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File No: 80863
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IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

FAYE DELORES PARKINSON

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE G.BROWN**

Counsel for the Crown:	T. Dotten
Counsel for the Accused:	J. Reveley
Place of Hearing:	Abbotsford, B.C.
Dates of Hearing:	Jun 1, 2, 3, 4, Sep 24, 25, Oct 26, 2015
Date of Judgment:	March 18, 2016

[1] THE COURT: These are my reasons for judgment in the case of *R. v. Faye Delores Parkinson*, file 80863-1.

INTRODUCTION:

[2] Faye Delores Parkinson is charged by Indictment of the following offences:

Count 1, that on or about September 7, 2013, she did wilfully cause or permit to be caused unnecessary pain or suffering to dogs and cats, contrary to s. 445.1(1)(a) of the *Criminal Code*.

Count 2, that on or about the same date, she being the owner or the person having custody or control of these domestic animals, did wilfully neglect to provide suitable and adequate food, water, shelter and care for them, contrary to s. 446(1)(b) of the *Criminal Code*.

The issue is whether or not the Crown has proven these charges beyond a reasonable doubt.

[3] On the day of seizure, Ms .Parkinson had in her home at least 17 animals: seven dogs, at least eight cats and two kittens.

CASE FOR THE CROWN:

Russell Belcourt

[4] Mr. Belcourt had been in the restoration business for some 26 years. He lives on 1st Avenue in Mission, B.C., and he is Ms. Parkinson's next-door neighbour. From his backyard, he can see her backyard area, including her van and back porch. However, there are tarps draped over parts of Ms. Parkinson's backyard. Mr. Belcourt could not see into her home, as blackberry bushes blocked her window.

[5] In September of 2013, from Mr. Belcourt's perspective, Ms. Parkinson had two animals, a black-and-white bigger dog and a Himalayan cat. He saw those two animals

between her portable carport and her house. Mr. Belcourt did not ever see Ms. Parkinson walking any animals and he never saw animals brought to or from the residence.

[6] In the fall of 2013, Mr. Belcourt was aware that the SPCA had come to Ms. Parkinson's home and removed some animals. He said there was a putrid smell coming from her place and it smelled like a dead body. He could smell this odour when he was outside by his carport.

Cst. Raaflaub

[7] Cst. Raaflaub is a Mission RCMP officer and she was involved with an SPCA search of Ms. Parkinson's home on September 7th, 2013. Cst. Raaflaub entered the home around 11:00 a.m. and there was an immediate stench which hit her "like a brick wall". Her eyes watered instantly and her throat was scratchy. Cst. Raaflaub masked up and put booties on. Cst. Raaflaub was in the front room and she saw a large kiddie pool and heard dogs barking.

[8] Following a voluntariness *voir dire*, I found that the following evidence was admissible.

[9] Ms. Parkinson told Cst. Raaflaub that she was experiencing chest pains. She also said that she had just cleaned her home. She was upset the SPCA was there and she was thankful the Constable was present. Cst. Raaflaub was concerned about Ms. Parkinson's comment about cleaning the home, given its condition. The smell was overwhelming and Ms. Parkinson appeared to be a hoarder.

[10] Cst. Raaflaub called Emergency Health Services and decided to apprehend Ms. Parkinson under the *Mental Health Act*.

Kimberley Monteith

[11] Ms. Monteith is a manager with the SPCA and she entered Ms. Parkinson's home on September 7th, 2013, after SPCA officers had gone in. She assisted in looking for the cats in the home and she was observing the animal behaviour. The dogs were fearful and a red-brown Shar-Pei did not want her nearby. Ms. Monteith videotaped the inside of Ms. Parkinson's home to capture the living conditions, behaviour and housing for the animals. Her video was marked Exhibit 1 and it was presented in segments.

Video 97

[12] This video portrayed the kitchen area with one dog running away. A pregnant white-and-tan Chihuahua was also seen with other dogs running around. Later, a mother cat and two to three kittens were seen confined in a black metal cage. Below the cage in another crate was a black Shar-Pei with a pronged collar on his neck. The residence was filled with household items.

Video 101

[13] This video portrayed a litter box by the back door with a second litter box.

Video 103

[14] This video was of a cluttered bedroom and there was another cat on the loose. The kitchen area again revealed the lower crate with a Shar-Pei and the upper cage with a mother cat and kittens.

Video 104

[15] Here was shown three dogs in a side room.

Video 105

[16] This video depicted a red-brown Shar-Pei out on the back porch. The Shar-Pei was chained up. This dog was panting and salivating and its nails were very long.

Video 109

[17] This portrayed a crate in the backyard. Ms. Monteith admitted in cross-examination there was some water and food in the realm of the red-brown Shar-Pei out in the backyard.

Video 120

[18] A box was seen where cats were housed in a wired crate. The cardboard was wet. The large kiddie pool was also seen in the living room.

Video 131

[19] A Chinchilla Silver cat was seen in the living room with build-up in its ears.

Video 137

[20] This video showed two cats in another cage and one of the cats was lying in a dirty litter box, as there was little space to move around in.

Marcy Moriarty

[21] Ms. Moriarty is the Chief Prevention Enforcement Officer for the SPCA. Ultimately, defence counsel did not take issue with the admissibility of her evidence relating to post-offence e-mail and phone communications with Ms. Parkinson.

[22] Ms. Moriarty explained that under the *Prevention of Cruelty to Animals Act*, the SPCA gives an animal owner a notice of disposition after animals are seized. The owner then has 14 days to appeal the seizure and the SPCA has 28 days to make a decision as to whether or not any animals seized are returned. There is the ability to further appeal that decision. In this particular case, a notice of disposition relating to the animals seized at Ms. Parkinson's home was given on September 7th, 2013.

