

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. MacDonald*, 2020 NSPC 32

**Date:** 20200728

**Docket:** 8209234; 8209235

**Registry:** Dartmouth

**Between:**

Her Majesty the Queen

v.

Sarah MacDonald

<b>Judge:</b>	The Honourable Judge Theodore Tax,
<b>Heard:</b>	July 16, 2019; July 17, 2019; January 14, 2020; January 15, 2020, in Dartmouth, Nova Scotia
<b>Decision</b>	July 27, 2020
<b>Charge:</b>	Section 21(b) and 21(2) of the Animal Protection Act of Nova Scotia
<b>Counsel:</b>	Janine Kidd, for the Nova Scotia Public Prosecution Service Christopher Avery, for the Defence Counsel

**By the Court:**

[1] Ms. Sarah MacDonald was charged by Special Constables of the Nova Scotia Society for the Prevention of Cruelty to Animals (“SPCA”) with having owned an animal, in this case a dog, and having failed to provide that animal with adequate medical attention when it was wounded or ill contrary to section 22(b) of the **Animal Protection Act of Nova Scotia**. She was also charged with being the owner of an animal, in this case a dog, and did permit the animal to be in distress contrary to section 21(2) of the **Animal Protection Act of Nova Scotia** (the **Act**).

[2] These provincial regulatory or public welfare offences were alleged to have occurred between December 6, 2017 and December 13, 2017, at Dartmouth, Nova Scotia. The alleged offences are summary proceedings. Through her counsel, Ms. MacDonald entered not guilty pleas to both charges on June 18, 2018 and a 2-day trial was scheduled for January 28 and 29, 2019. During a pre-trial conference held on November 20, 2018, the Court was asked to adjourn the trial and the estimated two-day trial was rescheduled for July 16 and 17, 2019.

[3] Trial evidence was heard on July 16 and 17, 2019, however, not all of the anticipated trial evidence could be completed by the end of that second day. The Court canvassed several dates with counsel, before confirming a 2-day trial continuation and possibly closing submissions on January 14 and 15, 2020.

[4] The trial evidence concluded on January 14, 2020 and the next day, the parties made their closing submissions. The Court reserved its decision.

[5] After canvassing several earlier dates, the Court scheduled May 1, 2020 for the trial decision. In the interim, the Covid-19 pandemic emerged, and public health states of emergency were declared, which necessitated the adjournment of the Court’s decision until today’s date.

**Positions of the Parties:**

[6] The Crown Attorney submits that the charges before the Court relate to the events which occurred between December 6, 2017 and December 13, 2017, when Ms. MacDonald was well aware of the deteriorating health of her dog which left her dog in a state of distress for several days before she contacted a veterinarian. It is the position of the Crown that Ms. MacDonald waited “too long” to seek

veterinary assistance, and in those circumstances, they have established the *actus reus* of both offences beyond a reasonable doubt.

[7] The Crown Attorney submits that the charges before the court under the **Animal Protection Act** of Nova Scotia are strict liability offences. Therefore, the Crown is only required to prove the *actus reus* of the offences beyond a reasonable doubt and they are not required to prove any *mens rea* or intention on the part of Ms. MacDonald to cause her dog to suffer without adequate medical attention or be in a state of “distress.” In other words, Ms. MacDonald failed to comply with the minimum reasonable standards of care stipulated by the **Animal Protection Act**.

[8] The Crown Attorney acknowledges that Ms. MacDonald may not have been aware of the date when her dog ingested the foreign, fabric object which became lodged in the dog’s intestine, however, she should have sought immediate medical attention based upon her dog’s symptoms of deteriorating health, which were readily apparent for days. While there is no doubt that euthanizing the dog was the only realistic medical intervention on December 12, 2017, the Crown Attorney submits that Ms. MacDonald’s knowledge of critical symptoms of a rapid decline in the dog’s health, at least three days earlier, left her dog in a state of distress during that time. During that same time period, she submits that Ms. MacDonald did not provide adequate medical attention to an animal who was seriously ill.

[9] Defence Counsel submits that the charges before the court involve the essential element of “permitting” an animal to be in distress. He submits that a reasonable interpretation of “permitting” something to occur involves imputing the knowledge of a certain state of affairs and then failing to take reasonable actions. It is the position of the defence that Ms. MacDonald did not permit her elderly and long-time companion pet to be in a state of distress.

[10] In addition, Defence Counsel submits that this is not a case which can be characterized as Ms. MacDonald being wilfully blind to the severe and lengthy deterioration of her dog’s medical condition, without obtaining medical attention within a reasonable time. He submits that Ms. MacDonald acted in a reasonable manner in assessing and addressing the medical condition of her elderly dog. In those circumstances, she did not permit her dog to be in distress nor did she fail to provide adequate medical attention when her dog was ill.

[11] During his submissions, Defence Counsel took significant issue with the Crown’s contention that Ms. MacDonald’s “interview” conducted by two SPCA

special constables, contained admissions and acknowledgement of the dog's state of distress and failure to provide adequate medical attention. Defence Counsel submits that the so-called "interview" was conducted in what he described as an "outrageous" manner and the comments upon which the Crown Attorney relies, are quite simply not admissions, but are words which have been taken out of context.

[12] Finally, Defence Counsel submits that Ms. MacDonald stated that when she realized the seriousness of her dog's situation, she took the appropriate action to contact the clinic to arrange for a veterinarian to come to her house to euthanize her elderly dog. It is the position of the defence that the opinion of Dr. Graham supports Ms. MacDonald's reasonable and timely actions and that when all of the evidence is considered in its proper context, the Crown has not established the *actus reus* of either offence beyond a reasonable doubt. In those circumstances, he submits that the Court is not required to consider whether Ms. MacDonald exercised due diligence.

### **Trial Evidence:**

[13] The first witness call during the trial was Dr. Teigen Bond. At the outset, the Crown Attorney indicated that Dr. Bond had changed her status to a non-practising license of a Doctor of Veterinary Medicine and advised the Court that the Crown would not be seeking to qualify her as an expert witness. In addition, Counsel agreed that an Outlook calendar for December 2017 would be filed as Exhibit 1.

[14] Dr. Bond stated that she attended at Ms. MacDonald's house on the afternoon of Tuesday, December 12, 2017, following Ms. MacDonald's call to her veterinary clinic to arrange for a veterinarian to come to her house for the purpose of euthanizing her dog. The call came in the morning. Ms. MacDonald was not a client of that veterinary clinic. The clinic hours, at that time, were Monday to Friday and half-days on Saturday.

[15] Since Dr. Bond had been informed that the purpose of the call was to euthanize a dog at Ms. MacDonald's home, she gathered up the necessary medications for that house call and went to the address with a veterinary technician from the clinic.

[16] On arrival at the house, Dr. Bond noted that Ms. MacDonald was a new client, so the veterinary clinic did not have a history of dealing with the dog. In this case, Dr. Bond asked why Ms. MacDonald wanted to have the dog euthanized and had her sign a consent form. After the form was signed, Dr. Bond went downstairs

to the basement of the house and saw the dog in a pen. She noted that the female dog looked “quite thin, hip bones and ribs sticking out.”

[17] Dr. Bond also noted that the dog’s pen was on a concrete floor in the basement which was quite cold and hard. There was a little bowl of water near the dog that “looked like it had not been changed in a little while” and there was a little container “full of generic dry dog kibble” and some milk bones. The dog had a blanket, like a bedsheet spread at the back half of the pen that was only covering on the ground.

[18] Dr. Bond said that the area “didn’t smell that great” and added that it was “like old feces.” The dogs breathing was “quite raspy and disconcerting and it sounded like the dog was struggling to breathe like she was drowning on land.” There was a lump on the dog’s side that was closed and not ulcerated. The dog appeared to be an older Pitbull/Am Staff mix. The dog’s “nails were quite long, and the dog was not moving a whole lot and appeared to be not healthy.” The dog’s eyes appeared to be glazed over and she was just lying there and did not react when she entered the room.

[19] After confirming Ms. MacDonald’s consent to euthanize her dog, Ms. MacDonald stayed while Dr. Bond sedated the dog, but left the area when she continued to euthanize her pet. The dog passed within seconds and after that Dr. Bond and the veterinary technician wrapped the dog up to take back to the clinic for cremation as Ms. MacDonald had requested.

[20] Dr. Bond estimated that Ms. MacDonald’s dog, named Brooklyn, was elderly, meaning that she was more than 12 years old, but she was not sure of the precise age. She did not weigh the dog. Dr. Bond said that the “raspy” sound of the dogs breathing was not normal, and it was distressing to hear. Although there was a lump on the dog’s rib cage, Dr. Bond said that it was non-ulcerated and did not look to be infected.

[21] Later that day, when she got home, Dr. Bond called the clinic and asked the veterinary technician to weigh the dog. Around 8:00 PM that evening, she filed a formal complaint with the SPCA online. She stated that the rationale for the complaint related to the fact that she was concerned about how thin the dog was, that the dog had been in a small pen on a concrete floor and that she was “concerned about how sick the dog appeared.”

[22] After filing the complaint, Dr. Bond said that an SPCA officer contacted her the next day and about three weeks later, an SPCA officer came to the clinic and took Brooklyn's body out of the freezer where it had been placed prior to being cremated.

[23] In concluding her direct examination, Dr. Bond stated that, when she arrived at the house, Sarah MacDonald met her at the door and told her a little bit about Brooklyn. During that brief conversation, Ms. MacDonald told her that "she had been praying to God to let Brooklyn pass and that she had been praying for Brooklyn to pass for a couple of days, but not on her birthday." Ms. MacDonald had also told Dr. Bond that her birthday was on Saturday, December 9, 2017.

[24] Dr. Bond stated that as Ms. MacDonald led her down the basement stairs, she had stated that "Brooklyn has been going downhill for a while" and that "she had kept her in the basement in the pen because she did not want her daughter to see how sick Brooklyn was."

[25] Dr. Bond recalled that Ms. MacDonald had said that: "she used to take Brooklyn out and walk around the basement, but the last 2 or 3 days, Brooklyn had not been able to get up. She would change the sheet on the floor whenever Brooklyn peed or pooped, and she would give her water and food." She also recalled that Ms. MacDonald had said that "Brooklyn's breathing just started getting raspy the day before, but that she had been not doing so well for a while."

