

Citation: ☀ R. v. Battaglio  
2020 BCPC 45

Date: ☀20200313  
File No: 16020-1  
Registry: Powell River

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**  
Criminal Court

**REGINA**

v.

**CAROL BATTAGLIO**

**REASONS FOR JUDGMENT  
OF THE  
HONOURABLE JUDGE B. DYER**

Counsel for the Crown:	R. Opel
Counsel for the Defendant:	J. Saulnier
Place of Hearing:	Powell River, B.C.
Dates of Hearing:	July 11, 2017; November 7, 8, 9, 2018; January 28, July 22, 23, September 6, December 9, 2019; January 20, 2020
Date of Judgment:	March 13, 2020

[1] The accused Carol Battaglio (“C.B.”) is charged with two counts under s. 24(1) of the *Prevention of Cruelty to Animals Act* RSBC 1996 c 372 (the “Act”) of causing or permitting some alpacas she owned to be or continue to be in distress between October 1, 2015 to November 29, 2015 and similarly, causing or permitting a chicken, in fact a rooster, to be or continue to be in distress from November 19 to 21, 2015. She has pleaded not guilty to each charge.

[2] Crown’s case as described in Ms. Opel’s opening was that only two alpacas of C.B.’s herd (Mo and Oye Vey a.k.a. Samantha) and one rooster in her flock of chickens (unnamed) and C.B.’s care of same were the subject matter of the proceedings before me.

[3] These charges are both strict liability offences. Thus in order to prove same, Crown must only prove the criminal act or *actus reus* of the offence however beyond a reasonable doubt. C.B. will avoid liability under the *Act* if she establishes that she took all reasonable care of these three animals in all circumstances proving same and the defence of due diligence on the balance of probabilities.

[4] The purpose or intent of the *Act* is as per its name – to prevent cruelty to animals. (See *R. v. Van Dongen*, 2004 BCPC 0479 para. 34). In *R. v. Chrysler*, 2013 BCPC 0241 Gillespie PCJ referring to *BCSPCA v. Baker*, [2007] BCSC 1717, a decision of Preston J. said this in paragraph 12 of her reasons:

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

[5] Doulis PCJ in *R. v. Scott*, 2017 BCPC 220 dealt with the same point at paragraph 225 of her decision as follows:

[225] Custody and control is not defined in the *PCA Act*. Upon engaging the principles of statutory interpretation I agree with Judge Clare in *R. v. Roos & Stevens* (22 October 1999), Port Coquitlam 57274-01 (B.C. Prov. Ct.), that the intent of the *Act* is to relieve distress in animals that are really unable to look after, to fend for, or to feed themselves. (Also see: *Dongen v. The Society for the Prevention of Cruelty to Animals*, 2005 BCSC 548 (CanLII))

[6] People who own or who are responsible for animals thus have a legal duty to properly care for them which can include taking positive steps to remedy a negligent situation in which they are kept. (See *R. v. Chrysler*, para. 61). In this case the charges arose by reason of allegations that C.B.'s care of the animals in 2015 on the relevant dates while they were kept at her small I would say hobby farm in Powell River, B.C. was substandard.

[7] The relevant sections of the *Act* are as follows:

### **Offences**

- 24** (1) A person who contravenes section 9.1, 9.2, 9.3, 23, 23.1, 23.2 or 23.3 commits an offence.
- (2) [Repealed 2011-7-6.]
- (3) If a person is convicted of an offence under subsection (1), a justice may, in addition to any other penalty that may be imposed for the offence, prohibit the person from owning or having custody or control of an animal for a period of time specified by the justice.
- (4) A justice may make an order under subsection (3) on any terms the justice considers appropriate.
- (5) A person who fails to comply with an order made under subsection (3) commits an offence.
- (6) A proceeding for an offence under this Act may not be commenced in any court more than 3 years after the facts on which the proceeding is based first come to the knowledge of an authorized agent who is a special provincial constable under the *Police Act*.

### **Harm to animals by persons**

- 23.2** (1) A person must not cause an animal to be in distress.
- (2) A person who kills an animal
- (a) must comply with prescribed requirements, and

- (b) must not, in killing the animal, cause the animal to be in distress or do anything that is prohibited by the regulations.

“**person responsible**”, in relation to an animal, include a person who

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

There is no dispute in this case that C.B. at all material times owned the three animals in question and therefore she was a “person responsible” under the *Act* at all material times.

## Part 2.1 – Standards of Care

### Duties of persons responsible for animals

- 9.1 (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.
- (2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.
- (2) For the purposes of this Act, an animal is in distress if it is
- (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
    - (a.1) kept in condition that are unsanitary,
    - (a.2) not protected from excessive heat of cold,
  - (b) injured, sick, in pain or suffering, or
  - (c) abused or neglected.

[8] Gulbransen PCJ in *R. v. Dongen* referred to a definition of the word “distress” in the English language (it is not defined in the *Act*) found in the Merriam-Webster’s Collegiate Dictionary (10<sup>th</sup> edn.) as follows: “a pain or suffering affecting the body” or “a painful situation” or “a state of danger or desperate need”. To this definition I will add the definition found in The Oxford Dictionary and Thesaurus (1997 edn) that distress means “suffering caused by pain, grief, anxiety etc.”

[9] As the person responsible for the animals in issue, the legal duties described in s.9.1 of the *Act* were duties that C.B. took on at the outset when she acquired the three animals.

[10] I intend to outline the legal issues in this case and then to summarize the evidence given by the various witnesses both called by the Crown and as well the testimony given by C.B. in somewhat of a chronological order, then make findings of credibility and finally reach my conclusion as to whether or not Crown has proven its case against C.B. beyond a reasonable doubt and whether or not C.B. has established on the balance of probabilities that she used due diligence and acted reasonably in her care of same at the material times.

[11] A finding of “due diligence” is a finding of fact and in order for C.B. to successfully defend these two charges, she need only show on the balance of probabilities that she took all reasonable steps which would have been expected of a reasonable person in the circumstances to comply with the legal duty she took on an acquisition of the three animals. (See *R. v. Adair*, 2000 BCSC 861 at paras 3, 5 and 6). Hood J. in *Adair* also held that the reasonableness of the accused Mr. Adair (Respondent on appeal) must relate to positive acts on his part in attempting to comply with a Notice he had received – arguably imposing a form of legal obligation on him. (See para. 10).

### **THE ISSUES**

- [12] (1) Were the two alpacas in distress during the offence period namely October 1, 2015 – November 29, 2015?
- (2) Was the rooster in distress during the offence period namely November 19 -- 21, 2015?
- (3) If so – did C.B. cause any of the three animals then to be in distress?
- (4) If so – did C.B. permit them either to be or continue to be in distress during the offence periods?
- (5) If any of the three animals were in distress, if C.B. caused or permitted them to be or continue to be in distress, did she exercise due diligence in alleviating or attempting to alleviate their distress?

[13] I intend to deal with each animal in turn at the conclusion of my reasons.

**SUMMARY OF EVIDENCE**

[14] C.B. age 74 on the last day of the trial in July 2019 after working for some years as a junior high school teacher and librarian returned to university and obtained a PhD in counselling. She is a mother of three sons, one who lived with her with a medical challenge making life in a busy city not good for him in the year 2010.

[15] Hence, she moved to Powell River in 2010 and for six months had a part time job there as an addictions counsellor which ended after six months. This move was because she felt her son would do better living in a smaller community and because she had a job offer. She earlier purchased a home in Powell River in 2008 and lived in it with her above son.

[16] She didn't quite remember the date she purchased her approximately seven acre farm located some three blocks from her home, but felt it was likely in 2011. It was called Cranberry Farm and she at no time resided there. At the time she purchased this farm, she had a permanent job in Powell River which ended. After some time off, she returned to a part time job in the Surrey School system which she said had started in 2008. After the farm was purchased, and after she lost her job in Powell River and in order to work in Surrey, she travelled from Powell River to Surrey each week leaving at 6:00 p.m. on the Saltery Bay ferry on Monday night and returning to her home in Powell River at or about 6:00 p.m. on Thursday. She worked all day Tuesday and Wednesday and Thursday morning staying overnight somewhere in North Vancouver. This work regime continued at all material times in 2015. She testified that she was home every weekend save for November 11, 2015 when she recalled she went to visit another son and one weekend earlier I believe in June.

[17] She did all her farming chores on Monday before she left Powell River and as well on her return on Thursday evening. She testified that when she was not on her farm to the best of her knowledge, she always had a caretaker present at the farm, someone responsible to look after it and otherwise her normal routine was to attend the farm daily.

[18] The farm when she purchased it was only logged raw land with no road into it. There were a number of stumps on the property. She hired a bulldozer to come in and clear certain areas with a view to eventually turning rough raw land into a working farm. Her initial plan was to have a therapy farm for seniors and people with disabilities like her son. She described the farm as a work in progress not only immediately after the purchase but as well even in 2019.

[19] C.B. had some earlier background in farming having spent a lot of time – whole summers as a young person helping out including with the cattle on her grandfather's dairy farm in Abbotsford. She took master gardener course at Van Dusen Garden in about 2009. She was interested in conservation, agriculture and soil conservation. Other than the work she did as a young woman with her grandfather's dairy cattle (which work she did not really explain in her evidence) she had no formal training and had taken no courses with respect to care of animals of any size when in or about 2011 she commenced acquiring animals – initially two little goats – for Cranberry Farm.

[20] She did testify that before 2011 and her acquiring any alpacas, she had visited four alpaca farms in Duncan, Oliver, Langley and on Gabriola Island and had spoken with their owners. In addition she learned about alpacas by reading books, magazines and going online. It was not clear to me when she did this or what she learned. She said she also contacted one Ms. Fell for advice I understood after she acquired the three alpacas from her in 2013 or 2014.

[21] In time, her goat herd grew to number fifteen animals. Their care has never been the subject of any SPCA investigation.

[22] Over time she acquired one llama ("Prince") and various alpacas commencing with two one year old males from a lady on a farm north of Whistler in 2011 that someone didn't want. Later in 2012 she obtained two female alpacas from a person on Gambier Island and another male llama also from the same lady who sold her the two male alpacas. She lost three alpacas in one night when a cougar attacked them. Still later she thought in 2013 or 2014 she acquired three female alpacas from one Rosemary Fell (referred to locally in Powell River as the "llama lady"). These three

animals were rescue animals in the sense that Ms. Fell had obtained them or knew of them as a local lady who had leased a farm had the lease cancelled, had to move and was too old to look after them. Ms. Fell asked C.B. to take them in essence to rehouse them and C.B. agreed. C.B. named them Mo, Celine and Dion. Mo was brown. Celine and Dion who were white were bigger and stronger animals – quite strong – (as compared to Mo who C.B. said was sort of a runt) and were “buddies” and C.B. felt probably sisters. C.B. testified that Mo was probably at a disadvantage competing with the two buddies for food in essence due to their size and bond. C.B. testified that Mo was the odd man out right from the beginning as she was smaller and not as aggressive as the two white alpacas.

[23] C.B. said she had Mo for approximately two years before giving her to Eleanor Miller to foster in October 2015.

[24] Mo was pregnant when C.B. first took her on and gave birth to a male cria, Rico, a few months later.

[25] C.B. said she had no concerns about Mo’s weight when she first acquired her. As well, she did not take an opportunity before taking possession of these animals to inspect them herself or have a vet inspect them on her behalf. Rosemary Fell did not tell her about Mo’s teeth for example in a telephone call prior to actually delivering Mo to her.

[26] About six months after acquiring Mo through Rosemary Fell, she offered C.B. three more female alpacas which C.B. took, namely Annie, a black female whose name she couldn’t recall and a white alpaca called Oye Vey whom C.B. called Samantha. She was pregnant on arrival and three to four months later in May 2015 gave birth to a baby girl – a cria – called Victoria. Samantha was taller and thinner than the other two but C.B. didn’t feel she was emaciated when she got her. C.B. agreed that pregnant alpacas are at a higher risk than non-pregnant females as they needed more food.



[27] C.B. seemed unsure of when she acquired these three alpacas stating variously she had them for approximately one year before they were seized by the SPCA in November 2015, then suggesting Victoria was born in May 2015.

[28] Mo's teeth were sticking up on the bottom when she arrived at C.B.'s farm – she had protruding buck teeth that C.B. said you could see right away. C.B. said she did not then discuss the state of Mo's teeth with Ms. Fell and agreed she had no knowledge then about alpaca teeth including protruding teeth in alpacas, in essence, whether they were a problem or not. She said their ability or inability to eat had nothing to do with the state of their teeth. The state of Mo's teeth in October 2015 can be seen in Exhibit 1, Tab 1 photo.

[29] C.B. testified that there was no noticeable change in Mo's teeth from the date she acquired her from Ms. Fell until the date she took note of them and called Eleanor Miller in or about October 2015.

[30] C.B. explained that alpacas only have bottom teeth but a split upper hair lip. She felt due to their lip, you couldn't tell when looking at some of them the state of their teeth. At trial she said she then understood 25% of alpaca needed their teeth trimmed.

[31] C.B. said the crias stayed with their mothers and the female alpacas were housed together whereas any male alpaca she owned was housed separately from the females, but otherwise together.

[32] C.B. never up until 2015 took her alpacas or llamas to a vet for advice. She said she did however go online and ask for a vet who knew about alpacas and explained that one could pay \$25.00 for a written reply to one's question and/or actually speak to a vet. She said she used this since for her goats. There is no evidence she used this resource for Mo including to obtain information about the state of her teeth prior to some date likely in in the summer of 2015.

[33] When asked why she would go online instead of taking her animals to see a vet, she explained that the vet was in Comox (the parties are agreed there was no large animal vet in Powell River at any material time) and that while she had a car and

uncovered trailer, she couldn't transport animals in her trailer to Comox and further, she didn't think there were any serious issues (about them) anyway. In the fall of 2015 she took two alpacas to Eleanor Miller's in her own car but this was only a trip of a short distance.

[34] C.B. testified at some length concerning her actions in respect to building and improving her farm property.

[35] She built a shelter to house her alpacas, keeping crias with their mothers, all females together and males apart.

[36] At night she fed her alpacas grain and hay. The grain was usually all gone in the morning but not all the hay. For this reason, she believed that her alpacas were getting enough to eat.

[37] Mo, Celine and Dion ate hay together in their shelter but C.B. said their grain ration was placed in a separate bucket for each animal. These containers were not so separate that the two stronger animals couldn't eat the grain in Mo's bucket.

[38] For about two weeks she put Mo and Rico who was then nursing (and she said alpaca crias will nurse as long as you let them) in a separate shelter entirely but then put them back with the other females as Mo did not want to be alone. Rico was still nursing in November 2015 but was also then eating grain and hay.

[39] Rosemary Fell, the llama lady testified and said she received this nickname due to her reputation and involvement with "camelids" – being both alpacas and llamas. She lived on a farm on Vancouver Island, had owned alpacas herself since 2001, had taken courses in camelid sciences in 2003 dealing with their health and nutritional needs and said she was the rescue liaison or co-ordinator for the Vancouver Island Llama and Alpaca Club.

[40] Working in this rescue capacity in the five years from 2013 to 2018, she had rehoused over 150 alpacas including making three trips to the Powell River area with animals going to new homes. She also sheared camelids and by 2015 had worked at

some 125 farms. In early 2012, C.B. called her and she first attended her farm that year to shear on July 27. She then had concerns about the state of C.B.'s farm both with respect to the safety and adequacy of the fencing and the absence of a shelter for the animals. She also helped C.B. deal with a mite problem on one of her alpacas in the summer of 2012 and suggested improvements she might make to her farm.

[41] She recalled after some reflection that in the next year after she first sheared for C.B., namely 2013, she delivered three alpacas to her all said to be of good quality and registered including Mo whom she did not feel was then pregnant. She noticed C.B. had by then made improvements to her farm. These three animals were rescue animals and she testified that her principal concern as a rescue co-ordinator was the well-being of the animals. She agreed she would not put any on a farm if to do so would result in them being unsafe or neglected. She agreed after the initial three were placed, C.B. took three more.

[42] She continued to shear likely once a year at C.B.'s farm in the four year period 2012-2015 doing her alpacas once each year and her llamas every two years but believed she had not attended C.B.'s farm in 2014.

[43] She visited Cranberry Farm on June 17, 2015 at 9:15 a.m. on the way to Lund to have a honeymoon lunch with her husband Bruce having earlier got C.B. consent to do so but having been told she would not be there. She looked at the alpacas and noticed the spinal column on two was sticking out or showing as were their ribs – they were not looking very healthy but looked lethargic. She looked around and noted there was no pasture or grass evident or water. They filled the empty water dishes. There was no hay she could find and none came. So she and her husband cut grass, vegetables and raspberry canes from C.B.'s garden and fed this to the camelids who appeared hungry. After spending three hours there, they then went to Lund for lunch. They noticed as well an ungelded male llama was in with the alpaca females and this was of concern to Ms. Fell as alpacas can become impregnated at any time having no "heat cycle". If a cria is born during winter months and there is no green grass and not enough nutrition for the

mother to eat to produce milk, and not enough sunshine, in essence, there is a risk to both.

[44] After lunch they stopped in a second time at C.B.'s farm around 3:15 p.m. and still no hay had been provided. No one was present on the property.

[45] In the result she called C.B. who was then in North Vancouver on four separate occasions and told her about what she had found that day. C.B.'s response was that someone was supposed to be there looking after the animals.

[46] Ms. Fell elected to send an email to C.B. and a copy of the same dated "June 2015" at page one and 6/20/2015 at page two was marked as Exhibit 2 at the trial. It states as follows:

Good morning Carol,

Thank you for phoning me back last night. As, you are aware, I have some serious concerns about what has been happening with the alpacas and llama at your farm. I was very disappointed to see how much weight the camelids had lost since the last time I saw them. Then, to find out that they didn't have water or hay; well, you can't blame me for being so upset. I assume that you finally bought hay, and they are being fed properly now.

If your intention is to run the livestock on dry-lot pasture, you must feed them hay 365 days of the year. As per the instructions I've provided.

YOU WOULD NORMALLY PROVIDE 1 BALE OF GOOD QUALITY HAY PER LLAMA PER WEEK. ALPACAS WILL EAT SLIGHTLY LESS.

MINERAL BLOCK. I left a new 'Camelid Delight' mineral block for your llama and alpacas.

They cost \$10.99 at Share-Kare and Buckerfields.

Your feed store in Powell River charges \$15.99. If you would like me to pick up another block for your camelids, and a mineral block for your goats before returning to Powell River, please let me know.

