

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

XIN YING ZHOU

**ORAL REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE D. WEATHERLY**

COPY

Crown Counsel:

K. Johnston

Counsel for the Accused:

C. Shen

Place of Hearing:

Surrey, B.C.

Date of Judgment:

May 9, 2018

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[1] THE COURT: Ms. Zhou is charged on Information number 218548-1 with the following charge:

Count 1: That she, between the 6th and 18th days of February, 2016, at or near 19423 Colebrook Road, in the City of Surrey, in the Province of British Columbia, being a person responsible for animals, to wit: dogs and cats, did cause or permit the animals to be or to continue to be in distress, in violation of Section 9.1(2) of the *Prevention of Cruelty to Animals Act* and did thereby commit an offence contrary to Section 24(1) of the *Prevention of Cruelty to Animals Act*.

[2] The issues for this court are as follows:

1. Is Ms. Zhou the person responsible for the dogs and cats seized on the Colebrook Road property on February 16th, 2016;
2. Were any of the dogs and/or cats seized in distress;
3. If any of the dogs and/or cats were in distress, does s. 24.02 of the *Prevention of Cruelty to Animals Act* (hereinafter referred to as the Act) apply;
4. If any of the dogs and/or cats were in distress, did Ms. Zhou cause or permit them to or continue to be in distress;
5. Did Ms. Zhou exercise due diligence in alleviating or attempting to alleviate the distress?

[3] Ms. Zhou is presumed to be innocent and the onus is on the Crown to prove beyond a reasonable doubt that she is guilty of this charge. Ms. Zhou also had the right to remain silent but she chose to give evidence herself on her behalf.

[4] The Crown called seven witnesses: Christine Lewis, Nicole Moreau, Lee Ann Thomson, Kimberly Monteith, Dr. Kanwardeep Brar, Dr. Emilia Gordon and Dr. Adrian Walton.

[5] I turn now to the evidence of Christine Lewis. Ms. Lewis is employed by the SPCA.

[6] In February of 2015, Ms. Lewis commenced working for the SPCA as a Special Provincial Constable, which she said was an animal protection officer. She said that on February 16, 2016, she was involved in executing a search warrant at 19423 Colebrook Road in Surrey, B.C. (hereinafter referred to as the Colebrook Road property).

[7] I pause to note that no issue was taken with the search warrant by Ms. Zhou.

[8] Ms. Lewis said that she had been to the same property on January 31st, 2016, as she had been asked to attend with a Bylaw and Animal Control Officer with the City of Surrey, pertaining to an application for a kennel license for that property. She said that she was there to make sure that there were no animals in distress there.

[9] She said that on January 31st, they entered the property and went to an outbuilding, which may have been an old barn retrofitted to be a cat area (hereinafter referred to as the cat barn). She said that it had eight rooms with four on each side of the hallway. She said that there was a ceiling and a heater with an

open flame and the hallway was hot but the rooms were cold and the bedding damp.

[10] THE INTERPRETER: Your Honour, could you please slow down a little bit?

[11] THE COURT: Yes, sorry

[12] She said that there was a strong smell of urine and feces and a chemical cleanser.

[13] She said that the cats had discharge coming from their eyes and noses and they were sneezing and shaking their heads. She said that she has no veterinary training but that the symptoms which she observed were typical with a cat that had a respiratory infection. She said that Ms. Zhou had some eye ointment present and, as they pointed out cats to her, she would apply ointment to the cat's eyes with her finger and then repeat it with another cat without first washing her hand. In cross-examination, she agreed that it was possible that Ms. Zhou used a hand sanitizer in between putting the eye ointment on the cats.

[14] Ms. Lewis could not recall if she made any recommendations that day to Ms. Zhou about the animals seeing a vet.

[15] She said that there was another outbuilding that housed two dogs.

[16] Ms. Lewis identified in court the person she referred to and knew as Ivy Zhou as being present at the property. She said that Ms. Zhou appeared to understand some English and that she had a translator on a speakerphone. In cross-

examination, Ms. Lewis said that she did not know who Ms. Zhou had on the phone or what was being said in Mandarin. Ms. Lewis said that they do not have officers that speak other languages and they rely on their phones for that purpose.

[17] Ms. Lewis said that on February 16th, 2016, when they executed the search warrant that Cst. Thomson was the lead investigator and they also had the police accompany them. She said that Ms. Zhou was advised of the search warrant and subsequently she was on the phone with someone who was translating. She said that there was also an older male present.

[18] She said the house appeared to be a normal lived-in house and that it was not messy.

[19] She said there was a Chihuahua dog in the back bedroom. She said they could hear multiple dogs barking and, subsequently, they used a ladder to access the attic area of the house.

[20] She said that the attic had no natural light and was pitch black but they found a flood lamp and turned it on. She said that where you first come into the attic, there was some laminate with kennels on it and that there was fibreglass insulation throughout. She said that in one kennel was a mother cat and kittens. She said that in another kennel was a Pomeranian with one or two puppies. She said the smell of urine was present.

[21] She said that there were five loose cats walking in the insulation and another cat was curled in a ball and not moving on the insulation. She said that she

grabbed that cat and saw that its eyes and nose had discharge and that there was some hair loss.

[22] She said they had a vet with them and, if they had a concern about an animal, he would examine the animal. She said that the vet had come into the attic as well and he began examining the cat. In cross-examination, she agreed that she did not know why the animals were in the attic, how they got there or how long they were in the attic for.

[23] She said after they had gone through the rest of the house, they went to the outbuildings.

[24] She said that in the cat barn there was no heater on, on this occasion. She said that all of the rooms in this barn had a strong smell of urine and feces and a chemical. She said that the bedding was damp. She said that there were upwards of 20 cats here and all of the cats had eye and nasal discharge and were sneezing. She said that her main concern was with respect to their breathing, as it was a pretty big cause of distress for them. In cross-examination, she agreed that their bodies looked okay but she added that she did not examine each one.

[25] She said that next to the cat barn there was a covered area that had access to another barn. She said that there were four dogs in this "in and out area" and four more dogs in the other barn.

[26] She said the barns were dark and damp with the smell of urine in some of the kennel areas. She agreed that the outbuildings could have had work being done on them.

[27] That concluded her evidence.

[28] The next witness for the Crown was Nicole Moreau.

[29] Ms. Moreau is an Animal Control Officer for the City of Surrey and has been for nine years.

[30] Ms. Moreau said that a City of Surrey bylaw restricts the number of dogs per property to two dogs unless a kennel license has been issued. She said that there is no restriction on the number of cats that a property may have.

[31] Ms. Moreau said she attended at the Colebrook Road property on seven or eight occasions.

[32] She believed her first attendance there to be on December 28th, 2015, in response to a complaint of too many dogs on the property. She believed that she observed 29 dogs on the property that day in two barns. She said there was no water present and there were dirty blankets on the floor and it was cold and dark inside the building.

[33] After speaking with her manager, she impounded the dogs. She said that there was some ID on some of the dogs and she contacted these people to come

and get the dogs. She said some of the dogs were picked up and the rest were taken to the Surrey Animal Resource Centre.

[34] She said that "Ivy", who she subsequently identified as the accused, was not on the property when she was there but she said that there was an older Asian male and an Asian female there, as well as a young boy there named "Tony", who she thought was eight or nine years old. She agreed that she thought Tony was going to tell Ms. Zhou that she had to apply for a license. She also agreed that Ms. Zhou applied for a kennel license soon after that date.

[35] She said that she next attended the property on January 31st, 2016, to do a site inspection and to speak to Ms. Zhou. She said that she attended on that date with the bylaw officer, as it is the bylaw officer that grants the kennel license. She said on that date she observed two dogs, both puppies. She said that she could hear several other dogs barking but she did not see them, as they were located in an outbuilding.

[36] She said that on January 31st, the cat barn was "not decent, but not really bad". She agreed that there was food and water present in each stall. She said there was a total of 34 cats and that eight of them appeared sick.

[37] She said she spoke with Ivy and while there was no interpreter present, she could understand Ivy and hold a conversation with her. She said that she went over the bylaw with her. She estimated that she spoke with Ms. Zhou nine or 10 times and on each occasion she spoke to her for a couple of minutes, for a total of

approximately 20 minutes. She said that, on some occasions, Ms. Zhou called a lady on the phone to translate for her.

[38] She said that she attended on February 16th, 2016, with the SPCA to assist with the execution of the search warrant. She said there was approximately five employees of the SPCA present, as well as two police officers and a vet.

[39] She said she believed they found 13 dogs in various locations. She said that in the attic, they found a mother cat with kittens in a box. She said in the attic, they also found two cages, one with a cat and dog and another with a dog and puppies. She said that the conditions were horrible in the attic. She said it was very hot in the attic and there was an awful smell of urine and feces. In cross-examination, she agreed that she could not say how long the animals had been in the attic or how or why they came to be there. She said based on her observations, these animals were sick.

[40] She said the rest of the dogs were found in an outbuilding or in a rocky play area. She said that the outbuildings was extremely dirty with no light, no clean water or food and with a strong smell of urine and feces. She said that they got the dogs out and the vet examined each dog and they then went to the SPCA facility.

[41] She said they found a whole bunch of cats in the cat barn. She said there were several rooms in the cat barn and she estimated that there were six to eight cats per room. She said that a lot of these cats appeared unhealthy, with eyes and

noses running and some were shaking their heads. She thought the total number of cats was 69.

