

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 96 CATTLE

BETWEEN:

KENNETH MCLEOD

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
Carrie Manarin, Member
Andreas Dolberg, Member

For the Appellant:

James Rempel, Counsel
Ken McLeod

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

July 15, 2014

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 appeal is from the June 5, 2014 Reasons for Decision (“Reasons”) issued by Marcie Moriarty, the Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society). The appeal was filed on June 6, 2014 and heard by a three-person panel in a telephone hearing on Tuesday July 15, 2014. The appellant, represented by counsel, testified and Debra McLeod was on the call solely as an observer. The Society, represented by counsel with Ms. Moriarty on the call solely as an observer, called expert witness Dr. Jodyne Green (veterinarian) and witnesses Tom de Waal (rancher) and Special Provincial Constable (SPC) Debbie Goodine. The telephone hearing was recorded.
3. The appeal involves the seizure of 96 cattle (including cows--some pregnant, bulls, a steer and calves). There were 99 cattle on the property when the search warrant was executed and three were euthanized on-site. Since the seizure, some calves have been born and additional cows euthanized.

II. Brief Summary of the Panel’s Decision

4. Section 20.6 of the *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society in its discretion to destroy, sell or otherwise dispose of the animal.
5. For reasons that will be explained in detail later, the panel’s decision is to permit the Society to retain custody of the cattle and in its discretion, destroy, sell or otherwise dispose of the animals (it is noted the Society said it intended to sell the animals). The Panel is of the view that the animals were in distress at the time of seizure and if returned to the custody of the appellant they would again be found to be in distress. Consequently, the panel concludes that it is not in the animals’ best interests to be returned to the appellant. The panel reserves its decision regarding costs until it has received additional submissions. It will issue that decision separately.

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. 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*, s. 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* sets 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. We are 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), and which decision was upheld by the Supreme Court on judicial review¹. In summary, the right of appeal to BCFIRB gives lay people an alternative to a more formal judicial review or judicial appeal. These reforms give BCFIRB broad evidentiary hearing, investigation and inquiry powers and broad remedial powers upon hearing an appeal: ss. 20.5 and 20.6. It 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

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

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 affidavits, witness statements, reports, invoices, and documentary evidence submitted were entered into evidence. The telephone hearing process does not require that all documentary evidence be discussed or read into the record and we wish to expressly note that the panel has carefully reviewed all of the documentary evidence and written submissions referred to above, whether or not it is referred to in the course of this decision. The panel also wishes to note that both the Society and the appellant have relied on material submitted during the Society’s review process, which forms part of Exhibit 3, Affidavit #1 of Marcie Moriarty.

Decision Being Appealed

12. In the Society’s June 5, 2014 Reasons, Ms. Moriarty said that she was satisfied that the appellant was the “person responsible for the animals” that were removed from his custody on March 24, 2014; that SPC Goodine reasonably formed the opinion that the animals were in distress, as defined by Section 1(2) of the PCAA; and that, as a result, she was satisfied that SPC Goodine reasonably formed the opinion that the appropriate course of action was to take custody of the animals in order to relieve their distress.
13. In Ms. Moriarty’s Reasons, she also said:

“...While I appreciate that a significant consideration in my decision involves analysis of whether or not the animal owner would maintain the animals in good condition if they were returned, there is also consideration to be given to the historical situation and the condition in which the animals were received. I feel that while there has been evidence presented that demonstrates that the situation for the Animals would improve if they were returned, I am not satisfied that they would be maintained in the long term in good condition. You have simply not convinced me based on the five reasons below that it is in the best interest of the Animals to be returned to you:

- a) your history,
- b) the severe conditions to which these Animals were permitted to deteriorate,

- c) your failure to take significant action (such as selling part of the herd),
- d) your failure to have a veterinarian attend on the Property unprompted to deal with animals in need, and
- e) the insufficiency of some areas of the plan.

The reality is that this is a case of “too little, too late.” The length of time that you have been raising cattle (20 years by your own statement) does not in fact assist me in feeling confidence in returning these Animals to you. In fact, it does the opposite as I would expect that you would have knowledge of good herd management (something that both Mr. Hall references as lacking and also something that our constables tried to assist with prior to the seizure), be aware of the water requirements of cattle, have an active veterinary relationship and realize that if circumstances in fact had declined to such an extent, that it was time to significantly reduce your herd. I appreciate that you were going through some personal challenges at the time of the BC SPCA’s involvement, but failing for example to segregate the cows for additional monitoring due to your wife being in the hospital, while unfortunate, does not answer the question as to why the BC SPCA had to tell you to do this practice in the first place or why, given the severe body condition of the majority of your cows, you did not get someone other than your wife to assist. The fact that the winter was “harsher than usual” does not in and of itself excuse the fact that at the time of seizure 93.2% of your herd had a BCS of 2 or less. How did the other ranchers in BC avoid this situation?

I am not prepared to return the Animals to you as I do not believe it is in their best interest. As has been explained to you, you are required to pay the costs of disposition associated with the seizure and care of the Animals. I will forward all of the invoices and a total costs of care shortly. Due to the unavoidable delay, one that actually worked out in your favour as it simply provided more time for the Animals to improve in body condition and increase in value, I will not be charging board from May 19th to June 5th. However, if there should be an appeal necessitating that the Animals remain in our custody, I will have to resume board charges as the suspension was simply in recognition of the delay in the decision. The BC SPCA as per the Act will obtain fair market value for your Animals and it is our hope that the proceeds will not only cover the costs of care that you owe but there may be some additional proceeds that will be returned to you...”

Documents Admitted Into Evidence

- a) Appellant’s Notice of Appeal (**Exhibit 1**)
- b) Appellant’s written submission dated July 8, 2014 and photographs (**Exhibit 2**)
- c) Affidavit #1 of M. Moriarty (Vol 1 & 2) sworn June 19, 2014 which includes the decision under appeal; (**Exhibit 3**)
- d) Affidavit #2 of M. Moriarty sworn June 19, 2014 which includes a CD containing photographs and videos taken at the appellant’s property on March 20 and 24, 2014; (**Exhibit 4**)
- e) BCSPCA written submission dated July 14, 2014 (**Exhibit 5**)
- f) Expert Witness Contact Form (Dr. Jodyne Green) (**Exhibit 6**)
- g) Witness Contact Form (Tom de Waal and SPC Goodine) (**Exhibit 7**)
- h) Adana Mitchell Affidavit sworn July 14, 2014 which includes information on the costs of pasture rental and a satellite map of the appellant’s property (**Exhibit 8**)

