently with the Appellant. On May 27, 2014, SPC Auzins issued the third order regarding Quincy and Cheyenne's feet, and Quincy and Frosty's weight and skin, with a further handwritten note to have a vet examine all horses re weight and provided Equine Code of Practice information to the Appellant.

59. The ITO noted that on June 13, 2014, Dr. Jeanneret called SCP Auzins to confirm that she attended the Appellant's property the day before and her observations were that four of the five horses were thin, Quincy had notable lameness in his front feet, Frosty had a rough hair coat and was laying down upon the veterinarian's arrival, and she found that Frosty's heart rate was elevated. Dr. Jeanneret recommended that Quincy see a farrier to provide specialty shoes, that Frosty have bloodwork done if his coat and weight did not improve, that all horses' hooves be trimmed, that weight gain was needed for Quincy, Duke, Stanley, and Frosty and if not successful, floating their teeth was recommended, followed by a recheck in four to six weeks.

60. On July 15, 2014 Dr Jeanneret called SPC Auzins to say that she tried to schedule a recheck but the Appellant was unwilling as the Appellant told Dr. Jeanneret she had been in and out of the hospital.

61. On July 20, 2014 SPC Auzins left an order for the Appellant that she make contact within 24 hours and at that time, the SPC did view the horses from an adjoining property and noted thinness and long cracked hooves on three animals.

62. On July 22, 2014 SPC Auzins applied for a Search Warrant. On July 23, 2014 the horses were seized. Quincy's coffin (foot) bone was through the sole of his foot and he was in critical distress and was euthanized the next day. A decision was made to return the four remaining horses with a Care Agreement which was ultimately signed on August 5, 2014, with the horses returned on August 6, 2014.

63. SPC Auzins testified that Frosty's pain medications were dispensed by the Appellant's then veterinarian, Dr. Poirier, on September 4, 2014 for 120 days' worth of medication but when the Society checked with the Appellant in January 2015 to see if the prescription had been renewed, the Appellant said she was working on it.

64. SPC Auzins said, in response to the Appellant's allegation, that she had never made any agreement to call the Appellant in advance of the SPC visit. SPC Auzins acknowledged that she sunk to her ankle boots when she walked into the area where the horses were kept. She saw adequate quality hay. The space under the tall roof area was wet and muddy. SPC Auzins believed the Appellant was in non-compliance with the agreement regarding Frosty as there was no pain medication and no shoes; and non-compliant regarding Duke and Stanley as they were underweight and the living conditions were poor with no access to a dry area. The shelter was inadequate and the Appellant had been told in August to rectify the shelter to make it adequate for adverse weather conditions. There was no three-sided shelter as recommended in the province wide Equine Code. She did not see soft boots on any hooves. SPC Auzins also explained that horses with low body scores should be rechecked in 30 days and that even though the score may not rise in that time, there should be an improvement to their coat and appearance.

65. SPC Auzins testified repeatedly that the horses were seized as the Appellant was in breach of her agreement and the horses were in distress. When the Panel asked her to go through the reasons why each horse was seized – outside of the allegation the Appellant was in breach – SPC Auzins said Frosty was in distress due to his feet, he was in noticeable pain, he had a BCS of 3 and no dry area so inadequate living conditions. Duke was underweight with prominent points of bone showing, BCS of 3 and inadequate living conditions. Stanley was underweight with a BCS of 3 and living with inadequate shelter. Cheyenne had no dry area so inadequate living conditions and it was not in her best interests to be left there if the other three were seized.

The Appellant's Case

Lynnette Kelpin Evidence and Testimony

66. The Appellant submitted photographs of her horses and property. She also submitted three statements, entitled "Horse", "Dates and Notes" and "Referring to SPCA's Accusations of Breach of Agreement."

67. In Dates and Notes (Exhibit 6), the Appellant provided a brief historical account of some of the events, adding that SPC Auzins did not know much about horses, and that the horses did not like her and wouldn't allow her close enough for an assessment at the 2014 seizure. The Appellant wrote that once the horses were returned in August 2014, SPC Auzins "right away issued more orders regarding the property." During a follow-up visit from the 2014 seizure and return, the Appellant objected to the SPC being in the barn, and acknowledged she was giving her horse an herbal program for pain and inflammation. The Appellant felt that after overhearing a conversation between her mother (the property owner) and the SPC, there was an agreement that the SPC would not attend the property without giving notice of an appointment time. The Appellant wrote about questioning the SPC at the next visit as to why she did not arrange an appointment.