[23] On September 10th, 2013, Ms. Parkinson called Ms. Moriarty's office and the dispute process was explained. Ms. Parkinson was also informed that her responsibility for the cost of care of the animals was capped as of the date upon which she surrendered the animals.

[24] On September 11th, 2013 and subsequently, the SPCA sent by e-mail to Ms. Parkinson the notice of disposition, the warrant and related materials.

[25] By September 14th, 2013, it was evident that Ms. Parkinson was disputing the seizure of the animals. The e-mails were marked Exhibit 7. It is clear that Ms. Parkinson refers to the animals taken as "my animals" on several occasions. In particular, she wanted her "male red Shar-Pei", her "shaded silver neutered male cat" and "Miracle, a female Persian" returned. Her e-mail of September 30th, 2013, says, "I want my seven dogs back and 11 cats."

Dr. Walton

[26] Dr. Walton is a veterinarian. He was qualified as an expert in the examination and treatment of domestic animals and his expertise included giving an opinion on the medical condition of the animals and any distress or pain felt by the subject cats and

dogs. I also qualified him to give evidence as to what symptomology would be apparent to a reasonable caregiver but I noted I would be careful not to allow that evidence to tread on the ultimate issues in this case which are for me to decide.

[27] Dr. Walton was also qualified to testify as to what would be adequate provision of food, water, shelter and care for cats and dogs.

[28] Dr. Walton has been a veterinarian for 15 years and his *curriculum vitae* was marked as Exhibit 3. In this case, Dr. Walton was asked to examine the animals seized from Ms. Parkinson's home. He had never seen these animals before and he did not know Ms. Parkinson.

[29] Dr. Walton began his examination of the dogs and cats on September 7th, 2013, although the records were not formally entered as computer medical records until September 11th, 2013. I will discuss each animal in the order presented on the medical record, Exhibit 5, and with reference to the summary and opinion report, Exhibit 6.

Female Fawn Shar-Pei Dog 308050

[30] This dog had some hair loss along the front lower neck and this could have been caused by a choke chain. Dr. Walton was concerned that this dog's choke chain carried a risk of strangulation.

[31] This Shar-Pei also had otitis (inflammation of the ear canal) in both ears. Ear medication was recommended for the yeast and bacteria in the ears.

[32] This Shar-Pei's right eye had entropion, a condition where the eyelids roll against the eye, and this was causing the dog pain and discomfort. The symptoms are

squinting, excessive tearing and eye irritation. Surgery is recommended to address the problem.

[33] Also, the dog's nose had ulcerative dermatitis, an open sore condition, and medication was recommended. Dr. Walton felt the dog's nose had been rubbing on things.

[34] This Shar-Pei was said to be mildly underweight but I note that the body score of 4 out of 9 can be seen as in the normal range.

[35] When this Shar-Pei was given medication, there was a marked improvement with the ears and nose. Dr. Walton was of the view that the hair loss and the ear problems were chronic. Animal owners are recommended to visit the veterinarian once a dog has been rubbing its ears for a few days and a strong ear odour, as was the case here, is noticed.

Male Black Shar-Pei Dog 308051

[36] This dog had a chronic skin condition, including thickening of his skin, discoloration and hair loss. The skin condition would be uncomfortable for the dog causing pain like a rash.

[37] Like the first Shar-Pei examined, this dog had otitis and entropion. The ear condition is more painful than the skin condition earlier mentioned. Respecting the entropion, both eyes had the lids rolling into the cornea causing pain and discomfort. Additionally, this black Shar-Pei's right hock (ankle) was very swollen, suggesting that perhaps arthritis or Shar-Pei fever. Dr. Walton felt this should have been brought to the

attention of a veterinarian as soon as the swelling was there. The urine from this dog was very concentrated, usually an indication that it was not drinking as it should.

Male Chocolate Point Himalayan Cat 308052

[38] This cat suffered from conjunctivitis in both eyes, causing them to be red, inflamed and sore. The right eye also had a dry eye condition due to a decrease in tear production. A tear gel was recommended and may be needed for the cat's entire life. This Himalayan cat also had very reddish gums and may need dental treatment. The cat was also a cryptorchid, that is, no testicles were visible. If the testicle is still in the cat, surgery is required. This cat was very underweight and had heavy matting with urine and fecal staining. Dr. Walton was of the view that most of this cat's problems were chronic.

Female Silver Himalayan Cat 308053

[39] Exhibit 5 is an error so reference should be had to Exhibit 6 and the veterinarian's testimony. This cat is suspected to be pregnant. Again, it has heavy urine staining and fecal matting. This Himalayan suffered from "periocular dermatitis", in other words, its eyelashes had disappeared.

Male Grey-Brown Chihuahua Dog 308054

[40] This Chihuahua had a poor coat with flea dirt and heavy matting with urine and feces. The dog had significant ocular tearing. I should add that the veterinarian was concerned about urine scalding for this animal and others where there was heavy matting with urine. Also, ocular tearing could be the result of a strong smell of urine in the home.

Male Papillon Dog 308055

[41] This Papillon's earflaps were inflamed and its pre-molar was broken requiring immediate dental attention. This dog was moderately underweight and, again, heavy urine staining and fecal matter was evident.

Female Fawn-and-White Chihuahua Dog 308056

[42] This Chihuahua had overgrown nails and was suspected to be pregnant. Dr. Walton noted that it was unwise to house a pregnant dog with other pregnant dogs.

Female White-and-Brown Chihuahua Cross Dog 308057

[43] No abnormalities were observed other than overly-long nails. This dog was possibly pregnant.