Events Leading to the Seizure

14. On January 21, 2014, the Society received complaint of animal neglect alleging 50-60 underweight cows and calves at the appellant's property.
15. On January 24, 2014, SPC Goodine attended the appellant's property and observed obviously thin cattle, inedible and poor quality hay, minimal shallow water (cows having to kneel to drink), and a lack of shelter. SPC Goodine issued a Society order directing the appellant to provide adequate feed, water and shelter, and to have a feed supply on site within seven days. She gave the appellant a copy of the *Code of Practice for the Care and Handling of Beef Cattle*.
16. On January 29, 2014, SPC Goodine had a telephone conversation with the appellant who said he found better quality hay from a neighbour.
17. On January 31, 2014, SPC Goodine attended the property again and saw six round bales of not good quality hay, a 1-tonne bag of beef ration, and no water.
18. On February 21, 2014, SPC Goodine attended the property and observed a second ton bag of beef ration on the property, with the first bag near empty. Mr. McLeod had stated that he had heard of a few places to purchase better hay but was concerned the price may be too high after transport costs. No water was present and only low quality hay was present. She noted the thinnest cows and cow calf pairs were still not separated and she expressed concern to the appellant about his failure to separate the thin cows. She told him that unwell, old cows ought to be euthanized immediately and he needed to downsize the herd immediately to provide adequate care.
19. On February 27, 2014, the Society received an anonymous complaint regarding a baby calf that was half in and half out of a cow for three days while attempting to give birth. The appellant told SPC Goodine that the cow died the same day. The appellant also said he had three cows go down over the last three days and that he had been "nursing" them. He claimed that he had purchased 22 bales of good quality hay.
20. On March 4, 2014, SPC Goodine re-attended the appellant's property with Senior Animal Protection Officer, Kent Kokoska, and Corporal Overby (RCMP). The appellant said he had secured some better quality feed from a seller in Hixon. SPC Goodine saw cows in the north pen licking snow. The appellant said the creek had frozen, and the snow was their only water source. SPC Goodine issued a further order requiring the provision of adequate food, water and shelter, and directing that the appellant separate cows with a body score condition (BSC) of 1/5 (1 is emaciated). She gave him a second copy of the *Code of Practice for the Care and Handling of Beef Cattle*. SPC Kokoska told the appellant he needed heaters for the water troughs to keep water thawed, and the cows required shelter, natural or manmade.

21. On March 6, 2014, Corporal Overby told SPC Goodine the appellant had purchased 300 bales of hay and had transferred 5 heifers, 1 bull yearling, and 11 yearling calves to Williams Lake Stock Yards for sale.
22. On March 11, 2014, SPC Goodine spoke to the appellant who said he thought purchased hay was making a difference, but confirmed that he had not separated the thinnest cattle and he had not made changes to the watering system. He admitted that the cows in the largest pasture did not have water. The appellant told SPC Goodine he was unavailable for inspection.
23. On March 14, 2014, SPC Goodine spoke to the appellant. He declined to allow an inspection or to allow SPC Goodine to view the cattle from the driveway, saying Monday (March 17, 2014) would be better.
24. On March 17, 2014, SPC Goodine inspected the cows. Three cows were down. The appellant said he tried to call a veterinarian (Dr. Wilson), but the vet was unavailable. SPC Goodine said if no veterinarian could come that day, one of the down cows needed to be euthanized. Later that day, when she called the appellant, he said he would follow-up with Dr. Wilson and stated that the cows were fine.
25. Based on the foregoing, SPC Goodine deposed on March 20, 2014 that it is was her opinion and belief “that the animals located at [the Property] are in distress and deprived of adequate food and water and require veterinary treatment.” A search warrant was issued on March 20, 2014. On March 24, 2014, the warrant was executed.
26. Ms. Moriarty relied on the reports of Dr. Jodyne Green, veterinarian, dated March 24, 2014 and May 26, 2014, the former stated that she observed the following on the appellant’s property: 70 heifers and cows, 4 bulls, 1 steer, and 24 calves; in the north pasture carcasses of four animals on “a dead pile”, two dead cows that had melted into the snow indicating that they had been down for extended period prior to death (with no evidence of gunshot); a mature Black Angus cow that was unable to stand with snow melted beneath her; and a newborn calf (still wet) lying in the snow pack, cold with no bedding and no suckle reflex; in a south pen, a Black Angus steer with a severe head tilt to left, and blind left eye; and a 6-8 week old Black Angus calf, left hind lame, sloughed all structures distal to the coronary band (sloughed the hoof) and frozen ears.
27. She also observed a mature, black-white face Angus X cow with vaginal prolapse and necrotic tissue present, baler twine in the vulvar lips from the owner attempting to treat the vaginal prolapse. A large portion of the herd had multifocal alopecia on top line, neck, withers and rump and she observed rubbing excessively/repeatedly on trees as well as large amounts of hair on the barbed wire fence. As a result of her inspection, Dr. Green concluded that there were injured, sick and debilitated cattle in need of veterinary care and treatment on the appellant’s property.
28. Dr. Green estimated, based on a herd assessment for body condition, that at that time the herd was emaciated and thin with 50% of the animals having a BSC of 1/5.

29. Dr. Green also reported in her March 24, 2014 Report that on that day she observed the water troughs in the pens were empty and the animals in the north pasture were drinking from an open hole in ice; the water was coming from a run-off ditch or small creek and had a hole only large enough for 2 animals to drink at a time. There was no evidence the hole was man-made.
30. Dr. Green reported that she observed no hay feeders in the pens/pasture; and the north pasture had only remnants of a hay bale which appeared to be of poor quality (i.e. dusty and brown); and the south pen had no feed.
31. Based on her observations, Dr. Green concluded in her report that the cattle have not been adequately fed or cared for for an extended period of time (months) based on the emaciated and extremely thin body conditions; fresh water had not been provided recently as the water troughs available to the cattle were empty and dry; the animals had not received regular veterinary care, as evident by the management of the vaginal prolapse, presence of 3 down cows, a steer with neurologic signs and a calf with a sloughed hoof; and an appropriate and effective herd parasite control program had not been followed. Multiple animals had evidence of hair loss and were noted rubbing excessively on the trees indicative of external parasites (lice). She noted that a heavy internal and/or external parasite load can contribute to thin body condition and overall poor health. She also said the cattle were not housed together or separated based on age, sex, stage of production and body condition, as they should have been.
32. Given the foregoing, Dr. Green found the cows to be in distress due to deprivation of adequate food and water, injuries, deprivation of veterinary care and being neglected. She recommended three animals be euthanized immediately given their critical distress, which occurred. The rest of the cattle, totalling 96 in number, were then seized.