A CLEAN WATER SOURCE MUST BE AVAILABLE AT ALL TIMES. If you have any doubt that there was no water available when I attended your farm on June 17<sup>th</sup>, I do have a witness who can attest to the fact. You obviously need to hire a caretaker for your farm when you're away.

While I realize you have a farm plan in place, and are attending to develop the property to acquire farm status, I get the impression that you've taken on too much. If you are not able to cope with the number of animals on your property, I am willing to assist in finding them good homes.

I'm sure your intentions are good, however if you wish to utilize the fiber from your camelids, you will have to take care of them, clean up the fields, get rid of the mud balls hanging from the alpaca's coat, etc.

In regards to growing grass in your pasture areas. You will need to enlarge your pasture areas, and allow some of the regions to go fallow in order for them to grow out. Your pasture will not contain enough nutrition for the animals until it's at least six inches long. Very difficult to achieve at this time of the year given this years weather conditions.

At present you have your alpaca stud running with the dams. That means that all the females are bred, so you can expect an increase in your herd size. This will also mean that more shelter will have to be provided. And feed costs will increase as well.

IF THE STUD IS IN THE SAME PASTURE AS THE FEMALES WHEN THEY GIVE BIRTH, HE WILL TRY TO BREED WHILE THEY ARE BIRTHING. THIS OFTEN CAN RESULT IN THE DEATH OF THE CRIA. FEMALE CAMELIDS BECOME PREGNANT WITHIN 2 WEEKS OF GIVING BIRTH. THIS IS NOT ADVISABLE, NOR IS IT HEALTHY FOR THE ANIMALS.

I am willing to assist you in providing information regarding animal husbandry on a small farm. I don't want to receive another report or phone call from persons representing the SPCA or other concerned citizens.

Sorry to be so rough on you, but this is the way it is.

I will be back in July to teach you how to shear, trim toenails, and maintain a healthy herd. If you want me to re-home some of the alpacas in order to lighten your work-load, please let me know and I will bring my horse-trailer.

We have plenty of grass, shelter and clean water at the farm I lease in Campbell River. Have 5 alpacas and one llama boarding there at present. All males are gelded. I could keep alpacas there until we found new homes. Something for you to think about.

Talk to you soon.

Regards,  
Rosemary

[47] Ms. Fell said she sent this email due to concerns she had on June 17, 2015 and to help C.B.'s animals – her main concern then being their health and well-being.

[48] The weight loss she detected from her last visit was in white females and one cria who was very thin and small for his age. In reference to this observation she made on June 17, 2015 and concern over the loss of weight issue she testified:

“However, starvation doesn’t happen in two weeks. Starvation is in months and years. For an animal to get that thin as those animals were, that is starvation over a long period of time.”

[49] Ms. Fell agreed there was no reference to Mo and the state of her teeth in this email. However she also testified that she and C.B. would have verbally discussed many times Mo’s need for immediate medical attention concerning her teeth before July 8, 2015 both over the telephone and when they got together at her farm;

[50] C.B. agreed she was not present at her farm on June 17, 2015 when Ms. Fell visited. She did remember receiving the above email and said she was completely puzzled why Ms. fell would say what she had therein as there was hay, grain and water then available – there was a guy there delivering it.

[51] C.B. recalled vaguely I think a telephone discussion with Ms. Fell in June and her saying that she had popped by to see her farm on her honeymoon but couldn’t really remember if she said anything else. She said she had a strong able man named Darrell living on her farm in a motor home in June 2015 and all he had to do was feed the animals a few days a week. She said she always had someone living on the farm so that when she wasn’t there someone was however, her own son was not able to help out.

[52] In cross examination, C.B. was asked if it had ever been suggested she downsize her herd (of alpacas) and said Ms. Fell had even though she felt she was doing ok. She didn’t know why Ms. Fell would make this suggestion but said in the summer of 2015, Ms. Fell completely changed her attitude and sounded like she was upset with her farm. Probably in July 2015 was the first time Ms. Fell suggested she might downsize her herd. When shown Exhibit 2 she again said she didn’t recall it and did not recognize it but said the comment therein was nonetheless stunningly false. She said she didn’t understand it or recall it and that the comments were out of line. She couldn’t explain it as e.g. there was lots of hay and water on her farm on June 17. She didn’t know if Ms. Fell had in fact attended her farm. She guessed Ms. Fell had called

her that evening. When asked if she had spoken to Ms. Fell on the phone that day at first she said “No” and then “maybe I did” and finally “I don’t remember”. She didn’t recall Ms. Fell calling her four times that day.

[53] She then said Darrell was there – he lived there and then qualified her response – that she believed he was there – but she was not.

[54] When asked if Ms. Fell had raised the issue of Mo’s teeth in June 2015 she responded that she had in July – that she (C.B.) needed to get someone to look at Mo’s teeth – a vet or someone and when asked for a suggestion, Ms. Fell sent her Dr. Parke’s name and telephone number.

[55] Defense counsel asked C.B. if prior to Ms. Fell raising a concern about Mo’s teeth in the summer of 2015, had she ever heard that alpaca’s teeth needed to be trimmed or cut? She responded that she had never run into that. She had read a book about llamas and never therein encountered the issue of “floating” teeth. She further testified that after this incident, and it was not and is not clear to me what incident she referred to – that she scrutinized all the websites on alpaca farms and there was only one that mentioned sometimes they needed teeth...one of the vets in Powell River had said that about 25% of them need some teeth care – other than that, she didn’t know.

[56] On July 8, 2015 Ms. Fell attended at Cranberry farm for the last time to shear C.B.’s animals and cut their toenails. She had a microchip reader with her as C.B. couldn’t recall the names of her camelids – and used it to identify the eight adult camelids then present and made handwritten notes of her findings. She gave C.B. a copy of these notes later that evening after redoing them. C.B. was not then living on the farm. She met Darrell there with C.B. and another man. Darrell apparently told her he wasn’t living on the farm either – that he lived elsewhere up the road. Ms. Fell said Darrell was a very capable helper with the shearing and other work she and C.B. then did and said he was “just awesome”.

[57] She and C.B. while shearing did a health assessment of each animal. When she did Mo – she testified she had a grave concern regarding Mo’s health both as to her

teeth and her lack of weight. The assessment involved her placing her hands on the animal's bodies and palpating their chest, ribs, backbone and underneath. Each animal was scored by Ms. Fell from 1 (thin) to 9 (healthy). She agreed that alpacas have a good coat usually and that sometimes unless they were really really starving it was hard to tell where they rated as far as their body weight was concerned I understood just by looking at them. Thus as their coats were thick – one needed to lay hands on it and palpate or medically examine each by touch.

[58] There is no evidence in this case that C.B. ever examined any of her camelids in this way at any time or requested that someone to do so on her behalf prior to July 8, 2015.

[59] Ms. Fell later typed up her hand written notes made at C.B.'s farm and the same were marked as Exhibit 3 at trial. On or about July 8, 2015 she emailed a copy of these notes to Eleanor Miller.

[60] Ms. Fell's observations of C.B.'s herd were mixed with some scoring (as to their body condition) "fairly good" or "well" and some "very thin". As to Oye Vey (Samantha) and Mo – Ms. Fell's findings were as follows:

White female alpaca with white female cria.

Name: Oye Vey

Microchip # FDXA133109297A

DOB JULY 7, 2001

This female scored well, as did her cria.

I do not have a date of birth for the cria.

Brown alpaca with male cria named Rico.

Name: Moe (not confirmed, as Carol could not remember her registered name)

Microchip # FDXA132147617A

DOB? This will be on her Registration papers.

This female is starving to death. She has severe dental problems



Carol was told that the alpaca needs immediate medical attention. THAT WAS BACK IN JUNE!!!! She, (Carol), assured me she would call a Veterinarian to attend to this issue.

[61] In cross examination defence counsel suggested to Ms. Fell that June 2015 was when she told C.B. about how Mo needed attention and she responded “and we discussed it prior to that” over the telephone and when together at her farm. She stated: “Ms. Battaglio was aware of the dental problems with her alpaca she named Mo prior to June.” She estimated she told C.B. to call a vet concerning Mo’s teeth quite some time beforehand (i.e. before July 2015) – she estimated a year earlier. C.B. said it was in July, 2015 Ms. Fell raised the issue of Mo’s teeth for the first time.

[62] Ms. Fell’s evidence on point was:

Q “Named Mo.” So, in this one you put, “The female is starving to death”?

A Yes.

Q What did you observe about that alpaca?

A She was skin and bones.

Q You also noted she had severe dental problems?

A Yes.

Q What – what did you note there?

A Severe malocclusion, which I suggested to Carol be repaired quite some time beforehand, and she assured me that she will call a veterinarian to have that taken care of. That is something, dental work is only done by a veterinarian. It’s not something that I would – not a service that I would provide.

THE COURT: Are you able to tell me approximately when it was that you first told Carol that this – did you call it mal -

A Malocclusion.

THE COURT: -- clusion – a malocclusion –

A Yes.

THE COURT: -- should be repaired? What – when in relation, for example, to July 8<sup>th</sup>, 2015 would you – do you recall having told her that, or – or recommended that?

A Honestly, I’d have to go back on my notes.

THE COURT: Are you able to estimate, you know, one week, two weeks, two months, three months, or – or not?

A I would say a year before then.

THE COURT: So that's an estimate?

A That's an estimate.

THE COURT: So, you estimate 12 months prior to July 8<sup>th</sup>, 2015 you advised Carol that that needed to be dealt with, right?

A Yes. Yes, sir.

THE COURT: So, and did she at the time give you an assurance that it would be?

A Yes.

[63] On July 10, 2015 Ms. Fell emailed C.B. with Dr. Parke's particulars as follows:

Hi Carol,

Sorry for the delay in getting back to you with the info on the Vet.

The lady who specializes in llamas and alpacas is Alisha; she works at Tsolum Veterinary Clinic in Black Creek.

The phone number for Dr. Peter Parke's office/ TSOLUM MOBILE VETERINARY is

Either Dr. Parke or Alysha regularly tend to alpaca dental issues. There is another farm in P.R. that has a llama with

long teeth, and I think they're trying to coordinate a visit from the vet. How are Jason and the alpacas doing now that they're sheared?

I'll let you know when we're heading back over your way.

Take care.

Kind regards,

Rosemary

[64] C.B. agreed that she had received this email from Ms. Fell. In cross examination counsel asked Ms. Fell if the July 10 email to C.B. was the first time she had provided her with some information on how she could deal with Mo's teeth – and the following exchange occurred between Ms. Fell and Mr. Saulnier:

A No, sir.

Q No, you did that previously?

A Yes, sir. She was supplied with manuals –

THE COURT: Just a second. Okay. Earlier, by you, Madam?

A Yes, sir.

THE COURT: Okay. She was supplied – what would – kind of manuals are you referencing?

A Llama and alpaca care.

THE COURT: Okay.

A Information regarding dental issues. Telephone numbers for the other shearing company. As well as the two veterinarians that would be available, not just Tsolum Vet, but the other veterinarian that would be available to take care of any issues that she may have on the farm.

MR. SAULNIER:

Q Thank you, Ms. Fell. I accept that you previously provided resources about llamas and alpacas and contact information about vets for – for Ms. Battaglio. But, specifically, on providing her with information about the people who could deal with Mo's teeth, that was first done July 10<sup>th</sup>, 2015?

A That was first done in writing on that date.

Q Okay.

A Verbally, we discussed this many times.

Q This info – I'll wait for His Honour.

THE COURT: Yes.

MR. SAULNIER:

Q Ma'am, if you'd previously give Ms. Battaglio the contact information for people who could deal with Mo's teeth, why would you then say, "Sorry for the delay in getting back to you with the info on the vet"?

A Because she told me she had lost the paperwork, and at that time, as well, she couldn't find the documentation, the registration papers for her animals, so that we could verify date of birth and the actual names of these animals.

Q You're referring to when you did the assessments of Ms. Battaglio's farm, and she did not have the registration papers?

A Yes, sir.

[65] C.B. responded to Ms. Fell's July 10, 2015 email the next day at 2:05 p.m. as follows:

Thanks Rose: I will get in touch with Alisha or Dr. Parke Monday. Do you have a phone number for Eleanor? I was looking at Mo last night and this morning, and I think her teeth are worse, and she is having trouble eating – seems thinner than ever. So I need to do something about it asap. Maybe Rico is so attentive because he is worried too!! Carol

[66] Ms. Fell later responded to C.B. as follows:

Hi Carol,

Eleanor Miller lives on Hillcrest. Her phone number is                      She is elderly, and on a fixed income, so really can't afford any vet bills.

She is very familiar with camelids. She had Winchester, her llama, for 17 years. She's awesome with animals.

I'm sure Rico is very worried about his Mom. She is probably not producing much milk anymore, as she's not even getting enough nutrition for herself. Having her teeth done will be a huge help. Then getting those two, (or more), onto some greener pasture will be a life-save. I think that "Bylaws" will only allow Eleanor to keep 2 head of livestock on her size of property.

Let me know how it goes with the Vet, etc.

It's raining here. Yipee!!!

Have a great weekend.

Rose

[67] Ms. Fell was shown certain photos by Crown counsel in Exhibit 1 taken either by Ms. Mead or another SPCA officer on November 20 at Tab 1 and said that she recognized Mo in photo #4 and she looked a lot thinner than the last time she saw her. She was then shown photo #3, a more or less face on photo of Mo's teeth. Her evidence was as follows:

Q Is there – obviously, this is a photograph showing teeth?

A Yes.

Q Is there anything wrong with those teeth?

A Yes.

Q What's wrong with them?

A They're too long. They look like they've been broken off. Yes, they're – they're –they've overgrown. Llamas and alpacas have a soft palate on top, and then their teeth on the bottom, and then

chewing molars on the back. It's really important that those bottom teeth match up to that soft palate so that they can eat grass, so that they can actually pick up grain and grasses, chew on bark. They're – they're – they're browsers, as well. In other words, they eat much like a deer or elk. They eat grass, they eat trees, they eat shrubs, they chew on bark. That helps keep their teeth worn down

It does appear that she may have broken her teeth off.

Q Okay.

A Just the way the angle of it. Unless someone actually tried sawing them with OB wire, or something. But, yeah, they shouldn't look like that, long story short, but it's too late already, so –

Q And does this, what you see in this photograph, the teeth the way they are, would that cause difficulty eating properly?

[68] She was then shown photo #5 showing Mo's anal area and testified "that's one extremely thin animal". On being shown a photo #6 of Mo's coat she said absolutely it was of concern – it looked as if the animal had a mite problem which could be eradicated with proper medication.

[69] On being shown a further photo #7 of Mo she testified that it showed that her spinal column was sticking out. When shown photo #8 she said she recognized Mo and expressed concern over her teeth. This photo again is taken more or less face on and show Mo's teeth – at least one sticking almost straight out of her mouth under her lips at I would estimate at about a 30 degree angle to the plane of the tongue.

[70] Ms. Fell testified that when she was last at Cranberry Farm shearing on July 8, 2015 she was concerned about her own safety on the property as the farm was an obstacle course by reason of the debris. No level clear area as requested was provided for her to shear and none secured was available. In addition, after then completing her work, she made a decision not to return again due to her concern that the soil might harbour parasites which would get on her feet or gear and be transported either to her own farm or those farms of other shearing customers.

[71] Crown counsel showed Ms. Fell photo #6 (Exhibit 1, Tab 2) of C.B.'s llama shelter and asked if she had any concern about its state? While she didn't recognize this structure (and there is no dispute that it was taken at C.B.'s farm on November 20)

she testified she did not have any concerns unless it was a sleeping area shown and then as long as the excrement shown was scooped off the floor.

[72] On cross examination she agreed that alpacas like to be in groups as they feel safer. She was asked about the Canadian scale she used in July 2015 when she and C.B. examined the body health of all camelids then owned by C.B. Nine was obese and a good score was 5, 5 to 6. This scale runs from 1 to 9 whereas the American scale runs 1 to 10. Ms. Fell did not record a numerical scale or score on July 8 for any of C.B.'s animals. In answer to a question from the Court, she said between the summer of 2015 and November, 2018 she owned ten llamas and four alpacas but one was put down in 2017.

[73] I return to C.B.'s evidence as to what she did having exchanged emails with Ms. Fell on July 10, 2015 and then being informed that both Dr. Parke and Alysha tended to alpaca dental issues. She called Dr. Parke's office in Comox and learned again that Alysha did camelid teeth care. She then contacted Alysha pretty much immediately in July and she advised C.B. that she would put her "on the list" for when she came to Powell River and that they would call when Alysha was coming. C.B. did not testify that she asked Alysha when this visit would occur. Nor did she apparently fully describe either Mo's dental condition or Mo's overall state of health to Alysha found by Ms. Fell on July 8 to be that Mo was then starving to death with severe dental problems There is no evidence that C.B. ever drew Ms. Fell's July 8 exam result or Mo's condition to either Dr. Parke's attention or to Alysha's including for example by way a text message with attached photo of her July 8 notes.

[74] C.B. testified that in July 2015 she understood large animal vets did not come to Powell River immediately upon being called. Rather they came on a regular route through Powell River to deal with customers there. She was not asked what her understanding was on this point if an animal owner possessed an animal that was starving to death who requested a vet attendance to examine the animal in question. I note in passing that there is no evidence C.B. ever had a vet come to her farm or ever requested that one do so for any reason – serious or otherwise at any time and hence it

would appear her knowledge of what vets did or did not do in the summer and fall of 2015 cannot be based on her own knowledge or experience with any vet.

[75] C.B. said Alysha never called back I assume to tell her when she'd be coming to Powell River to deal with Mo. She waited a few weeks and then she called Dr. Parke's office and was told Alysha had quit. She did not really have a specific recollection of when this call was made. She gave Alysha time at first, and when nothing happened, she called her back a couple of weeks later at least, she estimated in July or early August.

[76] She gave no evidence that she ever attempted to locate Alysha to see if she still did camelid dental care notwithstanding her having left Dr. Parke's employ.

[77] When she was told Alysha had quit, she asked if Dr. Parke could attend and in essence do Mo's teeth stating that her animal needed its teeth done. She was advised he was away for a month. In the result she asked to be put on a list and to have Dr. Parke call her as to when he was coming to Powell River on his return after his month holiday. He never called her back.

[78] C.B. said in her direct evidence that she then called the online vet service to ask about her alpaca with protruding teeth who was losing weight.

[79] On cross examination she agreed she didn't recall the date of the call to the online vet concerning Mo's weight and teeth or exactly what she said to him. When asked if this call was made in August or September she responded after hesitating at some length that she thought it was before Rosemary (Fell) came out in July – it may have been August or September, she was not sure and said that her memory was failing. She did say she first appreciated there was a weight issue with Mo when Rosemary visited in July 2015. She also said one reason she hand fed Mo was that Mo had to compete for food with the two other stronger females she was with I assume Celine and Dion.