Female Red-and-White Chihuahua Cross Dog 308058

[44] This dog had no major issues other than overly-long nails.

Neutered Male Silver Himalayan Cat 308059

[45] This cat was in overall good condition but for some ocular discharge and disappearing eyelashes.

Himalayan Kitten 308060

[46] This kitten had ocular discharge and a potbellied abdomen indicative of a heavy parasite load. De-worming was recommended immediately.

Himalayan Kitten 308061

[47] This kitten really had the same issues as described with the kitten above.

Black Persian Cross 308062 and 63

[48] I am going to say here that it is unclear to me whether the Persian cross cat referred to as 308063 is different than the cat of 308062. It is not entirely clear. In any event, this cat was described as feral and very aggressive. It was underweight and had heavy matting with feces and urine staining. An ocular discharge was evident in both eyes.

[49] This cat reacted to an ingrown toenail being touched, even when under sedation. This cat's nails were so overgrown that they curved back into the pads of the thumb and were coming out of the skin on the other side.

Male Chocolate Point Himalayan Cross Cat 308064

[50] This cat had a skin infection around both eyes and evidence of eye pain and pink eye. If left untreated, this cat could possibly lose its vision. Its gums were severely inflamed. The fur was heavily matted with urine and fecal matter.

Female Seal Point Himalayan Cross Cat 308065

[51] This cat appeared healthy.

Male Seal Point Himalayan Cross Cat 308066

[52] This cat appeared healthy and was in significantly better condition than the other animals.

Female Himalayan Cat 308067

[53] This cat was significantly underweight. It had an ear infection with crumbling material on both ears and had heavy matting. This Himalayan was the mother of the

two kittens but she did not appear to be lactating. Dr. Walton opined that the lost milk reduction was likely due to malnutrition; however, the kittens still appeared healthy so the mother must have been producing milk until a few days prior to the seizure. It is common for a mother cat to lose weight when the kittens are born but these kittens were four to five weeks old.

[54] In Dr. Walton's summary at page 8 of Exhibit 6, he says the following:

Preliminary findings found that several of the animals were significantly underweight (Cases 308055, 308052, 308067 and 308062). This could be the results of malnutrition, chronic disease and old age; however, none of the animals were particularly old and no evidence of chronic disease was noted. If the animals show significant weight gain and increased body score under normal husbandry, it is safe to assume that chronic malnutrition is to account for the low body score.

Many of the animals, including most of the cats, were suffering from significant matting. While it is normal for Persian and Himalayan cats to acquire mats, the extent of the matting, especially between the pads of the feet, combined with the contamination of the mats with both urine and feces is indicative of animals confined in close quarters and insufficient grooming.

Almost all the animals showed signs of excessive ocular tearing. No evidence of infectious conjunctiva were noted. I questioned the investigators if they had experienced any unusual tearing or irritation of the eyes or mouth. They mentioned that the smell of urine was quite strong.

I am just simply going to add that I think that was an understatement.

Chronic irritation of the ocular membranes from high environmental ammonia (urine) would account for the ocular discharge and the periocular dermatitis noticed in many of the animals. During my on-site investigation at Burnaby shelter the next day, many of the dogs no longer showed as much ocular tearing from the day prior, though the periocular dermatitis is still occurring.

[55] Dr. Walton went on to discuss some pregnant animals and then he says:

Case number 308055 required special attention. The upper left fourth pre-molar was fractured and very loose. This animal was also found to be underweight. It is reasonable that some of the weight loss in this animal (body score 3 out of 9) might be associated with the dental pain associated with this tooth.

[56] Dr. Walton gave evidence about what would be appropriate living conditions for cats. They need the ability to move freely and they need their private space. Cats do not like to defecate where they sleep and eat. The heavy matting found in these cats suggests they were in too close quarters.

[57] Dogs are not as fastidious as cats; however, there can be inter-pack aggression over resources and smaller spaces.

[58] Dr. Walton also referred to animal medications found in Ms. Parkinson's home. The penicillin had expired in 2008 and the vitamins were more appropriate for cattle than cats.

[59] Dr. Walton viewed a number of pictures of Ms. Parkinson's home. The mother cat with kittens is in a cage on top of a cage containing a barking dog. This would be very stressful for the felines.

[60] There were hazards in the home such as a mop bucket which could contain cleaners, and general clutter. Some litter boxes were not cleaned for some time. Water dishes were dirty and there was rotting food.

[61] Dr. Walton examined certain other photographs. Photograph 48 shows the mother cat with two kittens in a pen which is not large enough. There were litter boxes with diarrhea on the edges. Overall, the animals were living in cramped, dirty conditions without enough water and food dishes.

[62] In cross-examination, Dr. Walton agreed that the odour of urine is common where there are animals; however, ventilation is required to mitigate the problem of ammonia. Dr. Walton also conceded that there were animals with flea dirt but no fleas, meaning that some flea treatment had been applied.

Christine Carey

[63] Ms. Carey is a special constable with the SPCA and she is in charge of investigating calls of concern under provincial and federal legislation. On September 3rd, 2013, Ms. Carey received a call of concern so on September 5th, 2013, she attended Ms. Parkinson's property. The property was overgrown and she could smell garbage and animal waste. Ms. Carey knocked on the door but no one answered. Dogs could be heard barking.

[64] She returned to the property in the afternoon and left a message about an SPCA inspection. Ms. Carey could see inside and she saw animal crates stacked upon each other in a covered porch area. She also saw a tan-coloured dog with a choke collar on a back porch.

[65] She was invited over to the Belcourt yard where she saw more clearly a tan Shar-Pei on a chain. The yard had discarded items in it. The Shar-Pei shook its head frequently and one ear appeared irritated.