The Society's Case

Marcie Moriarty Affidavit

33. Ms. Moriarty deposed in her affidavit #1 dated June 19, 2014 that the appellant's animals were seized because they were in distress and the appellant was unable or unwilling to relieve that distress and in particular the animals were not provided with sufficient quantities of feed and water, a majority of animals had a body condition score (BCS) of 1 to 1.5 on a scale of 5 (1 being emaciated) and there was evidence of a lack of veterinary care and a lack of shelter.
34. Ms. Moriarty referred to Dr. Green's May 26, 2014 report where, after conducting individual animal assessments, Dr. Green clarified her original onsite findings and said that "...93.2% of the animals had a body condition score of 2 or less and 82.2% of the animals' BCS was less than 2; emaciated, indicated the failure to provide disease prevention and control. The dead, down, emaciated animals, calf with sloughed hoof, cow with vaginal prolapse, steer with neurologic symptoms indicated a failure to provide veterinary care, diagnosis and treatment. No shelter was provided to protect the newborn calves born throughout the year, including the coldest months of the year; January, February. As the animal owner there must be a conscious awareness

of the animals overall body condition and health and a continual modification of the management. Poor nutritional quality and lack of quantity feed were significant factors in the condition of these animals. Corrective steps were not taken. High protein licks are insufficient in providing supplemental protein...supplemental feeding with high protein, high energy feedstuffs should have been performed and was not. There are several alternative feed programs outlined to deal with hay shortages and poor hay quality. Producers have successfully fed cows in late gestation and lactation...More needed to be done for these animals.”

35. Ms. Moriarty was further convinced by a written statement from Tom de Waal, president of the BC Angus Association and the individual into whose care the cattle were ultimately placed, who said in his statement, “In all my years of raising and selling livestock I must say that I have never seen animals that have been as thin and malnourished as these.” He further opined that “I would think that it will take at least a year before the majority of the animals recover from their ordeal and some will never recover at all. ...It is my opinion that 6 months of feed will turn the younger yearlings and calves around but the cows and bull will require at least a year.”
36. Ms. Moriarty referred to information in her decision including her concerns that the appellant failed to take significant action to alleviate the animals’ distress which gave her no confidence that he would do so in the future. She found that the appellant failed to perceive and address the animals’ condition before they reached the level of distress, despite 20 years experience with cattle, he failed to sell part of the herd, he failed to have a veterinarian attend on the property unprompted by the Society, and he failed to provide a sufficient plan to alleviate distress.
37. In reaching her decision, Ms. Moriarty considered section 1(2) of the *Act* which defines distress to include the following: “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.2) not protected from excessive heat or cold, (b) injured, sick, in pain or suffering or (c) abused or neglected.”
38. Ms. Moriarty also considered section 9.1 of the *Act* which provides that “(1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress. (2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.”
39. In Ms. Moriarty’s opinion, it was not in the best interests of the animals to be returned to the appellant’s custody based on a review of the evidence as expressed in her letter to the appellant dated June 5, 2014 (the Reasons).
40. In those Reasons, Ms. Moriarty found that the appellant’s submission that good quality hay was not available was insufficient to relieve him from the responsibility to provide adequate feed; like other ranchers in the area, he should have managed to source good hay or to provide supplementary feed. She noted that the appellant did find better hay in late-January/February but that was only after the Society got involved, and that the poor body condition of the cattle would have been apparent prior to the Society’s involvement.

41. Ms. Moriarty found the appellant's mistaken belief that cattle could get adequate water from licking snow to be unacceptable, and that the trucking in of 1000 L of water daily was still inadequate for a herd that required between 1,950-4,950 litres per day. She was not satisfied, given the creek might freeze again, that the appellant would be willing or able to provide adequate water in the future.
42. Ms. Moriarty noted that the appellant only made contact with a veterinarian regarding the condition of the herd after the Society's involvement, as per the Society order dated March 17, 2014 which directed the appellant to get veterinary care within 24 hours. The appellant submitted a letter from veterinarian, Dr. Scheidt, dated April 6, 2014 (the "First Letter") and April 27, 2014 (the "Second Letter") respectively. In the First Letter, Dr. Scheidt confirmed that her first contact with the appellant was on March 18, 2014. The Second Letter provides some preliminary treatment and feeding recommendations for the cattle should they be returned. Dr. Scheidt did not conduct a farm inspection; although she offered to do one on March 19, 2014 the appellant declined. This did not provide Ms. Moriarty with any confidence that the appellant would maintain an adequate Veterinarian/Client/Patient Relationship (VCPR) or that the appellant would seek out veterinary advice and attendance in the future when required.
43. Ms. Moriarty saw some value in the plan of care proposed by the appellant should he get his cattle back, including the assistance of neighbour Stanley Hall to help the appellant and the appellant's stated intention to reduce his herd size to 30-35 cow-calf pairs (and one steer) which he believes is a number that can be sustained by his own pasture. However, Ms. Moriarty noted that he did not reduce his herd when presented with that suggestion as early as November 2013. Ms. Moriarty also noted that the appellant's mismanagement of the herd that was evident prior to the seizure was so significant that she did not have much confidence in the sustained improvement of the herd should it be returned to him.

Dr. Jodyne Green Reports and Testimony

44. In her report dated March 24, 2014, veterinarian Dr. Green, detailed the conditions on the property when she arrived to assess the herd and outlined the necessity of following the *Code of Practice for the Care and Handling of Beef Cattle*. She reported that cattle need to be monitored on an ongoing basis and feed resources must be well-managed and readily available according to the animals' changing needs and environmental conditions; cattle that are not fed adequately will lose body condition, will not perform to their capacity, and are more likely to have reduced immune function. She also noted that BCS is an important tool for determining if an animal is too thin (BCS of less than 2 out of 5); cattle need access to water of adequate quality and quantity to fulfill their physiological needs. Water availability and quality are extremely important for cattle health and productivity. Beef cattle will drink between 26-66L (5-14gal) per day.
45. Dr. Green provided an additional report dated May 26, 2014 where she said 82.2 % of the herd has a body score condition less than 2 which is emaciated: no fat in the brisket or tail docks, all skeletal structures visible, no muscle tissue evident, no external fat present. The herd went several months without adequate quantity and quality of nutrition and survival during stress is doubtful. BSC of 2 or less (as opposed to less than 2) require prompt

corrective action. In addition to two dead emaciated cows she observed in the north pen on March 24, 2014, one cow was euthanized on-site due to distress and two additional emaciated cows became downer cows and were euthanized due to distress. She testified that in her opinion, the cows became downer cows due to their emaciated condition.

