

Citation: ☼ R. v. Chrysler
2013 BCPC 0240

Date: ☼ 20130515
File No: 177225-1
Registry: Surrey

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

DARCY CHRYSLER

**ORAL REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE M. GILLESPIE**

Counsel for the Crown:	L. O'Grady
Counsel for the Defendant:	L. Rudovica
Place of Hearing:	Surrey, B.C.
Dates of Hearing:	December 3, 4, 5, 2012; January 25, March 6, 2013
Date of Judgment:	May 15, 2013

BACKGROUND

[1] THE COURT: Ms. Chrysler is charged Count 1 that on the 14th day of March 2009, at or near Surrey, she was a person responsible for an animal, to wit horses, and has such, did cause or permit the animal to be or to continue to be in distress, contrary to s. 24(1) of the *Prevention of Cruelty to Animals Act*.

[2] By way of background, on March 14th, 2009, Ms. Chrysler lived at a property located at 18787 16th Avenue, referred to hereinafter as the "16th Avenue property." That property was located in Surrey, British Columbia. She lived on that property with five horses, some dogs, a cat, gerbils and two turkeys. She had been in a common law relationship with Tim Stevenson. They had been together on and off for 20 or more years. Several months before this date, Ms. Chrysler had moved out from their shared home at 4456 184th Street in Surrey, British Columbia. Tim Stevenson and Darcy Chrysler had previous dealings with the SPCA regarding animals, including horses, that they owned. Some of these horses had been previously seized by the SPCA.

[3] On March 14th, 2009, Special Cst. Morgan and several other SPCA officers, along with a veterinarian, Dr. Steinebach, attended to the 16th Avenue property with a warrant to seize animals in distress. When they initially attended the property, Ms. Chrysler was not in attendance. She arrived shortly after 1600 hours. As a result of their collective observations of the health of the horses, the SPCA officers made a decision to seize the animals. Charges were subsequently approved charging Ms. Chrysler with an offence pursuant to s. 24(1) of the *Prevention of Cruelty to Animals Act* (PCA). Information 177225 contains that charge.

I - Issues:

[4] There are five main issues arising in this case. They are as follows:

- (1) Is Ms. Chrysler a person responsible for the horses found at and seized by the SPCA at the 16th Avenue property?
- (2) Were those horses in distress?
- (3) If the horses were in distress, does s. 24(2) of the PCA apply? In other words, does the distress result from an activity that is carried out in accordance with reasonable and generally accepted practices of animal management?
- (4) If the horses were in distress, did Ms. Chrysler cause or permit them to be or continue to be in distress?
- (5) Did Ms. Chrysler exercise due diligence in alleviating or attempting to alleviate the distress?

II - Applicable Legislation:

[5] Section 24(1) of the PCA provides that a person responsible for an animal who causes or permits the animal to be or to continue to be in distress commits an offence. Section 24(2) provides that s. 24(1) does not apply if the distress results from an activity that is carried out in accordance with the reasonable and generally accepted practices of animal management. An animal is in distress, pursuant to s. 1(2) of the PCA, if it is:

- (a) deprived of adequate food, water, shelter, ventilation, space, care or veterinary treatment;
- (b) injured, sick, in pain or suffering; or,
- (c) abused or neglected.

[6] Pursuant to s. 1(3) of the PCA, a person responsible for an animal includes a person who (a) owns an animal, or (b) has custody or control of the animal.

III - Position of the Parties:

[7] Crown counsel submits that Ms. Chrysler is an owner of the horses on the 16th Avenue property and that, according to the observations of SPCA officers, Crown submits I should accept their evidence and find that the horses were in distress. Further, Crown submits that s. 24(2) of the PCA does not apply in these circumstances. Crown also submits that Ms. Chrysler caused or permitted the horses to continue to suffer distress and that she did not exercise any form of due diligence in attempting to alleviate the distress.

[8] Defence counsel submits that Ms. Chrysler was not an owner of the horses nor was she a person responsible for them and, therefore, the Crown has failed to establish beyond a reasonable doubt that Ms. Chrysler is guilty of any offence under s. 24(1) of the PCA. In the event I find that she was a person responsible for the horses, defence counsel submits I should find that Ms. Chrysler was acting with due diligence in attempting to alleviate the distress in the horses and, therefore, I should acquit her. Defence made no submissions that suggested that Ms. Chrysler disputed that the horses were in distress.

IV - Strict Liability Offence:

[9] Both counsel agree that s. 24(1) of the PCA is a strict liability offence. Strict liability offences require the Crown to prove that the accused person is responsible for the action or neglect that caused the offence. In this case, it falls to the Crown to establish beyond a reasonable doubt that Ms. Chrysler was a person responsible for the animals and that if she is responsible for the animals that she caused or permitted the

animals to be or continue to be in distress. There is no need for the Crown to establish intent. Once the prosecution has proved the above-noted elements, the accused has the opportunity to raise a defence of due diligence on a balance of probabilities.