68. In Horses (Exhibit 7), the Appellant wrote that she is the main person to take care of the horses in her family including medication and assessing and healing any injuries. She detailed Frosty's leg

deformity, said he had an occasional limp "here and there" and believed his hooves were originally straight but the farrier she was using caused his hooves to turn at weird angles, a condition which disappeared when she changed farriers. She said whenever Frosty appeared to be in pain in his feet, she soaked them in herbs and Epsom salts.

69. The Appellant wrote in Exhibit 7 that when Frosty was diagnosed with navicular by Dr. Martin, she wanted a second opinion. She wanted a better answer than painkillers for the rest of Frosty's life. She contacted Dr. Geertsema who asked to see the x-rays taken by Dr. Martin. There were problems getting the x-rays as it was not clear who had them and who could release them and they were not in the Appellant's possession. She was trying to arrange for the x-rays to be provided and set-up an appointment with Dr. Geertsema. Dr. Geertsma could not come out on Friday, February 6, 2015 and said he would try to squeeze her in later but before he could get back to her, the horses were seized.

70. The Appellant wrote that when Dr. Geertsema did finally see the x-rays after the seizure, he indicated to her that "it did not look nearly as bad as what it had been made out to sound."

71. The Appellant provided additional information about the other horses' history, medical and behavioural assessments and her view that she provided care for these animals. She documented that when the animals had medical issues, she sometimes called for veterinary advice and sometimes treated the horses herself by using medicinal herbs and digestive herbs.

72. In Dates and Notes (Exhibit 6), the Appellant wrote that she always provided her horses with clean water and fed them with sufficient amounts of quality hay and bagged feed. On September 4, 2014, her then veterinarian, Dr. Poirier, assessed the horses BCS to be between 4 and 8, and the horses have maintained the same appearance throughout the entirety of her care. She said four farriers said Frosty did not need shoes and Frosty could be seen running through the fields, not limping, and eager to move without much encouragement.

73. She wrote that Frosty was without his pain medication before his 2015 seizure as the Society's Eileen Drever had told her that it was not good enough to refill his prescription; that Frosty also needed to see a veterinarian, and the Appellant was awaiting Dr. Geertsema.

74. The Appellant testified that her horses are all rescues and she does what she can to take care of them and they have improved in her care. They are family horses and she loves them.

75. She said the horses have access to four acres: the paddock with hog fuel and 3 adjoining field pastures. She referenced the photos she submitted which were taken within a month after the seizure. She explained the horses were standing on solid ground in the bark mulch and had trees for shelter and dry solid footing. The gates were open so the horses could wander.

76. The Appellant was confused about the identity of the horses as the decision referenced three. She said this is not a clerical error as claimed by the Society, and does not know what to make of it. The same four horses seized in 2014 were again seized in 2015, she confirmed.

77. The Appellant testified that BCS is subjective and different people might give different opinions, including the numbers used for her horses by Dr. Martin.

78. The Appellant said she assumed that the home inspection done prior to the 2014 return of her horses was to ensure its suitability and all she had to do was move the firewood under the open-sided shelter.

79. She believed she was taking steps to relieve the issue of weight loss in her horses by feeding 3-4 % of her horses' body weight, not 2-3%. She did not believe her horses were in distress and she did not see her horses suffer. Frosty ran through fields. They were not abused or neglected.

80. The Appellant said that in February of 2014, prior to the first seizure, a municipal animal protection officer came to the property and said there was nothing wrong with the horses which meant there was nothing to be done. The things he checked off on the form were, in her understanding, only things to be considered at some point in the future, otherwise he would have written down a timeline. She was not sure why he would have checked off foot care to be done in the future if there was no need for foot care then. She also took umbrage with SPC Auzins always checking box number 1 (provide access to clean, potable drinking water at all times) when she did not bring up water as an issue.