[66] Ms. Carey left a posting on Ms. Parkinson's front door requesting that Ms. Parkinson contact her to avoid possible legal action. She never received a response so a search warrant was sought. Ms. Carey also attended at Ms. Parkinson's home on

September 6th, 2013, and left a second posting on the door. The Shar-Pei on the porch was wet and again a strong odour of ammonia was present.

[67] Ms. Carey executed the search warrant on September 7th, 2013, with co-workers. She concluded the animals located were suffering from various degrees of stress due to unsanitary and hazardous living conditions. Four or five dogs were in an area where there was urine and feces on the floor and bedding and a cardboard box was soiled. The dogs had nowhere to retreat from the animal waste.

[68] Cats were hiding under furniture where, again, there was urine and feces. A turtle pool used as a litter box was full of waste. The odour in the home was burning Ms. Carey's eyes and, later, her throat.

[69] In the front-covered porch area, she found two Himalayan cats and one of two large black wired crates. One of the cats was sitting in the litter box with heavily matted fur.

[70] Ms. Carey also observed the Shar-Pei outside on a choke collar surrounded by debris. The dog's chain was caught on a bed frame. No clear water was evident and litter boxes had been dumped in that area. The tan Shar-Pei had crusted red eyes and was shaking its head. Its skin condition was poor and its nails were very long.

[71] Two of the cats appeared "semi-feral".

[72] Ms. Carey explained the process by which the animals were removed from the property. She also confirmed that she was the one who went through a window to unlock the door for the RCMP and others.

[73] In cross-examination, Ms. Carey admitted that the Shar-Pei outside did have access to an awning. Concerning the cats, she did see numerous bowls of kibble and water.

[74] She clarified that the animals found were in distress but not critical distress. As to the animal waste, Ms. Carey stated in cross that it was everywhere and she slipped on it. Photograph 60 of Exhibit 9 shows an officer's soiled booties after being in the home.

Ms. Lavigne

[75] Ms. Lavigne was another special constable with the SPCA who attended Ms. Parkinson's home when the search warrant was executed on September 7th, 2013. She saw the Shar-Pei outside on a chain and then she entered the front room addition. There was a lot of debris and the smell of stale urine and feces was overpowering.

[76] She saw two Himalayan cats in the top crate.

[77] Ms. Lavigne took the photographs marked as Exhibit 9. Photographs 3, 26 and 51 to 53 are of the top crate which had contained two Himalayan cats. The living conditions there were unsanitary with soiled newspaper, dirty water bowls and the like. There was nowhere for the cats to retreat.

[78] Photographs 14 and 15 show an area with a wire pen and dogs hiding about. The screen door had fallen but it is possible this door was knocked down when the officers entered. Feces is seen in many places.

[79] There are pictures of the living room and bedroom area. There is a lot of clutter and mess. In the kitchen, one can see a top crate with a mother cat and kittens and a

bottom crate with a Shar-Pei. These crates are very unclean and the water bowls are dirty.

[80] Photographs 54 and 55 reveal a litter box filled with fairly fresh feces. The mudroom in the back had a very dirty water bowl. In the back porch area, the Shar-Pei had access to a deck and yard but it was chained. The Shar-Pei found there was squinting and had discharge in its eyes. The yard contained much feces.

[81] Pictures were also taken of discharge in various cats' ears and eyes.

[82] Ms. Lavigne recalled that Ms. Parkinson was requesting to go to the hospital.

Leanne Thompson

[83] Ms. Thompson is also a special constable with the SPCA who was in attendance at Ms. Parkinson's home on September 7, 2013. She assisted with catching the animals and putting them in crates. Ms. Thompson's impression was that the home was cluttered and there was a strong smell of feces and urine. She remembered the kiddie pool full of animal waste.

[84] Ms. Thompson seized seven dogs and 11 cats. A fawn female Shar-Pei was seized on the deck. Food and water was available for this animal but it could not reach the doghouse. A male black Shar-Pei was in a black crate in the kitchen. It wore a pinch collar. Food and water was present. A white-and-beige Chihuahua was loose in the kitchen, possibly pregnant. A female Chihuahua with orange collar was in a crate in the kitchen. Its water had feces floating in it.

[85] In the front room penned area was found a male white-and-brown Papillon, a wire-haired Chihuahua and a white-brown Chihuahua. This area contained lots of feces

inside and outside the pen. Two Himalayan cats were found in the top crate. This crate contained a dirty litter box.

[86] In the kitchen, a mother Himalayan cat and two kittens were located in a top crate. There was black debris in the mother's ears.

[87] A male Chocolate Point Himalayan was in a cage in the front foyer and its fur was matted. A Silver Point Persian cat was in the same cage. The other six cats were loose in the house.

CASE FOR THE DEFENCE

Faye Parkinson

[88] Ms. Parkinson is now 73 years old. In 2013, she lived in her Mission home with a number of animals. She owned a black Shar-Pei and his father was a show dog. She also owned a number of cats, including a quality line of Himalayan cats. Her Himalayan, "Baby", was neutered and "Miracle" was spayed. She denied owning any feral or wild cats.

[89] Ms. Parkinson owned a cat with two kittens in the kitchen and she provided them with a milk supplement. She could not remember the mother cat's name.

[90] Ms. Parkinson also owned a brown Shar-Pei dog, a dog she saved from someone who was going to put her to sleep. This dog sometimes got out of the backyard so it was on a chain at times. This Shar-Pei had a good appetite and was not thin, according to Ms. Parkinson.