Issue 1: Is Ms. Chrysler a person responsible for the horses?

Consideration of the Law:

[10] Madam Justice Smith, in **R. v. Sudweeks**, [2003] B.C.S.C. 1960 at para. 126, dealt with the issue of ownership for the purpose of interpreting s. 1(3) of the PCA. In the *Sudweeks* case, 39 horses and seven dogs were left on a property that belonged to Mr. Sudweeks over the winter months. Mr. Sudweeks hired Mr. Tetz to look after the animals in his lengthy absence. The property was searched by the SPCA and the animals were found to be in critical distress with inadequate quantities of hay and water available to properly feed them. At trial, Mr. Sudweeks maintained he was not a person responsible for the animals. He maintained while he owned the property, his daughters were the ones who owned and were responsible for the animals. Madam Justice Smith, at paragraph 126 of that case, found Mr. Sudweeks to be a person responsible for the animals on the basis that he was a person who has custody or control of the animal, pursuant to s. 1(3)(b) of the PCA. Madam Justice Smith said:

Being responsible for animals is not synonymous with ownership of them. Responsibility may be shared. The two daughters were considered to be owners of the animals and shared in the decision-making about caretaking for the lodge in winter and in providing instructions about the animals' needs. It does not follow that Mr. Sudweeks, who was the co-owner of the lodge and its property, the co-founder of the business run on the lodge, and who was the only member of the family to visit the lodge and have contact with the animals between the end of the lodge season and the seizure of the animals on January 11 and 15, was not responsible for

them within the meaning of the **PCA Act**. That **Act** provides in s. 1(3) that a person responsible for an animal includes one who owns an animal, or who has custody or control of an animal. The trial judge was entitled to find, as he did, that there was no reasonable doubt that Mark Sudweeks fell within the second aspect of that definition.

[11] Mr. Justice Preston in **BCSPCA v. Baker**, [2007] B.C.S.C. 1717, dealt with the interpretation of the word "owner" for the purposes of s. 20 of the PCA. In the course of this consideration, Preston J. also considered the definition of "person responsible" in s. 1(3) of the PCA. He found at paragraph 19 of that case that:

The definition of "person responsible" in the *Act* clearly includes an owner within the larger category of "person responsible."

[12] In my view, Preston J. clearly accepted that a person responsible included a much broader group of people than just the owner of the animal. The rationale for this legislation and broad interpretation reflects the concern that animals are dependent creatures and rely on human caregivers to provide them with the necessities of life, including food, water and adequate shelter. The PCA is broadly worded to reflect the vulnerability of animals and the need for those entrusted with their stewardship to be accountable for their well-being.

[13] At paragraph 21 of *Baker*, Mr. Justice Preston quotes *The Shorter Oxford English Dictionary*, 3d. ed., and says of "owner":

One who owns or holds something; one who has the rightful claim or title to a thing.

[14] At paragraph 14, Mr. Justice Preston observes that in animal control legislation:

There is a practical recognition in the cases that an animal may have more than one owner and that legal title in the conventional sense is often not an important indicator of ownership.

[15] At paragraph 13, Mr. Justice Preston considers the decision of ***R. v. Elder-Nilson***, [2006] O.N.C.J. 408, where the trial judge found a defendant liable for the actions of a pit bull, pursuant to provincial legislation governing dog owners' liability. In *Elder-Nilson*, the trial judge, in finding the defendant liable, noted the following:

Based on the evidence of the defendant given at the interim hearing regarding the seizure of the dog, it appears that there is a pattern of moving dogs from place to place or transferring legal ownership of them so that the concept of ownership in the technical legal sense of registered title, has been reduced to simply a more practical matter, of having possession of, and responsibility for the animal with the consent of the owner. The issue seems to be more one of who has possession and control of the dog at any particular time. This somewhat free ranging, common law concept of ownership actually works quite well for interpretation purposes, given the structure and the intent of the statute as well as the bylaws as these are both directed towards legislating effective control over the animals, to promote the safety of the public and ensure the proper treatment of the animals themselves. In this sense, the person with possession of the dog is the one exercising control with the permission of the actual registered owner and thereby takes on the duties and responsibilities of the dog, and has all of the rights of the owner short of selling the dog and keeping the consideration for their own use. On this basis, this person together with the registered owner who delegates those duties to the person with actual possession and immediate control, must both be liable, if the legislation is to properly function in an environment where possession and control is passed to persons who look after dogs for the legal owners, and legal ownership changes rather freely.

[16] Ultimately, in the case Mr. Justice Preston dealt with, he was dealing with a different section of the PCA. However, in the particular circumstances before me, I find that the broader interpretation of owner/person responsible in the *Elder-Nilson* case, as quoted by Mr. Justice Preston, is applicable to the interpretation of the more broadly cast definition of a person responsible in s. 1(3) of the PCA.

