

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Robinson*,  
2018 BCSC 1852

Date: 20181024  
Docket: 23222  
Registry: Salmon Arm

**Regina**

v.

**Charlene Robinson**

Before: The Honourable Mr. Justice Marchand

## **Reasons for Judgment**

|                             |  |
|-----------------------------|--|
| Counsel for the Accused:    | A.D. Janse                             |
| Counsel for the Crown:      | G.A.P. Verdurmen                       |
| Place and Date of Hearing:  | Salmon Arm, B.C.<br>February 6-7, 2018 |
|                             | Kamloops, B.C.<br>June 13-15, 2018     |
| Place and Date of Judgment: | Kamloops, B.C.<br>October 24, 2018     |

**Introduction**

[1] Charlene Robinson is an experienced and fiercely independent horsewoman. In the fall and early winter of 2013, she had 20 Arabian horses and one pig in her care on her rural property in Salmon Arm. There is no doubt that Ms. Robinson cared deeply about her animals.

[2] Nevertheless, as the result of two complaints and several interactions with Ms. Robinson, the Society for the Prevention of Cruelty to Animals (“SPCA”) executed a warrant on Ms. Robinson’s property on December 19, 2013. With input from a veterinarian, the SPCA concluded that all Ms. Robinson’s animals were in distress due to inadequate water, feed, shelter and care. The SPCA seized three of Ms. Robinson’s mares and two stallions.

[3] On January 9, 2014, the SPCA executed a further warrant. With input from the same veterinarian, the SPCA concluded that Ms. Robinson’s animals continued to be in distress and seized six mares plus two pony stallions. The SPCA left seven horses and the one pig in Ms. Robinson’s care.

[4] Ms. Robinson is now charged as follows:

Count 1

Charlene ROBINSON, between the 5th day of November, 2013 and the 13th day of May, 2014, inclusive, at or near Salmon Arm, Province of British Columbia, did, wilfully cause or, being the owner, wilfully permit to be caused unnecessary pain, suffering or injury to animals, to wit: horses and a pig, contrary to Section 445.1(1)(a) of the Criminal Code.

Count 2

Charlene ROBINSON, between the 5th day of November, 2013 and the 13th day of May, 2014, inclusive, at or near Salmon Arm, Province of British Columbia, did, being the owner or the person having the custody or control of domestic animals, wilfully neglect or fail to provide suitable and adequate food, water, shelter and care for them, to wit: horses and a pig, contrary to Section 446(1)(b) of the Criminal Code.

[5] Ms. Robinson maintains that the Crown has not proven beyond a reasonable doubt that any inadequacy in her care of her animals represented a marked departure from the norm or was “wilful”. She says that a number of factors beyond

her control caused a decline in the condition of her animals and that she was doing everything in her power to meet their needs at the time of the seizures.

**Issues**

[6] In relation to Count 1, the issues are:

1. Were any of Ms. Robinson’s animals experiencing pain, suffering or injury?
2. Was the pain, suffering or injury unnecessary?
3. Was the pain, suffering or injury caused or permitted to be caused by Ms. Robinson?
4. Did Ms. Robinson act wilfully?

[7] In relation to Count 2, the issues are:

5. Did Ms. Robinson neglect or fail to provide suitable and adequate food, water, shelter and care for her animals?
6. Was this neglect or failure a marked departure from the norm?
7. Did Ms. Robinson act wilfully?

**Background**

**Ms. Robinson’s Property and Animals**

[8] Ms. Robinson owns an approximately 20-acre parcel of land at 1626 Salmon River Road in Salmon Arm. The property borders the Salmon River. It has a large 14-acre pasture with a barn and several paddocks with individual shelters. The property has a very productive water well and extensive underground water lines that lead to many hydrants at various locations on the property. Ms. Robinson generally kept her 15 mares in the pasture and her five stallions in individual paddocks. Ms. Robinson’s pig had a box stall in her barn.

### **Complaints**

[9] On November 5, 2013, the SPCA received a complaint of 20 underweight horses on Ms. Robinson's property. The complainant also reported that one horse had died two days previously.

[10] In November 2013, Daniel Chapman was contracted by the SPCA to investigate complaints in the North Okanagan. Subsequent to the events at issue, Mr. Chapman was appointed a Special Provincial Constable with the SPCA. I will, therefore, refer to him as Cst. Chapman even though he did not hold that designation at the material times.

[11] On November 19, 2013, Cst. Chapman attended Ms. Robinson's property to explain the SPCA's concern. Ms. Robinson was working on her water pump, which she reported was broken. Cst. Chapman was unable to inspect Ms. Robinson's property and animals that day but obtained Ms. Robinson's email address for future communication. Ms. Robinson reported that she did not have a phone. Cst. Chapman asked if a horse had died. Ms. Robinson replied that that had not occurred.

[12] On November 22, 2013, the SPCA received a further complaint that 15 horses on Ms. Robinson's property were being neglected. The complainant reported that the horses were underweight, had no feed and had "rain rot". The complainant also reported that one horse was about to die.

### **SPCA Inspection on November 28, 2013**

[13] Cst. Chapman arranged with Ms. Robinson to inspect her property and animals on November 28, 2013. Cst. Chapman arrived shortly after 9:00 a.m. and found Ms. Robinson at her water pump. It was still not operational. Cst. Chapman observed that hay was out for the horses but none had water. Some of the horses appeared underweight. There was no evidence that a horse had recently died. Ms. Robinson said the horses were dehydrated but that she would have her water pump fixed by November 30, 2013. Ms. Robinson identified that one stallion named Magic

required dental work and promised to have that done within two weeks. Cst. Chapman considered a number of the pens on the property to be so full of manure that they needed to be cleaned out.

[14] While at Ms. Robinson's property, Cst. Chapman assessed the body condition of Ms. Robinson's horses using the "Henneke Scale". The Henneke Scale is a universal scale which assigns a number from one to nine to a horse based on the horse's body condition. A "body condition score" (or "BCS") of one describes a horse that is extremely emaciated, while a BCS of nine describes a horse that is extremely fat. A BCS of five describes a horse that has an ideal body condition.

[15] The body condition of a horse is normally assessed by performing both a visual and a physical examination of the horse but sometimes only a visual examination is done. Scores are based on observable and/or palpable features such as the prominence of the horse's bone structure. The assessments are objective and assessments performed by veterinarians or other trained persons typically vary by no more than 0.5.

[16] The full Henneke Scale is as follows:

- BCS of one – extremely emaciated
- BCS of two – very thin, emaciated
- BCS of three – thin
- BCS of four – moderately thin
- BCS of five – moderate condition
- BCS of six – moderately fleshy
- BCS of seven – fleshy
- BCS of eight – fat

- BCS of nine – extremely fat.