[26] Dr. Bond also added that Ms. MacDonald had told her that Brooklyn's nails were very long because "she hates the vet and Sarah said that my vet in PEI told me it was too stressful for Brooklyn to get her nails cut at the vet clinic" and that "she should just let her live the rest of her life without being stressed." Dr. Bond confirmed that Ms. MacDonald had told her about that conversation, which she had had with Brooklyn's vet in Prince Edward Island. Dr. Bond said that Ms. MacDonald was surprised that Brooklyn had not reacted to her, because she normally hates vets. Dr. Bond also said that Ms. MacDonald had "mentioned that Brooklyn had been probably ready to die for a little while now."

[27] On cross-examination, Dr. Bond agreed with Defence Counsel that she met Ms. MacDonald as a result of a request for an in-home euthanasia. When it was suggested that it was more expensive than going to the clinic to do that, Dr. Bond said initially that she wasn't sure about that, but then agreed with Defence Counsel that there would be an additional fee for that procedure. On arrival at the house,

Dr. Bond confirmed that Ms. MacDonald was visibly upset and crying as they went downstairs to see her dog, Brooklyn.

[28] Dr. Bond agreed with Defence Counsel that she had not looked at any of Brooklyn's clinical history or any care that had been given to Brooklyn prior to that day. Dr. Bond confirmed that, on arrival, Ms. MacDonald had explained the reason why she had placed a pen around Brooklyn. Dr. Bond initially said that the explanation was that she used to let Brooklyn out but in the past few days she had not wanted to go outside. When Defence Counsel suggested that Ms. MacDonald had said that Brooklyn rallied this morning and was wandering around which is why she put her in the pen, just prior to the veterinarian arriving, Dr. Bond's response was "possibly."

[29] Following that answer, Defence Counsel referred Dr. Bond to a portion of her written report to the SPCA made on December 14, 2017 and, after looking at that portion, she agreed that she had written that Ms. MacDonald had said that the dog did get up and walk around a bit just before she arrived at the house and agreed that she had told Ms. MacDonald that she saw a lot of pets rally before we arrive in order to have one last good day or moment.

[30] With respect to Dr. Bond's decision to file a complaint with the SPCA, she had confirmed that she wrote the report to the SPCA in the evening after her shift for the day. However, Dr. Bond maintained that she had decided that there was a problem with Brooklyn while she was at Ms. MacDonald's house. She added that, prior to sending the report that evening, she considered whether a complaint would reflect poorly on her job or upon the other members of her veterinary clinic if she complained about a client who was paying a veterinarian to take care of their pet or to euthanize their pet. She acknowledged that she was new at the job, didn't want to make her boss unhappy, but felt she had a legal, moral and ethical obligation to report what she had seen.

[31] Prior to sending her report to the SPCA, Dr. Bond confirmed that she did not talk to a more senior veterinarian at their clinic or anyone else for that matter. She confirmed that she had just recently graduated in 2017. She completed her board examinations and was officially licensed as a practising veterinarian at the end of May 2017. Dr. Bond agreed with Defence Counsel that she had only six months of experience as a licensed and practising veterinarian when she attended at Ms. MacDonald's house.

[32] On further cross-examination, Dr. Bond agreed with Defence Counsel that Brooklyn had plenty of appropriate food, there were also treats for her and there was clear water. Dr. Bond had initially said that she didn't notice anything wrong with the water, however, it did look a "little dirty" and may not have been changed before she got there. With respect to those last remarks, Defence Counsel pointed to a portion in Dr. Bond's written statement to the SPCA where she had written that there was "clear water." After reviewing that portion, Dr. Bond agreed with Defence Counsel's suggestion that, in fact, she had "no concerns" about the dog's access to food and water.

[33] Dr. Bond added that her main concern was about the state of dog's condition in her area. On this point, Dr. Bond agreed with Defence Counsel's suggestions that Brooklyn was thin, she was an old dog and in the process of dying. She agreed with Defence Counsel that Brooklyn was a dog that was fit to be euthanized.

[34] With respect to the dog lying on a thin blanket on a cold floor, Dr. Bond agreed with Defence Counsel that Ms. MacDonald had told her that the dog was lying on that blanket because she had just peed on her dog bed before she arrived at the house. Dr. Bond also agreed that Ms. MacDonald had told her that Brooklyn had dog beds, which had just been soiled, but maintained that Ms. MacDonald had not told her that they were being washed.

[35] On further cross-examination, Dr. Bond agreed with Defence Counsel that her report to the SPCA did not include any reference to Brooklyn having dog beds, but only mentioned that she was lying on a bed sheet on a cold floor. He also suggested that her report to the SPCA made it appear as if Brooklyn was living full-time in a cold basement on a thin bed sheet, to which Dr. Bond responded: "that was not my intention." When asked why she had only mentioned that there was a bed sheet on the cold concrete floor, Dr. Bond initially maintained that it was cold, but again agreed that Ms. MacDonald had also told that Brooklyn's dog bed where she normally slept, had just been soiled by her.

[36] Due to a previously arranged time for another witness to testify, Dr. Bond returned the next day to conclude her testimony. As cross-examination continued, she agreed with Defence Counsel that Ms. MacDonald had told her that Brooklyn's raspy breathing had just started that morning. Dr. Bond also agreed that Ms. MacDonald had informed her about previous issues that she had discussed with Brooklyn's veterinarian in Prince Edward Island. In addition, Dr. Bond agreed that Ms. MacDonald had told her about the dog's anxiety at a veterinary clinic and



based upon that information, Dr. Bond agreed with Defence Counsel that she was aware of the fact that Brooklyn had received ongoing veterinary care in Prince Edward Island. Dr. Bond agreed that she never asked Ms. MacDonald to provide the name of the veterinary clinic or the veterinarian.

[37] Dr. Bond confirmed that the veterinary clinic where she worked had several other locations in the HRM. Defence Counsel suggested that Brooklyn had been an ongoing patient at another location of that veterinary clinic. Dr. Bond said no one made her aware of that but agreed with Defence Counsel that she did not ask Ms. MacDonald for the name of Brooklyn's veterinarian in Nova Scotia. Dr. Bond also confirmed that she made no additional inquiries before filling out and sending her complaint to the SPCA on the evening of December 12, 2017.

[38] The next witness, Mr. Chris Pickering, was a special constable with the SPCA in December 2017. He received the report from Dr. Bond and conducted a brief interview with her on December 13, 2017. On December 19, 2017, he prepared an order [Exhibit 2] and seized the remains of Brooklyn from the veterinary clinic, storing the dog's body in a SPCA freezer. On January 26, 2018, he transferred the dog's remains to the Department of Agriculture-Laboratory Services in Truro, Nova Scotia, for the purpose of a necropsy.

[39] On January 26, 2018, Mr. Pickering also filled out a lab services request form [Exhibit 3] on behalf of the SPCA at the Department of Agriculture Lab to explain what the SPCA wanted them to do. In that form, he had indicated that the dog was euthanized by a vet at home and that the vet suspected "neglect and starvation." He indicated that "the purpose of the necropsy is to make sure the dog was not ill, and its condition was due to a lack of feeding and/or abuse."

[40] On cross-examination, Mr. Pickering confirmed that he left the position with the SPCA at the end of January 2018 and confirmed that he had no role to play in ultimately laying the charges against Ms. MacDonald.

[41] The next two witnesses called by the Crown were Benjamin Amini and Karen Pickering, who had both been special constables with the SPCA when these charges were laid. Mr. Amini and Ms. Pickering conducted an interview with Ms. MacDonald on March 1, 2018.

[42] Since Defence Counsel had advised the Court and the Crown that they were contesting the voluntariness of the interview, the Court entered into a *voir dire* for that purpose. Defence Counsel also asked that the *voir dire* evidence be blended in

with the trial itself and if the interview was admitted as part of the Crown's case, it would not be necessary to recall the witnesses or replay the recorded interview.

[43] About a week prior to the interview, Mr. Amini went to Ms. MacDonald's house to speak to her about coming to the SPCA office in Dartmouth. An interview was arranged for 10 AM on March 1, 2018. Mr. Amini stated that he was the lead investigator on the file and asked most of the questions during the interview, but special Const. Karen Pickering was also participated in the interview. Prior to the interview, Mr. Amini read a cautioned statement form to Ms. MacDonald. She confirmed that she understood that she had the right to contact a lawyer and that she did not have to say anything. She never asked to speak to a lawyer. Ms. MacDonald consented to participate in the interview and signed the consent form [Exhibit 7].

[44] At the beginning of the audio/visual interview, Mr. Amini informed Ms. MacDonald that the purpose of the interview was to look into what happened in the last few days of her dog's life. He did not tell her that they were investigating her for animal cruelty.

[45] The interview was about one hour long. Mr. Amini stated that Ms. MacDonald's demeanour on arrival was very positive and cooperative, but when they started talking about the specifics of the matter, she became very emotional. He noted that she cried at times and they provided her with some Kleenex as she seemed to be upset about what had happened to her dog, Brooklyn.

[46] Mr. Amini described the seating arrangements in the room where the meeting was held, the uniforms that he and special Const. Karen Pickering were wearing and confirmed that neither one of them had threatened or made any promises to Ms. MacDonald.

[47] After those preliminary questions, the Crown Attorney played the audio/visual recording of the "cautioned video statement of Sarah Jane MacDonald" on March 1, 2018, which was initially marked as *voir dire* Exhibit 2.

[48] Following the playing of the audio/visual statement, there was insufficient time left on July 16, 2019 to conduct the cross-examination of Mr. Amini on his *voir dire* evidence. Since other witnesses had been arranged for July 17, 2019, the Court scheduled 2 extra days for trial on January 14 and 15, 2020 to complete the evidence, including the cross-examination of Mr. Amini.

[49] The other witness called by the Crown on the *voir dire* was special Const. Karen Pickering of the SPCA. Ms. Pickering was a sergeant and a supervisor at the SPCA when she participated in the interview of Ms. MacDonald on March 1, 2018. She had briefly met with Ms. MacDonald at her house on February 22nd, 2018 to “invite” her to come to an interview at the SPCA office.