[80] She was advised probably in August, maybe September – who knows by the online vet to feed Mo by hand with grains only which she did rubbing only her head while she stood as she did so.

[81] C.B. in cross examination could not say her daily hand feeding Mo led to any change in her weight or body condition. She fed Mo in this fashion for the four days she was in Powell River and her new caretaker Bobbi was supposed to do it while she was away but she was uncertain he would.

[82] Alpacas not having upper teeth nibble grain with their lip. She did not hand feed hay to Mo but said Mo didn't appear to have any difficulty picking loose hay up out of the manger not on the ground.

[83] Mo did not do well notwithstanding the commencement of the hand feeding which was ongoing at a time she changed caretakers. Bobbi started in October and was at her farm in November. He later died of a drug overdose.

[84] It soon occurred to C.B. to ask one Eleanor Miller if she would look after Mo as she felt she needed someone to pay closer attention to Mo on a daily basis. Ms. Miller's llama had died and she was anxious to have another camelid but was only legally permitted to have two due to the size of her lot. Because alpaca don't want to be on their own and get quite distressed if they are – she decided to take Annie to Ms. Miller's as well on October 24, 2015. She seemed to have been prompted to call Ms. Miller as she testified on returning from Surrey on one Thursday, likely in October, she took a look at Mo when it was dark out and just all of a sudden saw her "as not doing well". She didn't look that great and while she felt all her other alpacas looked fine, Mo seemed worse. She was thin. But she didn't think Mo was suffering at this time. She asked rhetorically if people suffer when they're thin? C.B. further testified that Mo didn't know she had crooked teeth and said: do people with crooked teeth suffer? C.B. answered her own question "I don't know". This analysis seems to overlook the fact that approximately three months earlier the llama lady had opined that Mo was starving to death.



[85] At the time she was hand feeding Mo, she noticed her teeth were sticking out and this was another reason she sort of kept any eye on Mo. C.B. testified she came with her teeth like that.

[86] This would have been two years earlier. She felt because of Mo's teeth deformity, the other animals were kind of mean to her.

[87] Eleanor Miller testified. She lived on a small 1 1/8 acre farm in Powell River in 2015 which she purchased in 2002 and had kept a llama for 22 years. He was put down in 2014. Prior to living on her small farm, she had resided on a 32 acre farm near Powell River and raised beef cattle, wild turkeys, more than 100 rabbits, chickens, one pig and bees.

[88] In 2015 she was looking for two alpacas as they were herd animals and were not supposed to be alone. She learned of C.B. from Ms. Fell who sheared her llama. She went to visit C.B. in March 2015.

[89] In her observations there, she felt C.B.'s farm was extremely inadequate. There was a lot of mud and heaps of alpaca excrement. She couldn't see a source of water or pasture, that is green food for the animals, all of whom save the male llama were together. C.B. was not then there but on a future return visit they met.

[90] C.B. advised her there was a distant possibility she could obtain a female and cria from her but wasn't particularly open to the idea. She went later in March and C.B. showed her the alpaca earlier discussed. It was very tiny with a tiny little cria. The female looked like a medium to small sized dog. Their condition was in her view pathetic. Ms. Miller observed the mother trying to defend the baby at her side with all the animals in the herd moving around.

[91] Ms. Miller said she noticed the mother's teeth sticking out of her mouth at a 90 degree angle from her chin. There is no dispute that this animal was Mo.

[92] On this visit, she asked C.B. how could she eat with her teeth like that? She didn't see any food on offer at the time save C.B. had a small bucket of grain used to

get Mo to come over. She asked C.B. if she had had a vet look at them and C.B. said “you mean file them” – which Ms. Miller said is what you have to do – and she observed C.B. just shuddered or appeared to shiver all over and didn’t answer immediately but then said “she couldn’t do it.” Ms Miller left leaving open the possibility of her later getting two alpaca from C.B.

[93] C.B. in her evidence did not dispute that she’d made the above comment to Ms. Miller in March 2015.

[94] Ms. Miller did not return to C.B.’s farm. On October 24, 2015 C.B. called her and asked if she was interested in taking Mo and Rico. She knew Mo was then in critical condition and agreed but said at this time there was no discussion of Mo’s condition. C.B. told her Mo would have to be hand fed. Ms. Miller understood she would have to do this because she was having difficulty eating due to her teeth and as well because C.B. was doing it.

[95] Ms. Miller called Rosemary Fell to discuss her fostering Mo and her male cria Rico and decided as he was intact, there was a risk that he might impregnate his own mother, so elected not to take him. She so advised C.B. and asked if a second female was available and C.B. agreed to provide Annie.

[96] Several days later at 2:00 p.m. C.B. came to Ms. Miller’s farm to check it out and finding everything good, brought Mo and then Annie in her car. Mo was filthy on arrival, covered with mud with feces on it, on her head, around her eyes, ears and mouth and was really scrawny with no weight on her body. Also, on arrival Mo could nibble textured grain out of her hand while lying on the ground with her teeth sticking straight out in front of her mouth. She testified Mo then ate as follows:

Q Let me just clarify something, then. From the time you saw her back in March to October had her teeth changed?

A Her teeth hadn’t changed at all.

Q Okay.

A Okay, so, when Mo went to eat I had my hands like this.

Q Cupped?

A Down, cupped in front of her like this. And, so, she had to get her head in my hands and kind of scoop with these big, long teeth hanging way – straight out of her mouth, scoop and then tip her head back and try to get the grain into her mouth and swallow.

[97] Ms. Miller watched Mo later this day. She observed Mo had difficulty standing. She had to put her nose down for balance and just swayed she was so weak.

[98] The next morning she patted Mo which seemed to be her practise and observed Mo's spine was sticking up three inches above her ribs. There was nothing there but fibre, skin and bones – no muscle or flesh. She had never seen this before. When she ran her hand over Mo's haunches or hip and pelvis area she felt big bones but no flesh.

[99] Her reaction was to call Dr. Van Dyck in Comox to see if he could come over. He had done so with her llama. She made an appointment for November 3 approximately one week later.

[100] She then called C.B. to report on Mo's state and to tell her about the vet appointment on November 3. I observe that Ms. Miller was merely fostering Mo and Annie then and at all material times C.B. owned them. C.B.'s response which Ms. Miller recalled exactly was "Oh, yeah" and then "I don't know what's wrong with her." And then "She's so weak. All she does is lie on the ground all day." C.B. then in a cross voice asked how did she get the vet appointment?

[101] She then phoned the SPCA she felt on October 27, 2015 to report an animal in distress. When asked why she had done this, she said she then knew Mo was dying and that Mo would never make it through the winter in the condition she was in. Before calling the SPCA, Ms. Miller observed that Mo couldn't really stand up or stay up beyond doing a 5 point stance using her nose and swaying. Annie's condition she felt was then ok.

[102] C.B. testified that Mo in late October was able to get up and walk around with her and indeed into her car with a push when she transported her to Ms. Miller's but wouldn't get up for her at Ms. Miller's on a visit (she didn't say when). C.B. assumed she was missing her cria Rico who had stayed with her. Ms. Miller's evidence was that C.B.

visited Mo a couple of days after Dr. Van Dyck attended on Mo on November 3, 2015. She recalled C.B. was then blasé about the vet's opinion on Mo's condition and the possibility of her survival and her really terrible teeth. They were able to get Mo up when C.B. visited.

[103] Tara Daniels from the SPCA attended at Ms. Miller's property with a colleague one Brandy Craig on October 27, 2015. Ms Miller observed Ms. Craig manually examine Mo and saw that Ms. Craig was herself shaking after completing the exam. Following this October 27 attendance, Ms. Craig, the SPCA branch manager asked Angela Mead to handle this complaint made by Ms. Miller. At this time Mo was not trying to stand but lay on the ground and slept. She tried to nibble grass and weeds at the Miller property with teeth she couldn't bite with. Ms Miller was then feeding her grain three times a day – as much as she wanted.

[104] The SPCA took photos of both Mo and Annie on this visit.

[105] In the three days following this visit, Ms. Miller observed Mo try to stand but be unable to get up.

[106] Brandy Craig testified for the Crown. In 2015 she had been the SPCA branch manager in Powell River for some four years and as such did initial cruelty examinations. Before this, she spent approximately three years as an SPCA volunteer doing the same type of work. On an initial call, she would determine if an SPCA constable needed to be involved, for example, if an order needed to be issued.

[107] In the four years prior to 2015, she recalled receiving approximately five to six complaints concerning C.B.'s animals and on each, attending at her farm to complete an initial check.

[108] At the onset of her dealings with C.B.'s farm, C.B. was not present thereon very often. Ms. Craig said she dealt with a lot of people helping C.B. on her farm including a male who lived there.

[109] On these visits she observed that the farm – the entire property was rundown and was basically mud and dirt. There appeared to be no vegetation available for the animals. She was of the opinion that C.B.'s animal shelter was not adequate but later agreed on cross examination that a roofed three sided shelter (which C.B. had in 2015) was sufficient. On these visits, she felt the provision of water for her animals was inadequate in that the water in cold months was frozen in the receptacles or they were quite often empty and always dirty. She did recall seeing rain barrels in place collecting rain run-off from building roofs but testified that the water therein had mosquito larvae and algae in it and in her view, was not potable for C.B.'s animals.

[110] As well on her early visits, she observed the bedding for C.B.'s animals to be dirty, wet and filled with feces and at times, no bedding was available at all. (Exhibit 1, Tab 2, Photo #9). In addition, she said there were injurious objects everywhere on the farm, metal laying around, tools and garbage. There is no evidence any animal in C.B.'s care at her farm was ever injured by reason of these objects. Ms. Craig felt the fencing was not properly kept up. The coats of C.B.'s alpacas were dirty with caked, matted mud. Ms. Craig admitted she didn't know a lot about alpacas and was not an alpaca expert but she testified that there was a general standard of care for all animals and she believed she knew a lot about animal care.

[111] Ms. Craig was asked about C.B.'s attitude in these early dealings with both the SPCA and herself and responded as follows:

A Generally, she was very dismissive. She felt that we had no right to be there. Towards myself, she felt that I didn't know what I was talking about and shouldn't – didn't want me on her property.

Q Did she tell you that?

A Yes.

Q More than once?

THE COURT: Just -- just a minute.

MS. OPEL: Sorry, Your Honour.

THE COURT: Did she tell you that more than once?

A Yes.

MS. OPEL:

Q When you spoke with Ms. Battaglio, what was her demeanour?

A There were times that she was cooperative.

Q Okay.

A And there were times that she would be quite agitated and yelling. There were times that she would cry. There were times that she would tell me that she was overwhelmed and then there would be times that she would tell me that she knew what she was doing and we had no right to be there.

Q From what you've described, was any of it aimed at you specifically or was this aimed at the SPCA in general?

A I don't know. I — I feel, as a representative of the SPCA, it's — it was generally the SPCA, but I know personally, I would say she didn't like me very much, but —

[112] She recalled that on some of the early visits, orders were issued with respect to certain perceived deficiencies and when the order was complied with, files would be closed.

[113] Ms. Craig in response to a complaint call from Ms. Miller regarding the condition of two alpacas Mo and Annie owned by C.B. attended at Ms. Miller's with Ms. Daniels she believed on October 28, 2015.

[114] On arrival she recalled Mo was lying on the ground and when she first approached her, Mo would not get up immediately. It took her a while to do so. She appeared to be extremely emaciated and her nose was touching the grass and running. She had clumps of grass sticking out of her mouth. Her teeth were overgrown and coming out of her mouth almost up to her nose. She was not able to chew and appeared to be repeatedly straining to swallow. Her stomach grumbled the whole time Ms. Craig was there making the kind of sound a stomach makes when one is hungry.

[115] Ms. Craig examined her manually. She was obviously emaciated and her spine was protruding. She had no fat stores. She had feces on her back end and down her legs.

[116] Annie was thin but in better condition than Mo.

[117] Both she and Ms. Daniels then took photos for these animals found in Exhibit 1 at Tab 1.

[118] Ms. Craig testified that Mo's teeth (seen in photo #3, Exhibit 1, Tab 1) were of concern to her because they were so overgrown. She felt Mo was not able to chew her food properly. As well with the abnormal state of Mo's dental occlusion she said there was a risk that teeth can actually grow right back into the animal's face. This observation was not challenged in cross examination and is some evidence together with that given by the veterinarian Dr. Dyck that alpaca teeth do in fact grow in length over time.

[119] Ms. Craig was shown all photos in Exhibit 1, Tab 1, #1 -- #12 and said they accurately described the two alpacas Mo (brown in colour) and Annie (black in colour), for example, photo #9 showing Mo's face and ears to be dirty by reason of her lying on the ground.

[120] After this visit, Ms. Craig said she entered her findings and photographs into an SPCA database. She believed that SPCA Special Constable Angela Mead would have seen these prior to taking over responsibility for dealing with this case.

[121] Dr. Van Dyck attended at the Miller's farm on November 3, 2015 and stayed for about 1.5 hours and his fee of approximately \$490.00 was paid by Ms. Miller. He sedated Mo although he was afraid of doing so due to her weak condition and filed her teeth using a dremal tool. He took approximately 50 % of them off. They still stuck out but were mostly inside her mouth. Ms. Miller observed Mo who seemed to be fine during the filing procedure could then eat a bit. He also graded or scaled Annie and Mo on a 1-10 scale. Mo was a 1 and Annie a 5. Annie was then skinny with dull fur and scaly skin but Ms. Miller was advised by Dr. Van Dyck that he thought she could survive but due to Mo's condition said he had a legal obligation to report on her to the SPCA.

[122] On cross examination Ms. Miller testified that she did not remember telling Dr. Van Dyck that Mo was then doing better (which she was not) or that she seemed to be

getting slightly stronger in the last few days or that Mo was spending more time standing and had started to eat grass.

[123] Dr. Van Dyck testified. He was qualified as an expert. He has a veterinarian degree from the University of Saskatoon in 1992, practised in Courtenay and had dealt with large animals including camelids in his practise since 1993.

[124] He testified that proper care of camelids requires that they have water and food including forage present at all times. They should consume 2% of their body weight each day. Adult camelids (Alpacas) range in weight from 60 to 80 kilograms. They need to be able to browse and consume for example forage, leaves, and branches which are necessary for the rumination they do. When shown photo #1, Tab 2, Exhibit 1 of C.B.'s farm taken by the SPCA on November 20 he said he saw no natural grazing material present and a lot of hazardous debris present. He commented on the optimum place of crias in an alpaca herd – they needed to be separated from adult males and non-breeding females so as to be able to bond with their mother and have a good ability to nurse with her so as to obtain good nutrients from her. This separation is required as adult animals compete for food and the bigger, stronger animals tend to get it, particularly the males.

[125] Crown counsel asked Dr. Van Dyck about the kind of care camelids needed of their teeth. He responded:

A So, in terms of – in terms of getting that good food into them, yeah, they have to have their teeth checked, and normally – normally right from, let's say, go from the time that they're born, it's recommended that the mother and the baby, the cria, are examined within a fairly short period of time that they're born to make sure that there was no injury from the – the birthing, and that the baby has normal development in its mouth, 'cause that's the first step in getting hold of that food and making use of it, they have to be able to eat it.

They can have cleft palates. They can have teeth that don't erupt properly. So, they won't be able to either get the food into their mouth and then utilize it properly before they can even digest it. You can have all the best food in the world, and if they have an anomaly with their



– with their – their mouth or their teeth, if not, they’re going to have problems.

Q And what do you mean by problems?

A Oh, they’re just not going to be able to digest and make use of the food, and grow properly, and they can – there’s all kinds of other situations that can occur. Thankfully, they’re not that common, but it’s always something worth checking on.

[126] Dr. Van Dyck opined on nursing females’ nutritional requirements. They required a higher level of nutrition and needed their food to be supplemented with pellets, grain or extra hay. He felt it was a good idea for even experienced owners to obtain a vet’s opinion as to what would be an adequate diet for such an animal. At all material times Mo was a nursing female.

[127] He testified as to how an owner could best or reasonably check on the condition of a camelid. He felt that because camelids have such thick fibre in their coats, it can be difficult to “eyeball” their condition from a distance and ascertain whether or not a given animal is malnourished because it is e.g. not eating. Their condition was not always obvious from a distance.

[128] Having been contacted by Ms. Miller and being asked to come and see a starving alpaca with extreme tooth problems he attended at her farm on November 3.

[129] He examined Mo and made notes and later prepared a report marked as Exhibit 6 for the SPCA. He received same history from Ms. Miller that (a) Mo seemed to be getting slightly stronger in last two days, (b) was spending more time standing and (c) Mo had begun to graze grass.

[130] On his manual examination he found:

- a) she was extremely thin and gaunt with no fat or muscle on her back
- b) he estimated her actual weight to be 35-40 kilograms and felt she should have been twice that
- c) her body condition was absolutely skeletal with only skin covering her bone structure

- d) he graded her a “one” on a scale of 1-5, “one” being malnourished and extremely thin. Three would be ideal body condition. In a well managed herd a scale of 3-4 or 3-3.5 would be an average condition score range for the animals therein.
- e) she had no fat reserves at all
- f) he noted three incisors on the left side only of her jaw were a problem clearly out of occlusion – all very long and pointing forward in the wrong direction at a diagonal angle to the left – whereas they should only be pointing forward. They appeared overgrown. He further testified on viewing Exhibit 1, Tab 1 photo #8 – showing Mo’s teeth – that it showed how her upper lip was held back and prevented from coming down over the top of her teeth. The upper lip is very important in allowing an alpaca to grasp the food it is eating. Mo’s right side incisors appeared to meet her lip properly
- g) all Mo’s molar teeth were present but appeared sharp which is not unusual but with an animal having difficulty eating would be another difficulty for it to deal with as in grinding food can cause ulcers in the mucosa of their mouth or inside their cheek but none were seen.
- h) her temperature and pulse were within normal range
- i) no abnormal body sounds were detected when he used his stethoscope
- j) Mo’s stools were soft – this was abnormal but they were of adequate size so he thought Mo had been eating quite well
- k) he detected no skin mites on Mo
- l) he did not believe Mo had some variety of wasting disease but said when cross examined he would have been surprised if Mo didn’t have some disease, an underlying anomalous blood result as she was so incredibly emaciated. He said he would 100% guarantee there would have been serious problems in Mo’s blood system. He explained a “blood anomaly” as follows:

THE COURT: And what is a blood anomaly, please?

A Well, so when an animal hasn’t eaten, been – for whatever reason -

THE COURT: Yes.