[17] On the basis of his training and experience, Cst. Chapman assessed Ms. Robinson’s horses as having BCSs ranging from a low of two for an older mare named Wianka and a stallion named Alabama to a five for a mare named Asia. Other BCSs included a three for a stallion named Africa, a 3.5 for a mare named Ruse and a stallion named Excetra, and a four for Magic and a mare named Ava. Cst. Chapman considered Wianka as “very skinny, emaciated”. Ms. Robinson explained that was because she had melanoma.

[18] At the conclusion of his inspection, Cst. Chapman made an SPCA “Order” (which is now more correctly identified as a “Notice”) to give Ms. Robinson time to alleviate what Cst. Chapman considered to be her animals’ distress. Cst. Chapman marked various boxes on a standardized form to “order” Ms. Robinson to:

1. Provide access to clean potable drinking water at all times. Immediately.
5. Provide necessary dental care. 2 weeks.
13. Ensure the shelter is cleaned and sanitized regularly. One month.

[19] The Order warned that “[f]ailure to comply with the above order(s) within posted timelines may result in legal action including seizure of your animal(s) and/or charges pursuant to: (a) Criminal Code [Code], (b) Prevention of Cruelty to Animals Act [PCAA]”.

[20] Ms. Robinson was cooperative throughout the inspection. She suggested that Cst. Chapman come back in one week but he said he would come back in two weeks.

### **SPCA Inspection on December 12, 2013**

[21] Cst. Chapman next attended Ms. Robinson’s property on December 12, 2013 with SPCA Special Provincial Constable Jamie Wiltse. Ms. Robinson was still working on her pump. None of the animals had water and Cst. Chapman felt that some of the horses had dropped in BCS. When Csts. Chapman and Wiltse got to Wianka, Cst. Wiltse was concerned that an offence had been committed so stopped

the inspection to read a *Charter* warning to Ms. Robinson. Ms. Robinson “declined” to hear the warning and simply wanted to know what she had to do.

[22] Cst. Chapman testified to a number of specific concerns. The shelters and pastures had not been cleared of manure. There was a salt block in the main pasture but no salt was available for the other horses. Magic had not had any dental care. Excetra was very thin. Africa was very thin and had flaky skin. Csts. Chapman and Wiltse had a discussion with Ms. Robinson about the possibility of blanketing Africa to keep him warm given that he was underweight. Wianka was very thin and was in a small paddock with no shelter. Ms. Robinson’s pig “was highly stressed out”. Cst. Chapman had “never seen a pig act like how that pig was acting”. The pig was apparently jumping up at the front of the stall door. There was no heat lamp for the pig and it was in a thin body condition.

[23] Ms. Robinson offered some explanations. Ms. Robinson said she was hauling 180 gallons per day of water from a water stand about one kilometre down the road. Ms. Robinson said she had run out of salt blocks but was willing to buy more. Ms. Robinson advised that Magic had an appointment for dental care on December 20, 2013. Ms. Robinson thought that Africa would get too hot if he was blanketed. Ms. Robinson explained that Excetra was a “hard keeper”, meaning that as a result of anxiousness, it was difficult to keep weight on Excetra.

[24] Csts. Chapman and Wiltse offered to help Ms. Robinson feed her animals but she declined, saying that she could get the job done quicker by herself.

[25] Cst. Chapman made two “Orders”. The first “ordered” Ms. Robinson to:

5. Provide necessary dental care. Marina.

7. Provide necessary veterinary care when the animal exhibits signs of injury, pain, illness or suffering that require medical attention by the end of 5 pm December 14<sup>th</sup>/2013.

Have a Herd inspection done by a registered Vet and follow all Vet recommendations. Have Vet Report faxed to 1-250-868-2830. Provide SPCA with a confirmed vet appointment.

[26] The second “ordered” Ms. Robinson to:

7. Provide necessary veterinary care when the animal exhibits signs of injury, pain, illness or suffering that require medical attention.

Have Africa, Wianka, Alabama seen by a registered Vet within 24 hours and follow all Vet recommendations. Provide SPCA with confirmed Vet appointment.

[27] Both Orders warned of possible legal action or charges under the *Code* or *PCAA*. One of the orders required that Ms. Robinson's animals were "not to be removed without permission of the investigating officer." Cst. Chapman did not repeat the orders he had made on November 28, 2013 and considered those orders to remain operative.

**Dr. Mills' Inspection on December 13, 2013**

[28] In accordance with Cst. Chapman's December 12, 2013 Orders, Ms. Robinson contacted a veterinarian named Dr. Britt Mills to see Africa, Wianka and Alabama and complete a herd inspection. Dr. Mills attended Ms. Robinson's property on December 13, 2013. Dr. Mills was called as a witness for the Crown and was qualified to give expert opinion evidence in the areas of animal health and husbandry.

[29] Dr. Mills assessed Wianka as having a BCS of 1.5, and Alabama and Africa as having a BCS of two. Fecal samples showed the presence of tapeworms or eggs for each animal at manageable levels. Dr. Mills found Wianka to have a very poor dental arcade, which was not uncommon for a 27 year-old horse like her. Wianka's poor dental arcade indicated that Wianka would not be efficient at eating hay. Dr. Mills also found Wianka to have what appeared to be a non-malignant melanoma, which was also not uncommon for an older grey horse like Wianka. Dr. Mills found the remainder of the herd to be thin with BCSs of between three and four.

[30] Dr. Mills noted that Ms. Robinson had two round bales of poor quality coarse hay on her property and that the horses she individually examined had a few inches of water on a thick layer of ice in unheated pails available to them. She observed undigested oats in Wianka's manure. Dr. Mills acknowledged that she did not know whether Ms. Robinson's animals had been fed and/or watered before her arrival.

[31] Dr. Mills testified that “after starvation” calories must be increased carefully so as not to adversely affect the animal’s electrolyte balance and to avoid “re-feeding syndrome”.

[32] Dr. Mills recommended that Africa and Alabama receive some roughage in pellet or cube form, starting at three pounds per day and increasing by one pound per day until each was receiving seven to ten pounds per day. Dr. Mills considered dental care for these horses to be desirable but secondary to increasing calories.

[33] Dr. Mills recommended that Wianka receive a soaked pelleted senior complete ration, starting with four pounds morning and night and gradually increasing over the following two weeks. Dr. Mills also recommended that Wianka be kept separate from the rest of the herd, blanketed to minimize calorie loss due to the cold and kept in an area with a shelter.

[34] Dr. Mills recommended follow up examinations for Africa, Alabama and Wianka. She also recommended that the entire herd have water available at all times and that the entire herd be dewormed.

