

**THE PROVINCIAL COURT OF MANITOBA**

**BETWEEN:**

**HER MAJESTY THE QUEEN,**

**- and -**

**MARLENE & WALTER HIEBERT,**

**Accused.**

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**Judgment delivered by The Honourable Judge  
Heather Pullan, in the Town of Steinbach, in Manitoba,  
this 20<sup>th</sup> day of March, 2003.**

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**Appearances:**

**S. Brennan, for the Crown.**

**M. Cook, for the Accused.**

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## **PART I: THE ALLEGATIONS**

1. Mr. and Mrs. Hiebert are charged as follows:

Count 1: Between the 19<sup>th</sup> day of July, 2000, both dates inclusive, at or near the town of Steinbach in the Province of Manitoba, did unlawfully contravene Section 25 of *The Animal Care Act*, C.C.S.M. c. A84 by operating a kennel without a licence issued by the director for that purpose and did thereby commit an offence contrary to Section 34(1) of *The Animal Care Act*.

Count 2: On the 19<sup>th</sup> day of July, 2000, at or near the town of Steinbach in the Province of Manitoba, being a person who had ownership, possession or control of an animal, did unlawfully contravene Section 2(1)(b) of *The Animal Care Act*, C.C.S.M. c. A84 by failing to provide an animal to wit: a St. Bernard dog, with adequate medical attention when the animal was ill, so as to significantly impair the animal's health or well being and did thereby commit an offence contrary to Section 34(1) of *The Animal Care Act*.

Count 3: Between the 19<sup>th</sup> day of July, 2000 and the 24<sup>th</sup> day of July, 2000, both dates inclusive, at or near the town of Steinbach, did unlawfully contravene Section 2(1)(b) of *The Animal Care Act*, C.C.S.M. c. A84 by failing to provide an animal to wit: a Poodle dog, with adequate medical attention when the animal was ill, so as to significantly impair the animal's health or well being and did thereby commit an offence contrary to Section 34(1) of *The Animal Care Act*.

Count 4: Between the 19<sup>th</sup> day of July, 2000 and the 24<sup>th</sup> day of July, 2000, both dates inclusive, at or near the town of Steinbach in the Province of Manitoba, did unlawfully contravene Section 26 of *The Animal Care Act*, C.C.S.M. c. A84, by operating a commercial breeding premise without a licence issued by the director for that purpose and did thereby commit an offence contrary to Section 34(1) of *The Animal Care Act*.

Count 5: Between the 19<sup>th</sup> day of July, 2000 and the 24<sup>th</sup> day of July, 2000, both dates inclusive, at or near the town of Steinbach in the Province of Manitoba, being a person who had ownership, possession or control of animals, did unlawfully contravene Section 2(1)(c) of *The Animal Care Act*, C.C.S.M. c. A84 by failing to provide the animals to wit: dogs, with reasonable protection from

injurious heat so as to significantly impair the health or well being of the animals and did thereby commit an offence contrary to Section 34(1) of *The Animal Care Act*.

Count 6: Between the 19<sup>th</sup> day of July, 2000 and the 24<sup>th</sup> day of July, 2000, both dates inclusive, at or near the town of Steinbach in the Province of Manitoba, being a person who had ownership, possession or control of animals, did unlawfully contravene Section 2(1)(d)(ii) of *The Animal Care Act*, C.C.S.M. c. A84 by confining the animals to wit: dogs, to an enclosure or area with unsanitary conditions so as to significantly impair the health or well being of the animals and did thereby commit an offence contrary to Section 34(1) of *The Animal Care Act*.

Count 7: Between the 19<sup>th</sup> day of July, 2000 and the 24<sup>th</sup> day of July, 2000, both dates inclusive, at or near the town of Steinbach in the Province of Manitoba, being a person who had ownership, possession or control of animals, did unlawfully contravene Section 2(1)(d)(iii) of *The Animal Care Act*, C.C.S.M. c. A84 by confining the animals to wit: dogs, to an enclosure or area with inadequate ventilation so as to significantly impair the health or well-being of the animals and did thereby commit an offence contrary to Section 34(1) of *The Animal Care Act*.

Mrs. Hiebert is solely charged with one further allegation:

Count 8: On or about the 19<sup>th</sup> day of July, 2000 at or near the town of Steinbach in the Province of Manitoba, did unlawfully contravene Section 12 of *The Animal Care Act*, C.C.S.M. c. A84 by making a false or misleading statement to an animal protection officer carrying out an authorized action under the Act and did thereby commit an offence contrary to Section 34(1) of *The Animal Care Act*.

2. Although the evidence and argument was presented in 8 days, those days actually extended over the course of a year. The first day of proceedings, October 22, 2001 did not result in the calling of evidence. Mr. Hiebert was delayed in his work as a trucker, unable to return from the United States. The case did proceed October 23 and 24. After that, however, arising from various medical challenges of the presiding judge, defence counsel, and scheduling issues, the actual final date the matter proceeded was almost a year after it began.

## **PART II: THE EVIDENCE**

### **1. Crown witnesses:**

**(a) Colleen Carlson**

3. Ms Carlson, presently employed by the Winnipeg Humane Society, is an Animal Protection Officer appointed under the *Animal Care Act*. On July 19, 2000, she attended Mr. and Mrs. Hiebert's residence near Steinbach, Manitoba with Dr. Terry Whiting, the Provincial Veterinarian for Manitoba, and Vicky Burns, the Director of the Humane Society. The trio attended Mrs. Hiebert's residence arising from information received that Mrs. Hiebert was operating without a licence. They were invited into the residence, reviewed Mrs. Hiebert's previously submitted licence application with her, and toured the premises.

4. In the course of the tour, they came upon a sick St. Bernard. Because of the emaciated condition of the dog, and a very swollen hind leg, Ms Carlson asked Mrs. Hiebert if the animal were under veterinary care.

5. Mrs. Hiebert responded "Yes, it is. It's under veterinary treatment. My vet, Dr. Dave Millar, is treating it. It's on medication and it's gaining weight."

6. They were so concerned about the St. Bernard's well-being, a seizure order was issued from Winnipeg, faxed to Steinbach. Dr. Whiting served the seizure order on Mrs. Hiebert. Ms Carlson began to shoot some video to give an overall view.

7. Ms Carlson later videoed a July 24, 2000 return to the property and seizure of a number of animals. She further taped some of the dogs arriving and being treated at the Humane Society. The videos were filed in the proceedings.

8. Her evidence included a description of green water in the water bowls, wire cages encrusted with fecal matter, and enclosures that she described as filthy. She characterized a pile of fecal matter as a "week's worth".

9. She described the video of the seizure of the St. Bernard on July 19, 2000. She said there was a lot of vaginal fluid flowing from the dog, fecal matter and urine. The dog was very wet on the underside. The dog could not walk on its own.

10. She noted a powerful smell of ammonia and fecal matter in the building on the property later described as "Area A" containing cages of wood and wire, stacked. She believed there were over 40 dogs in that building alone.

11. There were various breeds of dogs. This was not consistent with her experience with breeding operations. Ms Carlson's view was that breeders deal with one type of dog so they know the dog and history. She felt that

perhaps 2-3 would be acceptable. She thought there were a dozen different breeds in the Hiebert operation.

12. Her detailed evidence described her perception that generally the dogs on the Hiebert property were unkempt, ungroomed, and dirty. She described their living conditions as filthy, with fecal matter in the pens. Rain turned the fecal matter and mud to soup, coating the dogs underbellies with the wet mixture. She described the drinking water supply as adequate, but filthy. In the video, she noted one pail of water because she could see mold floating on the top of it.

13. On July 24, 2000, Ms Carlson again took a videotape of the seizure of 99 dogs on the property. She said that day was very hot, with overpowering smell and heat. It was roughly 30 degrees, and slightly hotter inside the building by around noon. She explained the process of cage labeling, and identifying the dogs taken from the cages. Ms Carlson observed that it had rained over the weekend, and observed a similar "soup mixture" as that observed on July 19, of mud, fecal matter, urine, and rain that the dogs were tromping through. She filmed a wheelbarrow outside one of the buildings full of fecal matter, surrounded by flies.

14. She saw a dog with a mass on one of its mammary glands, excreting fluid. She viewed the general condition of the poodle as filthy, unkempt, ungroomed, and opined that it should be seen by a vet.

15. As the party was getting ready to leave, Ms Carlson was called over to the bush. A wooden box, with a mesh bottom contained a mother and two pups. That pen had not been seen on the previous inspection. The mother was a very small dog, and the two pups were young. The mesh grate would permit the mother to walk on it comfortably, but the pup paws would go through. They would have to venture out onto the grate to eat, because of where the food was placed.

16. As the location of that pen was not known from the previous inspection, a wider search was commenced. Jason Prudhomme came across an outhouse, and decided to check it. Inside the unused outhouse he found a Vari-Kennel used to transport animals. Inside were a chihuahua with an injured leg, observed July 19. The other dog was a poodle. The outhouse contained debris. The temperature was 29-30 degrees, approaching noon.

17. The chihuahua with the damaged hind leg found in the outhouse required significant dental work. The other dog in the outhouse was described as a poodle with a hernia mass the size of a grapefruit. A Pomeranian had sores on its body and overgrown hind nails.

18. On cross-examination, Ms Carlson confirmed that on July 19, Mr. Hiebert did not arrive home while she was present. On July 24, she indicated that Mr. Hiebert may have been in the home. Mr. and Mrs. Hiebert did not come outside that day. Ms Carlson agreed that she saw large, commercial-sized bags of food. She did not witness any mice running around. She testified that in most cages there were vessels for water. As to water quality, Ms Carlson's observations were based on visual inspection. No samples were taken for analysis.

19. Ms Carlson explained that the reason for the July 19, 2000 visit to Mrs. Hiebert by Dr. Whiting, Vicky Burns, and Ms Carlson was because Mrs. Hiebert applied for a licence in November. The paperwork had been sent back to her as incomplete in November, and nothing had been heard from her since. Ms Burns had received a call of concern that the Hieberts were operating a kennel.

20. Ms Carlson was of the view that wooden and wire cages were more difficult to keep clean than concrete or stainless steel. Urine would absorb into the wood eventually, as would fecal matter. A solid surface is required to clean and sanitize.

21. On July 24, 2000, Ms Carlson estimated that she arrived at the Hiebert property with the others at 9:30-10:00 in the morning. She agreed she had no way of knowing what time it was that Mrs. Hiebert normally cleaned the area.

**(b) Dr. Terry Whiting**

22. Dr. Terry Whiting is currently employed as a regulatory veterinarian for Manitoba Agriculture. He is designated as an Animal Protection Officer under the *Animal Care Act*. He primarily functions as an enforcement officer, doing investigations, evaluation of animal conditions, their health and their environment. He makes recommendations to the Director on corrective action, and performs community mentoring. It is his view that most animal welfare problems can be corrected through guidance and community participation. Licences for kennels and breeding premises in Manitoba are issued through his office. Most licence inquiries come from members of the public newly aware that a licence is required. The Act was not enacted until 1997, and the regulations sometime later. Over the last two years, his office had been in receipt of inquiries from individuals who have been in the breeding or boarding business for some time, recognizing a licence is now required.

23. An information package goes out to licence applicants, including an application form, the Act, and regulations. A copy of the Canadian Veterinary

Medical Association Code for Kennel Operators, and further instructions on how to be in compliance with the Act are included.

24. In this case, in response to Mrs. Hiebert's application, Dr. Whiting was certain that the Act, regulations and Code of Practice would have gone out. There is a large stack of envelopes pre-stuffed in the office.

25. Dr. Whiting produced Exhibit 2, the site plan. His July 19, 2000 unscheduled inspection visit included Colleen Carlson from the Humane Society, and Vicky Burns. As a result of that visit, he filed a report with his supervisor explaining that there were approximately 99 dogs on the premise and that Dr. Whiting had no reason to believe they were in compliance with the Act.

26. Mrs. Hiebert had applied for a licence on November 25, 1999. She was notified in November 1999 that her application was incomplete in the area describing physical structure of the facilities. She was requested to resubmit. Dr. Whiting's observations, at the July 19, 2000 inspection, included a St. Bernard female suffering emaciation, and in a compromised condition. After contacting Dr. Preston by telephone, seizure documents were faxed, and Dr. Whiting took possession of the dog.

27. Mrs. Hiebert indicated that the dog had been treated with penicillin daily by injection. The dog was removed to Pembina Animal Hospital in Winnipeg for evaluation and treatment.

28. Dr. Whiting's opinion was that the facility was operating as a profit puppy production unit, according to the definition of a breeding premise under the *Animal Care Act*. He further concluded that the facility was a kennel under section 6.1 of the regulations, as there are more than 7 dogs on the premise. Although Mrs. Hiebert had applied for a licence, she had not been approved.

29. It was Dr. Whiting's conclusion that Mr. and Mrs. Hiebert were in contravention of section 25 of the *Animal Care Act*, which requires a licence. He further concluded that the outdoor facilities were not acceptable under any weather conditions. He was of the view that they could be hazardous to the smaller dogs in winter conditions. The physical structure precluded any effective vermin control. The lack of physical and human resources available to operate the facility, suggested inadequate exercise and socialization with people.

30. Although the present situation was not immediately critical or life threatening to the majority of the animals, the "severe lack of facilities and resources is highly dangerous to the long-term welfare of the animals in the care of Mrs. Hiebert".

31. Dr. Whiting's evidence expressed some general concerns about large breed dogs and St. Bernards in particular. Dogs with short muzzles are at increased challenge in hot weather because the panting mechanism results in ineffective cooling. Large breeds such as St. Bernards, with short muzzles, are at heightened risk because the larger body mass makes it much more difficult to cool through the skin. Complicating this further is the abundance of St. Bernard's hair coat.

32. The St. Bernard concerning Dr. Whiting was in a small out building with no ability to ventilate. The dog was confined in a small pen with no ability to get outside. In Dr. Whiting's opinion, the dog was suffering, even apart from that caused by the swollen leg. The confinement under hazardous thermal challenge could risk death. The situation was exacerbated by the pregnancy.

33. Dr. Whiting could not get the St. Bernard to stand up or remain standing. He was unable to evaluate whether the lameness was so severe that the animal could not walk or whether he was intimidating the animal and it would not walk.

34. In his opinion, the St. Bernard was not receiving adequate medical attention for the level of inflammation, or not responding to treatment, assuming treatment being delivered. He also thought the dog was very thin. To be thin in late gestation was life threatening because of pregnancy toxicosis.

35. The situation was explained to Mrs. Hiebert. She was agreeable to Dr. Whiting's seizure of the dog pursuant to Dr. Allan Preston's order. When asked if the dog were under medical attention for the leg, Mrs. Hiebert reported to Dr. Whiting that she believed the leg injury to be exercise related. She had sought advice from a veterinarian. The dog was being treated with penicillin by injection. The dog was delivered to Pembina Veterinary Clinic into the care of Dr. Van Middlesworth. Dr. Whiting placed him as a caregiver to the animal under the *Animal Care Act*.

36. On the July 24, 2000 seizure date of the other animals, Dr. Preston dealt with the Hieberts. Dr. Whiting dealt with the supplemental inspectors there to assist in the dogs' seizure. Dr. Whiting designed a system to identify the dogs and the cages that they came from.

37. The goal of the Code of Practice is to convert scientific knowledge into applicable standards for a lay person working in the industry. They are recommendations or best management practices, which a competent operator could achieve. The Code of Practice tries to obtain a balance between scientific animal production, and mechanically feasible application. In Dr. Whiting's words, Code of Practice recommendations are "generally accepted as correct and they are doable".