[42] She said that in the residence, they found a mother cat with kittens in the laundry room and another loose cat. She said there was also a dog in a crate in the bath tub and another loose dog under the bed.

[43] She could not say whether or not the outbuildings were still under construction.

[44] That concluded her evidence.

[45] The next witness for the Crown was Lee Ann Thomson.

[46] At the time of these events, Ms. Thomson was a Special Provincial Constable with the SPCA and was the lead investigator in this matter. She is currently an auxiliary Special Provincial Constable with the SPCA.

[47] She testified that she first met Ms. Zhou in 2012 pertaining to a complaint at 10999 Partridge Crescent in Surrey, B.C. (hereinafter referred to as the Partridge Crescent property).

[48] She said that on November 27th, 2015, they received a complaint of an animal in distress with respect to the Colebrook Road property. She said on November 30th, she went to the Colebrook Road residence and that Ms. Zhou was there, as well as 15 or 16 dogs. She said that she issued some SPCA orders on

that date to Ms. Zhou. She said that Ms. Zhou phoned a friend, whom she believed was named Lily, and her friend translated for her.

[49] Ms. Thomson said that on January 13th, 2016, she brought a vet to both the Partridge Crescent property and to the Colebrook Road property and had the vet examine the animals at both properties. She said there were close to 30 cats at the Partridge Crescent property. Ms. Thomson said she brought with her a staff member from the provincial SPCA office who spoke Mandarin, whose last name was Lu, to translate. She said at the time a friend of Ms. Zhou, whom she thought was named "Wilson", was present and he also translated. Ms. Thomson said she issued further SPCA orders on that date to Ms. Zhou and she reviewed them with her and she believed they were translated for her by Ms. Lu and by Wilson.

[50] Ms. Thomson explained to the Court the specifics of the orders which sets out a number of things, including certain steps that Ms. Zhou must take with respect to some of the animals, such as having a vet provide a plan for dealing with upper respiratory infection and the proper use of eye drops for the cats.

[51] Ms. Thomson said that on February 16th, 2016, she executed the search warrant at the Colebrook Road property. A video taken at the time the search warrant was executed was marked as an exhibit and played for the court. Ms. Thomson explained and noted a number of observations made at the time recorded on the video including that the property was a large farm property with outbuildings; that there were animal feces throughout the house, some of which were smeared into the carpet; that a dog and some cats were found in the attic; that the cat barn

had eight rooms with cats in each room. Some of these cats were in cages and some were loose in the rooms. There were approximately five or six cats per room. The floors and some walls were made of particle board. All the rooms had food and water and litter box and cages. There was a strong smell of chemical; the cats had eye and nose discharge and there was sneezing in every cat room, although she could not say how many of the cats were sneezing; some of the video shows cats with ocular discharge and another with a cat which had one eye sealed shut; the front room to the cat facility had a lot of medications and supplements, some with no labels and some with no written English on them; in one dog area there was moldy dog feces but here were no dogs found in this area; there was a rusty nail found on the floor in an area where the dogs were found in between two out buildings; and, some of the dogs had ringworm.

[52] Ms. Thomson said that they seized a total of 69 cats and 15 or 16 dogs. She said that the vet, Dr. Walton, examined all of the animals at the property and at the Surrey SPCA. She was present for most of the examinations.

[53] In cross-examination, Ms. Thomson said that when they knocked on the door to execute the warrant, they were all speaking English. She agreed that Ms. Zhou spoke Mandarin and broken English. She confirmed that on a prior occasion when dealing with Ms. Zhou, she brought Ms. Lu with her to interpret, although she is not a qualified translator.

[54] Ms. Thomson said that a van that can be seen in the video belonged to Ms. Zhou but she could not say if it had construction material in it.

[55] Ms. Thomson agreed that in the cat barn some of the cage doors were open and she agreed that she could not say how long the cats that were found in cages had been in those cages. She agreed that the rooms had some ventilation present and agreed that it could be for heat. She agreed that most areas shown in the video had lots of windows and were fairly bright. She was unsure if the outbuildings were still under construction.

[56] In further cross-examination, Ms. Thomson confirmed that the SPCA has a working relationship with the City of Surrey.

[57] Ms. Thomson agreed that while the procedure varies depending on the circumstances, generally orders are issued with a timeline and, if the requirements of the order are not met by the date on the timeline, legal action can be taken. She said that it is written on the order that failure to comply may result in legal action being taken. She said that this was the procedure that took place with respect to Ms. Zhou.

[58] Ms. Thomson confirmed that the notices she issued to Ms. Zhou were in English and, other than the one occasion when Ms. Lo was present, that all other communication with her was in English. She said that she did not know what the quality of the translation that was provided by Ms. Lo or Ms. Zhou's friend was.

[59] She disagreed that at the time the search warrant was executed that the sick animals were being adequately treated and said she said that all the seized animals were in distress due to lack of adequate veterinarian care.

[60] She denied that the SPCA had told or pressured Dr. Brar not to treat Ms. Zhou's animals.

[61] She denied hearing that officials from the City of Surrey had threatened to kick Ms. Zhou out of Surrey or out of Canada.

[62] That concluded her evidence.

[63] The next witness for the Crown was Kimberly Monteith.

[64] Ms. Monteith is employed by the SPCA and she is Manager of Behaviour and Welfare. She said that she trains staff and volunteers on animal care and welfare and how to recognize when an animal is in emotional stress and when it should see a vet. She also helps out at the shelters.

[65] She attended at the Colebrook Road property on February 16th, 2016, when the search warrant was executed. She said that she helped remove the animals and looked at them so she could plan as to where the animals would go.

[66] She said that she went into the house and, in a small furnace room that had no windows or air circulation, found two adult cats and some kittens. She said the room had the smell of urine and that the cats were fearful.

[67] She said that she went into the attic, which had no windows and was dark. She said they managed to get a light turned on in the attic. She said that part of the attic had linoleum on it and the rest was four or five rows of insulation. She said that she found a kennel with a dog and two puppies in it, another kennel with a dog

and a cat in it, another kennel with a cat and some kittens in it and a crate with cats and some kittens. She said there were also some loose cats walking around and that one cat, which was quite sick, was laying on the insulation. She said the attic was hot and it smelled of animals and she had no recollection of seeing food or water bowls.

[68] She said she went into the cat barn which had eight rooms, four to a side.

She said that there were cats in each room and the cats were hiding and would not approach them.

[69] She said she went to the dog barn and there was no light in it and no bedding and there were feces in the back of the barn.

[70] In cross-examination, she agreed that she had no idea how long the animals in the furnace room and the attic were there for, or why they were there or how they got there. She agreed that the attic did not look like the type of place where one would keep an animal long-term.

[71] That concluded her evidence.

[72] The next witness for the Crown was Dr. Kanwardeep Brar.

[73] He has been licensed and practicing as a veterinarian since November of 2012.

[74] He was qualified as an expert in the field of small animal veterinary medicine and, in particular, the areas of diagnosis and treatment of cats and dogs and was allowed to give opinion evidence in those areas.

[75] Dr. Brar said the clinic he works at has four vets and that they see 30 to 40 pets a day. He said that they see mostly cats.

[76] He said that he met Ivy Zhou in April 2015, when she first came into the clinic where he works. He said that from then until January 17th, 2016, he saw her sometimes two to three times a week and sometimes not for two to three weeks. He estimated that she made approximately 80 visits to the clinic during this time period.

[77] He said that there was a communication barrier with Ms. Zhou. He said that they had employees at the clinic that were fluent in Mandarin. He said that he would speak to Ms. Zhou in English and that, in most cases, she understood, but she would answer him in Mandarin and his employee would translate. He said that when an animal she brought in had a sickness, they would use a translator.

[78] He said that Ms. Zhou sometimes brought in dogs but mostly she brought in cats. He said that she brought in cats for preventative things such as vaccinations.

[79] She said that the symptoms the cats often had that she came in with were eye and nasal discharge, eye infections, ringworm and skin problems.

[80] Dr. Brar said that he was familiar with SPCA orders. He said the orders have a timeframe set out on them and that, in some cases, the orders would set out the problem they found. In most cases, they had the names of the animal on the order. He said that Ivy came into the clinic with SPCA orders maybe four to five times.

[81] He said that when she came into the clinic with the orders that they would go through the orders with her. He said that he would call the SPCA officers to see the issues they found and that he would do a full physical on the animals. He said that afterwards they would send their records to the SPCA or call them.

[82] He said that conjunctivitis is redness in the eyes with a green or yellow discharge from the eyes, accompanied by sneezing. He said that it is like a sinus infection and that when too many cats are together sharing a small environment and that they stress and the bacteria and virus that exists normally on cats flares up and causes this condition. He said that a cat would be a little bit stressed and discomforted by it. He said that in some cases it can lead to asthma. He said if the cat is taken out of that environment, the condition goes away. He also said that it can take 10 days to two weeks to treat.

[83] Dr. Brar said that ringworm is a fungal disease which causes a loss of hair and circular lesions on the body. He said when you have lots of cats living together in a humid environment without much sunshine, they get ringworm. He also said that it can be caused by stress. He said it was very common to find ringworm among kittens.

[84] He said ringworm is treated by placing the cat on medication for one to two months. He said it was important to segregate the cats. He said that ringworm can be transferred from cats to humans and from cats to dogs and vice versa.