[35] Dr. Mills found Ms. Robinson to be cooperative and receptive to her recommendations. She observed Ms. Robinson to be actively involved in husbandry and concluded that Ms. Robinson was attached to and cared about her horses. Dr. Mills observed no signs of intentional cruelty. When she suggested that Ms. Robinson keep one or two of her favourite horses and offered to help Ms. Robinson find new homes for the others, Ms. Robinson declined the offer of help.

[36] Even though none of the horses appeared to be thirsty and there was food about, Dr. Mills concluded that Ms. Robinson’s horses were not receiving adequate food, water, shelter and care. Specifically, Dr. Mills testified that it is not normal for horses to drop from a BCS of five to 1.5 or two and that it would take months to lose the several hundred pounds it would take to do so. Dr. Mills testified that it is not common for horses to lose weight at the transition between fall and winter. Dr. Mills considered inadequate food and poor dental condition (which negatively affects

digestion) to be responsible for the weight loss. Dr. Mills did not consider Wianka's melanoma, Wianka's age or the presence of worms to be contributing factors. Dr. Mills did not consider Ms. Robinson's reports of what she was feeding her horses to be credible, given their condition.

[37] Dr. Mills acknowledged there was nothing glaringly obvious in her examinations of Ms. Robinson's animals to indicate they were in physical pain like they would experience if they were injured. Rather, Dr. Mills explained that the animals would be in severe discomfort due to their hunger, absence of body fat and exposure to the cold.

[38] Dr. Mills did not recommend the seizure of any of Ms. Robinson's animals but testified that was because the SPCA was already involved.

**SPCA Inspection on December 17, 2018**

[39] Cst. Chapman attended Ms. Robinson's property on December 17, 2013 for a further inspection. There were 18 bales of hay on the property but Ms. Robinson's animals did not appear to have been watered. Ms. Robinson reported that her water pump had been fixed but she was waiting for it to thaw. Wianka was in a separate paddock but did not have water, shelter or soaked feed.

**Execution of Warrant with Dr. Jackson on December 19, 2013**

[40] On December 18, 2013, Cst. Chapman sought a warrant to relieve the distress of Ms. Robinson's animals. The warrant was executed on December 19, 2013 with veterinarian, Dr. Jennifer Jackson, in attendance. Dr. Jackson testified for the Crown and was qualified to give expert opinion evidence in the areas of animal health and husbandry.

[41] The SPCA arrived at 2:08 p.m. and observed that there was essentially no water available to any of Ms. Robinson's animals. It appeared that some food had been provided to the animals just prior to the SPCA's arrival and there was a limited amount of hay, pelleted rations and alfalfa cubes on site. Dr. Jackson acknowledged that just because a horse is not physically next to water or feed it does not mean the

horse has not had adequate access to water or feed. Dr. Jackson agreed that a horse can go six hours without water and feed. Dr. Jackson acknowledged that she did not conduct any scientific tests to determine whether Ms. Robinson's horses were dehydrated.

[42] Dr. Jackson completed individual assessments of 19 of Ms. Robinson's horses as well as her pig. She assessed the horses as having BCSs ranging from a low of one for a bay mare with star and stripe markings to 3.5 for a chestnut mare with three white stockings. Dr. Jackson assessed Wianka as having a BCS of 1.5. Dr. Jackson assessed Africa, Excetra, Alabama and another stallion named Raz as having a BCS of two. Dr. Jackson assessed Magic as having a BCS of three.

[43] Dr. Jackson testified that horses with a BCS of one have less than a 50% chance of survival and can easily die. In her experience, even with veterinary care, a horse with a BCS of one has a 30% chance of dying. According to Dr. Jackson, with immediate veterinary care, a horse with a BCS of two has a 90% chance of survival. In Dr. Jackson's opinion, a horse with a BCS of less than three is considered to be in starvation mode and requires veterinary care within one week. Dr. Jackson testified in direct that it would probably take months for a horse to drop from a BCS of five to a BCS of two. On cross-examination, Dr. Jackson also agreed with her earlier testimony at the preliminary inquiry that the time frame could be "four to six weeks-ish, depending on weather and exercise and competition and stress and, you know, all those --". Dr. Jackson testified that it could take as little as two weeks for a horse to drop from a normal BCS to a BCS of two with no food at all.

[44] Dr. Jackson agreed that Arabians are endurance horses and "tend to be a bit more on the thin side than some other horses." Dr. Jackson maintained, however, that Arabian horses "fit very well within the body condition scoring." Dr. Jackson testified that the age of a horse does not affect its BCS. Finally, Dr. Jackson also testified that disease can affect a horse's BCS. Dr. Jackson did not note evidence of cancer on Wianka.

[45] For his part, Cst. Chapman testified that Arabian horses can be fat or thin and that horses can become thin for a variety of reasons, including disease, skittishness and/or age.

[46] Dr. Jackson noted that two horses had burdock in their manes and/or forelocks while three others had rain scald. She explained that burdock is a plant with a Velcro-like quality that is hard to remove, pulls hair out of place, inhibits the function of hair, and can cause ocular problems and pain or discomfort. She explained that rain scald is a fungal bacterial infection that is caused by lack of shelter and/or grooming. She noted that it can be contagious but is easily preventable and treatable.

[47] Dr. Jackson felt that several horses were in need of hoof care, Alabama was dropping food indicating a need for dental care and Excetra was exhibiting abnormal chewing habits. Dr. Jackson described the bay mare with star and stripe markings as appearing depressed.

[48] Dr. Jackson observed Wianka vigorously eating snow in her paddock until she was given two gallons of water, which she quickly drank. Dr. Jackson explained that eating snow is problematic for horses because it requires energy to convert to water and is therefore taxing on the horse's metabolic rate. In Dr. Jackson's opinion, lack of access to adequate water was contributing to Wianka's low BCS.

[49] Dr. Jackson considered the shelter for Ms. Robinson's horses to be inadequate in size and unsafe for the horses. She testified that wires and nails were sticking out of the support beams in the barn and presented a risk of injury. She considered some of the fencing to be inadequate.

[50] Dr. Jackson observed Ms. Robinson's pig to be thin with no water, no heat, no access to daylight, and limited bedding and feed.

[51] In the written report she filed in relation to her inspection on December 19, 2013, Dr. Jackson concluded:

In my opinion the owner, although very caring and seemingly concerned about her horses, is not resourceful enough to care properly for all of them. Chronic inadequate feed, water, time and care has left these horses in a precarious situation.

[52] Dr. Jackson concluded that Wianka was in distress as defined by the *PCAA*, that immediate changes needed to be made and that Wianka needed to be removed. In Dr. Jackson's opinion, many things could be done to improve the quality of the health of the animals and she made a number of recommendations regarding the provision of adequate water and feed.

[53] Cst. Chapman did not complete independent assessments of the horses' BCSs. He testified that they were in terrible condition. In his view, the horses were in distress due to inadequate water and shelter.