[50] At the beginning of the audio/visual interview, Ms. Pickering stated that she and Mr. Amini essentially repeated what they had said at Ms. MacDonald’s house, that is, that the purpose of the interview was to follow-up on the report of a cruelty case. She added that after the SPCA officers received the necropsy report, they had questions “to put to her under caution.” Ms. Pickering confirmed that Ms. MacDonald had been cautioned by special Const. Amini, and that she understood she could contact a lawyer, but did not wish to do so.

[51] After those preliminary questions by the Crown Attorney, the audio/video interview of Ms. MacDonald was played in court and then, Defence Counsel cross-examined Ms. Pickering on the *voir dire*.

[52] Ms. Pickering confirmed that she met with Ms. MacDonald at her house on February 22, 2018 and arranged for a recorded, cautioned interview to be held with her on March 1, 2018. Ms. Pickering agreed with Defence Counsel that the SPCA special constables had already laid two charges against her on February 28, 2018. Ms. Pickering also agreed with Defence Counsel that Ms. MacDonald was only informed of those charges at the very end of the interview on March 1, 2018, when special Const. Amini handed her the paperwork relating to the charges.

[53] Ms. Pickering agreed with Defence Counsel that the charges were laid against Ms. MacDonald before anyone at the SPCA had spoken to her. She added that it was not her decision to lay those charges before the interview, but the decision was probably made by the SPCA’s Chief Inspector, Joanne Landsberg. On further questioning on this point, Ms. Pickering said that the charge was laid by special Const. Amini, adding that he did not consult with her before doing so. Ms. Pickering stated that she did not know who made the decision to hold back informing Ms. MacDonald that she had already been charged with two **Animal Protection Act** offences prior to the SPCA’s interview with her.

[54] Defence Counsel posed further questions with respect to the timing of when the charges were laid against Ms. MacDonald. Initially, Ms. Pickering stated that they had received Dr. Graham’s report of the necropsy prior to the decision to

charge, but then added that the decision to charge was left open until the interview with Ms. MacDonald and the SPCA obtained her version of events.

[55] At that point, Defence Counsel asked the court clerk to retrieve the “original” Information which was laid with respect to these charges. The court clerk brought the “original” Information into the court and handed to Ms. Pickering for her to review. After reviewing that document, she confirmed that it had been sworn by special Const. Amini on February 28, 2018.

[56] Parenthetically, I should note here that the “replacement” Information presently before the Court was also sworn by special Const. Amini on March 21, 2018. The difference between the 2 Informations is that the second charge now alleges an offence contrary to section 21(2) of the **Animal Protection Act** [no owner of an animal shall permit the animal to be in distress]. The “original” Information had alleged an offence contrary to section 21(1) of that **Act** [which alleged that “no person shall cause an animal to be in distress.”]

[57] On further cross-examination during the *voir dire*, Ms. Pickering agreed that midway through the interview, she took over the questioning of Ms. MacDonald. Ms. Pickering maintained that even though she knew that Ms. MacDonald had already been charged with offences, the SPCA did not know what she might say and that could have resulted in no charges being laid. However, Ms. Pickering said that the SPCA had already received Dr. Graham’s necropsy report, but added that sometimes more investigation is required before laying the charge.

[58] With respect to her comment about further investigation, Defence Counsel pointed Ms. Pickering to the line in Dr. Graham’s report where she had suggested that more investigation may be required about the history and behaviour of this dog. Ms. Pickering agreed that Dr. Graham had made that comment in her report.

[59] Defence Counsel then questioned Ms. Pickering about other comments in that paragraph of Dr. Graham’s report. He confirmed that she had directly quoted the part of Dr. Graham’s report that it is not uncommon for some dogs to repeatedly ingest foreign bodies as normal behaviour [especially young, curious dogs], but pointed out that she had omitted to read the next sentence in Dr. Graham’s report which stated that “history and additional investigation may indicate this as a previous behaviour in this dog.” With respect to the comments about the normal behaviour of dogs, Ms. Pickering agreed with Defence Counsel that she had added her own personal comment that this was a common behaviour

in Labrador retrievers and that there was no reference to Labrador retrievers in Dr. Graham's report.

[60] On further questioning that Ms. Pickering appeared to be quoting directly from Dr. Graham's report during the interview with Ms. MacDonald, Defence Counsel also pointed out that, she had omitted to read the reference to reviewing the "history and additional investigation" and that she had also omitted reading the next sentence relating to "in this case, the dog is in thin body condition, but not emaciated and weight loss secondary to vomiting may have occurred." Ms. Pickering maintained that she did not omit those sentences "on purpose" when she continued to read the last sentence in that paragraph.

[61] Defence Counsel confirmed that Ms. Pickering was aware that the SPCA had received Dr. Graham's report on or about February 20, 2018. She recalled that there was a discussion in the office with respect to Dr. Graham's indication that the matter required "history and investigation." Ms. Pickering stated that the follow-up to Dr. Graham's report was to obtain the "history and investigation" during the interview with Ms. MacDonald.

[62] Defence Counsel then questioned whether Ms. Pickering was aware of anything having been done by the SPCA on this file between February 20, 2018 and February 28, 2018, when Ms. MacDonald was charged. Ms. Pickering stated that, at that time, she was a supervisor and directing many others and was not involved in this investigation. For that reason, she could not confirm whether anything was done by the SPCA in that timeframe.

[63] On further cross-examination with respect to whether any actions were taken between February 20, 2018 and February 28, 2018, Defence Counsel referred Ms. Pickering to the SPCA's Occurrence Report system which was essentially a running log containing officer's notes on specific files. Defence Counsel provided Ms. Pickering with a copy of the SPCA Occurrence Report and she confirmed that "there is no entry, but that does not mean to say it did not occur in our office." She agreed with Defence Counsel that looking at the notes in the log of the SPCA, there is no way she could tell what the SPCA did during that timeframe.

[64] During the audio/video interview of Ms. MacDonald, Ms. Pickering had stated that she was operating the video camera and that the program for the camera that she was using could only record in 30-minute segments. Defence Counsel pointed out that Ms. MacDonald's answer on page 40 of the transcript was cut off in mid-sentence and there is a reference in that transcript to video recording

concluded and then the video recording began again. Ms. Pickering agreed with Defence Counsel that when the recording resumed, Ms. MacDonald never got the opportunity to finish her previous answer because special Const. Pickering then started reading excerpts from the veterinarian's statement to Ms. MacDonald.

[65] Ms. Pickering agreed with Defence Counsel that, up to that point in the interview, Ms. MacDonald was answering questions and there was a back-and-forth exchange. When the video resumes, Ms. MacDonald's answers are provided while she is crying and by the end of the interview, Ms. Pickering agreed with Defence Counsel that Ms. MacDonald is bawling. Ms. Pickering believed that she was bawling because the necropsy pictures were still on the table in front of her, although Defence Counsel pointed out that the pictures had been shown to her earlier in the interview by special Const. Amini.

[66] In addition, Defence Counsel drew Ms. Pickering's attention to the fact that the first part of the video stopped at 10:32 AM and shortly thereafter, the interview began again and the video stopped at 10:44 AM. Defence Counsel pointed out that the next time the video resumes is at 10:59 AM and Ms. Pickering agreed that there was a 15 minute gap in the recording when the camera stopped recording for an unknown reason. Ms. Pickering could not recall what happened during that 15-minute gap, other than to recall that Ms. MacDonald then became "very upset."

[67] At that point of the trial and being late in the day, Defence Counsel indicated that he would need about an hour or so to complete his cross examination of special Const. Karen Pickering on the *voir dire* and to conduct his cross-examination on the *voir dire* of special Const Amini. As a result, the Court scheduled January 14 and 15, 2020 in order to conclude the cross examinations on the *voir dire*, hear submissions on the admissibility of Ms. MacDonald's "interview", Dr. Graham's evidence and potentially evidence called by the defence.

[68] When the trial resumed on January 14, 2020, the Crown Attorney advised that Mr. Amini would be available to testify on the *voir dire* in the afternoon given the 4-hour time difference between the Yukon and Halifax. The Crown Attorney also advised that Dr. Graham was present to testify that morning, but Ms. Pickering was not available to complete her testimony on the *voir dire*.

[69] The Crown Attorney also indicated that Ms. Pickering would not be available to testify until sometime after the 3rd week of April 2020. As a result, the Court canvassed tentative dates in May and June 2020 for the completion of Ms.

Pickering's testimony, for the submissions and decision of the Court on the *voir dire* as well as time for any defence evidence to be heard.

[70] However, at the conclusion of the Dr. Catherine Graham's testimony, on January 14, 2020, Defence Counsel advised the Court that they did not wish to continue the *voir dire* with respect to the voluntariness of the statements made by Ms. MacDonald during the March 1, 2018 interview at the SPCA office. Defence Counsel also advised the Court that he no longer opposed Ms. MacDonald's statement being tendered as part of the Crown's case and that he no longer contested the issue of whether that statement was freely and voluntarily made. Defence Counsel also confirmed that they would not be raising any **Charter** issues in relation to Ms. MacDonald's statement.

[71] Following the confirmation of those decisions by Defence Counsel, the Court noted that the documents filed during the *voir dire*, should be filed as exhibits in the trial. The "Cautioned Statement Form" signed by Ms. MacDonald at the outset of the interview on March 1, 2018 became Exhibit 7 and the USB recording of the "Cautioned Video Statement" of Sarah MacDonald by SPCA special Constables on March 1, 2018 became Exhibit 8. The Court also noted that the Crown had provided a transcript of that video statement as an "aide."

[72] Following those concessions by Defence Counsel, the Crown Attorney confirmed for the Court that no additional court dates would be needed for the conclusion of the cross-examination of Ms. Pickering on the *voir dire* or the cross-examination Mr. Amini on the *voir dire*. The Crown Attorney also confirmed that their evidence in this prosecution, which was being introduced in relation to the *voir dire* on the voluntariness of Ms. MacDonald's cautioned video statement, would now become part of the court record.

[73] Given the fact that the Crown had now tendered Ms. MacDonald's video statement as Exhibit 8 in the trial, the Crown Attorney confirmed that she tendered all of the exhibits and closed her case.