[17] Considering the evidence, I note Ms. Chrysler testified in these proceedings. She testified that she lived in the motor home at the 16th Avenue property for four to six weeks but she did not recall exactly when she moved in. Later, when Crown counsel suggested she had been there for three months, she replied, "No, not more than two months," and she had been at the other property for Christmas with Tim Stevenson and their daughter. She moved because she and Tim Stevenson were not getting along and she did not approve of the way he was with his animals. She testified that the barn at the 16th Avenue property was a mess when she arrived. There was frozen solid manure inside it. She could not remove it the whole time she was there because for the whole period of time she was there the temperatures were below zero. There was nothing she could do. She tried to fix the paddocks in the front by removing blackberry bushes and she agreed there was fresh grass in those paddocks but the horses were not using that area.

[18] On the day the SPCA seized the horses, it was not frozen. The barn area was not frozen; in fact, it appeared to be thawed out. She testified that the horses were Mr. Stevenson's and some of the dogs and cats belonged to her. She only owned one horse, Devil Ray, and that horse was 32 years old and had died earlier at Tim's property. Later in her evidence, she referenced that when she returned home to her property, the SPCA were loading horses onto the trailer and she referenced "snapping pictures of them loading my horses." She corrected herself and said they were Mr. Stevenson's horses. She denied telling Special Cst. Morgan that the animals were hers in response to a question asked by Cst. Morgan about who owned the animals.

[19] Ms. Chrysler testified she had arranged to give several of the horses to "Mohammed" but Mr. Stevenson would not let her give them away. After the animals were taken away, Ms. Chrysler agreed that she did sue the SPCA for return of all the animals. She eventually gave up her claim to the horses because the SPCA wanted to recoup the money they say she owed them for taking care of the animals and she could not afford it. She maintained that she did not own the horses; rather, she sued to get them back in Supreme Court in her name because the documents of seizure named her, even though they were not her horses. She did not know she could only make a claim for only some of the animals, not all of them. She was asked why she bothered if the horses were not hers and she replied because she still cared about them. Further, she stated she did not like the SPCA. She advised that, in her view, they did a lot of illegal things, including "hide evidence," "plant stuff" and she had seen it done. It was never specifically suggested to any of the SPCA officers that they had hid or planted evidence in this case. On the day the SPCA arrived at her property, she said she was out with Mr. Stevenson purchasing food for the horses.

[20] Ms. Chrysler testified that the water on the 16th Avenue property was trucked in and there was clean water in a water container on the property. She testified the water depicted in the photos that appeared green and murky did not look like that earlier. I find that Ms. Chrysler was suggesting that the SPCA officers must have mixed it up to make it look the way it did in those pictures.

[21] Ozzie, the horse, only arrived one week before the SPCA seized him. He came from Mr. Stevenson's because he was a bone rack. She testified he was in rough shape. She had seen him at the 184th property too because she had picked her

daughter up from this location and took her to and from school. She testified that she tried to pump food into Ozzie. She was out buying food when the SPCA arrived at her property. She was asked who was responsible for the horses and she testified that she told Tim Stevenson she would look after him. She said the horses were a mess and Mr. Stevenson said he was not aware of their condition, as he believed "Vince" had been taking care of them. She did not notice how bad the horses' feet were because they were in the mud. She felt that she was taking the blame for someone else's mess. She said she did not create the mess nor let it get to that extent.

[22] In cross-examination, she acknowledged that horses like to have dry feet and she knew it was important to trim the horses' hooves every six to eight weeks. She testified she provided care for the animals and had only failed to empty the cat litter box on the morning of March 14th, 2009, as she was going to get food for the horses. Tim Stevenson paid for the horses' food. She did not pay rent to him. She bought dog food and cat food and paid for the legal bills to sue the SPCA for the return of the animals. She was prepared to acknowledge that only Ozzie was in poor body shape. She said the other four horses looked fat to her friends. They also looked worse in the trailer. She said for the six weeks she was on the property, she did not put the horses in the front paddocks because she was busy cleaning them out. She reiterated she was not the one who let the barn deteriorate to the condition it was in and she could do nothing about it because it was frozen solid for the six weeks she was there. In cross-examination, she also agreed she may have resided at the property for up to two months.

[23] All the boards that were depicted in the photos with exposed nails had been previously picked up by her and neatly stacked. She testified she did not know how they got into the condition where they were depicted in the photos, which reflected boards with exposed nails in the paddocks where the horses were standing in muddy fields. Again, it is unclear if Ms. Chrysler was suggesting that the SPCA officers had removed them from stacks and placed them in the fields.

[24] She did not blanket the horses nor were there any blankets on the property. She testified a vet had told her it was better not to blanket them and let them have the run in their shelters. In answer to a question from Crown counsel about thin horses being vulnerable to sickness and cold weather, she replied that she had taken horses much skinnier than Ozzie and saved them. She denied telling the SPCA officers that she was the owner of the animals on the 16th Avenue property but she did acknowledge that she singled out a cat and told them it was not hers even though she now says it is. She said she did this because she hoped that they would leave that cat behind. She agreed she lied to the SPCA about that cat.