[54] With input from Dr. Jackson, the SPCA seized Wianka, Africa, Excetra and two mares from Ms. Robinson's property. The removal was hindered by the fact that gates were frozen shut and there was limited daylight.

[55] Cst Chapman made a further "Order" for Ms. Robinson to:

1. Provide access to clean potable drinking water at all times. Immediately.
2. Provide sufficient quantity of suitable food to allow for normal growth and the maintenance of normal bodyweight. Immediately.
5. Provide necessary dental care. One month.
6. Provide necessary foot, nails or hoof care. 30 days.
8. Ensure the animal is kept free of infestation by fleas, lice, parasites or other insects. 48 hours.
10. Provide shelter and ensure protection from heat, cold and dampness appropriate to the weight and protective outer coat of animal. 48 hours.
15. Ensure the area/pasture is kept free of injurious objects. Immediately.

[56] Cst. Chapman's Order added comments that Ms. Robinson was to "follow all vet recommendations" and "provide a heat lamp for the pig and provide water 24/7". The Order came with the usual warnings that failure to comply could result in charges under the *Code* or *PCAA* and instructed Ms. Robinson that the animals were not to be removed without the permission of the investigating officer.

**Dr. Mills' Assessment of Seized Horses on December 21, 2013**

[57] On December 21, 2013, Dr. Mills inspected the horses that were seized on December 19, 2013. Wianka's BCS had improved slightly to a two while Africa's BCS remained at two. Dr. Mills assessed Excetra and the grey mare that was seized to have BCSs of three, and the chestnut mare that was seized to have a BCS of four.

[58] Lab work indicated that none of the seized horses had an underlying medical condition of clinical significance. The results of the lab work reinforced Dr. Mills' opinion that the horses' poor BCSs were entirely related to a lack of food.

**SPCA Compliance Check on December 31, 2013**

[59] Cst. Chapman attended Ms. Robinson's property on December 31, 2013 to conduct a compliance check. Ms. Robinson's water pump was frozen and she was melting snow in her water trough with a heater to provide her animals with water. There were animals without water, including the pig. Cst. Chapman concluded that there had been no improvement since the December 19, 2013 Order and applied for a further warrant.

**Execution of Warrant on January 9, 2014 with Dr. Jackson**

[60] The SPCA executed a second warrant on Ms. Robinson's property on January 9, 2014 with Dr. Jackson. They generally found no change in circumstances. There was still no running water. On arrival, a number of animals did not have water. Ms. Robinson was still melting snow in her water trough. There had been no changes to the shelter available to the horses. On the positive side, there was sufficient hay on the property to minimally meet the horses' needs and there was a heat lamp for the pig. Further, while Cst. Chapman and Dr. Jackson were on Ms. Robinson's property, the animals were watered to minimally meet their requirements for that day.

[61] According to Dr. Jackson, there was no meaningful change in the BCSs of the horses. Alabama and Magic still had BCSs of two and three respectively. Raz had

improved only slightly to a BCS of 2.5. Cst. Chapman testified that there had been a slight improvement in the condition of some of the mares in the pasture.

[62] In Dr. Jackson's opinion, the horses continued to have inadequate water and were in a precarious position. In Dr. Jackson's opinion, the horses were in distress. In cross-examination, Dr. Jackson acknowledged that the horses were not in "critical distress" in the sense that none needed to be hospitalized or euthanized.

[63] With input from Dr. Jackson, the SPCA removed Alabama, Raz and six mares. The SPCA removed the thinnest horses and those they could catch.

[64] In the written report she filed in relation to her inspection on January 9, 2014, Dr. Jackson concluded:

If it does not snow and it gets colder again it will be difficult for [Ms. Robinson] to provide adequate feed and water for the remaining animals. Horses deprived of water are at risk of colic and failure of organ function as well as decreased feed utilization that results in weight loss. Complete water deprivation can cause death in 96 hours.

[65] Cst. Chapman made a final "Order" that Ms. Robinson was to:

1. Provide access to clean potable drinking water at all times. Immediately.
2. Provide sufficient quantity of suitable food to allow for normal body growth and the maintenance of normal bodyweight.
6. Provide necessary foot, nails or hoof care for all horses. 2 weeks.

[66] Cst. Chapman commented in his Order that:

[E]ach horse needs 5 gallons of water daily (water needs to be available at all times). Feed Magic appropriate food to allow horse to be a body score of 5/9. All horses should have a body score of 5 out of 9.

[67] The Order also gave the usual warnings about possible charges and non-removal of the animals.

### **Subsequent Inspections**

[68] Cst. Chapman attended Ms. Robinson's property on February 27, 2014 but no one was home. When he attended on March 6, 2014, he had no concerns. On his

last attendance on May 13, 2014, he noted some algae in Ms. Robinson's water trough. Ms. Robinson indicated that she was aware of and was working on the problem.

[69] On March 7, 2014, Dr. Mills inspected the 13 horses seized from Ms. Robinson. Each had a BCS of between four and five. Dr. Mills concluded that the horses had been able to store significant body weight within a short period of time when fed as recommended. In Dr. Mills' opinion, Ms. Robinson's horses had not been receiving adequate food, water, shelter and care while in Ms. Robinson's care. In Dr. Mills' opinion, the horses had experienced pain and suffering from hunger and a decreased resistance to the cold.

### **Ms. Robinson's Response**

[70] Ms. Robinson has a long history in the equine industry. She had her first horse at age ten and her first horse industry job at age 14. She learned husbandry practices through reading, study, farrier training and working with others. Over the years, she has trained, boarded and bred horses. She has also handled horses in show rings. For many years, Ms. Robinson supported herself and her family through her work with horses. At other times, she took outside work while also continuing to work with horses. She described herself as energetic and testified that working ten to 15 hours a day was not a hardship.

[71] In 2007, Ms. Robinson had to scale back her commercial horse operations as the economy began to fail and the market for horses weakened. By 2013, Ms. Robinson was no longer earning any income from her horses. She kept a number of younger mares and stallions with hopes that the market would turn around. She explained with emotion how her older mares had supported her family so she "pensioned them off". She had no expectations of her horses. Though other people often sell off older horses, those horses can be slaughtered for meat and Ms. Robinson was "not okay with that". Ms. Robinson had an emotional attachment to her horses and planned to put them down when they no longer had a good quality of life.

[72] In 2013, Ms. Robinson was working at a seed orchard and also received a modest widow's pension. She says she was able to meet her financial commitments.

[73] Regarding the availability of water, Ms. Robinson testified that she had a very productive well on her property that was capable of meeting her animals' needs and watering her pasture. She had miles of buried water lines leading to hydrants at many locations on her property. The hydrants had hoses to fill water troughs to minimize the need for Ms. Robinson to carry buckets.