[91] Ms. Parkinson testified that she had "hundreds" of receipts from veterinarians. If something was wrong with an animal, she would provide antibiotics or shots. She also

used a de-wormer and she would de-worm a female dog before it had pups and she would de-worm the pups at four weeks old. If she saw tapeworms in the stool, she would de-worm the animal.

[92] Ms. Parkinson has not shown dogs in a while. She owned a Rottweiler in 2009 which died of cancer. She was upset that all her kittens were gone, as they were "all my love". She misses her animals.

[93] When the SPCA came in September 2013, Ms. Parkinson had been in her bedroom sleeping. She suddenly heard a raucous and one of her dogs barking. The animals were upset by the SPCA coming into her home. Miracle was very scared.

[94] Ms. Parkinson explained that she usually cleaned the litter boxes every few days right to the bottom. She would disinfect once per month.

[95] She kept the small dogs in the mudroom with dog pens. These dogs went out the kitchen in the front room to go to the bathroom. Any rusted dog fencing was covered in cloth.

[96] Ms. Parkinson firmly believes the screen door fell down when the SPCA people came crawling through her window.

[97] Ms. Parkinson said animals do smell but she thought some odours could be due to a rotten sub-floor in a bathroom. She had that repaired in 2014 after the "raid" by the SPCA. Her home was built in 1924.

[98] Ms. Parkinson was shown photograph 26 of Exhibit 9, which depicted cages in the mudroom area. She could not figure out the name of the cats shown there. She explained that the animals did not always stay in their cages. When viewing the

photographs, Ms. Parkinson said it looked like a hurricane had hit the place and she would have cleaned the place up.

[99] The brown Shar-Pei outside could sleep under cover. According to Ms. Parkinson, this dog was a good eater. The eyelid problem was very common with that breed. She was aware this dog's back foot would swell. She walked this Shar-Pei as often as she could. This female Shar-Pei was unpredictable and Ms. Parkinson had been putting off having the dog put down.

[100] Ms. Parkinson kept a lot of bowls around, separating food dishes from water dishes. She would wash the bowls right away, if dirty. She then looked at the water bowl at photograph 42 and said it was "disgusting", as the water was low and the food got in the water bowl. She admitted she may have missed cleaning one bowl.

[101] Ms. Parkinson stated she would dust her home but there was a dirt floor underneath. Photograph 13 of Exhibit 9 shows an air filter she had, as does photograph 5. She also had a de-humidifier in the kitchen.

[102] On March 30th, 2013, Ms. Parkinson took "Mr. Blue", a Chihuahua, to the veterinarian for a problem it had with its penis.

[103] On June 14th, 2012, she took two pups now no longer in her care to the vet for shots.

[104] She also had a receipt for shots on December 22nd, 2011.

[105] Ms. Parkinson took the male Shar-Pei, "Gunji Bear" (phonetic), to the vet on June 10, 2010, July 6, 2010 and August 10, 2010, when she had his eyelids done. Receipts confirmed these visits to the veterinarian.

[106] Concerning the tan Shar-Pei she purchased in 2013, that is the one often outside, there was an issue with his eyes and she applied antibiotics. She feels there is more of a need to use a vet when animals are breeding. Ms. Parkinson recalls taking one cat for an eye problem to a Mission vet. Eye drops were used.

[107] She is always looking over her pets for things such as ear mites. She applies mineral oil if there is a problem with ear mites.

[108] When shown photograph 65 depicting a Persian cat with eye problems, Ms. Parkinson was astonished. She said the cat looks like one of hers but she did not see this eye problem. She tries to clean her cats' eyes out once a week.

[109] She did not believe that the infected ear in photograph 64 belonged to one of her animals and she said in court, it "makes me sick".

[110] Ms. Parkinson presented her own photographs of her animals taken in 2013 before they were seized. Her animals were fine. There was no diarrhea or eye discharge. She buys dry food for her cats and soft canned food for the kittens. Her cats "get fat" with her.

[111] Ms. Parkinson admitted the porch at photographs 39 and 40 of Exhibit 9 was a mess but it is "all cleaned up now". She later said it did not look like that back then and she "couldn't have lived there". Ms. Parkinson believes that the crate was not in the place shown at photograph 39. She believes that the Shar-Pei outside had lots of space and his chain was long.

[112] At the front of the house, she has a dog pen for the dogs to play in.

[113] Ms. Parkinson admitted that she kept old medicine to remind her of what to purchase in the future.

[114] In cross-examination, Ms. Parkinson would not admit to writing the e-mails in Exhibit 7, as she would not use that language. She admitted that she often forgot things. She agrees seven dogs and 11 cats were taken from her home.

[115] She was attached to some animals more than others. According to Ms. Parkinson, she owned her seven dogs at least three months prior to them being seized.

[116] Ms. Parkinson's cats were the mother with the two kittens. She had owned Baby and Miracle for the longest time. She became overwhelmed when so many kittens were born and she had difficulty remembering the names of the cats.

[117] In cross, Ms. Parkinson was shown the cat with the bad teeth in photograph 62 but she said she never had any cats which had trouble eating. Ms. Parkinson agreed she had lots of animals but she was home all the time. She also said she never had a skinny cat. She also groomed her own dogs and pets herself.

[118] Ms. Parkinson admitted that Community Services was coming to her home to vacuum but they stopped coming. Ms. Parkinson says she would have taken her animals to the vet if they were in bad shape but they were in good shape. She would not want to cause harm to any of her animals.

[119] Ms. Parkinson stated that she put her brown Shar-Pei, Molly, inside if she was not home. She was not aware of Molly rubbing her ears. She did see a problem with Molly's eyes. Again, she was debating putting Molly to sleep because she could be vicious. She put Polysporin on Molly's nose but she never saw an open sore.