[25] She described the ownership of the horses as follows. When she and Mr. Stevenson lived together, they referred to the horses as "ours" but she could not sell them and they were his horses. She denied that she had options to deal with the horses, as she testified she could not give them away. She tried to give them to "Mohammed" but Mr. Stevenson would not let her. She would not give them to the SPCA, as horses die in their custody; they euthanize them. She again acknowledged that when she sued the SPCA in the Supreme Court she represented in that action that she was the owner of the animals.

[26] Mr. Stevenson testified in these proceedings, too. He testified that he was renting the property on 16th Avenue and approximately six to eight weeks before the SPCA seized the horses, he put them on that property. Initially, he said a groom from the racetrack took care of them. He purchased vast quantities of food for the horses but it was going missing. He provided some care for the horses but "I had other people who provided care as well because I couldn't be there attending all the time." (Transcript Timothy Stevenson evidence January 25th, 2013, lines 10 through 12, page 3) He said that the groom moved out sometime in the winter; it was miserable weather. He was asked if it was cold and he answered, "Typical B.C. winter weather." When he discovered the groom had left, he moved a trailer onto the property and, "Ms. Chrysler took care of the animals or said she would." (Transcript Timothy Stevenson evidence January 25th, 2013, lines 10 to 11, page 4)

[27] He did not recall how long Ms. Chrysler was on the property except that when the person left, she took over. (Transcript Timothy Stevenson evidence January 25th, 2013, lines 21 through 22, page 4) In cross-examination, Mr. Stevenson was questioned about whether the turkeys on the property belonged to Ms. Chrysler. He answered that, "I wouldn't consider any animal being anybody's except for the person who's responsible for caretaking." (Transcript Timothy Stevenson evidence, January 25th, 2013, lines 14 through 16, page 8) Historically, at the 240th Street property, he testified Ms. Chrysler had some responsibility for helping with the animals.

[28] He was quite vague about how horses previously seized from him by the SPCA ended up back on the 16th Avenue property. He testified that a neighbour told him to go look at an empty lot and those were his horses. He was quite evasive and vague

about how he came to be in possession of those horses again. He also said he was, "counting on her care of the horses two months prior to their seizure." (Transcript Timothy Stevenson evidence January 25th, 2013, lines 38 to 39, page 15.) He also agreed with the suggestion that while Ms. Chrysler was residing on the property on 16th Avenue, it was her job to feed the horses and provide for good animal husbandry. (Transcript Timothy Stevenson evidence January 25th, 2013, lines 10 through 12, page 16)

[29] He also agreed that Ms. Chrysler had been involved in the care of horses since 1997 and had some involvement with the care of horses since then; however, he went out of his way to try to avoid saying that she was assisting in providing for the welfare of the horses. He became evasive answering a question with a question. For example, he said, "You're requiring 24 assistance for the animals? Is that what? Where they cannot be left alone at any point in time?" (Transcript Timothy Stevenson evidence January 25th, 2013, lines 26 to 28, page 18) In response to Crown counsel's question, "She was there to provide for their basic needs when you were not there?" he stated, "She provided assistance with their needs when I was not there."

[30] Mr. Stevenson was also somewhat evasive about whether horses needed to have dry feet, shelter and minerals. He said the minerals were in their food. Wet hooves were sometimes a good thing depending on whether you were promoting foot growth and animals did not need to be groomed every day. Further, he said you cannot stop horses from rolling in the mud.

[31] Special Cst. Morgan also testified about a conversation she had with Ms. Chrysler about the ownership of the animals on March 14th, 2009. She testified that when Ms. Chrysler came home, Ms. Chrysler told her that, on page 27, lines 20 through 38, she says:

My notes reflect that Darcy Chrysler identified herself to us as Darcy Chrysler. I will say is that my normal practice when I'm executing warrants in the past has been that I will not give information to somebody until they've identified themselves as a resident on the property and as a person who's responsible for those animals or you know has an interest in the animals. So either way, if Darcy Chrysler had not identified herself, I would not have given her a copy of the warrant and the Information to Obtain until I had verified that she lived on the property and was responsible for the animals. So I would have asked her if she had not provided the information prior to talking to her about anything else.

[32] Then the question was asked, page 34, lines 18 through 28:

Q And you're not sure if you would have asked or if she would have provided that information herself?

A I can't recall specifically if she provided it before I had the opportunity to ask or if I had asked but I do have -- I do know that she identified herself as the owner of all of the animals on the property and specifically mentioned that she'd only had Ozzie for one week and that -- and --

THE COURT: Sorry. You have to slow down here. I do know she identified herself as the owner...?

A As the owner of all the animals on the property but at the same time when she said that, indicated Ozzie had very recently been brought to the property approximately one week before and that he had been Timothy Stevenson's horse and that she had noticed he was losing weight on the 319 184th property and brought him to a property to put weight on him and that Timothy Stevenson had given her ownership of that horse.