46. Dr. Green said water quality and palatability affect water consumption and cattle may limit their intake to the point of dehydration if the water quality is compromised. Snow is only a sufficient water source, according to the Code, under specific situations. Snow is not an adequate source of water for cows that are lactating or newly weaned, or those with a BSC of less than 2.5. On March 24, she noted, only two cows could drink at a time due to limited access to a small hole in a frozen creek, which will create aggressive herd behaviours and causing animals to fight for access to water.
47. Dr. Green said that good animal welfare requires good animal health and that pain and discomfort caused by health issues impacts an animal's well-being. She said a Veterinarian-Client-Patient-Relationship (VCPR) is needed for a veterinarian to assume responsibility for herd health, to provide medical treatment and to give the client instructions. A VCPR requires that the veterinarian have sufficient knowledge of the animals and be personally acquainted with the keeping and care of the animals.
48. Dr. Green stated that the appellant did not have an established VCPR with veterinarian. Given that Dr. Scheidt had never seen the animals and that her recommendation only addressed a downer cow in an otherwise normal herd -- not the situation present at the appellant's property. Dr. Green said the severity and extent of the cattle's distress on the appellant's farm could in no way be understood by Dr. Scheidt in an over-the-counter conversation.
49. In addition to emaciated conditions, Dr. Green reported that the herd was infested with lice, evidenced by multiple animals with extensive hair loss and the amount of hair found on barbed wire fences where the animals scratched. She stated that more than 75 % of the herd was infested.
50. Dr. Green noted that the 6-8 week old calf with the sloughed hoof was lame and the appellant administered no pain medication, had no treatment plan, and failed to euthanize the animal. The sloughed hoof was caused by frostbite. Without a barn or shelter to calve in, newborn calves in January were at a great risk for hypothermia, frostbite and death. Two of the dead emaciated cows had melted into the snow pack, indicating that they had been down for an extended period of time. Dr. Green said they had died naturally. Another cow that was down was alive but was melted into the snow pack and emaciated and was in distress. The steer had neurological damage and was blind in one eye and was in distress. An emaciated black white face Angus cow was found with vaginal prolapsed with necrotic issue indicating it had been present for some time, and baler twice had been used for suturing the vulva to prevent reoccurrence.
51. In her testimony, Dr. Green said it was unacceptable to have that high a number of cows with such low BSC – she described it as astronomically high. She said it would have taken several months without adequate (in terms of both quality and quantity) nutrition for the

cattle to have become that emaciated. She testified that she recommended that the Society seize the animals. She noted that the condition of the cattle could have been corrected by the appellant feeding adequate protein and energy through good quality hay and supplements and, even if good quality hay was not available, additional grain could have been used to supplement the animals' diet for weight gain. In addition, an adequate water supply was necessary for ruminants to aid in digestion and metabolization of their food.

52. Dr. Green detailed the importance of a relationship between the rancher and the veterinarian to ensure the health of the herd. Cattle produce protein, she said, that ends up on our plates and that protein has to be high quality. She stated that she saw repeated evidence of lack of care of the appellant's cattle and that in her opinion they suffered pain and distress. She said it was uncommon to see downer cows in general and that it was quite extreme to see three downer cows in a herd this size.
53. Dr. Green said it was important to separate the herd according to several factors in order to ensure weaker or submissive animals do not have to compete for access to food.
54. Dr. Green testified that she had seen other clients with cattle over the years and those cows were in good health and good shape. The seized cows, on the other hand, were extremely compromised and require intensive management and significant care to be healthy. Cows should have a BSC of 2.5/3 or up to 3.5 depending on their production stage.
55. Dr. Green testified that she visited Mr. de Waal's farm where the seized cows are located two weeks prior to the hearing and said they looked like a different herd, with most cows having gained at least 3 pounds a day. There were still five cows with a BSC under 2 and more time will be needed in order to determine if that is due to nursing, age, or having reached their maximum condition.
56. When asked by the panel if the cows on the property at the time of seizure that had a BSC over 2 were in distress, Dr. Green said yes, to a degree. She was uncertain if they were receiving adequate water. She said the other cows – most of the herd – were certainly in distress and exhibited anxiety or behaviour associated with being hungry and seeking food. In her opinion, the downer cows were in pain and the blood supply to the muscles in their extremities was compromised. It was also her opinion that those cattle suffering from frostbite would have been in pain. There was great risk to the cow with the sutured prolapsed vagina, and to a bull that might attempt mating (or to a calf that might be born) as the sutures had been left in the cow and created a risk. She said a rancher with a VCPR might be taught properly by a veterinarian how to deal treat the original prolapsed condition. The baler twine was improper suture material and the method of suturing was also incorrect.
57. When asked what would be required to maintain the health of these cows if returned to the appellant, Dr. Green testified that without changes, the cows would certainly lose weight again. She stated that if the cows were returned, they would require extremely close supervision, but she stressed that she had never seen such poor condition in a herd and she could not in her right mind think of returning the cattle to the appellant. She said the whole management structure of the appellant's farm would need to be altered; the appellant did

not have a set breeding time with the result that calves were being born at different times and in the coldest months of the year. Consequently, the appellant needed not only to separate the herd and manage a breeding program but also needed to ensure proper labour management at calving time. Shelter and appropriate bedding would both be required. A consistent water source of 26-66 litres per cow per day needed to be available at all times. Appropriate nutrition was needed and the appellant would need to have a nutrition plan and ensure a high quality diet, including supplements as required, and life-stage nutrition management as needed. Adequate feed had to be secured prior to a shortage situation and a parasite and disease management program was required.

Tom de Waal Letter and Testimony

58. Mr. de Waal is the owner of Harvest Angus and president of the BC Angus Association. He testified that he wrote a letter dated May 7, 2014 which detailed his background as a rancher and as an auctioneer for 12 years during which time he auctioned half a million head of cattle a year. He has been feeding cattle for the past 5 years with a herd of 100 mother cows, 100 yearlings and bulls and heifers.
59. In his letter, Mr. de Waal stated that in all his years of raising and selling livestock he had never seen animals as thin and malnourished as the cows seized from the appellant, some so weak they required extra care in transporting them. He described their condition as “absolutely disgusting”. He is now caring for the seized cattle and said they have been a handful as their basic needs had not been met for a long time. When he received the herd, there were 21 cows with calves and many of them had insufficient milk to nurse their young. Seven cows gave birth since arriving at his ranch: one was stillborn and the other six needed to be bottle-fed, though one died. He had to bottle feed as many as 12 calves with milk replacer (11 calves after one died). The cows giving birth retained their placentas and required medication and five more required medical attention. No cows have come into heat since arrival, indicating basic nutritional requirements had not been met. It was Mr. de Waal’s opinion that it would have taken 8 months to a year of inadequate feeding for the animals to be in the level of malnourishment they were in upon arrival.
60. Since arriving at his farm, Mr. de Waal testified that the cattle have been on free choice chopped forage with supplements of a 14% grain pellet ration, and they have been dewormed, deloused and vaccinated. After slowly increasing the supplements, he has been able to reduce this as the cows have gained weight and the pasture, with some chopped hay, is able to support their nutritional needs, although five bulls still remain on supplements.
61. Mr. de Waal explained that he was in a unique position because his ranch has adequate infrastructure to effectively quarantine the appellants’ cattle from his own during their rehabilitation. He stated that he would not have agreed to take the herd if this had not been possible. He was able to provide the care these animals needed without risk to – or from – his own herd. He is going through one and a half tons of hay every day for these cattle.
62. Mr. de Waal said he monitors the cows twice a day in the pasture to determine if they have had enough to eat; he said you can determine if cattle are hungry by their behaviour He

said his own ranch has 14 or 15 automatic waterers and in each pasture there is a dug out or creek. In the summer months, the cows are in the pasture where food and water is available, and in the fall and winter the cows are brought to the farm where there is feed, and where water is run from a well into heated water dispensers to prevent freezing. He estimates each heated waterer costs about \$1000 plus installation and the laying of water lines deep enough to prevent freezing will cost several thousand dollars.