[74] In 2013, Ms. Robinson moved to an "off-grid" power system. It was not feasible to run her existing submersible pump off-grid so, in late October 2013, she began installing a convertible jet pump. The installation process was slow. Ms. Robinson was still installing the jet pump when Cst. Chapman first attended her property. The jet pump was not working at that time so Ms. Robinson was hauling water for her animals. Ms. Robinson testified that the jet pump was operational soon after. According to Ms. Robinson, Cst. Chapman subsequently saw the jet pump working and even helped bucket water, that had been pumped from her well, to her horses.

[75] Between December 13 and 19, 2013, Ms. Robinson acknowledged that her pump was not working and that she was hauling water to her property in 15-gallon containers. She says that she provided each of her horses with four to five gallons of water at least two times per day. Ms. Robinson also acknowledged that her water line froze on December 19, 2013 and did not thaw until the spring.

[76] In terms of feeding her horses, Ms. Robinson maintains that she fed her horses twice per day, and generally had sufficient and appropriate feed available for them. She acknowledged not storing much hay on site but explained that was because she does not have a hay barn. She purchased hay from local suppliers, stored it elsewhere and hauled it to her property every day to once per week. Ms. Robinson produced some receipts from feed stores to support her testimony that she had sufficient and appropriate feed available for her horses, including supplements.

[77] Regarding their BCSs, Ms. Robinson acknowledged that some of her horses were thin but testified that the scores given by Dr. Mills and Dr. Jackson were exaggerated downwards. She testified that the vets “have an agenda”. According to Ms. Robinson, the BCS measures the storage of fat and that, like people, a horse can be healthy without any body fat. Before they were seized, Ms. Robinson estimated that Wianka had a BCS of 2.5 to three, Africa of three and Alabama of three to 3.5.

[78] Ms. Robinson explained that her herd experienced an overall loss of body condition in early December 2013 due to an unexpected cold snap that caught her off guard. It had been a warm fall and Ms. Robinson acknowledged that she should have transitioned her horses off her pasture earlier. She testified that Wianka had a BCS of five while on the pasture but dropped very quickly afterwards. She acknowledged that she made a mistake and her horses suffered the consequences. She testified that she was working diligently to follow all of the orders made by the SPCA as well as the recommendations made by the vets when her horses were seized. According to Ms. Robinson, her horses’ weight loss was close to being corrected by January 9, 2014.

[79] Regarding shelter, Ms. Robinson explained that all of her horses had adequate shelter. In relation to Wianka, Ms. Robinson explained that she was in a separate paddock without shelter on December 13, 2013 to see Dr. Mills and on other days for feeding purposes. Ms. Robinson testified that Wianka otherwise had access to adequate shelter.

[80] Regarding her general husbandry practices, Ms. Robinson testified that she personally met her horses’ needs, including dental care, farrier work and deworming. She relied on veterinarians only when necessary. She acknowledged that one horse had burdock but denied that any of her horses had rain scald.

[81] Regarding her pig, Chop, Ms. Robinson testified that she lived in an outdoor pen in the summer and a 12’ x 12’ box stall in the barn in the winter with windows and open air at the top. She fed and watered Chop regularly and appropriately. She

also added a heat lamp the day that she received the recommendation to do so. She explained that Chop sometimes knocked over his water vessel. Ms. Robinson testified that Chop was at an ideal body weight.

[82] Ms. Robinson testified that she walked through her animals several times per day and never observed any in a state of pain.

[83] Ms. Robinson disputes Dr. Mills' testimony that she declined help. Ms. Robinson says she told Dr. Mills that she would agree to a fostering arrangement if Dr. Mills could find a nice home for her horses. Ms. Robinson acknowledged declining one offer to have her horses cared for by a particular person whose care of animals caused Ms. Robinson concern.

[84] Ms. Robinson's testimony was supported to some degree by the testimony of her neighbours Janice Tyndall and Lorie Ann Simms. Both are experienced horsewomen who attended Ms. Robinson's property in December 2013 after reading negative Facebook posts about Ms. Robinson. Both wanted to reach their own judgments about the condition of Ms. Robinson's horses and/or offer help.

[85] Neither Ms. Tyndall nor Ms. Simms was offered to give expert opinion evidence. At best, their evidence related to whether Ms. Robinson's care of her horses was within the standard of the local horse owner community.

[86] Both Ms. Tyndall and Ms. Simms were aware that Ms. Robinson was dealing with a water problem by hauling water to her property. Both observed feed available to Ms. Robinson's horses. Ms. Tyndall acknowledged that one of Ms. Robinson's horses appeared thin. Ms. Simms noted that two appeared thin. Both considered it normal to have some horses on the thin side within a large group of horses, due to age, illness or being a "hard keeper". Neither observed anything out of the ordinary in relation to Ms. Robinson's horses.

## Analysis

### **Essential Elements of the Offences**

[87] Sections 445.1 and 446 of the *Code* relate to cruelty to animals. These sections provide, in part, as follows:

#### **Causing unnecessary suffering**

445.1 (1) Every one commits an offence who

(a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird;

...

#### **Failure to exercise reasonable care as evidence**

(3) For the purposes of proceedings under paragraph (1)(a), evidence that a person failed to exercise reasonable care or supervision of an animal or a bird thereby causing it pain, suffering or injury is, in the absence of any evidence to the contrary, proof that the pain, suffering or injury was caused or was permitted to be caused wilfully, as the case may be.

...

#### **Causing damage or injury**

446(1) Every one commits an offence who

...

(b) being the owner or the person having the custody or control of a domestic animal or a bird or an animal or a bird wild by nature that is in captivity, abandons it in distress or wilfully neglects or fails to provide suitable and adequate food, water, shelter and care for it.

[88] Section 429 of the *Code* defines “wilfully” as it applies to both ss. 445.1(1) and 446(1). That definition, in part, is as follows:

#### **Wilfully causing event to occur**

429(1) Every one who causes the occurrence of an event by doing an act or by omitting to do an act that it is his duty to do, knowing that the act or omission will probably cause the occurrence of the event and being reckless whether the event occurs or not, shall be deemed, for the purposes of this Part, wilfully to have caused the occurrence of the event.

[89] As is evident from the provision, the essential elements of the offence under s. 445.1(1)(a) are:

1. an animal or bird must be experiencing pain, suffering or injury;

2. the pain, suffering or injury must be unnecessary;
3. the pain, suffering or injury must have been caused, or in the case of an owner, permitted to be caused by the accused; and
4. the accused must have acted wilfully.

[90] In *R. v. Menard* (1978), 43 C.C.C. (2d) 458 (Que. C.A.), Lamer J.A., as he then was, writing for the Quebec Court of Appeal held that the pain, suffering or injury does not have to be great. The threshold is not high. All that must be established is that the animal suffered in some measurable way.