V - Analysis:

[33] There is conflicting evidence in this case about whether Ms. Chrysler is the owner of the horses. Ms. Chrysler specifically denies that she ever advised Special Cst.

Morgan that she was the owner of the horses on the 16th Avenue property. Mr. Stevenson also disputes this evidence. When I consider Mr. Stevenson's evidence, I find that he was evasive about the degree to which Ms. Chrysler exercised control of the animals in his absence. Eventually, he acknowledged that she assisted him in their care; however, this contradicts his earlier evidence when he said Ms. Chrysler took care of the animals or said she would. He also testified he was counting on her care of the horses two months prior to their seizure. He also said, "I had other people providing care as well because I couldn't be there attending all the time." I find that on the whole of his evidence that he acknowledged that when he was not at the property, the person at the 16th Avenue property was in charge of taking care of the animals.

[34] Ms. Chrysler also said she was not responsible for the animals on the 16th Avenue property. In submissions, her counsel said she was simply present on the property. I find that even Ms. Chrysler's evidence was not consistent on this point. For example, she described the ownership of the horses as follows. When she and Mr. Stevenson lived together they referred to the horses as "ours" but she could not sell them, they were his horses. However, when she brought an action in Supreme Court, she referred to the animals as her own and represented to the court that she was the owner. Her answers in cross-examination to the apparent inconsistent position she was taking in these proceedings was that she did not know she could separate out the animals, dogs, cats and turkeys that were hers from the ones who were not hers.

[35] Earlier in her evidence, she testified that the horses were "Tim's" and some of the dogs and cats belonged to her. She said she only owned one horse, Devil Ray, and that the horse was 32 years old and died at Tim's property. Later in her evidence, she

referenced that when she returned home to her property on March 14th, 2009, when the SPCA were there loading horses on the trailer, she said she snapped pictures of them "loading my horses." She quickly explained that she misspoke but I do not accept that explanation as credible.

[36] At another place in her testimony, she was asked who was responsible for the horses and she testified that she told Mr. Stevenson that she would do it. She said that the horses were a mess and Mr. Stevenson said he was not aware of their condition, as he believed "Vince" had been taking care of them. I do not accept Ms. Chrysler's evidence where she attempts to portray herself as not being responsible for the animals on the 16th Avenue property. I do not accept her explanation that she did not know she could separate out the animals she was not the owner of in her civil proceedings she commenced against the SPCA in the BCSC.

[37] In applying the principles of *R. v. W.D.*(1991), 63 CCC (3d) 397 (SCC), I find that her evidence is unreliable where she says that she was not the owner or in any way responsible for the horses and, further, I am not left in a doubt by it. Further, I do not believe Mr. Stevenson's evidence raises a doubt on this issue either, as I do not believe him where he says she was not responsible for the animals at the 16th Avenue property. As I am entitled to do, I may accept some, all, or none of the evidence. I do accept Mr. Stevenson's evidence where he says that she was the person responsible for feeding the horses and taking care of them in his absence, that he depended on her to do that. I find that when she referred to the five horses on the 16th Avenue property as her horses, this was truly reflective of her belief in terms of the day-to-day care of the animals. The evidence of Mr. Stevenson that I specifically do accept about

responsibility for the animals also supports this finding as well. As noted above, he holds her out as a person who is at least assisting him in the care and maintenance of the horses.

[38] When I apply the legal tests set out in *Baker* and *Sudweeks*, I find on the whole of the evidence (and I pause to note that I do accept that the evidence of Special Cst. Morgan where she says that Ms. Chrysler identified herself as the person responsible for the horses is credible) that Ms. Chrysler had possession of and responsibility for the animals without the consent of the owner. Further, I find that she exercised control of the horses with the permission of the actual registered owner, Mr. Stevenson, and thereby took on the duties and responsibilities of the horses regardless of whether she had the right to sell the horses. Accordingly, I find that she is a person responsible in the broader definition of that term, as defined in s. 1(3) of the PCA.

Issue 2: Were the horses at the 16th Avenue property in distress?

[39] A veterinarian, Dr. Steinebach, testified and I qualified him as an expert in the area of equine medicine and husbandry. He had been qualified 18 times as an expert in this area in Provincial Court.

[40] On March 14th, 2009, he attended to the 16th Avenue property in Surrey, along with SPCA Special Constables Levine, Morgan and Hamel. The weather was five degrees Celsius; it was cold, sleety and he described it as a typical March day. He made observations of the property including the outbuildings and animals present there. His initial observations were that the horses could access the barn, that the barn had a heavy manure pack in it. There was some hay but it was not accessible. There was

one horse in the barn and it was covered in mud and there were four other horses in the field. The food for the horses in the barn was laid out over the manure. He testified that this was not a desirable way for any horse to eat. It was counterintuitive to find food amongst excrement. Later on, he made a similar observation for the condition the two dogs were living in, in the pen on the outside where their kibble was sprinkled among feces and manure. The other horses located in the field, in his opinion, could not come into the barn easily because the entrance to the barn was in a deep bog and had standing water in it. In his opinion, horses avoid getting their feet submerged in this mud. They do not like getting their feet caked with dirt and mud. The mud in front of the barn was over the top of his gumboot, which he testified was at least one foot high. It had a brownish tinge to it and he testified it looked like there was liquefied manure in it.

