



## IN THE PROVINCIAL COURT OF SASKATCHEWAN

Citation: 2013 SKPC 101

Date: June 27, 2013  
Information: **24373204**  
Location: Wynyard

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Between:

Her Majesty the Queen

- and -

April Irving

Appearing:

Barry Stricker  
Nicholas Blenkinsop and April Irving

For the Crown  
For the Accused

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**JUDGMENT**

**J. PLEMEL, J**

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### INTRODUCTION

[1] Animal Protection Officers (APOs) seized 82 dogs and puppies from April Irving on June 4, 2010 from her yard in the Leslie District of Saskatchewan. She is charged with having committed the following offences between June 24, 2009 and June 4, 2010:

- 1) being the person responsible for dogs wilfully neglect to provide suitable and adequate food, water, shelter and care of such animals (*Criminal Code* section 446);
- 2) being the owner wilfully permit to be caused unnecessary pain, suffering or injury to dogs by failing to provide adequate care (*Criminal Code* section 445.1); and
- 3) being the person responsible for the animals cause or permit the

animals to be or continue to be in distress (section 4, *Animal Protection Act* of Saskatchewan).

[2] The Crown alleges that Ms. Irving was operating a puppy mill and, in the process, contravened the *Criminal Code* and *The Animal Protection Act* of Saskatchewan (hereinafter referred to as the provincial *Act* or simply the *Act*). They argue that the yard where the dogs were kept was muddy and full of junk; some dogs were undernourished; water provided was lacking and unclean; some dogs or puppies were ill and some were in unnecessary pain. After consultation with a veterinarian, one of the dogs was euthanized on the day of seizure. They argue that not all dogs had shelters and many shelters present were inadequate.

[3] Ms. Irving responds that she loved these animals and considered them family. She vigorously denies committing any of the three offences alleged. She argues that she worked long, hard hours to provide adequate food, water, shelter and health care for her dogs and that they were not only adequately cared for, but well cared for.

[4] The trial of this matter, including several *voir dices*, took approximately 37 court days and was heard over a period of over a year and a half due to numerous adjournments. During the *voir dices* I ruled that there was no unreasonable delay in bringing this matter to trial and therefore no breach of section 11(b) of the Canadian *Charter of Rights and Freedoms*. I ruled that there were no unreasonable searches of Ms. Irving's properties or seizure of her dogs and therefore no breaches of section 8 of the *Charter*. Besides arguing section 8 of the *Charter*, the defence also argued that over seizure of dogs resulted in breaches of sections 7 and 11(d) of the *Charter*. I found no such breaches. In a *voir dire* prior to trial and several other times during the course of the trial, I made rulings regarding disclosure which, I am satisfied, resulted in the Crown meeting its disclosure obligations.

[5] Counsel agreed to apply the evidence from the *voir dices* to the trial.

[6] Nearing the end of trial Ms. Irving's counsel, Mr. Blenkinsop, asked for leave to withdraw as counsel for ethical reasons. As required by the Supreme Court of Canada in *R. v. Cunningham*, I granted him leave to withdraw (2010 S.C.J. 10; 2010 S.C.R. 331). As a friend of the Court, however, Mr. Blenkinsop offered to file a written brief outlining some issues he identified if Ms. Irving agreed and if the Court had no objections. While I found this unusual, if his ethical reasons did not prevent him from doing so, I accepted his offer and he did in fact file a brief.

[7] Ms. Irving applied for court appointed counsel. I denied her request. She finished giving her evidence without the benefit of counsel, and also called two additional witnesses.

[8] With the consent of Ms. Irving and the consent of the Court, Mr. Blenkinsop returned to Court to orally present closing argument on the points contained in his brief. Ms. Irving also presented her own closing argument.

## **BACKGROUND**

[9] In May 2009, about one month before the first date referred to in these charges, APO Ray Whitney visited Ms. Irving's operation more than once. I ruled his visits were authorized by law and little more needs to be said about his evidence for the purposes of this judgment.

[10] During the period of time referred to in the current charges, APO Lloyd Howden attended Ms. Irving's yard at Leslie on four occasions, namely July 10, 2009, July 14, 2009, April 6, 2010 and June 4, 2010. On all but the first visit, he was accompanied by others, including Dr. Marie Slipiec, a veterinarian. Because she did not want him on her property and was confrontational towards him, he also stopped near her yard and observed it from a distance on other occasions between these dates.

[11] Counts 1 and 2 refer specifically to dogs while count 3 refers to animals in distress. A horse was also seen on July 14, 2009 and April 6, 2010. It was tethered near a grain bin and had access

to rotten canola or grain which was in this bin. Dr. Slipiec was concerned this might be harmful to the horse. On July 14, 2009, she recommended to Ms. Irving that the bin be closed off in such a way that the horse could not access the rotting grain. Ms. Irving's response was that, since the horse was not sick it was obvious that the horse was not eating the grain.

[12] When they returned on April 6, 2010, the horse was tied to a fence post with access to about two cups of water. It still had access to rotten canola in the nearby building. Dr. Slipiec's advice to close off the bin had not been followed. In her report filed at trial by the Crown, Dr. Slipiec commented that "pins, tail, head and spine are prominent. Toes a bit long". The Crown's argument focused on the dogs, not this horse. The horse was not present on June 4, 2010, when the dogs were seized. I have not heard enough detail about the condition of the horse to determine whether or not it was in distress under count 3. Therefore I conclude it was not. My following reasons deal only with the dogs.

[13] I will outline the Crown's case, followed by that of the defence. I find it useful to comment first on the four times authorities attended to her Leslie property. APO Howden and Dr. Marie Slipiec, a veterinarian, gave considerable evidence about the concerns they had. I will go into some detail about their concerns and their recommendations to Ms. Irving. Next, I will summarise the evidence of the other Crown witnesses.

[14] After summarising the Crown's case I will outline that of the defence, beginning with Ms. Irving's response to the concerns raised by APO Howden and Dr. Slipiec as well as other issues especially surrounding food, water, shelter and care of her dogs. I will then summarise the evidence of the remaining defence witnesses.

## **CROWN EVIDENCE**

### **JULY 10, 2009 - ATTENDANCE BY APO HOWDEN**

[15] APO Howden testified that he went to Ms. Irving's yard where she kept her dogs on July 10, 2009, because someone who bought a dog from her filed a complaint. I am satisfied that he attended to try to determine for himself if the complaint had any foundation and not with the intention of seizing animals. When there is a foundation to a complaint which can be remedied APOs will make suggestions and, if necessary, do follow up without seizing animals.