SPC Debbie Goodine Materials and Testimony

63. Special Provincial Constable (SPC) Goodine has worked for 14 years with the Society and 12 years as a SPC based in Prince George and estimates she has attended 20 cattle complaints. She testified that she investigated two other complaints in the Prince George region in 2014, one was unfounded and one dealt with several underweight cows. In the latter case, the rancher was working with a veterinarian to improve the animals' condition so there was no seizure. She has not seen any other issues regarding low weight in cows in her region in 2014.
64. SPC Goodine testified about her attendance at the appellant's property on several occasions and the discussions they had. Her first visit to the appellant's farm was on January 24, 2014 after the Society received the first complaint. She said when observed the animals from the roadway, the cattle were obviously thin and on closer inspection, she observed some were very thin and others emaciated. She said she had to ask the appellant where the bull was and when he pointed it out to her, she was surprised because all she saw was a skeletal animal lying down that did not look at all like a bull. She described it as a walking bone rack.
65. She also testified that she saw hay scattered throughout that the cattle were using for bedding but little in the feeders. She said she observed a trail leading to a small hole in the creek and testified that she believed it would have taken the emaciated animals a lot of energy to get there.
66. SPC Goodine recalled her conversation with the appellant at this first visit where he said that "money could fix everything" and that he was working with the bank to get a loan. She issued the appellant an order to relieve the distress by providing adequate suitable food in quality and quantity, fresh water all the time, and adequate shelter. She said that she wanted to provide the appellant with an opportunity to relieve the animals' distress and that, at the time, she felt that he would comply. She told the appellant that lack of financial means was not a defence to allowing his animals to be in distress and that he could sell some or euthanize some humanely. Prior to her second visit to the appellant's property on January 28, 2014 SPC Goodine contacted the BC Cattlemen's Association (BCCA) office, as the appellant was a BCCA member and had expressed an interest in their peer advisory assistance. She noted that the Society has a Memorandum of Understanding with the BCCA which includes a clause for the association to provide peer advisory services. The BCCA later responded to SPC Goodine, indicating that the local BCCA representative Martin Rossmann had been to the appellant property in November 2013, and expressed to the appellant at that time that he felt some of the herd needed to be sold.

67. On her January 31, 2014 visit to the appellant's property, SPC Goodine observed a flat deck truck with 6 large round bales of hay (weighing approximately 1500 lbs each) which she said did not look "too bad" because it had some green in the middle, however she also observed that the bales were black around the edges. She estimated that 40 – 50 cows would eat one of these bales in a day or two. She also noted that the appellant had a ton of beef ration or feed supplement.
68. On her February 21, 2014 visit, SPC Goodine saw a second bag of beef rations and some still left in the first bag, which surprised her as she thought with the number of low BSC cows, the appellant would have used more by then. The appellant told SPC Goodine that he was still trying to locate good quality hay and that water was still an issue. He told her he was growing frustrated with the slowness of the bank in providing a loan for better quality feed and supplements. She reminded him of the selling, downsizing or humane euthanasia options.
69. Upon receiving a second complaint concerning a cow that was having difficulty calving, she called the appellant on February 27, 2014 and he confirmed that he had a cow that was having issues during calving, that the cow had since died and that three others were down and he was nursing them. When she attended on March 4, 2014 SPC Goodine said she did not notice any improvement in the condition of the cows, despite seeing some greener hay previously. She gave the appellant another order to provide adequate food and water and shelter and to separate the BSC 1 cows from the others as they needed more attention according to the Code. She also provided him with a second copy of the Code.
70. SPC Goodine testified that she re-attended the appellant's property on March 17, 2014 the appellant told her that one cow had died over the weekend and she and saw three cows down in the north pasture. She said that although her intent had been to re-inspect the water and feed on that occasion, her focus was now on those three cows. She said the appellant told her he was trying to get a veterinarian to come to the farm and she provided him with three telephone numbers for veterinarians. She also gave the appellant an order to get veterinary care within 24 hours to deal with the three downed cows. Mr. McLeod said he had a conversation with Dr. Scheidt and SPC Goodine later discovered that the veterinarian offered to attend after 5 pm that night, but the appellant said he was unavailable. SPC Goodine testified that the appellant never did get a veterinarian to attend the farm.
71. On March 24, 2014, SPC Goodine attended the property with a warrant. She testified that over a two month period she did not believe the cattle's situation had progressed and when she saw the downer cows, she felt the situation was actually getting worse. It was difficult to get the appellant to get a veterinarian in to see his herd and SPC Goodine felt it was necessary to get a veterinarian on the premises. A herd assessment was undertaken by Dr. Green on that day and it was her opinion that the entire herd was in distress.
72. SPC Goodine confirmed that the appellant had been cooperative by allowing her to inspect the animals on his property and appeared to be making an effort to satisfy the Society's orders and making some effort to attempt to relieve the animals' distress. She testified that

it was her view based on her conversations with the appellant that his justification for failing to alleviate the suffering was due to a lack of money and that he did the best he could at the time.