[85] He said 50 percent of the cats with untreated ringworm will have the ringworm go away on its own if they are kittens. However, he said the other 50 percent will lose hair all over their bodies and it will become quite itchy and the cat will become quite distressed by it.

[86] He said that some of the cats that Ms. Zhou brought in had ringworm and he estimated that it was perhaps five or six of her cats that had ringworm. He said he provided her with medication and explained to her the management part of the treatment to her through a staff member that was interpreting.

[87] In cross-examination, he agreed that there were just these two categories of sickness with Ms. Zhou's animals, the breathing problem and the ringworm.

[88] He said that in 2015, he went to her residence at the Partridge property on one occasion to look at her facility.

[89] He said that on January 7th, 2016, he went to a different residence which she had moved into, which I am satisfied is the Colebrook Road property. He said the cats there were in big spacious rooms and they were free to move about. He estimated that there were four to five cats per room. He said the environment at this location was better than her previous location because it had bigger spaces for the cats to run around and it had windows allowing in daylight.

[90] He said he found no major issues. He said that he found cats with eye discharge and sneezing and skin issues and upper respiratory tract issues.

[91] He said they threw out the expired medications and they provided Ms. Zhou with some medications and eye drops that they had brought along and that she came into the clinic a few days later to pick up the rest of the required medication.

[92] He said they recommended that she get several large boxes of gloves and that she use different gloves when treating each cat. He said he also recommended cleanliness and he said they brought her some veterinary-grade cleaning solution. He said that they recommended that she be able to identify and have records for each cat and they gave her folders for her records.

[93] He said there was no heat and he told her she needed heat and that she bought heaters for the rooms the next day.

[94] He said he recommended that she throw out all of the litter boxes and cat carriers and replace them with new ones so that the infection would not flare up again, but he said that the pets were taken away by the SPCA before that could be implemented.

[95] He said there was some construction material in the hallway and it seemed to be undergoing some construction.

[96] He denied that SPCA employees asked him not to treat Ms. Zhou's animals.

[97] That concluded his evidence.

[98] The next witness for the Crown was Dr. Emilia Gordon.

[99] She has been a licensed veterinarian since 2005.

[100] She was qualified as an expert in the field of veterinary medicine and in particular, the areas of animal shelter medicine, population health, facility design and infectious disease and was allowed to give opinion evidence in those areas.

[101] She is employed by the SPCA and her job is to oversee 36 SPCA shelters across the province.

[102] She said that shelter medicine is veterinarian care applied to companion animals, which includes dogs and cats. She said that it includes design and use of shelter facilities and management of populations and infectious disease concerns.

[103] She said that housing a large number of cats in an average house can lead to problems, specifically:

1. infectious disease and in particular upper respiratory infection (URI);
2. skin infections such as ringworm;
3. intestinal problems;
4. grooming of the cats not done by the owner because of the large number of cats.

[104] She said that her first involvement with this matter was on January 13th, 2016, when, at the request of their Cruelty Investigation Department, she went to

the Partridge Crescent property and examined 25 cats there. She said that some cats were upstairs but most were downstairs.

[105] She said the environment where they were kept had been recently cleaned, as it smelled of chemicals. She said that there was also strong odor of urine.

[106] She said many of the cats showed signs of overt illness. She said 11 of the cats showed signs of URI and 11 cats had inflamed ears with discharge.

[107] She said the symptoms of a cat with URI include nasal and eye discharge, swelling of the eyes and sneezing. She said that a cat with URI is in discomfort and may be in pain.

[108] She said that the cats with the ear issues can have itchiness.

[109] She said that two of the cats were pregnant and quite sick and required immediate medical care. She said that one of these cats had abdominal pain, which may or may not have been apparent, and also had congestion, which would have been apparent. She said that the second pregnant cat had discharge and vaginal bleeding, which had crusted, and she was acting as if it was painful, which would have been apparent.

[110] Dr. Gordon said that the SPCA staff member, Ms. Lo, was present and they told Ms. Zhou that the cats had to see a vet. She said Cst. Thomson was present and she wrote up some orders.

[111] Dr. Gordon said that she was not involved in executing the search warrant in February 2016, but that 75 of the animals seized came to their facility, 59 of which were cats and the rest were dogs. She said the animals were showing signs of hair loss and URI. She said they cultured all 75 animals for ringworm and 71 of the samples came back positive for ringworm. She said that this degree of positive finding is very high. She said that this means that they were either infected with ringworm or they were not yet infected but their coats were heavily contaminated with the spores. She said that usually, if left untreated, those not yet infected would become infected. She said that ringworm spores are not normal on cats and dogs but are fairly common in her clinical practice. She said that of the 71 that tested positive about one-third had hair loss, which means they were infected.

[112] She said that 50 percent, or about 30, of the cats had URI at intake and they tested 15 of them who were clearly sick by swabbing their eyes and throats and sending the samples to the lab. She said that 53 percent tested positive for at least one pathogen. She said 27 percent had the calici virus and 20 percent had the herpes virus. She said this was consistent with cats in contact with other cats for a long term and that the pattern of infectious disease would span several months. She said two of the cats had pneumonia.

[113] She said that the level of infectious disease in the cats was higher than the random population and also higher than other large scale cases that she had seen.

[114] She said that many of the needs of the cats were not being met and she specifically mentioned hygiene, biosecurity and enrichment. She said that one

cannot prevent infection but one can prevent the infection from spreading and it was preventable in this case. She said that only non-porous surfaces can be cleaned properly and that untreated wood surfaces are porous and cannot be cleaned properly.

[115] She said that SPCA had outbreaks of ringworm and they subsequently changed their protocols. She added that URI is the biggest challenge for North American shelters.

[116] She said that other than one cat which had the calici virus that Dr. Walter euthanized, all of the cats eventually got better.

[117] She said that all of the dogs, which were eight, and all of the cats were tested for gastrointestinal parasites. She said only one of the dog samples was sent because if one dog has it they all have to be treated. She said the samples came back as positive for gastrointestinal parasites.

[118] That concluded her evidence.

[119] The next witness for the Crown was Dr. Adrian Walton.

[120] He has been a licensed vet since 2000.

[121] He was qualified as an expert in the field of veterinary medicine and in dealing with and treating small animals and was allowed to give opinion evidence in those areas.

[122] Dr. Walton said that he has his own animal hospital and 90 percent of his practice is treating dogs and cats. He said that he also does contract work for the SPCA.

[123] He said that on February 16th, 2016, he attended when the search warrant was executed.

[124] He said that his role at the time was to observe the conditions at the property and to do an initial inspection of the animals and to triage the animals.

[125] He said that he also inspected all of the animals later that day at the SPCA Animal Centre, which he referred to as the farm.

[126] He said that upon entering the residence he saw in the laundry room feces on the floor and the walls, which he said can result in disease being spread to dogs, cats and people.

[127] He said that he went into the attic after a single light bulb had been turned on. He said that a surface had been placed over 50 to 60 percent of the insulation. He said the rest of the room had no cover over the insulation and that there were assorted cats and kittens running loose and some were playing in the insulation.

[128] He said there were cages and the first cage was actually two cages put together and it was holding a dog and a cat. He said that a second cage had a Pomeranian dog with puppies.

[129] He said that the venting in the attic was extremely poor.

[130] He said that insulation is irritating for the animals. He said that one of the cats in the attic had severe dermatitis, or skin infection. He said that cat was missing most of its hair and its skin was thickened and wrinkled and crunchy to the touch.

[131] He said the cat with severe dermatitis was very underweight. He said he gave the cat a "body score" of one out of nine, which he said was the lowest score he would give an animal. He said that body score measures the amount of fat and muscle on an animal and that a score of five is ideal but a score of four or six is unacceptable. He said that with a score of one, the cat was at risk of going into organ failure. He said he recommended that it should see a vet right away.

[132] He said he went into the cat barn, which he said was a modified horse barn with stalls or rooms on each side. He said that it appeared to be unheated and that there was a strong solvent smell.

[133] He said he went into all of the rooms and the main issue he had was inadequate ventilation. He said there was a lot of fecal contamination, including diarrhea in a litter box, which he said was indicative of GI, or gastrointestinal, upset. He said one cat had a puddle of vomit at its face. He said that in every room they could hear sneezing and coughing from the cats.

[134] He said that a large number of the cats had eye and nose discharge and crustiness on their faces. He said they also had hair loss, mostly on their faces. He said that you cannot quarantine cats for URI by having them in the same room,

even if they are in cages, because their sneezing puts droplets in the air and the infection spreads. He said they need to be in a separate room and medically treated.

[135] MR. JOHNSTON: Sorry to interrupt, Your Honour. I wonder if we could stand down for one minute.

[136] THE COURT: You want to take the break?

[137] MR. JOHNSTON: No, I just need one minute.

[138] THE COURT: All right. We will just stand down very briefly.

[139] MR. JOHNSTON: Thank you.

(PROCEEDINGS ADJOURNED)
(PROCEEDINGS RECONVENED)

[140] He said there was disease throughout the entire facility.

[141] As noted, Dr. Walton said that he inspected all of the animals found at the property at the SPCA farm later that day.

[142] He said the cat from the attic that he scored as a one out of nine on the body score was "extremely positive" for ringworm. He said that when the Wood's lamp was shone on the cat to look for ringworm that it "glowed like a Christmas tree". He said he had never experienced a cat with ringworm to this extent in his 18 years as a vet. He said that this cat also had a large ulcer on its tongue, which would have been extremely painful to the extent that it would prevent the cat from eating. He

said that the cat was immune-suppressed. He said that the cat was sensitive to touch but otherwise acted normal.