38. The Canadian Code of Practice prohibits housing dogs on wire, because of health risk from the cutting of feet, and behaviour risk. The behaviour risk results from a normal behaviour tendency not to defecate in the place where dogs live. It is difficult retraining dogs not to defecate in the house after being housed in wire.

39. The psychological damage results from programming already referred to. When dogs were developed in the wild they did not defecate in their den. There is an inbred need to leave the living space to go to the bathroom. For these reasons, wire housing is usually prohibited by the Code of Practice.

40. One of the structures was wire on both sides. There was a big group of trees behind it. For half of the day there was protection from direct sunlight. The other half of the day, the afternoon, there was not such protection. The tin roofed shack would heat up, and the heat radiated from the tin on the dogs.

41. The other problem was that dogs, to cool themselves, have to evaporate water. In order to do this, there must be water to evaporate. The ability for animals to adapt to heat stress is dependent on the availability of fresh water. If the fresh water is kicked over in a screen lined cage, there is no longer access to it. The structure does separate the dog from excrement. It is not sufficient housing for dogs under the Code. The structure identified as H4 had a metal roof with 50% wire flooring. There was wooden flooring with a place for the dogs to sleep. There was a similar wire floor for the dogs to defecate and urinate onto the ground. The challenge of this structure was the same as the previous one. The wire floor was not acceptable practice for raising dogs.

42. Dr. Whiting opined that this enclosure had less ability to ventilate because the back was fully wooded. There was no capacity to cross-ventilate the facility. In the afternoon, the dogs would be in full sun. This was a steel roof building. Little dogs can take the most heat stress because of small body mass and really short hair. The dogs may not enjoy this environment, but Dr. Whiting did not believe it to be life threatening because of the size of the dogs in it.

43. Dr. Whiting expressed significant concern with sanitation in dog raising. A dog passes worm eggs in feces. If feces are not removed from the premise, they can become re-infected with parasites. There are also bacterial diseases transmitted. There is generally a three day cycle for the worm egg passed on in manure to infect a dog. Cleaning kennels and dog holding facilities once a day is sufficient to break disease transmission cycle.

44. Structure D1 was a suspended box. There was a small black dog and puppies in it. It had wire flooring. The puppies were at considerable risk

because their feet are so small. They would go between all the grids. This is not a recognized method of housing a bitch and litter.

45. A good puppy facility has the ability for the mother to express her own behaviour. When she is done nursing the puppies she should be able to get away from them because that is a part of being a dog. A good nursery facility would be a concrete floored room with a nursing box. These standards are in the Code of Practice. Scientific research has demonstrated that dogs will work very hard to get away from living space to defecate.

46. Ventilation in the structure was a concern. When it was closed up, there was very little ventilation. There was no heat protection. Shade from the trees blocked the sunlight. This would not be a satisfactory way to keep a dog with respect to injurious heat. It does not meet any requirements in the Code at all. Dr. Whiting had never heard of or seen anyone housing dogs this way before. Dr. Whiting's view was that although not immediately life threatening, it would be very difficult to raise a well socialized puppy in this management system.

47. The areas identified as G1 and G2 contained some dogs on wire and some dogs in a pen. Dr. Whiting's view was that the whole principle of housing dogs underneath single sheet steel roofing is not acceptable because of the micro climate that develops when steel gets heated up. In Manitoba, the long summer days without clouds, and particularly where there is no tree cover protection is problematic.

48. The Code speaks to a maximum allowable temperature for an indoor facility of 27 degrees Celsius. This was not a direct violation of the Code because it was not an exclusively indoor facility. However, in Dr. Whiting's view, it was an unacceptable method to hold dogs. An unconfined dog can accommodate a lot of heat stress. A dog in a cage becomes the responsibility of the holder to accommodate the usual behaviour repertoire. The reason for such high standards in the Canadian Code of Practice for kennels is because the dog's natural tools to accommodate heat and cold stress are removed. It becomes, then, the responsibility of a human to accommodate for heat and cold stress, meaning air conditioning in the summer and supplemental heat in the winter. The current concern, because of summer conditions, was air conditioning and heat exposure.

49. Area A was, in Dr. Whiting's view, completely unventilated. When the roof heated, the heat would be directly conveyed into the air mass of the building. This is the building from which he removed the St. Bernard on July 19, 2000.

50. The building, in Dr. Whiting's opinion, was completely unacceptable for housing dogs. A building to house dogs required an impervious concrete floor

curb up the wall 6 or 7 inches so that the bottom part of the wall is continuous concrete for disinfection and cleaning. Dr. Whiting was of the view that this building was a very hazardous structure for holding dogs. The St. Bernards suffered directly because of it.

51. Dr. Whiting discussed pen A1, he felt was typical of the pens in the building. The wall is wood clapboard. A minimum standard for dog kennels should be steel clad, with a curb of concrete. It is not possible to clean and sanitize this type of building material. There were 27 pens such as this in Building A. The pens were urine and manure contaminated. Dr. Whiting was unable to imagine how they actually could be cleaned. He did not take volume measurements of the feces within the pens, but it was present in every pen. He said "I saw one smooth dog fece (sic) patty across the whole bottom of the pen. So whether it was one inch thick or five inches thick . . .".

52. In a normal kennel, there would be one layer of dogs and a door in the back allowing exit from living space to an outdoor run for urination and defecation in the run. The whole building did not meet the standard allowing cleaning and disinfection.

53. Dr. Whiting observed that when he walked around the room, he was on a wood platform. Dogs were on a similar platform, in a mixture of straw, manure, and soil. He could not detect a hard surface on the bottom of the floor. He assumed it to be a dirt floor building because he could not detect any end to the flooring.

54. In the middle of the room, when the door was open, he detected some ventilation. When he stepped into the pens that were in the back in the corner, there was no ventilation at all especially down where the dogs were.

55. As to the pen containing the St. Bernard, it was so small there was just enough room for the dog to turn around. When the dog defecated, he stepped in it every time.

56. Dr. Whiting thought that one could scrape up some of the manure material and add more straw, but one could not clean the pen by removing fecal material from the environment. The dogs had no method to exit the building, so they had no ability to manifest natural behaviour. They could not adapt to heat other than to lay there and pant.

57. In Dr. Whiting's opinion, this facility was the cause of injurious heat to large breed dogs. In the northwest corner of the building, there were two white poodle type dogs. The St. Bernard female was removed from the building on July 19, 2000.

58. In other pens in the building, there were other dogs in pretty fair condition compared to the St. Bernards and poodles. Some dogs had been recently trimmed. That is one method of assisting dogs in controlling heat stress. The pen was fairly dry. The dogs were not particularly soiled, except up to the mid front leg.

59. A significant risk, if dogs are not kept unmatted, is fly strike. Blue bottle flies lay their eggs in the hair coat, and the maggots crawl underneath the dog's skin causing a severe toxic reaction.

60. It was Dr. Whiting's understanding of the human resource situation in this operation that there was insufficient person power to walk the dogs twice a day. There were 100 dogs, and one manager. The dogs ate, slept and defecated in the little spaces. That is what he understood, and that was consistent with the other information.

61. There were piles of garbage leaning up against the cages. In Dr. Whiting's opinion, this was unacceptable management practice for dog kennels as in any area of agriculture. Garbage must be removed from the building.

62. In good management practice, a lot of emphasis is placed on lighting and visibility. Without lighting, you cannot inspect the dogs or monitor their condition. In this facility, without a flashlight, you could not visually inspect any of the dogs. In Dr. Whiting's opinion, it fell way below the accepted standard for animal husbandry. The dogs were difficult to inspect in the building because it was so dark.

63. Area C, outdoor kennels for dogs, contained kennels made from older or used wood material. There was no concrete floor. There was some protection from the elements at the front varying with the individual kennel. A lot of liquid pooling was in the front of the cages. There was no protection from direct sunlight, but there was large air volume. Dr. Whiting did not believe the dogs in this environment were particularly heat stressed, but there was no ability to separate the dog from fecal material. The dog defecated somewhere in the run and then, to get exercise, ran back and forth where he had defecated and urinated.

64. Dr. Whiting noted that the only way to enter pens in this area to feed and water the dogs is through a door. Whenever one came up to the pen, the dogs ran through "slurry", a term for manure, water and soil mixed together.

65. Most of the water pails had water in them. The pails could not be removed for cleaning and disinfection.

66. In an outhouse, on the property, two small dogs were found in a vari-case, a plastic carrying case with just enough space for two dogs to lie down. In Dr. Whiting's opinion, this was "reckless endangerment of these dogs". Dr. Whiting had seen these dogs on July 19, 2000. They had previously been housed in the G2 area. Both were debilitated, one with a permanent leg injury and the other, the poodle, with the groin mass.

67. The July 24th animal seizure could have taken 10 hours. It was, in fact, done in 3 1/2. Had these dogs not been found, they would have been left in the outhouse for an undetermined amount of time in the midday heat in July in Manitoba. There was no ventilation in the structure. This was, according to Dr. Whiting's evidence, the same as leaving your dogs in the car. The door was closed when the dogs were found. They were not young or perfectly healthy dogs to start with.

68. In Dr. Whiting's opinion, the poodle with the mass had an inguinal hernia. Dogs can live for many years with such hernias, as can people. There is a medical risk of strangulation. It should be surgically corrected because a dog can die of this condition at any time, even though seeming completely healthy and not in pain. The mass can also drag on the ground and get skin abrasions or punctured. This dog died from strangulation of this hernia three or four days after seizure.

69. Dr. Whiting's evaluation was that no animal on the premise met the sanitation requirements except some dogs held on wire. Dogs held on wire are prohibited by the Code. There may be an exception for two or three dogs that were pets in the house. He did not believe any of the dogs met the standard of once a day fecal removal.

70. In terms of ventilation and protection from heat, the best situations were marginal. Those best situations for ventilation were the large dogs in Area C.

71. Dr. Whiting believed that the ventilation in Area A for large breed dogs was the cause of death or severe disability in the St. Bernards that were housed there. He believed it was a lack of heat, or lack of protection from heat and improper ventilation which was the major contributor to the poor condition of the dogs.

72. The St. Bernard seized and delivered to Dr. Van Middlesworth was the subject of an authorization to euthanize because of its condition. Dr. Van Middlesworth saved the dog. Another pregnant St. Bernard in the adjoining pen was near whelping. That dog died, but Dr. Whiting did not think it was neglect on the caregiver's part. The dog was in critical condition at the time it was placed.

73. Of the dogs placed at the Humane Society, a total of four dogs died. The grey poodle with the hernia died. A female Dachshund died of pyometra, an infection of the uterus. A Great Dane also died prior to being released. All St. Bernards aborted their fetuses.

74. Interaction with Walter Hiebert was limited. He was present on the July 24, 2000 when the dogs were seized. Dr. Whiting was in contact with Mr. Hiebert when he returned the house pet dogs arising from a ministerial order.

75. In dog management, one of the primary objectives is to allow a dog to separate from their waste material, so the primary use of bedding is for warmth. In animal husbandry, another purpose of bedding is to absorb urine, but not in dogs. Dogs should not live in the same environment as their urine and manure.

76. On cross-examination, Dr. Whiting confirmed that at no time was Mrs. Hiebert's application for a commercial breeder's licence refused. The application was incomplete, Dr. Whiting had no knowledge of a rejection letter being sent. The \$100.00 fee was never refunded.

77. Dr. Whiting did not disagree that he may have said, on July 19<sup>th</sup>, 2000, that from his examination some of the dogs appeared healthy. He said many of the dogs appeared healthy at the time of his first inspection. The dogs, in general, were healthy. There were specific dogs that were unhealthy. In general, they were getting fed and watered.

78. As to the presence of Vicki Burns, the Director of the Winnipeg Humane Society, on the July 19<sup>th</sup> inspection, she is someone who was not an animal protection officer. Dr. Whiting's office had no relationship with the Winnipeg Humane Society, and Dr. Whiting did not know why Ms Burns was included in his instructions for inspection that date. He has never had her accompany him before or since during his normal duties. Dr. Whiting agreed that Ms Vicki Burns does not personally like the Hieberts. That opinion is supported by all the verbal contact he has had with her since this incident.

79. Notwithstanding his mentoring philosophy, Dr. Whiting could not imagine mentoring resulting in sufficient change to bring the facility into compliance in a reasonable period of time. Dr. Whiting's opinion was that they did not have the resources or commitment to bring the facility into compliance within thirty days, rendering mentoring unrealistic. On July 19<sup>th</sup>, Dr. Whiting observed a large inventory of rooster flooring, which Mrs. Hiebert indicated it was their intention to put down. She indicated that the rooster flooring was designated for the little dogs in the wire cages.

80. When the dogs that had been pets in the home were returned to the Hieberts, both Mr. and Mrs. Hiebert were present. Dr. Whiting apologized to

them for returning the dogs in a different condition from which they were seized. He brought back five dogs. He apologized that they smelled. He further apologized for their surgical alteration.

81. Dr. Whiting had recently personally filed a complaint with the Veterinary Services Board controlling veterinary conduct in Manitoba, because the Hiebert dogs were spayed without their consent. He had a discussion with the Hiebarts about making a formal complaint to that body. Dr. Whiting is vice-president of the Veterinary Medical Association. To surgically alter a dog without an owner's consent, Dr. Whiting opined, is unprofessional conduct under the *Manitoba Veterinary Medical Act*.

82. Dr. Whiting had no concerns about the dogs not being fed. The quality of the water was a problem, but there was water. There was apparently no schedule for cleaning and disinfecting dishes.

83. On July 19<sup>th</sup>, 2000, Dr. Whiting's impression was that the St. Bernard seized on that day needed critical care. He did not diagnose the actual cause of that need. Mrs. Hiebert indicated she had been in touch with Dr. Dave Millar regarding the dog. Dr. Whiting's information from Dr. Dave Millar was that he provided general mentorship, guidance, but not necessarily clinical veterinary client/patient relationship. Dr. Millar is a dog breeder himself. The dog breeding community is a community like any other. Dr. Whiting spoke with Dr. Millar in his office. It was Dr. Whiting's belief that Dr. Millar had spoken to Mrs. Hiebert about the dog, but had not seen the dog.

84. Dr. Whiting's primary concern was ventilation and temperature stress. Dr. Whiting said that there was a sanitation problem with the large breed dogs in "Area C", and a heat and ventilation problem with all dogs in "Building A".

85. Dr. Whiting saw no indication of fly strike. He perceived urine scald on the two St. Bernards in "Barn A".

86. When the dogs were seized July 24<sup>th</sup>, 2000, some had wet underbellies. It had rained July 23<sup>rd</sup>, 2000. It was Dr. Whiting's opinion that in a well constructed kennel there is no wet area for a dog to run through. In these kennels, there was pool water, urine, and feces in the front of the pens.

87. Dr. Whiting had never seen dogs on wire in his previous experience with dog breeding facilities.

**(c) Jason Prudhomme**

88. Jason Prudhomme works for Prairie Animal Control. He was recruited to assist with handling some of the larger dogs at the Hiebert premise on July

24<sup>th</sup>. His role was to assist with removing the larger dogs from the kennels and putting them in kennels on a trailer for transport.

89. He testified that the enclosures containing the dogs were mostly feces and mud. It appeared to him that there were no dry places for most of the dogs to lie down. There was a powerful fecal odour. The overgrown weeds made the premise look unkempt.

90. A lot of the dogs appeared to him to be underweight. Some of them had open sores. The dogs behaved as if they were happy to be free when removed from the kennel.