[74] Since the "Cautioned Video Statement" of Sarah MacDonald, which was recorded on March 1, 2018 had now become Exhibit 8 in the trial, it is important to briefly outline the most relevant evidence from that interview to the charges before the Court.

[75] Between pages 6 and 9 of the transcript, Ms. MacDonald provided a general overview of her dog's health stating that Brooklyn had started losing muscle tone

and may have had vision problems for the last year. She had slowed down and did not want to walk as far as she had in the past. The 15-year-old dog had lost weight and turned white, but continued to eat as she had always done, as a “grazer” with her food dish being refilled during the day. Ms. MacDonald confirmed that Brooklyn’s appetite was great until the very last week.

[76] Ms. MacDonald mentioned at pages 10-12 that her birthday was on December 9th and about 2 days earlier her mother was visiting from Prince Edward Island and told her that Brooklyn was “looking pretty rough” which Ms. MacDonald believed to be a reference to having lost some weight. She then mentioned that Brooklyn has had a “severe phobia of the vet” since a relatively young age, and that she had regularly taken her dog to a veterinarian, with the last appointment being about 18 to 24 months earlier. Brooklyn was also polycystic, with cysts all over her body, which started when she was between 6 and 8 years old. Ms. MacDonald stated that while she lived in Prince Edward Island, she took her dog to the veterinary school to have a cyst removed and it was confirmed that none of them were cancerous.

[77] On page 15 of the transcript, Ms. MacDonald mentioned that she took Brooklyn to get vaccinated on an annual basis and had taken her to a veterinarian on Prince Edward Island about 4 years ago, for a dental operation.

[78] At page 17 of the transcript, Ms. MacDonald was asked when she decided that Brooklyn was “really not doing well” and she said that it was around December 9th that she thought Brooklyn might fall asleep and die because she was starting to get “really skinny”, slept all the time and stopped wanting to stay outside. Ms. MacDonald said that her dog was old and she hoped that she would just close her eyes and go to sleep because she did not want to take a dog that was terrified of veterinarians to their office to be euthanized. She thought that would be a terrible way to end her life.

[79] At pages 18-19 of the transcript, Ms. MacDonald said that she called the vet on December 12, 2017 because her dog had not eaten in 2 days and just before stopping eating, she had thrown up a lot. She said that when her dog stopped eating and threw up, she Googled what that might mean on the Internet. At the same time, Brooklyn became very skinny and stopped wanting to go outside. On December 11th, she moved her dog’s bed, her toys, food and water to the basement so her children would not see Brooklyn in that condition. She noted that Brooklyn did not touch her food that day.



[80] Ms. MacDonald was shown a series of pictures of the remains of Brooklyn taken during the necropsy performed by Dr. Graham during the exchanges from pages 19 to 24 of the transcript. Ms. MacDonald said that, at the end, Brooklyn was “definitely thin and old” and that Brooklyn became that way within the last few days. After showing some additional pictures of the fabric that was ingested and stuck in Brooklyn’s lower intestine, Ms. MacDonald maintained that she had no idea about that because Brooklyn had been eating until the last few days, had been getting thin for a long time and was just “getting old.” She stated that Brooklyn had chewed on things in the past, but she never had to take her to a vet.

[81] On page 25 of the transcript, Ms. MacDonald was asked why she did not take Brooklyn to the vet when she saw that “sudden change” and loss of weight. She replied: “it wasn’t sudden. It wasn’t sudden till that last week.”

[82] There was a discussion about the cysts on Brooklyn from pages 25 to 30 of the transcript where Ms. MacDonald reiterated that Brooklyn had cysts all over her, with big ones on her side and stomach. Most of the cysts had not opened or were bleeding, but a couple had been scratched by Brooklyn’s long nails and started bleeding, so she cleaned and bandaged them. She gave the dog some baby aspirin for pain relief, but she also said that the dog had never acted any differently than normal to indicate that she was in pain.

[83] From pages 32 to 34 of the transcript, special Const. Pickering referred to specific portions, omitting others, of Dr. Catherine Graham’s report from the necropsy of Brooklyn. Ms. Pickering stated that Brooklyn basically died from swallowing 77 cm of fabric which resulted in an obstruction of the intestine, causing vomiting, anorexia because no food was eaten and weight loss. Ms. MacDonald acknowledged that Brooklyn may have vomited 2 or 3 times after her birthday which was on December 9th and added that she thought that this was an old dog, not being her normal self, sleeping all the time, who was near the end of her life. When it was suggested that this meant Brooklyn was “suffering,” Ms. MacDonald responded: “I did not equate it to suffering, I equated it to a little old lady being, like 100 years old. I really did not think she was suffering.”

[84] Between page 41 and 43 of the transcript, special Const. Pickering noted that Ms. MacDonald had described several signs of Brooklyn’s failing health and asked why she did not contact a veterinarian. Ms. MacDonald replied that she had been doing some research on the issue of what are the signs when a dog is dying, and

she thought Brooklyn's condition was because she was old. She added: "I did not know it was because she ate something."

[85] As the interview ended at pages 46 to 50 of the transcript, special Const. Pickering stated that Ms. MacDonald had "good intentions by googling" to see what the symptoms meant, but questioned again why she did not take the dog to the veterinary clinic. Ms. MacDonald said that when she saw the dog throwing up, and some of the other signs, she called the next morning because Brooklyn was not eating or drinking. She reiterated that she did not think Brooklyn was suffering in pain and thought that the weight loss was due to her old age.

[86] Dr. Catherine Graham was the last witness called in this trial. Dr. Graham is a Veterinary Pathologist employed by the Animal Health Laboratory of the Nova Scotia Department of Agriculture. She graduated as a Doctor of Veterinary Medicine degree in 1994 and obtained a Master's degree of Veterinary Science in Veterinary Pathology in 1999. Dr. Graham's Curriculum Vitae which outlined her work and teaching experience as well as her numerous publications in her field of expertise was filed as Exhibit 4.

[87] Defence Counsel did not contest Dr. Graham's qualifications to be qualified as an expert to provide opinion evidence in the area of veterinary pathology. Given the position of the defence, the Crown Attorney asked a few questions on the **R. v. Mohan**, 2015 SCC 23 *voir dire* which certainly addressed the issues of relevance, necessity, the absence of any exclusionary rule and that Dr. Graham was a properly qualified expert. In addition, Dr. Graham confirmed that she was aware of her duty to the court to give fair, objective and nonpartisan opinion evidence and that she was willing to do so.

[88] After being qualified as an expert, the Crown Attorney filed Dr. Graham's report in this matter which had been sent to the SPCA [Provincial] office on February 20, 2018 [Exhibit 5]. The report contained Dr. Graham's results of the necropsy of Ms. MacDonald's dog, which was done on February 1, 2018. During the necropsy, she had also taken a series of photographs during the post-mortem examination and the booklet of 13 photographs was filed as Exhibit 6.

[89] Dr. Graham stated that her examination of Ms. MacDonald's dog started by looking to see if there were any abnormal features of the carcass as a whole and then from there to look at the internal organs by examining all body systems, tissue samples and bodily fluids. The dog was a mature, spayed female, which was in "thin body condition" and on external examination her abdomen was sunken, and

the ribs were visible, with a bony prominence on the hips. She noted that there was some hair loss on the bottom of the abdomen and there were 3 raised masses on the dog's neck.

[90] After doing the external examination of the dog's remains, Dr. Graham proceeded to do an internal examination. She stated that the subcutaneous tissue in the abdomen still had fat stored around the abdominal organs. Although she mentioned that the dog had a "thin body condition," she mentioned that the weight of the dog's remains was 18.4 kg. Dr. Graham mentioned that the major finding on the internal examination was that there were 2 round raised masses on the dog spleen and another mass inside the stomach under its inner lining.

[91] Dr. Graham noted that the dog's stomach and small intestine were dilated, and the walls were thickened. When the dog's intestine was opened up, there was a foreign body which was 77 cm long extending from the gastroduodenal junction to the jejunum, in layman's terms meant from the back end of the stomach to the small intestine. The foreign body was a waffle knit, fabric object and Dr. Graham took a picture of it, once it was removed from the dog's intestine [Exhibit 6 at tab 13]. Dr. Graham stated that once the foreign object was taken out of the intestine, it appeared to be 45 to 50 cm in length. The foreign, fabric object had lodged in the intestine of the dog and caused the intestine to loop, crumple and fold on itself.

[92] Dr. Graham noted that the walls of the intestine were thick, red and wet in behind that foreign body with little content and no fecal material in the intestine towards the caudal, which is at the back end of the dog. Dr. Graham stated that when the intestine was opened, it was evident that it had folded or telescoped onto itself, which she referred to as intussusception [meaning a telescoping of the intestine].

[93] With respect to the dog's thin body condition, Dr. Graham said that she did not use a body score index because that was used more for clinical purposes and based upon an animal upright and standing. While the hips and ribs were clearly visible, she mentioned that in a normal, healthy body the ribs would not be visible and the hipbones not prominent or the abdomen sunken or touched up. However, she added that the dog's breed and its age can certainly have an impact on those factors as very old or young dogs have less fat and certain breeds have more prominent and visible bone structure.

[94] She also noted that there were several white skin masses on the dog under the skin, but she was not able to do any final diagnoses on them due to the fact that

the dog's remains had been frozen. Dr. Graham indicated that they might have been compatible with minor carcinoma but added that this type of carcinoma can spread to other tissues in the body of a dog but is not rapid growing. The treatment for those type of masses is surgical excision as no other treatment is appropriate.

[95] With respect to the foreign fabric object which became lodged in the dog's intestine, Dr. Graham stated that she could not estimate, with any confidence, when that had occurred, since the irritation and reaction could have lasted for several days. She also added that at the end of that foreign fabric body, the folding [as shown in photo #10 of Exhibit 6] might suggest that it was there for a longer period of time. Looking at photo #11, Dr. Graham stated that at the end of the intestine where the foreign body had moved, the tissue was pale and telescoped on itself and not able to straighten out, which suggested to her that it may have been folded in that location for between 5 to 7 days.