A isn’t eating properly, isn’t being – isn’t high grading properly, and then they fall really – they get depressed and won’t get up because they’re so weak, all their organs are – are affected. So their kidneys are affected, their liver is affected, their – their muscles are affected from just being down too long, and that creates more

stress on their kidneys, and it's a pretty bad cycle, downward cycle they – they could go into.

THE COURT: Okay. So high-grading means picking the best food out in a herd environment?

A Yes.

[131] He filed Mo's teeth giving her a sedative. He tried to correct her incisors from deviating to the left so her lip would work better. He cut them back.

[132] When the occlusion was that extreme he could not cut them all back at once as to do so would impinge on the teeth's nerves and create a bigger problem. The filing (or "floating") had to thus be done a little bit at first (he estimated he removed 1/3) and normally needed to be done again several months later to avoid getting too close to sensitive tooth nerves. His plan with Mo was to check her incisors in six months and probably do them again. He testified that the reference in his report to minor incisor alignment was really a code for his procedure having done only one side of Mo's mouth - not both.

[133] He was unable to say how long it would have taken Mo's teeth to become as he found them and said it could be a congenital problem at birth.

[134] He agreed that his report (Exhibit 6) contained no prognosis for Mo. He testified that he should have graded her prognosis of recovery as grave to poor. He felt that he and Ms. Miller likely talked about how there was a lot of risk of internal organ damage due to Mo's extremely thin underweight condition.

[135] His plan for Mo involved probably on November 3 giving her a mild deworming medication and having a lab test done ("ova and parasite") to check if there was evidence of worms in Mo and a further deworming dose in 14 days with a follow up in 6-8 weeks and then as needed potentially a stronger deworming medication depending on the test results. He also recommended checking the rest of the herd to see if Mo was an anomaly or not. Finally he explained the test results which disclosed that Mo had an extremely high number of eggs per gram of her fecal sample, namely 750 whereas a normal healthy animal score would be between 20 to 200 eggs.

[136] On cross examination Dr. Van Dyck gave in evidence the following facts or opinions:

1. Alpacas are not stubborn animals and are very trainable
2. It was pretty unusual for an alpaca to lay down and not want to get up.
3. Grain is considered a concentrated food and an easy way to get extra calories into an alpaca to add weight.
4. Mo would have difficulty grazing with one lip stuck open.
5. Sometimes when an alpaca is really ill you segregate it completely so they can without competition from other animals get all the food they need. If you don't segregate sick ones they will just deteriorate.
6. Hand feeding would help Mo with ample hay available but he felt she could also manage with the one side of her mouth pellets of food in a bucket.
7. It was possibly an alternative explanation for her size that she was getting food but due to a high level of worms in her system, she was not getting the nutrients out of the food. Worms damage an alpaca's stomach and intestines so she can't digest food or absorb nutrients properly. Mo had a high level of worms but some worms are common in all alpacas and hence they should be given deworming medication. Most camelid owners do so twice a year and more frequently if they show side effects and use among other medications ivomectin.
8. He did no test for parasites. It was possible that Mo had a parasite that deworming medications were not taking care of.
9. When an animal's health is compromised worms and parasites tend to worsen.
10. Most alpacas need floating (teeth filing) at some point in their lives. This procedure is not called for if their incisors do not protrude past their upper palate. Normal care of teeth in a larger herd of alpacas requires floating one in every four animals. Floating involves levelling high points in incisor teeth. As a rule when this procedure is performed on an alpaca there is no subsequent negative reaction and most do better quite quickly.
11. If an alpaca is eating but not defecating and not bloating, its stomach (rumen intestines) could be empty and it would take a while to fill it up.
12. In the winter when there is no or not much grass to graze on it is sufficient for alpacas to have hay and grain – things like that as

food as long as they consume 2% of their body weight daily. They can eat blackberry leaves – a staple for most west coast alpacas.

[137] Dr. Van Dyck felt Annie was ok.

[138] Dr. Van Dyck did contact Angela Mead by telephone between November 3 and 13, 2015.

[139] C.B. was cross examined about parts of Dr. Van Dyck's evidence and in particular his view that if an alpaca had an anomaly of their mouth or teeth, then they were not going to be able to make use of their food and grow properly. She didn't agree with this opinion (and did not recall his so testifying) because Dr. Parke had a different opinion which she had heard in court. She then said:

“What I want to say is, you know, Mo was smaller than the other alpaca and it's possible she was smaller because she had that tooth anomaly, however, she'd had that for a long time and she had survived into adulthood, and nobody had done anything about it. I only had her for a year. So, yes, I agree with that. Yes, I agree she needed to have her teeth looked at. That's why I had called the vet to get it done, and Alicia to have it done, but Dr. Parke also said that she was still able to eat. So, yeah, it's not – I mean, it's a disadvantage, but not a fatal thing. Okay? Is that reasonable?”

[140] C.B. however agreed Mo was underweight. She had never weighed Mo. She agreed Mo had no fat reserves and agreed Mo wasn't well and said that's why she was trying to do something about it.

[141] On November 13 Ms. Mead who had never dealt with C.B. before receiving Ms. Miller's complaint on October 27 contacted C.B. by telephone to advise her about it. C.B. said everything was fine according to Ms. Mead who was also certain they then discussed the most pressing issue – namely the status of Mo. She eventually agreed with some reluctance to permit an SPCA inspection of her farm on November 20 at 1:00 p.m.

[142] I return to the evidence given by Ms. Miller. In mid November Mo's condition was absolutely terrible. She was very very weak and not defecating. For approximately two weeks, she had been unable to stand.

[143] On November 19, Ms. Miller called C.B. and discussed under all circumstances euthanizing Mo. In her direct evidence, Ms. Miller said C.B. became very angry and said words to the effect to her – if Mo was an eight year child, would you do that? On cross examination she said she believed C.B. made this comment after Mo was put down the next day. In any event C.B. refused then to consent to Mo being put down.

[144] Ms. Miller then called Ms. Mead on November 19 at the SPCA to seek permission to have Mo put down. Ms. Mead did not in this call tell Ms. Miller to get Mo examined by a vet first. The next day Ms. Mead called Ms. Miller and gave SPCA's permission to have Mo euthanized by Dr. Barnes and asked her to deliver Mo to Dr Barnes clinic at 3:15 that afternoon.

[145] On November 19 Ms. Mead said Brandy Craig called her to advise Mo's condition had worsened, that she was going downhill. I understood that this communication followed Ms. Miller's call the same day.

[146] Ms. Mead attended Ms. Miller's farm on November 20 at 12:53 p.m. with Tara Daniels, the assistant Branch Manager of the Powell River SPCA office. Ms. Mead was then an SPCA employee of about 9-10 years and was a special provincial constable who had been appointed to do animal cruelty investigations. She worked out of a Comox office. Her animal expertise involved doing volunteer work with SPCA, taking an animal welfare course at Thomson Rivers University as well as certain animal farming courses. When dispatched she said her goal was to relieve animal distress. If she saw an issue she felt needed to be addressed, she would prepare and serve a Notice of Distress. Ms. Mead testified that prior to her attendance, she had seen photos of C.B.'s animals at Ms. Miller's farm (but not been there) I assume Mo and Annie. As well, she had received a description of Mo's condition.

[147] On arrival she did a hands on assessment of Mo which involved feeling her body in various areas manually. Mo could not get up during this exam according to Ms. Mead and she didn't recall her ever doing so while she was there. She could feel all of Mo's spine, hip and rib outlines and bones right under her skin but not any muscle or fat stores. As well, Mo had severely overgrown teeth. She felt Mo was emaciated. Annie who was roaming the property also appeared underweight.

[148] Eleanor Miller was present during Ms. Mead's visit. Ms. Craig believed that she too attended at C.B.'s farm on November 20 but said she had not brought the SPCA file relating to this visit to Court and couldn't really recall what she saw that day on which Ms. Mead really took the lead. Ms. Mead could not recall if she spoke to any vet that day including Mr. Barnes in Powell River.

[149] Ms. Mead then attended at the Cranberry Farm and met C.B.

[150] Ms. Mead recalled that on their arrival at C.B.'s farm, C.B. was not very happy to see them.

[151] There were eight alpacas present – four adult females, one male and three crias. She and her colleague were then concerned with the state of C.B.'s property and they noticed poor fencing, were told by her there was no running water and the presence of tree stumps also noted by Dr. Van Dyck to be were felt to be a potential problem. Her major concern however was all the underweight alpacas she saw. She felt Samantha, a white alpaca nursing a cria was most severe but three others including Celine and Dion were as well.

[152] Ms. Mead also observed a rooster on the farm that appeared to have its back end torn off with bones sticking out, tissue hanging off blood present and ripped off feathers. C.B. advised that a racoon had attacked a number of her birds the night before.

[153] Based on her observations, Ms. Mead issued two Notices of Distress at about 2 p.m. and served them on Ms. Battaglio.

[154] The first Notice (No. B 10786) related to the alpacas and the state of her property and set out seven issues that C.B. was directed to address namely:

1. Provide access to clean potable drinking water.
2. Provide sufficient quantity of suitable food to allow for normal growth and the maintenance of normal body weight.
3. Provide necessary dental care
4. Ensure that the animal is kept free of infection by fleas, lice, parasites or other insects.
5. Ensure the shelter, pen, living area is cleaned and sanitized regularly.
6. Ensure the area/pasture is kept free of injurious objects or other hazards.
- \*7. Provide necessary veterinary care when the animal exhibits signals of injury, pain, illness or suffering that require medical attention.

[155] Ms. Mead had placed an asterisque beside the last item #7 and testified that this direction related to the 4 above alpacas she was concerned about and their requirement of “vet care”. Under “comments” Ms. Mead wrote:

Provide vet and dental care and follow vet’s recommendations for treatment. Provide parasite control. Clean water. Clean shelter – 7 days.

[156] The Notice provided that C.B.’s failure to address the 7 above issues within 7 days may result in legal action including application for a search warrant, removal of your animal(s) and/or charges pursuant to the *Criminal Code* and the *Act* herein issue.

[157] The second Notice of Distress issued at 2:05 p.m. related only to C.B.’s rooster. The only issue referenced thereon which C.B. was ordered to address was to provide vet care as per item 7 above on the first Notice. Under comments, Ms. Mead wrote: “provide vet care and follow vet’s recommendation for treatment” and provided C.B. with 24 hours to deal with this issue. This Notice was otherwise completed as per the first Notice above.

[158] Ms. Mead testified that C.B. had in all cases the option to surrender the animals in question to the SPCA and they would relieve the distress or get the needed vet care



herself. C.B. declined to surrender the animals and said with respect to the rooster, she didn't think his injury was that serious that he was fine and that she could fix his injury with Polysporin. When Ms. Mead told her that the rooster's injury was too serious for such treatment, C.B. got upset and became argumentative and kept insisting that he was not in pain. Ms. Mead could not recall at trial if C.B. agreed with her that the rooster was in pain.

[159] C.B. testified that on receipt of the two Notices, she took the rooster to Dr. Barnes – the local Powell River vet that day. As for the alpacas, she tried desperately to get in touch with a vet namely Dr. Parke, her first attempt being not when she was in Powell River but as soon as she got to Surrey on the following Tuesday morning. On cross examination she said she called a vet the next day after Ms. Mead's visit – a Friday she thought. Dr. Parke's office said he would call back but he never did. I note this evidence is similar to the evidence she gave concerning her efforts to reach the same vet after Ms. Fell told Mo she believed was starving to death in her July 8, 2015 email (Exhibit 3). She was not asked why she again sought vet care from the same vet who had not earlier answered her calls concerning Mo. C.B. said however that she had done so as Ms. Fell had said he was more knowledgeable about alpacas whereas Dr. Van Dyck was more knowledgeable about or interested in horses. This is not entirely consistent with Dr. Van Dyck's own trial evidence where in direct he said he had been dealing with camelids since 1993 to date and had remained current with studies regarding their physiology. As well Ms. Fell was not asked in cross examination if she ever had so advised C.B.

[160] She said she called Dr. Parke's office three times – everyday she was in Surrey – Tuesday, Wednesday and Thursday and each time the result was as above. She said she was unable to make an appointment with Dr. Parke.

[161] She agreed that her rooster was injured on November 20 and had his tail feathers pulled out she thought by a racoon who had entered the chicken coop which she had recently repaired. She had never used or didn't think she had ever used Polysporin on a chicken before and didn't think she had said to Ms. Mead that she

intended to administer same to her injured rooster. However in cross examination, she said after she saw Dr. Barnes, she took her rooster home and let him behave the way roosters do. She did not put him down. When asked if she then gave him any treatment, she responded that she just put Polysporin on the broken skin agreeing it was something declared not to be effective but she did it anyway as it helped prevent infection. As well, she testified that chickens lose all their feathers every year.

[162] She said she only noticed the injured rooster on November 20 when touring her farm with Ms. Mead. She saw it rooting with no tail feathers – all were pulled out and some blood and torn skin.

[163] As to the 7 day Notice, she said she took care of everything on it. She took the rooster in to Dr. Barnes on November 20, 2015. At some point after Dr. Barnes had examined it, she suggested to him that the rooster should go in her stew pot and said Dr. Barnes said “yes”. If this exchange occurred as C.B. testifies, in my view it boils down to C.B. really saying she would euthanize the rooster herself and Dr. Barnes agreeing with this course of action. Nonetheless C.B. testified that Dr. Barnes didn’t really tell her what to do with her rooster and didn’t direct her for any treatment or action or to put him in the stew pot. She said she didn’t tell him what she intended to do with the rooster at the conclusion of the visit. If this evidence is accurate, in the result C.B. did not as required by the Notice even obtain a vet’s recommendation as directed to do so by the SPCA.

[164] C.B. said both before and after her visit with Dr. Barnes (and after her rooster was injured) he was running around just like a regular rooster with the chickens and was not acting injured. Again C.B. admitted he was in fact injured but on cross examination said twice she did not believe he was either distressed or in distress. Chickens in her experience huddle or stand still in one spot when they are distressed and he didn’t. She observed him hopping around with a female chicken and pecking for food, behaving in a normal way, one not indicative of his being in pain. She did not believe he showed outward signs of pain.

[165] Her plan when he was home was to administer Polysporin to the wound, watch him and if she felt he was in distress, return him to the vet. Otherwise, he was to remain with his injury absent signs of distress. C.B. then asked rhetorically “Is that what you do with your kid?” This seemed to suggest to me that at this time C.B. equated the management of her injured rooster somewhat with that a parent would do with an injured child.

[166] Dr, Barnes testified. He was qualified as an expert in veterinary medicine able to give an opinion on animals’ health and husbandry having obtained his degree in 1984 in Saskatoon at the College of Veterinarian Medicine. He had worked in Powell River since 1984 initially treating both large and small animals but since about the year 2000 – said he focussed only on small animals.

[167] Dr. Barnes was called by Ms. Miller on November 20 and asked if he would euthanize Mo and did so that afternoon. This procedure was not his idea. She apparently advised him she was acting under the direction of the SPCA. He was then aware that she had fostered Mo who was under the care of the SPCA. Mo was being assisted to stand when he first saw her in his clinic on November 20 and was extremely thin or emaciated. He estimated she was 50 pounds underweight at 132 pounds and said that she should have weighed 180 pounds +/- . Her spine, ribs and pelvis were prominent meaning she had suffered loss of muscle mass.

[168] Dr. Barnes was made aware Dr. Van Dyck had earlier seen Mo. He was not on November 20 aware of whether or not this vet had ordered euthanasia for Mo but was not concerned about this as Mo was emaciated and he elected to do what the SPCA was directing. In other words, he did not disagree with this decision.

[169] He recalled C.B. bringing her rooster in on this day as well.

[170] He examined the rooster who was standing. He noted it had blood on its feathers at the back, a wound over the top of its sacrum, a good sized chunk of skin was missing on top just above his tail and there was dried blood on the wound. He recommended two options to C.B.: 1) treat the wound to reduce its size or 2) euthanasia. She said she

would take him home and euthanize him herself. Dr. Barnes then felt this was a reasonable decision. There was talk of putting him in her stew pot. She said this was what she was going to do which he did not think was unreasonable. He did not recall C.B. saying words to the effect “So I guess you think it’s for the stew pot then?” He did not initially believe he would have said this but ultimately agreed she had said these words and he had said “yeah” in response agreeing that euthanizing the rooster was then a reasonable thing to do.

[171] Dr. Barnes was aware that the cause of the injury was a racoon attack. In his opinion, injuries from such attacks were commonplace in his practise with racoons being in essence the number one local predator of small animals. This was so throughout his entire career. He was of the opinion that even if a skin graft was done on the rooster, that the probability of infection was 100% and his likely progress would have been guarded and he discussed this with C.B. At trial he felt the rooster’s prognosis was not great. He was also aware that lots of folks used Polysporin on animal wounds but said it was topical only. Racoon inflicted wounds tended to be deep and Polysporin didn’t penetrate them. To treat such wounds, systemic antibiotic medication was required. In his opinion, Polysporin almost never worked on anything.

[172] Dr. Barnes also testified that in his opinion all animals do feel pain but show it differently. Often rooster do not verbalize pain they may feel as to do so is to show outward signs of pain which would decrease their chances of survival as they would become a target for other animals. He thus agreed that C.B.’s rooster might not necessarily show signs of his injury, for example by crying out and noted he was not doing when he first saw him on November 20. Dr Barnes said he would actually expect him to behave normally hunting and pecking notwithstanding his injury and would expect he could do these things. Thus he agreed the rooster’s pain or suffering might not be obvious to a lay person.

[173] Ms. Mead called Dr. Barnes after C.B.’s attendance but on November 21. She was advised of his two above treatment options but that C.B. had left without obtaining

any treatment for her rooster from him. He advised her that on departure C.B. had said she was going to put him in the stew pot.

[174] Ms. Mead then called C.B. who said she had decided not to put him down and said he was fine and running around. She couldn't remember if C.B. said she was going to put Polysporin on his wound or not. She proposed that C.B. surrender the rooster to the SPCA and she refused.

[175] She then contacted the Powell River SPCA and understood a representative went to C.B.'s farm with the RCMP and took possession of the rooster.

[176] Ms. Craig eventually attended at C.B.'s farm on November 21 to assist with the seizure of the rooster and various alpacas. At trial, she could not recall the exact date. She could not exactly recall the entire afternoon – only parts of it. She was called out after another SPCA employee, one Ms. Peters, an animal care attendant sent to seize the rooster had reported back that she felt unsafe and overwhelmed in attempting to complete this task. Ms. Craig said that the RCMP had to be called in as initially C.B. did not agree to surrender the rooster to them – but later after their arrivals did so at between approximately 4:00 – 5:00 p.m. She had to use a net to catch it. It was still spry but physically injured and the RCMP had been unable to catch it.