91. In "Area C", it was Mr. Prudhomme's observation that there were twenty large breed dogs including Rottweilers, Great Pyrenees, St. Bernards, and a Great Dane.

92. In addition to handling the large dogs, Mr. Prudhomme was involved in a property search to determine if there were any more dogs other than the ones originally discovered. He walked around the property. In an outhouse, he found a carry all kennel piled up on a bunch of debris inside. The kennel was facing the back of the outhouse, so he couldn't see in.

93. When he picked it up, he felt it to be heavy. He turned it around and found a small chihuahua and poodle in it.

94. The weather conditions were very hot and humid, around 30 C. The outhouse appeared not to have been used for a long time. There was no ventilation that he could see.

95. On cross-examination, Mr. Prudhomme indicated that he could not recall how many dogs had sores, which dogs had sores, or how many sores had been on one particular dog. He agreed that the mere fact that a dog had a sore did not mean that it was neglected.

96. It appeared to him that the two dogs in the outhouse had been hidden away. Mr. Prudhomme agreed that he did not know the ideal weight for a dog, and that it was possible that the dogs he saw may have been at their target weight for age.

97. On re-examination by Crown counsel, Mr. Prudhomme indicated that he arrived at the Hiebert premise at 10:00 a.m. July 24<sup>th</sup>. He left sometime after noon. He found the dogs in the outhouse at about 11:30 a.m.

(d) **Dana Matthews**

98. Dana Matthews has been employed by the Winnipeg Humane Society since March 1998. During her tenure with the Humane Society, she has enjoyed a wide range of responsibilities. At present, she is the Acting Shelter Manager. She came to be at the Hiebert premise on July 24<sup>th</sup>, through her employment with the Winnipeg Humane Society.

99. When she entered "Building B", she could not see. Little light was coming through the door. She could not stay in there for very long from the urine smell and the heat. She observed the long haired dogs to be dirty and badly matted. The majority of them slinked to the back of their cages when approached. In Ms Matthews opinion, a matted coat caused more heat problems in moisture. There also could be problems with maggots between the skin and the hair.

100. If the mats are bad enough, they can actually cause the fur to tear away from the skin causing sores. The dogs can't groom themselves properly, so they can't go to the bathroom properly.

101. Some of the dogs were so badly matted that she could not find where their ears were. The enclosures were not dog cages. It was Ms Matthews view that they were more like chicken or rabbit cages. They were wire mesh, not suitable for a dog to be living on. Large feces did not pass through the grating so the dogs stepped on it. The dogs had no where to go to get away from the discomfort of the grating.

102. The large animal enclosures, Ms Matthews observed to be mud puddles. A male Rottweiler came forward, and the water on the ground was well past his ankles in many spots which can cause problems with the feet. In the "H 4" and "H 3" areas a pair of miniature pinschers, with very short hair, had no visible means of getting away from the elements if it rained. In enclosure "G 1" and "G 2", containing poodle cross dogs, the mud bottom was a big puddle. There was a small dog house like structure at one end, with boards along the floor. The boards, however, had holes and cracks in them. There was a cut down 5 gallon pail with some kind of liquid which did not look like water. There was no food to be seen. The dogs in that enclosure were particularly fearful, and filthy. Ms Matthews could not determine what colour they were.

103. Back at the Humane Society, the dogs seized from the Hiebert's property were all assessed and identified. A big older male Rottweiler was literally crawling with lice. He had a number of skin lesions from scratching.

104. His female mate had something obviously wrong with her eye. It did not appear to be an old problem. Some of the Shih Tzus, a long-haired breed, were so matted on the back end that there were growths in the teat area. The

longer haired breeds had irritated eyes, and some “pretty heavy eye infections”.

105. It was Ms Matthews’ impression that the dogs were very fearful. Nothing that the workers processing the dogs said or did could make some of the dogs comfortable. After the dogs were all identified, catalogued, and caged, they were entered into the computer and files created on each dog.

106. On cross-examination, Ms Matthews testified that the white protective suit she had been issued, was pulled down to the waist during the course of her work at the Hiebert property, because “it was more than warm. We were actually sweating profusely under the suits so that was why they were taken down”. She did not agree that in 90% of the cages there was a food bowl. She did not agree that in 90% of the cages there was a water bowl. She estimated that 65% of the cages had a water bowl, and 45% had a food dish. As to water quality, Ms Matthews opined that the pond on her father’s property had cleaner water than that found in the food dishes.

107. As to the wire in the cages, Ms Matthews testified that she had to pull two chihuahua toes out of the wire, when that chihuahua was stuck.

**(e) Dr. Richard Van Middlesworth**

108. Dr. Van Middlesworth has been a veterinarian for over 25 years. He testified with respect to the St. Bernard seized by Dr. Whiting from the Hiebert property.

109. The dog arrived at his clinic on July 19, 2000. It was carried in on a stretcher, because it could not walk. He described the dog’s condition as “extremely emaciated”. The dog was unable to walk because one hind leg was swollen to over twice the normal size.

110. The dog was soiled with urine, fecal matter, and discharge from the vulva. Portions of the soiled areas were covered in maggots, crawling in the skin and starting to erode into the tissue itself.

111. The dog was very pale, thin, and weighed only 84 or 85 pounds. Most St. Bernard’s have a weight between 110-160 pounds. He characterized the dog as “malnourished”.

112. The maggots numbered in the hundreds. He could see a “wave of motion from the maggots crawling on this part of the dog”. The maggots were restricted to the dirty areas of the dog. On the clean area, there were no maggots.

113. An x-ray of the leg disclosed no fracture, which was a surprise. It was only on x-ray of the abdomen that Dr. Van Middlesworth discovered the dog to be pregnant. There was no external suggestion of pregnancy. Most animals would be quite large. This dog had 12 fetuses in the uterus. That many puppies should be easily recognizable as pregnancy. For the puppies to show up on x-ray, they had to be at least 42 days. Term is 61-63 days, so the dog should have been noticeably pregnant.

114. Discussions were had with Dr. Whiting. Dr. Whiting authorized euthanasia if that were to be appropriate.

115. The blood test disclosed an extremely high white blood cell count, suggestive of severe infection. The dog was offered food and water which it devoured ravenously. Food and water were frequently offered in small amounts so the dog was not overloaded. At 8:45 July 20, 2000, the dog aborted the first of its puppies. The puppy was sent to the University for analysis. Food was offered frequently through the day, and the dog continued to eat and drink well until about four in the afternoon when she had had enough. She was continuing to discharge from the vulva. Her medication was changed. She was continually cleaned, because of the ongoing soiling resulting from her medical condition.

116. The St. Bernard continued to improve, and was noted to stand on July 21. When she first came in, she was not able to do that.

117. Dr. Van Middlesworth noted that in pregnancy, a dog requires twice the normal volume of food just to feed the puppies as well as feed themselves. In the case where inadequate nutrition is a factor, body weight starts to decline. The mother will try to feed the puppies before herself in an effort to provide live puppies. In the condition which she was admitted to Dr. Van Middlesworth's clinic, she should have been in much better condition, much larger. As the St. Bernard continued to improve, medication was altered to oral antibiotics rather than injectable because she was eating well and it was less costly. By July 26<sup>th</sup>, she had gained two pounds, the discharge was reducing, her temperature was normal, pulse was normal, and her respiration was slightly high. There were no more puppies visible in the abdomen. She had aborted all 12.

118. By July 27<sup>th</sup>, the dog had come a long way. She had recovered to the point of discharge. Members of the St. Bernard Rescue Association of Manitoba took charge of her.

119. The post-mortem report on the first aborted puppy noted several bacteria present. Normally, in the fetal lung tissue there should not be any bacteria at all. There was probably infection introduced into the uterus at the time of breeding. This kind of condition can be prevented by having both dogs clean to start with when they are bred. Having tests done on both the male

and the female prior to breeding to ensure the absence of infection is also helpful.

120. Dr. Van Middlesworth estimated the value of a St. Bernard breeder to the owner to be well over \$1,000.00. Puppies from the breed would have to be worth anywhere from \$500.00-\$1,000.00, depending on what is happening in the marketplace. Most pure bred puppies sell for \$500.00 or more. As a large breed, offspring of this animal would sell for more than a smaller breed.

121. The 12 puppies, then, had the potential market value of \$6,000.00. If the dog had been properly looked after, and had there been 12 live puppies as opposed to 12 dead ones, there would have been a significant impact on the financial status of the business.

122. Instead, there is an expensive bill and no puppies. If there had been a healthy mother, and a healthy litter, the dog could have been used for breeding over and over, once a year for up to five years. It does not make sense, according to Dr. Van Middlesworth, not to have good veterinary care to produce a good healthy litter, and, in the long run, maintain good business.

123. All of the problems together created a condition where the St. Bernard, if she had not been seen, would probably have died in the next couple of days. She was so ill, according to Dr. Van Middlesworth, that it was hard not to make the decision to put her to sleep. He just decided to wait to give her one chance. Had she not improved, and showed no interest in eating, he would have put her to sleep the following day. She had been in such bad shape when she was picked up, that both Dr. Van Middlesworth and Dr. Whiting were considering euthanasia.

124. Earlier veterinary treatment could have prevented a lot of this. Just having a veterinarian look at the nutritional status and see what the animal was eating and why, could have made a huge difference. According to Dr. Van Middlesworth, the way she presented when delivered to his clinic, was as if she had not been cared for at all. The soiling should have been noticed. One could not help but notice the maggots, the swelling in the leg should have been noticed, and her total body condition was noteworthy.

125. On cross-examination, Dr. Van Middlesworth indicated that the swelling in the leg would have had to have taken place over a couple of days or more. As to inadequate weight for this St. Bernard, Dr. Van Middlesworth agreed that some dogs, are, by their nature, skinny. However in this case, after she left the clinic, over the next six months, the dog did weigh 110 pounds when well fed. That was in a non-pregnant state. When she was seen at the clinic weighing 84 pounds and pregnant, Dr. Van Middlesworth opined that this told him something was wrong with her nutrition. Dr. Van Middlesworth noted that the dog was not forced to eat to gain the 25 pounds.

126. The low albumen level could, in other circumstances, be attributable to the fact that there was an abortion going on if it had been progressing for more than a few days. The protein level, in this dog, was attributed by Dr. Van Middlesworth to inadequate protein intake.

127. In the clinic, the St. Bernard was administered amoxicillin and Baytril. Baytril is a wide spectrum antibiotic. Penicillin is not, according to Dr. Van Middlesworth, a wide spectrum antibiotic. In fact, in this case it was not effective against the bacteria. Dr. Van Middlesworth could not tell whether or not the dog had been given penicillin before it came into his clinic.

128. As to the appropriateness of a pet owner administering penicillin, Dr. Van Middlesworth said:

“If you don’t know what it is you’re treating, it’s not a good idea to go using antibiotics without a proper diagnosis because you can create resistance problems, as has developed in this case. The bacteria was resistant to the antibiotic if that’s what they were using. That’s the first one listed on the susceptibility chart and it said resistant so -- and that could be because of long-term improper use of antibiotics.”

129. Dr. Van Middlesworth would never recommend or give antibiotics without having seen the animal at clinic.

130. He could envision a scenario where a veterinarian familiar with the breeder and the animal might advocate a regimen of penicillin over the phone, but thought that penicillin on its own is not often the drug of choice for a serious infection.

**(f) Dr. David Millar**

131. Dr. Millar was licenced as a veterinarian in Ontario in 1975. He moved to Manitoba in 1998, as pastor of the First Baptist Church in Steinbach. He also runs a Christian school in the church.

132. Dr. Millar became licenced as a veterinarian in Manitoba, in June of 1999. He had a full practicing licence until January, 2001. He then proceeded to an associate, non-practicing level.

133. Dr. Millar met the Hieberts in September, 1998. He had spoken to Mr. Hiebert on the telephone once or twice while he was still in Pickle Lake, Ontario.

134. He has been at the Hieberts home about half a dozen times since September, 1998, usually to see an animal. His general impression of the areas where the Hieberts' breeding premises were, was that it was noisy, which is normal.

135. He cannot specifically recall examining a poodle with a large inguinal hernia, at the Hiebert property. He examined another dog with a hernia, but he cannot specifically remember a poodle with one.

136. He never attended at the Hiebert premises to view a St. Bernard dog, for medical reasons. He was consulted over the phone. He said that Mrs. Hiebert called him about 2-3 weeks before the seizure, reporting that she had a sick St. Bernard. The dog was not eating, lost a lot of weight, was pregnant, had a large back leg, and was running a fever. She said she had some penicillin, and discussed an appropriate dose. She began medicating the dog with penicillin.

137. Dr. Millar suggested that the medical problem was probably a cellulitis infection in the area of the back leg. That is why penicillin treatment was agreed upon. At the time, Dr. Millar said that his practicing status was "fully licenced", but not insured and practicing at the time. Because he did not have a clinic to work out of, he was not to provide a service and be paid for it.

138. About four days subsequent to the initial call, Mrs. Hiebert called again. The gist of the second call was that the dog was beginning to feel better, and had started to eat. She had made some special soup broth that the dog was eating. The temperature had gone down. He looked brighter in the eye and looked much more alert. The leg appeared much less swollen. Dr. Millar could not remember anything else about that second conversation. There was a third and final phone call discussing how the dog was progressing. That was the last Dr. Millar heard of the situation until he heard that the dog had been removed.

139. Dr. Millar boarded his own dog at the Hiebert property in February of 2000 for four or five days. There were some St. Bernards in the run across from his dog, and there was nothing wrong with the dogs at the time.

140. In Dr. Millar's opinion, maggots could develop on a dog in 24 hours, on a hot summer day in July.

141. On cross-examination, Dr. Millar confirmed that the occasions he went to the residence for veterinary purposes, were at the request of Marlene Hiebert. Dr. Millar was of the view that it was possible for a St. Bernard of a more slender build to weigh around 84 pounds. In the case of this particular

St. Bernard, based on the information Mrs. Hiebert gave to Dr. Millar, he authorized the use of penicillin for the dog.

142. Dr. Millar said he had never seen a dog in the care of the Hieberts that was abused or neglected. He was satisfied that the cages provided satisfactory homes for the dogs.

143. Dr. Millar testified that he was on the farm July 24, 2000, when the animals were removed. For the animals that he saw, he did not see any problem with any of the animals being removed.

144. In addition to testifying as a Crown witness, Dr. Millar was called a second time by the defence. As part of the defence case, he was asked about the drug Ivomec, for treating parasites. He felt it to be effective on lice in dogs, although not specifically made in Canada for dogs. He said in Canada, it was made for large animals. The use of Ivomec for dogs to treat dogs is an "off label use".

145. Dr. Millar testified that because of his presence at the Hiebert property the day the animals were seized, a citizen reported him to the Canadian Veterinarian Medical Association. In response, he called Dr. Whiting. He was not licenced to practice in Manitoba at that time and said he had not been practicing. He had only been "there as an advisory, as a friend, so this was the, the advice that he gave me was that to write a letter stating what I had done ..." Dr. Millar further testified that Dr. Whiting had said that out of all the animals seized, none of them graded below a 2 out of 5 on a scale from the Canadian Veterinary Journal.

146. Dr. Millar testified that he had been cleared of any wrongdoing. Dr. Millar further testified that it was probably Dr. Preston who told him that it was not his desire for the seizure to occur. Either Dr. Whiting or Dr. Preston told him that they were willing to work with the Hieberts. Someone else had made the decision above their heads. The individual overruling whoever made those remarks was the Humane Society.