[91] In *Menard*, Lamer J.A. also dealt with the meaning of the word “unnecessary”. He held that in the context of s. 445.1 “unnecessary” means that a person pursuing a legitimate purpose, such as hunting, need not abstain absolutely from inflicting pain, suffering or injury. A person is only obliged to not inflict pain, suffering or injury on an animal that is not already inevitable taking into account the person’s purpose and the circumstances of the case.

[92] The leading case on the *mens rea* of wilfulness for purposes of both ss. 445.1(a) and 446(1)(b) is *R. v. Gerling*, 2016 BCCA 72. At paras. 25-28, Chiasson J.A. on behalf of the Court explained:

[25] Under both ss. 445.1(1)(a) and 446(1)(b) of the *Criminal Code*, the Crown must prove that the accused acted wilfully.

[26] For the purposes of s. 445.1(1)(a), “in the absence of any evidence to the contrary”, evidence that a person failed to exercise reasonable care or supervision causing pain, suffering or injury, is proof that the pain, suffering or injury was caused or permitted wilfully (s. 445.1(3)).

[27] In my view, where there is no evidence to the contrary, the test under s. 445.1(1)(a) is objective. Determining whether there is an absence of reasonable care or supervision is an objective exercise. Where there is evidence to the contrary, the Crown must prove wilful conduct and s. 429(1) of the *Criminal Code* applies. It engages a subjective element: “knowing that the act or omission will probably cause the occurrence of the event and being reckless whether the event occurs or not”.

[28] Section 429(1) also applies to s. 446(1)(b).

[93] Besides establishing wilfulness, in the circumstances of a case such as this, to make out the offence under s. 446(1)(b), the Crown must also establish that the accused neglected or failed to provide suitable and adequate food, water, shelter and care for an animal or bird. *R. v. Galloro*, 2006 ONCJ 263 is often cited for what appears to be a well accepted proposition that the neglect or failure must represent a marked departure from the norm.

### **Credibility and Reliability of the Witnesses**

[94] Before turning to my findings on each of the essential elements of the offences, I will make a few comments on the credibility and reliability of the witnesses.

[95] I generally found the evidence of the Crown witnesses to be credible and reliable. All care about the welfare of animals but, contrary to Ms. Robinson's assertions, none presented as having "an agenda". All have experience and training. All testified in a balanced and fair fashion. To their credit, all acknowledged Ms. Robinson's good intentions. All were responsive and articulate. All provided logical and coherent versions of events.

[96] The evidence of the Crown witnesses was certainly not perfect. Later in these reasons I will detail a number of variations, inconsistencies and gaps in their evidence.

[97] Ms. Robinson was also generally a credible and reliable witness. She was responsive and articulate. To her credit, she acknowledged some personal shortcomings that negatively affected her animals. Some of her testimony was supported by other witnesses and documents. She gave an appropriately detailed account of events.

[98] Ms. Robinson's testimony was also not perfect. For example, it is hard to reconcile her testimony about her financial wellbeing with the testimony of the Crown witnesses and her circumstances in the fall and early winter of 2013. The Crown witnesses all testified that Ms. Robinson told them she was experiencing financial

problems. In terms of her personal circumstances, in the fall and early winter of 2013, she was both running her acreage and supporting her son on her seasonal wages and a modest widow's pension. She was taking her acreage off-grid. She did not have a telephone. Her supplies were limited. She handled a wide variety of tasks on her own rather than hiring tradespeople. She was not providing regular veterinary care to her animals. On her own testimony, when a cold snap hit, she was unable to manage the situation. In my view, she overstated her financial health.

[99] In cases of conflict, it was also hard to accept Ms. Robinson's testimony over the testimony given by the impartial expert witnesses. For example, it is likely that she overstated the body condition of her horses.

[100] Finally, I found Ms. Tyndall and Ms. Simms to be credible and reliable witnesses. Neither was particularly close to Ms. Robinson nor had a vested interest in the outcome of the case. Both became involved out of a sense of fairness and wanting to help. Both gave measured testimony and acknowledged that one or two of Ms. Robinson's horses was or were thin. The weight I can give the testimony of Ms. Tyndall and Ms. Simms is, however, limited by the relatively brief time they spent on Ms. Robinson's property and the fact that they were not tendered as expert witnesses. I cannot prefer their testimony over the testimony of Dr. Jackson and Dr. Mills regarding the condition of Ms. Robinson's horses.

### **Findings on Count 1**

#### ***Issue 1: Were any of Ms. Robinson's animals experiencing pain, suffering or injury?***

[101] The Crown does not allege and there was no evidence to establish that any of Ms. Robinson's animals was injured. Rather, the Crown asserts that all of Ms. Robinson's animals were experiencing pain or suffering. Despite the positive qualities of the testimony of the Crown witnesses, their evidence fell short of proving the full breadth of these assertions beyond a reasonable doubt.

[102] I will deal with each of the Crown's assertions in turn.

[103] It is apparent that Ms. Robinson fell short of best practices in relation to foot care. Specifically, some of her horses' feet were in need of trimming. While there was evidence that lack of foot care can lead to lameness, there was no evidence that any of Ms. Robinson's horses was experiencing pain or suffering in relation to the condition of their feet.

[104] There is no doubt that at least one of Ms. Robinson's horses had burdock in its mane. Ms. Robinson acknowledged as much. There is also no doubt that burdock can cause discomfort, pain and suffering. Nevertheless, the evidence fell short of proving beyond a reasonable doubt that any of Ms. Robinson's horses was actually experiencing pain or suffering in relation to the presence of burdock.

[105] The evidence also fell short of proving beyond a reasonable doubt that any of Ms. Robinson's horses was suffering from rain scald. The presence of rain scald was noted by Dr. Jackson but not by Cst. Chapman or Dr. Mills. Further, the Crown did not adduce photographic evidence to clearly show the presence of rain scald on any of Ms. Robinson's horses. In any event, even if I had been satisfied beyond a reasonable doubt that some of Ms. Robinson's horses had rain scald, the evidence fell short of establishing that any of those horses was experiencing pain or suffering as a result of having rain scald.

[106] Regarding Chop, Cst. Chapman observed what he considered to be unusual behaviours, Dr. Jackson considered her to be thin and both were concerned that Chop did not have water. Dr. Jackson also had concerns about Chop's access to light and heat. While I share Cst. Chapman and Dr. Jackson's concerns, their evidence fell short of establishing beyond a reasonable doubt that Chop was experiencing pain or suffering. Cst. Chapman was not qualified to give expert opinion evidence. While his evidence suggests that Chop may have been in pain or suffering, his evidence does not establish that fact beyond a reasonable doubt. I simply did not receive adequate evidence about the behaviour of pigs to reach any conclusions regarding why Chop behaved in the manner observed by Cst. Chapman. Further, Dr. Jackson did not conduct a careful examination of Chop. She

did not assess Chop's body condition. She did not offer a specific opinion that Chop was in distress or experiencing pain or suffering. Finally, the Crown did not adduce any photographs of Chop to assist me in my assessment of the evidence.