[143] He said that he made the decision to euthanize the cat because of:

1. the ringworm;
2. the oral ulcer;
3. it would require a feeding tube which would require him to cut through the infected skin;
4. the cat would require constant handling and it was contagious with the ringworm;
5. the cat required pain medication and if its organs had already commenced to fail, the cat would be unable to process the pain medication; and,
6. the cost involved.

[144] He said that to continue to treat the cat, he has to show that he can alleviate the cat's stress in a timely manner and that it has good chance of a successful outcome. He said that he could not meet these criteria. He said that the symptoms he described with respect to this cat would have been apparent to a layperson.

[145] In cross-examination, he said that he had no knowledge if this cat was in the process of being treated or if its condition was improving. He said that the cat was not getting enough calories and it was emaciated and it should have been assessed by a vet. He did not know if a necropsy had been requested for that cat by Ms. Zhou.

[146] He said that they found a week-or-two-old kitten that had an incomplete urinary track system, as it had no outlet to pee. He said that a cat that cannot pee will eventually die. He said that it also had a cleft palate.

[147] In cross-examination, he said that these were congenital birth defects.

[148] He said that what he observed with respect to this cat would not be observable to a layperson but would be by a breeder, as you can see that the animal is not thriving. He said that the breeder would also see the cleft palate, which would prevent the kitten from suckling.

[149] He said that the main problem with the cats was the URI. He said the particular breed of cats found at this location do not have a great upper respiratory system to begin with so URIs are more significant with these breeds than with others.

[150] He said the overall health of the cats was poor with the vast majority of them having URIs and some having various degrees of skin infection from ringworm.

[151] In cross-examination, he said that most of the kittens were relatively healthy and that several cats had minimal URI but they all had it to some degree.

[152] He said that he could not say if any of the animals were infected while at the SPCA facility but he said that it would take a week or 10 days for them to become infected. He said that all of the animals were tested within 48 hours of being seized and the ones that tested positive could not have acquired the disease at the SPCA

in that time period. He added that most of the cats that tested positive also showed clinical signs of being infected.

[153] He said that he did a body score all of the cats and the typical body score was in the normal range.

[154] In cross-examination, he said that he has his own animal hospital and that URI is very common and that they see a case of ringworm at least monthly.

[155] He also said that some of the cats from the attic had sores on their feet and they were shaved at his clinic and treated separately.

[156] He said that some of the cats had matting and some had defecated in their cages and that feces had stuck to them.

[157] He said that some of the dogs had minor issues, but that there was nothing significant and the vast majority seemed healthy. He said one of the dogs was showing signs of trying to pass puppies and he subsequently performed a Caesarian section on her but she died during surgery. He said that, prior to going into labour, there were no concerns with respect to that dog's health. He said that the Pomeranian puppies were about four weeks old and they were healthy. He said their mother had her kneecaps pop out of her joints, which he said was a genetic defect.

[158] That concluded his evidence and the case for the Crown.

[159] As noted, Ms. Zhou gave evidence on her own behalf.

[160] Ms. Zhou is 51 years of age.

[161] She said that with respect to the English language, she can understand if she is asked her name, address and phone number and that she can write in English very simple things. She said that she has a vocabulary of 30 to 50 words but she cannot carry on everyday conversations. She said that occasionally she would have friends do translations for her but said that their English is not up to standard and that they have no training in the care of animals.

[162] She said that she is currently unemployed but on November 1st, 2015, her job was taking care of cats and dogs at the Partridge Crescent property. She said that she got a license November 1st, 2015, to have a pet kennel and that people could bring their cats and dogs their temporarily as a daycare. She said subsequently the license was cancelled and she was told that it had been issued to her by mistake. She said she was also told that she was in a residential area and there were complaints about the dogs barking.

[163] In cross-examination, she said no one gave her any regulations about running a pet daycare while she was at the Partridge residence.

[164] In re-examination, she said that she was given some regulations by the SPCA after her business license was issued, she thought, in December 2015.

[165] She said that she did not have a license to breed animals, as she was breeding them for her personal use, and no license was required. She said she did give some of them away to her boarding customers.

[166] She said she done commercial breeding of animals for over 20 years in China and she wanted to do it here. She said that she found an investor to get the Colebrook Road property for that purpose and she was going to be the manager.

[167] She said she started moving into the Colebrook Road property in November 2015, and the move was completed close to the end of the year. She said in January 2016, she was still using the Partridge property and the cats were there as the accommodation for the cats at the Colebrook Road property was still under construction and was not suitable for the cats to live in. She said that by February 2016, she was no longer using the Partridge property.

[168] In cross-examination, she said she thought it was December 31st when she moved all of the cats to the Colebrook property. She agreed that whatever date it was when the cats were moved to the Colebrook property, that the cat barn had not been 100 percent completed.

[169] She said that initially she and three other people were looking after the animals.

[170] She said that she bought building materials and hired 10 construction workers and improvements were going on every day. She said that from November 1st to December of 2015, she spent approximately \$170,000 on construction. She said that by February 2016, she had the following work completed:

1. dog kennel built;
2. painting;

3. partition of the cat barn;
4. windows installed;
5. fencing;
6. flooring in four rooms completed;
7. porcelain tiles laid in the hallway; and,
8. ventilation system installed.

[171] She said the Building Department stopped her construction license and recommended to her to bulldoze and reconstruct, as the structure was not earthquake-proof.

[172] In cross-examination, she estimated that she spent a half a million dollars on improvements on the Colebrook Road property.

[173] She said that on three or four occasions, the SPCA seized animals from her and she thought on only one occasion that they had a search warrant. She said she was frequently given cats and dogs by her clients and that someone from the SPCA would say can this dog or cat be given to me free of charge. She said she had some resentment but that occasionally she would give them away and sometimes she would say no they had to wait until the mother cat had a kitten.

[174] In cross-examination, she said that on November 1st, 2015, she gave the SPCA two cats and two birds, all of which were healthy. She said that the SPCA only took the good animals and they left the old and sick ones.

[175] In cross-examination, Ms. Zhou said that after she moved to the Colebrook Road property that "they", which I took her to mean the SPCA and/or Animal Control employees, came to her residence every two to three days. She said that SPCA Employee Thomson and a city supervisor in charge of licenses discussed which cats they liked and they took their pictures with them and they asked her if they could take them away for free. She said that 90 percent of the cats that she bred were rare and expensive. She added that the SPCA wanted her cats because they were expensive.

[176] She estimated that the SPCA gave her instructions about what she should do about 10 times. She said that sometimes the interpretation was done by her son, who was eight years old at the time. She said he came to Canada when he was four years old and that his English and Mandarin are not good. She said she requested that the SPCA send a Chinese-speaking interpreter. She estimated that she understood 10 percent of what they said.

[177] In cross-examination, she said that the SPCA did about 50 inspections of her properties and there was only one occasion when they had someone who spoke Chinese present.

[178] She said Dr. Brar helped her to get some heaters for her facility.

[179] She said that Dr. Brar assisted her with the animals by:

1. treating the pets including giving medication and injections;

2. cleaning their teeth;
3. sterilization;
4. if the animal was not eating, he would examine it; and,
5. he would examine their eyes and ears.

[180] Ms. Zhou said Dr. Brar came to the Colebrook property with his wife and two Chinese-speaking nurses, which, on all of the evidence, I find to have been on January 31st, 2016. She said that on the day he came, the conditions were totally under control. She said that five or six cats had a little bit of sneezing and she would quarantine them in a room, as the vet told her they had a cold. She said that the sick cats and the healthy cats had a distance of 300 metres between them and they were in different buildings.

[181] She said that the two common illnesses experienced by the cats were ringworm and colds. She said that the cats that had colds and/or ringworm were controlled and on their way to recovery and their illnesses did not get passed on to the dogs or to anyone in her family.

[182] She said that the "brown cat", which was found in the attic and was subsequently euthanized, which she said in cross-examination was named "Peter", often had eye discharge and she said this was from a genetic mutation caused by the cat's nose being too short. She said she sent a specimen from the cat to a specialist in a faraway place to be tested and the cat was found to have defective

genetics. She said that eye infection is not due to the human not caring properly for the cat but rather is due to genetic mutation. She said that presently there is no medical solution for the eye discharge. She said the cat also had an oral ulcer. She said this cat also had had a serious case of ringworm. She said that after using medication on the cat given to her by Dr. Brar, although its fur did not grow back, there was no longer a ringworm condition.

[183] In cross-examination, she said she did not agree with the medical evidence of the SPCA with respect to the animals taken from her property on February 16th, 2016.

[184] Ms. Zhou said that on that date five or six of the cats had ringworm, including Peter. She said that it was Dr. Brar who told her that the cat had ringworm due to a genetic defect. I pause to note that this was not put to Dr. Brar. She said that Dr. Brar saw Peter approximately 10 times, as he was treating it regularly with monthly injections, and that he did so on January 17th, 2016, and that under his treatment the cat was improving and the ulcer in its mouth had reduced in size. She said that she applied a "kind of white solution" prescribed by the doctor for ringworm to the cat once every four days. She said that Peter's eating and drinking and bowel and urine habits were normal but he was not putting on weight. She said that Dr. Brar told her that it was not necessary that it be in the hospital but it needed monthly injections. She said that she kept this cat alone in a cage that had two levels, an upper level to sleep, play and scratch and a lower level that had a litter box. She said she gave it canned food after soaking it in water, as she thought with the mouth

sore it would be easier for the cat to eat. She said when Dr. Brar came for the visit, he asked her if the cat was eating and drinking and passing stool and she told him everything was normal; it was just not putting on weight.