[120] With respect to the black Shar-Pei, Gunji Bear, Ms. Parkinson said she washed him to deal with his skin condition. She did not see an ear canal problem. Gunji Bear seemed fine, notwithstanding the swollen hock, but he did limp a little. She gave him calcium. She felt she kept Gunji Bear hydrated because she had four buckets full of water.

[121] Concerning the Chihuahuas, Ms. Parkinson stated that she snipped their nails all the time. She would have noticed the fecal matting, if it was there. She did not know how all the feces got in the mudroom.

[122] Regarding the Papillon, Ms. Parkinson felt it was eating and she would have noticed a tooth problem.

[123] Ms. Parkinson also denied being aware of most of the problems Dr. Walton identified with her cats. She felt all her animals were in good shape. She said she dewormed her kittens.

[124] Ms. Parkinson did not recall having Cat 308064, a male Himalayan Chocolate Point.

CREDIBILITY AND RELIABILITY OF WITNESSES:

[125] I am fully cognizant of the principles set out in *R. v. W. (D.)*, [1991] 1 SCR 742 and *R. v. H. (C.W.)*, [1991] 68 CCC (3d) 146.

[126] I am going to say at the outset that there is no doubt Ms. Parkinson loved her animals in her own way, although she was more attached to certain animals than others. However, I found Ms. Parkinson to be, at times, an unreliable witness. By her own admission, she would often forget things. Her evidence was often scattered and

she sometimes spoke in generalities rather than specifics. In fact, she only knew the names of a few of her animals. She seemed genuinely surprised by some of the photographs depicting her own home and the animals in her care.

[127] In contrast, Dr. Walton presented his observations in an objective and methodical manner. His findings were based on scientific reasoning. Based on the above, where Dr. Walton's description of the animals' condition differs from Ms. Parkinson, I accept his evidence and reject Ms. Parkinson's evidence.

[128] I also find that the SPCA officers presented their evidence in a straightforward, unbiased manner.

CRIMINAL CODE PROVISIONS RELATING TO ANIMALS:

[129] I have engaged in my analysis of ss. 445.1(1)(a) and 446(1) bearing in mind the very recent B.C. Court of Appeal case of *R. v. Gerling*, [2016] BCJ No. 264.

[130] I have also taken into account the very helpful discussion about crime against animals in the 5th Edition of Criminal Law authored by Manning, Mewitt and Sankoff.

[131] I have decided to deal with s. 446(1) (b) first.

Section 446(1) (b)

[132] Under this charge, the Crown must prove beyond a reasonable doubt that Ms. Parkinson did wilfully neglect or fail to provide suitable and adequate food, water, shelter and care of animals which she owned or over which she had custody and control.

Ownership, Custody and Control

[133] First of all, for the purposes of this charge, I am satisfied beyond a reasonable doubt that Ms. Parkinson had custody and control of the seven dogs and ten or 11 cats, as identified in Dr. Walton's veterinary records. She admitted as much in her e-mails with Ms. Moriarty.

[134] Although Ms. Parkinson could not recall the names of quite a number of her animals, I am satisfied they all lived in her home at the time of the SPCA seizure on September 7th, 2013.

[135] The seized dogs had been living with her for at least three months, based on her own evidence.

[136] The cats had lived with her for various periods but it is clear she was most attached to "Baby" and "Miracle".

Adequacy of Food, Water, Shelter and Care

[137] In this second stage of analysis, I am really focused on the *actus reus*. I am satisfied beyond a reasonable doubt that at least some of Ms. Parkinson's animals were not provided suitable and adequate care and food.

[138] As to the animals' care, it is important to examine the evidence as a whole and not piecemeal. There were seven dogs and ten or 11 cats in very close quarters with a pervading stench of urine. Many of the animals, including most of the cats, suffered from significant matting. This matting often contained both urine and feces. As Dr. Walton stated, it was normal for Persian Himalayan cats to acquire mats but the extent of the matting, especially between the pads of the feet, indicated that these animals were confined in quarters with insufficient grooming.

[139] These animals also lived in a home with an overpowering smell of urine and many of the animals suffered from ocular tearing as a result. As recorded by Dr. Walton, chronic irritation of the ocular membranes from high levels of ammonia (urine) would account for the ocular discharge and periocular dermatitis noted in many of the animals.

[140] The matting and ocular tearing were conditions noted in many of the animals but there were also more specific instances of inadequate care.

[141] The mother cat with kittens ought not to have been in a cage on top of a cage containing a dog, as this would become stressful for the felines.

[142] The female Shar-Pei dog, 308050, should not have been regularly restrained by a choke chain and this dog also had ear inflammation and entropion in the right eye. Dr. Walton felt this dog's hair loss at the neck and ear problems were chronic.

[143] Another Shar-Pei, 308051, also had ear inflammation, entropion and its right hock was very swollen.

[144] The male Papillon, 308055, required special attention. Its upper molar was broken and required immediate dental care.

[145] The male Himalayan cat, 308052, suffered from conjunctivitis in both eyes and the right eye also had a dry eye condition. This cat also had very reddish gums.

[146] The feral cat, 308062/63, had nails so overgrown that they curved back into the thumb and were coming out of the skin on the other side.

[147] Another Himalayan cat, 308064, had a severe pink eye condition.

[148] As to the adequacy of the animals' food, I note that Dr. Walton found that the male Papillon, 308055, with the broken pre-molar, and the feral cat, 308062/63, to be moderately underweight. The mother cat, 308067, was significantly underweight, and although it is common for a mother cat to lose weight, malnutrition was evident here because the kittens were now four to five weeks old. The Himalayan cat, 308052, was very underweight and this cat suffered from conjunctivitis in the eyes and reddish gums.

