



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

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10-11

No Charges in Giraffe Case

Victoria - The Criminal Justice Branch of the Ministry of Attorney General today announced that no charges will be laid against the Mountain View Conservation and Breeding Centre or its operators following a review of an investigative report submitted by investigators with the Society for the Prevention of Cruelty Animals. The report focussed specifically on the circumstances surrounding the condition and death of a giraffe at the facility.

An explanation of the decision is contained in the attached Clear Statement. The Branch concluded that the viable defence of due diligence is available in the case, and that as a result there is not a substantial likelihood of conviction on charges under the ***Criminal Code*** or under the ***Prevention of Cruelty to Animals Act***.

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Clear Statement

Mountain View Conservation and Breeding Center

Mountain View Conservation and Breeding Center (Mountain View) came under scrutiny of the S.P.C.A. as a result of information sent to the S.P.C.A. in November 2009. Mountain View, a non-profit organization, was created in 1986. It is located on about 300 acres of land in Fort Langley.

On November 23, 2009, a number of representatives from the S.P.C.A. attended Mountain View and toured the facility. It was noted during the tour that one of the giraffes there presented with dramatically overgrown hooves. The giraffe had swollen fetlocks, the joint behind and above the hoof, and appeared to be having difficulty walking.

The S.P.C.A. issued an order to Mountain View directing that the hooves on the giraffe be trimmed within four weeks, however the order was not subsequently enforced, after the S.P.C.A. was advised by a veterinarian that four weeks was not a reasonable time within which to arrange hoof trimming for a giraffe.

It is unclear how long it had taken the giraffe's hooves to reach the condition noted in late November 2009, although operators of Mountain View had apparently noted one hoof slightly overgrown in late September. Mountain View had been keeping giraffes since 1998 and none of the other four giraffes at the facility had any hoof problems or had previously required hoof trimming.

The S.P.C.A. remained involved in monitoring the condition of the giraffe in December 2009 and January 2010. During this time Mountain View considered alternatives for correcting the hoof problem. According to veterinary experts the alternatives were to euthanize the animal, to trim the hooves while the animal was under a general anaesthetic, or trim the hooves while the animal was restrained in a squeeze chute.

A general anaesthetic presented some risk to the giraffe, as previous experience has shown that 35% of giraffes do not survive this process. Mountain View did not have a suitable squeeze chute available, and building one as part of the giraffe enclosure before the weather warmed did not appear feasible due to the potential disruption to the other giraffes.

Concerned that the animal appeared to continue to be in distress and suffering as a result of the hoof condition the S.P.C.A. directed that the hooves be trimmed by not later than February 1, 2010. Because the hoof trimmer was not available the procedure did not take place until February 5, 2010.

At the initiation of the operators of Mountain View, the Director of the Canadian Association of Zoos and Aquariums contacted the S.P.C.A. advising that proceeding under anaesthetic was a

highly risky procedure that should only be attempted if required to deal with an urgent, life-threatening situation. He further advised that acquiring a squeeze chute, training the animal to accept it, and then carrying out the trimming would be the currently accepted best practice procedure.

Notwithstanding these reservations, an attempt to complete the hoof trimming under anaesthetic proceeded on February 5, 2010 and the giraffe died during this process. A post mortem found that the cause of death was marked lung edema that was likely associated with acute cardiovascular failure perhaps precipitated by an idiosyncratic drug reaction. The giraffe was found to have hoof deformities, and a moderate case of a hoof condition known as laminitis, which is a swelling of thin layers of sensitive vascular tissue in the hoof.

Analysis

The Criminal Justice Branch has concluded that no charges will be approved against Mountain View or its operators in connection with the condition or death of the giraffe. The Branch considered offences under section 445.1 of the **Criminal Code**, for causing unnecessary pain, suffering or injury to an animal, and under section 24(1) of the **Prevention of Cruelty to Animals Act** which makes it an offence for a person responsible for an animal to cause it or permit it to be in distress or to continue to be in distress.

The Criminal Justice Branch will approve charges when our charge assessment standard is met. That standard requires firstly that on the available evidence there is a substantial likelihood of conviction, and secondly that a prosecution is required in the public interest. A substantial likelihood of conviction exists where Crown Counsel is satisfied that there is a strong, solid case of substance to present to the Court. In determining whether this standard is satisfied, Crown must assess what material evidence is likely to be admissible, the weight to be given to the admissible evidence, and the likelihood that viable, not speculative, defences will succeed.

To succeed in a prosecution under the **Criminal Code** the Crown must prove beyond a reasonable doubt that by act or omission, the accused wilfully caused an animal unnecessary pain, suffering or injury, or permitted the same to be caused. The Crown must also assess whether it is possible to rebut any evidence to the contrary which raises a doubt that the pain, suffering or injury was wilfully caused or permitted to be caused.