147. On cross-examination by the Crown, Dr. Millar testified that Ivomec is not safe in all dog breeds. He notes that it is recommended that it be used with caution in collies and other dogs who herd. He explained that anyone could administer an extra label dose to a dog, if it were veterinary supervised. Dr. Millar confirmed that he did not have a veterinary/client relationship with the Hieberts in July of 2000, because he did not have a practice. He did not recommend the use of Ivomec drops by ear canal in each dog, each month. Ivomec does not prevent re-infestation of lice. It is possible that Ivomec can be used as a crutch to compensate for deficiency with respect to housing of animals that allows for re-infestation of lice on dogs, but in Dr. Millar's opinion that was not happening in this case.

148. As to the scale that Dr. Whiting rated the dogs seized on, Dr. Millar agreed that that dealt only with body condition. It did not address infection, wound, or other issues.

149. As to the negative impact of lice on a dog, sucking lice can actually drain the blood out of the animal. A very severe infestation could cause scratching. A dog clear of lice has a better quality of life than a dog infested. Ivomec does not prevent the lice from biting the dog.

150. In response to questions by the Court, Dr. Millar clarified his status in July of 2000. He had passed all of his examinations, had been appropriately accredited, and the only impediment to active practice was a lack of connection with a clinic. He could not treat patients. He indicated that is why he tried to make it clear that he was responding to Mrs. Hiebert's inquiries in an advisory capacity only. He was not lawfully entitled to practice veterinarian medicine in July 2000 in the Province of Manitoba. Dr. Millar testified that from his perspective, the giving of advice was not the practice of veterinary medicine.

**(g) Dr. Allan Preston**

151. Dr. Allan Preston, in May of 2000, was the Acting Director of the Veterinarian Services Branch for Manitoba Agriculture and Food. In October of that year he became Director of the Branch. At the time relevant to these proceedings, he was Acting Director. His qualifications include a six year tenure as a member of the Canadian Veterinary Medical Association Animal Welfare Committee, and chairing that committee for four years. That committee reports to the National Veterinary Organization on issues relating to animal welfare including the development of codes of practice for care and handling of animals. The Code of Practice was developed during that period. As chair of the committee, he orchestrated solicitation of input from all interested groups including the Canadian Kennel Club, and drafted a code of practice appropriate to the management of dog breeding establishments.

152. He served on the Manitoba Veterinary Medical Association, and was president. He also served on the Veterinary Medical Board for six years dealing with complaints from the public against veterinarians. The Board dealt with animal related issues including farm animals and farm standards. His own personal practice was in rural Manitoba for the bulk of his career and practice. In 1995 he received peer recognition as Veterinarian of the Year, presented by the Manitoba Veterinary Association. In the same year he was awarded the national Canadian Veterinary Medical Association's Humane Award, recognizing an individual who advanced the issues of animal welfare across the country.

153. Dr. Preston sent Dr. Whiting to the Hiebert property, on his behalf, July 19, 2000. After Dr. Whiting's report back, Dr. Preston decided to seize and remove the dogs. The date of July 24<sup>th</sup> was selected because Dr. Preston wanted to ensure the seizure was carried out in a fashion in the best interests of the animals. He also wanted to deal appropriately with the people. It was his understanding that Mr. Hiebert would be home at that point from his truck route, and he deemed it more appropriate to institute the seizure when both were present.

154. An RCMP officer attended with Dr. Preston, to explain the warrant, the process, and the procedure. Dr. Millar was in the room as well as the Hieberts' daughter and granddaughter. Dr. Preston testified the primary discussion was with Mr. Hiebert, who was sitting directly across the room from him. Mr. Hiebert was the person who responded to his comments and questions. Dr. Preston explained to the Hieberts that Dr. Whiting's investigation of a week previous disclosed an apparent breach of the *Animal Care Act* in that the premise was not licensed. In addition, he discussed some of the housing and ventilation concerns in Dr. Whiting's report. He further highlighted some of the conditions that he had indicated with regard to the animals.

155. It was Dr. Preston's recollection of the conversation that insofar as dog caregivers was concerned, Mrs. Hiebert, her daughter, and a couple of neighbour boys, provided care in Mr. Hiebert's absence. When he was home from his truck routes, he participated in the care of the animals as well.

156. When Dr. Preston met with Mr. Hiebert at the home on July 24<sup>th</sup>, Mr. Hiebert was more talkative than Mrs. Hiebert. Dr. Preston noted that he enjoyed talking about his dogs and his operation. It was Dr. Preston's recollection that Mr. Hiebert indicated that when he was on the road as a trucker, Mrs. Hiebert was the one in charge of the operation. Dr. Preston received the impression that Mrs. Hiebert ran the operation, and when Mr. Hiebert came home he did a bit of work in the operation. She was in charge of the day-to-day, and it was Dr. Preston's assumption that Mr. Hiebert was giving guidance and direction even if he was not there doing the work.

157. Dr. Preston recalled, right from the beginning, that he would endeavour to get the family pets and companion animals returned as soon as possible.

158. On July 24<sup>th</sup>, Dr. Preston spent most of his time in Building A. He described the weather as very hot and humid, and that the building was almost unbearable for heat and humidity inside. Dr. Preston described the aroma in the building as "somewhat less than ideal". There was a fair bit of ammonia odour. The animals were housed in a wide variety of kennels of wood and wire construction.

159. Dr. Preston described the hygiene of the animals as “not what I would consider to be filthy, but they certainly were not as clean as a house dog would be”. The kennels did not have a lot of fecal contamination.

160. Because of the manner of cage construction, fecal matter got pushed through and down to the next level and onto the floor. The conditions were very humid, smelly, and much, much less than ideal. There is really no comparison to the Code of Kennel Operations, and these conditions. The Code details optimal kennel requirements. None of those requirements were in existence in that building. As to a comparison between the conditions in Building A, and a generally accepted practice in the industry, Dr. Preston described this particular method of housing and caring for dogs as “dramatically below the normal for what the industry would, would see as acceptable”.

161. Dr. Preston’s primary concern was the inability to clean and disinfect the operation. His other major area of concern would be the inadequacy of the size of the kennels for the dogs that were in them.

162. Ventilation was non-existent. The facility did not meet ventilation standards both in the Code of Kennel Operations, or generally accepted practice in the industry. The runs that did exist were dirty, contaminated, and the dogs had to walk through the contamination to get from one end to the other. This was far below accepted standards for both the Code and normal practice. After the seizure was complete, Dr. Preston returned to the Winnipeg Humane Society to oversee the initial examination of the dogs, and the procedure for putting them into kennels. Thirteen of the larger breeds were sent to the animal holding facility at the Veterinary Services Laboratory at the University of Manitoba.

163. Dr. Preston examined, in a cursory way, most of the dogs that came out of Building A and some of the others. To follow-up, he examined some of the dogs at the Humane Society and the dogs held at the University. He saw them on a daily basis for a period of time after that. His general impression was the dogs were not starved. His concern was the conditions they were being raised in. Lack of normal hygiene and high humidity probably contributed to some of the infections that Dr. Preston and his colleagues saw.

164. A short time after the inspection, a letter arrived at Dr. Preston’s office by fax. The letter was dated July 25, 2000. It purported to be signed by Walter Hiebert. No discussions were had with Mr. or Mrs. Hiebert as to why the letter, Exhibit 13, was created. The letter, filed as an exhibit in the proceedings, read as follows:

“To whom it may concern:

I Walter Hiebert want to make a statement in regards to the dog breeder farm we have been operating in Steinbach Manitoba Canada.

First: I believe we have looked after the dogs well, and the veterinarians I believe would agree. There is always a dog or two that needs attention. We have given great care to these dogs.

Second: Even though we were operating before licensing was required we knew we now needed a license to operate, and it has been in process for approximately 9 months. We were operating during this time while waiting for the license to come through.

Thirdly: I accept full responsibility for operating without this new license. I should not have continued the operation until I had the licence, and until I had met all the conditions for it.

I apologize for my arrogance, disrespect, and negative attitude in regards to this license and to those involved. I am willing to take responsibility accordingly.

Sincerely

Walter Hiebert”

165. Dr. Preston described the conditions as “deplorable”. Over the long-term into the winter, a concern shared by both Dr. Whiting and himself was that the Hiebert property environment could become very dangerous to the animals’ health. The facilities did not provide adequate protection from the elements. Dr. Preston did not think there was any doubt that over time, the housing, lack of ventilation, and lack of proper sanitation could be “quite detrimental to those animals”.

166. In October 2001, there was a concern raised that there were again animals on the premise. Dr. Gus Ruck, an animal protection officer, did a further investigation in that month. There were dogs on the premise again.

167. Dr. Preston testified, on cross-examination, that the July 19, 2000 inspection was as a result of a complaint under the *Animal Care Act* to the Winnipeg Humane Society. That inspection was really not anything to do with a follow-up to the application. All the breeds on Mrs. Hiebert’s November 1999

application were represented on the property. The application disclosed about 30 dogs short of what, in fact, existed at the property.

168. Dr. Preston was of the view that there would be tremendous cost to bringing that type of operation up to Code condition. There was a roll of rooster flooring in the barn where the St. Bernard's were. Part of the discussion with Marlene Hiebert, after the animals were taken July 24, 2000, was that there needed to be a lot of changes to bring it up to standard. There was no indication, at all, in Dr. Preston's opinion, of neglect in terms of feeding and watering. It was not Dr. Preston's impression that most of the dogs were caked with fecal matter, but most were in need of a bath. The dogs were generally in good bodily condition. Insofar as their health was concerned, there was a range of problems from two or three serious situations to more generalized skin, eye, and ear conditions. There was a general lack of hygiene.

169. As to the poodle with the inguinal hernia, the biggest danger is that at some point the intestines in the mass may twist on themselves, strangulate, and create a life-threatening situation. It is hard to say what brings on strangulation. The only comment Dr. Preston had on the hernia was "the condition was there and it's a condition that normally is repairable and it probably should have been repaired".

170. When asked about the mud on the dogs seized, Dr. Preston confirmed that in a rural environment it is commonplace to see animals with mud on them. The distinguishing feature in this case was that the mud was in the kennel that they resided in. In response to further questioning by the Court, Dr. Preston noted that the poodle with the hernia on July 24<sup>th</sup> was examined at the Humane Society. It was noted that the dog had a hernia "that probably should be repaired. It was not an emergency condition but it was identified as a condition that should be repaired and we discussed that with Dr. Pfeiffer at the Humane Society".

**(h) Dr. Erika Pfeiffer**

171. In June 2000, Dr. Pfeiffer became Director of Animal Health at the Winnipeg Humane Society. Her responsibilities there include supervision of veterinary staff, students and volunteers. In addition, she is responsible for any decisions regarding the animals, health of the animals, medical treatment, surgical treatment, program direction for disease control, vaccination, and animal health policies.

172. In 2002 when she testified, she was Vice-President of the Manitoba Veterinary Medical Association. The President presently is Dr. Terry Whiting. Dr. Pfeiffer will be President next year.

173. Dr. Pfeiffer felt that the reason the Humane Society was chosen to receive the animals from the Hiebert property, was that the Humane Society had the best facilities for looking after that number of animals and their care, and the ability to keep them together. A sophisticated intake process was employed to keep track of the animals. The animals were vaccinated and dewormed. Any initial treatment required was instituted at the time. If treatment could wait, it was scheduled. The intake procedure involved three veterinarians and six animal health technologists. After the intake process, Dr. Pfeiffer was responsible for all their care.

174. On July 24, 2000, about 100 animals were accepted into the Winnipeg Humane Society. Their health varied over a wide range. The age was a wide range as well, from the unweaned to geriatric. Some animals were fine. Other animals had mild skin and eye problems. More animals had severe skin, eye, and ear problems that required attention. Some of the dogs showed a lot of anxiety with human contact, even though they appeared otherwise healthy.

175. The urgent matters were attended to right away. Dr. Pfeiffer referred to some animals with "horrible skin" that needed immediate treatment. Other animals simply required an initiation of a treatment program. Animals desperately requiring a bath were given one immediately. Others were scheduled.

176. Dr. Pfeiffer never attended the Hiebert premise. She did view videos.

177. A number of the dogs had extreme amounts of lice, causing them to scratch to the point of bleeding. A number of the dogs had foot infections from being kept chronically wet and injured. Something as simple as a parasite, can develop into a very, very itchy situation. Infection can result.

178. Lice are spread dog to dog. To prevent spread, the lice needs to be identified upon arrival and treated. The animal must be quarantined to ensure that treatment is complete and the environment disinfected. Dog feet kept continually wet and dirty can develop pododermatitis. The area between the toes and up the leg may contain red oozing skin that is itchy and painful.

179. Some of the dogs required simple grooming. Others had matted coats causing a condition similar to pododermatitis. If there is moisture, there is bacteria normally on the skin. This is problematic particularly if the animal is exposed to a dirty environment. The matts must be removed, the skin cleaned, and a topical or systemic antibiotic used.

180. Some of the dogs had ear and eye infections. A few dogs had major systemic illnesses. Some of the dogs had severe dental problems requiring extraction. Dental problems can generally be addressed by initially providing

an appropriate diet and appropriate toys. Some of the dogs had dental disease that had gone on so long that the roots were exposed, tremendous amount of tartar buildup was on the teeth, and infection right at the gum line. There was puss oozing from between the tartar and the gums.

181. Dr. Pfeiffer indicated that screening and quarantining was best accomplished by simply identifying the animal on arrival. Lice are obvious to see, and best addressed by keeping the animal away from others, and disinfecting the facilities.

182. About 75% of the animals received by the Humane Society from the Hiebert property had something that need to be done. Some required procedures as simple as a bath and a nail trim. Fifty percent of the animals required medical treatment. Eye ointment, ear ointment and cleaning, advanced grooming, shaving because of lice were some of the treatments administered. About half the animals required veterinary input.

183. The treatment goal was to get the animals comfortable and returned to a normal state. Of the 50 dogs requiring medical treatment, half of them required surgery, extended medical therapy, or more intensive treatment.

184. Dr. Pfeiffer's view was that in all of the animals, many of the issues could have been identified while working with a veterinarian in consultation, if not by examination. Routine fecal testing would identify any parasites. Regular check-ups of the dogs could identify problems such as ear infections. The owners could also, themselves, identify a change in the dog like discharge from the eyes, shaking of the head, scratching the ears, and could treat some of the problems with over the counter medication. The prescription medication could be obtained through examination of the animal by a veterinarian.

185. The Code for Kennel Operations prescribes that the kennel owner be working with a veterinarian at least in consultation. Identified medical problems must be treated.

186. Dr. Pfeiffer's evidence touched on the conditions of some of the specific dogs. It was clear from her evidence that the fecal encrustation, matted fur, infection, discharge, pododermatitis, conjunctivitis, and other such conditions had existed in the dogs for a couple of weeks.

187. Some of the lice infestations in some of the animals resulted in bodies that were red, bumpy, inflamed, and itchy from nose to tip of the tail. There were thousands of lice on some of the animals. Dr. Pfeiffer characterized some of the lice infected dogs as "the worst lice I have ever seen, even on cattle".

188. In cases of severe lice infection, the immune system is compromised because it is chronically dealing with infestation. Animals often have other illnesses as a result. In such cases, lice may not cause the eye infection, but because the lice were severe enough to suppress the immune system the animal is more likely to get an eye infection if presented with an irritating situation like strong ammonia fumes or feces in the eyes. A toy poodle had an ear infection so bad the ear canal was completely blocked. The hair underneath the ears was completely matted. Dr. Pfeiffer felt the ear infection had been going on for months.