[96] Dr. Graham said that the foreign fabric body had been ingested through the esophagus and the stomach to get to that location in the intestine. In her opinion, the location and the changes in the intestine at that location, look like the foreign object had been in the intestine for several days. Dr. Graham stated that the only treatment for the ingestion of a foreign object is surgical removal when that object causes an obstruction. She added that ingestion does not always damage the intestine, but in this case, it had obstructed the flow of fluid in the intestine. In other words, the foreign object could have been vomited out of the mouth or possibly pass through the intestine, but surgery was the only option for its removal if the foreign object remained as an obstruction.

[97] In Dr. Graham's opinion, the clinical indications of a linear foreign body being present would result in the acute or sudden onset of vomiting which is quite often severe, accompanied by a reluctance to eat or anorexia [caused by not eating] depressed or lower activity levels and commonly abdominal pain with possibly diarrhea. If not corrected, the affected portion of the intestine may be damaged due to irritation or dilation which could lead to inflammation or perforation/rupture of the intestine. If the intestine became perforated, then intestinal fluids would be released into the abdomen and likely cause mortality or death of the dog.

[98] Dr. Graham also indicated that there is no clinical difference for treatment for the removal of a foreign object from the intestine based upon the age of the dog. She repeated that the only real option for removal of a foreign object from the intestine is a surgical intervention. However, the age of the animal does have a

significant impact on the survival rate as younger dogs have an 80 to 98% chance of survival.

[99] In Dr. Graham's "final report", which was filed as Exhibit 5, she agreed that she had mentioned at the bottom of page 2 that ingestion of unusual material is not uncommon in canines and some dogs will repeatedly ingest foreign bodies as a normal behaviour [especially young, curious dogs]. History and additional investigation may indicate this as a previous behaviour in this dog.

[100] In concluding her "final report" to the SPCA [Exhibit 5], Dr. Graham said that the other lesions were age-related or incidental in this case. They were benign tumors of smooth muscle which was not uncommon to find in adult canines at postmortem examination of the stomach and they are considered "incidental". She also added that the "splenic hematoma" is also not uncommon to find in adult canines and in this case, the masses are relatively small and have not resulted in blood loss. The mass in the liver, while quite large, was not clinically significant as it was a benign tumor.

[101] On cross examination, Dr. Graham stated that some dogs do express their pain, for example, by exhibiting abnormal posture, but it is not present in all dogs. She added that it is hard to tell if a dog shows pain. In this case, since she had not previously treated this dog, Dr. Graham agreed that she would not know how Brooklyn might express pain.

[102] She understood that Brooklyn was a part Pitbull dog and the normal age for them would be between 10 and 12 years. If Brooklyn was 15 or 16 years old, she would certainly be a very old, geriatric dog and based upon that, her health would be declining and it would be common for the dog to show muscle loss, muscle mass loss and weight loss.

[103] Dr. Graham added that older dogs generally look thinner and stated that, in her opinion, Brooklyn was not emaciated, she was just thin. She also stated that dogs generally slow down as they age, they eat less and lose weight and they just generally have some good and bad days. As a result, Dr. Graham stated that the pet's owner may also go back-and-forth on whether it's the "right time" to euthanize the dog, but it is not typically a veterinary emergency situation.

[104] Defence Counsel posed questions with respect to what a dog vomiting may indicate, and Dr. Graham stated that dogs will vomit because they have eaten something, for example, after eating grass. She opined that vomiting, on its own, is

not an emergency situation but persistent vomiting or diarrhea or loose stool which was not random may be an emergency situation. With respect to the hypothetical question of what her opinion would be if a dog had two episodes of vomiting in the same day, Dr. Graham stated that, in her opinion, she would not regard that as an emergency situation.

[105] With respect to the issue of Ms. MacDonald's dog being polycystic, Dr. Graham noted that there were masses on her neck on the stomach, the spleen and her liver, but they were not associated with any clinical disease. However, since Brooklyn was almost 16 years old, Dr. Graham was of the opinion that she would not have been a good candidate for surgery, the anesthetic would pose significant risks and recovery would be prolonged. Dr. Graham likened the situation to the risks involved in doing an abdominal surgery on a 95-year-old person.

[106] Defence Counsel posed questions with respect to the foreign, fabric body in the dog's intestine and Dr. Graham said that she could not say how long it had been there. It could have been from 2 to 3 days to more than a week. If the dog had thrown up for two or three days and then stopped eating, with weight loss that was evident, then it would probably be the time to call a veterinarian.

[107] Dr. Graham agreed that the photographs of the intestine were consistent with what it would look like if the fabric had been ingested 3 to 5 days earlier. She also agreed that it would be unlikely that an owner would know whether their dog had eaten a foreign object, unless that dog was known to have repeatedly ingested objects of that nature.

[108] With respect to the comments at the bottom of page 2 of her "final report" to the SPCA [Exhibit 5], Dr. Graham stated that she could not identify the specific cause of the ingestion of the foreign body. She said that ingestion of unusual materials is not uncommon in canines and that is why she mentioned the aspect of history and additional investigation to see if this was the previous behaviour of the dog. Dr. Graham confirmed that the SPCA never sent her any information about the history of the dog, nor was she advised of any further investigation that was done by the SPCA.

[109] Once again, Dr. Graham stated that she could not give any opinion as to when the dog ate the foreign, fabric object or provide any opinion based upon some of the symptoms that Brooklyn displayed, as they were a range of typical symptoms which could indicate changes resulting from eating something around 3 to 5 days earlier. As for the comments of a "thin body condition" on page 3 of her

report, Dr. Graham said that case studies vary, and weight loss can take place gradually over a few days or quickly with severe presentations.

[110] Dr. Graham opined that the owner would have to observe all the signs and that even if the dog had vomited a couple of times, that would not necessarily indicate a need for immediate clinical care, unless other indicia were also present. In Dr. Graham's opinion, even after three days like that, the decision to call a veterinarian to euthanize their dog would be an individual decision, if surgery was not a viable option. She added that it would not be necessary to call a veterinarian within three days if the dog was only vomiting as it would not be unreasonable to conclude that the dog was not systematically ill. Dr. Graham added that the owner would need to see a pattern of clinical signs, over time before deciding to get a veterinarian involved.

[111] Following Dr. Graham's testimony, the Crown Attorney closed her case. As it was the end of the day, the court adjourned to continue the trial on January 15, 2020. On January 15, 2020, Defence Counsel advised the Court that they would not be calling any additional witnesses in the trial. However, by agreement of counsel, a photograph of Brooklyn's playpen area in the basement of Ms. MacDonald's house which had been filed as an exhibit for identification and identified by Dr. Teigen Bond during her testimony, was filed as Exhibit 9 in the trial.

### **Analysis:**

[112] In the final analysis, when all of the evidence in this case is considered, in reality, this case is one which could theoretically arise in any household where the owners of a companion animal such as a cat or a dog face that gut-wrenching and emotional decision of whether it is the "right time" to contact a veterinarian to make arrangements to euthanize their companion animal.

[113] The Court can and will take judicial notice of the fact that the finality of these end-of-life decisions, made by the owner of their companion animal, are never easy and especially so where the companion animal has been treated like a member of the family for many years.

[114] In this case, Ms. MacDonald made that very difficult and emotional decision to contact a veterinarian on the morning of December 12, 2017 to come to her house to euthanize her elderly, geriatric, almost 16-year-old AmStaff mix dog, named Brooklyn that afternoon. It was at that point that Ms. MacDonald reached

the decision that it was the “right time” to humanely euthanize her long-time companion animal. It is evident from the evidence during the trial that, at that point in time, Ms. MacDonald believed that the quality of her elderly and geriatric dog’s life had recently and seriously been affected by a couple of episodes of vomiting for an unknown reason, not wanting to eat or only eating a little bit and weight loss, which she believed was due to the dog’s very advanced age.

[115] It is clear from the opinion provided by Dr. Catherine Graham, who was qualified as an expert in Veterinary Pathology, that it is highly unlikely that Ms. MacDonald knew that the symptoms displayed by her dog, Brooklyn, were caused by her dog having recently ingested a 77 cm long foreign fabric body which got lodged in and blocked the flow of fluids in her intestine. Indeed, Dr. Graham also opined that unless those symptoms persisted for days, there would not be an acute need for clinical care. Moreover, Dr. Graham also opined that abdominal surgery of an elderly dog was simply not a viable option given the significant risk of a negative and fatal outcome.

[116] The two charges before the Court under the **Animal Protection Act of Nova Scotia** are summary conviction proceedings under what has been referred to as regulatory and public welfare legislation which create offences of strict liability. Regulatory offences are generally strict liability offences and do not require the Crown to prove the *mens rea*: see **R. v. Sault Ste. Marie (City)**, [1978] 2 SCR 1299 and see : **La Souveraine, Compagnie d’ assurance générale v. Autorité des marchés financiers**. 2013 SCC 63 at para. 31.

[117] Public Welfare Offences involve a shift in emphasis from the protection of individual interests and the deterrence and punishment of acts involving moral fault to the protection of public and societal interests: Dickson J. In **R. v. Sault Ste. Marie** and Cory J. in **R. v. Wholesale Travel Group Inc.**, [1991] 3 SCR 154, 1991 Canlii 39 (SCC).

[118] Protection of the public is the underlying rationale for such offences which are enacted as incidental sanctions whose purpose is to enforce the performance of various duties, thereby safeguarding the general welfare of society: see **La Souveraine, Compagnie d’ assurance générale v. Autorité des marchés financiers**, supra, at para 32- 33.

[119] The legislation in question sets out the *actus reus* of the offence and once the *actus reus* has been proved beyond a reasonable doubt by the Crown, the defendant can avoid liability by showing that they acted with due diligence.



[120] Justice Wagner of the **Supreme Court of Canada** (as he then was) outlined the requirements of a due diligence defence in the **La Souveraine, Compagnie d'assurance générale v. Autorité des marchés financiers**, supra, at para.56:

“[56] The due diligence defence is available if the defendant reasonably believed in a mistaken set of facts that, if true, would have rendered his or her act or omission innocent. A defendant can also avoid liability by showing that he or she took all reasonable steps to avoid the particular event [Sault Ste. Marie at page 1326]. The defence of due diligence is based on an objective standard: it requires consideration of what a reasonable person would have done in similar circumstances.”