[16] He had never met Ms. Irving before. When he entered the yard she was initially friendly but when he identified himself as an APO she became agitated and angry and she started screaming and yelling at him. She ordered him off her property, kicked the side of his truck and folded the mirror of the truck into the side of the vehicle. Nothing was broken on the truck. She told him that if he ever returned he better bring along a police officer. Even though he believed he had the legal authority to be there, he decided to leave. He did not have a good opportunity to make detailed observations of her operation on this date.

### **JULY 14, 2009 - ATTENDANCE BY APO, POLICE & VETERINARIAN**

[17] APO Howden returned to the property four days later on July 14, 2009, accompanied by police officers and Dr. Slipiec. He obtained a search warrant for this attendance. He did not believe he required one, but given what he described as Ms. Irving's belligerence on July 10, he felt he would be better able to carry out his duties under the *Act* and its *Regulations* if he had one.

[18] It rained a lot that summer and the yard was very wet. Drainage was poor. Straw bales were present and some straw was spread out on the ground. According to APO Howden, the straw on the ground was soaking wet from ground water, urine and feces. There were wooden pallets present and

many dog houses were on or partially on pallets which allowed some, but not all, of the dogs to get off the wet ground and straw.

[19] APO Howden felt that the dogs did not have proper food or water. For food he only observed bones and meat scraps scattered around the property. There were empty dishes for the animals. He saw water which he described as scummy and sludgy in some containers. Some water containers were not fastened and could be tipped over.

[20] He described the shelter as being basic. Most were plywood shelters with flat wooden roofs which he felt would not shed water. I point out here that *Mush With P.R.I.D.E.*, a publication which I will refer more to later, approves of flat roofed dog houses and shows diagrams resembling the dog houses in Ms. Irving's yard, though in the diagrams the houses are raised off the ground (Exhibit D-12, page 9). Some in Ms. Irving's yard were sitting in water. Others were on wooden pallets. Some on the ground had no bedding inside. Some dogs were tied to the houses and APO Howden stated that there was urine and feces churned into the ground. Dr. Slipiec stated that some of the dogs' chains were tangled. There were not enough houses for all the dogs. APO Howden did see a trailer with plywood structures on it. I am satisfied now that many of these were plywood dog houses which Ms. Irving was still in the process of setting up, after her recent move to this yard.

[21] On this occasion APO Howden and Dr. Slipiec saw 57 dogs or pups, described as huskies, wolfhounds and cross-breeds. They saw a number of deficiencies in her operation. Dr. Slipiec noted that the only evidence of food was a few bones scattered about; one puppy showed signs of a nervous system disease; they requested health records for the dogs but Ms. Irving could not, or would not, provide any.

[22] Dr. Slipiec felt the dogs were not getting proper exercise. The areas where they were tethered or confined were well worn from the dogs' activities. These areas collected water and the dogs were not able to leave the areas as they were chained. She did not see other areas in the yard which had

been worn in the same way, which indicated to her that their locations were not changed regularly. Furthermore there were not enough dog houses to provide a roofed structure for all dogs to get out of the rain and elements.

[23] Different types and sizes of dogs and dogs of varying ages have different nutritional requirements. Dr. Slipiec was concerned that the food she could see was not meeting the dogs' requirements. She testified that she is not in favour of a raw meat diet for dogs as it does not provide the necessary nutritional balance and also may lead to issues such as salmonella and e coli for humans who come in contact with it. She told Ms. Irving of her concerns.

[24] Dr. Slipiec and APO Howden asked Ms. Irving for the health records of the dogs on this and subsequent visits. She did not provide them. Nor did she ever give them the name of a veterinarian even though they asked her to do so. Some vaccines may be given by a dog owner. The rabies vaccine, however, may only be administered by a veterinarian or under a veterinarian's supervision.

[25] APO Howden had many of the same concerns as Dr. Slipiec adding that all dogs were wet and caked with mud as it had been raining for some time. Before leaving, Dr. Slipiec and APO Howden made a number of recommendations about how to remedy the deficiencies they saw. Ms. Irving was not receptive to their advice.

[26] Before leaving Ms. Irving's property, APO Howden told her he would send her a list of recommendations as to how to fix the problems they identified. He subsequently mailed her a report containing his observations, as well as his instructions on what she must do to remedy the deficiencies.

[27] His report and instructions form part of Exhibit D-2. It reflects some of the deficiencies I have already referred to and I won't reprint it here. It also refers to things in Ms. Irving's favour, respecting the charges before the Court. It says that all dogs were in acceptable body condition, that

the dogs had some pallets to stand on which helped get them off the wet ground and that all dogs had access to basic shelter at the time of the July 14<sup>th</sup> inspection.

[28] His instructions to her were that she must: close off the grain bin(s); provide all dogs with a balanced diet; not feed raw meat to dogs as it promotes internal parasites in them and creates issues regarding human health; take some steps with respect to the pup with the nervous system disorder and provide a report about this pup to the SPCA from a veterinarian; make health records for dogs available to the SPCA upon request; obtain more wood pallets to get dogs off the wet ground; and put a plan in place to winterize the dogs.

[29] He sent these to her by registered mail but she may not have picked them up from the post-office.

#### **APRIL 6, 2010 - ATTENDANCE BY APO, POLICE AND VETERINARIAN**

[30] On April 6, 2010, APO Howden returned to Ms. Irving's property for the third time. His purpose was to inspect her operation and check on compliance with his instructions. He was again accompanied by Dr. Slipiec and police. On this occasion, he felt the situation had not improved. He felt that Ms. Irving had not followed any of his instructions. The number of dogs had increased and he felt she had more dogs than one person could handle. There was a house and other buildings on the property which he did not enter so he could not be certain of the exact number of dogs she had. They saw 67.

[31] A detailed report prepared by Dr. Slipiec refers to the 67 dogs or puppies seen on this occasion (Exhibit P-5). She testified and I accept that the report accurately reflects her observations on April 6, 2010. It contains body conditioning scores of 60 dogs and puppies. She was not able to get close enough to the other seven dogs to score them, because they were aggressive.

[32] Her observations which show poor care of dogs are as follows:

#### REGARDING GROOMING

Large, white, heavily matted dog.

#### REGARDING SHELTER

11 dogs had no shelter. Some of them were tied together, 6 dogs had ½ plastic kennels for a shelter. These were shown at trial to be the bottom half of transportation kennels, turned upside down, so a dog or dogs could get under for shelter. She felt that the shelter for most dogs was inadequate.

APO Howden took a photograph of a sheepdog tied up near the bottom half of an animal transport kennel and testified this appeared to be the dog's only shelter. It did not have a roof (P-6, November 17 *voir dire*). The Crown's evidence is that some but not all of the dog houses, had pallets under them to raise them off the ground.