[177] She testified as to her general observations of C.B.'s farm on the date of the seizure. It was the same as before, muddy, very run down and with stuff all over the place. She felt there had been very little improvements to it since her earlier first visit in 2011. Her then concerns were very similar to those referred to above relating to her earlier overall observations of the state of C.B.'s farm. She was shown various photographs she believed Ms. Mead had taken found in Exhibit 1, Tab 2. As to photo #6, she testified that it showed wet bedding in one of the animal stalls also full of feces.

[178] C.B. testified that Ms. Mead had not called her concerning this later SPCA visit on November 21, 2015. On their arrival, she was fixing the hole in the chicken coop where she believed the racoon had entered. She felt that the rooster was then fine and

was running around. She refused to help catch it. When the RCMP could not, Brandy Craig arrived with a net and did so.

[179] C.B. said she was pretty annoyed with the SPCA taking the rooster on November 21 as it was not showing any pain, discomfort or distress in her view. The situation didn't seem urgent to her as chicken grow lost feathers back. She felt the SPCA was making a mountain out of a mole hill and agreed she may have displayed some agitation to the SPCA officers this day but denied yelling at Ms. Craig although she admitted she was getting some frustration about her various attendances at the farm.

[180] On November 21 Dr. Barnes received a call from Ms. Mead and understood he was directed to put the rooster down and did so in his clinic later that day.

[181] On November 27, Ms. Mead called Dr. Barnes, the country vet and Dr. Van Dyck's offices and learned C.B. had made no appointments with any of them and that no vet had gone to her farm in Powell River. Thus she concluded the direction in the first Notice of Distress had not been complied with.

[182] On November 28 she applied for and received a search warrant to attend on C.B.'s property and did so the next day November 29 with Brandy Craig, several RCMP officers and two local alpaca farm owners – Jackie McRae and Bernie Sattman. C.B. was not present but arrived shortly after 10:00 a.m. The alpacas were then in stalls and C.B. let them out.

[183] The SPCA then seized nine alpacas, one llama and five chickens and gave C.B. a Notice of Disposition advising she could dispute the seizure. She did not. Mo was not among them, nor was Annie.

[184] On November 29 Ms. Mead took the photos in Exhibit 1, Tab 2 showing the state of C.B.'s farm that day and certain of her animals. She noted the property continued to be littered with bits of wood and hazardous debris and stumps. The fencing was poor and would not she felt be keeping the animals very secure. Samantha, an alpaca, is shown in photo #2 at Tab 2 with her cria. In Ms. Mead's opinion, she was the alpaca then most underweight. She observed the barn stalls to have wet floors and dirty

contaminated water as well as dirty wet straw. Some water buckets both in the stalls and outside were seen to be empty and dirty. The stall floors had in places wet mud, accumulated feces and dirty wet straw. One chicken was felt to be underweight.

[185] After the animals were sized, they were fostered by the SPCA to the McRae and Sattman Farms in the Powell River area.

[186] Ms. Mead then requested Dr. Parkes to attend on them and examine them which he did non December 2, 2015. He testified at trial and was qualified as an expert able to give opinion evidence on animal health and husbandry. He had obtained a Master's degree in agriculture from the University of Guelph in 1996 and his veterinarian degree in 2000. Since 2003, he had practised at the Tsolum Vet Hospital in Courtenay and had dealt mostly with large animals. Sixty to seventy percent of his practise involved calls to farms using a truck with his required equipment. He was and is called the "mobile vet".

[187] Following his visits to the two farms, he created two reports from his hand written notes – one on December 2 and one approximately one year later in December 2016. (Exhibit 13)

[188] His first report (Exhibit 11) deals with his attendance at the Sattman property where he examined one llama and two intact white female alpacas and later at the McRae Farm where he examined seven animals – all alpacas – for a total of ten animals.

[189] At each of the two farms his procedure involved generally observing the animals' body condition and teeth as well as completing a hands on body palpation exercise. He graded or scored each animal on a 1-10 scale, 1 being emaciated and 10 obese, 4 being slightly under nourished and 6-8 being average or a good body condition. A 4/10 score meant that the animal was slightly under conditioned and its teeth could require attention but were not so bad that it was prevented from gaining or maintaining adequate body condition. He took photos of each animal he examined. Crown caused photos of six of the animals he saw to be enlarged and they were marked as Exhibit 12.

[190] He stated that teeth shortening need not be done by a vet but could be done for example by a farrier but it would be a highly skilled procedure for an alpaca owner to do. The llama “Animal 1” in his first report required routine shortening of his lower incisors, had a score of 4/10 body condition and was otherwise in good health and did not require any immediate veterinary care. Two white alpacas scored 4/10, were in good health and didn’t require immediate veterinary care.

[191] At the McRae property two brown alpaca crias scored 4/10 and were seen to be in good health and were given ivomectin and one animal #7 housed with them had a possible parasite load. This medication deals with parasites – most likely worms and is a routine treatment for animals in an under conditioned state, one of which causes or reasons often is parasites. A white alpaca cria scored 4/10 and was otherwise in good health and was injected with ivomectin for the same reason.

[192] Animal #7 (Samantha also called Oye Vey) was described by Dr. Parke as follows:

**Animal 7 (White intact adult female Alpaca):** Located on the property of Jackie McRae, 12725 Scotch Fir Rd, Powell River. Animal 7 was found to be emaciated in a body condition of 2/10 and is the only animal is this investigation of major concern to the attending veterinarian. Animal 7 was given a label dose of ivomectin injectable to address a probable parasite load. Animal 7 should needs to be fed a standard small ruminant ration of hay, grain, and trace mineral mix; possibly segregating at time of feeding to ensure adequate consumption.

(Emphasis added)

[193] Dr. Parke said one of his concerns with Samantha was the reduction of muscle mass in her rump, ribs and shoulder area. Segregation was suggested to avoid her having to compete for food with stronger animals.

[194] Dr Parke found the two black alpacas to score 4/10 and otherwise to be in good health and each received the above parasite medication for the same reason. The neutered male alpaca (Prince”) scored 6/10 – a routine reasonable body score and he felt this was evidence of his having been given sufficient food. He too was given ivomectin.



[195] He concluded his report as follows:

Conclusion: Although the 10 animals in question were housed and fed in a manner not in keeping with basic animal raising practices, 9 out of 10 of the animals will respond well to adequate ration and housing. The condition of Animal 7, however, represents severe neglect and warrants possible charges under the SPCA prevention to cruelty guidelines. Animal 7 was not given an adequate ration to support the energetic requirements of a nursing animal. In addition, poor housing appears to have also increased to energetic requirement of this animal above the daily energy provided in any ration or pasture at the previous residence. A high parasite load is also very probable in animals raised in such poor conditions.

[196] By the above term basic animal raising practices he was referring to such things as access to clean food and water, readily accessible minerals, hay or silage and grain mixture and clean exercise area, ideally a pasture access and adequate housing.

[197] He said due to the appearance of the alpacas on his observation of them, he felt they were not receiving adequate ration, parasite control or routine dental care.

[198] In reference to animal #7 (Samantha) he testified that she should receive 30-40% more food than a non-lactating alpaca female would get in order to have the same body condition as a non-lactating female which should receive 2% of its body weight in forage dry matter daily. Adult alpacas not lactating weigh an average between 150-200 pounds. Forage included hay or silage, alfalfa cubes or pasture grass. A non-lactating female thus should in addition to the silage receive 1-2 pounds of grain each day. He also clarified his report conclusion that poor housing could contribute to a high parasite load as follows:

The nature of ingestion of parasites is exacerbated in, not that I saw the housing, but in housing, where there's poor housing, lower quality pasture, and more chance for fecal/oral transmission, which means the chance to – of an animal to ingest feces contaminated feed or water.

[199] In cross examination, Dr. Parke acknowledged alpacas tend to defecate all in one place. As to shelters, they required it to mostly keep out of wind and rain and in some cases, a three sided shelter was sufficient. He was asked about Alisha and

agreed she had worked for him in 2015 and quit in September 2015. He said he was away for only 12 days in September and October 2015 for the Rugby World Cup – not a month. He also acknowledged that he got the name “Samantha” from the SPCA or the property owner. He agreed alpacas did not challenge fences the way other animals do.

[200] He said he completed his second report in December at the request of the SPCA after Samantha (animal #7) died. He acknowledged when he first saw her, he was concerned about her condition. His second report states in part as follows:

**Animal 7 (white intact adult female Alpaca):** Located on the property of Jackie McRae, 12725 Scotch Fir Rd, Powell River. Animal 7 (‘Samantha’) was found to be emaciated in a body condition of 2/10 and is the only animal in this investigation of major concern to the attending veterinarian. Animal 7 was given a label does of ivomectin injectable to address a probable parasite load. Although every attempt was made to correct and reverse the body condition noted above, the health of Animal 7 continued to decline and the animal died of natural causes. It is the attending veterinarian’s opinion that it would have take approximately 2 months of inadequate care to cause such a decline in body condition. The attending veterinarian is unaware of the total time Animal 7 spent in this condition but would comment that being such condition put the survival of Animal 7 in doubt.

[201] He clarified in his direct evidence that the reference to his considered view “approximately two months of inadequate care” was based on his experience watching animals’ condition deteriorate in a variety of cattles, camelids and horses. Two months would have been the shortest period of time for them to deteriorate in terms of their body condition. When cross examined, he said if Samantha was once a 4/10, his estimate of her falling to a 2/10 in two months of inadequate care in essence was still reasonable.

[202] Finally when shown Exhibit 1, Tab 2, photo #1 and #14 he expressed similar concern about the state of C.B.’s farm as it was in late November 2015 as did Ms. Fell, Ms. Mead and Ms. Miller including as to the general nature of debris, lack of pasture and poor fencing.

[203] I return to Ms. Mead's evidence. She testified in cross examination that Ms. Miller had advised her that Oye Vey (Samantha) has passed away unassisted. C.B. on November 20 had given her the names of her animals. She could not recall if when she issued the two Notices of Distress on November 20 to C.B. that she believed there was a large animal vet in Powell River but said when she spoke to Dr. Barnes on November 27, he told her he was no longer seeing large animals.

[204] On December 3, 2015 C.B. emailed the SPCA and said she was relinquishing the ten animals that the SPCA had earlier seized. They then became the property of the SPCA and C.B. was no longer responsible for the costs of their care.

[205] She understood that Dr. Barnes had examined Mo and recommended she be put down. She agreed that this decision was not Ms. Miller's to make and felt Mo ought not to have been euthanized without such a vet recommendation.

[206] Lastly, I wish to summarize some more general evidence C.B. gave at trial not necessarily tied directly into the above chronology of events.

[207] She confirmed Samantha was the alpaca (Animal 7) in Dr. Parke's first report (Exhibit 11) dealing only with the ten animals sized from her farm. She was thinner than other alpacas she owned, was pregnant when acquired in or about May or June of 2014 but not then emaciated. All animals referred in Exhibit 11 save #1 and #10 – the two males were "rescue animals" got from Ms. Fell.

[208] The water supply at her farm included two rain water collection barrels which the alpacas could access, pails in each shed and city water connected to a hose which was used to fill most of the above receptacles each night. In addition, there were two ponds on her farm that they could access during the day. She checked their water each morning.

[209] She fed the alpacas grain and hay at night. The grain was usually all gone in the morning but not all the hay so she thereby concluded they were all getting enough hay.

[210] She only started to put hay out for them during the day after Rosemary Fell told her in July 2015 she felt they looked thin.

[211] Darrell built a three sided shed for hay storage and because of a leak in the roof, one bale got a little wet. This leak was fixed. Some hay may have had some mould in the summer of 2015 but not all. Grain was stored in with the hay in the same building in garbage cans tied to the wall so they wouldn't tip.

[212] She agreed that November 2015 was a very rainy month and said one shed suffered a flood and there was lots of mud. She dug a ditch to channel the water away and said that the shed's floor no longer gets wet.

[213] She took various photos of her farm in November 2019 (Exhibit 14). Photo #4 shows a small pond which was present in 2015 with water in it and #5 shows a larger pond created before November 2015. Only one field abutted the larger pond and the animals, I assumed when in this field, had access to it. Photos 7-10 show lots of lush green grass and C.B. said her farm looked the same in November 2015. She agreed not all the photos of fields in Exhibit 14 showed the same fields as in the SPCA photos Exhibit 1. The area around the sheds got more traffic and was hence more worn down.

[214] She testified she had a mineral block in her animal shelter in November 2015 that her alpaca had access to all day.

[215] In October and November 2015 all her alpacas looked fine save for Mo. Samantha just seemed to have a different build. She thought in relation to Mo, Samantha was fine – she didn't see a problem with her.

[216] She also put wooden palettes in one half of the floors in the shed where the alpacas slept so they could avoid the wet or damp floor and excrement thereon and sleep on them. She put straw on top of the palettes but admitted it would slip off onto the floor and into the excrement which was dry.

[217] In the fall of 2015 she cleaned the alpaca stalls once a year based on an article she had read about goats. She agreed the SPCA disagreed with this practise but didn't tell her what else to do.

[218] As to pasture, she planted grass in fields and fertilized the same I understood in the first year she purchased the property. There was grass in November 2015. As well, there were then six little fenced in areas or fields available for her animals. The males were already kept in separate fields and no females (all alpacas) became pregnant when with her. Her male alpaca was gelded and while she was unsure of the male llama's status, the evidence in this case is that he was also gelded.

[219] As I have said, Ms. Battaglio took various photos of her farm (22 in total) as it was in November 20, 2018 (Exhibit 14).

[220] She took none in November or early December of 2015 immediately after receiving the two Notices of Distress. The 22 photos were taken on a sunny day whereas the photos Ms. Mead took were not and didn't she felt show how green her fields were in fact in November 2015.

[221] Alpacas hum when they are distressed and they did so when segregated so she terminated their segregation. Mo was not humming in the fall of 2015. Nor did she then hear her stomach grumbling nor did she hear noises of liquids moving from one of Mo's stomachs to the other. There is no expert evidence given in this case by any of the three vets who testified as to whether or not one would expect to hear or not hear such sounds from an animal Ms. Fell said was starving to death in July 2015. Mo was euthanized on Friday November 20, 2015 without her consent and she was upset that this was done.

[222] On cross examination she agreed that she had taken no formal courses of training with respect to camelids nor did she spend time on a camelid farm with an owner and felt she got as much knowledge from reading the right books. She had no medical training relating to animals.

[223] City water was connected to her farm in 2012 or 2013 before she acquired any alpacas.

[224] She admitted there unfortunately was foxglove weed that grew on her farm and pursuant to a suggestion made by Ms. Fell said she pulled it out every year and tried to insure that none of its flower turned to seed. She said her animals didn't eat it in any event.

[225] She rotated her animals between and among the six small fields leaving some of them to lie fallow and unoccupied so that any parasites and worm eggs would die. In addition, she allowed her chickens access to all fields to assist with parasite control. She acknowledged worms were a problem for alpacas and could cause weight loss. She gave them a worm medication – ivomectin I understood every six months including in the summer of 2015. She admitted she made no notes for example relating to the various inspections made on her animals later in e.g. November 2015 and was testifying solely from memory.

[226] She had her alpacas sheared once a year and their toenails cut about every six months, a job which she never performed herself.

[227] She agreed she had been told to isolate nursing females. There was an addition on the end of one of her sheds used for this however she said alpacas do not want to be segregated for long and after a short time apart, prefer to be with others in their herd. She put both Rico and Victoria (crias) and their mothers in this shed for a couple of weeks after they were born and all went together.

[228] C.B. was asked about an email she received from Brandy Craig, an SPCA officer in Powell River dated February 2, 2012 and her earlier email to Ms. Craig of January 27, 2012. Ms. Craig had earlier made some suggestions as to how she should better operate her farm for her goats and C.B. responded as to her progress on January 27. It appears Ms. Craig then suggestions were:

- 1) Provide access to clean potable drinking water at all times.

- 2) Ensure food and water containers are clean and disinfected and located to avoid contamination by excretia.
- 3) Provide necessary foot, nails or hoof care.
- 4) Provide necessary vet care when the animal exhibits signs of injury, pains, illness or suffering that require medical attention (C.B. agreed that in January 2012 she had instructed the local vet to visit her farm to attend to a rash on a goat's legs. She said she had never understood thereafter had a vet visit her farm as there was no local large animal vet but said since she had).
- 5) Insure the shelter is clean and sanitized regularly.  
C.B. testified that she had then consulted an online vet on the issue.
- 6) Insure the alpaca pasture is kept free of injurious objects.

[229] C.B. Said that all these issues were raised with her in 2012 and that she had then tried to meet all of Ms. Craig's objections.

[230] C.B. gave direct evidence about her help or care takers on her farm. Her evidence was that at all material times, including in 2015, she worked part time in Surrey commencing in January 1, 2010 or 2011. She testified that thereafter, she was home (in Powell River) every weekend save two each year usually at the end of June and on the November 11 holiday weekend and including November 11, 2015. She testified initially that she knew there was always someone responsible there (on the farm) to look after it and then said to the best of her knowledge they were there when she wasn't. She said this on point:

“Well, when I'm not – when I'm away I cannot actually guarantee anybody else does anything, but to the best of my knowledge, there was always somebody responsible at the farm.”

[231] The first care taker was one Zoe who C.B. found through a neighbour. She stayed in her motor home on the farm. She trained dogs and knew about goats. Zoe was there until Christmas 2013. She and C.B. did not get along that well. Next C.B. had three nephews in their late teens or early 20's of a friend one Myuiki stay for approximately three years. They would come and go and not all be there at the same time. They didn't really have any experience with animals. Her instructions to them and

her only requirements were to put the animals in and out and feed them two days a week. Then Darrell Atelay came and stayed in his mother's motor home on the farm. He did some repairs to C.B.'s home. He did not have a background with animals. She guessed he was on the farm for a couple of years. Bobbi Turcotte was the care taker after Darrell who left at the end of September 2015. He initially lived in Cranberry as did C.B. and she met him through her son. Bobbi started in October. He was a carpenter and did some work on the farm for her including building some fences. He did not have a background with animals but C.B. felt he was a smart, intelligent guy look for a place to stay and have access to his two sons. He lived in a cabin in the farm. She said that it was really not "rocket science" to feed her animals. Her instructions to Mr. Turcotte were to feed the animals and put them in at night and out in the morning as well as provide water to them and she assumed he did so. He was on the farm in November 2015. She later learned that he had a drug addiction and died of a fentanyl overdose.