**Has the Crown established the *actus reus* of the offence that Ms. MacDonald “permitted” her dog to be “in distress” [section 21(2) Act], beyond a reasonable doubt?**

[121] In conducting the analysis of this critical question, it is important to briefly summarize the positions of the parties with respect to the *actus reus* of the two offences before the court. Although the Crown Attorney acknowledges that Ms. MacDonald did call a veterinarian to come to her house to euthanize her dog, Brooklyn, she submits that Ms. MacDonald did not come to that decision at the “right time” on December 12, 2017. The Crown Attorney submits that Ms. MacDonald made that decision “too late” by a minimum of one and possibly as many as three days based upon the veterinarians’ evidence.

[122] In those circumstances, the Crown Attorney submits that they have established the *actus reus* of the two **Animal Protection Act** offences - failing to provide adequate medical attention to an animal who was ill and permitting a dog to be in a state of distress - beyond a reasonable doubt. The essence of the Crown’s position is that Ms. MacDonald did not provide timely “adequate medical attention” and as a result “permitted” her dog Brooklyn to be in a state of distress for a minimum of one and as many as three days.

[123] It is the position of the Defence that the Crown has not established, beyond a reasonable doubt, that Ms. MacDonald committed the *actus reus* of either one of the two offences for which she was charged. First and foremost, he submits that Ms. MacDonald had no knowledge whatsoever of the fact that her dog had ingested the 77 cm long foreign, fabric body in the day or two or as many as 5 to 7 days before she was euthanized.

[124] In support of that position, Defence Counsel highlights the fact that Dr. Graham, who was qualified as an expert witness in veterinary pathology, agreed that it would have been highly unlikely for an owner to know that their dog had ingested a large foreign object which would block their intestine and that the blockage would then be the cause of certain clinical indications.

[125] Furthermore, Defence Counsel also draws the Court's attention to the fact that Dr. Graham's opinion was that none of the symptoms exhibited by Ms. MacDonald's elderly and geriatric dog were, on their own, acute and required immediate medical attention or had appeared to have persisted over a lengthy period of time. Moreover, he submits that it was abundantly clear from Dr. Graham's medical opinion that surgery was not a realistic option for an elderly and geriatric dog, given the low likelihood of survival. As a result, given the fact that surgery was not a realistic option, Defence Counsel submits that Ms. MacDonald made the only reasoned decision to humanely euthanize her long-time companion animal, at a reasonable time.

[126] In assessing the factual issue of whether the Crown has established the *actus reus* of the two offences before the Court beyond a reasonable doubt, it is evident from the evidence presented in court that the complaint and the case for the Crown was largely based upon the evidence and opinion of Dr. Bond. The Crown also relies on statements made by Ms. MacDonald during the "interview" conducted by special constables of the SPCA and the veterinary pathology report prepared by Dr. Graham.

[127] Since the Crown's case with respect to the *actus reus* is largely based upon Dr. Bond's evidence in relation to her complaint to the SPCA which was made a few hours after euthanizing Ms. MacDonald's elderly dog on December 12, 2017, it is important to carefully assess the credibility and reliability of her testimony.

[128] The weight to be accorded by the Court to the evidence of a witness usually requires an assessment of the credibility and reliability of the evidence of that witness. Credibility relates to the witness's veracity, whereas reliability concerns the accuracy of the witness's testimony. Both require careful assessment and it is evident that a witness may believe his or her evidence to be true, yet the evidence may not be reliable. For those reasons, when considering the testimony of a witness, the Court may accept all, some or none of the witness's testimony.

[129] I find that the evidence established that Dr. Bond prepared and filed her complaint with the SPCA within a few hours after euthanizing Ms. MacDonald's

dog at her house on December 12, 2017. At that time, Dr. Bond was an inexperienced veterinarian who had only about six months of experience as a licensed veterinarian.

[130] In addition, during a very thorough cross-examination conducted by Defence Counsel, Dr. Bond acknowledged that, before sending the complaint to the SPCA she had not checked any patient files at the clinic for Brooklyn, was not aware of any prior regular appointments for checkups and vaccinations or other medical interventions done by veterinarians for Brooklyn. Dr. Bond also agreed that she did not consult with any of the more experienced veterinarians in her clinic or elsewhere before forwarding her complaint to the SPCA, notwithstanding the fact that she was told that Brooklyn had been seen by veterinarians in Halifax and also on Prince Edward Island.

[131] In those circumstances, I find that Dr. Bond actually knew very little about any of Brooklyn's circumstances, other than seeing that she was an elderly dog, which meant to her that the dog was likely over 12 years old and that she appeared to be quite thin, with hip bones and ribs sticking out. However, I find that it was obvious from Dr. Bond's answers that her complaint to the SPCA was entirely based on a very brief meeting with the owner and her brief observations of the dog, for the purpose of euthanizing Brooklyn at Ms. MacDonald's house.

[132] Moreover, I find that during the thorough and effective cross-examination conducted by Defence Counsel, Dr. Bond agreed that her report to the SPCA made it sound like Ms. MacDonald's dog was kept in a small pen on a cold, hard basement floor with only a thin bedsheet, but she added that it was not her intention to do so. Despite making that statement, Dr. Bond agreed that Ms. MacDonald had told her that Brooklyn had a couple of Costco dog beds and that Brooklyn had only been moved to that location in the last couple of days because she did not want her young child to see Brooklyn in that condition.

[133] Dr. Bond was also questioned by Defence Counsel about her concerns with respect to Brooklyn's access to food and clean water. On direct examination, Dr. Bond had said that she saw that there were "generic kibbles" for the dog and added that she thought that the water looked "dirty". On cross examination, Defence Counsel drew Dr. Bond's attention to a copy of her complaint and after reading what she had written, she completely retracted her earlier comments. In fact, Dr. Bond agreed with Defence Counsel's suggestion that, now upon reflection and after seeing what she had written to the SPCA, she had "no concerns" with respect

to the dog's access to food and clean water. In those circumstances, I find that Brooklyn's condition on December 12, 2017 was not due to any lack of feeding by her owner.

[134] During the cross-examination, Dr. Bond also agreed with Defence Counsel that Ms. MacDonald had told her that taking Brooklyn to veterinary clinics had caused her dog a great deal of stress and anxiety in the past. Dr. Bond also agreed that Ms. MacDonald had also stated that she did not want Brooklyn to be stressed by having to go to a veterinary clinic to be euthanized. I find that it is evident from those remarks that Dr. Bond knew that Ms. MacDonald had contacted the clinic to arrange for a house call in order to alleviate her dog's anxiety of having to be taken to a clinic, after coming to the finality of the decision that it was the appropriate time to euthanize her long-time companion.

[135] In addition, during Dr. Bond's cross examination, she was asked whether Ms. MacDonald had actually paid an additional amount to avoid having to take her dog to the clinic and instead arranging to have her and the technician come to the house to euthanize her pet. Initially, Dr. Bond said that she was not sure of the fee structure at the clinic, but when challenged by Defence Counsel, she agreed that Ms. MacDonald had actually paid extra fees to have her come to the house with the veterinary technician to euthanize Brooklyn and then take the remains away to her clinic to arrange for cremation.

[136] Dr. Bond had stated, during her direct examination, that Ms. MacDonald had told her that Brooklyn was "not doing well" for a few days, but during cross-examination, she agreed with Defence Counsel that Ms. MacDonald had also told her that the dog's raspy breathing, had just started that morning.

[137] I note that much was made by the SPCA special constables during the "interview" with Ms. MacDonald and also apparently by Dr. Bond based upon Ms. MacDonald's statement that Brooklyn was "not doing well" in the days leading up to December 12, 2017. In my opinion, Ms. MacDonald's statement is far from any admission that her dog was "in distress" in the day or two leading up to the decision to call a veterinarian to make a house call for the purpose of euthanizing her dog.

[138] I certainly agree with Defence Counsel that a statement that a dog is "not doing well" is open to a great deal of interpretation. I find that this was simply a statement that, in recent days, Ms. MacDonald's dog's health had been declining relative to what it had been at its best, which is quite logical, considering the fact

that Brooklyn was an elderly and geriatric dog, who was almost 16 years old. In addition and unbeknownst to anyone, it was subsequently determined that the “not doing well” was also due to the fact that Brooklyn had ingested a 77 cm long foreign fabric object which had become lodged in and blocked her intestine.

[139] In her complaint report, Dr. Bond had advised the SPCA that, on arrival at Ms. MacDonald’s house, she saw an elderly dog in a pen on a cold hard concrete floor which looked “quite thin, hip bones and ribs sticking out.” On this point, Defence Counsel drew the Court’s attention to the fact that Ms. MacDonald had told the SPCA special constables during her interview that Brooklyn only became that way in the last few days and had been eating until then and she believed that the dog was just “getting old.” Again, I find this is certainly not an admission that Ms. MacDonald had “permitted” her dog to remain in state of “distress.”

[140] In addition, I find that Dr. Graham’s evidence essentially confirmed that Brooklyn’s appearance was not out of the ordinary for an elderly dog as she stated that older dogs generally look thinner. Dr. Graham also specifically noted that Brooklyn was not emaciated, she was just thin, and that weight loss could result from varying symptoms on a gradual basis over a few days or quickly with severe presentations. In those circumstances, I find that Dr. Graham’s opinion certainly supports Ms. MacDonald’s statements and confirms that Brooklyn’s condition was not due to a lack of feeding and/or abuse by her owner.

[141] In the final analysis, when I consider Dr. Bond’s evidence in its entirety, I find that the reliability of her testimony was almost entirely undermined during the thorough and very effective cross-examination conducted by Defence Counsel. In those circumstances, I find that Defence Counsel established that there were several significant statements made by Dr. Bond in her complaint to the SPCA which were based upon a complete lack of information of any of Brooklyn’s prior veterinary history of regular appointments, vaccinations or clinical procedures, as well as inaccurate statements or unconfirmed assumptions about her living conditions. In addition, I also find that Dr. Bond failed to consider and relate to the SPCA what Ms. MacDonald had explained as the rationale for the timing of her request to euthanize her elderly companion animal.