#### REGARDING TETHERING

2 dogs were tied to trees.

1 was tied to the farm house, 3 to grain bins and 3 to an old truck.

1 grey wolfhound dog was "tied to gas and diesel storage tanks with no water or shelter nearby". This dog had "difficulty getting up and moving, muscle loss on hind legs, hips creaked, missing teeth, pulp exposure on remaining teeth and rotten, missing one ear." This dog was referred to extensively in the evidence by the name of Pepper.

#### REGARDING ACCESS TO WATER

Ms. Irving went ahead of APO Howden and Dr. Slipiec pouring water into pails or containers for the dogs.

11 dogs had access to pails of dirty water only.

5 had no access to pails of water. Of these 2 were near a pail which had been tipped over.

2 had access to water which was in the bottom half of a dog kennel.

1, which was tied near a dead bull carcass had access to ice in a pail but not to water.

2 dogs were tied together near the dugout on a line from which they could not fully enter their plywood shelter and which limited their access to water.

Dr. Slipiec's report, which she adopted at trial, stated that overall the

water each of the dogs had was dirty and was only a few inches in depth.

#### REGARDING FOOD: DEAD BULL CARCASS, BONES AND RAW MEAT

Dr. Slipiec or APO Howden photographed a dead bull carcass with a knife slit across its left hind quarter lying on the ground next to a shed and two huskies chained close by. Dr. Slipiec described it as having been dead for some time and not suitable for food. It was not fresh and was dehydrated. APO Howden's description of it supports her evidence as does the photograph of this disgusting looking carcass (Exhibit P-3, 1<sup>st</sup> *voir dire*). Dr. Slipiec could see no signs that it had been recently moved to keep it out of the sun. As there was ice in one of the pails, however, I know it was a cold day. We know from other evidence that this was put there by Ms. Irving as an experiment to see if the dogs would eat it. They did not and she eventually hauled it off.

They saw other bones and raw meat scattered around the yard and considered this to be inadequate nutrition.

Dr. Slipiec testified that in one fenced off pen there were 2 adult dogs and 4 puppies in which there were rib bones with very small amounts of meat on them. The large white dog was hoarding the bones and preventing the puppies from getting them. Exhibit P-7, tendered by the Crown in support of this testimony, in fact shows puppies near a bone. I therefore find that the large dog in the photograph was not preventing the puppies from getting near the bone.

However, I do accept Dr. Slipiec's evidence that when dogs are kept or tied together, a dominant one may get more food than the others. This may contribute to one having a good body conditioning score and the other having a poor score, as we see in some cases in her report.

#### REGARDING SANITATION

APO Howden testified that he smelled rotting meat as well as dog feces and urine. He stated dog feces were extensive but were mixed in the wet ground. He also saw feces on many of the dogs. Defence counsel suggests that APO Howden is not credible on this point, as he did not comment on feces in notes he made on April 6<sup>th</sup>. Dr. Slipiec, however, also testified that they were concerned about feces in the yard. It is unclear from her answer if they saw feces on July 14 or April 6, or if they just were concerned that it was potentially present, given the wet soil condition.

Dr. Slipiec and APO Howden testified that in one area of the yard they could smell parvo virus. This was described as a disease with a distinctive smell which is harmful and sometimes fatal to dogs. It is very contagious and can stay in soil for years. Dr. Slipiec stated that if dogs are being kept outdoors in a kennel operation, the soil cannot be cleaned to protect from parvo virus and that it is therefore very important to vaccinate against it.

#### BIO-SECURITY

Dr. Slipiec testified that it is their practice to clean their footwear before entering a kennel operation and on leaving and that they did so on this occasion. She went on, however, to state that Ms. Irving's bio-security was ineffective. She had a roaster of muddy, apparently bleach water, which Ms. Irving asked them to dip their boots into. This liquid was muddy. Dr. Slipiec testified, and I accept, that proper concentrations of bleach will protect against the spread of disease, but if it is muddy, as it was here, or contains organic matter, it is ineffective.

#### BODY CONDITIONING SCORES OF DOGS AND PUPPIES

Dr. Slipiec testified that body conditioning scoring is a quick way of determining a dog's health. Using a 5 point system, she considers 3 to be ideal and anything under 3 indicates some issues.

Dr. McLeod testified that he considers 2.5 out of 5 to be good; at another point in his testimony he explained that in his opinion, 2.5 is on the low side but is acceptable. 1 and 1.5 in his opinion are very bad body scores. Dr. Slipiec testified that the body condition of the dogs had deteriorated since her July 14, 2009 visit.

Of the 67 dogs seen on April 6, 2010, Dr. Slipiec was able to do body scoring on 60. It is necessary to touch animals while scoring them and she was not able to get close enough to some in order to handle them. I accept that body scoring is subjective, meaning that one person might score an animal somewhat differently than another person would. I also accept, however, that Dr. Slipiec's scoring of the dogs was an accurate overall reflection of their condition. The dogs' body scores were as follows: 13 scored 3; 13 scored either 2.7 or 2.8; 12 scored 2.5; 1 scored 2.4; 10 scored 2; 4 scored 1.8; 1 scored 1.7; 5 scored 1.5 and 1 had an extremely low body score of 1.

When considering the evidence of Dr. Slipiec and Dr. McLeod, I am satisfied that of the 60 dogs scored, 21 had body scores which were 2 or less and that these are not good body scores. Of these 21, 6 were

very poor, with body conditioning scores of 1 and 1.5.

Dr. McLeod, Ms. Irving's own witness, testified that if someone has a large number of dogs one could expect to see about 10% with body scores of under 2.5. If the percentage was greater, that would, in his opinion, point to a problem with nutrition. I find that 21 dogs, or around 30% were under 2.5 and that this indicates they were not receiving adequate nutrition prior to April 6, 2010.

#### EXERCISE

APO Howden felt that areas worn down around the dog houses were an indication that dogs were not being properly exercised. Dr. Slipiec testified that the dogs should be walked 20 minutes per day. Given the number of dogs, one person could not possibly accomplish this, even walking a number at one time.

#### RECOMMENDATIONS

On April 6, APO Howden told Ms. Irving he would prepare recommendations for her advising her of what she needed to do to remedy the deficiencies in her operation. He and Dr. Slipiec prepared recommendations which he mailed to her by registered mail but which she did not pick up. He also phoned her and eventually, on April 30, stopped on a service road near her yard to deliver them to her. She came out to the road, screamed and hollered at him. He gave her an inspection notice which she crumpled up and threw to the ground. She did, however, take a copy of the recommendations they had prepared. APO Howden told her on this occasion that they would be conducting an investigation of her property again on or about May 26, and that she was required to comply with their recommendations immediately.