189. A grey toy poodle had a large abdominal mass and severe dental disease. The mass turned out to be an inguinal hernia. It was a fairly large hole through which the abdominal contents were herniating. In Dr. Pfeiffer's view, it had been building over a period of years. Dr. Pfeiffer examined the animal on arrival at the Humane Society. She was concerned about the mass, so she sent the animal to another clinic for an x-ray and ultrasound. The animal looked "reasonably bright at the time". The hernia definitely needed to be surgically reduced, but the dog developed a bloody diarrhea a couple of days after arrival, and died at the Humane Society despite therapy. The mass itself was "stable for the time" and "eventually needed to be done".

190. As to the poodle's general state of health, Dr. Pfeiffer testified that "except for bad dental disease ... in reasonable health, it was not having any problems with the hernia, so the hernia would have been repaired at the time of her spay".

191. Dr. Pfeiffer commented on the poor condition generally of the dogs' teeth. Chronic dental disease is associated with heart and liver problems in dogs. Small breed dogs are particularly vulnerable to death by heart failure related to years of dental infection. One must always assume with teeth that bad that it is causing systemic effects. In Dr. Pfeiffer's opinion, although the dogs' natural mouth flora caused the deterioration, it was the owner's responsibility to have the dental condition addressed. In Dr. Pfeiffer's opinion, 25 of the 100 dogs seized from the Hieberts had problems "directly related to the charges that are listed in the *Animal Care Act*".

## **2. Defence Witnesses**

### **(a) Marlene Hiebert**

192. Mrs. Hiebert, 64 years of age, was born in Altona, Manitoba, and moved to Steinbach at the age of six months. She has been on a farm all her life. She has been married to Walter Hiebert for 44 years, and they have three children and eight grandchildren.

193. Their daughter Heather, 39 years of age, lives with Mr. and Mrs. Hiebert. Heather has one daughter, Shanley, 7 years of age, who also lives with them, and was living with them in July of 2000.

194. Mrs. Hiebert has been on the farm on which she presently resides for close to 40 years. That is the farm depicted in the videotape from which the animals were seized.

195. The legal owner of the farm is John Fehr, a friend. Mr. Fehr took over ownership in 1995. A lot of money was spent on legal fees in connection with another proceeding, and money had to be borrowed to keep up with the payments.

196. Mr. Hiebert was 5 or 6 years old when he moved onto the property, and he grew up there as well. When Mr. and Mrs. Hiebert married, they operated a dairy and beef farm. They have had pigs, chickens, and dogs in there. They own 200 acres of land, and also have farmed grain.

197. Exhibit 5, the application for a kennel/breeder licence, reflects the applicant name Marlene Bergen. Mrs. Hiebert indicated that that was herself. The application bears her signature, "M. Bergen" dated November 16, 1999. Mrs. Hiebert testified that she does not normally use Bergen as her surname. She said she did so on this application because "Allan Preston had suggested that I do that".

198. With the application, Mrs. Hiebert enclosed a \$100.00 cheque for the commercial breeding licence. She did not tick off a request for a kennel licence.

199. Mrs. Hiebert testified that Mr. Hiebert was not reflected on the application because she wanted to help with the family income. At her age, she did not think she could get much of a job, loved dogs, and thought she could earn money looking after dogs. Her husband was driving trucks. Mr. Hiebert would be gone for 5 or 6 weeks at a time, driving all over Canada and the United States. He would return home for 3 days, or less. He basically slept during the time he was home.

200. During the summer months of 2000, Mrs. Hiebert testified that her husband left before July 1<sup>st</sup> and had not been home in July at all yet. He was called home for July 24<sup>th</sup>. Otherwise, he would not have been home.

201. Allan Preston called her on July 19<sup>th</sup> asking her to have Mr. Hiebert home for Monday, July 24<sup>th</sup>. From July 19<sup>th</sup> to July 24<sup>th</sup>, 2000, Mrs. Hiebert testified that Mr. Hiebert was not involved with the dog operation. She bought food, and her daughter Heather put it out. Both she and Heather filled water

bowls. Cleaning pens was largely Mrs. Hiebert's responsibility. The Martins boys came 2 or 3 times a week, depending on when Mrs. Hiebert called them. Heather assisted in the day-to-day operation, by watering and looking at the dogs. If she saw something wrong, she would draw Mrs. Hiebert's attention. She would not have checked the dogs more than once a day.

202. As to the \$100.00 fee submitted with the application, a receipt was issued to Mrs. Hiebert November 25, 1999. The fee has never been returned, even until the date of her testimony. She has not received a letter saying the application was refused. She has not received a letter saying the application was not going to be granted. The first time anyone came out to check the premise was July 19, 2000. Vicki Burns, Colleen Carlson, and Terry Whiting came. Mrs. Hiebert met Vicki Burns and Colleen Carlson before. Dr. Whiting indicated that he was there with respect to the application, and Mrs. Hiebert invited him into the house. A copy of the drawings of the buildings, and a recently completed dog inventory was presented to Dr. Whiting. There were more than 100 dogs on the list.

203. As of July 19, 2000 Mrs. Hiebert was of the view that she was still going to receive her licence. She testified that she felt she had a commercial breeding licence on July 19, 2000. She had applied for it, she had not received any information that she was not going to get it, and she had the receipt that she paid her \$100.00. She had talked to Allan Preston from November to July 19<sup>th</sup>. He had said he was going to come out and check, and she should keep on going.

204. As to Count 1, the allegation that Mrs. Hiebert was operating a kennel without a licence, it was her understanding that a kennel licence was required if she were to board dogs. Her plan as of November 16, 1999 was not to board dogs.

205. Her view was that between July 19 and July 24, 2000, she was running a commercial breeding operation, not a kennel. The dog that was seized on July 19<sup>th</sup> and the dogs seized on July 24<sup>th</sup> were not anyone else's property like boarding dogs.

206. Count 2, the charge relating to the St. Bernard seized by Dr. Whiting July 19, 2000, related to a dog Mrs. Hiebert obtained when the dog was just under a year. She was two years of age at the time of seizure. Mrs. Hiebert got her from another farmer. Prior to July 20<sup>th</sup>, Bernadette had not had a litter. Mrs. Hiebert was aware of her pregnancy. The pregnancy was planned. Mrs. Hiebert had checked both the St. Bernard, and the male, before they breed. There were no problems.

207. Mrs. Hiebert's view was that pregnancy, on average, for a large dog is 60 days. Prior to her pregnancy, the St. Bernard weighed "probably around 140 pounds, would be my guess".

208. When Mrs. Hiebert checked on her in the beginning of July, she was limping badly. Her hind leg was swollen and warm. Mrs. Hiebert could see no open wound. Mrs. Hiebert did not know how she sustained the injury. It could have occurred from a bump, or an insect sting. Mrs. Hiebert took her out of the pen. She walked with Mrs. Hiebert to the barn, and was put in a pen by herself. The barn was cool, and the flies would not be there. She lost weight because of the fever. She did go off her feed for a little while. Mrs. Hiebert called Dr. Millar for advice.

209. At first, she spoke to him everyday. The dog started improving. She was eating well, and never went off her water. She walked around. Dr. Millar advised Mrs. Hiebert to give her penicillin. Dr. Millar never came out to actually look at the dog. He did not feel he needed to come out. Dr. Millar felt Mrs. Hiebert knew what she was doing and it could be discussed over the telephone. Mrs. Hiebert was quite comfortable with how the matter was being addressed.

210. Mrs. Hiebert had previously dealt with Dr. Millar by telephone regarding an animal's health. Through the years, it was usually done that way with pigs, cows, and horses. Mrs. Hiebert thought he had a licence. She never asked him. She believed him to be a licenced veterinarian who came from Ontario.

211. After her injury, the St. Bernard did not want to eat the regular dog food. She did, however, enjoy canned dog food. Because Mrs. Hiebert wanted her to drink a lot of water, she gave her noodle soup. She blended noodle soup with wieners, mixed a bit of the hard dog food into it, and then the canned dog food. Bernadette devoured the food.

212. On the morning of July 19, 2000 she had eaten a huge handful. Mrs. Hiebert agreed that the dog had lost weight, and could not dispute the veterinarian's assertion that she weighed 84 pounds at the time of seizure.

213. Mrs. Hiebert had administered the penicillin herself by injection. This was a "fast acting penicillin". The first while Mrs. Hiebert gave it to her daily. Because she was eating, Dr. Millar suggested that Mrs. Hiebert "slow it down a bit". In terms of the number of shots the dog had been given, Mrs. Hiebert indicated "8, 10, whatever ... I don't know. It could have been more".

214. The dog had incurred the injury at the beginning of July, so she had been sick somewhere short of three weeks at the time of her seizure. Mrs.

Hiebert had been giving her penicillin for the whole time. The dog had been listless.

215. At no time, did Mrs. Hiebert believe she should have taken the dog to the veterinarian or an animal hospital. At no point did she feel that Dr. Millar should come out and see the dog. The dog was eating. The swelling was going down. The fever was not nearly what it had been. Dr. Millar said she would start aborting the puppies and to watch her.

216. On July 19<sup>th</sup> she ate well, walked around, and had a very normal stool.

217. Mrs. Hiebert had not expected the arrival of Dr. Whiting, Vicki Burns, and Colleen Carlson. By the time of their arrival, the St. Bernard had begun aborting. She was messy in the back. She had not been messy earlier.

218. Mrs. Hiebert's comment on earlier evidence given that the St. Bernard had maggots at the time of her seizure, was that Mrs. Hiebert loaded her with her bare hands. There were absolutely no maggots on her.

219. Mrs. Hiebert last saw the St. Bernard walk in the barn prior to Dr. Whiting's arrival. She finished her food an hour before, and Mrs. Hiebert had just completed cleaning and putting fresh shavings in. She was walking very well. She was improving, and doing okay. If Mrs. Hiebert had not seen her improving, she would have insisted Dr. Millar come.

220. The only thing Mrs. Hiebert could think of doing differently to prevent Bernadette's seizure, is to have "hidden her".

221. Mrs. Hiebert had the poodle with the hernia since May of 2000. She got her from the United States. She had a growth on her at the time Mrs. Hiebert obtained her, and Mrs. Hiebert knew it was a hernia. She showed it to Dr. Millar on a different visit. He looked at it. Dr. Millar said that as long as the poodle was in a pen by herself, it was not life threatening. The ultimate plan was to have it fixed by Dr. Millar, but because he said it was not life threatening it was alright to leave it until an appropriate date could be arranged.

222. The poodle ate well, drank well and her bowel movements were satisfactory during the two months that Mrs. Hiebert had her. There were no problems with her at all. Her disposition was friendly and active, and she loved people.

223. On July 24, 2000, when she was seized, she was in a kennel in an outhouse. Mrs. Hiebert said she did it on her own. She said that her husband did not know that she had done it. She said she did it "Cause I had a gut feeling that Vicki Burns and Colleen Carlson would be with -- could be with

them and if she would got taken away and put with other dogs and such she would die.” Mrs. Hiebert further opined “Well, if they couldn’t find her I could save her life”.

224. As to the chihuahua similarly found in the outhouse, Mrs. Hiebert had had him for almost a year prior to July 24<sup>th</sup>. His leg was in the condition it was from when Mrs. Hiebert received him. She paid about \$200.00 American for him. He was a breeding dog. He was friendly, happy, and never seemed to be in pain. Dr. Millar had seen the dog, and had not prescribed any medical treatment for the leg. Mrs. Hiebert put the chihuahua in the outhouse because she feared for his life, too.

225. Relating to the allegation of injurious heat, Mrs. Hiebert testified that the old barn on the property was 40 or 50 years old. It had two operable windows with screens. On July 19 and July 24, both windows were open. There was a walk-through door.

226. On July 24, the party there for the seizure was present for approximately 2 or 3 hours. Mrs. Hiebert did not go into the barn during that time. The RCMP were keeping her in the house. She described the temperature in July 2000 as “always cool in that barn”. She did not feel the barn was too hot to house animals. The animals did not seem uncomfortable. She did not see any dogs panting in the barn in July of 2000. They were not listless. None were reacting badly to being in the barn.

227. As to ventilation, at each end of the barn there was a door which could be opened and closed. There were three holes in the ceiling where the air could go up and out. The air flow and temperature in the barn were good. Mrs. Hiebert said that there was a thermometer in the barn on one of the posts. After the raid, it had disappeared. Mrs. Hiebert did not take it down.

228. The outside pens were not a heat danger because there was either a barn or a wall so there would always be shade on one side. They all had some form of enclosure to go into. There was no problem with a metal roof on some of the pens for the dogs. There was always shade, and lots of air movement so they would not heat up.

229. Mrs. Hiebert did own fans, but she did not have them operating in the barn on July 24 because it was well ventilated. Had she observed effect of the environment on the dogs, she would have put up the fans. She checked them five or six times a day because anything could happen, like the injured St. Bernard.

230. The dogs’ bowls were clean, because Mrs. Hiebert put a small amount of Javex in each one.

231. As to the other two buildings, they were cool. There was never a problem with respect to heat regulation. None of the dogs in those two buildings seemed to be affected by the heat. Had she seen problems, she would have put in a fan.

232. As to sanitation, Mrs. Hiebert used shavings for bedding material. She used a shovel and hoe to remove the shavings daily. She would put the used materials on the field. They would ultimately be cultivated over into the ground. She did not miss a day of pen cleaning from July 19 to July 24. The only help she had was "just those boys that came and helped me periodically".

233. She had not cleaned the pens the morning of July 24, because she did not have time. She normally would start with pen cleaning as she was an early riser. Mrs. Hiebert agreed there would be feces in the cages on July 24, left over from overnight. She disagreed that her dogs were laden with feces. She could not agree with the witness who testified that the dogs were covered in fecal material. None of her dogs had any feces on them on the morning of July 24.

234. The wire cages were constructed with coated wire purchased in the United States. Mrs. Hiebert had no fear of the dogs' feet going through the wire, because she had various sizes. In a cage housing a small dog, they would put small wire. From July 19 to July 24, no dog had his or her leg go through the wire in the cage. During the same period, she saw no indication of injury on a dog's foot from having been on wire. No one had told her not to use wire. She had seen wire in other dog breeding operations. She felt the use of wire to be acceptable.

235. Each cage had a solid wood floor. She had seen wood used in cages in other operations. No one had ever told her it was not proper to use wood. She had never experienced any difficulty in using wood. The use of wire as flooring was important because "the dog stays a lot cleaner if it's on wire because the poop goes through it". It was never possible for one dog's excrement to fall through to another dog's house.

236. Mrs. Hiebert did not agree that the big dogs had a lot of mud and water splashed up on them on July 24.

237. Mrs. Hiebert did not agree with the allegation that she was running an unsanitary operation. She was cleaning her pens. The dogs never had to lie in their feces. She did not feel there was anything more she could have done in terms of pen hygiene.

238. As to the allegation relating to misleading Colleen Carlson, Mrs. Hiebert did recall a conversation regarding the St. Bernard. She said she told Colleen Carlson the dog was under veterinary care because she had been talking to a

Dr. David Millar on the phone. The statement that the dog was under veterinary care was a true one. In the country, veterinarians do not always come out to look at a sick animal. She had never told Colleen Carlson that the veterinarian, in fact, came out to look at the dog. She had no intention of misleading Ms Carlson.

239. As to Exhibit 13, the letter purporting to be signed by Mr. Hiebert dated July 25, 2000, Mrs. Hiebert first saw the letter on that date. She was in Pastor Peter Hubert's office in the Full Gospel Church in Steinbach. Pastor Hubert, according to Mrs. Hiebert, is now in London, Ontario. In his office at that time, were Steven Downs, Mr. Hiebert, and Mrs. Hiebert. Steven Downs had called them to come in. Mrs. Hiebert did not know who had typed the letter.