[185] She agreed in cross-examination that Dr. Brar's documents from his January 17th visit to her residence, which I note is Exhibit 6 in this proceeding, makes no reference to a cat named Peter and she said that sometimes the name she mentioned to Dr. Brar was different than the name that Dr. Brar recorded and she thought that he used a phonetic translation. She agreed that in giving his evidence, Dr. Brar was never asked about giving Peter an injection on January 17th.

[186] She said that when she dealt with the cat, she always used disposable gloves and her work clothes. She said that when the SPCA or Animal Control came to her residence for inspection, she would not let them see the cat.

[187] Ms. Zhou said that she did not know what cat was the second cat euthanized by the SPCA so she could not say what was going on with that cat.

[188] She said that every day eight to 10 clients would come with some animals. Some would be puppies and kittens placed with her to be sold. She said that some cats came that morning and she went to get building materials and did not have time to examine the cats before the SPCA came with the search warrant. She said her father called to tell her that the SPCA was there and she said then "she was in a hurry to hide" some of the animals.

[189] She said that she is a natural born animal lover and that when she was between 30 and 35 years old, she started doing commercial breeding in China. She said she hired staff and started an online shop. She said although she has no formal training, she has amassed tens of years of work experience dealing with dogs and cats.

[190] She said at the Colebrook property, the dogs and cats were separated by buildings.

[191] As stated, she said initially she had three employees. She said one of them worked full-time but she was not clear on how many hours the others worked. She said that as of approximately January 1st, 2016, she only had one employee and she only had one on February 16th, 2016 when the search took place.

[192] She said in the dog building, the dogs were separated in four locations by age, size, sex and whether or not they had been spayed or neutered.

[193] She said the daily routine was that every morning the pens would be cleaned and the food and water bowls would be clean and fresh water provided. She said they would be fed in the morning and again in the evening. She said the dogs would be able to go out into the yard and walk freely and they could play with balls.

[194] She said the cats were in rooms with generally four to five cats per room. She said that mother and kittens were kept together so in those situations there might be more than four or five cats in a room.

[195] She said her rooms were bigger than the SPCA rooms. She said the procedure for the cats was the same as the dogs with respect to cleaning. Subsequently, she said she would clean the cat rooms once a week by moving the animals out of the room and sterilizing the room.

[196] She said the cats had litter boxes in their rooms. She said that there were cages in some of the rooms to separate them, if needed. She said in each room there were balls to play with and a laser light for the cats to chase. She said that the cages and wall surfaces would be sprayed and cleaned.

[197] She said the cats had a lot of interaction with her and her employees.

[198] She said that if an animal became sick, she would phone the vet and tell the vet the symptoms and she would name the scientific name of the problem she thought the animal was suffering from. She said that she was right 90 percent of the time. She said if it were an emergency situation, she would take the animal to the vet right away. She said that she saw the vet three to five times a week, mostly for preventative measures.

[199] She said she would quarantine the sick animals by putting all of the cats with the same condition in one room and then, as it recovered, she would remove it from that room. She said that medicine was used strictly in accordance with the vet's instructions. She said she would give the sick animals better quality canned food for enhanced nutrition and that she would buy goat's milk to give to the sick cats.

[200] She agreed that on February 16th, 2016, the day the search warrant was executed, that the SPCA did find animals located in the "boiler room", which I took her to mean the furnace room, but she said that they were not usually kept there. She said there were kittens in that room in the process of being weaned and that it is close to the kitchen and easy for her to listen for them sneezing or coughing, which she heard maybe two or three times a day.

[201] She said this room was warm and it had a skylight and the floor was easy to clean and there was a rack for the cats to climb on and a litter box.

[202] She said the cats found in the closet were in the closet in her bedroom. She used that area as a birthing room for the cats so that it was easy for her to hear them.

[203] She agreed that there were animals found in the attic but she said they were not normally kept there.

[204] She said that she had an inkling that the SPCA was going to come and take the animals away from her and she prepared the attic earlier by having the renovator lay a bacteria-free floor and some simple renovation work there. She said that she had also placed some cages in the attic. She said that she thought the SPCA would kill the old cat that was sick.

[205] She said a lot of her clients had fostered animals with her and the owners had gone to China.

[206] She also said that every year she had bad clients pretending to foster their cats and then abandoning them with her.

[207] She said she had to save these animals.

[208] She said that on February 16th, 2016, her father called her and said the SPCA was there to take the animals by force and that she put some of them in the attic and they were only there for about 10 minutes.

[209] She provided the court with some video clips from dates prior to February 16th, 2016, which were mostly of dogs.

[210] That concluded her evidence in chief.

[211] In cross-examination, she agreed that ringworm is very infectious and can be spread between cats and dogs and people.

[212] She agreed when the SPCA came on February 16th, and her father called her to warn her, that she did not want them to take the kittens and puppies and the old cat named Peter so she put them in the attic. She said that the attic had no window but it had a vent on top and that it was warm in the winter.

[213] She agreed that she knew Peter had severe ringworm and that it was infectious, which I note is contrary to what she said in chief, which was that, while his fur had not grown back, he no longer had a ringworm condition. She said that Peter was in a cage when he was in the attic and that she put him in a different area

of the attic than the other animals. She said that it was her recollection that she had closed Peter's cage. She did not know how he could have gotten out of the cage.

[214] She said the SPCA was aware of Peter and she denied trying to hide him every time the SPCA came. I note that this was contrary to what she said in her evidence in chief when she said that when the SPCA or Animal Control came to her house, she would not let them see that cat. She said that she attempted to hide it from the SPCA on February 16th, as she knew that the SPCA would take it away or kill it and she felt that they would use its sickness as an excuse to take away the other cats. She was asked that, if the SPCA knew about Peter and if Peter was under Dr. Brar's care, why would she hide it from the SPCA. She responded that the SPCA would kill it, as they had to kill one or two cats to frame her. She denied that Peter was seriously ill or that he was in distress. She said she requested that the SPCA do a necropsy to be done on Peter but they denied her request.

[215] Ms. Zhou said that the SPCA never talked to her about the health of her animals. She agreed she went to see Dr. Brar every three to five days and that Dr. Brar had staff who could translate for her. She agreed with respect to the order issued November 30th, 2015, she had Dr. Brar's staff translate it for her but she said that they did not translate the whole document but only the boxes that had been ticked. She agreed that although she was running a kennel and a cattery, she never had anyone translate the whole document for her.

[216] With respect to the order of January 13th, 2016, she agreed that 15 of 23 boxes on the order had been checked. She said it was not translated when given to

her and she said that sometimes when she brought the orders to Dr. Brar that he would not tell her what was written on it and that sometimes she could not get anyone to translate it. She said that she would take every single sheet of paper given to her by the SPCA, even if she did not agree that the animal was in distress, to Dr. Brar and sometimes he would say you do not have to worry about it.

[217] She said on February 16th, 2016, the SPCA seized 69 cats from her.

[218] Although she did not specify the dates, Ms. Zhou said that, prior to February 16th, she had Dr. Brar check every cat for ringworm. She said that 30 percent of those cats had hair falling out, which is symptomatic of ringworm, which is a common condition and she said all those cats were treated. She said that on February 16th, only three of her cats had issues with hair falling out.

[219] Ms. Zhou said that 98 percent of the ringworm infection in her cats, as noted by Dr. Gordon when she gave her evidence, was caused by the SPCA not changing their gloves after touching a cat.

[220] She denied that any of the animals seized from her property on February 16th were in distress. She added that her customers would not pay her money if the animals were in distress.

[221] That concluded her evidence and the case for the defence.

[222] THE COURT: So we will take the morning break now. Thank you.

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

[223] THE COURT: I turn now to the cases provided by counsel, Mr. Johnston, on behalf of the Crown. He provided the following cases for the court's assistance: ***R. v. Chrysler***, [2013] BCPC 240, ***R. v. McAnerin***, [2016] BCPC 319. Mr. Shen on behalf of Ms. Zhou provided the following cases for the court's assistance: the *McAnerin* decision, ***R. v. Scott***, [2017] BCPC 220 and ***R. v. Gerling***, [2013] BCSC 2503.

[224] I turn now to the submissions of counsel. Mr. Shen, on behalf of Ms. Zhou, conceded that she was a person responsible for animals as set out in the Act and the charge facing his client.

[225] He submits that the issues for this court to determine are if the Crown has established beyond a reasonable doubt that his client caused or permitted the animals to be or to continue to be in distress, which he says they have not established.

[226] He submits that, if the court finds that the Crown has established that, then, as the offence is a strict liability, the defence of due diligence is available to his client and has been established by the defence on the balance of probabilities.

[227] Mr. Shen submits that following the *McAnerin* decision, the court can also consider the conduct of the SPCA. He suggests that the evidence of the SPCA employees has been coloured unintentionally by their bias against Ms. Zhou. As an example, he noted the evidence of Ms. Lewis and Ms. Moreau with respect to an

earlier visit to Ms. Zhou's residence, where Ms. Moreau said that eight of 30 animals were sick while Ms. Lewis said they were all sick. He added that they were also reluctant to admit that the facility was still under construction.