On May 20, 2010, he stopped some distance from her yard to look at it without going onto it. He did not observe any material changes. He did not do a further inspection on May 26, 2010. His next attendance on her property was the day the dogs were seized.

### **JUNE 4, 2010 - DAY OF SEIZURE OF ANIMALS**

[33] No further inspection took place at the end of May. Instead, APO Howden, armed with a search warrant and accompanied by RCMP officers and other animal protection officers, arrived in

the morning of June 4, 2010 to seize the dogs.

[34] APO Howden described the yard on this date to be very wet, muddy and cluttered. He went on to describe many dogs as being wet and muddy; lack of adequate shelter; bones and meat scattered about the yard; food or water containers which were overturned; dogs tethered to objects; the old sheepdog, Pepper, lacking mobility; a young wolfhound pup which could not walk and which had to be carried out of the house; a wet and matted Komondor, caked in mud; a big bag of organic matter which, when opened, was crawling with maggots; a dead moose carcass; and a foul odour.

[35] APO Howden's evidence is supported by a video made of the seizure with the recording starting at about 9:00 a.m. It is contained on three discs filed in this case as Exhibit P-12, A, B and C. Rather than going into detail here about what APO Howden and Dr. Slipiec testified to, I have made notes of what is seen on the video including times shown, along with some of their testimony. These are attached as Appendix A to this judgment and form part of the judgment.

[36] In the video we see the RCMP carrying and using bolt cutters on occasion but we cannot see any rusty clasps. APO Howden said some of the clasps securing dogs to their chains were rusty and could not be opened so the chains had to be cut by police officers. He felt this was an indication that Ms. Irving did not often take her dogs off their tethers for exercise. Ms. Irving denies that the clasps were rusted. I am satisfied that the authorities may have had some difficulty opening clasps but, as I cannot see rust and no clasps have been filed, I do not find that they were rusted shut.

## **CROWN WITNESSES**

[37] The Crown called seven witnesses. I have summarised the evidence of APO Lloyd Howden and Dr. Marie Slipiec. I will now deal with the rest.

**CROWN WITNESSES - RAY WHITNEY AND CORPORAL ROUSSELL**

[38] APO Ray Whitney testified about his dealings with Ms. Irving prior to the period of time referred to in these charges. His evidence related primarily to the issue of search and seizure. I have found that all visits by APOs to her properties were authorized by law, as were their investigations, searches and seizure of dogs. No further summary of his evidence is required here.

[39] Corporal Roussell was present on the day the dogs were seized as were other members of the RCMP. I do not find it necessary to summarise her evidence which was general in nature.

**CROWN WITNESS - SHYLO ANGELL**

[40] Shylo Angell was an unhappy customer who purchased a dog for \$150.00 from Ms. Irving in Leslie on about April 22, 2010, as shown in a written agreement (Exhibit D-10). Ms. Irving told her the dog was approximately one year old. She told her that the dog had its first set of vaccinations, though she did not provide her with any records. The reason Ms. Angell was unhappy is that the dog did not seem to be socialized, would not go for walks, often had to be picked up and would not eat. She returned the dog to Ms. Irving about two weeks after purchase but, as per the agreement, she did not receive a refund. On her visits to Ms. Irving's yard she saw food scattered around the ground as if it had been knocked over as well as bones on the ground. She saw dogs tied to trees. She felt the surroundings looked dirty.

**CROWN WITNESS - BRIGIT BRADSHAW**

[41] Brigit Bradshaw's evidence related to a Komondor. This witness is a professional dog groomer, working in the Central Animal Hospital facility in Saskatoon. She is not an employee of the SPCA, but given the large number of dogs seized on June 4, 2010, she and others assisted the SPCA. I am satisfied the Komondor she dealt with is the same one seen by Dr. Slipiec on April 6

and referred to in her report that day as “the large white heavily matted dog”. At the time she groomed it she had five years experience and by the time she testified she had seven years. She grooms about eight to ten dogs a day and has experience grooming Komondors as well as other dogs. She testified that in seven years as a groomer, she has never seen a dog in a worse state of grooming than this Komondor.

[42] She testified that when it was brought in to her “it was in a kennel, and the kennel was in the front area, we’re in the back, you could smell the dog through the whole clinic, and everyone had to wear masks because it was - - it smelled so bad. It was covered in urine and fecal matter on its legs and its back end.” It had massive amounts of matting, fecal matter and urine and urine scald because of it. The kennel itself was full of urine and fecal matter.

[43] She could not even tell, until she removed the coat, that it was a female, due to the heavy matting. She testified that in order to prevent an accumulation of feces and urine, this type of dog needs to be shaved or bathed and combed regularly in the hind end area. Judging from the amount of thick hair and matting, she did not think this dog had ever had that done. She took three photographs of the dog while shaving it (Exhibit P-22). When she shaved it, the hair was matted so thick that it came off in one piece, as one large pelt, which is not at all normal. Once the pelt was removed she could see significant urine scalding to the skin. She could also see redness to other parts of the skin consistent with being wet but not from urine.

[44] In cross-examination Ms. Bradshaw was shown notes she made dated June 12, 2009 and it would appear that this is the date she shaved the Komondor. Defence counsel suggests that this dog was not removed from its transport kennel and was left to wallow in its own feces and urine from June 4 to June 12 by the SPCA. Therefore, its poor condition with respect to grooming was the fault of the SPCA and not Ms. Irving. Exhibit P-24 does not support this argument. It is comprised of documents assembled while this animal was in the care of the SPCA and includes two photographs of the dog in a metal cage before it was shaved. Its coat is dirty.

**CROWN WITNESS - BRENDA PERLINGER**

[45] Brenda Perlinger's evidence also does not support Ms. Irving's contention that the SPCA kept the Komondor in question in a crate for eight days in its own feces and urine. Ms. Perlinger worked as a health care assistant at the SPCA when the dogs arrived on June 4. She was involved in processing the dogs as they came in. Though not questioned specifically about this Komondor, she stated that in admitting the dogs on June 4, they were photographed and assigned a cage number. The cage number for this one, according to Exhibit P-24 was 110. She also stated that forms would be kept and photographs attached to these forms to be followed all the way through. From her evidence I conclude that this Komondor was put in cage 110 on or about June 4 and that the photographs attached to the forms were the photographs, showing this dirty white dog in its cage at the SPCA. It was transported to the Central Animal Hospital eight days later, in a kennel. I have no evidence as to whether the transportation kennel was clean before it was put in there for this short journey.