[232] C.B. said that she gave the various care takers a place to stay but didn't pay them and in return, they did chores. She felt they were all responsible adults who could carry out the orders she gave them. Her son was at the farm from time to time but not able to do the various chores required.

[233] I turn now to the submissions made by both Crown and Defence at the conclusion of the evidence in this case.

### **POSITION OF CROWN**

[234] Ms. Opel argued that at least two of C.B.'s alpacas (Mo and Oye Vey or Samantha) were neglected and allowed to starve to death and this caused them to suffer. The rooster was injured and in pain and when C.B. took him to vet, she failed to follow through with his recommendation.

[235] She urges me to reject a central tenet of the defence submission, namely that the evidence given by C.B. to the effect that she only or for the first time realized Mo's teeth were an issue when Ms. Fell drew this to her attention in June or July 2015 and that she acted reasonably in trying to deal certainly with Mo thereafter. Crown submits that she



knew sooner in time this was an issue and did nothing and that after Ms. Fell told her about her concerns regarding Mo's teeth, she didn't do enough in a timely way to deal with Mo's health.

[236] Crown also submits that Mo's dental occlusion was only one of several factors that led to Mo's being in distress. Others included her nursing a cria and not being separated from other more aggressive alpacas in the herd and while needing more nutrition than non-lactating females, could not get it as she had to compete with the other larger females for it and did so unsuccessfully.

[237] Crown argues Samantha (originally called Oye Vey) was in distress as she too did not have sufficient food and was thus weak and underweight as per Dr. Parke's examination of her on November 3, 2015. I should accept his opinion that it would take a minimum of two months for her to get into the condition she was then in (a scale of 2/10) and that this was due to severe neglect. She too was nursing and there is no evidence she was separated for more than two weeks from other alpacas while doing so. When fostered on December 15 by Ms. Miller, on arrival, she could only stand as Mo had earlier done with her nose in the ground or in a five point stance and ate lying down, did not void and died five days later on December 20, 2015 during the night notwithstanding Ms. Miller separating her and her cria and really trying to provide 24 hour special care.

[238] Very importantly, Crown argues that C.B. was not a credible witness but rather one who gave for example internally inconsistent answers to simple questions. Crown gave as an example C.B.'s evidence that Samantha was emaciated when she first came to her farm but shortly thereafter saying she wouldn't use that word.

[239] Crown emphasized that animals are vulnerable and like children or elderly folks who are reliant on adults and/or parents, rely on their owners for proper care. The relationship between animals and their owners is one of trust and dependence. If one owns an animal, it is incumbent on the owner to take proper care of them and with respect to alpacas, that would include touching them and even weighing them so as to

be alive to their actual condition from time to time. Mr. Saulnier did not disagree with this statement. Nor do I.

[240] Crown argues that the rooster was in distress and that C.B. did not follow Dr. Barnes recommendations to either treat it or if not, euthanize it.

[241] Crown does not allege other animals in C.B.'s care were in distress but does say their care was inadequate based on Dr. Parke's November 3 assessment to the effect that almost all were under conditioned and below the 6-8 scale rating of average or good condition. Thus the focus in this case is on three animals namely the rooster, Mo and Samantha.

### **POSITION OF DEFENCE**

[242] The defence admits that C.B. was the person responsible for the animals referred in the evidence, including when fostered with Ms. Miller. Mr. Saulnier admits the Court will probably find that Mo was in distress but argues that I should have a reasonable doubt that Samantha was in distress and if she was, I should have a reasonable doubt that C.B. knew she was. If both alpacas to C.B.'s knowledge are found to be in distress, C.B. exercised due diligence regarding these animals including with respect to her management of Mo's teeth.

[243] As for the rooster, C.B. complied with the SPCA Notice and took him immediately to the vet in Powell River and the next day surrendered him to the SPCA to be euthanized. Thus, she did not permit him to be in distress.

[244] Defence asks me to accept C.B.'s evidence that it was only in or about July 2015 and not earlier that C.B. realized there was an issue with Mo's health and teeth and that thereafter she did all she reasonably could do to care for him and thus acted with due diligence. Mr. Saulnier rejects that C.B. is other than a credible, reliable witness. He says that two of the Crown witnesses Ms. Miller and Ms. Mead exaggerated things when they testified and argued I should prefer the evidence of the various veterinarians to that of for example Ms. Miller as to the animal's conditions.

[245] As to Samantha, the evidence as to her condition while being cared for by another after November 29 (the end of the “charge period” on count 1) is irrelevant as to whether or not she was in distress from October 1 -- November 29.

[246] Mr. Saulnier argues I should have a reasonable doubt as to whether C.B. knew or ought to have known that Samantha was in distress particularly as no one had brought any issues concerning her condition to C.B.’s attention in the summer of 2015 contrary to the situation with Mo where Ms. Fell had done so on at least July 8.

[247] These above summaries are intended to be only the briefest descriptions of most of the main issues raised by both Crown and Defence in their very substantial and helpful closing arguments which included written submissions from each. In the case of Crown, the same ran to some thirteen typewritten pages. In the case of Defence I have received some twenty-six typewritten pages. Thus it is difficult, if not impossible to refer to every point raised by each counsel. However I have carefully considered all these very helpful written submissions before completing these reasons.

### **CREDIBILITY**

[248] I turn now to the issue of credibility and the law relating to the manner in which I should deal with same and make findings with respect to the witnesses called to testify.

[249] One helpful decision in point is that of *R. v. Parent*, 2000 BCPC 11 a decision of Her Honour Judge Ann Rounthwaite of this Court wherein she dealt with the credibility of witnesses generally and how a trial judge can assess it at paragraphs 4 to 5 of her reasons where she stated as follows:

[4] In assessing credibility, courts have recognized a number of factors as helpful.

[5] These include:

1. the witness’ ability to observe the events, record them in memory, recall and describe them accurately,
2. the external consistency of the evidence. Is the testimony consistent with other, independent evidence, which is accepted?

3. its internal consistency. Does the witness' evidence change during direct examination and cross-examination?
4. the existence of prior inconsistent statements of previous occasions on which the witness has been untruthful.
5. the "sense" of the evidence. When weighed with common sense, does it seem impossible or unlikely? Or does it "make sense"?
6. motives to lie or mislead the court: bias, prejudice, or advantage. To consider the obvious possible motive of every accused person to avoid conviction would place an accused at an unfair disadvantage. As a result, I do not consider that possible motive when assessing an accused's testimony.
7. the attitude and demeanour of the witness. Are they evasive or forthcoming, belligerent, co-operative, defensive or neutral? In assessing demeanour a judge should consider all possible explanations for the witness' attitude, and be sensitive to individual and cultural factors, which may affect demeanour. Because of the danger of misinterpreting demeanour, I would not rely on this factor alone.

[250] In paragraph 9 of her reasons, Her Honour Judge Rounthwaite used the term "ring of truth" as a different way of expressing the point in paragraph 5 above the sense of the witness' evidence. (These same points were considered by Doulis PCJ in *R. v. Scott*, 2017 BCPC at paragraph 156 of her reasons.)

[251] On this same point, our British Columbia Court of Appeal in *Farnya v. Chorny* (1952), 2 D.L.R. 354 commented, albeit in the context of credibility in civil actions. This well-known case from our Court of Appeal encourages trial judges not to rely too strongly on the demeanour of a witness or the fact that his or her evidence remains uncontradicted but rather we should be concerned with whether the evidence of the witness is 'consistent with the probabilities affecting the case as a whole'.

[252] The test if you will is repeated at page 4 of the Quicklaw report of the reasons as follows:

[11] The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In

short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say "I believe him because I judge him to be telling the truth" is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

[12] The trial Judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial Judge with a divine insight into the hearts and minds of the witnesses. And a Court of Appeal must be satisfied that the trial Judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.

(My own emphasis added)

### **FINDINGS OF CREDIBILITY**

[253] It is trite law to state that a trial judge can accept all, some or none of the evidence of any given witness. Credibility includes concepts of both honesty and reliability of what a witness gives in evidence in court. Thus a witness may deliberately lie or by counter point tell what he or she believes to be the truth but be mistaken and thus give unreliable evidence in a trial.

[254] I will deal with the Crown witnesses first. No argument was made by Mr. Saulnier that any of the veterinarians who testified were other than credible witnesses. I bear in mind that all of these men made notes of what they did and saw and were most likely under a legal or at least a professional duty to do so at the time. And in every case with one exception, their notes or reports were made more or less contemporaneously with the events in question. The sole exception is the updated report December 9, 2019 of Dr. Parke, really of fellow on to his earlier December 2, 2015 report outlining his findings on reviewing the animals in C.B.'s herd seized on November 29, 2015. All these men

were qualified to give opinion evidence as to animal nutrition and husbandry practises and did so. I accept their evidence to be credible, reliable and most helpful in this case and in particular that given by both Dr. Parke and Dr. Van Dyck.

[255] I am mindful that Ms. Miller, Ms. Mead and Ms. Fell testified some three years after the events in question in this case whereas Ms. Craig and the accused gave their evidence some forty-four months later. Certain of the witnesses had some trouble with dates on which things happened, perhaps understandably.

[256] No suggestion was made that the “llama lady” Rosemary Fell was other than a credible witness and I find that she was an honest and reliable witness. In addition I am of the view that by reason of her extensive knowledge of camelids including by means of on the job experience with her own herd and visits to some 125 other herds while doing her shearing work and her formal studies, that her evidence relating to the camelids she saw and examined is entitled to significant weight as is the expert evidence given by the three veterinarians, all of whom had significant training and in the case of Dr. Parke and Dr. Van Dyck, significant dealings administering to camelids while performing their profession. I am not of the view that she exaggerated her testimony.

[257] Mr. Saulnier has argued that both Ms. Miller and Ms. Mead had a tendency to exaggerate when testifying at trial. He noted that both witnesses said for example that Mo couldn't stand in late November but yet is seen standing in certain photos in Exhibit 1. Likewise Mo was described to be caked in feces and with a running nose but again this is not shown in the photos marked as Exhibit 1. I recall Ms. Miller described Mo's condition on arrival at about 5:00 p.m. at her farm on October 24 to be like this whereas certain of the photos of this in Exhibit 1 were taken on a different date. Ms. Miller according to Mr. Saulnier said Mo was not defecating whereas Dr. Van Dyck who examined her on November 3, 2015 (Exhibit 6) has noted that her stools were soft but of adequate size. I do not consider if these are true inconsistencies that they are necessarily on material points. Overall I did not find Ms. Miller to be an over-reaching, exaggerating or untruthful witness. As to Ms. Mead, I find that she was generally speaking a truthful and reliable witness who made some notes and on occasion at trial

relied on them to testify and accordingly some care is required in the weight I attribute to her evidence. As to Brandy Craig, again I find she was a truthful witness but did at times admit to having difficulty in recalling what occurred due to the passage of time. I take this into account in assessing the weight to be given to her evidence as well.

[258] I turn now to the accused. I have some serious concerns about the credibility of the accused including for some of the reasons outlined by Ms. Opel for the crown at page 8-12 of her written closing submission.

[259] One very material external inconsistency in her evidence was her insistence that she really only appreciated that it was not until Rosemary Fell told her for the first time in July 2015 that Mo was starving to death and needed dental care that she realized that Mo had these issues whereas Ms. Fell testified that it was at least a year earlier that she had spoken to her about these concerns she had for Mo. I have set out her evidence above on point. C.B.'s evidence that Mo's teeth in July 2015 were the same as they were when she acquired her concerns me and cannot be correct in light of the evidence given by the two veterinarians about the need to float alpaca teeth and all the evidence in this case as to how alpacas eat which in my view leads to a logical inference that their incisors grow if not worn down in the course of normal grazing and browsing behaviour. C.B. testified that an alpaca's ability or inability to eat has nothing to do with the state of their teeth. This cannot be true in light of the veterinarians' evidence as to how their lips work in tandem with their teeth while eating and browsing. The great weight of the evidence in this case is that the state of camelid's teeth is on the contrary a very important focus in their overall health care and that dental problems if they exist do have a significant impact on their ability to obtain food in sufficient quantities so as to obtain the nutrients therein so as to have a good healthy overall body condition.

[260] C.B. testified that on returning from Surrey in October 2015, she took a look at Mo and just all of a sudden saw her as not doing that well and said she didn't look that great so called Ms. Miller and arranged to transport her there on October 24 for better fostering care. This cannot be true in light of Ms. Fell's unchallenged evidence that on

July 8 Mo was starving to death and that she told C.B. this at about that time. Likewise C.B. testified that just before transporting Mo to Ms. Miller's, she didn't think she was suffering. She was just thin. This cannot be true in my view. How can an animal said by a very knowledgeable and experienced camelid expert like Ms. Fell said to be starving to death not be suffering? It is sheer nonsense in my view for C.B. to suggest otherwise.

[261] C.B.'s entire position in this case generally to the effect that she only twigged to the state of Mo's teeth and overall health being a problem when Ms. Fell told her so on July 8 and then actively took steps to deal with it to me makes no sense and is certainly not a piece of evidence – and I think also a critical one for the accused – that can withstand scrutiny under the above *Farnya v. Chorny* test.

[262] Surely a woman who had I believe two children and had owned both other alpacas and other animals and is possessed of a PhD would have recognized that Mo's teeth were a problem at the outset. Mo was a rescue animal and in my view akin to a child with special needs – needs that required immediate care. It is in my view but a lame and unbelievable excuse to testify that she had never heard or run into the idea that alpacas' teeth might need to be trimmed and never encountered this issue of floating teeth in her reading of her llama book before Ms. Fell drew her concerns re Mo's teeth to her attention. Her evidence on this point does not have an air of reality or ring of truth to it. Mo's teeth were glaringly obviously not right well before July 8 and it is nonsense for C.B. to suggest as she has in this case that she was only first alive to this being a problem when Ms. Fell told her about it.

[263] On this same issue: is C.B. being truthful as to her above evidence that she didn't know about camelid teeth trimming or floating, there is externally inconsistent evidence on point given by Ms. Miller which I accept as truthful just as I accept Ms. fell's evidence that she drew Mo's teeth condition and her concerns to C.B. at least a year before July 2015 as truthful. Ms. Miller testified that she in March 2015 was interested in acquiring two alpacas and visited C.B.'s Cranberry farm at least twice in March 2015 and met C.B. there both times and discussed the possibility of her acquiring alpacas from C.B. On the second visit later in March 2015 she testified that C.B. showed her Mo



and her cria Rico. Ms. Miller then observed Mo's teeth to be sticking out of her jaw and then spoke to C.B. she testified as follows:

A -- I mentioned the mom's teeth, and I said, "You know, how can she eat with her teeth like that?" So, in the meantime the alpacas are kind of all moving around, and the mom is there, and she has this tiny little baby. Everybody's pressed up this rickety fence. She's trying to defend this baby by her side in the herd, and it's just really obvious to me how pathetic, I don't know what other word to use, the condition of the mom and the cria were.

Ms. Opel:

Q Was that mom, I mean, you've explained that you were concerned about how she could eat. Was she able to get to the food with her cria that was being offered at that time?

A I didn't see any food on offer at the time.

And then:

A Like, how could she eat food?

Q Okay.

A Okay. So, I asked her if she'd had a vet look at them, and she at -- at that animal. That animal was called Mo. I believe her long name was Mocha.

THE COURT: This is the small ----

A The mom.

THE COURT: --- mom that you described?

A Yeah, the mom.

THE COURT: You believe it was called Mo -- Mocha, spelled?

A M-o-c-h-a.

THE COURT: C-h-a. Okay.

A And she said, "You mean file them," which is what you have to do, and she just shuddered and she didn't answer. So ---

THE COURT: What --- I don't understand, she just shuddered. What --- what ---

A Carol did.

THE COURT: Yes. What does that mean?

A Well, it means that she just stood there and she shivered all over, like, shook herself, and said she couldn't do it. I don't ---

THE COURT: She couldn't do it, or didn't answer, which? You've said two things. What did she do after ---

A Let's just go with the shuddering. That ---

THE COURT: Okay. So, she just shuddered an ---

A Mm-hm.

THE COURT: --- and then no answer, or she says she can't do it? Which is it?

A The shuddering I definitely totally remember. I'm kind of in shock at this point, okay.

THE COURT: Okay. Just a minute. Ms. Opel, I think you should be describing on the record the movements your witness just made ---

MS. OPEL: Oh, sorry.

THE COURT: --- in the witness box that the record is complete.

MS. OPEL: Sorry, Your Honour.

Q Yes, Ms. Miller, when she said "shuddered" she shook her body, indicating that that's what she observed from Ms. Battaglio when she posed the question of filing the teeth to her, or was talking about that. And it wasn't be lengthy, it was how long did she do that shudder for?

THE COURT: Okay.

A Seconds. Five seconds. I'm not too sure.

[264] This evidence suggests to me that in March 2015 at least contrary to C.B.'s evidence at trial, C.B. knew about the procedure whereby alpaca teeth could be filed but didn't wish to do it with Mo. Even if it was Miller who then raised this possible treatment for Mo's teeth and not C.B. herself, this evidence still is inconsistent with C.B.'s evidence as to when she first knew about this very critically important corrective procedure in fact used on Mo by Dr. Parke on November 3. This is a critical issue in this case in my view – when the owner C.B. knew about this corrective procedure. I do not believe her evidence on point.

[265] As to C.B.'s evidence that there was nothing in her llama book about floating teeth I observe that she neglected to bring this book to court to substantiate this point. I well understand that in this case the Crown bears the onus of proving the criminal act alleged but unlike a charge under the *Criminal Code*, C.B. does have the onus of

proving on the balance of probabilities (if I find Mo was in distress – which is almost conceded) – she acted in Mo’s care with due diligence. To suggest she might have brought along the llama book does not therefore in my view suggest that she had an onus to prove herself innocent. Her failure to bring this book in my view also impacts negatively on her credibility.

[266] As to why she would scrutinize websites on alpaca farms for advice on what to do with crooked alpaca teeth I have no idea. Surely this issue could have been addressed by googling something as simple as “how to correct alpaca dental problems.”

[267] I do not believe C.B.’s evidence that after July 10 when Ms. Fell gave her Dr. Parke’s telephone number that she learned in July or the beginning of August that he was away for a month. I prefer his evidence that he was away for only 12 days at a Rugby World Cup in September and/or October 2015. His staff would have known this. His evidence was not that he was away for a month and I infer not away when she says she called his office in July or at the beginning of August. If C.B. was told he was away and she is only mistaken as to the length of his holiday, then her evidence as to when she called him cannot be reliable and it might seem she called him far later than she says she did. It is difficult to know what she has said on point might be truthful. Again this is not a small point in this case where Crown argues that between October 1 and November 29 C.B. has not established a defence of due diligence and defence argues that one act of due diligence was attempting to get a vet to come and see Mo and deal with her teeth in a timely manner. Did this process if it occurred at all start in late July or as late and say October?