[228] In referencing the *Gerling* decision, Mr. Chen submits that, although not required to do so by the Act, the Act does provide a mechanism for the SPCA to give a person suspected of violating the Act notice of same and a chance to remedy the problem. He submits that this court should not rely on the evidence from the date the warrant was executed with respect to any prior shortcomings when orders may have been issued. I pause to note that that evidence is not evidence of character or similar fact evidence. It was led for the Crown just to show that she had notice.

[229] Mr. Shen submits that Officer Thomson was the main investigator on February 16th when the warrant was executed and that when she was questioned about the cats sneezing, her answers were evasive and what she is describing was not evident in the video. He adds that she said Ms. Zhou only took her animals to the vet when an order was issued but the evidence of Dr. Brar shows that not to be true.

[230] Mr. Shen says the attic was a central piece with respect to the warrant and he said that the officers, and by that he meant the SPCA officers, perceived it as having very bad conditions. He said his client testified why the animals were in the attic and she said that she was afraid and she was trying to protect the animals in

that, in her mind, the SPCA was going to kill them. He added that they were only in the room temporarily.

[231] He said all the doctors agreed that the treatment of animals takes time and can take several weeks and URI and ringworm is commonly seen in the cat population. He said with respect to the tests conducted by Dr. Gordon pertaining to ringworm that was sent to the lab to test whether spores are present, does not mean that they have ringworm and that she said that a third were showing signs of infection. He said we also note the facilities were still under construction and that Ms. Zhou said that sometimes sick animals are abandoned on her and she does not get to control that and the SPCA refused to take some animals.

[232] He then turned to Dr. Brar's evidence that on January 17th, he visited the Colebrook Road property. Mr. Shen says the evidence is that he examined a lot of the animals, prescribed medications and advised her of management improvements to make and he helped her make improvements and he was optimistic but the animals were seized before the recommendations could be implemented. He said that his client made approximately 80 visits to Dr. Brar. Some were preventative and some were for treatment and the court can find that she has taken the animals to Dr. Brar regularly.

[233] He said the court could find also that the physical conditions were being actively improved at the time until the stop work order was put in place but barring that the court should assume that those improvements would have been made. He

asked rhetorically in this particular situation on all the evidence if that constitutes permitting the animals to be in distress.

[234] He says that Ms. Zhou's evidence, combined with Dr. Brar's evidence, as he is the one with the most knowledge about her, should raise a reasonable doubt, that she did not cause or permit the animals to continue to be in distress.

[235] He then turned to the defence of due diligence and referred the court to the *Scott* decision where the accused in that case was found to be cooperative and he submitted that, depending on the finding that I made, given that she, he says, has followed the orders, and took the animals to the vet, that I could find Ms. Zhou to be cooperative.

[236] He also referred to the *Scott* decision for the proposition that to establish due diligence, you do not have to meet a perfect standard. He says, when considering what is reasonable care, I must consider the evidence as a whole and, when considering Ms. Zhou's evidence, that she followed the SPCA orders and took the animals to the vet in situations she thought was necessary.

[237] With respect to notices provided to her, he says that she had been told to fix some problems even though she could have been charged and there was a clear problem with communication. He said Dr. Brar would gesture and his assistants would help with the language but they were not medically trained. He says that all notices were in English and she made her best efforts to have them translated.

[238] He said that they gave her a notice and a copy of the regulations in December. She had to have them translated and that the court should not expect that she should be able to have that done and comply with the order by February. He submits that, if the SPCA chooses to give her notice, and it is apparent that she does not understand, that the SPCA should take further steps to ensure that she does understand and not bury their heads in the sand, as they did here.

[239] With respect to the two cats that were euthanized, he said the young kitten had congenital defects that his client was not aware of, as it had been seized before she saw and the older cat, Peter, she was trying her best to save and it was getting better and it was treatable. He says the court should consider Ms. Zhou's evidence with respect to the SPCA acting improperly and considering her testimony, consider it in the context of *R. v. W.(D.)*.

[240] In summary, he says the court should have a reasonable doubt that she caused or permitted to be or continue to be in distress. However, if I find otherwise, he submits the defence of due diligence has been established on the balance of probabilities.

[241] I turn now to Mr. Johnston's submissions. He says the animals were in distress in three ways. First, Peter, the older cat that had to be euthanized. Secondly, all the other animals in the attic were in distress. He said the Act does not provide a time limit and a definition for distress. The attic had no lighting and poor ventilation. The insulation was a hazard to the animals. The risk of infection from Peter was very high and he was roaming freely in the attic. Thirdly, he points

to the overall rate of infections in the population and he says the court should find it is due to the attic and the conditions that the cats and dogs who were being housed in.

[242] He said Cst. Lewis' evidence about the attic was that it was pitch black, that there were five cats loose in the fibreglass insulation, that the cat later identified as Peter was lethargic and not moving and laying in insulation, his eyes and nose had discharge. She said there were other animals in the vicinity. He said her evidence with respect to the cat farm was there was sneezing in every room.

[243] He said Kim Monteith's evidence was that there were two cats with kittens in the furnace room, that it was dirty, had a dirty litter box and the smell of urine and that she said the attic was completely dark with loose cats in the insulation and Peter was laying in the insulation. She did not remember water and food bowls being present.

[244] He said Dr. Walton's evidence with respect to the attic was there were several cats playing in the insulation, which is irritating to their skin. One cat, Peter, had severe dermatitis to all four feet, which was likely correlated to the insulation exposure, that there was a dog and cat in the same cage, that the initial observations of Peter was that he had chronic skin problems, he was missing most of his hair, the skin was thick and crunchy to the touch, he was very underweight, he had a body score of one and he was at risk of going into organ failure.

[245] Later when he was examined at the SPCA facility by Dr. Walton, the Wood's lamp for fungal infection or ringworm glowed like a Christmas tree. He had a large ulcer on his tongue, which would have been extremely painful, so as to prevent the cat from eating. He decided to euthanize Peter.

[246] With respect to the cat barn, Dr. Walton's evidence was that there were visible symptoms of URI in every room and in the house there was feces on the floor and walls, which caused fecal disease to spread, and the cat barn had poor ventilation. The odour was so strong it was causing problems for Dr. Walton and there was significant fecal contamination. A cat in one of the rooms was extremely lethargic with his face in a puddle of vomit and in every room he could hear sneezing and a large number of cats had ocular and nasal discharge. Some of the litter boxes had diarrhea in it, which is an indication of a gastrointestinal upset.

[247] With respect to ringworm, Mr. Johnston says Dr. Walton said it is a fungal infection, which can be caused by:

1. a lack of sun;
2. poor ventilation or cleaning; and,
3. stress, which could be caused by inadequate conditions and housing.

[248] He then turned to Dr. Gordon's evidence, who he noted was an expert in animal shelter, population health, facility design and infectious disease and she was in charge of the testing. He said her evidence was that many of the animals were showing visible signs of URI, 71 of 75 tested positive for ringworm, and that this

degree of positive finding was very high and her evidence was that how the animals were kept directly contributed to the rate of infection.

[249] He then turned to s. 24.02 of the Act, subsections (b) and (c), and said that the accused was not charged as an operator but when a person takes on the responsibility of caring for a large number of animals, they must follow the proper protocol to stop the spread of infection. He said that she essentially is operating as an operator and she had a large number of cats and dogs and, as such, she had an obligation to take reasonable steps to follow generally-accepted practices regarding hygiene and biosecurity and she failed to take those steps and she failed to act in a reasonable manner and, as a result, an unacceptably large number of animals in her care were infected. He said the court can conclude this based on Dr. Gordon's evidence and Dr. Walton's evidence.

[250] He said several witnesses saw the floor and walls were porous and could not be properly sanitized and suggests the court should find a lack of proper sanitization and biosecurity, as well as no apparent attempt to isolate sick animals. He said, with respect to the evidence called about the facility not being completed, if the facility was not completed, the animals should not have been there. He said, based on Dr. Brar's evidence, there appears to be some attempt by Ms. Zhou to comply with some of the orders but he suggested that the conditions of conjunctivitis and eye discharge and, again, problems in ringworm would not be present if reasonable management practices had been undertaken.

[251] Mr. Johnston says Dr. Brar's evidence about January 17th is important because he said he examined a number of cats and completed the form for the cats he inspected, which I note is Exhibit 6 in this proceeding. Mr. Johnston said it is very important, as Ms. Zhou said she was exercising due diligence by bringing all of her animals to Dr. Brar, including Peter, who Dr. Brar saw on January 17th and gave an injection. She also said that it was her understanding the SPCA were aware of Peter through reports from Dr. Brar but none of this was put to Dr. Brar and should have been.

[252] Mr. Johnston says Dr. Brar described the animals he saw and Peter, who may have been in even worse condition then, than he was found on February 16th, was never discussed in his evidence and Exhibit 6 does not contain a report about such a cat. He says, based on the decision of *Browne v. Dunn*, I should give Ms. Zhou's evidence little or no weight on this point.

[253] Mr. Johnston submits that it has been established that the animals were in distress and she caused the animals to be or continue to be in distress, as evidenced by the cat barn, the attic and Peter's health. He says, with respect to due diligence, it is a standard of probabilities and *W.(D.)* does not apply. He says due diligence has not been established and points to the following factors. That her claim of due diligence primarily relies on Dr. Brar and it was never put to him, as it should have been; also, there are no such notes in his reports or the exhibits. Secondly, her evidence does not correspond with other evidence in the case. Dr. Gordon found a level of infection much higher than should be the case and Ms.