[142] In those circumstances, I find that it was crystal clear from the meticulous and effective cross-examination of Dr. Bond that the reliability and integrity of her complaint to the SPCA and her evidence in court, was seriously compromised by a number of factors. In addition, I find that Defence Counsel’s cross-examination of

Dr. Bond clearly established that this complaint was made by an inexperienced veterinarian who had not consulted with any of her more experienced colleagues prior to making and sending the complaint to the SPCA. Moreover, I find that Dr. Bond's complaint and for that matter her evidence in court confirmed that she had a complete lack of knowledge of any of Brooklyn's prior veterinary history, vaccinations or clinical interventions by veterinarians into provinces leading up to December 12, 2017.

[143] In addition, I find that Dr. Bond's complaint contained inaccurate statements or was based upon unconfirmed assumptions without considering what Ms. MacDonald had told her and/or relating that information to the SPCA. By doing so, I find that Dr. Bond's complaint had unreliably and inaccurately portrayed Brooklyn's situation in a very negative light – by being confined in a small pen on a cold, hard concrete floor with only a thin bedsheet and concerns about access to food and clean water, which led SPCA special constables to believe that, as Dr. Graham stated in her report, that this was a case where the “Vet suspected neglect and starvation.”

[144] Furthermore, based upon Dr. Bond's complaint, I find that special constable Chris Pickering of the SPCA considered the complaint as being one where the vet suspected “neglect and starvation” and for that reason, the SPCA asked for a necropsy to be performed. In his note requesting that necropsy, special Const. Chris Pickering pointed out that the SPCA's purpose for the request was “to make sure that the dog was not ill and its condition was due to the lack of feeding and/or abuse.” It is evident from the request for a necropsy that the SPCA considered this to be a potential case of neglect and starvation, based upon Dr. Bond's complaint.

[145] It would also appear that the SPCA's concern about potential abuse as the purpose of the necropsy may have been based upon Dr. Bond's comment in the complaint of the thin body condition and the dog's bones and ribs sticking out and finding the dog in a small pen on a cold, hard concrete floor in the basement, with only had a thin sheet to cover the floor. As mentioned previously, I have found that any notion of any ongoing abuse and/or neglect of Brooklyn by Ms. MacDonald was completely retracted by Dr. Bond when she was thoroughly challenged on almost every aspect of her complaint to the SPCA during her cross-examination. During the trial, notwithstanding the characterization of Brooklyn's situation in her complaint, Dr. Bond confirmed that there were “no concerns” with respect to Brooklyn's access to food or water.

[146] Moreover, when I consider the statements made by Ms. MacDonald during her “interview” with SPCA special constables, I find that there was absolutely no indication of anything remotely close to being considered the abuse or neglect of her almost 16-year-old companion animal who had lived in her house throughout her life. In fact, I find that Ms. MacDonald had stated, on several occasions, that her dog had dog beds in the living areas of the house, had always been provided with adequate food and water as well as regular exercise, had regular checkups and vaccinations with veterinarians in Nova Scotia and Prince Edward Island and had received timely medical treatment for specific issues. She had also said that the dog’s beds had been in the basement before the veterinarian arrived, but they had been recently soiled and were in the wash.

[147] The fact is, until Dr. Graham performed the necropsy, no one knew that Brooklyn had swallowed a 77 cm long foreign, fabric object which had obstructed her intestine. Moreover, even if Dr. Bond or Ms. MacDonald had suspected that ingesting a foreign object might have been the cause of the clinical indications, I seriously doubt that the foreign fabric object would have shown up on an x-ray to verify that it was there. Regardless of whether that inquiry had been made or whether an x-ray could have been taken to potentially show the location of the foreign object, it is also clear from Dr. Graham’s opinion that surgery to remove it was not a viable option for an elderly and geriatric dog.

[148] In addition, Dr. Graham had also indicated that the dog’s vomiting could be caused by various things such as the ingestion of foreign objects or grass and that vomiting does not, on its own, create an emergency or acute situation which would require immediate medical attention. Dr. Graham also agreed with Defence Counsel that 2 episodes of vomiting in the same day would not be regarded as a situation requiring immediate veterinary treatment. In fact, Dr. Graham also agreed that, without an owner seeing a pattern of clinical signs over a period of time, there would be no reason to conclude that the dog was systematically ill or the need to immediately make that emotional and final, personal decision as an owner, to euthanize their long-time companion pet.

[149] When I consider Dr. Graham’s opinion evidence, I find that she made it clear that it would be generally very hard for an owner to tell if a dog was showing any pain. She added that without having treated a dog in the past, it would be difficult for her to know how that dog might express pain. Given the fact that Dr. Graham acknowledged that dogs generally slow down as they age, eat less, lose weight and have some good days and some bad days, I found that her evidence

highlighted the realities of aging and that an owner would likely go through a matrix of factors going back-and-forth to decide whether it was the “right time” to euthanize their dog. Most importantly, I find that Dr. Graham’s opinion clearly established that those indicia of advanced aging are not typically a veterinary emergency which might require immediate medical attention.

[150] The offence contrary to subsection 21(2) of the **Animal Protection Act** states that no owner of an animal “shall permit the animal to be in distress.” Specifically for the purposes of subsection 21(2), the Legislature has included subsection 21(3) of the **Act**, which is a complete answer to the potential offence by providing that an owner of or person in charge of an animal “does not permit the animal to be in distress, if the owner or person in charge takes immediate appropriate steps to relieve the distress.”

[151] Since the concept of causing or permitting an animal to be in “distress” is the essence of a potential offence under section 21 of the **Animal Protection Act**, the Legislature has specifically defined when an animal is in “distress” in subsection 21(6) of the **Act**. Subsection 21(6) of the **Animal Protection Act** provides as follows:

“(6) For greater certainty for the purpose of this Section and Sections 23 to 33, an animal is in distress if the animal is deprived of adequate ventilation, space or veterinary care or is abused.”

[152] Although Ms. MacDonald was initially charged with causing an animal to be in distress contrary to subsection 21(1) of the **Animal Protection Act**, as I mentioned earlier, a “replacement” Information was laid and she was subsequently charged with the offence contrary to subsection 21(2) of the **Act** that she did “permit” an animal to be “in distress.”

[153] In determining whether the *actus reus* of this offence has been established by the Crown beyond a reasonable doubt, I agree with Defence Counsel that the Legislature’s use of the word “permit” brings into question a knowledge aspect to this strict liability offence. I find that a dictionary definition of the verb “permit” for example in the Canadian Oxford Dictionary, Oxford University Press Canada, 2001 defines the verb “permit” as to allow for something to occur or give an opportunity for something to occur.

[154] In the context of the *actus reus* of this regulatory offence contrary to subsection 21(2) of the **Act** that Ms. MacDonald “permitted” her dog to be in



“distress,” I find that, in order for Ms. MacDonald to have “permitted” something to occur, the Crown would have to establish, beyond a reasonable doubt, that she either knew or was wilfully blind to the fact that her dog was in “distress” AND that the “distress” of her elderly dog, was caused, pursuant to subsection 21(6) of the **Act**, by her actions or inaction which resulted in the dog being “deprived of adequate ventilation, space or veterinary care or is abused.”

[155] In other words, I find that the *actus reus* of the offence requires the Crown to establish, beyond reasonable doubt, that the defendant had knowledge of or was wilfully blind to a state of affairs that met the definition of “distress” in the **Act** AND that then, the defendant “permitted” it to occur or continue by not taking reasonable steps to provide the adequate care to alleviate the state of “distress.”

[156] Furthermore, I also find that the definition of “distress” in subsection 21(6) of the **Act** also brings into play an objective assessment of the defendant’s actions or inaction to determine if the animal was, in fact, deprived of “adequate ventilation, space or veterinary care or is abused.” In my opinion, the addition of the adjective “adequate” by the Legislature in the definition of “distress” establishes a minimum requirement that the owner or person responsible for an animal is expected to provide satisfactory, sufficient or reasonable measures to ensure that the animal is not left in “distress.”

[157] Given the fact that the Legislature has included the minimum requirement for an owner to provide “adequate” care and living conditions of an animal in the definition of “distress” in the **Act**, I find that, with respect to the *actus reus* of this offence, the Crown would also have to establish, beyond a reasonable doubt, that the owner of an animal had deprived the animal of satisfactory, sufficient or reasonable ventilation, space or veterinary care or abused the animal.

[158] However, since this as a strict liability offence, the Crown is not required to establish the *mens rea* or intention of the owner to deprive animal of adequate care, living conditions or the abuse of the animal. As with other strict liability offences, if the Crown has established all of the elements of the *actus reus* of the offence beyond a reasonable doubt, then the defendant may avoid liability by showing that he or she acted with due diligence by taking all reasonable steps that a reasonable person would have done in similar circumstances, to avoid the particular event.

[159] Given the fact that I have previously concluded that practically every aspect of Dr. Bond’s complaint to the SPCA and her evidence in court was vigorously challenged by Defence Counsel and that she essentially recanted all of her stated

“concerns,” I find that her evidence did not establish that Ms. MacDonald’s dog had been deprived of adequate ventilation, space, veterinary care or was, in any way, abused.

[160] Furthermore, I find that Dr. Graham’s opinion evidence clearly established that there were no issues of neglect or starvation.

[161] With respect to tumors and cysts, although Dr. Bond had made remarks about the tumors and cysts on Ms. MacDonald’s dog, I find that Dr. Graham’s opinion evidence clearly stated that none of the lesions or cysts were anything other than “age-related or incidental.” Moreover, Dr. Graham also opined that the tumors on the dog’s body were “benign” and not uncommon in adult canines and were not associated with clinical disease.

[162] In addition, when I consider Ms. MacDonald’s statements made during the “interview” conducted by the SPCA special constables, as I mentioned previously, there is absolutely no evidence or any admission of failing to provide adequate ventilation, exercise, space, veterinary care, food and water to Brooklyn or abuse of Brooklyn during the more than 15 years that the dog was with Ms. MacDonald.

[163] Quite to the contrary, I find that Ms. MacDonald actually provided more than merely “adequate” care and living conditions throughout Brooklyn’s life and given the evidence that, as a dog ages, there will be good days and bad days and after going through a matrix of relevant factors, Ms. MacDonald came to the very difficult and emotional decision that the only reasonable conclusion, in all the circumstances, was to contact a veterinarian to euthanize her companion animal.