[41] He noted that many of the wooden surfaces, including fence rails, were chewed. Dr. Steinebach observed that horses chew on wood surfaces for two reasons: one, boredom, or, two, due to what he called as pica, which results from them lacking something in their diet, perhaps calcium or a mineral imbalance. There was no evidence of available food in the paddocks the horses were in and the paddocks where there was grass was unavailable to them and also did not appear to be in use. Dr. Steinebach concluded that these horses were not bored because their environment was very challenging, so in his opinion the evidence of chewing on the wood resulted from a lack of food and minerals in their diet. He testified that eating wood was not good for horses; it could result in short and long-term health problems for horses, including digestive ailments and wood fibre in their digestive tract, which he testified was

undesirable and not healthy. There was no visible active source of clean, fresh water accessible to the horses. Dr. Steinebach saw two containers of water that were available to horses in the paddock. Both of these, he testified, were contaminated as they were filled with algae. He described them as green, slimy, turbid water that was not potable. Ms. Chrysler said there was also another container of water closer to the barn but this, he testified, was not accessible to the horses in the field. She also testified she took buckets of water out two times daily but when SPCA officers and Dr. Steinebach were present, the horses were observed to be drinking standing water in the fields, contaminated with urine and feces in that field. Dr. Steinebach said horses do not drink this type of water typically. He concluded this was an unacceptable way to supply water to horses. He also did not believe that a tanker truck would be able to access the muddy paddocks based on how much mud was present at the time.

[42] He made observations of pieces of board with protruding nails in them present in the horses' paddock. Dr. Steinebach observed that if the horses stepped on these boards and the nails punctured their hooves, it could strike the base which would result in injury to them. He also detected barbed wire, which was a hazard. The presence of these hazards was potentially harmful to the horses, and were present in areas where the horses were located and would be walking amongst them. As I noted previously, these were among the features that he noted were challenging in the environment that these horses lived in and consequently assisted him in reaching the earlier conclusion I noted, that these horses would not be suffering from boredom. Ms. Chrysler stated she had spent time stacking these boards earlier and did not know how they came to be in the field. It is not clear to me if she was intimating that somehow they had been

sprinkled there or placed there by others, including SPCA officers, and there was no suggestion ever made to any of the officers or Dr. Steinebach that that had occurred while they were present. In any case, I do not draw that inference and find that the boards photographed were in the locations that Dr. Steinebach and Cst. Morgan and other SPCA officers noted when they made observations of the boards in the paddocks.

[43] Dr. Steinebach made visual observations of the horses. He applied a body condition scale to assess the body condition of the horses on the property. The scale was a nine-point scale. A horse of 1, he testified, would be utterly emaciated. It would have no fat stores present, visible ribs, hips and spinal column and nearly anything would be life-threatening, including extra cold weather, as it would make the horse increasingly susceptible to pathogens and he said it could potentially be killed just by the weather, given its weakened state. On the other end of the scale was a 9, which he described as being morbidly obese. He said an ideal score would be 4.5 out of 9.

[44] Dr. Steinebach examined Ozzie and concluded that he was a 1 out of 9. He based that on his observations that Ozzie was emaciated, his coat was covered in mud and feces, his lower limbs were wet with mud, his hoof wall was cracked on the left hoof. He had no fuzzy undercoat. There were no blankets, no shelter, no fresh water, no observation of readily available food. In Dr. Steinebach's opinion, "This horse did not have an extensive time to live." He said, "There was nothing in this horse's environment that would enhance his health."

[45] He also assessed the other four horses and concluded the following. Sassy was a 2.5 out of 9. She was underweight and had no blanket. Katie was a 1½ out of 9: no

blanket, one large full thick cut on her hoof. Bronco was a 2 out of 9. He noted this horse was covered in mud and feces, exceedingly itchy, tail filled with burrs, no blanket. He could not examine the horse further due to the mud and feces on the hair. Pigeon was a 2 out of 9: no blanket, no suitable shelter, absence of food or potable water.

[46] He also made observations of other animals on the property. There were dogs in the pen that were covered in excrement. Their food was placed in excrement. The turkeys' pen had no light, no potable water and the pen appeared to be covered in feces. He observed that turkeys are not nocturnal animals. The dogs and cats were located in a trailer.

[47] Dr. Steinebach concluded that there was poor animal husbandry practice for all the animals and there were deficiencies everywhere he looked on the property. With respect to the horses, he said there was no shelter and no blankets. The horses were already stressed and there would be increased stress when they had to battle the elements, given that it was wintertime and they would have a need for increased calorie requirements to stay warm because they had little or no body fat, no undercoat and no fat stores.