The Appellant's Case

Kenneth McLeod Affidavit and Testimony

73. In Mr. McLeod's affidavit dated April 28, 2014, he stated he wanted his cows returned. He moved to Quesnel, BC from Alberta in 2011 and brought some of his herd with him, purchasing other cows once in BC. He has kept cattle since the 1980s, initially in the Kamloops area and in Alberta from 2000 to 2011. The appellant is also employed as a truck driver, and works rotating shifts of 8-10 hours, five days a week.
74. Mr. McLeod does not dispute that many of his animals were in poor condition this winter and that he regrets any pain or suffering he has caused the cattle. He said it is important to him that he treat his animals with the utmost respect and he felt a combination of factors likely led them to being in the condition they were in, and that he would take every step to ensure their recovery and good health if the herd is returned to him.
75. In 2011 after arriving in Quesnel, Mr. McLeod bought hay from a number of people, as he did in 2012. In winter 2013/14 he was not able to get good hay and he said that was the biggest factor in his cows' poor condition. There was plenty of poor quality hay from 2013 available and this is what he got to feed his cattle.
76. Mr. McLeod kept his cattle in three herds: south herd, north herd and round pen herd. The north herd is the farthest from his residence on his property. He rolled out bales of hay of varying amounts depending on the size of each herd.
77. Mr. McLeod disagreed that he should have a feed supply on site as he picked up hay twice a day from his neighbour and fed his cows daily. He also disagreed that there was no water available as he purchased 1000 litres a day and hauled it to the cattle in the south pen and grazing area, and that empty water tanks on his property were just unfilled at the particular time of the Society's visit to his property.
78. He agreed he told SPC Goodine he wanted to reduce his herd size to 35 cow-calf pairs and that his intent was to separate his herd and move the cow-calf pairs, but his wife was hospitalized and was therefore unable to assist him.
79. Mr. McLeod testified that he ran out of hay around the end of November 2013 and thereafter he brought in the poor quality hay every day from his neighbour. He said he could not find any better quality hay, believed it was better than nothing and fed the cattle as much of it as they would eat but that they continued to lose weight. He said he also looked for hay throughout December 2013 and January 2014 and on February 22, 2014 he purchased 22 bales of what he described as good quality hay. At that time he was feeding

the herd 4-5 bales a day. Otherwise he had been unable to find any good hay until after March 4, 2014 when he purchased 300 bales of hay in Hixon. He did not believe he had a feed quality problem after February 22, 2014.

80. Mr. McLeod felt he was in compliance with the Society order regarding shelter as cows could use the wooded area in the north and south pens and he had sold the cows in the round pen. He agreed the cows in the north herd did not have water for almost three weeks in March, as the creek was frozen over, but he stated that they could lick snow. He thought at the time that licking snow was an acceptable practice and was not detrimental to the cattle, but now realizes he had been mistaken. His well did not provide adequate water for his south and round pen herds but he ran a hose from the house well and those cows could drink the water he trucked in. He did not provide a way of getting water to all of his cattle and he now believed that it was better to get water to the cattle, not cattle to the water.
81. Mr. McLeod agreed one cow died giving birth and three additional cows were down but he was trying to help them. On March 17, 2014 he realized he needed the assistance of a veterinarian and called Dr. Wilson who was too busy. He talked to Dr. Scheidt on March 19, 2014 and Dr. Scheidt provided him with instructions regarding treatment for the downed cows. He had planned to euthanize them but two died on their own on March 23 in the evening.
82. Mr. McLeod agreed that parasite control was important and said only 10 of his cows had lice and he would normally treat parasites himself in the fall but he missed the opportunity to treat the animals in the fall of 2013 as the snow came early.
83. Mr. McLeod did notice a calf had a limp and he said he had looked at all its hooves and they appeared satisfactory. He did not feel the way the calf walked was severe. He noticed the hoof had been sloughed the afternoon of March 23, 2014 and planned to euthanize the calf the next morning as his practise was not to shoot animals at night out of concern for the neighbours.
84. Mr McLeod said he also noticed the cow with the prolapsed vagina on the evening of March 23, 2014 but he did not have time to contact a veterinarian prior to its seizure on March 24, 2014. The original prolapse occurred in 2012 while the cow was calving and it had to be dealt with in a hurry to save the cow so at that time he made the decision to deal with it himself. He said she appeared fine after that apart from the herd generally being in poor condition. He does not believe the animal with the neurological condition was in pain as it could eat and drink appropriately.
85. Mr. McLeod said he followed the recommendations of Dr. Scheidt from March 19, 2014 in that he purchased glycol, ketamalt and electrolytes and administered them as instructed; provided water to downed cows by pail; purchased additional protein tubs for the cows; but that he could not find any alfalfa hay even though he called everybody he knew.
86. Mr. McLeod's proposed plan of care as detailed in his April 28, 2014 affidavit, should the cows be returned, was to use the creek water which by April was running freely on his property (as evidenced by photos taken in April, 2014); to provide additional water; to use

the 200 bales of decent quality hay he then had until the pasture was ready in June; and follow the recommendations of Dr. Scheidt such as supplementing the hay and using protein pellets or grain, which he would also use in future years. He will continue supplementing the feed with minerals. He will reduce his herd by selling 50 – 60 animals when they reached sufficient weight. He would also manage his herd with the assistance and mentoring of his neighbour Stan Hall, a Quesnel rancher for the past 30 years who stated in an affidavit that he would assist the appellant in managing his cattle herd and would take this responsibility seriously. Overall, the appellant said that a smaller herd meant the herd would not have to overwinter in the north pasture, allowing them to be closer to the water he trucks in winter, and that feed would also be less of an issue if good hay becomes scarce in the future as he would need less for the fewer animals.

87. In his oral testimony Mr. McLeod said it was not normal to supplement cows in the summer with anything other than minerals. He does use hay in the fall and winter and he testified that he had never before had an issue with the quality or quantity of hay or with the water from his creek. He searched the internet, asked around, and kept his eyes open for signs on the road indicating hay for sale. He said some of the hay he found was poor quality so he did not buy it. He began feeding poor quality hay from his neighbour in November 2013 as he believed it was better than nothing. He considered his Hixon-sourced hay to be of good quality
88. Mr. McLeod said when the creek froze, it was unexpected as this did not occur in the previous 2 years, so there was not much he felt he could do for the cows in the north herd. There was too much snow and it was too cold and would have taken too much to build a road to get back there to bring water to the area.
89. He acknowledged that BCCA director Mr. Rossmann, had advised him in November 2013 that he needed better quality hay for the winter and that he should cull 3 thin animals in the herd. Mr. McLeod stated that he had sold about five cows in 2013; he wasn't sure. He also stated that 3 older cattle were euthanized late in 2013. Mr. McLeod had provided auction records to the Society indicating that Mr. McLeod had previously sold 62 cattle in the fall of 2013. There was no testimony about these inconsistent numbers.
90. Mr. McLeod said he became concerned that his cows were losing weight and he couldn't find feed in February and March 2014. He also recalled being concerned even earlier, in the late fall of 2013, that the cattle should have gained more weight when they came off the pasture. He stated that this is one of the reasons why he had decided to reduce his herd. He testified that he did not reduce it as much as he should have.
91. He testified that his plan for the herd if they were returned would be lots of grass to get them in good condition before winter. He referred the panel to several recent photographs of healthy pasture and the running stream on his property. He said a previous user of his property told him the pasture could support 30 – 35 cow-calf pairs, and at this herd size, he believed he could also produce some of his own hay. He plans to hook up water lines to his well system now that he knows about the potential for a water problem in the winter, and he will put in a frost free water system so adequate water will be provided in the winter. He

said he has not sourced this material yet nor priced a backhoe operator to dig the trench to lay pipes, but believes he has the knowledge to build this system.