[149] I am satisfied beyond a reasonable doubt the above animals were not provided adequate food, although other animals were better nourished.

Mens Rea

[150] One of the key issues in this case is intent under s. 446(1) (b). This section requires that the Crown prove beyond a reasonable doubt that Ms. Parkinson wilfully neglected to provide her animals with suitable and adequate food and care. Unlike s. 445(1) (a) of the *Criminal Code*, there are no presumptions about wilfulness. However, s. 429 does apply:

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.

[151] This section sets out a subjective standard and it really requires the Crown to prove that Ms. Parkinson turned her mind to the animal's situation and intentionally or recklessly failed to act.

[152] I repeat that Ms. Parkinson loved her animals in her own way and, therefore, I am not satisfied that Ms. Parkinson intentionally failed to adequately care for and feed

her animals. However, I am satisfied beyond a reasonable doubt that Ms. Parkinson recklessly failed to act. I come to this conclusion by first looking at the totality of the evidence. Ms. Parkinson chose to take into her control seven dogs and ten or 11 cats yet she was reckless as to providing adequate and routine care for some of the animals. Indeed, she could only name a few of the animals and many of the ones she could not name were languishing in her care.

[153] As to the pervading smell of urine, Ms. Parkinson herself agreed that the animals did smell but she blamed most of the smell on a rotten sub-floor in a bathroom. In my view, she was deflecting the issue. This stench of urine was caused by too many animals in close quarters without regular cleaning of litter boxes or grooming of the animals.

[154] There are more specific examples of Ms. Parkinson being reckless as to the animals' care and feeding. In her evidence, when she looked at photograph 42 of a water bowl, she described it as disgusting and admitted she may have missed cleaning one bowl. I find that she is admitting only to what is really the tip of the iceberg here.

[155] Earlier in her evidence, she conceded that her place looked like it had been hit by a hurricane. When Ms. Parkinson was shown photograph 65 depicting the Persian cat with eye problems, she seemed astonished.

[156] She also conceded that the porch where the Shar-Pei was located was a mess but it was cleaned up now.

[157] Further, she admitted that "Gunji Bear" seemed fine notwithstanding the swollen hock but he did limp a little.

[158] I also find that Ms. Parkinson possessed some veterinarian medicine but it was out of date and not adequate for the specific ailments afflicting these animals. She also had visited the veterinarian in the past but not recently and some animals, such as the Papillon with the broken pre-molar, required immediate veterinary attention.

[159] These partial admissions made by Ms. Parkinson in her evidence demonstrate that she had an awareness of the problems but she chose to minimize them or overlook them. In short, she was reckless as to the adequacy of care required for so many animals living in such close quarters.

[160] Of note is the fact that Ms. Parkinson was an experienced animal owner who professed knowledge about husbandry.

[161] For the purposes of s. 446(1) (b), the Crown has proven recklessness beyond a reasonable doubt. Ms. Parkinson's actions in taking in these animals may have been based on good motives but she was reckless when it came to actually caring for them.

[162] Overall, the Crown has proven all the elements of the charge under s. 446(1) (b) beyond a reasonable doubt.

Section 445.1(1)

[163] Under this charge, the Crown must prove beyond a reasonable doubt that Ms. Parkinson did wilfully cause or permit to be caused unnecessary pain or suffering to the dogs and cats in her residence.

Pain and Suffering

[164] For the first component of an offence under s. 445.1(1) (a), the Crown must prove beyond a reasonable doubt that Ms. Parkinson caused or permitted to be caused pain or suffering to animals.

[165] I am satisfied the Crown has proven that component based on the following evidence.

[166] First, I already found Ms. Parkinson to be in care of control of these animals, as outlined above. While she did not directly cause her animals pain or suffering, she did permit pain or suffering to occur with some of her animals, as outlined below. I have already found that she failed to provide reasonable care and feeding for some of her animals.

[167] Secondly, there is clear evidence, not only of inadequate care but also of pain and suffering. Dr. Walton gave expert evidence on this topic. The Shar-Pei dog, 308050, had entropion in his right eye and this caused the dog pain and discomfort. As well, this dog would have ear pain due to the otitis. Much the same could be said of the other Shar-Pei dog. The Papillon dog would be experiencing dental pain due to the broken pre-molar. The dry eye condition experienced by the Himalayan cat, 308052, results in chronic pain and corneal damage, if untreated. It was obvious that the paws of the fractious cat, 308062/63, were causing it pain because the nails had grown so long that they curved back into the thumb pads and were coming out the skin on the other side.

[168] The ocular tearing experienced by many of the animals would also cause some discomfort. Some animals were in fine health but that fact does not diminish the pain and suffering experienced by other animals.

[169] I agree with SPCA Constable Carey's assessment that some of these animals were in distress but not critical distress.

Unnecessary Pain and Suffering

[170] I must be satisfied that the pain and suffering experienced by the animals in Ms. Parkinson's home was unnecessary. In my view, the pain and suffering was unnecessary because, if Ms. Parkinson took reasonable care of her animals, they would not be suffering from the conditions referred to above.

[171] If the litter boxes and animal waste were regularly cleaned up, there would be no intense smell of ammonia causing ocular tearing in the animals.

[172] Dr. Walton opined that the ear problems with Shar-Pei, 308050, were chronic. Yet once that dog was given medication, the ears improved.

[173] No one could be expected to deal with the entropion problem right away as there are costs and planning associated with the veterinarian care required. However, Ms. Parkinson appears to have delayed a long time with the decision for surgery, as she was also considering putting the dog down. The problem with the dog's hair loss at the neck could easily be remedied by not using a choke chain.