Zhou thought there were just very few animals that were sick. Thirdly, that Ms. Zhou's testimony about the practices of the SPCA are not plausible when she suggested: a) that the SPCA is motivated only by money; and, b) that the SPCA would take only healthy and valuable cats. He said this is absurd. Every witness presented professionally and concerned with the animals' welfare.

[254] Also, he says she is contradicted by her own evidence. When she heard that the SPCA was present on February 16th, she hid Peter. She said the SPCA only took the healthy animals but when they were at her door, she hid Peter, who was old and sick. Her explanation that the SPCA had to seize that cat to frame her was never put to the witness, Mr. Johnston submits. It is clear, he said, that the SPCA had never seen Peter. He said in her evidence she agreed to actively hiding Peter from them, which is inconsistent with her evidence that the SPCA was aware of Peter through Dr. Brar.

[255] He also submitted there were a number of incidents in her evidence, which are inconsistent, but he did not list them. He said she presented as an evasive witness, who was attempting to rely on a lack of understanding and he said a lack of understanding is her responsibility. He said the Crown does not rely on the previous notices in this case so the adequacy or inadequacy of the notice is not relevant.

[256] He said that evidence was led to show that she was given ample opportunity to learn. He says that the court should find that she has not established a defence of due diligence on the balance of probabilities.

[257] I have carefully considered all of the evidence, the cases provided and the submissions of counsel.

[258] Section 9.1(2) of The Prevention of Cruelty to Animals Act states:

A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.

[259] Section 1(1) of the Act states in part:

"person responsible", in relation to an animal, includes a person who

- (a) owns an animal,
- (b) has custody or control of an animal, or
- (c) is an operator in relation to an animal;

"operator" means a person who engages in a regulated activity, and includes any person who assists, directs, supervises or employs that person for the purpose of doing the regulated activity.

[260] Section 1(2) of the Act states:

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.

[261] Section 24(1) of the Act states:

A person who contravenes section 9.1, 9.2, 9.3, 23, 23.1, 23.2 or 23.3

commits an offence.

[262] Section 24.02 of the Act states:

A person must not be convicted of an offence under this Act in relation to an animal in distress if

- (b) the person is an operator and the distress results from an activity that is carried out in accordance with the prescribed standards of care that apply to the regulated activity in which the operator is engaged, or
- (c) the distress results from an activity that is carried out in accordance with reasonable and generally accepted practices of animal management that apply to the activity in which the person is engaged, unless the person is an operator and those practices are inconsistent with prescribed standards.

[263] The cases submitted make it clear that charges under the Act are strict liability offences. The Crown need not establish intent but they must prove the *actus reus* of the offence beyond a reasonable doubt. The accused then has the opportunity to establish the defence of due diligence on the balance of probabilities. In the case at bar then, the obligation on the Crown is to establish beyond a reasonable doubt that Ms. Zhou was a person responsible for the animals and she did cause or permit the animals to be in distress or did continue to be in distress.

[264] When considering the issue of distress, my brother Judge Brown in *McAnerin* stated at paragraphs 77 and 78:

In my view, however, it is not always necessary for the Crown to prove the animal suffered physical harm for there to be a finding of distress. Section 1(2) of the *PCAA* states that an animal is in distress under ss. (a) if the animal is deprived of things such as food, water or shelter. A finding of distress can also be made under ss. (a.1) and (a.2) if an animal is kept in unsanitary conditions or is not protected from the elements. Of course these listed situations must be proven to be at a concerning level, but there is no requirement that the animals themselves be symptomatic. Subsections (b) and (c) of s. 1(2) do require proof of injury, illness, pain, abuse or neglect.

"I conclude that at least components of the definition of distress allow for a finding of distress even where the animals show no physical symptoms. The legislation envisions sanctioning action or inaction before an animal is necessarily harmed or injured".

[265] With respect to what constitutes due diligence my sister judge Doulis said in Scott, commencing at paragraph 293:

Due diligence means the absence of negligence. It requires a person to take all due care in the circumstances, to avoid or prevent the offence taking place: *R. v. Chapin*, 1979 CanLII 33 (SCC). Dickson, J.A. further clarified the applicable standard at page 134:

"An accused may dismiss his responsibility by proving that he has taken every precaution that a reasonable man would have taken in the circumstances or, in other words, that he was in no way negligent."

[266] I turn now to the question of whether Ms. Zhou was a person responsible for the dogs and cats seized on the Colebrook Road property on February 16th, 2016. Ms. Zhou, through her counsel, has conceded that she was responsible for the dogs and cats seized from the Colebrook Road property on February 16th, 2016, which I note has been established was located in Surrey, B.C. I also note that she has been identified beyond a reasonable doubt as the accused.

[267] I next turn to whether or not any of the dogs or cats and/or cats that were seized were in distress at the time they were seized. In order to address this issue, I will first address the issue of the credibility of the witnesses.

[268] I found all of the Crown witnesses to be credible witnesses.

[269] The SPCA employees: Christine Lewis, Lee Ann Thomson and Kimberly Monteith and the Animal Control Officer Nicole Moreau all gave their evidence in a

straightforward manner and none of them were seriously challenged in cross-examination. While there were some minor discrepancies in the evidence between some of them, it was nothing more than might be expected when you have a number of people giving evidence about an incident from many months earlier.

[270] The three doctors, Drs. Brar and Gordon and Walton, all of whom were involved in this matter in some capacity and all of whom were qualified to give expert evidence, testified in a straightforward, professional manner and they were not seriously challenged in cross-examination. Indeed, on some points, Dr. Brar's evidence was supportive of Ms. Zhou.

[271] In his submissions, Mr. Shen suggested that the SPCA employees were biased towards Ms. Zhou but there was no credible evidence led to support such a conclusion.

[272] I did not find Ms. Zhou to be a credible witness. At times, I found her evidence to be internally inconsistent. At times, her evidence made no logical sense. At times, I found her evidence to be evasive. Her evidence, at times, was not consistent with the physical evidence, for example, the laboratory finding.

[273] I provide the following examples which I note are examples of only some of the problems I had with her evidence:

1. She said that Peter the cat that was found in the attic and was ultimately euthanized was under the care of Dr. Brar and was getting better. Dr. Brar was never asked about this cat in his evidence and he should have been. Pursuant to the rule in *Browne v. Dunn*, I give little

weight to her evidence on that point. Also, Dr. Brar's reports from the examinations that he did on January 31st while visiting the Colebrook Road property, which are exhibits in this proceeding, reference no cat named Peter or any cat that would have been in the physical condition Peter would have been in at the time. When confronted with this point in cross-examination, she responded that sometimes the name she mentioned to Dr. Brar was different than the name he would write down and she thought he used the phonetic translation. This also was not put to Dr. Brar and I reject her evidence with respect to Dr. Brar's ongoing treatment of Peter.

2. She said that the SPCA was aware of Peter because of the reports that Dr. Brar sent to the SPCA. Dr. Brar was never asked specifically if he sent the SPCA a report pertaining to Peter and, in my view, he should have been. Furthermore, it makes no sense for her to hide Peter when the SPCA comes on February 16th, 2016, if the SPCA is aware of Peter and presumably would be on the lookout for him. I reject her evidence that it was her understanding the SPCA was aware of Peter.
3. Ms. Zhou testified that the SPCA was only interested in taking away the healthy, expensive cats but not the sick, old cats, which is inconsistent with why she would hide Peter in the attic. When asked about this, she then said she put Peter in the attic, as he was old and sick and she thought the SPCA would kill it. Subsequently, she said that she thought the SPCA would use Peter's condition as an excuse to take all her cats. Also, at one point in cross-examination, she said that on February 16th, Peter was not seriously ill and was not in distress. I reject her evidence on this point.
4. Ms. Zhou mentioned several times that the SPCA and city employees wanted some of her healthy cats to be given to them for free. She described an occasion at the Colebrook Road property where she said that SPCA Employee Thomson and a city supervisor in charge of licenses discussed which cats they liked and they took their pictures

with them and asked if they could take them away that day, free. Ms. Zhou's evidence earlier was that she could only understand a very little English and only once, on an earlier occasion, did they bring an interpreter yet she did not offer any explanation as to how she could have understood the discussion these people were apparently having with one another or how she could understand what they were saying to her. Only Ms. Thomson was asked in a general sense about this and she denied trying to get Ms. Zhou to give her a free animal. I do not accept Ms. Zhou's evidence on this point or any of her evidence about SPCA employees trying to get her to give them healthy animals for free.