[164] With respect to the charge contrary to section 21(2) of the **Act**, I find that it was evident from the evidence that no one knew until the necropsy of Ms. MacDonald’s dog that the clinical indications which appeared in the last day or two of Brooklyn’s life were due to the ingestion of a lengthy foreign fabric object which blocked her intestine. Given that lack of knowledge, I cannot conclude that the Crown has established the *actus reus* of this offence, beyond a reasonable doubt, that Ms. MacDonald had any knowledge of the ingestion of that foreign fabric object or was wilfully blind to that being the real reason for her dog’s clinical indications. In those circumstances, I find that she did not “permit” her dog to be in “distress.”

[165] Moreover, I have also concluded, based upon my review of the entirety of the evidence, that the Crown has not established, beyond a reasonable doubt that

Brooklyn was “in distress” as I have found that Ms. MacDonald did not deprive her dog of adequate ventilation, space or veterinary care, nor was there any evidence that Ms. MacDonald, in any way, abused her long-time companion pet. Quite to the contrary, I find that the evidence established that Ms. MacDonald had cared for her companion pet and attended to all of her dog’s needs, throughout Brooklyn’s life.

[166] In those circumstances, I find Ms. MacDonald not guilty of the charge of permitting an animal, in this case her dog, to be in distress contrary to section 21(2) of the **Animal Protection Act**.

**Has the Crown established the *actus reus* of the offence of failing to provide “adequate medical attention” to an animal when wounded or ill [section 22 (b) Act], beyond a reasonable doubt?**

[167] Ms. MacDonald was also charged with an offence contrary to subsection 22(b) of the **Animal Protection Act**, which alleged that she owned an animal, other than a farm animal, in this case a dog and that she failed, between December 6 and December 13, 2017, to provide her dog with adequate medical attention when the animal was wounded or ill. I find that the *actus reus* of this offence, requires the Crown to establish very similar circumstances to the requirements of the offence contrary to subsection 21(2) of the **Act**.

[168] Subsection 22(b) of the **Animal Protection Act** requires an owner of an animal, other than a farm animal, to provide the animal with “adequate medical attention when the animal is wounded or ill.” I find that the *actus reus* of this offence requires the Crown to establish, beyond a reasonable doubt, a time when the animal was wounded or became ill, which imports an issue of knowledge of those conditions or the owner’s wilful blindness to either of those conditions AND then also establish that the owner failed to provide “adequate medical attention.”

[169] In addition, I note that this offence, like the offence contrary to section 21(2) of the **Act**, also includes the qualifying adjective that the owner failed to provide “adequate” medical attention when he or she knew or ought to have known that the animal, in this case, a dog was wounded or ill. In my opinion, the legislative requirement to provide “adequate medical attention” does not create a legislative standard of perfection or a gold standard, but rather, it simply creates a minimum standard to provide satisfactory, sufficient or reasonable medical attention.

[170] Therefore, I find that the *actus reus* of this offence requires the Crown to establish, beyond a reasonable doubt, that Ms. MacDonald knew or was wilfully blind to a specific time or moment when her dog was wounded or ill AND thereafter, that she failed to provide her dog with “adequate medical attention” by not meeting the minimum requirement to provide satisfactory, sufficient or reasonable medical attention.

[171] Like the other regulatory offence before the court, this charge contrary to subsection 22(b) of the **Act** of failing to provide an animal with adequate medical attention when the animal is wounded or ill, is a strict liability offence. As such, the Crown is not required to prove that Ms. MacDonald had the *mens rea* or intention to commit the offence by failing to provide “adequate medical attention” when she knew or ought to have known that her dog was “wounded or ill.”

[172] In the event that the Court was satisfied that the Crown had established the *actus reus* of this offence beyond a reasonable doubt, it would be open to the defence to establish, on a balance of probabilities, that Ms. MacDonald had acted with due diligence by taking all reasonable steps that a reasonable person would have done in similar circumstances, to avoid the particular event.

[173] With respect to the *actus reus* of this offence, I find that the term “wounded” is not defined in the **Act**, however, a basic dictionary definition of that term would seem to incorporate some sort of hurt or injury of an overt or visible nature. Given the wording of this provision, I find that that the Crown would have to establish, beyond a reasonable doubt, that the animal was actually “wounded” but there does not appear to be a requirement that the “wound” was caused by an intentional act of violence inflicted by the owner or another person or another animal. There is no doubt that an animal could have been “wounded” accidentally by virtue of its own actions.

[174] In my opinion, the key factual issue with respect to the notion of a “wound” would be that, regardless of the manner in which it was caused, the “wound” would likely be evident to the owner. Having said that, I can certainly foresee a situation where a “wound” may not manifest itself overtly on an animal and that, in those circumstances, it would be very difficult for an owner to know that his or her animal had suffered an injury and was “wounded.” Further to that point, one could easily see that it would be very difficult for an owner to know that his or her animal has suffered an internal hurt or injury, especially where the owner was not aware of the incident during which the “wound” had occurred.

[175] In this case, I find that the evidence did not disclose that Brooklyn was suffering from any external, overt “wound” which required Ms. MacDonald to provide her with “adequate medical attention.” Certainly, there were internal and external lesions and cysts on the almost 16-year-old dog, but Dr. Graham was of the opinion that none of them were uncommon to find “incidentally in adult canines.” Moreover Dr. Graham opined that they were “age-related” and that none of those lesions or cysts were associated with clinical disease.

[176] As a result, when I consider all of the evidence, including Dr. Graham’s opinion, I find that Brooklyn was not suffering from any overt “wound” which required Ms. MacDonald, as the owner of her dog to reasonably take steps to provide “adequate medical attention.” Since I have concluded that Brooklyn was not “wounded” for the purposes of this section of the **Animal Protection Act**, I find that there can be no question of her failing to provide “adequate medical attention” in that circumstance.

[177] Therefore, the key question with respect to this charge is, in reality, whether Ms. MacDonald knew or ought to have known that Brooklyn was “ill” and if so, whether she failed to provide “adequate medical attention.” Once again, the concept of being “ill” is not defined in the **Animal Protection Act**, but common dictionary definitions of that word would include being “sick, not well, not healthy or ailing.” The dictionary definitions of being “ill” are often followed by a preposition such as “sick with” or “ailing from” to indicate that the person’s or animal’s state of ill health was due to some known cause or affliction.

[178] It is important to note here that there is no issue between the parties with respect to Ms. MacDonald providing “adequate medical attention” at any time for her dog on or before December 9, 2017. While Brooklyn had some good and bad times between December 9 and December 12, 2017, I find that Dr. Graham clearly opined that one or two episodes of vomiting, a lessened appetite for food and water and reduced interest in exercise in an almost 16-year-old dog, would not mean that the dog was systematically ill, which would require immediate veterinary attention. Dr. Graham added that an owner would have to see a clear pattern of clinical signs, over time, before deciding to get a veterinarian involved.

[179] When I consider Dr. Graham’s opinion evidence, it is also important to remember that neither Dr. Bond nor Ms. MacDonald knew that the clinical signs displayed by Brooklyn in the last day or two of her life were due to the ingestion of a 77 cm long, foreign fabric object which became lodged and did not pass through

her intestine. In those circumstances, I cannot find any moral fault in the fact that Ms. MacDonald took a short amount of time to work her way through the matrix of factors and ultimately reach that emotional, agonizing and final decision that the quality of her dog's life had reached the point where it was the "right time" to humanely euthanize her long-time companion animal.

[180] I have no doubt, based upon the entirety of the evidence in this trial, that Ms. MacDonald's dog was provided with "adequate medical attention" throughout her life. Based upon the opinion of Dr. Graham, the only "adequate medical attention" that could have been provided to Brooklyn, as an elderly and geriatric dog of almost 16 years, was to do what Ms. MacDonald had arranged, that is, to humanely euthanize her long-time companion animal. As Dr. Graham mentioned, Brooklyn's chances of surviving an operation to open her intestine and remove the foreign object were negligible, so that operation was certainly not a viable option.

[181] Moreover, I find that Ms. MacDonald's decision to have her elderly and geriatric dog euthanized in her house was also based on her notion of providing adequate medical attention by not creating the additional anxiety in her almost 16-year-old dog by forcing her to make one last visit to the veterinarian's clinic. Ms. MacDonald knew that Brooklyn was extremely anxious and upset each and every time they attended at a veterinarian's clinic and I find that she informed Dr. Bond of that anxiety and that is why she arranged for the veterinarian to come to her house. As I mentioned previously, Ms. MacDonald actually paid an additional amount to arrange for the veterinarian to come to her house to alleviate the anxiety that she knew Brooklyn would have, if she had to take her to the vet's office.

[182] As mentioned above, I find that the *actus reus* of this offence requires the Crown to establish that the defendant had knowledge of or was willfully blind as to the point in time when their dog became "ill." Based upon my review of the totality of the evidence, I find that Ms. MacDonald had absolutely no knowledge of when Brooklyn ingested the 77 cm long, foreign fabric object. Furthermore, based upon Dr. Graham's opinion that the foreign fabric object could have been ingested as many as 5 to 7 days before Brooklyn was euthanized and that she also noted that even a 16-year-old dog having good moments and bad moments towards the end of their life was not unusual, I cannot conclude that Ms. MacDonald failed to provide "adequate medical attention" for an unknown situation or "illness."

[183] In addition, when I consider the totality of the evidence and Dr. Graham's opinion, given all of the circumstances which unfolded, in as few as one day or as

many as five to seven days before Brooklyn was euthanized by a veterinarian, I find that there was no moral fault whatsoever in any of the actions of Ms. MacDonald. She had no knowledge of when the foreign fabric object was ingested by her dog and therefore, she would have had no reason to believe that the symptoms which the dog began to exhibit in the final couple of days, were anything other than normal “age-related” deterioration of a very elderly and geriatric dog.

[184] As a result, I have also concluded that there is absolutely no moral fault nor is there any question that she failed to provide “adequate medical attention” before making an emotional, agonizing, highly personal and final decision to euthanize her elderly dog, which was, at that point in time, the only reasonable medical intervention.

[185] Having come to those conclusions, I also find Ms. Sarah MacDonald not guilty of the charge of failing to provide adequate medical attention when her dog was wounded or ill, contrary to section 22(b) of the **Animal Protection Act**.

Theodore Tax, JPC