[48] The evidence of Ms. Chrysler and Mr. Stevenson does not contradict the observations of Dr. Steinebach in any material way with the exception of the location of the water container on the property and that the horses did not have direct access to that water container. Ms. Chrysler's contention is that the boards had been neatly stacked and she did not know how they came to be in the field again.

[49] I accept Dr. Steinebach's evidence about the overall condition of the property and the horses and the other animals he observed on the property.

[50] The farrier was not called. There were admissions with respect to her evidence. She said that there were serious problems with the horses' hooves. Katie had overgrown hooves. It had been a long time since she had received hoof care, unevenly worn hooves, which could cause stress on a horse's joints. There was a thrush infection in one of the frogs of her hooves. There was a white line infection in three-quarters of the hooves, which, if untreated, could cause soreness and lameness. Sassy had overgrown hooves, thrush infection in the frogs of all four hooves, very bad white line infection on one hoof. Bronco had unevenly worn hooves, thrush infection in frog tissue and thin, peeling hoof walls. Ozzie's hooves were worn unevenly, serious thrush infection in frog tissues and thin, peeling hooves. Pigeon had overgrown and uneven hooves, a crack in the left front hoof and fungus in the crack, and thrush infection in the frogs. For all of the horses, the farrier recommended treatment, including trimming hooves and keeping hooves dry and out of the mud as much as possible and an application of anti-thrush medication.

[51] I accept the evidence of Dr. Steinebach and the farrier and conclude, on the basis of their evidence, which is not seriously disputed by any of the evidence, including the evidence of Ms. Chrysler, that the overall condition of the property was terrible. The constellation of factors present in the 16th Avenue property, including the poor physical environment, the dirty barn that had not been mucked out in a long time, the presence of liquid and dry manure in the stalls, the bog-like entrance to the barn, the absence of straw and woodchips in the stalls, the absence of any quantity of food, no evidence of

mineral substances, including salt licks, heavily chewed wood surfaces, difficult and muddy access to the barn, an absence of fresh water source in the paddocks, an absence of a grass source in the paddocks that the horses had access to, an absence of available shelter in the paddocks, no blankets for the thin, undernourished horses and the paddocks in use were boggy and had derelict fencing and a presence of hazards, including boards with exposed nails, some barbed wire and large quantity of fresh manure strewn about and poor body condition of the horses and poor hoof condition, support this conclusion.

[52] When I consider the constellation of the factors present, the evidence of Dr. Steinebach, which I accept and not materially contradicted, and the evidence of the farrier, and I consider the definition set out in s. 1(2) of the PCA, I find that all of the five horses on the 16th Avenue property were animals in distress, pursuant to s. 1(2) of the PCA.

Issue 3: Section 24(2) does not apply

[53] No submissions were made that the practices engaged in were within the generally accepted principles of accepted animal husbandry.

Issue 4: Did Ms. Chrysler cause or continue to permit the animals to be in distress?

[54] Ms. Chrysler, in her evidence, acknowledged that she had been at the property as of March 14th, 2009; a period no longer than two months. Initially, she said it was less and was certain she arrived after Christmas. Accordingly, I find as a fact she was at that property for a period of six weeks to two months. She also testified Ozzie arrived

one week previously to March 14th, 2009. I find his poor body condition would have been obvious to her at that time and accept that that is the date that he would have arrived. She also testified that she would not contact the SPCA to help her with the horses - to take them. It was clear from her testimony that she was hostile towards the SPCA. She did acknowledge she could have called other animal charities to help with the horses, although she maintained she could not give them away, as Tim Stevenson had legal title to them. She said she had tried to give two of the horses away and Tim would not let her. This concern about legal title was not something that seemed to trouble her when she represented herself as the owner in the Supreme Court proceedings when she was suing the SPCA to have the animals returned to her. On the basis of her evidence about her stay at the property, coupled with Dr. Steinebach's evidence that it would take at least six weeks to change the animals' body condition positively, I do not find that the Crown has established that she caused the distress in the animals in the first place, as their poor body condition would have developed over time, before the time that I found she was a person responsible for them at the property.

[55] However, I must go on to consider whether her actions for the six weeks to two months she was the person responsible for the animals, permitted the animals to continue to be in distress. She testified she was not the owner of the animals but on all of the evidence I have heard, and accept, I find that she was at least a person responsible for them. I also find that Mr. Stevenson accepted that she was also a person responsible for the horses, as evidenced by his comments, "I had other people providing care for them (meaning the horses) because I couldn't be there attending to them all the time. And after the groom left the property, he moved a trailer on the

property so Ms. Chrysler could take care of the animals or said that she would." The condition of the horses' bodies was evident in the pictures and I find that Ms. Chrysler's efforts to characterize that during the six to eight weeks she had been there the weather was continually below zero is not believable. I do not accept her evidence on that point, that the property would have been frozen solid for that entire period of time. Mr. Stevenson also contradicts this evidence, as he describes the winter as being "typical B.C. winter weather" and not one where the temperatures were constantly below zero. Also, Dr. Steinebach testified that the area outside the barn was boggy and was in approximately one foot of sludge that came up to the top of his boots and if there had been a permafrost for two months it would have taken much longer than that for the bog to be in that situation.