[46] Ms. Perlinger also testified about the wolf-cross pup which had difficulty walking. Exhibit D-23 consists of forms assembled by the SPCA regarding this pup. Ms. Perlinger recalled APO Howden carrying it into the SPCA on arrival. It had a distended abdomen. The next day she noted that it was unable to raise its back end. It was taken to a veterinarian. She was aware that Ms. Irving had concerns about one puppy in particular and I am satisfied that this is the one. Ms. Irving advised her that this dog could not have bowel movements and required daily enemas. Ms. Perlinger had this dog placed on a diet recommended by a veterinarian but did not give it enemas. After about three days on the diet it began to raise its back end and got stronger each day. In time it made an excellent recovery. This pup did not act like, nor have the hair of a normal dog. On testing, they were advised it was part wolf. As a result, Ms. Perlinger personally transported it to a sanctuary in Colorado which was equipped to handle this type of animal.

[47] When the SPCA sent this pup to the veterinarian, x-rays showed that it had microscopic

fractures in its hind end area. The admitting records state that when it was being weighed on admission it went to bite the staff and was dropped as a result. The staff entry indicates “no injury resulted” (Exhibit D-23). Defence points out that it is plausible that the fracture found in the x-ray was as a result of it being dropped.

[48] In cross-examination, Ms. Perlinger was shown SPCA forms for a number of dogs seized from Ms. Irving. For the most part they indicate that the dogs lost weight in the first two to three weeks at the SPCA. The defence argues this demonstrates that Ms. Irving was feeding her dogs better than they were fed while in the care of the SPCA. Also, Ms. Perlinger agreed that all dogs were vaccinated on arrival at the SPCA and that dogs need to be healthy in order to get vaccinated.

#### **DEFENCE EVIDENCE**

[49] The defence called five witnesses in addition to Ms. Irving. I will now summarise the evidence of each one.

#### **DEFENCE WITNESS - APRIL IRVING**

[50] Ms. Irving agrees that 2009 and 2010 were very wet years.

[51] Ms. Irving’s version of APO Howden’s first visit on July 10, 2009 differs from his. She testified he drove his truck towards her, hitting her with his mirror.

[52] Ms. Irving testified that she spent a great deal of time every day removing dog feces from the yard. She also testified that she spread straw around the yard and dog houses, and changed the straw frequently, thereby removing feces and urine.

[53] When the authorities attended to her property on July 14, 2009, she had not been at this

location very long. She was in the process of getting things set up.

### **REGARDING SHELTER**

[54] Regarding shelter, Ms. Irving testified that she raised her flat roofed, wooden dog houses onto pallets to get them off the wet ground. The top portion of transportation kennels, when turned over, provided protection from the sun and rain and, because they did not have solid sides, the dogs got the benefit of more air and sometimes a breeze. Plywood sheets which she stood on edge and fastened, provided shade and protection from the wind. Tethering dogs to trees, or putting their dog houses in the area of trees also provided protection from the sun. She intentionally placed some dogs where they were able to seek shelter under the deck and steps of the house. She also moved her dogs from one place where they were tethered or housed, to other places in the yard, as they churned up the areas where they were kept.

[55] She testified that in the winter, she placed straw bales along the walls of the dog houses, thereby providing insulation from the cold. She also nailed a piece of carpet in front of the doors to the dog houses, to protect them when the wind was cold. At times, when required as the temperature dipped too low for the younger dogs or those which might need more protection, she would bring them indoors. Often, on the coldest nights there were many dogs and pups indoors.

[56] She put straw into the houses for insulation and around the houses as required for comfort and for reasons of sanitation. She was able to clean up dog feces and urine easier by doing so. She carried many pails of feces to the dump each day and kept the yard clean. She denies that there was any smell from feces or urine.

### **REGARDING WATER**

[57] She fed dogs in metal bowls and watered them regularly. Watering containers were tied in

place when required so they did not tip over. Some containers were heavy crockery pots which did not need to be tied, as they could not be tipped. Others were wedged into corners in such a way that dogs had access but could not tip them over. Her water supply was dug out water to which she added a stabilizer to make it perfectly fit for animal consumption. She pumped her water to a central location in the yard from which she ran hoses to various locations to make the job of watering animals less time consuming. She does not deny going ahead of Dr. Slipiec and APO Howden, filling water containers on April 6, as she always did chores when in the yard and adding water was therefore not unusual. She denies that any of the containers had dirty water.

### **REGARDING FOOD**

[58] Ms. Irving testifies that she put a great deal of time, thought and energy into preparing appropriate meals for her pups and dogs. She denies that the body score conditioning numbers accorded to them by Dr. Slipiec were accurate.

[59] She acknowledges that she fed many of the dogs raw meat, as that is what they preferred. She argues that, even though some literature and veterinarians recommend against serving raw meat, other literature supports a B.A.R.F. diet, which includes raw meat. B.A.R.F. is an acronym for bones and raw food. When APO Howden and Dr. Slipiec recommended against a raw meat diet, she began serving other foods, trying to balance nutritional requirements, but the dogs were very upset with that, and after several months, she went back to serving either raw or cooked meat, with other vegetables, cereal or other plant or garden produce. She also used commercial dog food and supplements as required to balance the dogs' nutritional needs.

[60] Because not all dogs are the same, dogs received different allotments and differently balanced meals, as required. If Dr. Slipiec and APO Howden saw mostly bones with no meat on them, that is because of the time of day they arrived. She routinely put out meat, including meat on bones, at the end of the day, as that is when it was cooler. This was to prevent meat from spoiling on hot days.

Also to preserve food, she would keep things in a freezer when it was working, or dug into a hole in the colder ground on the north side of the house, or in a horse trough which had a cover on it, also located in the shade.

[61] Ms. Irving testified that she got meat and bones from butcher shops. She received wild game from hunters. She bought kibble and food supplements. She bought cereal, grains and vegetables from farmers and suppliers including a Hutterite Colony which also supplied her with some of her meat. For awhile she had a farmer, Mr. Pomedli, grind cereals and grain for her, and for a time she ground them herself. She often mixed things together into cooked stews. She had large pots and a stove or hotplates for this purpose. She bought chicken bi-products from suppliers.

[62] She picked up road kill as the province's Ministry of the Environment issued her permits to do so for the purpose of feeding meat from such animals for pet food. The moose carcass on her property on the day of seizure had been brought there two days earlier. She had a permit for it which she obtained sometime between June 2 and June 9. Sometimes the ministry issued permits to her after she obtained road kill, sometimes before. Examples of ministry permits are in evidence.