92. Mr. McLeod said he did access the services of a veterinarian when it was required, noting that he saw Dr. Wilson with one cow that needed a C-section in July of 2013 and two bulls that needed to be castrated in the fall of 2012.
93. Mr. McLeod said that every year with cattle there are some issues but he has kept cattle for 25 years and can normally resolve them. The issues that developed last winter were just very hard to resolve. He said it was disheartening to see his cows go downhill but he did what he could.
94. On cross examination, Mr. McLeod said he noticed his cows losing weight in November 2013 and he called Mr. Rossmann from the BCCA who told him the cows needed better hay and some supplements. He stated, however, that the BCCA was “no help” to him as he had expected that they would actually help him source quality feed which they did not do. Mr. McLeod testified that he realized that he was overstocked and intended to sell more cattle in the fall but that winter came early. When the Society told him to consider reducing his herd size he agreed that had been his prior plan but they were hard to sell at that time of year. Buyers don’t want to buy cows if they are not fleshed out. Mr. McLeod said he arranged for an appointment for Dr. Scheidt to come out to his property but it turned out to be the day after the cows were ultimately seized. He also said his neighbour would oversee his day to day operation on a volunteer basis.
95. With respect to his suturing the prolapsed vagina of one cow, Mr. McLeod said the situation was an emergency (in 2012) so he put the vagina back in and sewed it up the best he could and the cow was fine until the stitches pulled out just a few days before the 2014 seizure. He said he was going to take it to the veterinarian. In 2012, he said it wasn’t necessary to follow up with a veterinarian as he believed the cow was fine and he gave it antibiotics.
96. Mr. McLeod also said that in 2013/14, he intended to supplement his herd with grain but because he does not have feeders, it is his practice to put grain on the ground. As a result he decided not to feed the grain because it would only have been wasted due to the heavy snowfall. He also testified that cows fed on grain need a lot of water and since water was not available, he made the decision that there was not enough water so he withheld the grain, and when water was coming, he would feed grain. He said with cows, you do the best you can.
97. Mr. McLeod explained that with his downed cattle, he nursed them by doing the best he could with bedding and water and feed a few times a day. He said you cannot leave a down cow in one spot so he would roll them over at least twice a day.
98. He said it was a “no-brainer” that he would need to get shelter for the calves and he could construct shelters himself as he had done in Alberta. He did not construct shelters in 2011 as he had a lot to do when he first moved back to BC. He claimed that they were not required in past years because his cows normally calved in April, but the bulls had got out

this past year and bred the cows too early. He said that he has now “learned” from his mistakes and would build shelters.

99. When he was looking for hay, Mr. McLeod was unable to detail how far he searched, only that he did so within a reasonable area and he didn't want to go to Alberta and buy hay sight unseen. In his view, Prince George and Vanderhoof had poor quality hay and he did not see any advertisements for hay farther south. He said his plan if the cows are returned would be to have a contract in place to purchase hay before the cold, but he had not yet done this. He did not want to overpay for hay but during this past winter he did not even find overpriced good hay, he said he only found poor quality hay.
100. Referring to veterinary care, Mr. McLeod said he believed it was a good idea to have a herd assessment done once a year in the fall but he had never had a reason to have his herd assessed by a veterinarian. He said because the combination of conditions that caused his cows to become thin would not happen again, there would be no need to call a veterinarian but he said it was a good idea to have one come once a year to look at the cattle operation and point out deficiencies. In his case, he claimed it had just never happened as he just didn't get it done and he had no time when he bought the land (which was just bare land without improvements) in 2011.

Analysis and Decision

101. The *PCAA*, sets out the following definition of distress in section 1(2):

- 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.

102. Section 20.6 of the *Act* sets out the following remedies following an appeal:

20.6 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;

103. In the panel's view, upon concluding that an animal is in distress and that an owner has not acted promptly to relieve that distress, the Society can take the steps it considers necessary, as it did in this situation by seizing the animals to relieve them of distress.
104. The panel has no difficulty at all in finding that the animals were in distress on March 24, 2014 and, based on their very poor physical condition, had been in distress for an extended period of time. The panel came to this conclusion even though the appellant's position was that he had done everything he could do but the problem was due to a shortage of good hay, the failure of others to assist him in locating alternate sources of hay, and the poor weather which also affected his water source. The panel did not put much weight on the appellant's assertion that he did everything possible as the appellant, with 25 years experience with cattle, should have been better prepared, should have recognized or been aware that his animals were deteriorating and suffering, and should have taken action to prevent this, including selling more of his herd or humanely euthanizing them to prevent suffering, should have known about water and feed requirements of his cattle, and should have had a veterinarian providing care for sick or injured animals. The panel finds that the appellant should have done more to relieve the suffering of his animals.
105. According to Dr. Green, the herd was lacking in adequate food and water, was deprived of adequate veterinary care, was deprived of adequate shelter, and more than 90 % of the herd was emaciated or thin. Dr. Green also said the herd was not protected from excessive cold and there was no shelter available; as evidence of this, animals were frostbitten and in the case of a newly born calf, it was so malnourished and freezing it was unable to stand or suckle. The herd was in distress and had been suffering and some of the animals were in pain.
106. The panel finds that the appellant did not act promptly or even at all, in some cases, to relieve that distress. While the panel acknowledges that the appellant did make some minor effort, his actions were completely inadequate to relieve the widespread distress of his herd. The panel does not agree with the appellant's assessment that the animals' distress was caused by his difficulty in securing good hay; the panel finds there were multiple reasons why the animals were in distress including overall herd mismanagement, overstocking of cattle and not downsizing sufficiently or appropriately, and the lack of a breeding program.
107. The panel finds that the appellant had a total lack of regard for providing veterinary care to his animals. The appellant seemed unaware of the quantity of water his animals required on a daily basis, yet he failed to avail himself of knowledge, such as that available in the Code, to educate himself on water requirements. As a result, there was inadequate water for the animals especially through the winter months. The panel also finds that the appellant did not provide adequate feed and supplement and did not avail himself of the knowledge found in the Code that may have educated him on alternate feeding regimes in the event of unavailability of good quality hay. Importantly, the panel finds that the appellant did these things at the expense of the well-being of these animals. Mr. de Waal described the herd in his May 7, 2014 letter after he received the seized animals from the Society as being more thin and malnourished as he had ever seen before, and would require a year or more for most of the cattle to recover from their ordeal and that some may never

recover. He said that the herd had not received proper care and basic nutritional requirements for over a year.