81. On cross-examination, the Appellant was unsure of when first contact with Dr. Geertsema was, either in January or February 2015. Dr. Poirier, who saw her horses in September 2014, had the x-rays from the Society but the Appellant assumed they were the property of the Society as that is what she was told. When Frosty's pain medication ran out in January, she did not refill the prescription as there were a lot of things going on in her life and she was trying to get the medication at her "earliest convenience." Frosty did have shoes but did not wear them as they would do more harm than good, according to one farrier. That was another reason she was awaiting Dr. Geertsema's opinion.

82. The Appellant said she did understand the Care Agreement regarding the shoes, but she thought she needed to follow a veterinarian's direction and thus was awaiting Dr Geertsema who indicated (before he saw Frosty or the x-rays) that shoes might not be necessary for Frosty.

83. She was told to feed Cheyenne separately as that horse was heavier and would eat more, so the Appellant sometimes put hay in one area or sometimes three piles. The Appellant said she understood that non-competition for food is "one theory."

84. In response to Panel questions, the Appellant said she debrided Quincy's foot crusts after the veterinarian showed her how, and she gave antibiotics to Quincy and he improved. She believed the level of soreness improved as he went from looking like he was in pain to "running around the field like a bucking bronco" until 2014 in the spring. Then, off and on, there was minimal soreness on one front foot and Quincy started limping, so from spring to summer she soaked his foot to draw out toxins. She used Epsom salts and apple cider vinegar. She said Quincy had bad feet when she got him but it was more cosmetic, and she believed that SPC Auzins was friends with the farrier. She called the veterinarian Dr. Jeanneret in the summer about Quincy as she was ordered to, but was not sure why the Society would indicate the feet were of concern. Dr. Jeanneret ordered the administration of Bute, a medication, and suggested different feed and perhaps shoes, but did not indicate Quincy's feet needed immediate attention. The Appellant administered Bute as scheduled, for as long as she could and did not use boots as Quincy's feet were a funny shape. The Appellant said she was hospitalized on June 23, 2014 and that is when Quincy fell into critical distress. While she was incapacitated, Quincy's care fell to her 10 year old daughter and her mom.

85. The Panel asked about the September 2014 veterinary report in evidence (from Wise Equine) and asked if the Appellant had followed her veterinarian's advice then, which was to follow a treatment plan and recheck of Frosty in 3 weeks The Appellant said she did not recheck as recommended because she trusted that her veterinarian's original protocol was correct. If it was correct and she rechecked anyway, there would be an extra bill. She saw Frosty look happy and run and play with his horse friends and eat and drink well.

86. When asked why she did not follow the Care Agreement that said when she saw her horse in pain she would seek veterinary care, she said she did not see the horse in pain and forgot that was a point she agreed to.

87. When the Panel asked if she was surprised to hear Dr. Perron's assessment of Frosty on the day of his seizure, the Appellant's only surprise was that the veterinarian would even take the horse onto ¾ inch crushed gravel as pain would be "exacerbated" by rock.

88. She said Duke did not wear his boots as he did not seem to need them and no veterinarian said he had to wear them. She remarked that after the September 2014 veterinarian visit, she understood that if nothing is said, nothing is wrong.

89. Under further examination, the Appellant said if she saw symptoms of pain in her horses, she would be more than willing to listen and comply with reasonable requests or demands, but she does not expect that if these horses were returned now, the Society would act any differently.

Testimony of Dr. Geertsema

90. Dr. Geersema testified that there was confusion about who had the x-rays and his staff handled that.

91. Dr. Geertsema said when he reviewed the x-rays of Frosty's feet, there were no specific changes to indicate navicular disease or perfectly sound feet, and that further testing was needed. He said it was helpful to see x-rays, if they existed, before he saw a horse.

92. Dr. Geertsema testified he never saw Frosty.

93. When asked by the Panel how confident he was of his statement about what he saw on the x-rays, Dr. Geertsema said he was very confident, but he thought that the Panel may have not understood what he was saying. He said that from an x-ray alone, you cannot diagnose. You cannot tell anything from an x-ray without clinical corroboration; the clinical signs would bear more weight than the x-ray. He cannot tell anything from the x-ray without looking at the horse and testing the horse.