[107] Regarding Ms. Robinson's herd of horses, Dr. Mills testified that the entire herd was experiencing severe discomfort due to their hunger, absence of body fat and exposure to the cold. Further, Dr. Jackson testified that the entire herd was in distress on January 9, 2014. Due to certain variations, inconsistencies and gaps in the evidence, I am unable to accept these broad assertions.

[108] Regarding Dr. Mills' opinion, keeping in mind the acceptable variation in BCSs, I cannot rationalize her testimony that some horses were within the normal range of body condition (BCS of four to six) and also in severe discomfort due to hunger, absence of body fat and exposure to the cold.

[109] Regarding Dr. Jackson's opinion, on December 19, 2013, Dr. Jackson completed 19 individual BCS assessments on Ms. Robinson's horses. She scored the horses from a low of one to a high of 3.5. She acknowledged that there can be a variance of 0.5 between the BCSs assessed by trained individuals. That being the case, it is possible that Dr. Jackson understated her BCSs by that margin, meaning that the BCSs may have ranged from 1.5 to four, with four being within the normal range. Any of the BCSs of three or higher would not be within "starvation mode".

[110] Outside of Wianka, Africa and Alabama, on December 13, 2013, Dr. Mills assessed the balance of the herd as having BCSs of better than three but no higher than four. Accepting as I do that Ms. Robinson was feeding her horses between December 13 and 19, 2013 and that it takes time for substantial drops in BCSs, there is an uncomfortably high variation between the BCSs assessed by Dr. Mills on December 13, 2013 and by Dr. Jackson on December 19, 2013.

[111] On December 19, 2013, Dr. Jackson assessed Ms. Robinson's three chestnut mares as having BCSs of 2.5, three and 3.5. Dr. Jackson described the chestnut mare with a BCS of three as having "white to mid cannon on right front and left hind".

Two days later, Dr. Mills assessed this same chestnut mare as having a BCS of four. I consider this to be a significant variation in such a short time.

[112] On December 19, 2013, Dr. Jackson assessed Excetra as having a BCS of two. Two days later, Dr. Mills assessed Excetra as having a BCS of three, again a significant variation in a short time.

[113] On December 19, 2013, Dr. Jackson assessed the bay mare with a star and stripe as having a BCS of one. If that were so, that mare would have been at serious risk of dying and in need of immediate professional care yet there was virtually no mention of this mare in the balance of the evidence and no special recommendations or orders were made in relation to her. Further, Dr. Jackson's assessment of this mare having a BCS of one is at odds with Dr. Mills' assessment of the balance of the herd (which included this mare) on December 13, 2013 as having BCSs between three and four.

[114] I am also troubled by the absence of clear photos of the individual horses that were seized and/or of greatest concern. The photos that were adduced were generally of poor quality. All were taken on January 9, 2014. None was taken on December 19, 2013. There was one clear photo of a group of horses which showed the prominent bony hip structure of a grey mare. There were also individual photos of Raz and Magic. In the photos, Magic appears to be thinner. My observations of the photos is inconsistent with Dr. Jackson's assessment on December 19, 2013 that Magic had a BCS of two and Raz of three. My perception could be due to the poor quality of the photos, the presence of winter coats on these animals, changes in their BCSs between December 19, 2013 and January 9, 2014, or my lack of expertise. Nevertheless, these variations do raise doubts.

[115] After carefully considering all of the evidence, it is likely that many of Ms. Robinson's animals were thin but the variations, inconsistencies and gaps in the Crown's evidence leaves me with a reasonable doubt that *all* of Ms. Robinson's animals were in distress and/or experiencing pain or suffering.

[116] That said, the Crown's evidence was clear, compelling and consistent that Wianka, Africa and Alabama all had BCSs of less than three and were in the worst shape. I am satisfied beyond a reasonable doubt that they were all in "starvation mode" and experiencing pain and suffering associated with their poor body condition. Neither Ms. Robinson's testimony nor the evidence as a whole leaves me in any doubt about that.

***Issue 2: Was the pain, suffering or injury unnecessary?***

[117] I am satisfied beyond a reasonable doubt that the pain and suffering experienced by Wianka, Africa and Alabama was unnecessary. There was nothing inevitable about their poor body conditions. All they needed was adequate food, water and dental care. Neither Ms. Robinson's testimony nor the evidence as a whole leaves in me in any doubt regarding this element of the alleged s. 445.1(1)(a) offence.

***Issue 3: Was the pain, suffering or injury caused or permitted to be caused by Ms. Robinson?***

[118] I am also satisfied beyond a reasonable doubt that the pain and suffering experienced by Wianka, Africa and Alabama was caused by Ms. Robinson. The fact that these horses were thin due to inadequate feed, water and/or dental care is evident from the results of Dr. Mills' assessments of their BCSs on March 7, 2014. After about two months of recommended care, Wianka, Africa and Alabama had BCSs of four, four and 4.5 respectively.

[119] Even on her own testimony, Ms. Robinson was unprepared for the cold snap and her animals suffered the consequences. Neither Ms. Robinson's testimony nor the evidence as a whole leaves me in any doubt that the pain and suffering experienced by Wianka, Africa and Alabama was caused by Ms. Robinson.

***Issue 4: Did Ms. Robinson act wilfully?***

[120] After carefully considering all of the evidence, I have concluded that the Crown has not met its onus of proving beyond a reasonable doubt that Ms. Robinson acted wilfully.

***Wilfully – subjective analysis***

[121] There is no suggestion that Ms. Robinson acted wilfully in the sense of subjectively intending to harm her animals. In fact, all of the evidence was to the contrary. Clearly, Ms. Robinson cared deeply for her animals and did not intend to harm them.

***Wilfully – objective analysis***

[122] The issue of wilfulness also requires that I consider whether Ms. Robinson failed to exercise reasonable care. Under s. 445.1(3) of the *Code*, a failure to provide reasonable care in the absence of “evidence to the contrary” is proof of wilfulness.

[123] In my view, s. 445.1(3) is of no assistance to the Crown - because there was “evidence to the contrary” regarding Ms. Robinson’s alleged failure to exercise reasonable care.

[124] I accept the evidence of Drs. Jackson and Mills that the decline in body condition of Ms. Robinson’s horses must have occurred over time. They must have been getting thin when the cold snap hit but there is no evidence that any was in pain or suffering at that time. While it is apparent that Ms. Robinson was not adequately prepared for the cold snap, the evidence establishes that from her first contact with Cst. Chapman, she worked tirelessly to care for her horses.