[56] When I consider the constellation of factors observed by Dr. Steinebach about the condition of the horses, together with the condition of the fields, the barn and the absence of fresh running water or available water source, I find that I am satisfied beyond a reasonable doubt that, for the period of the six to eight weeks when Ms. Chrysler was the person responsible for the horses, she permitted the horses to continue to be in distress. I am also satisfied beyond a reasonable doubt that she was a person responsible for the horses found and seized at the 16th Avenue property. I am satisfied beyond a reasonable doubt that the horses were in distress. I am satisfied beyond a reasonable doubt that she caused or permitted them to be in distress.

Issue 5: Did Ms. Chrysler exercise due diligence in alleviating or attempting to alleviate the distress on the animals?

[57] She testified when she was taking water to the horses in the morning and the evening but there was no other fresh supply of water for the horses and consequently they were forced to consume, during the daytime, either the water in the container that was not potable, or the dirty water on the ground in the paddocks that they occupied. That water was noted by Dr. Steinebach to be brown in colour and amongst feces and urine. The weather was cold, the horses were noticeably underweight, and they were not given access to shelter during the day. They stood in a rainy, muddy field and the access to the barn was through a boggy, muddy ground; there were loose boards present in the paddocks they occupied with visible nails protruding from them, together with wire from the downed barbed-wire fences and wooden boards had evidence of being freshly chewed; there was an absence of food present for the horses to graze on in their paddocks when the SPCA arrived on March 14th and while the paddocks up front were grassy and could have been used, I find that they had not recently been used on the basis of all the evidence I have heard and accept. Given the body condition of the animals, I also infer that there was no ready food source in the paddocks that these horses occupied daily, as they were still very thin. I also find that the absence of blankets or available shelter contributed to their inability to defeat their thin body size. As Dr. Steinebach testified that, while blanketing is not necessary, it is very helpful, particularly with horses with thin body weights who do not have sufficient undercoats and access to shelter who will otherwise burn excessive calories to keep warm.

[58] The condition of the other animals is relevant, too, as Ms. Chrysler testified she was making efforts to change the circumstances in the animals at the 16th Avenue property. The dog pen was a mess. It was dirty, there was insufficient clean water and

the food there was sprinkled on top of feces. The ground was covered in mud and feces. Several of the dogs had infections. The turkey pen was also filthy, covered in excrement and had no readily available source of light. The litter box in the trailer was observed as being full. Ms. Chrysler testified she was making efforts to clean up the property or doing her best; however, I do not accept that evidence on the basis of the overwhelming physical evidence to the contrary, which I do accept, which includes the condition of the barn, the condition of the other animals, which would have been easier to remedy, given the smaller scale.

[59] She was also clearly continuing to permit the ongoing neglect of the horses, as she was the person responsible for them for the six weeks to two months for the four horses that were present there and for Ozzie for the last week when he was there. When asked what else she could have done, she said she was not able to give the horses away. She tried to give two of the horses to "Mohammed" but Mr. Stevenson did not permit that to occur. She said that she would not call the SPCA; she did not like them, animals die in their care. I find that she had a clear animus toward the SPCA and would not call them. She did acknowledge there were other animal charity care centres who may have taken them but she did not call them. I have reviewed all of the evidence of the special constables in detail in this case and I accept their evidence, pursuant to *W.D.*, and reject Ms. Chrysler's evidence in the portions where I have noted earlier in my judgment and also rejected portions of Mr. Stevenson's evidence that I noted earlier in my judgment on the basis that I have described earlier that I did not find them credible, that some of the explanations I identified earlier of Mr. Stevenson's own evidence contradicted, as did Ms. Chrysler's own evidence internally contradict. On the

portions that I have identified, I rejected those dealing with her evidence where she said she was not a person responsible for the animals.

[60] On the whole of the evidence I do accept, which is the evidence of Dr. Steinebach and the observations of the SPCA special constable and some of the evidence of Ms. Chrysler that I have indicated with respect to control of the animals and Mr. Stevenson in places where I have also indicated, that Ms. Chrysler permitted the animals to continue to be in distress while she was a person responsible for them and that she had a legal duty to properly care for them, which she was not doing, nor did she arrange for someone to care for them, or make any arrangements for that, which I find she was obliged to do.

[61] In all of the circumstances, I find she failed to exercise the appropriate diligence in remedying the negligent situation the horses were kept in and continued to permit them to be in distress by refusing to or neglecting to contact the SPCA or any other caregiver to provide care for the horses, which she could not or would not do and, therefore, did not exercise due diligence.

[62] Accordingly, I find the Crown has established beyond a reasonable doubt that Ms. Chrysler is guilty on Count 1 of the Information.

(REASONS FOR JUDGMENT CONCLUDED)