Testimony of Marlene Roman

94. Ms. Roman testified that there was confusion regarding whether or not Dr. Paton could release the x-ray (from the veterinary practice Paton and Martin) or if the Society had the authority. The Society authorized Dr. Paton to release the x-rays on Friday of the long weekend so he could send them to Dr. Geertsema but she did not get that message until late Monday, and by the time the x-rays arrived Tuesday, the horses had been seized. The problem, she said, was learning who had the

authority to release the x-rays held at Dr. Paton's office. She recalled first speaking to the Appellant the week before the seizure and her earliest written note was February 6, 2015.

Analysis and Decision

95. The Appellant submitted that her horses, when seized in February 2015, had access to 4 acres and three dry pastures and were fed and had access to clean water. Her firm belief was that she always cared for her horses and if she saw anything wrong, she took care of them.

96. The Society, in its review decision, said the Appellant had demonstrated a clear violation of not only the *Act* by permitting animals to be in distress, but also by violating the terms of the Agreement. The animals were in unacceptable conditions with mud to their ankles and there was no appropriate structure to provide shelter from wind and rain. Frosty was in pain and Duke was lame. The Appellant never provided proof of any existing shelter for the horses. If Cheyenne was left behind, she would lose her herd and Dr. Martin testified that that would be unacceptable to do to one horse, even if that horse was otherwise in acceptable condition. Dr. Martin had seen the horses the summer prior and although the horses improved over the summer while in Society care, they had declined again over the winter and their BCS had dropped again. The Society submitted that the Appellant required prompting to get any veterinary care and that the Society was not a babysitter. She had already had a second chance and as a result of that, the horses were now in a state of distress again and the Appellant failed to seek adequate veterinary care for them. The Care Agreement was not complied with and if returned, the horses would decline and would not receive appropriate care.

Preliminary issue

97. This is the first case to come before the Board arising from the breach of a Care Agreement. When animals are found abandoned and taken into custody, or found to be in distress and taken into custody, the Society must give notice to the owner of the animals seized and the owner may ask for a review of the decision not to return the animal. In this case, at the 2014 review, the Society returned the animals under a Care Agreement.

98. It is important for this Board not to confuse the question of whether there has been a breach of a Care Agreement by itself, with the question whether the requirements of the *PCAA* have or have not been breached. While there may in many cases be an overlap between the substantive requirements of a Care Agreement and the requirements of the *PCAA*, it is in my view important for the Board not to treat a Care Agreement or a breach of a Care Agreement as if it were a new or additional free-standing requirement that justifies dismissing an appeal. The focus must always be on the statutory tests in ss. 10.1 and 11 of the *PCAA*

> **Abandoned animals**
> **10.1** (1) In this section, **"abandoned animal"** includes an animal that
> (a) is apparently ownerless,
> (b) is found straying,
> (c) is found in a rental unit after expiry of the tenancy agreement in respect of the rental unit, or
> (d) if a person agreed to care for the animal, is not retrieved from that person within 4 days following the end of that agreement.
> (2) If an authorized agent is of the opinion that an animal is an abandoned animal, the authorized agent may take custody of the animal and arrange for food, water, shelter, care and veterinary treatment for it.

Relieving distress in animals

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.

99. To focus solely on the Care Agreement could distract BCFIRB from the statutory task and cause the inquiry to focus instead on a minor breach of a non-essential provision in a Care Agreement, or the breach of a Care Agreement that did not necessarily arise from a true provision of distress where action by the Society would not have been justified in the first place. In short, the discussion would focus more on the issue of the agreement than the statute. In a case involving a seizure arising from breach of a Care Agreement, the key question must always be whether the Appellant has shown that the Society incorrectly applied the legislation. While Care Agreements are a valuable administrative tool, and the breach of a Care Agreement may well be an important contextual factor in making that determination – particularly taking into account the particular provision breached and the confidence one might place in an Appellant's willingness or ability to carry through with representations or promises central to an animal's well-being - BCFIRB must always focus ultimately on the definitions in the *PCAA*.

The Seizure

100. At the time of the February 10, 2015 seizure, all four horses were ankle deep in mud without any shelter evident that would provide the horses with the opportunity to get out of inclement weather or to get dry. The horses, in my view, were deprived of adequate shelter and were not protected from excessive cold.