108. The Society provided the appellant with more than enough opportunity to relieve the suffering of his animals, but the appellant had multiple excuses ranging from lack of funds, to lack of time, to lack of assistance from others to bad weather, and so forth. Nevertheless, it is his position that he did the best he could. The panel disagrees with his conclusion and instead finds that the appellant permitted the condition of his animals to deteriorate to the point where they were in distress, and then permitted them to remain in distress for several months or longer.
109. The panel therefore finds that the Society acted reasonably and correctly in seizing the animals from the appellant due to distress from multiple sources.

Return of the Animals

110. The panel now turns to consider whether the animals should be returned to the appellant, in the animals' best interests.
111. It is clear from the submissions of the Society that it felt that it would not be in the animals' best interests to be returned to the appellant. Although the Society saw some value in the plan prepared by the appellant should he get his cattle back, his mismanagement of the herd (which was surprising given Mr. McLeod's years of cattle ranching experience) that was evident prior to the seizure was so significant, the Society did not have much confidence in seeing sustained improvement in the future.
112. The appellant submitted that although he fell short in the care of his animals, he can be trusted in the future to take all steps necessary to ensure they will not be in distress if returned to him. He submitted that his history of cooperation with the Society during its investigation and lack of any prior involvement with the Society indicate that this is not a pattern of poor animal care, and he is sorry for the condition of his animals. He submitted that this was not a case where he made a decision not to care for the animals but rather that good feed was not available and in any regard, he was trying to comply with the Society's orders regarding feed. Regarding veterinary care, Mr. McLeod submitted that he noticed the cow with the prolapsed vagina the night before the animals were seized, and that he had been observing the calf with the sloughed hoof, and that there were probably ten animals that had lice, but that he did not believe this was not a major factor in their poor condition. Mr. McLeod relied on the plan of Dr. Scheidt as evidence of his willingness to follow the recommendations of a veterinarian. And regarding the cattle's water supply, Mr. McLeod admitted that it was in fact a problem and he failed in his obligation, but that it was an unprecedented situation that would not be repeated if the cows were returned and in fact, at the time of seizure, the water situation was about to turn around due to improving weather (the ice was melting on the creek).
113. In his submission, Mr. McLeod summarized his plan to ensure the animals would not be in distress as he would comply with Dr. Scheidt's recommendations as set out in her

March 27, 2014 letter with regard to feed and veterinary care; he submits that he has a sufficient water supply on site now and will construct a water system that will ensure an adequate supply during winter conditions; his wife will assist him in separating the herd; he will have his neighbour supervise the management of his herd; and he will significantly reduce his herd before next winter.

114. Having heard all the evidence, the panel is not satisfied the herd would remain in good health if returned to the appellant and the panel is of the opinion that if the herd is returned to the appellant, it could again fall into distress. In the panel's view, for a rancher with more than 20 years experience, the appellant demonstrated a surprising lack of knowledge of the basic needs of his cattle and a gross mismanagement of the herd in the months prior to its seizure. Therefore, the panel finds it both reasonable and correct that the Society would lack confidence that the appellant will, in fact, ensure that the best interests of the cattle are observed in the long-term. The appellant has minimized his responsibility throughout the events leading to the seizure of the animals. It is unfortunate that Mr. McLeod thinks his good intentions and efforts to resolve a situation can replace the actual resolution of a situation. Doing the best he could was unfortunately far from good enough for these animals.
115. Mr. McLeod is also mistaken in his submission that his proposed plan of care will ensure that the cattle are maintained in good health. In fact, his plan falls far short. He has not provided any evidence that he has established a VCPR, but only provides his assurance that it will happen in the future. Mr. McLeod has not made arrangements for feed for the winter, but provides his assurances that he will do so before it gets cold. Mr. McLeod has not made any progress in ensuring an adequate supply of water for his animals, only his assurance that he will do it before it becomes necessary. He was equivocal about whether he will provide shelter for the animals or not, testifying on the one hand that he would build shelters but then later testifying that it would not be necessary if he implements a breeding program so that calves are not born in the winter. The panel is not satisfied that adequate conditions will be present or maintained to ensure the well-being of the animals over the long term. One need only look at the level of care and extra feeding and the length of time it has taken (and for some cattle, will continue to take) to return the seized cattle to good health to know that the appellant would need to take extra care to continue to return these animals to good health – extra care that his plan does not address. The panel places a great deal of weight on Mr. McLeod's past behaviours and his use of excuses about having no ability to find feed or provide for adequate water and no time to create shelters as being indicative of future behaviour. Despite the offer of assistance from the appellant's neighbour, Stan Hall, the panel does not believe that the appellant will follow direction, given he did not completely and sufficiently follow direction of the Society (its orders) to relieve the distress of his herd. The panel is not satisfied that should his herd be returned to him he would act in a proactive and responsible fashion and prevent his animals from being in distress. Instead the panel finds it likely that the appellant would once again attempt to make excuses for allowing his animals to be in distress or to provide his animals with inadequate care, feed and water, and shelter, and again blame circumstances which should be entirely foreseeable and planned for by any responsible rancher.

116. The panel does not find Mr. McLeod's arguments convincing but rather the panel views his excuses as indicative of his failure to recognize and take personal responsibility for the welfare of the cattle entrusted to his care. Further, in the panel's view, this was not simply a case of "bad luck" or the convergence of circumstances over which the appellant had no control, as he characterized it to be, but rather gross mismanagement including but not limited to overstocking cattle, failing to adequately downsize the herd when he knew he had no feed for the winter, failing to secure a supply of feed, failing to recognize the need for feed supplements and adequate water, failing to have a breeding program to ensure that calves would not be born in the coldest months, and failing to provide shelter for those animals most vulnerable to the winter elements. He also demonstrated an alarming lack of knowledge regarding the basic health and nutritional needs of the cattle. On several occasions, he failed to recognize distress in animals that required immediate veterinary assistance and intervention with the result that a number of cattle suffered for many months and some eventually succumbed to complications arising from their emaciated state or had to be humanely euthanized by the Society. Consequently, despite his proposal to implement a plan of care that may appear to be reasonable, the panel lacks any confidence that the appellant would, in fact, do what he says he would do in the long-term. Accordingly, the panel finds it would not be in the animals' best interests to be returned to the appellant.
117. Therefore it is the panel's decision pursuant to Section 20.6 of the *Act* that the animals remain in the Society's custody and the Society in its discretion may destroy, sell or otherwise dispose of the animals.

Costs

118. 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.

119. The panel has reserved its decision on the issue of costs. At the conclusion of the hearing, the parties were directed to provide their written submissions on the costs of care and the reasonableness of those costs. A decision on the matter of costs will be issued separately in due course.

ORDER

120. For the reasons outlined above, the panel orders pursuant to s. 20.6 of the *PCAA* that the Society retain custody of the cattle and in its discretion, destroy, sell or otherwise dispose of the animals.

Dated at Victoria, British Columbia this 29th day of July, 2014

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Presiding Member



Carrie Manarin, Member



Andreas Dolberg, Member