240. When she first came to the office, she did not know there was going to be a letter there. She first learned of it, when Pastor Hubert placed it in front of her husband. The dog situation was not discussed very much in his office. What was discussed was Pastor Hubert's concern that Mr. Hiebert, as the head of the household, was not home when he should have been. Pastor Hubert, in relating his views of Mr. Hiebert's inadequacy, used a disciplinary tone. In the pastor's view, Mr. Hiebert had not done his job. He was on the road and not looking after his family.

241. Notwithstanding his lack of participation in the preparation of the letter, the signature at the letter's bottom is, in fact, Mr. Hiebert's signature. Mrs. Hiebert saw him sign. She did not discuss his signing the letter with him prior to it. Pastor Hubert instructed the letter be distributed to the Hieberts' friends. Mrs. Hiebert never really understood what the point of the letter was, but Walter was not given a choice to sign it. Mr. Hiebert did not appear to read it before signing. Pastor Hubert did not say he was going to send the letter to Dr. Whiting. Pastor Hubert made copies of the signed letter, for the purpose of distribution to friends. The Hieberts did not give them to their friends. They gave one copy to the pastor, one to counsel Mr. Cook, and one to David Millar.

242. Mrs. Hiebert testified that any reference, in the letter, to Mr. Hiebert's participation in the dog operation was in error. Any responsibility that Mr. Hiebert purported to take in the letter, for operating without a licence is in error. Mr. Hiebert was not involved in the operation.

243. Mrs. Hiebert never saw any indication that any of her dogs had lice. She was giving them Ivomec every four weeks, which prevents lice and other pests.

244. After the seizure, five dogs were returned to Mrs. Hiebert. She was appalled by their condition. They were thin and emaciated, dirty and had lice and kennel cough. Mrs. Hiebert photographed the dogs when they were returned.

245. Mrs. Hiebert testified that she had the dogs “put down” just over a year prior to her testimony November 25, 2002. Dr. Gus Wruck, came to inspect her kennel. He was there with two RCMP officers. Mrs. Hiebert was worried about the dogs. She phoned Dr. Millar after Dr. Wruck and the officers left, to put the dogs down because “I had a visit again and I was scared of what they were going to do to me because these dogs were not returning back to what they should be”.

246. Dr. Preston dropped into the Hiebert residence about a week after the dogs were returned. He apologized for the raid, said it should not have happened, and that they had gone over his suggestion and to the Ministry of Agriculture for a signature so they could seize them.

247. Mrs. Hiebert said that she had not seen the Code for Kennel Operations prior to July 24, 2000.

248. Mrs. Hiebert testified she has instituted an action against the Winnipeg Humane Society for “defamation of character”, “the slander that we’ve had thrown at us”.

249. On cross-examination, Mrs. Hiebert testified that in July of 2000, her daughter Heather and grandchild Shanley were living with Mr. and Mrs. Hiebert. They did not pay rent. Heather did not have a job. She made no contribution to the household finance.

250. Mr. and Mrs. Hiebert held a joint bank account. Mrs. Hiebert did not have a separate bank account for the puppy operation. She ran the puppy operation out of the joint family account. Mr. Hiebert paid exclusively for the loan on the house and the property, and the utilities were paid out of that one account. The proceeds of the puppy operation were not separated from the proceeds of Mr. Hiebert’s wage.

251. Mrs. Hiebert testified that she bought coated wire in the United States, intended for use with the dogs. Kennels that she had seen, used the wire and told her to get it. Mrs. Hiebert did not read the label on the wire, because she knew what she was buying it for. The operations where she had seen the wire being used were all in the United States. Mrs. Hiebert was not familiar with the use of this wire in any Canadian operation. She later clarified that there were one or two kennels using such wire in Manitoba. Mrs. Hiebert’s friend, who operated licensed “Sunflower Kennels” used that wire.

252. Historically, on the property, Mr. and Mrs. Hiebert ran a dairy and beef operation with his parents. The division of labour on that operation was

worked out between Mr. and Mrs. Hiebert. In the pig operation, everything was done together.

253. Mr. and Mrs. Hiebert previously raised dogs at some point prior to the seizure here. The raid in that operation was in 1995, so the operation began a couple of years before. Mr. and Mrs. Hiebert did everything together. Neither had a job outside, but they still had pigs on another farm. Mrs. Hiebert had no training with respect to raising dogs, except she worked on a puppy farm in the United States in 1996. Mr. Hiebert was there with her.

254. Mrs. Hiebert testified that before she made her application in November of 1999, she had occasion to review the provisions of The *Animal Care Act*. She testified that perhaps she had missed the definition of "kennel".

255. As to the pregnant St. Bernard, Mrs. Hiebert was aware that it cannot be in a hot place, and the need for ventilation. She said the barn was never more than 25 degrees.

256. Mrs. Hiebert noticed the "injury" on the St. Bernard, moved her to the barn, and that is when she started to lose weight from 140 pounds to 84 pounds. It took at least two weeks to lose that weight. Mrs. Hiebert believed the dog started gaining weight, but she did not weigh it. It was eating well. Mrs. Hiebert had phoned Dr. Millar right away.

257. Despite the fact that, by Mrs. Hiebert's own admission, the dog lost almost half its body mass while pregnant, Mrs. Hiebert agreed that she never asked for Dr. Millar to come out and see the dog. Notwithstanding the potential \$6,000.00 value of a 12 or 13 puppy litter, Mrs. Hiebert did not insist on Dr. Millar coming out to see the dog because there was nothing he could have done.

258. As to the poodle with the hernia, Dr. Millar had not indicated to Mrs. Hiebert that the dog was in any danger. As for the hiding of the poodle on July 24, Mrs. Hiebert said that she had a "gut feeling" the Humane Society was coming back. If it were just the veterinarians coming out, she would not have hidden it. She said there were a few vent holes in the outhouse, with shrubbery and trees all around. It was in the shade. Mrs. Hiebert placed it there about 15 minutes before the party for the seizure arrived. Dr. Preston had advised when they would be there. Mrs. Hiebert said "... if the Humane Society wouldn't have come that dog would have - I would have gone right in front of them and taken them out of there".

259. She had no idea how long the people would be on her property. She was confident the dogs were not in danger in that cool place in the shade. The seizure party had arrived at around 9:00 o'clock. The hottest time of the day was right about noon. The seizure took 2-3 hours to complete. The dogs in

the outhouse were the last ones found. She agreed that she would rather expose the dog to risk than have them found by the Humane Society. Even though all the chihuahua had was a congenital deformity, Mrs. Hiebert said that they had made some very negative remarks about the chihuahua when they were there before. Mrs. Hiebert was of the view that the Humane Society would hurt a dog.

260. Notwithstanding that Mrs. Hiebert knew the seizure party was coming, she had not cleaned the feces out of the cages that morning because she did not have time. She had done it Sunday afternoon. She had known they were coming for five days. The kennels were not that dirty. She had cleaned them the day before. The cement floors in the barn were cleaned with a water hose and brushing.

261. At the time of Mrs. Hiebert's testimony, she had 8 dogs on the farm. They were housed on wire. They had wood floors, too. She said Dr. Gus Wruck was there not long ago, and he did not object to what they were on. Mrs. Hiebert disagreed with the Canadian Code of Kennel Operation's prohibition against dogs being held on wire because of the incompatibility with the foot structure of dogs.

262. In cross-examination regarding the letter Mr. Hiebert wrote at the direction of the pastor, Mrs. Hiebert said that they had been involved with the pastor for two years. She never had an opportunity to read the document before her husband signed it. The pastor made copies of the document, and handed a stack to Walter. To Mrs. Hiebert's knowledge, her husband did not read it. It was just pushed in front of him, and he was told to sign it. The pastor said he had faxed the letter to Terry Whiting. Mrs. Hiebert had no idea how the pastor would know Terry Whiting's contact information. She had no idea where the pastor drew his information to compose the letter. She speculated that the pastor was aware of the seizure because he was phoned by Steven Downs, the other fellow in the office at the time.

263. On cross-examination, Mrs. Hiebert was questioned about the dogs that were put down after being returned after the seizure. Five dogs had been returned, four of whom were put down. One was given away. The four put down were put down for nervousness, no weight gain, and coughing. They just were not the same dogs anymore. In response to Crown's suggestion that these were socialization and not health concerns, Mrs. Hiebert indicated that the male boxer had problems with his hind quarters. It could not walk.

264. Bernadette was in far worse condition, and Mrs. Hiebert did not choose to put her down. Mrs. Hiebert disagreed with Crown counsel's suggestion that the dogs were returned neutered, and of no financial value, as the motivating factor for euthanizing them. She said that she just did not want to get charged another time for dogs that were not in good shape.

**(b) Heather Schalla**

265. At the time of her testimony November 26, 2002, Ms Schalla had been residing with her parents Mr. and Mrs. Hiebert on their farm for the three years previous. She testified that in July of 2000, her father was employed as a long distance truck driver. She was at the property July 24, 2000 when the dogs were seized. The dog business, she said, was her mother's - started in the fall of 1999. Ms Schalla assisted with feeding, watering, and grooming. Two boys came to take the waste out of the pens. Ms Schalla did not do that work because she suffers from carpal tunnel syndrome in her wrists.

266. She recalled that on July 19 her father was not home. On July 24, 2000 he was home, at the request of Dr. Preston. In July 2000 Ms Schalla did not see her father participate in the dog operation in any respect.

267. Ms Schalla was aware that a St. Bernard dog injured her leg. Ms Schalla was not aware of which leg. The leg had been injured a few weeks before. On July 19, she was just starting to eat again. Prior to July 19 she had eaten very little. She agreed the dog was thin. She was aware her mother had been speaking to Dr. Millar about the dog. She saw her mother injecting the dog with penicillin. She said that on July 19, the dog had been walking earlier in the day prior to her seizure.

268. The poodle with the hernia, according to Ms Schalla, came from "Pick of the Litter", Kathy Bauck in Minnesota. The poodle had come a month or so before.

269. In July 2000, Ms Schalla did not see any dogs appearing to be suffering from heat. The large barn was fairly cool inside, in July of 2000. She never found the air stale in the barn.

270. Her mother cleaned the pens everyday in July of 2000. She did not notice a day go by when her mother did not clean the pens with rakes, shovels, and sweeping. The contents of the wheelbarrow containing the substances removed from the pens was carted to the back area. She saw no fecal material on the dogs seized July 24. She imagined there would have been some fecal material in the pens on July 24, because the chores had not yet been done. On July 24, none of the dogs seized had lice. Her mother would check the dog's eyes all the time.

271. On cross-examination, Ms Schalla testified that she was a resident on the farm in July 2000 with her 7 year old daughter. She was not employed. She had moved back to the family farm because she was experiencing some problems. During the day, she would help out in the house and with the chores occasionally. She was engaged in a job search. Her daughter's

recreational activities, her job search, shopping and errands would take her away from the home.

272. Her father was aware that her mother had started a dog business. Ms Schalla did not attend each out building on a daily basis. The days that she had gone there, it was quite comfortable. She was generally, when she was assisting with chores, doing so about an hour a day.

273. As to her contact with the dogs July 23, she could not testify as to the amount of time she spent with the dogs. She never actually inspected any of the dogs. As to her assertion that the dogs were all lice free on July 23, she said she did not actually see any of the dogs scratching.

274. When her father was a dairy farmer, her parents were in partnership. It was the same for the partnership that ran the dog operation in 1995. As to the dog operation the fall of 1999 to July of 2000, Ms Schalla maintained her father was never involved.

275. On cross-examination, Ms Schalla indicated that although she is presently working as an educational assistant, she resides with her parents rent free. She helps out with the groceries and cooks and helps with the cleaning. She does not make a whole lot of money right now, but she gets time to spend with her daughter.

276. As to Ms Schalla's testimony that she had seen lice on dogs before, and therefore would recognize it, she could not indicate when she had seen lice on dogs before. She agreed that once a house pet had had lice. Once shampooed, the lice were gone. That was the extent of her previous experience.

**(c) Gordon Kornelson**

277. Since 1995, Mr. Kornelson has been employed accounting and income tax filing. Prior to that he was a Loans Manager at Steinbach Credit Union for 29 years. He has known Mr. and Mrs. Hiebert since 1988, through his professional capacity. He provided loans for their hog operation in 1988. He has been to the Hiebert farm twice. He went out to affirm the credit union's value of the property taken as security. The second time he went there was because Mr. Hiebert had a number of trees Mr. Kornelson was interested in purchasing. Mr. Kornelson attended at the farm in the spring or summer of 2000. His estimate of the season of his attendance was because there were flowers. He saw dogs. He also saw a big semi truck. He saw at least 50 dogs on the day he attended. None of the dogs appeared injured, none appeared sick, that he could recall. As to their hygiene, "they looked okay to me".

Inspecting the dogs, according to Mr. Kornelson, was not the purpose of his visit.

278. He saw Mr. and Mrs. Hiebert. Mrs. Hiebert was working with the puppies. Mr. Hiebert did not do anything with the puppies.

279. As to how Mr. Kornelson ended up looking at dogs when he attended to look at trees, he indicated he was invited to look at the dogs by the Hieberts. He cannot recall whether Mr. or Mrs. Hiebert invited him to look.

280. When he toured about the premise, he was escorted by Mr. Hiebert alone. He was shown into each of the outbuildings and pens. Mr. Hiebert pointed out what different dogs were called, or the different types of breeds that were there. He recalled being told Mrs. Hiebert liked to take care of the dogs. He had a specific recollection that Mr. Hiebert said that the dogs were Mrs. Hiebert "thing" because he was never at home.

**(d) Kathy Bauck**

281. Mrs. Bauck is a dog broker/breeder, operating in Minnesota for 18 years. She occasionally deals with cats and rabbits, but her work primarily relates to dogs. She breeds 37 different breeds.

282. Mr. and Mrs. Hiebert "just happened to drive on in" 7 years ago, and the Baucks were hospitable to them. The Hieberts were invited to spend the night. They have been very good friends ever since.

283. About 6 months later, Mr. and Mrs. Bauck were severely injured in a car accident. Mrs. Hiebert cared for their animals. Mr. Hiebert came and cared for some of the adult dogs at that time. The Hieberts were not paid. Mrs. Hiebert assisted on and off for about a year and a half.

284. Mrs. Bauck had been to the Hiebert farm about three times, the last being May 2000. Mr. Hiebert was not there during the three days the Baucks were. There were 25-30 dogs there at the time. There were no feces in the pens, which Mrs. Bauck characterized as "a miracle". Some of the Hieberts' pens were made of wire flooring, some wood with straw, and the big dogs were outside on dirt. Mrs. Bauck has utilized wire in her operation. Coated wire is recommended, 1 inch by 1 inch for small breeds and 1 inch by 2 inches for large breeds.

285. The wire at the Hiebert place in May of 2000 was 1 inch by 1 inch coated wire. Coated wire, according to Mrs. Bauck, is a recommended flooring material in the United States. She has been using it for 14 years.

286. Mrs. Bauck's operation, USDA licensed, is inspected up to 13 times a year. The inspectors have seen her wire floors, and have sent people to her kennel to model themselves after her. Although Mrs. Bauck has cement flooring in her big dog barn, she was at a recent meeting at the USDA office concerning cement flooring. It is not the most sanitary. The authorities now claim, according to Mrs. Bauck, that the cement cracks or loses its coating. Mrs. Bauck had put a waterproof coating on it. It would be best, so the recommended present thinking goes, if the dogs were all on rooster flooring for big breeds, or coated wire for small breeds.