101. Frosty was in pain and had been prescribed pain medication, but the Appellant ran out of medication and did not refill the prescription for at least a few weeks. She claimed she was awaiting an appointment with a veterinarian she had never engaged previously. The Appellant said she understood that the Society told her that getting a refill was not good enough, and that Frosty needed to see a veterinarian. In deciding not to provide Frosty with pain medication, I find that the Appellant was causing her animal to be in distress and to continue to be in distress for as long as she was denying him the medication.

102. Three of the horses were thin, though not alarmingly so. However, these horses had been even thinner at the time of the first seizure and had gained weight while in Society custody, and in the view of the Society ran the risk of becoming thin again. This might be due to the horses expending more energy to stay warm due to the lack of shelter. For whatever reason, the Appellant was not investigating this new weight loss of her horses nor dealing with the causes of the weight loss, so I find she was depriving her animals of adequate food.

103. Finally the Appellant did not seek veterinary care for her two horses which showed signs of lameness even though she understood that the lameness was pain and the animals needed veterinary attention. She instead chose to self-treat the horses after the September 2014 veterinary visit, which she was ordered to do. However, the Appellant chose not re-schedule a follow up exam

as the veterinarian recommended. I find that the Appellant deprived her horses of veterinary treatment.

104. Given my findings, I have no problem concluding the four horses were seized as they were in distress.

105. Turning now to the issue of returning the horses, I note that the legislative framework was described in *Eliason v SPCA*, 2004 BCSC 1773 where Mr. Justice Groberman (as he then was) stated:

> The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of. [emphasis added]

106. I also note the following passage from *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.):

> The goal and purpose of the act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as the Plaintiff's counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in the distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain the good condition in which it was released into its owner's care.

107. Before I provide my findings regarding the four horses that were seized in February 2015, I must revisit the situation of the horse Quincy, seized in July 2014 and euthanized the next day as he was determined to be in critical distress. My decision about the four remaining horses is influenced by what happened with Quincy and the role the Appellant played in Quincy's demise, which, in my view, is a good indicator of the confidence that can be placed in the Appellant's future actions.

108. On December 20, 2011, the Appellant had Dr. Poirier out to see Quincy. Dr. Poirier's records said:

> Severe chronic laminitis left & right front feet. Increased digital pulses, positive to hoof testers at the toe. Sole is convex, appears that P3 bone has sunk. Very poor prognosis for recovery. Advised Bute therapy and cushion boots to improve comfort level. Mud fever in RF/RH and LH, RH had warm pitting, non painful edema in distal limb. Dermatophilosus over back & rump. Recommend debriding all crusts and starting antibiotic therapy. If comfort level of the horse does not improve over the next few weeks, advise humane euthanasia.

109. These comments indicate that the level of pain the horse was in was severe in that the veterinarian recommended euthanasia if Quincy did not improve. The Appellant said she debrided the crusts and gave antibiotics and said Quincy was improved and was totally fine, remaining totally fine until the spring of 2014, immediately before the 2014 seizure. Yet information from SPC Auzins, after she spoke to the Appellant's then farrier on May 26, 2014, indicate the farrier thought that Quincy's feet were always a problem, and there was no treatment available for him, that his feet were causing him pain and that Quincy should be euthanized. The Appellant said she was hospitalized in June and that is why Quincy deteriorated, yet Quincy's pain was obvious, to the farrier at least, before that time. Quincy was euthanized in July 2014 as being in critical distress.

110. It is clear to me from the evidence that the Appellant had no ability to correctly determine if Quincy was in pain. Worse than that, she was able to convince herself that there was no pain despite it being obvious to others. I do not believe that Quincy was not in pain. I believe that Quincy was in terrible pain in 2011 and remained in terrible pain until his death in 2014, and I conclude from the evidence that the Appellant by her inaction was responsible for allowing Quincy to be in and to continue to be in distress and pain for much of that time.

111. This history of Quincy is telling, and it is one of many reasons why I conclude that if the four horses were returned, they would not remain in good health and would be found to be in distress. I find that the Appellant does not have the ability to determine the healthy weight or the correct type of shelter that her horses need. This is not a case of "if only someone would tell her, she would comply". She was told. She was told when the horses were seized in 2014, she was told when the horses were returned in 2014 and she had been told after the horses had been returned. The Appellant, in my view, based on the evidence and her past behavior, is not capable of understanding what her horses need and then providing it.