[174] The Papillon had an untreated dental problem which required special attention since this animal had weight loss.

[175] Likewise, the Himalayan cat, 308052, needed tear gel right away for its eye problem.

[176] As far as the fractious cat is concerned, it is obvious that its pain was unnecessary. It needed to have its nails clipped long ago.

[177] All the matting in the animals was unnecessary and caused some discomfort. Regular grooming would prevent the problem.

[178] Overall, I find that the animals which were in pain or suffering were in such distress unnecessarily.

Mens Rea

[179] Intent is once again a contentious issue under this section, 445.1(1) (a), as it was under s. 446.1(1) (b). Under 445.1(1) (a), the Crown must prove beyond a reasonable doubt that the animals' pain or suffering was caused wilfully. Again, wilfully includes recklessness because of the definition of the term in s. 429. Wilfulness is not to be confused with motivation, so the Crown does not have to prove a cruel or malicious motive to ground a conviction.

[180] It is also very important to bear in mind s. 445.1(3), which provides that proof of a failure to exercise reasonable care or supervision of an animal is proof that the damage or injury was caused or permitted wilfully unless there is some evidence to the contrary.

[181] For some inexplicable reason, this presumption of wilfulness is not found in s. 446(1) (b). This subsection clearly demonstrates that charges under s. 445.1(1) (a) are oriented not only to acts of cruelty but also to the failure to exercise proper care.

[182] The case of *R. v. Gerling* referred to above rules that the *mens rea* test under s. 445.1(1) (a) is objective unless there is evidence to the contrary. If there is evidence to the contrary, the Crown must prove wilful conduct, and s. 429(1) applies making the analysis a subjective one.

[183] Evidence to the contrary in 445.1(3) is simply evidence raised by the accused which raises a reasonable doubt about her wilfulness. I agree with Mr. Dotten that evidence to the contrary relates to the mental state of the accused. If s. 445.1(3) creates a presumption of intent, surely evidence to the contrary must relate to intent.

[184] In this case, I have already found that Ms. Parkinson failed to exercise reasonable care or supervision of some of the animals in my analysis under s. 46(1) (b). I will not repeat all of the examples of inadequate care and feeding. Consequently, the presumption of intent applies under s. 445.1(3) unless Ms. Parkinson has tendered evidence to the contrary which raises a reasonable doubt about her intent.

[185] It is true that Ms. Parkinson makes several assertions that she believes she was providing adequate care of her animals. However, I found her to be an unreliable witness. She had frailties with her memory and she spoke in generalities. She also realized that with 17 or 18 animals, things could go wrong very quickly.

[186] In my view, Ms. Parkinson appreciated the risk in having so many animals in confined quarters. Despite having good motives, she appreciated the precarious position these animals were in. The dwelling was filthy, the grooming was wholly inadequate and veterinary care was largely absent.

[187] Ms. Parkinson has admitted to some of the problems when presented with photographs of her animals and her premises.

[188] In sum, Ms. Parkinson has not raised any evidence to the contrary, that she was at least reckless as to her animals' care.

[189] Accordingly, I am to apply an objective test of *mens rea*. Any objective person would realize that the condition of some of these animals would result in pain and suffering.

[190] An objective person does not need Dr. Walton to tell him that a fractious cat would be in pain if its nails were curling back up right through its paw or that ear inflammation or eye disorders would cause discomfort. Any objective person would realize that the stench of urine in Ms. Parkinson's home would cause eye tearing and discomfort.

[191] If, for any reason, Ms. Parkinson has in fact adduced evidence to the contrary about her intent under s. 445.1(3), I am nevertheless satisfied on a subjective standard that she had the necessary intent for this offence under s. 445.1(1)(a). While she did not directly intend to cause the animals unnecessary pain and suffering, she was reckless as to whether the animals would experience distress because of her inadequate care.

[192] As one example, the Shar-Pei outside was seen by SPCA Constable Carey to be shaking its head frequently and to have an irritated ear. It may take an expert to diagnose the problem as otitis but it was plain for Ms. Parkinson to at least see this dog was in discomfort.

[193] Now, Ms. Parkinson stated she was not aware of the ear problem with the Shar-Pei, only the eye problem. I find that she is minimizing here. She was debating putting the Shar-Pei down and there is nothing illegal about that course of action, but in the meantime, this animal languished in her care.

[194] Ms. Parkinson also admitted that after looking at the photographs, the porch area where this Shar-Pei lived was a mess but it is "cleaned up now". However, she later went into denial and said the porch did not appear as depicted in the photographs. Ms. Parkinson was overall reckless about the Shar-Pei's condition. She simply had too many animals to care for and she was overwhelmed.

[195] Ms. Parkinson's recklessness about ear problems was equally evident with the cats. She did not believe that the infected ear in photograph 64 belonged to one of her cats but it clearly did. The photograph made her sick. Again, she is minimizing or denying her role in allowing these problems to occur in her animals, which led to their various states of distress.

[196] I conclude that the Crown has proven all the elements of the charge under s. 445.1(1) (a) beyond a reasonable doubt.

CONCLUSION:

[197] I find Ms. Parkinson guilty of Count 1, wilfully permitting her animals to be caused unnecessary pain and suffering.

[198] I find Ms. Parkinson guilty of Count 2 by wilfully neglecting to provide the animals with suitable and adequate care and feeding.

[199] I will say that I take little comfort in finding a well-meaning 73-year-old lady criminally responsible for the wilful neglect of her animals. But the reality is this woman was reckless as to the fact that 17 or 18 animals were housed in deplorable conditions with many experiencing pain and suffering due to those conditions.

G. BROWN
Provincial Court Judge