[63] Ms. Irving argues that the dogs in fact lost weight when they were brought to the SPCA as can be seen from the records and as testified to by Ms. Perlinger. This, she indicates, proves that she fed them better than did the SPCA.

[64] Ms. Irving also points out that many of the dogs showed considerable strength when being seized by the APOs. This is in fact supported by the video referred to in the appendix.

## **REGARDING PROTECTION FROM WILD ANIMALS**

[65] To protect her dogs from wild animals such as fox and coyotes, she kept her more vulnerable dogs in an inner area with her larger, stronger dogs on the outer edges. She felt this would act as a deterrent to wild animals. In May 2010, she knew there was a fox in the area and she obtained a

special permit from the Ministry of the Environment to shoot, trap or snare it if she felt it was necessary. The permit is marked as an exhibit in this trial.

### **REGARDING EXERCISE**

[66] Ms. Irving pointed out that the manner in which she tethered her dogs was exceptionally well thought out, providing them the means to move freely on their chains in the area where they were tethered and that their chains were long enough to do this. Some were fastened to a cable with an O-ring which allowed them to run up and down a long length of the cable. She also took them on runs, or had other people do so. She claimed she had hired help at times and also put guests to work when they came to visit. She has not provided names of persons she employed for this purpose.

### **REGARDING HEALTH CARE**

[67] She took the pup with the nervous disorder, seen by Dr. Slipiec and APO Howden on July 14, to a veterinarian for treatment as Dr. Slipiec recommended. She provided documents to the Court which she testified related to this pup. I accept her evidence on this point. She suggested that her dogs were all properly vaccinated.

[68] Ms. Irving stated that when they asked for the name of her veterinarian on the July 14 visit, they turned and walked away from her before she could answer. Dr. Slipiec could not recall if they waited for an answer or not. She was asked for her medical records for her dogs on this and on other occasions and never provided them. Nor has she provided her medical records in this trial, suggesting that they may have blown away while she was moving sometime after the dogs were seized. I do not believe this. She also testified that some of her record keeping was done on smart phones which were no longer available as her dogs chewed them. She filed photographs of chewed smart phones which assist her in making this point. She has filed numerous prescriptions, medication boxes and photographs of such things as vaccines and medicine bottles. Some contain the names of veterinarians and procedures they performed on the dogs. She also tendered medical

records she obtained from Dr. McLeod and other veterinarians. From this I am satisfied that she was providing some medicine and vaccines to her dogs, but not keeping adequate records to demonstrate what each was receiving and when they were administered.

### **REGARDING GROOMING AND SANITATION**

[69] Regarding cleanliness and grooming, Ms. Irving testified that she cleaned and groomed her dogs regularly as required. If they were dirty when they arrived at the SPCA in Saskatoon it is because, when removing the dogs from her yard, the APOs, SPCA and persons working with them, took them through mud and water on the way to the cattle trailers. She testified that the trailers themselves were filthy with cow manure which might explain why some dogs had feces or urine on them when they were subsequently washed and groomed at animal shelters.

### **REGARDING BIO-SECURITY**

[70] As to bio-security, Ms. Irving testified that she had roasters containing an appropriate blend of water and bleach. Before persons wanted to enter her yard they were to put their feet into these containers so their footwear would be sterilized, thereby preventing harmful diseases from being carried in. She went on to state that Dr. Slipiec and APO Howden ignored her when she asked them to do this before they came onto her property.

[71] She stated several times that her own standards of cleanliness, shelter and care far exceeded that of the SPCA and APOs and that the reason she is being prosecuted is because she is different.

### **GORDON POMEDLI - DEFENCE WITNESS**

[72] Mr. Pomedli farmed about 12 kilometres from Ms. Irving's Leslie property. He was a friend who helped her out from time to time. I find him to have testified in a credible manner.

[73] He believes he was in her yard about six times in total. The summer she arrived he believes he was only in her yard once or twice. He went to drop things off for her and not to pay particular attention to the dogs, though he saw them. He delivered bales to her. He compared her operation to that of a cattle operator. She had a lot of dogs as you couldn't make a living just having one or two. She was making a living at it.

[74] She never asked him to put his feet or footwear into the bleach water when he went into her yard, but then again, he never walked among the dogs. She was always outside working with her dogs. She bought bags, called mini-bulk bags, of chicken by-products and rejected oat products as food. These bags were about 3 feet x 3 feet x 4 feet in size and weighed approximately 500 to 800 pounds. As she did not have any means of unloading them, he unloaded them in his yard and then she came over with her truck to pick up what she needed, when she needed.

[75] He described how she had access to a mill for a period of time in her yard and mixed her own food for the dogs. He also saw deer and moose carcasses in her yard and believed she cut meat from them to feed to the dogs. When he had a dog and was a cattle farmer, if a calf died, he sometimes cut meat off it and fed it to his dog without cooking it. He also saw meat and bones from butcher shops in the yard. As well, she stopped by his yard frequently on the way back to her place from a butcher shop with discarded trimmings and bones in the back of her truck.

[76] He recalled her moving a cable/dog run from one area of the yard which had been worn to another area which was less worn. At one point she showed him a chewed up cell phone that did not work very well. He saw a dog sled and dog sled kennel on what he referred to as a broken down truck but this was south of Elfros.

[77] He felt she loved the dogs as he often saw her hugging and petting them "almost to the point that I thought she was paying more attention to the dogs than she ever did to herself". In examination-in-chief, when asked about the cleanliness of the yard he responded "you could walk across the yard without stepping in dog shit, but you watched where you walked". He remembers

seeing her going with a pail picking up dog feces. He also described seeing her on her knees at a dog house saying they were full of dog manure too. I believe he meant to say she was cleaning dog feces from the dog house.

[78] He felt the dogs were all eating and looked to be in good shape. He felt the dogs' coats looked shiny, though they were gaunt. He does not know how to body score a dog.

[79] He drove past the yard the day they were seized but was not sure when he had last been there before that; maybe a month prior. He remembers 2010 as being so wet that he could not seed some of his land. He stated it rained every other day and never dried up. He recalls seeing dogs sitting on top of flat roofed dog houses but did not pay much attention to whether it was dry around the dog houses or not.

[80] He wondered why she needed so many dog houses for huskies because, when he had one 15 years earlier, it preferred to sleep in a snowbank.

[81] He knew there to be many coyotes in the area in 2009 and that there was a bounty on them.

### **ALEXANDER RONCHIN**

[82] Mr. Ronchin is a butcher in Kuroki, Saskatchewan. His testimony was straightforward and credible. Ms. Irving picked up large quantities of beef scraps and bones from him when she lived in the Leslie area. It was good meat for animals. He was glad to give it to her because if she did not take it he would have had to pay someone to haul it away.