112. According to Dr. Martin and Dr. Perron, Frosty was in pain at the February 2015 seizure. Frosty had been examined by the Appellant's own veterinarian in September 2014, who wrote:

> Stiff gait at walk. Slightly increased pulse LF. Sore on turns. Hoof test positive LF sole. RF hoof test negative. Advise anti-inflammatory treatment (Previcox or Bute) & shoeing with a fuller set shoe with heel support. Plan to recheck in 3 weeks to ensure dose of meds is adequate.

113. When asked why she did not attend for a re-check, the Appellant said she trusted her veterinarian. When I pointed out that her veterinarian said come back in three weeks, the Appellant made excuses about not seeing any signs of pain and that the horse "looked happy, running and playing with his horse friends." Despite the Appellant's assertions, the fact was that Frosty was losing weight and after his pain medication ran out, he was denied additional pain medication. His feet made him suffer and he was having difficulty walking. The fact that the Appellant denied seeing Frosty in pain does not mean it was not evident or did not exist. The Appellant, in my view, cherry-picked pieces of veterinary information to suit her own plan to care for her horses. She did this with Quincy and she did this with Frosty, and both suffered because of her inability to note signs that her horses were in pain and then seek and follow the appropriate veterinary treatment plans.

114. The Appellant had excuses for why the two horses could not wear boots as prescribed, resulting in her denying the horses some of the relief they needed. The Appellant also created the excuse that she was on the verge of getting a second opinion from Dr. Geertsema in February but just ran out of time before the horses were seized. The reality, which the Appellant did not seem to grasp, was the original diagnosis of navicular disease was from Dr. Martin in July of 2014 and the Appellant wrote in Exhibit 7 in her effort to get her animals back in 2015, "When Frosty was diagnosed with navicular by Dr. Martin, I wanted a second opinion, as we would with any doctor's diagnosis. It seemed there was a better answer than being on pain killers for the rest if his life." In fact, the Appellant waited from July 2014 until February 2015 to get this second opinion, before running out of time.

115. Current veterinary evidence from both Drs. Martin and Perron indicates that the horses were not receiving the level of care they needed. Dr. Martin noted that a BCS of 3 means there is some reason for the horse to be thin, and that even a naturally thin horse at 3 needs improvement. He said wet environments for horses here can be expected but horses need to be able to get out of a wet environment if they want to. I conclude from the evidence that the Appellant is not capable of getting necessary veterinary care for her horses and would remain incapable if they were returned to her. I conclude her horses would also remain with inadequate shelter and protection from cold.

116. Dr. Perron said that mud, in and of itself, is a problem to the hoof and skin, and that cracks could occur in the hoof allowing bacteria to enter. Deep abscesses could happen. He testified that limping always is associated with pain. Treatment of a horse in pain, by other than a veterinarian, would be

dependent on the knowledge and skill of the horseman. If a client with could not resolve a problem, he would expect the client to call a veterinarian. I conclude that the Appellant, having had months to construct a three-sided shelter for her horses to permit them a dry spot to retreat to, failed to do so to the detriment of her horses, and if returned would continue to fail to do so to the detriment of her horses.

117. Three of the horses had a BCS of 3. Each should have received veterinary care to investigate the reasons for this low score as we heard from veterinary testimony. A BCS of 3 was a cause for concern. I do not believe that the Appellant would be able to keep the three horses at an adequate BCS or notice when they started to lose weight.

118. With regard to the one horse that was not found to have anything wrong with it and had a BCS of 5, I am of the opinion that if returned, it would be returned to a situation where it would lack adequate shelter and would not be protected from extreme cold and would not receive veterinary care should it require it. Although the evidence was that horses are herd animals and it was not good to separate a horse from its herd to become a solitary horse, I don't need to address this as the risks I've already described (lack of adequate shelter, lack of protection from extreme cold, lack of veterinary care) provide me with ample reasons not to return the one horse.

119. Based on the evidence and testimony I heard in this matter, I am satisfied that the Appellant will not be able to provide the shelter, food and veterinary care these horses need to remain in good condition or, in the case of Frosty, in as good a condition as is necessary. Having concluded that the horses were correctly seized, I also conclude it would not be in the best interests of any of these horses to be returned and therefore I uphold the decision of the Society.