[268] At times I found C.B. to be argumentative in answering questions put to her in cross examination, for example in the exchange between her and Ms. Opel on July 23, 2019 (pages 70-71 of transcript) over whether or not Ms. Fell had visited her farm on June 17, 2015, had Ms. Fell called her on this date several times and her inability to recognise her email of that date (Exhibit 2).

[269] I also agree with Ms. Opel’s point that when she was asked to review the photo of Mo’s back end (Exhibit 1, Tab 1, photo #5) in her cross examination her evidence as

to whether or not this view suggested that she was suffering because she was too thin was evasive (see: page 10, Crown written argument).

[270] In the result I find that where C.B.'s evidence differs from the evidence given by the three vets, Ms. Fell, Ms. Miller, Ms. Craig and Ms. Mead, I prefer theirs over hers.

### **THE LAW**

[271] Mr. Saulnier has helpfully provided the Court with two volumes of caselaw as follows:

#### Volume 1

1. *R. v. Chrysler*, 2013 BCPC 240
2. *R. v. Fountain*, 2013 BCPC 183
3. *R. v. Nixon*, 2011 SCC 34
4. *F. v. Robinson*, 2018 BCSC 1852
5. *R. v. Van Dongen*, 2004 BCPC 479
6. *R. v. White*, [1999] 2 S.C.R. 417

#### Volume 2

1. *R. v. Adair*, 2000 BCSC 861
2. *R. v. Fibreco Pulp Inc.*, 1997 BCCA 4145
3. *R. v. Gerling*, 2013 BCSC 2503
4. *R. v. Hurley*, 2017 ONCJ 263
5. *R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299
6. *R. v. Scott*, 2017 BCPC 220
7. *R. v. Sedhu*, 2013 BCSC 2323

[272] I have reviewed these cases. Some of them are not overly helpful as they relate to *Criminal Code* charges and not charges under our Provincial Act.

[273] Certainly the cases submitted do deal with offences like those charged in the case at bar and are really fact driven and examples of when some judge of this Court has convicted or acquitted an animal owner e.g. of charges similar to the case at bar.

[274] In *Van Dongen*, Gulbransen PCJ commented on the meaning of neglect as used in s. 2(c) of the *Act* in the definition of “in distress.” He said this in paragraph 34 of his reasons:

[34] The definition in s. 2 of the Act of animals “in distress” must also be considered. These are animals who are:

- a) “deprived of adequate food, water or shelter” or,
- b) “injured, sick, in pain or suffering” or,
- c) “abused or neglected”.

Subsection a) and b) refer to the most common consequences of cruel conduct. “Abuse” likely refers to deliberate malicious acts towards animals and encompasses many sorts of cruel conduct. “Neglect” must therefore refer to conduct which could cause animals to end up in the states of “distress” referred to in the previous subsections. The purpose of the Act is to prevent cruelty to animals. It does not purport to subject farmers to investigation of their daily practices to be measured against a particular standard of farming practice and divorced from the likely consequences of their actions.

[275] The word “neglect” in the English language means or includes failing to care for or do, disregard or pay no attention to and the noun is of course “negligence”. (see Oxford Dictionary & Thesaurus (1997 edn)). In my view an animal might well be neglected if the person responsible had not used reasonable care in the circumstances in looking after it.

[276] In *R. v. Fountain*, a case involving an emaciated rescue horse, one “Jake” an issue arose as to whether or not it might be a defence to a lack of care in the part of an owner for him to say for example he could not afford to get a vet to come and examine a sick animal. Frame PCJ relying on *R. v. Ryder*, [1997] B.J. No. 6361 (ONCJ) observed that there the Court held that if a person is unable to look after their horses from a grooming, health and eating standpoint, then the owner had an obligation to give them up.

[277] Finally in his discussion on “Strict Liability and Knowledge” Mr. Saulnier in his helpful summary of the law at 2-3 cites *R. v. Hurley*, 2017 ONCJ 263, a decision of Justice of the Peace McMahon which deals with provisions in the *Ontario Society for the*

*Prevention of Cruelty to Animals Act* RSO 1990 C.O. 36 and sections 11.2(1) and (2) similar to sections in our *Act* (above) in that it (1) states that no person shall cause an animal to be in distress and (2) provides that no owner or custodian of an animal shall permit the animal to be in distress. I note that in her closing submission Ms. Opel for the Crown said she did not disagree with any portion of Mr. Saulnier's statement of the relevant legal principles applicable to the case at bar.

[278] These include:

- 1) the *actus reus* of the s. 11.2(1) offence above requires proof beyond a reasonable doubt that the defendant engaged in some positive act that resulted in distress. An omission, failure to act or mere passivity are not sufficient to ground liability for a s. 11.2(1) offence. (Paragraph 23)

In support, McMahon J.P. at paragraphs 26 and 27 said this:

[26] The weight of legal authority views "cause" as requiring a positive act. In *Astro Tire & Rubber Co. v. Western Assurance Co.* [1997] 24 O.R. (2d) 268, the majority of the Court of Appeal of Ontario described "cause" as follows, at para. 9:

It is defined in the Shorter Oxford Dictionary as follows: 'Cause... 1. Trans. To be the cause of; to effect, bring about, produce, induce, make". It is a transitive verb which in its ordinary usage contemplates that someone or something brings about an effect.

[27] In *R. v. City of Sault Ste Marie*, the Court confirmed "cause" and "permit" as troublesome terms that have generated much case law. The court went on to provide valuable insight into the differences between the terms, at 1329:

The "causing" aspect centres on the defendant's active undertaking of something which it is in a position to control and which results in pollution. The "permitting" aspect of the offence centres on the defendant's passive lack of interference or, in other words, its failure to prevent an occurrence which it ought to have foreseen. [Emphasis added]

McMahon P.J. rejected a Crown argument in *Hurley* that in the case of domestic animals which are dependent on humans for their care "cause" could arise from an omission or failure to act.

This was so even though he earlier held that the basis of fault or liability for a strict liability offence here is negligence (at paragraph 14). A negligent act can be exemplified by both misfeasance and nonfeasance.

- 2) “Permit” (in s. 11.2(2)) is a much broader than the terms “cause” and the *actus reus* of (2) can be committed by act of omission. (Paragraph 39).

McMahon J.P. then said this in relation to s. 11.2(2) of the *Ontario Act* in paragraphs 40-44 dealing with the proper construction of the verb “permit”:

[40] The provision imposes a positive duty on the custodian of an animal to prevent the animal from falling into distress as well as a positive duty to relieve any distress whether or not the owner or custodian is to blame for the distress. Therefore, the standard of care can be considered as more substantial as compared to the standard imposed by s. 11.2(1).

[41] Understanding the term “permit” is essential to the proper assessment of the duty and standard of care arising from s. 11.2(2). As already noted. In *r. v. City of Sault Ste Marie*, at 1329, the concept of “permit” was described as a ‘passive lack of interference’ and a “failure to prevent an occurrence which it ought to have foreseen”. That meaning is echoed in the case law.

[42] The Court of Appeal for Ontario has weighed in on the issue and helped to better define the concept of “permit”. In *R. v. Royal Canadian Legion*, [1971] O.J. No. 1673 (C.A.), at para. 22, the court accepted that “permit” meant “not to prevent”. In *1213963 Ontario Limited v. Alcohol and Gaming Commission of Ontario*, [2009] ONCA 323 (CanLII), at para. 3 the court concluded that “permit” required proof that the defendant knew or ought to have known of the problem or issue at hand.

[43] In *R. v. Bedard*, [2009] O.J. No. 4720 (ONCJ), the court stated at para. 9:

“Permit” is a broader term and does not embrace intent or recklessness. One may permit without being wilful or reckless, for example, simply by failing to take reasonable care.

Finally, as already noted, in *Podolsky*, at para. 76, the court described “permit” as “mere passive participation.”

[44] The case law confirms that the concept of “permit” is very broad. In my view, it can manifest itself in numerous ways by either act or omission. In certain circumstances, the act of authorizing another person to engage in an activity can constitute “permit”. In other circumstances, to passively stand by, to allow, to fail to act to prevent foreseeable harm or failing to

remedy existing harm could also constitute “permit”. Each case will turn on its facts, but it is clear that the use of the term ‘permit’ in s. 11.2(2) imposes a significant duty of care upon an owner and a custodian of an animal.

## **DISCUSSION**

[279] I turn now to the above issues and I will deal with the rooster, then Mo and lastly Samantha each in turn and make findings of fact and a determination as to whether or not the applicable charge is made out.

## **THE ROOSTER**

[280] I find that C.B. owned this bird and Crown has proven beyond a reasonable doubt that she was the person responsible for it as defined in the *Act* s. 2 and s. 9.1(2). He was (as above) in a “state of desperate need”.

[281] The Crown has also proven beyond a reasonable doubt that it was in distress. It was injured and in pain and suffering as these concepts are understood in the English language and as they are used in s. 1(2) of the *Act*. He was (as above) in a “state of desperate need”.

[282] There is no evidence that C.B. knew of its condition well described above by Dr. Barnes when he examined it on the afternoon of November 20 in his Powell River clinic before it was sighted in a damaged state in her farm yard about 1:00 p.m. that day by SPCA representatives.

[283] I find she was served with the Notice of Distress at 2:05 p.m. on November 20 and it was then in distress. She took it to the vet Dr. Barnes in a timely way. Crown does not allege any mistreatment before this meeting occurred or during it.

[284] I find that upon examining it, Dr. Barnes really gave C.B. two choices or options. The first was treatment involving no doubt some form of surgery or skin grafting. I infer from all the evidence relating to what occurred in his office that if this option were chosen, this treatment would have been done likely that afternoon with a view to attempting to alleviate the rooster’s distress in a timely humane way. One cannot



interpret this option to be provided on any other basis e.g. an invitation to make an appointment for surgery or repair next week. Time would have been of the essence had option one been chosen. It was not. The second and only other option suggested was euthanasia. I infer that this option if selected was to be performed in the same fashion as option one above – in a timely humane fashion.

[285] I find contrary to C.B.'s evidence that these two options or choices were given to her and were in fact the "vet's recommendations" for the rooster. There were no others.

[286] When C.B. rejected option one – medical treatment, she really chose option two and I so find. She told Dr. Barnes she would do it at home. When she left his office he understood – and I accept all his evidence as truthful and reliable – that she was going to put him down later that day at her farm. Implicit in his recommendations (option two) was that it be done very soon.

[287] It was not part of his recommendation that C.B. for example could see how he did later that afternoon, overnight and the next day until 2:04 p.m. and if it was to be put down – she could wait this long – 24 hours from the time written on the Notice. This course of action would have been inhumane and would have in my view continued the rooster's distress and C.B. would have permitted it to be in distress once at her farm and without keeping her word to Dr. Barnes.

[288] C.B. made a decision on November 20 when she got home not to euthanize the rooster but due to his apparent healthy behaviour – see how she got on. I find she intended to treat his wound with Polysporin which she knew to be useless. I find this decision in effect was her not following the vet's recommendations.

[289] I find that the rooster continued to be in distress once home and at all times until he was euthanized the next day. It behaved exactly as Dr. Barnes suspected it would behave so as to not show weakness to other members of the flock. I do not accept that C.B. did not believe it was suffering due to its behaviour. In allowing it to run around at her farm she really rejected Dr. Barnes' recommendation and as well the SPCA Notice direction and she permitted it to continue to be in distress.

[290] I do not interpret this Notice as I think Mr. Saulnier does that if the bird was surrendered to be euthanized within the 24 hours on the Notice, C.B. was both complying with it and the vet's recommendation. This interpretation in my opinion wholly overlooks the scheme of the *Act* – prevention of cruelty to animals. The Notice should be construed with this object front and centre. It required C.B. to ascertain the vet's recommendations within 24 hours and I think to follow them so as to not permit or continue or cause or permit the rooster to be in distress.

[291] I find that the Crown has proven beyond a reasonable doubt that when C.B. elected at her farm after her visit to Dr. Barnes on November 20 not to put the rooster down and in doing the positive act of putting it down to run around with other chickens in her yard she caused it to be or continue to be in distress contrary to s. 24(1) of the *Act*.

[292] If I am wrong and her actions in not keeping her word to euthanize the rooster on her return home and letting him run about contrary to the vet's recommendation cannot properly be seen as a positive act, then it would certainly be tantamount to the breach of a positive duty on her part as his owner to prevent his being in distress or continuing in this state and a breach of her positive duty to relieve his distress. On this analysis I would reach the same result and find Crown had proven beyond a reasonable doubt the offence charged in s. 2.24(1) of the *Act* in reliance on s. 9(2) of the *Act* and finding that C.B. permitted the rooster to continue to be in distress.

[293] I also find as a fact that the 24 hour period specified in the Notice expired at 2:04 p.m. on November 21, 2015 and that the rooster had not then been surrendered to the SPCA to be euthanized. I accept that this surrender occurred as per Ms. Craig's evidence only after the RCMP were called and attended at C.B.'s farm in the late afternoon that day between 4:00 – 5:00 p.m. outside this period. I also find that the accused C.B. ought to have accepted one of Dr. Barnes' options and that she knew or ought to have known the rooster was in pain and suffering. This would have been obvious to anyone. I do not believe C.B.'s evidence that she thought he was not suffering and therefore didn't follow Dr. Barnes' advice to euthanize him.

[294] Did C.B. exercise due diligence with respect to the rooster acting reasonably in the circumstances to relieve his distress? I find that she did not. She has not established this defence on the balance of probabilities. I reject the argument that in taking it to the vet and surrendering it late in the next day that this amounts to due diligence. Implicit in what C.B. did was to really prolong his pain, suffering and distress unnecessarily.

### **MO**

[295] I find that the Crown has proven the following facts beyond a reasonable doubt with respect to this alpaca:

- (a) the accused C.B. was at all material times including from October 1, 2015 to November 20, 2015 the person responsible for Mo. She owned Mo.
- (b) Mo was in distress throughout the above period right up to and inclusive November 20, 2015, the day she was euthanized. This finding does not mean that Mo's distress commenced on October 1, 2015. I am of the view that it commenced far earlier in time as I will outline below.
- (c) Mo was in "distress" as this term is defined in s. 1(2) of the *Act* because she was deprived of adequate care or veterinary treatment and in particular, having her badly mal-occluded teeth being filed or floated, was suffering and was neglected in the sense this word is ordinarily used in the English language, namely that C.B. failed to reasonably care for her having regard to her known circumstances. She too was in a "state of desperate need".

[296] Mo was a rescue animal entirely in C.B.'s care on her farm for approximately two years before she was put down on November 20, 2015. She was a "special needs" alpaca in that at the outset she had a serious problem with her teeth that I find materially impeded her ability to eat food and obtain nutrition from it. Nonetheless on the date of C.B.'s acquisition of Mo, she was said by the "llama lady" Ms. Fell to be of good quality.

[297] She was a smaller alpaca than the other two alpacas which C.B. acquired and was pregnant with Rico when acquired. I find that C.B. knew at an early date that Mo

was at a disadvantage competing, including for food, with Celine and Dion for a number of reasons, including that they were bigger, bonded with one another and not to Mo likely due to her odd looking teeth and were more aggressive competing for food.

[298] When Mo gave birth to Rico, she suckled him right into late October 2015 and regularly and thus had need for more food and nutrition than a non-lactating female. This was in a sense another special need of Mo commencing on Rico's birth a few months after C.B. acquired Mo in 2013 or 2014.

[299] Believing that alpacas don't like to be alone, I find that for the most part Mo and her cria Rico were housed or kept with other alpacas and thus Mo was at all times due to her size forced to compete for food with larger more aggressive alpacas all the while needing more food than other non-lactating herd members.

[300] I do not accept C.B.'s evidence that there was always someone on the farm caring for and feeding her alpacas including Mo. I have set out above the observations of various witnesses who attended C.B.'s farm on various dates and either found no one present and/or no or little food. I prefer this evidence to C.B.'s blanket statements as to her belief of the presence of helpers when she was away.

[301] From late on most Mondays until approximately 6:00 p.m. Thursday each week, C.B. was an absentee responsible person who entrusted the care of her alpacas to others believing they were doing what she told them to do. Based on the observations of the Crown witnesses set out above, which I accept to be accurate, and in particular Ms. Fell, it appears that her workers did not always follow her instructions.

[302] I find that the Crown has also proven beyond a reasonable doubt that C.B. knew or ought to have known well before June 2015 that Mo's teeth were a significant problem for her and an impediment for her obtaining and consumption of food necessary for Mo to preserve her own health and produce sufficient milk so that her baby cria Rico could grow and prosper.

[303] I do not believe C.B.'s evidence that there was no change in the state of Mo's teeth from the day she acquired her to October 2015. Nor do I believe her evidence that

she had no knowledge of whether the state of Mo's teeth was a problem for Mo. Nor do I believe her evidence that she felt the ability of an alpaca to eat (or not) had nothing to do with the state of their teeth. These stated beliefs are not in accord with common sense. She offered in her evidence her observation that in the morning not all of the hay provided to her alpacas was consumed and therefore she believed they were getting enough to eat. This assumption in my view fails to take into account the fact that Mo was known to be less aggressive than the other alpacas and as well her difficulty in grasping and swallowing food referred to in Ms. Craig's evidence.

[304] C.B. testified that she had learned about camelids because she had a book on llamas. She said when she first concluded Mo's teeth were a problem in the summer of 2015, which evidence I do not believe, she consulted this book and found nothing on point dealing with requisite dental care. Again, this book was never tendered in evidence at the trial nor was its title or author provided in her evidence. C.B. also testified that prior to Ms. Fell raising the issue of Mo's teeth with her in July 2015 that she had never learned or run into the idea that alpacas' teeth might need to be trimmed or cut, nor had she encountered the issue of floating teeth in her llama book. I do not believe her and find that at least in March 2015 she knew about filing alpaca teeth and commented on same to Ms. Fell in a conversation at her farm. If this book contained nothing on llama dental care and was relied upon by C.B. as to the standard of care she provided Mo (and her due diligence) C.B. bore the onus of proving this defence if Mo was found to be in distress. This book thus in my view has a certain significance in this case.

[305] C.B. never took Mo to a vet or had a vet visit Mo to deal with her teeth. This is so even though I find that Ms. Fell in March 2015 when at C.B.'s farm shearing her alpacas raised a concern about the state of Mo's teeth and C.B. herself mentioned filing them and appeared to shudder at the prospect of doing so. I also accept Ms. Fell's evidence that this issue was discussed on a number of occasions going back possibly prior to this date. The state of Mo's teeth was very clearly and obviously an issue in my view to anyone.