287. The rooster flooring Mrs. Bauck does have was put in her puppy barn three years ago. It does not wear, and cleans beautifully.

288. In May of 2000, Mrs. Bauck helped Mrs. Hiebert groom a couple of dogs. They had no lice, no hot spots, and there was nothing wrong with the Bichons that she groomed that day. She particularly commented that the dogs in the house were obviously loved.

289. She noticed no smell in the big barn. As to the sanitation in the barn, "It wasn't like what I would do because I'm just a total neat freak, however though I found it adequate. I wouldn't have closed you down".

290. Mrs. Bauck gave the poodle with the hernia to Mrs. Hiebert. Mrs. Bauck bred the dog, but the hernia got larger. Mrs. Bauck decided not to breed the dog any longer, and give it away.

291. Mrs. Hiebert made a comment that possibly it could be used for mixed breeds. Mrs. Bauck was of the view that Mrs. Hiebert's intent was to breed it to a Bichon.

292. As to the sanitation in the Hiebert business, Mrs. Bauck would have cleaned up the yard because when a dog eats another dog's feces they can get parasites. Mrs. Hiebert explained that she kept them wormed.

293. Mrs. Bauck has a veterinarian on staff every other Monday. He walks through her kennel at least once a month. She calls him with questions. She uses much more phone consultation than in person, for veterinary concerns. When an animal is sick, she gives a telephone report to the veterinarian. He will give her a general description of what she should do for the animal. Most of the time it works.

294. Ivomec, in Mrs. Bauck's opinion, is the most "high powerful wormer there is". She administers the medication four times a year. She administers it additionally for lice or ear mites into the ear.

295. The medication is not listed for dogs. There has never been a thorough kennel test done on dogs. All veterinarians, however, recommend it. There are 15 breeders that sell together, and they all use it. Their inspectors recommend it.

296. Mrs. Bauck has received 200 puppies from Mrs. Hiebert. None had any health concerns.

297. In May of 2000, Mrs. Bauck saw straw bedding for Mrs. Hiebert's dogs. Mrs. Bauck herself uses straw in her large dog barn. She uses shavings everyday in her puppy barn. She saw a bag of shavings in the puppy area at Mrs. Hiebert's place.

298. Mrs. Bauck would not recommend wood chips until the puppies eyes are open. Once opened, she saw not difficulty with using wood chips.

299. Mrs. Bauck had telephone conversations with Dr. Terry Whiting and Dr. Allan Preston after the dogs, the subject of these proceedings, were seized. She probably had five or six conversations the first day, and pretty well "lived that whole ordeal for a solid week". Mrs. Bauck's interest was to get the animals back. Mrs. Bauck maintained that she gave Dr. Whiting and Dr. Preston every piece of information they required.

300. On cross-examination, Mrs. Bauck confirmed that she was not on the Hiebert farm July of 2000. On her visit in May of 2000, there were 25-30 dogs present. She was not sure if she saw the entire operation. She thought there had to be more than 25-30 dogs, because she had given the Hieberts more than that. She had given them somewhere around 75-80 dogs.

301. She spoke of contracts involving the Hieberts raising puppies and then selling them back to her. Mrs. Hiebert would take the adult animal and pay for it back in puppies. It was a way to ensure adequate supply of a good selection of puppies to Mrs. Bauck's client pet stores.

302. When she was at the Hiebert farm in May of 2000, she was in one cubicle of the big barn. She saw some outside dogs, particularly where the St. Bernard's were. She was very surprised that there was no "old poop" in the cubicle she did see. There was no waste in the dog boxes. There was quite a bit of stool on the ground where the dogs would run around outside. She thought the dogs were in pretty good condition.

303. Mrs. Bauck's operation includes 850 adult dogs, and at least 400 puppies. Her staff includes 15 people, plus a veterinarian. Her operation runs from 8:30 a.m. until 5:30 p.m. She goes back out at 8:00 p.m., and the adult

dog manager stokes the stove and checks at that time as well. Her husband, also, does checks at 10:30.

304. Mrs. Bauck's husband is out with the dogs at 5:30 or 6:00 in the morning, 7 days per week. Mrs. Bauck has slept in the barn if dogs are having problems. Mrs. Bauck emphasized that she likes everything very clean. She described a rigorous daily schedule designed to maintain optimal conditions for the dogs, and their well-being.

305. Mrs. Bauck's facilities have air conditioning and heat, with the exception of the facility for Siberian Huskies. The Siberian Huskies do not have heat. The only air conditioning is in the puppy barns. The other buildings have large blower fans, and air exchangers.

### **PART III: PRINCIPLES**

306. It is common ground between counsel that the offences before the Court are public welfare offences. The principles applicable direct that

“While the prosecution must prove beyond a reasonable doubt that the defendant committed the prohibited act, the defendant must only establish on the balance of probabilities that he has a defence of reasonable care.” (*R. v. Sault Ste. Marie (City)* [1978] 2 S.C.R. 1299 at p. 14)

307. Proof of doing the prohibited act establishes a *prima facie* case. It is open to the accused to establish that she took all reasonable care in the circumstances.

### **PART IV: DISCUSSION**

#### **(a) Marlene Hiebert**

##### **Count 1: Operating a kennel without a licence.**

308. The regulations enacted pursuant to *The Animal Care Act* define “kennel” as a premise where animals are kept in connection with a commercial enterprise, containing more than 7 adult animals. The evidence is clear as to the number of animals in the Hiebert premise, and the nature of the enterprise. The evidence is equally clear that a licence did not issue to Mrs. Hiebert, and that between July 19<sup>th</sup> and 24<sup>th</sup>, 2000, she did not have a licence.

309. Mrs. Hiebert testified that it was her understanding that a kennel licence was required only if she were to board dogs. Her plan, on application

November 16, 1999, was not to board dogs. She conceded she may not have noted the definition of “kennel” in the Regulations.

310. Mrs. Hiebert’s evidence does not establish any reasonable belief in a mistaken set of facts, or all reasonable steps to avoid operating unlicensed.

**Count 2: Failing to provide a St. Bernard with adequate medical attention when the animal was ill so as to significantly impair the animal’s health and well-being.**

311. Dr. Whiting was so alarmed by the condition of the St. Bernard on July 19, 2000, that he took immediate steps to seize her. He placed her in the care of Dr. Richard Van Middlesworth, but was of the view that her condition was so grave that he authorized euthanasia if necessary. Dr. Van Middlesworth described the dog’s condition as “extremely emaciated”. The dog was malnourished, infested with maggots, and suffering from a severe infection.

312. She was so sick at the time Dr. Van Middlesworth first saw her, that it was hard not to make the decision to put her to sleep. He decided to give her one chance. Had she not improved, he would have put her to sleep the next day. Dr. Van Middlesworth said he would never recommend or give antibiotics without having the animal seen at a clinic. He felt it inappropriate for a pet owner to administer penicillin if they do not know what they are treating. In this case, he opined that the bacteria was resistant to the penicillin, if that was what was being used.

313. Mrs. Hiebert acknowledged that the St. Bernard’s weight had dropped from 140 pounds to 84 pounds. It took two weeks to lose that weight. By Mrs. Hiebert’s own admission, the dog lost almost half its body mass while pregnant. She testified that she had regular telephone consultation with Dr. Millar. She never insisted Dr. Millar come out to see the dog, because she was of the view nothing could be done. The dog was improving, responding to her regular administration of penicillin.

314. Heather Schalla testified that the St. Bernard, as of July 19, 2000 was just starting to eat again. She agreed the dog was thin, but was aware her mother had been speaking to Dr. Millar about the dog. She saw her mother inject the dog with penicillin.

315. Dr. Van Middlesworth and Dr. Whiting both thought this dog near death on July 19, 2000. Dr. Whiting’s conduct in immediately seizing that dog, was entirely consistent with his assessment of her condition. According to the evidence of both veterinarians, adequate medical attention would have prevented the animal’s imperiled state.

316. Mrs. Hiebert's assertion that telephone contact with Dr. Millar was adequate, in the circumstances, is inconsistent with her expressed concern about the dog's well-being. This dog was pregnant. It had lost a large percentage of its body weight. Its illness had been progressing over weeks. It was clearly not responding to the repeated penicillin injections. Mrs. Hiebert's emphatic assertion that the St. Bernard was improving and not in need of different medical attention is simply not supported by evidence of the dog's condition. Her position that she took reasonable steps to address the dog's medical needs, and that the dog was improving, is totally unreasonable.

**Count 3: Failing to provide a poodle with adequate medical attention when the animal was ill, so as to significantly impair the animal's health or well-being.**

317. Dr. Whiting testified that the groin mass seen on the poodle was, in fact, an inguinal hernia. While animals could live for many years with such a condition, there is a medical risk of strangulation. It should be surgically corrected because the dog could die of it at any time. The mass could also drag on the ground. This poodle died from strangulation of the hernia three or four days after seizure.

318. Dr. Preston agreed that the biggest danger was strangulation. He further agreed that this was a condition normally repairable, and that this condition should have been repaired in this animal.

319. Dr. Erika Pfeiffer, having examined the poodle upon seizure, noted the mass and severe dental disease. She agreed with the diagnosis of inguinal hernia. In her view, the condition had been building over a number of years. She sent the animal to another clinic for x-ray and ultrasound. She agreed that surgery was indicated for the hernia. The dog looked "reasonably bright" at the time of her examination. The mass itself, as she noted, was stable at the time of her examination. Surgical intervention needed to be effected eventually.

320. Mrs. Hiebert was aware of the hernia. She had been in ongoing discussions, she said, with Dr. Millar about surgical correction.

321. None of the veterinarians familiar with this dog felt that immediate surgical intervention was indicated. In fact, Dr. Pfeiffer, charged with the responsibility of assessing all animals on intake, while noting that surgical intervention should take place, did not direct it immediately. The St. Bernard, the subject of Count 2, needed immediate medical attention for its illness. The poodle, based on the evidence presented, was not in the same circumstance.

322. While there was a medical condition requiring attention, the evidence presented does not establish that Mrs. Hiebert failed to provide the poodle with

adequate medical attention, when ill, so as to significantly impair the animal's health or well-being.

**Count 4: Operating a commercial breeding premise without a licence.**

323. Mrs. Hiebert had applied for a commercial breeding licence in November, 1999. A licence never issued. According to Dr. Whiting, there had been follow-up contact with her requesting further information to process her application. Her evidence does not establish that she took reasonable care to comply with the legislation.

324. Mrs. Hiebert testified that she felt she had a commercial breeding licence on July 19, 2000. She had applied for it, had not been told that she was not going to get it, and had a receipt for her \$100.00 fee. She said that she had talked to Dr. Allan Preston from November 1999 to July 19, 2000. He said he was going to come out and check, and she should keep on going. Dr. Preston, when he testified, was not asked about Mrs. Hiebert's assertion that he had directed her to continue operating between those dates.

325. Mrs. Hiebert's asserted belief that she had a licence, is not consistent with her later assertion that Dr. Preston told her to keep on going until the licence issued. It is true that the delay between her application November, 1999 and Dr. Whiting's visit July 19, 2000 is largely unexplained. Nonetheless, Dr. Whiting testified that Mrs. Hiebert received word that her application was incomplete, also in November 1999. She was requested to resubmit because of inadequate information provided. The application was not resubmitted. No licence ever issued.

**Count 5: Failing to provide the animals with reasonable protection from injurious heat so as to significantly impair the health and well-being of the animals.**

326. Colleen Carlson described the temperature in the outhouse, as between 29-30 degrees. Dr. Whiting's opinion, relating to the conditions July 19, 2000 when he seized the St. Bernard, was that the St. Bernard was confined under hazardous thermal challenge, which could risk death. He felt the situation was exacerbated by the St. Bernard's pregnancy. The small building housing large dogs, when the roof was heated, resulted in heat being directly conveyed to the air mass of the building.

327. Colleen Carlson was in the barn on July 24, 2000. She described the heat and smell as overpowering. She said it was approximately 30 degrees outside. She described it as even hotter inside the building. Dr. Whiting testified that St. Bernard's and shorter nosed breeds were at increased risk in the conditions.

328. Dr. Whiting thought that the farm building, Area "A", could hit 40 degrees Celsius in the summer. There were no trees and it was fully exposed to the summer sun.

329. The small pens allowed no access to the outside, to permit the dogs to make normal adaptive changes when under heat stress. He felt that the significant heat was a contributing factor to the poor condition of the St. Bernard's health. Dr. Preston, who had been in the building apparently for less time than Dr. Whiting, described the building as "almost unbearable for heat and humidity". He said there was almost no comparison between the conditions in this building, and the standards in the Code for Kennel Operations.

330. Dr. Whiting described the placement of the dogs in the small kennel, in the outhouse, as reckless endangerment. There was no protection for them from injurious heat. It was the same as leaving them in a car. Jason Prudhomme, found the dogs in the outhouse, described the weather as hot, humid, and approximately 30 degrees. Dr. Van Middlesworth testified that the St. Bernard he treated was suffering increased respiration arising from the heat outdoors. This normalized as the dog was placed in an air conditioned environment to prevent her from becoming overheated again.

331. A St. Bernard, other than the one placed with Dr. Middlesworth, was seized. The dog was placed with a friend of the Hieberts in Steinbach, because the dog was very near whelping. The dog died. Dr. Whiting was of the view that the lack of protection from heat and improper ventilation was the major contributor to the very poor condition of the dogs.

332. Mrs. Hiebert felt that the old barn on the property had two operable windows with screens, and an operable walk-through door. She described the temperature in July 2000 as "always cool in that barn". She did not believe the barn was too hot to house animals. The animals did not seem uncomfortable.

333. She said there was a thermometer in the barn on one of the posts. After the raid, it had disappeared. She had not taken it down. None of the witnesses were asked about the disappearance of the thermometer.

334. The outside pens, in Mrs. Hiebert's view, were not a heat danger because there was always shade to go to.

335. Mrs. Hiebert owned fans, but she did not have them operating in the barn on July 24, 2000 because she felt the environmental conditions did not call for fans at that time. In the other two buildings, there was never a problem with respect to heat regulation.

336. As the barn was never more than 25 degrees, any concern about the pregnant St. Bernards was not an issue. As to the other buildings, they were also cool. There was never a problem with heat regulation. None of the dogs seemed to be affected by the heat. Had she seen problems, she would have put in a fan.

337. Heather Schalla did not see any dogs appearing to be suffering from heat in July 2000. She could not testify as to the amount of time she actually spent with the dogs. She never inspected any of them.

338. She had moved back to the family farm, as indicated, with her 7 year old daughter, because of problems she was experiencing. During the day, she helped out in the house and with chores. She was engaged in a job search, her daughter's recreational activities, shopping, and errands. All would take her away from the home.

339. Cathy Bauck's facilities have air conditioning, heat, large blower fans and air exchangers depending on the needs of the animals housed in the various parts of the facility.

340. The Code of Practice for Canadian Kennel Operations directs the maximum allowable temperature for an indoor facility of 27 degrees Celsius (80 degrees Fahrenheit). It particularly notes that "temperatures should be suitable to the breed, coat length, age and condition of the dogs housed in the kennel". As noted by Mrs. Bauck in her testimony, the temperature control requirements of huskies, for example, may be different than young pups.

341. The maximum temperatures reached in the area, during the dates alleged in the charges, included 29.5 on July 23<sup>rd</sup> and 24<sup>th</sup>. Colleen Carlson estimated a 30 degree temperature on July 24, 2000, and testified that it was slightly hotter inside the building by around noon.