Costs

120. Section 20 of the PCAA provides:

> **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.*

121. The Appellant does not know why the Society said the horses take up space in their facility when they were kept in a different facility. She does not understand why Dr. Perron charged so much when he was on site for less than an hour. She does not understand why the hauling fee is so much for such a short distance. She is not sure what a standard fee would be. She is unsure if she should point out that Frosty was charged for farrier twice in a short stretch of time.

122. The Society submits its costs totaling $5291.77 comprised of the following:

Description	**Amount**	
Februrary 10/15: Hauling for four horses	200	
February 10/15: Veterinarian Examination at time Warrant	421.20	
February 12/15: Complete Veterinarian Examinations for four horses	405.30	
February 13/15: Front shoes "Frosty"	90.00	
February Board and deworming for four horses	1641.70	
• Feb 10-28: Boarding for Duke (19.52 x 19 days)		370.88
• Dewormer for Duke		20.00
• February 10-28: Boarding for Frosty (19.52 x19 days)		370.88
• Dewormer for Frosty		20.00
• February 10-28 Boarding for Stanley (19.52 x19 days)		370.88
• Dewormer for Stanley		20.00
• Feb 10-28 Boarding for Cheyenne (19.52 x 19 days)		370.00
• Dewormer for Cheyenne		20.00
March 17/15: Veterinarian Re-examination for four horses	334.95	
March Board for four horses	1967.62	
• March 1-24: Boarding for Duke (19.52 x 24 days)		468.48
• March 1-24: Boarding for Frosty (19.52 x 24 days)		468.48
• March 1-24: Boarding for Stanley (19.52 x 24 days)		468.48
• March 1-24: Boarding for Cheyenne (19.52 x 24 days)		468.48
March 26/15 Farrier for four horses	231.00	
TOTAL	**5291.77**	

123. The Society asks for costs up to the anticipated date of the delivery of my decision, which has been the Society's usual practice. As the date of my decision is April 21, 2015, the Society requests, in addition to its submission at the hearing, an additional $2186.24 ($19.52 boarding per day x 4 horses times 28 days from March 25 – April 24) for a total of $7478.01.

124. The Society submitted that its daily cost for caring for the horses was probably low, but was the same rate as they paid other facilities for boarding. The Society submitted that it was building a new horse facility and once that facility opened, the four horses were transferred there from other facilities, hence their comment about the horses using space that could be used to provide care to other animals in need.

125. Regarding overhead costs, the Society incurs costs to maintain the facility, a portion of which costs directly benefit the Horses. This includes expenses associated with utilities (heating/electricity); general facility upkeep and maintenance; taxes on land use; administration costs including ordering supplies; maintaining the Society's computer, office and other management systems; managing staff who clean and supply food supplies for the Horses, interact with the Horses throughout the day beyond feeding and cleaning to ensure their emotional contentment, interact with, report to, and instruct veterinarians, etc and interact with, direct, train and coordinate volunteers and other staff members, all for the benefit of the Horses.

126. The Society does not seek to profit from holding animals at its facilities, and aims to simply "break even" on such costs (that is, charge the actual costs incurred by the Society in relation to the holding of animals). Assessing the costs with a high degree of accuracy would require a detailed

accounting exercise, the costs of which would outweigh any costs possibly recouped by the Society. As stated, its costs are likely underestimated at $19.52 per day.

127. The Appellant provided no evidence regarding the unreasonableness of the costs presented by the Society. Her comments were that one veterinary bill when assessed on a per hour basis was high, the hauling fee was high for a short distance – though she did not know what was standard – and why had Frosty needed a farrier twice in a short expanse of time.

128. The Society provided documentation for each of its itemized expenses. The Society puts forward that a daily cost per horse of $19.52 per day is reasonable to cover feeding, care and overhead and based on the circumstances of this case, I see no reason not to accept this amount as reasonable.

129. I order that the Appellant is liable to pay the costs of **$7478.01** to the Society.

Dated this 21th day of April, 2015

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
Per:

_____
Corey Van't Haaff, Presiding Member