[83] When she came to get meat scraps she would always have one or more dogs or pups travelling along with her.

**MATTHEW JOSEPH GALLANT**

[84] Mr. Gallant bought a puppy from Ms. Irving before she moved to the Leslie area. The evidence suggests that this was at the location where she was temporarily camped out while in transit to Leslie. He thought she sold some other dogs while he was there that day for \$300.00 each. His pup was \$450.00.

[85] When he bought his pup from her he testified that she had “a whole bunch of dogs and...he was more off to the side in the back tied under a tree, lots of shelter under there – it was raining that day and the dogs were wet ... she told me that he was going to be a lot of work because he was not your average household, bring-home dog. It took me three months just for him to come so...I could pet him. He was very wary of people.”

[86] On the day of purchase, she spent significant time with him telling him how to care for this pup and how to train it so it and the dog he already had, would get along. Over the next year he and Ms. Irving became friends. They spoke regularly over the phone and they visited each other several times. After her dogs were seized, he helped her take down her kennels and dog houses.

[87] After he bought this pup he felt it was not responding to him correctly. It would eat by itself under his deck and he could only get it to come out for raw meat. He took the pup back after several months to visit the accused’s operation in Leslie and after the pup had a chance to play with the other dogs it seemed to warm up to him and bond with him.

[88] Ms. Irving told him how to make a calendar to record vaccinations including rabies. She gave him good recipes for this pup, but it liked raw meat and that is how he liked to feed it. He testified about how commercial dog foods lack nutrients but, using Ms. Irving’s recipes and showing the dogs love, they are healthier and live longer.

[89] It is clear from Mr. Gallant’s evidence that he believes her to be very knowledgeable about

dogs. I believe some of this is as a result of good self-promotion on her part. For example, he was very impressed that her dog Pepper lived to be 19 years old as this is what she told him. Interestingly, at trial she testified Pepper was 13 years old when he was euthanized.

#### **DEFENCE WITNESS - DR. ROBERT McLEOD**

[90] Dr. McLeod is a practicing veterinarian from Kelvington, some distance from Leslie. He testified as an expert in the field of veterinary medicine. He gave his testimony in an honest and forthright manner.

[91] From September of 2009 until shortly before the date of seizure he met frequently with Ms. Irving, administered or prescribed medications and vaccines and examined and treated some of her dogs. She asked him on occasion if he would come out and look at her operation but he advised her this was not something he did in his practice.

[92] He treated the old dog, Pepper. In September this dog had a badly mangled ear as it had been bitten by another animal. It did not respond to medicine so on October 14, 2009, he performed surgery on the ear flap. There was a great deal of infection. He described Pepper as an old feeble dog. In September 2009, it had a poor body score condition of 1.5 and in April 2010, it had worsened to a 1. It did not respond well to treatment, which Dr. McLeod attributed to his age.

[93] He did not order Ms. Irving to euthanize this dog because he feels this is a matter of personal choice for the owner. However, it is clear from his answers that he felt euthanasia was appropriate in this case because of the pain it was in. No medication he prescribed could alleviate the pain. He did not examine this dog's teeth and could not comment on the exposed nerves as testified to by Dr. Slipiec. It was his opinion that an old feeble dog like this should be kept inside especially in colder weather and certainly not under a fuel tank outside.

[94] He recalls Ms. Irving arriving at his clinic with a small wolf-cross pup which she was holding

in her arms outside his clinic. He was busy and was going out. She told him this pup was having problems with constipation and diarrhea. He recommended putting this pup on a milk replacement as well as other treatment. He recommended she give the dog an enema when required, but clarified that he did not tell her to give it one every day.

[95] Regarding Komondors, Dr. McLeod testified that he saw two on April 7, 2010. They appeared healthy. He vaccinated them for rabies. Their coats were healthy. He was shown image 4771 of Exhibit D-19 showing a clean white dog sitting in a tire rim. He believes this was one of the Komondors to which he gave a rabies shot. A similar looking dog is seen in a photograph taken on April 6, 2010 near a tire rim (Exhibit D-17, image 248). This is not the same dog shown in the photographs attached to Exhibit P-24, taken at the SPCA and groomed by Brigit Bradshaw. It is not the same dog shown in Exhibit P-6, a photograph taken April 6, 2010, which shows the dog referred to by APO Howden as being a heavily matted Komondor type dog.

[96] Dr. McLeod testified that it is a good idea to have outdoor dogs vaccinated for rabies. He never dispensed the rabies vaccine to clients and always administered them himself. He vaccinated fewer than 16 of Ms. Irving's dogs for rabies. The first rabies shot is good for one year and the next one is good for three years. It is also clear that he dispensed many other vaccines to her which she could administer herself. He also sold her other medicine and was shown exhibits which support Ms. Irving's testimony that she received medicines and vaccines from other sources as well.

[97] Dr. McLeod did not know how many dogs Ms. Irving had. It was his opinion that 82 dogs would be difficult for one person to care for. Having a dog house on a pallet in water was not, in his opinion, appropriate. Dogs require an area in which to go to get dry and to have shade. Dogs require regular exercise.

#### **DEFENCE WITNESS - FRED TSCHETTER**

[98] Mr. Tschetter was a member of a Hutterite Colony located about 50 kilometres from Ms.

Irving's Leslie farmyard. He testified in a straightforward and credible manner.

[99] He testified that beginning sometime in 2009, Ms. Irving obtained large amounts of garden produce from their colony including grains, vegetables, potatoes and chickens. When they butchered chickens she came for the utility products such as bruised ones or ones that died, as well as chicken heads, guts and other parts. He understood she was using this as dog food. The food was good when provided to her. Nothing was rotten. They had ways to keep it cool at the colony until she picked it up. Much of it was given to her for free, but she paid for some. They also delivered a large number of bales to her farmyard.

[100] In examination-in-chief he stated that when she came to the colony she had some dogs or puppies with her. The children in the colony liked to play with the puppies. The dogs she brought along seemed to be well socialized. However, on reflection, in cross-examination he recalled that she only had a puppy with her on one occasion.

[101] His three grown sons went to Ms. Irving's yard about 15 times to help her. It was his understanding that they would help remove dog houses and other times they would build pens and drive stakes. When they worked for her, they were gone all day.

[102] Sometimes Mr. Tschetter would stop by Ms. Irving's yard with his boys or with his wife. He believes he was there four or five times and that his last visit was in about April of 2010. It was wet and muddy and they wore boots. He did not see anything in the yard in which to sanitize his footwear nor was he asked to clean his feet by Ms. Irving.