In the case of charges laid under section 24(1) of the **Prevention of Cruelty to Animals Act** a defence of due diligence is available where there is evidence that an accused exercised all reasonable care. This requires the accused to establish on a balance of probabilities that he or she took all reasonable steps to avoid the particular event.

After a careful analysis of the available evidence by senior Crown Counsel, the Branch has concluded that while there is evidence available from which a Court could conclude that the giraffe was experiencing pain, suffering or injury and that it was in distress, given the unique features of this case a Court is likely to accept the viable defence that Mountain View and its operators acted with due diligence in dealing with the hoof problem which the giraffe had developed. This evidence is also capable of establishing that Mountain View acted reasonably,

thereby providing a defence to any charge under the ***Criminal Code*** alleging that the accused wilfully caused an animal unnecessary pain, suffering or injury, or permitted the same to be caused. There is therefore no substantial likelihood of conviction for any charges under the ***Criminal Code*** or the ***Prevention of Cruelty to Animals Act***.

In reaching the conclusion that the defences exist the Crown took into account a number of factors, including the following:

Foreseeability of the Hoof Problem

Mountain View acquired giraffes for the first time in 1998. There is no available evidence that prior to the fall of 2009 any of the four other giraffes suffered from abnormal hoof growth. In the absence of any such evidence a court may conclude that it was reasonable for Mountain View to believe that the terrain the giraffes were walking on was sufficient to keep the hooves in check. Since Mountain View may not have reasonably foreseen that the giraffes would develop hoof problems, the absence of a functioning chute that could be used to facilitate hoof trimming is not determinative of neglect.

Alternative Solutions

The available evidence establishes that there were three alternatives to alleviate or attempt to alleviate the suffering and distress of the animal; euthanasia, trimming under general anaesthetic and trimming in a squeeze chute. When the S.P.C.A. first visited on November 23, 2009 the animal had not reached the stage where euthanizing it was a reasonable alternative. Anaesthetizing the animal created a significant risk to its life, and so Mountain View was exploring the alternative of constructing a squeeze chute once the weather warmed. In the interim the giraffe was receiving veterinary care. Although there is evidence that its condition may have been worsening, there is other evidence that providing pain killers to the giraffe had resulted in some improvement.

Given the nature of the giraffe's hoof problem it is not clear that hoof trimming would necessarily have alleviated its discomfort, even if it had been successfully carried out.

Industry Standards

Although there are few experts in the local area, available veterinary evidence indicates that following the initial S.P.C.A. order, Mountain View followed the proper protocols for diagnosis and treatment. One veterinarian was not sure whether they could have done anything differently.

In addition, based on previous case law, it is not necessarily sufficient to constitute proof of an offence merely because the care falls below what the S.P.C.A. deems appropriate.

Efforts and Promptness

There is evidence that Mountain View should have called someone to look at the giraffe's hooves sooner, however it is not clear how long it took them to reach the stage they were at when the S.P.C.A. attended on November 23, 2009. There is evidence which can support a

conclusion that the condition of the giraffe at that time was not dire, and following that visit a veterinarian prescribed pain killers for the giraffe which are reported to have resulted in improvement.

The evidence establishes that Mountain View was concerned about the risk presented by proceeding with an anaesthetic, and preferred instead to proceed by way of construction of a squeeze chute. After the giraffe was seen by a second veterinarian in January 2010, who concluded that the animal should be euthanized if the hooves were not trimmed within five days, Mountain View complied with the S.P.C.A. direction and the attempt was made to trim the hooves with the animal under anaesthetic.

Conclusion

A defence of due diligence will fail where the person responsible for an animal ignores repeated warnings to correct the issue and does little if anything to address the matter. In this case Mountain View took steps to explore the chute option however the winter months prevented construction from taking place. Mountain View called in veterinarians to treat the animal and the giraffe was under veterinary care. When the anaesthetic procedure was directed, Mountain View at first tried to postpone it but then worked with the S.P.C.A. to proceed with it. The available evidence does not establish to the degree necessary for a successful prosecution that Mountain View ignored repeated warnings.

There is also insufficient evidence to establish beyond a reasonable doubt that Mountain View had necessarily neglected the hoof problem and wilfully caused the giraffe distress or unnecessary pain or suffering. The diagnosis and treatment process is difficult. Available expert evidence indicates that it is difficult to assess the nature of the problem and to predict whether trimming would have made things any better for the giraffe.

In all the circumstances the Criminal Justice Branch has concluded that viable, not speculative, defences are available, and that as a result there is not a substantial likelihood of conviction on charges under the ***Criminal Code*** or under the ***Prevention of Cruelty to Animals Act***.