342. The 27 degree guideline in the Code of Practice for Canadian Kennel Operations relates to indoor facilities. Some of the Hiebert facilities were outdoor, with shelter. Even so, Dr. Whiting described the partially treed shaded structures as an unsatisfactory way to keep a dog, to address issues of injurious heat. Dr. Whiting had never heard of anyone or seen anyone housing dogs this way before.

343. He was also of the view that the whole principle of housing dogs underneath single sheet steel roofing is not acceptable, because of the micro climate that develops when steel heats up. Area A, the building he removed the St. Bernard from on July 19, 2000, was structured such that when the roof heated, the heat would be directly conveyed into the air mass of the building.

In Dr. Whiting's opinion, this building was completely unacceptable for housing dogs. The risk to the dogs left in the outhouse has already been referred to.

344. In terms of protection from heat, in Dr. Whiting's opinion, the best situations on the property were marginal. He believed the lack of protection from heat was a major contributor to the poor condition of the St. Bernard's.

345. Dana Matthews testified that the conditions when working to remove the dogs from the Hiebert property were so warm that she and her colleagues folded their protective suits down from the top of their body. Dr. Preston described Building A as almost unbearable for heat and humidity inside.

346. Section 2(2) of *The Animal Care Act* requires a person with ownership, possession or control of an animal

(c) shall provide the animal with reasonable protection from injurious heat or cold.

Count 5 alleges a failure to provide the animals to wit: dogs, with reasonable protection from injurious heat "so as to significantly impair the health or well-being of the animals".

347. In argument, Crown counsel submitted that I ought to treat the requirements alleged in excess of the statutory as surplusage and disregard them. In the circumstances here, it is my view that having alleged significant impairment of the health or well-being of the animals, the Crown is obliged to prove it.

348. The Crown witnesses referred to all clearly described and established a failure to provide reasonable protection from injurious heat so as to significantly impair the health or well-being of the animals.

349. Mrs. Hiebert's unrealistic position that the animals were completely comfortable and unaffected by 29.5 degree July heat in the absence of adequate shelter and temperature control is totally unreasonable. Heather Schalla was not with the animals, in their environment, with any degree of consistency or regularity to permit the Court to weigh her evidence very heavily. This factor, together with her clear financial and other dependence on her parents clouds her objectivity in describing the environmental conditions for the dogs on the Hiebert premise.

350. It is noteworthy that Mrs. Bauck, who claimed expertise in kennel operations, had the air conditioning, and fans recommended by Dr. Whiting in his testimony, in her operation.

351. The Crown has proven that Mrs. Hiebert failed to provide the dogs with reasonable protection from injurious heat so as to significantly impair their health and well-being. Mrs. Hiebert did not establish that she took reasonable care to avoid the injurious heat.

**Count 6: Confining the dogs to an enclosure or area with unsanitary conditions so as to significantly impair the health and well-being of the animals.**

352. There was much discussion, in the evidence, about the appropriateness and acceptability, of the use of wire flooring in dog cages. The Code of Practice for Canadian Kennel Operations describes wire flooring as "an inadequate method of containing dogs". Foot trauma, lack of definition between living in elimination areas, and the consequent breakdown of the animal's natural instinct not to soil in its housing area are described.

353. Colleen Carlson observed that the wooden and wire cages on the Hiebert property were more difficult to keep clean than concrete or stainless steel. She described the living conditions for the animals as filthy, with fecal matter in the pens. Rain had blended the fecal matter and mud to soup, coating the dogs.

354. Dr. Whiting described dog pens containing a fecal patty across the whole bottom of the pen. The porous nature of the floors and walls in Building A made it impossible for the building to meet the standard for cleaning and disinfection. The piles of garbage leaning up against the cages in one of the buildings was an unacceptable management practice, in Dr. Whiting's opinion, in any area of agriculture. The dogs in the outdoor areas suffered no ability to separate from fecal material. When one came up to the pens, the dogs ran through "slurry, the manure, soil and water mixture".

355. Jason Prudhomme testified that the enclosures containing the dogs were mostly fecal material and mud. There was a powerful fecal odour. Dana Matthews observed the wire mesh precluding large feces passing through the grating so the dogs stepped on it.

356. Dr. Preston's primary concern was the inability to clean and disinfect the operation. He found no comparison to the Code of Kennel Operations, and the conditions he observed. The conditions in Building A, as described by Dr. Preston, were dramatically below the norm for industry acceptable standards.

357. The runs that did exist were dirty, contaminated, and the dogs had to walk through contamination to get from one end to the other.

358. Dr. Erika Pfeiffer testified that a number of the dogs had extreme amounts of lice, causing scratching to the point of bleeding. Fecal encrustation, matted fur, infection, discharge, and various infections had existed in the dogs as she examined them for at least a couple of weeks. The lice on some of the dogs was some of the worst she had ever seen in her practice.

359. Dr. Whiting could not imagine, taking into account the porous nature of the various structures, a method whereby they could be adequately cleaned. An impervious floor was needed to wash down with a power sprayer.

360. Dr. Pfeiffer's evidence described filth and fecal encrustation all over various dogs such that medical problems were caused.

361. Dr. Whiting concluded that the method of housing did not meet sanitational requirements of the Code. Dr. Whiting did not believe that any of the kennels met the standard of once a day fecal removal.

362. Mrs. Hiebert testified that there was no problem with sanitation. She did not miss a day of pen cleaning from July 19 to July 24, 2000, except that she had not cleaned the pens the morning of July 24<sup>th</sup> because she did not have time. Normally, she said, she would start pen cleaning early in the day, as an early riser. Notwithstanding that she knew that Dr. Whiting, Dr. Preston, and others were coming on July 24<sup>th</sup>, she had not cleaned the cages on that day. She could not agree with any witnesses who testified the dogs were covered in fecal matter. None of her dogs had feces on them July 24<sup>th</sup>. She had seen wire in other breeding operations, and felt the use of wire was acceptable. She had never experienced any difficulty in using wood in cages. She did not feel there was anything more she could have done in terms of pen hygiene. She never saw any indication that her dogs had lice.

363. Heather Schalla testified that her mother cleaned the pens every day in July 2000. She saw no fecal material on the dogs seized on July 24<sup>th</sup>. None of the dogs seized on July 24<sup>th</sup> had lice.

364. Gordon Kornelson attended the Hiebert farm in the spring or summer of 2000. On the issue of hygiene and the dogs, he said "they looked okay to me".

365. Cathy Bauck had not been at the Hiebert property since May of 2000. She commented on the miraculous absence of feces in the pens on the Hiebert farm at that time. She noticed no smell in the big barn. She did note that the sanitation in the barn was adequate, although not up to her personal standards. She observed 25-30 dogs, but thought there had to have been more dogs there.

366. The evidence of Drs. Whiting, Preston and Pfeiffer clearly establishes unsanitary conditions significantly impairing the health or well-being of the animals. The evidence of Colleen Carlson and Jason Prudhomme confirm the unsanitary conditions.

367. Mrs. Hiebert's evidence is that she essentially handled matters of sanitation herself. She made reference to two boys who came from time to time to assist, but the frequency and duration of their attendance was never clear in the evidence. Heather Schalla's participation was limited. That Mrs. Hiebert should admit no sanitation problems whatsoever, especially in view of the challenged structural circumstances, is difficult to accept.

368. Notwithstanding the porous nature of the pens, she had no problem keeping them clean. She had not attended to her regular daily cleaning, notwithstanding that she was an early riser and knowing that Dr. Whiting and colleagues were attending, because she had not had time. Heather Schalla asserted on direct examination that the dogs were lice free. On cross-examination, however, she conceded that she did not actually inspect any of the dogs and that her opinion was based on the fact that she did not actually see any of the dogs scratching. It would appear that her contact with the dogs was minimal, in any event, arising from her job search, commitments with her daughter and other outside obligations. Nonetheless, her limited ability to observe did not preclude her from offering opinions as to the conditions of the dogs and the operation.

369. It is difficult to weigh her evidence heavily in connection with this allegation, arising from the factors earlier described relating to her dependency on her parents. Gordon Kornelson, when he was on the farm, did not carefully examine the dogs. He was not on the farm in July of 2000. It is impossible to weigh his evidence heavily in connection with this count.

370. Mrs. Bauck was not on the farm in July of 2000. She spoke to the miraculous absence of feces in the pens in May of 2000, but could not comment on conditions in July of 2000.

371. The prosecution has proven, beyond a reasonable doubt, that dogs were confined with unsanitary conditions so as to significantly impair their health and well-being. The defence has not established, on a balance of probabilities, a defence of reasonable care in the circumstances.

**Count 7: Confining the animals to an enclosure or area with inadequate ventilation so as to significantly impair the health and well-being of the animal.**

372. Dr. Whiting testified that there was no true ability to ventilate the building occupied by the St. Bernard's. There were no fans or any form of

forced air ventilation or air conditioning. It was his view that Building A was completely unventilated, having sat in the full sun all day. It was a concern the building could heat up to 40 degrees.

373. Dr. Preston noted that the building was almost unbearable for heat and humidity. The aroma was less than ideal. He noted, as earlier indicated, no comparison between this building and the standards in the Code of Kennel Operations. The Code of Kennel Operations highlights fresh air source, and adequate air exchanges.

374. The outhouse and Area A were locations on the property particularly noted for comment by the veterinarians on site, as having inadequate ventilation.

375. Mrs. Hiebert testified that at each end of the barn, there was a door that could be opened and closed. There were three holes in the ceiling affording ventilation. Air flow was not an issue. Heather Schalla never found the air stale in the barn. Cathy Bauck noticed no smell in the Hiebert barn in May of 2000 when she was there. In her facility, the buildings have air conditioning, heat, and large blower fans.

376. Evidentiary considerations in this count are similar to those in Count 5, injurious heat. The evidence presented by the Crown establishes beyond a reasonable doubt that Mrs. Hiebert committed the prohibited act. Her evidence that the ventilation conditions were adequate taking into account the circumstances under which the dogs were confined, the temperature, the number of dogs confined, and the circumstances overall is unreasonable and does not establish on a balance of probabilities that she has a defence of reasonable care. Although Ms Bauck, who had ventilation equipment in her facility, noticed nothing untoward about the ventilation, her visit was months before and presumably in different environmental conditions. As a consequence, her evidence cannot be afforded more than marginal weight.

**Count 8: Making a false or misleading statement to an animal protection officer.**

377. The Crown relies on the following exchange between Colleen Carlson and Mrs. Hiebert in support of the charge:

Q. And you asked her if the dog was under veterinary care?

A. Yes, I did.

Q. And what answer did she provide?

A. She said, "Yes, it is. It's under veterinary treatment. My vet, Dr. Dave Millar, is treating it. It's on medications and it's gaining weight."

378. There was nothing false or misleading about this statement. Dr. Millar agreed that he had been involved in the management of the dog's condition. There is no dispute that the dog may have been on penicillin.

379. The elements of this offence, in this case, do not address the adequacy of the medical attention. That issue is considered in Count 2.

380. It is clear from the evidence that Mrs. Hiebert would not have known that Dr. Millar was not adequately licenced. His position, in evidence, was that because he was not affiliated with a practice he could not treat patients. His evidence was that his relationship with Mrs. Hiebert and the St. Bernard was "just in an advisory capacity". As to the difference between an advisory capacity and a veterinarian capacity, he was of the view that the giving of advice was not the practicing of veterinary medicine.

381. There was no suggestion that Mrs. Hiebert would have known or understood Dr. Millar's practicing status to be anything other than the dog "being under veterinarian treatment". As indicated earlier, the adequacy is an entirely different matter.

**(b) Walter Hiebert**

382. From July 19-24, 2000, Mr. Hiebert was engaged as a trucker. The licence application reflected Mrs. Hiebert as the sole applicant. Dr. Millar's evidence was that he dealt solely with Mrs. Hiebert during the relevant time period.

383. The Crown relies on the fact that the dog operation was housed on property of both Mr. and Mrs. Hiebert. Dr. Preston's discussion, on July 24, 2000 during the dog seizure, was primarily with Mr. Hiebert. Mr. Hiebert was the individual to whom Dr. Preston directed his comments, and was the person who responded to them. Dr. Preston explained the warrant process, the alleged breaches of the Act, lack of licences and other areas of concern. The discussion also included dog care and issues related to the production of dogs for money.

384. Gordon Kornelson, when he attended the Hiebert property in the spring or summer of 2000, was escorted by Mr. Hiebert alone. It was Mr. Hiebert who showed him into each of the outbuildings and pens. Mr. Hiebert pointed out the dog breeds. He specifically recalled Mr. Hiebert's assertion that the dogs were Mrs. Hiebert's "thing".

385. Mrs. Hiebert, in her evidence, while advancing the position that the dog operation was hers alone, conceded that she and her husband used a joint bank account. The dog profits and truck driving wages were pooled to pay the joint bills of the family. These factors, while certainly creating a significant aura of suspicion that Mr. Hiebert controlled the dog business during the dates concerned here, even if physically absent, may not have been sufficient to raise the standard of proof to that of beyond a reasonable doubt sufficient to found a conviction.

386. However, Exhibit 13, the July 25, 2000 letter from Mr. Hiebert is capable only of the conclusion that he was actively involved in the dog business and was a person who had “ownership, possession or control” of the animals. The letter acknowledges operating while waiting for the licence to come through. The letter confirms that he was involved in the care of the dogs. The letter indicates his willingness “to take responsibility accordingly”.

387. Mrs. Hiebert’s assertion that the letter was a product of Pastor Hubert’s inexplicable coercion is impossible to accept. This explanation does not pass any test of reason or common sense. Mrs. Hiebert had not provided any information to Pastor Hubert as to the identity of Dr. Preston, his involvement in the investigation, or his fax number. Nonetheless, the document found its way by fax to Dr. Preston. Crown counsel’s characterization of Mrs. Hiebert’s explanation “pertaining to the creation and distribution of this letter is simply incredible”. I adopt that position.

388. Heather Schalla said her father was not involved in the dog operation. She said it was solely her mother’s endeavour. I have, with respect to other issues, commented on an inability to afford Heather Schalla’s evidence weight, arising from her limited involvement in the dog operation at all, and her continuing financial and other dependence on her parents. At best, the evidence discloses a lack of acquaintanceship with the business and financial dealings of her parents.

389. Crown counsel relied on *R. v. Stevens (a.k.a. Roos)*, November 23, 1999, (B.C.P.C.). That case involved an allegation of permitting cattle to be in distress contrary to the *Prevention of Cruelty to Animals Act* in British Columbia.

390. In considering whether Ms Stevens was a “person responsible” for the animals, the court considered factors similar to those here. In that case, the accused’s husband operated the farm. She worked as a crown attorney. McEachern P.J. considered that a person who had control did not have to be engaged in the day-to-day care or control of the animals.

391. The Court considered, as here, that Ms Stevens had another endeavour. Nonetheless, McEachern P.J. concluded that she had the requisite degree of control and convicted her.

392. While not completely in harmony with the case here on facts, this case is illustrative of a circumstance where the spouse who did not have hands-on control of the animal operation could still be found in control through analysis of other evidentiary factors.

393. In this case, the Crown has proven the requisite degree of “ownership, possession or control of the animals”, and Mr. Hiebert’s participation in operating the endeavour.

### **CONCLUSION**

394. Mr. and Mrs. Hiebert are convicted of Count 1, 2, 4, 5, 6, and 7. Mr. and Mrs. Hiebert are acquitted of Count 3. Mrs. Hiebert is acquitted of Count 8.

Dated at the Town of Steinbach, in Manitoba, this 20<sup>th</sup> day of March, 2003.

“Original signed by”

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Pullan, P.J.