[125] The evidence to the contrary includes Ms. Robinson’s evidence that:

- she worked hard to get her water pump to function properly;

- she went to great lengths to haul water to her property, melt snow for her animals and/or bucket water to her animals;
- she fed her animals twice daily and had hay on hand at all times;
- she separated Wianka from her other horses to ensure Wianka was able to feed; and
- she followed many of the recommendations of the vets and SPCA including: immediately hiring Dr. Mills to complete the individual and herd inspections; blanketing Wianka; purchasing the recommended feed; purchasing a deworming product; making plans to provide dental care for the horses that needed it; and immediately adding a heat lamp to Chop's box stall.

***Recklessness analysis***

[126] Turning then to s. 429(1) of the *Code*, Ms. Robinson does not contest that it was her duty to adequately care for her animals. As an experienced horsewoman, I am also satisfied beyond a reasonable doubt that she knew if she failed to do so her animals would experience pain and suffering. The evidence as a whole does not, however, satisfy me beyond a reasonable doubt that she was reckless about the adequacy of her care.

[127] Winter comes every year. Pastures die off every year. When temperatures fall below zero, water freezes. Ms. Robinson must have seen that her horses were getting thin before the cold snap hit. She must have known that she had inadequate feed on hand for twenty horses and a pig. She must have known that any problems with her pump would make it difficult to provide adequate water to her animals. She knew her horses required regular dental care in order to efficiently chew and digest their food. The SPCA put her on notice of serious concerns on November 28, 2013. She underestimated the needs of her horses and overestimated her ability to meet their needs. She acknowledges she missed the mark in caring for her animals when the cold snap hit. She should have asked for and/or accepted help. Does all of that establish beyond a reasonable doubt that she was reckless?

[128] In my view, the answer is no. Careless – even very careless – yes, but reckless, no.

[129] Recklessness is made out when an individual who is aware that her conduct could bring about criminal consequences nevertheless persists in that conduct despite the risk: *R. v. Sansregret*, [1985] 1 S.C.R. 570. It has also been described as a “conscious disregard of a substantial and unjustified risk” that one’s conduct will result in prohibited consequences: *R. v. Hamilton*, 2005 SCC 47.

[130] In this case, as I have said, it is likely that Ms. Robinson’s animals were declining in body condition for some time but there is no evidence that any was in pain or suffering before the cold snap hit. While Ms. Robinson was not adequately prepared for the cold snap, she did not persist in the conduct that resulted in Wianka, Africa and Alabama experiencing pain and suffering. Even before the first SPCA Order, Ms. Robinson was working on her water pump. Rather than consciously disregard the risks faced by her animals, she followed various recommendations and orders made by the vets and the SPCA. She tried various methods to have adequate water available to her horses. She had adequate and appropriate feed on hand. As a result of her efforts, there was evidence from multiple sources that some of her horses’ BCSs were beginning to improve.

[131] Ms. Robinson exercised poor judgment, her efforts fell short and she put her animals in jeopardy. Her conduct, however, did not reach the required level of recklessness.

## **Findings on Count 2**

### ***Issue 5: Did Ms. Robinson neglect or fail to provide suitable and adequate food, water, shelter and care for her animals?***

[132] I am satisfied beyond a reasonable doubt that Ms. Robinson failed or neglected to provide suitable and adequate food, water and care for her animals. As I have already said, the inadequacy of Ms. Robinson’s provision of food, water and care is evident from the recovery in body condition of Wianka, Africa and Alabama once they were no longer in her care. These horses were in starvation mode while

Ms. Robinson's care but recovered to normal body condition within about two months of their seizure. Further, Ms. Robinson acknowledged that she was unprepared for the cold snap.

[133] Neither Ms. Robinson's testimony nor the whole of the evidence leaves me in any doubt that Ms. Robinson failed or neglected to provide suitable and adequate food, water and care for her animals.

[134] I am not satisfied beyond a reasonable doubt, however, that Ms. Robinson neglected or failed to provide adequate shelter for her animals. The condition of the fencing and shelters may not have been up to the high standards of Dr. Jackson but that was not required. There was no evidence that the condition of the fencing and shelters caused any injury to any of Ms. Robinson's animals. The evidence fell short of establishing beyond a reasonable doubt that the shelters for Ms. Robinson's horses were of inadequate size. More specifically, the evidence fell short of establishing beyond a reasonable doubt that any of Ms. Robinson's horses had rain scald, never mind that the rain scald was caused by inadequate shelter.

[135] Regarding Wianka, I accept Ms. Robinson's testimony that she was put in a separate paddock without shelter only for purposes of ensuring that she could be seen by Dr. Mills on December 13, 2013 and/or ensuring that she had access to her feed. I accept Ms. Robinson's testimony that Wianka was otherwise kept in the main pasture, which provided her with access to shelter.

***Issue 6: Was Ms. Robinson's neglect or failure a marked departure from the norm?***

[136] Ms. Robinson clearly fell short of the animal husbandry standards described by Dr. Jackson and Dr. Mills in relation to her provision of food, water and care for Wianka, Africa and Alabama. If it were otherwise, these horses would not have been in such poor body condition. The issue is whether Ms. Robinson's neglect or failure was a *marked* departure from the norms described by the veterinarians.

[137] After carefully considering all of the evidence, I am not satisfied beyond a reasonable doubt that it was.

[138] Neither Ms. Tyndall nor Ms. Simms was alarmed at the state of Ms. Robinson's animals nor her efforts to address their needs. While I do not prefer their testimony over the testimony of Dr. Jackson and Dr. Mills, it does leave me with a reasonable doubt about whether Ms. Robinson's conduct was a marked departure from the norm.

[139] Further, while I do not accept all of Ms. Robinson's evidence regarding her efforts to address her animals' needs, her evidence leaves me with a reasonable doubt about whether her animal husbandry practices were a marked departure from the norm.

***Issue 7: Did Ms. Robinson act wilfully?***

[140] For the reasons I have already given, I am not satisfied beyond a reasonable doubt that Ms. Robinson's shortcomings were wilful. She did not intentionally harm her animals but she did exercise poor judgment. For example, it was careless of her not to prepare for a sudden turn in the weather. While Ms. Robinson's conduct was concerning and problematic, she did not cross the line into recklessness.

**Conclusion**

[141] The Crown has not met its onus of establishing that Ms. Robinson wilfully caused her animals unnecessary pain, suffering or injury. Further, the Crown has not met its onus of establishing that Ms. Robinson's neglect or failure to provide adequate food, water, shelter or care for her animals represented a marked departure from the norm or was wilful. Accordingly, I find Ms. Robinson not guilty on both counts on the indictment.

[142] I thank counsel for their able assistance.

"L.S. Marchand J."

MARCHAND J.