5. Ms. Zhou said in her evidence in chief that in January 2016, she was still using the Partridge property for her cats, as the Colebrook Road property was not yet completed. In cross-examination, she said that she thought it was December 31st, 2015, when she moved all the cats to the Colebrook Road property.
6. Ms. Zhou said that Peter had had a serious case of ringworm. She said that after using medication on the cat given to her by Dr. Brar, although its fur did not grow back, there was no longer a ringworm condition. This is contrary to the physical findings of Dr. Walton, who testified that when he put the Wood's lamp on the cat to test it for ringworm that it "glowed like a Christmas tree" and that in his 18 years as a vet he never experienced a cat with ringworm to such an extent. I do not accept her evidence on this point.
7. Ms. Zhou testified that on February 16th, 2016, only three of her cats had issues with hair falling out due to ringworm. This is contrary to the evidence of Dr. Gordon, who testified that 71 of 75 of the animals, both cats and dogs, whom they cultured for ringworm came back positive and that one-third of these animals had hair loss. Given that there were 69 cats and 15 or 16 dogs seized, there would have been far more than three cats that would have had hair loss. I do not accept her evidence on this point

8. Ms. Zhou suggested in her evidence that her animals became infected by the way that they were dealt with by the SPCA. She offered no evidence to support her claim. The evidence of Dr. Walton on point was but that it would take a week or 10 days for them to become infected. He said that all of the animals were tested within 48 hours of being seized and the ones that tested positive could not have acquired the disease at the SPCA in that time period. He added that most of the cats that tested positive also showed clinical signs of being infected. I reject her evidence on this point.

[274] As stated above, these are but some examples of difficulties I had with her evidence. In applying the test in ***R. v. W.(D.)*** (11991), 63 CCC (3d) 397 (SCC), I do not believe her evidence and I am not left in a reasonable doubt by it. Turning to the third stage of the *W.(D.)* test, as it applies to this case, I must now consider whether, on the basis of the evidence which I do accept, if I am convinced beyond a reasonable doubt that she did cause or permit an animal or animals that she was responsible for to be in distress or to continue to be in distress.

[275] With respect to the issue of whether any of the dogs and cats seized were in distress, I agree with the Crown's comments in that regard.

[276] With respect to the animals found in the attic I accept that Ms. Zhou put them up there shortly after the arrival of the SPCA and that they were not there for more than 10 or 15 minutes. The definition of animals in distress in the Act does not set

out a minimum time that an animal must be kept in the condition noted in that particular section of the Act to constitute distress.

[277] The attic was hot and inadequately vented and had no light. At the time the animals were found, the light bulb was off. Several cats were running loose in fibreglass insulation. Dr. Walton testified that the insulation was irritating to the animals' skin. The cat, Peter, had severe dermatitis on all four feet. He was found curled up in the insulation. I cannot find beyond a reasonable doubt that they had no access to food and water. I do find that all of the animals in the attic were deprived of adequate ventilation and light and were in distress, as defined by the Act.

[278] Ms. Monteith testified about finding two adult cats and kittens in a small furnace room. She said the room had no windows and no air circulation and the smell of urine. I find that these animals were in distress, as they were deprived of adequate light and ventilation.

[279] I turn now to the cat barn. Based on all of the evidence, and in particular the evidence of Dr. Gordon and Dr. Walton, I find that all of the cats in the cat barn were in distress. I find that the cats in the cat barn were deprived of adequate ventilation and adequate care and veterinary treatment and that they were also kept in conditions that were unsanitary. Many of these cats were sick. Some were coughing and/or sneezing. Many had discharge coming from their eyes and nose. Some had their hair matted and some had feces stuck to their hair.

[280] Mr. Shen submits that there was no evidence of sneezing or coughing on the video of the search but the witnesses, in giving evidence, did not say that all of the cats were continuously sneezing. Also, it was not established in the evidence that the video equipment would necessarily pick up the sneezing on its audio component when sneezing occurred.

[281] Dr. Gordon was clear in her evidence that the needs of the cats were not being met with respect to hygiene and biosecurity. She stated that only nonporous surfaces can be properly cleaned and I note the evidence that some of the floors and walls had porous surfaces.

[282] Again, with respect to the cat named Peter. In addition to being found in the insulation in the attic, Peter was clearly in need of veterinary care. I also find that he was sick and in pain and was suffering. I also find that he was in distress, for those reasons.

[283] I turn now to the dogs in the dog barn. I am satisfied that the dogs in the dog barn were in distress due to inadequate light and unsanitary conditions.

[284] I turn now to the kitten with the incomplete urinary track system that had no outlet to pee. I accept Ms. Zhou's evidence that this cat was a very recent arrival to the Colebrook Road property and she was not aware of its condition. While the cat required veterinary care, I find that she personally had not assumed responsibility for that cat.

[285] I turn now to the issue of whether, after finding that the dogs and cats were in distress, does Section 24.02 of the *Prevention of Cruelty to Animals Act* apply?

This provision was not advanced as a defence by Mr. Shen on behalf of Ms. Zhou. Additionally, I find that the evidence of the expert witnesses preclude this defence from being applicable.

[286] I turn now, having found that many of the dogs and cats were in the distress that they were, did Ms. Zhou cause or permit them to be or continue to be in distress? On the totality of the evidence, it is clear that the animals were at the Colebrook Road location for a number of weeks. Based on the evidence, I find the animals found in distress were, save and except for those found to be in distress in the attic, in distress for various periods, some for several days, others for several weeks. I find that Ms. Zhou did cause and/or permit the animals to be in distress.

[287] With respect to the animals in the attic, she caused them to be in distress by placing them there and permitted them to continue to be in distress for 10 to 15 minutes.

[288] I turn now to the question of whether Ms. Zhou exercised due diligence in alleviating or attempting to alleviate the distress of the animals. As noted in the passage referred to from the *Scott* decision, due diligence means taking every precaution that a reasonable person would. This is also referred to as the absence of negligence.

[289] I find that Ms. Zhou did not establish, on the balance of probabilities, that she exercised due diligence in alleviating or attempting to alleviate the distress of the animals. I make this finding based on all of the evidence including:

1. When the SPCA came to the Colebrook Road property on February 16th, 2016, Ms. Zhou's response was to put some of the animals, including Peter, in the lightless, inadequately vented attic where several of the animals were found in the insulation. One of the animals, Peter, was already extremely sick and highly infectious or contagious. He was in close proximity to the other animals and easily could have infected them. Ms. Zhou also failed to ensure that Peter was safely secured in his cage and away from the other animals.
2. The general unsanitary conditions of some locations inside of the house and the cat and dog barn led to infection being spread among the animals. Sick animals were not properly segregated from healthy animals.
3. Ms. Zhou neglected to inform and train herself of the proper care of the animals. She said that she was provided with a copy of the code or regulations and she never had it translated so that she would know what was in it and she also said that she did not have some of the previous orders translated. She and her counsel have raised the issue of the failure of the SPCA to have a Mandarin-speaking person present when dealing with her and the fact that the orders were in English. However, there is no obligation on the SPCA to provide an interpreter or to provide the written materials in Mandarin. A reasonable person would have arranged to have all the documents translated so as to inform him or herself of what was required of her or him.
4. Although a great deal of money was spent on renovations, Ms. Zhou failed to properly inform herself with respect to using non-porous building materials and the impact it would have on trying to keep the animal areas clean and free from infectious bacteria. A reasonable person would have informed him or herself in that regard prior to any renovations being undertaken.

Mr. Shen submits the renovations were not yet complete and had to be stopped because of a stop work order. In my view, that is irrelevant. A reasonable person would not have placed any animals in the cat barn or the dog barn until they had been properly completed and inspected, if not by the SPCA, then a privately-retained vet with an expertise in animal shelter design and infectious disease.

5. Ms. Zhou lacked the necessary knowledge to recognize when an animal should be seen by a vet. I accept that Ms. Zhou, on a very regular basis, took animals to Dr. Brar for preventative care and for

treatment. Ms. Zhou had approximately 85 animals seized from her on February 16th, which, in my view, was a very large number. In addition, based on her own evidence, she had animals coming and going on a regular basis. Simply pointing to the number of visits made to the vet is not an answer. It is clear from Dr. Gordon and Dr. Walter's evidence that the vast majority of the animals seized were in need of veterinary care yet Ms. Zhou thought only a few were sick. Notwithstanding the previous orders which had been issued, she failed to properly inform or train herself to know when an animal should be seen by a vet. A reasonable person in her position would have done so.

6. Ms. Zhou had far more animals in her care than she could properly care for. A reasonable person in her position would have reduced the number of animals in their care or would have hired appropriately-trained employees to assist in that regard. At the time the search warrant was executed, according to her evidence, it was just her and one employee caring for approximately 85 animals, which clearly was not enough.

Mr. Shen submits that some of Ms. Zhou's clients left animals with her and would not take them back and the SPCA would not take them. If that is the case, then Ms. Zhou has an obligation to re-home them in an appropriate home. Unfortunately, if no appropriate home can be found, she has an obligation to have them humanely euthanized rather than house them in inappropriate conditions and have them become ill and leave them untreated.

7. I find, based on Doctor Walton's evidence, Peter, the cat, was critically ill on February 16th, 2016. He was in immediate need of veterinary care, which would have been apparent to a reasonable person and should have been apparent to Ms. Zhou. I accept Dr. Walton's evidence as to why he had to euthanize Peter. As noted, I do not accept Ms. Zhou's evidence about Dr. Brar examining Peter on January 31st or that he was in a worse condition on that date. A reasonable person would have had Peter in to be examined by a vet on and prior to February 16th, 2016.

[290] In addressing the issue of due diligence, Mr. Shen submits that the case law supports his submission that due diligence does not require perfect standards and I accept that as a proposition of law. However, for the reasons stated, I find that the facts in the case at bar are far, far below perfect standards.

[291] As stated, the defence of due diligence has not been made out on the balance of probabilities and I find Ms. Zhou guilty as charged.

(REASONS FOR JUDGMENT CONCLUDED)