[306] I find that well before the month of June 2015 C.B. was aware of what could be done to correct Mo's teeth and simply neglected to engage anyone to rectify her dental mal-occlusion in a timely way.

[307] It is no excuse in my view to fall back as an excuse for not doing so on the fact that there was no large animal vet in Powell River or she had no trailer or that her phone calls were not returned or that she didn't have a lot of money. If C.B. could not afford a reasonable standard of care for Mo with her special needs she should have given her up to someone who could far sooner than she did.

[308] I accept as accurate Ms. Fell's evidence that on June 17, 2015 when she dropped by C.B.'s farm that there was a lack of food and water for her alpacas and that she was concerned over their thin condition and loss of weight compared to her earlier visits. I accept as well her opinion as to her observations made on June 17 as follows:

"However, starvation doesn't happen in two weeks. Starvation is in months and years. For an animal to get that thin as those animals were, that is starvation over a long period of time."

[309] This opinion is similar to that expressed by Dr. Parke who examined all alpacas seized from C.B.'s farm on December 2, 2015.

[310] I also accept as accurate Ms. Fell's observation made of Mo on July 8 that she was then starving to death and had severe dental problems. She manually examined Mo this day and in her notes made later this day recorded the following in addition concerning Mo:

Carol was told that the alpaca needs immediate medical attention. THAT WAS BACK IN JUNE !!! She, (Carol), assured me she would call a Veterinarian to attend to this issue.

[311] I find that in June 2015 Ms. Fell again raised the issue of Mo's teeth with C.B. and that C.B. did then provide the above assurance but did not then call a vet to attend and deal with Mo's teeth.

[312] I also find that there is no evidence C.B. ever manually examined any of her alpacas including Mo so as to check on the state of their bodily condition when she knew or ought to have known that because of their thick coats it was hard to merely visually assess their condition. It seems unlikely that she also in Mo's case saw what was plainly there to be seen, for example Mo's protruding spine observed by Ms. Fell on June 17, 2015 when she attended C.B.'s farm.

[313] I find that Mo was starving to death on July 8, 2015 and that one very significant cause of this regrettable state of affairs was as Ms. Fell explained her mal-occluded teeth making it difficult for her to browse and eat pasture properly as the teeth did not match up properly with her upper lips. C.B. never dealt with Mo's teeth prior to fostering her with Ms. Miller. Ms. Miller took immediate action to engage Dr. Van Dyck to attend at her property to rectify Mo's teeth some nine days after taking possession of her.

[314] I also find that Crown has proven beyond a reasonable doubt that C.B. permitted Mo to continue to be in distress from October 1 to November 20, 2015 when she was put down. I also find that Crown has also proven beyond a reasonable doubt that C.B. knew or ought to have known Mo was in distress in the relevant period as per count 1. Mo was on her farm and in her sole care until October 24, 2015 when she elected to foster Mo with Ms. Miller and transported her to the Miller property. Mr. Saulnier admits that C.B. was also responsible for Mo's care while Mo was with Ms. Miller. Nonetheless I find that due to C.B.'s earlier actions and neglect, Mo's condition was on and after October 24 beyond redemption.

[315] I come now to the last issue: Did C.B. exercise due diligence in alleviating or attempting to alleviate Mo's distress? Has defence established due diligence on the balance of probabilities?

[316] In my view C.B. has not.

[317] C.B. testified that in July 2015 Ms. Fell first raised the issue of Mo's teeth and suggested she get a vet to look at them. I have not believed that this was the first time

that this issue was raised by Ms. Fell or that it was only at this late date that C.B. herself first appreciated that Mo's teeth were a problem and should be looked at.

[318] C.B. did however ask Ms. Fell I find between July 8 and 10, 2015 for the name of someone she should take Mo to concerning her dental problems and was on Friday July 10 given the name Alisha as a woman who specialized in alpacas working with Dr. Parke in Black Creek (on Vancouver Island). She advised Ms. Fell by email July 11 she would call on the Monday and said in part as well that Mo was then having trouble eating, seemed thinner than ever so she needed to do something about it (i.e. Mo's thin condition which three days earlier Ms. Fell had characterized as Mo starving to death) as soon as possible.

[319] She testified that she called Dr. Parke's office pretty much immediately and was advised Alisha did teeth so she called her and was put on a list for when Alisha was next coming to Powell River.

[320] There is no evidence that C.B. advised either Dr. Parke or Alisha that Mo was at least in Ms. Fell's experienced view then starving to death and that her mal-occluded teeth had gone untreated for approximately two years. Nor did C.B. ask about bringing Mo to Dr. Parke's clinic. C.B. said in July 2015 she understood large animal vets came through Powell River on a regular route seeing animals requiring care. They did not come on an individual basis. I do not accept this evidence as accurate in light of the further evidence in this case that Dr. Parke came to see Mo on November 3, 2015 at the Miller farm.

[321] On cross examination, C.B. said she was advised by Alisha (or someone in Dr. Parke's office) that they would call when she was coming but that no such call was ever made.

[322] C.B. testified that she didn't call Alisha back immediately. Rather she "gave it time" and waited a few weeks and then called Dr. Parke (she could not recall exactly when) – in July or August. She said she then learned Alisha had quit and then asked that because Mo needed her teeth done – would Dr. Parke come and do them? She



was told he was away on holiday for a month and that they would call on his return as to when he would come to Powell River. No such return call was ever made.

[323] Dr. Parke testified that Alisha was employed in his practise and quit in about September 2015 and that he was not away for a month in 2015 but rather for only 12 days at the Rugby World Cup in September/October that year. I have accepted this evidence as truthful and reliable and prefer it to C.B.'s on point especially in light of C.B.'s uncertainty as to when she made calls to Dr. Parke's office and her lack of notes on really any of her evidence.

[324] Thus I find C.B. did not call Dr. Parke's office back until more likely September 2015 or possibly October. There was thus a significant and unreasonable delay in her follow up with this office and in getting I find urgently needed vet care for Mo.

[325] C.B. said in direct when Dr. Parke's office did not call her back, she then called the online vet service probably in August, maybe early September – "who knows?" The purpose of this call was to advise she had an alpaca with protruding teeth which was losing weight. She testified that she was then advised to feed Mo by hand and commenced doing so right away.

[326] On cross examination C.B. testified that while she was not certain of the time line or the date of the call, she did consult an online vet concerning Mo's teeth and weight loss issues. She could not recall exactly what she said to him. When asked if this call was placed in August or September, C.B. hesitated at some length and then said she thought this call was before Rosemary (Fell) came out in July (on the 8<sup>th</sup>) but it might have been then i.e. in August or September – she was not sure. She said her memory was failing. I observe if her evidence is correct that she first appreciated Mo was too thin and his teeth were an issue when Rosemary Fell so advised her on July 8 – why would she have called an online vet before this date to seek advice on a condition she said was in essence not a concern to her?

[327] It seems sensible to conclude she would only have called an on line vet after she learned Alisha had quit and Dr. Parke couldn't come as he was away. I find she learned

of these facts probably not sooner than September 2015 or possibly in early October 15.

[328] In the result I find that the on line vet advice would not likely have been got by C.B. until after these times and thus that Mo would not have been hand fed until some unknown date in September or early October 2015. Hence the advice she received as to how to feed Mo who was starving to death was of no benefit to her as it was not commenced until at least two months after she was told by Ms. Fell to deal with Mo's teeth.

[329] I note as well that C.B. gave no evidence that she ever asked the online vet how to rectify Mo's teeth. But I also find that as early as March 2015 C.B. knew about filing alpaca teeth and never did anything about obtaining this care for her beyond making one or two telephone calls to Dr. Parke's office and in the space of several months really receiving no help on point. What she did do was too little too late.

[330] There is no evidence that when C.B. learned that Alisha had quit Dr. Parke's practise that she asked for her telephone number to see if she still did alpaca teeth albeit not as an employee of Dr. Parke.

[331] There is no evidence C.B. on learning Dr. Parke was away made any effort to locate another large animal vet (for example Dr. Van Dyck) who might help out or contacted for example Dr. Barnes, the Powell River SPCA or Ms. Fell for a further referral. I find that over the summer of 2015 and possibly into early October 2015, C.B. knew or ought to have appreciated the extreme gravity of Mo's health condition and failed to take reasonable steps in her care to prevent Mo from continuing to starve to death while in her care. Mo's poor body condition which was an emergent and serious one on July 8 (and sooner) could only have worsened as a result of this lack of care up to and beyond October 1, 2015 having regard to C.B.'s inaction.

[332] C.B. admitted notwithstanding her hand feeding Mo four days a week – she did not do well. There was no change in her weight or body condition. Her caretaker Daryl had by the end of September left and she was unsure if her new caretaker one Bobbi

would feed Mo by hand as she had instructed. She concluded she needed someone to pay closer daily attention to Mo so she offered Mo to Ms. Miller on October 24, 2015 with instruction to hand feed her. She testified that she called Ms. Miller and proposed fostering Mo with her because she had returned home one Thursday night in October and upon looking at Mo, all of a sudden saw her as not doing that well, not looking that great. Nonetheless she testified she did not think Mo was suffering. It is difficult to accept this evidence in this case including Ms. Fell advising C.B. in writing on July 8 that Mo was starving to death.

[333] C.B. testified that Mo stood for her when she hand fed her but that she did not after October 24 when she visited her on the Miller property.

[334] I do not intend to repeat the evidences summarized above as to Mo's lack of progress with Ms. Miller from October 24 – November 20, 2015. I do note that she possibly with the assistance of the SPCA was able to get a vet, one Dr. Van Dyck to assess Mo about nine days after receiving her from C.B. at her property in Powell River. There is no basis in this case for me to accept that had C.B. sought his help and sooner, that he would not have travelled to her farm to assess her needs in a timely way particularly if he had been told of her true condition.

[335] By November 3, some days into Ms. Miller's fostering of Mo she was described by Dr. Van Dyck to be malnourished, extremely thin, an animal who due to her teeth would have difficulty grazing (something which alpacas need to do), half her ideal weight and an animal with serious problems in her blood system and with all her organ likely affected. There was a risk of internal organ damage due to her extremely underweight condition and her prognosis for recovery was grave to poor.

[336] I find that C.B. has failed to established on the balance of probabilities at any material time that she exercised due diligence in taking reasonable steps in Mo's care.

[337] I turn now to Samantha.

**SAMANTHA** (a.k.a. "Oye Vey" or "Oy Vey")

[338] Crown has established beyond a reasonable doubt that this alpaca whom I shall refer to as Samantha was owned by C.B. and that she was at all material times the person responsible for her care.

[339] Was Samantha in distress during the period October 1 to November 29, 2015?

[340] In my view there is no serious dispute in this case as to the following facts or opinions concerning this animal which I find established in the evidence:

- (a) Samantha was a female alpaca acquired by C.B. from Ms. Fell likely in 2014 some six months after C.B. acquired Mo. She was a rescue animal and was with C.B. for at least a year.
- (b) She was pregnant when acquired and in May 2015 gave birth to possibly a female cria initially called Victoria. (There is some dispute in the evidence as to this cria's sex).
- (c) Samantha was with C.B. at her farm at all times from the date she was acquired to the date she was seized by the SPCA on November 28, 2015.
- (d) C.B. admitted that on her arrival, she was thinner than two other alpacas she then acquired.
- (e) Ms. Fell manually assessed her and her cria on July 8, 2015 at C.B.'s farm reporting to C.B. in writing on or about that day as to her condition (and using her then name "Oye Vey") as follows: "This female scored well as did her cria."
- (f) Angela Mead attended at C.B.'s farm on November 28, 2015 with other SPCA personnel and seized all C.B.'s alpacas including Samantha who was sent to the Jackie MacRae Farm near Powell River on or about that day.

I note that Ms. Mead testified that she visited C.B.'s property eight days prior to Samantha's seizure and testified that she was then concerned with its overall rundown state but the major concern she had was the underweight condition of all her alpacas, of which Samantha was most severely underweight. I accept this evidence as reliable but am mindful that defence does not.

Likewise on November 28 Ms. Mead made observations as to the conditions of the farm which understand defence does not agree with but which I again accept as accurate and reliable. These included that at approximately 10:00 a.m. most of the water

receptacles in the alpaca stalls were empty and were stained or contaminated with dirt and algae, there was an absence of dry bedding straw in some stalls and the floors of most were wet with dirty straw and some had accumulated caked feces.

- (g) Ms. Mead (or some SPCA representative) contacted Dr. Parke, a Vancouver Island vet who attended at the MacRae Farm on December 2 and conducted a manual exam of Samantha and several other alpacas there also seized earlier from C.B.'s farm. Samantha had what he described as an emaciated body condition and he scored her 2 of 10. He was concerned with the reduction in muscle mass in her rump, ribs and shoulder areas and said she was the only animal he had examined which was then of major concern to him. He injected her with a drug (ivomectin) to address a probable parasite load. He recommended a format of feeding and suggested possibly segregating her during feeding to ensure adequate consumption thereby avoiding a situation where she would have to compete for food with stronger animals. He testified that on his 1-10 grading scale, 1 was "emaciated" and average was a scale of 6-9.

Dr. Parke believed from his observations of these alpacas' body condition that it did not appear they had received adequate rations and parasite control or routine dental care. He was of the opinion that the condition of Samantha represented severe neglect and concluded that she had not been given adequate ration to support the energetic requirements of a nursing animal.

- (h) Samantha was on Jackie MacRae's farm from about November 28 to December 15. Ms. MacRae contacted Ms. Miller on December 14 and asked her to take Samantha and her cria which she did the next day.
- (i) At some date between November 28 and December 14 Ms. Miller attended at the MacRae farm and observed that the alpacas were being fed romaine lettuce hearts and as well that they had feed, hay, nice water, a shelter barn and everything.

I conclude there is no evidence that Samantha while with Ms. MacRae was deprived of anything she reasonably required or that her deteriorated condition could have been caused by any neglect in her care by Ms. MacRae while she was on her property.

- (j) Samantha was with Ms. Miller for five days and died of natural causes on December 20. During these five days, Samantha could stand initially using a five point stance with her nose on the ground if lifted but could not stand on her own certainly by the third day Ms. Miller had her save on one

occasion when C.B. visited her. Ms. Miller fed Samantha who ate lying down. Ms. Miller did not believe she was then able to defecate.

- (k) No vet visited Samantha when she was with Ms. Miller and as with Mo, no autopsy was performed as to the cause of her death.

[341] In my view Crown has established beyond a reasonable doubt that Samantha was in distress in the period in question. While it is true she was not assessed by a vet within the relevant period of time referred to in count 1, she was assessed by Dr. Parke some three days later and he was of the opinion which I accept as reliable that the decline in her body condition he noted on December 2, 2015 would have taken approximately two months of inadequate care to occur. This estimate in his opinion was the shortest time it would take.

[342] I also find that Crown has established with proof beyond a reasonable doubt that C.B. knew or ought to have known that Samantha was, as was Mo, close to or at an emaciated condition while in her care prior to seizure. I am clearly of the view and find on all the evidence in this case that a basic reasonable standard of care requirement for an alpaca owner is to manually examine them from time to time to see how they are doing and that this is especially important as they do have thicker coats which can mask or hide deficits in their body conditions. A thicker coat rather than being an excuse for an owner not being alive to the fact that an alpaca is in an emaciated state is the very reason such an examination is critical and necessary and is part and parcel in my view of an alpaca owner properly discharging the reasonable standard of care required of them. This in my view is only common sense.

[343] I find that in the relevant period of time Samantha was also deprived of adequate food and water. There is no evidence that notwithstanding she was a nursing or lactating female, that she and her cria were ever separated for any reasonable period of time from other alpacas while being fed or that because she was nursing she received a better amount of food than other non-lactating herd members. In addition, having regard to Ms. Mead's observations of the state of the alpaca stalls and C.B.'s evidence that she believed it was okay to clean them once a year, I am of the view that when with C.B., Samantha was kept in a condition which was unsanitary at least at night. Likewise by

reasons of these conditions as well I find that she was certainly neglected and must have been suffering.

[344] I find that Crown has proven beyond a reasonable doubt that in the relevant period of time, sometimes referred to in the caselaw as the “offence period” – C.B. permitted Samantha to continue to be in distress. What Dr. Parke found in his December 2, 2015 manual assessment of Samantha did not occur in the few days she was with Ms. MacRae and was a condition evident to the SPCA personnel certainly in late November on the 20<sup>th</sup> and 28<sup>th</sup>.

[345] Did C.B. exercise due diligence in alleviating or attempting to alleviate Samantha’s distress? Has C.B. established this defence on the balance of probabilities? I find that she has not. She has not established that she took all reasonable care of this alpaca in the circumstances. In my opinion the llama lady Rosemary Fell was very accurate in her June 2015 assessment (Exhibit 2) then conveyed to C.B. that she had taken on too much in having on her farm in addition to numerous goats and chickens, I understand nine alpacas and one llama that she was then attempting to care for notwithstanding the fact that by my calculation she was about 44% of the time each week entrusting their care to caretakers whom she believed were doing what she instructed them to do but were clearly not. Neither C.B. nor the majority of the caretakers she had actually lived on the farm where these animals were kept. None were on the evidence particularly knowledgeable about camelid care.

[346] There is no evidence any of them ever manually examined any of the alpacas so as to have an accurate understanding of their true body condition. Despite C.B.’s assertions that there was always feed and clean water available to her alpacas, these are more statements of her belief than facts and which statements I have not found to be always accurate in light of the evidence which I accept of persons such as Ms. Fell who visited her farm from time to time.

[347] These observations apply to C.B.’s lack of due diligence with Mo as well as Samantha.

[348] There is one final observation and finding I wish to make. It is true that there is no autopsy or necropsy report as to how and why Mo and Samantha either sickened so severely or died. I am nonetheless of the opinion that there is more than sufficient evidence in this case including the total absence of timely vet care for Mo and Samantha, and in Mo's case including obviously needed dental care, filthy stalls with caked feces, lack of feed and water at times, the material absences of C.B. from the farm where they were kept, the probability that both alpacas likely had worms or some parasite that would have robbed them from some of the nutrition in the food they did get to eat and the lack of knowledge of C.B. in camelid care witnessed by her complete failure to for example deal with Mo's teeth, to establish as I have found on the requisite standard of proof that C.B. permitted these various animals to be in distress or continue to be in distress.

### **CONCLUSION**

[349] I find the accused guilty of counts 1 and 2 on the information before the Court.

---

The Honourable Judge B. Dyer  
Provincial Court of British Columbia