[103] He would see Ms. Irving petting the dogs or working in her yard, perhaps building fences. The dogs seemed happy and looked "pretty good". In cross-examination it is clear that he did not touch them and that with all their fur he could not tell if their ribs were protruding. He did not see any chained to trees. Some were around trees but with fences. He saw some chained in the pasture where there was a lean-to. Some did not have any shelter. He never went behind the house.

## ANALYSIS

[104] APO Howden and Dr. Slipiec were two key witnesses for the Crown giving evidence about the condition of the dogs and the surroundings in which they were kept. Often their description conflicted with Ms. Irving's. Unless I state otherwise, I accept the evidence of APO Howden and Dr. Slipiec over that of Ms. Irving. Ms. Irving was evasive when answering many questions. APO Howden and Dr. Slipiec were not. Some of their evidence which is inconsistent with Ms. Irving's is supported by photographs or video. Ms. Irving's evidence not only conflicts on important points with Dr. Slipiec and APO Howden, but also with other witnesses. For example she stated that another APO, Ray Whitney, was aggressive towards her while snapping on blue gloves. Mr. Whitney denies this. She told defence witness Matthew Gallant that Pepper was 19 years old. She testified, however, that this dog was 13 years old. At one point the accused testified that she gave up her own roasts and meals for her dogs. At a later point she testified that she was a vegetarian.

[105] I accept APO Howden's version of events on his first visit and not Ms. Irving's. It was she and not he who was aggressive.

[106] On the July 14, 2009 visit, though Ms. Irving had only been there for a short period of time, problems were beginning to show. The yard was untidy and wet; dogs were getting tangled in their chains; there were not enough dog houses out for all the dogs; some houses which were set up were surrounded by mud and water so the dogs in these locations could not leave their shelters without getting wet and muddy; they had no place to go to get dried out; some had no shade; the straw which was put out to assist in keeping the ground clean was wet and smelly; even though she tried, she could not keep the wet ground and straw free entirely from feces and urine; with the number of dogs she had, and all the work she had in caring for them she could not properly exercise them. I am satisfied that the system she had for tethering them allowed them certain movement including running and jumping around their stakes, in their pens and along a lengthy cable. This, however, was not a substitute for taking all her dogs out of the yard for more exercise.

[107] I am satisfied that Dr. Slipiec and APO Howden gave Ms. Irving sound recommendations on how to remedy the deficiencies. She was in the process of setting up her yard in July of 2009. She put out more pallets and dog houses. She stated and I accept that she took the pup showing signs of a nervous system disorder to a veterinarian for treatment.

[108] She tried to follow the advice not to serve raw meat for a period of time but went back to serving it as she felt it was good for her dogs when supplemented with other foods. I will not join the debate as to whether or not raw meat is good for dogs. I have no doubt, however, that Ms. Irving failed to provide her dogs adequate food. This is apparent in that 21 of 60 dogs did not have good body scores on April 6<sup>th</sup> and of those 21, six were in the range described as poor. She failed dismally in balancing the nutritional needs of her dogs. Depositing an animal carcass such as the bull on April 6 or the moose on June 4, cutting a slit in it and hoping dogs tethered close by will rip it apart and eat its meat, is not an adequate way of serving up dog food. The bull on April 6 and the moose on June 4 had begun to decay and smell and were not fit for consumption. Unlike Mr. Tschetter, who made a point of keeping meat cool before giving it to Ms. Irving, she took no similar protection in offering these disgusting bull and moose carcasses to her dogs.

[109] I find that the large rotting mini-bulk bag full of dog food which was crawling with maggots on June 4 is further evidence that Ms. Irving did not have a good handle on food storage. She points out that neither of the carcasses talked about nor this maggot infested food actually was fed to her dogs. They are indicative, however, of her poor method of food storage and distribution.

[110] Since there were no soil samples taken, I am not prepared to conclude that there was parvo virus present in the soil even though Dr. Slipiec and APO Howden testified they smelled its distinctive odour. However, I have no doubt that there was a foul stench and that this was as a result of poor sanitation. It is difficult to see how the yard could possibly have been kept clean, given the amount of rain in 2009 and 2010. Feeding raw meat to the dogs, much of which ended up on the ground in these unsanitary conditions, was not adequate.

[111] I am also satisfied that the dirt got into the water containers. This resulted in some of the drinking water being unclean and inadequate. I am satisfied that Ms. Irving took steps to make the water potable at its source. It remained that way at its central location in the yard. However, it was the containers to which the dogs had access which were not kept clean due to the unsanitary conditions in the yard. Similarly, I find the bleach water in the roasters intended for visitors to clean their feet for reasons of bio-security was dirty and ineffective. I note Ms. Irving did not ask Mr. Tschetter, Mr. Gallant nor Mr. Pomedli to clean their feet when they came into her yard anyway. However, she testified that she asked Dr. Slipiec and APO Howden to do so.

[112] I am satisfied as well that the shelter provided to her dogs was inadequate. While a plywood flat roofed dog shelter of a satisfactory size may be approved of by Mush With P.R.I.D.E., there were not enough such houses to shelter all dogs. That publication also speaks of proper drainage which Ms. Irving's yard did not have. Some dog houses were surrounded by mud and water and these wet shelters did not provide a place for the dogs to go to get dry.

[113] In addition, many dogs were not properly groomed. I reject Ms. Irving's testimony and argument that these dogs were clean and dry until the APOs took them out of the yard to be transported to the SPCA. She suggested that the dogs were taken from their clean locations where they were clean, through mud puddles and water on the way to the trailers to be transported. Then they were put in trailers which were filthy with cattle manure and that is how some may have got feces on them. I see in the video taken on June 4 that many wet and muddy dogs were taken from their tethers of pens in the yard to the trailer. Getting there they sometimes also got more wet, but that was due to the nature of her yard.

[114] One transport trailer had what APO Howden described as clean dry straw on its floor. The video supports this. The other trailer had what appeared to be a clean rubber flooring. The trailers were rented and likely hauled cattle previously. Some manure can be seen in these trailers and the dogs may have come into contact with it. However, I also accept that the dogs were wet and muddy before going into the trailers. These trailers were not the source of the filth described, for example,

by Ms. Bradshaw when she groomed the Komondor.

[115] The dogs were not adequately protected from coyotes, foxes or other wildlife and in this respect they also lacked adequate care. At least one dog, Pepper, was attacked by an animal and had its ear badly chewed. I am unsure whether this was from a wild animal or from one of the other dogs, though there is no evidence that other dogs were aggressive towards Pepper. I am satisfied that the other dogs were also at risk of attack from wildlife.

[116] Not surprisingly, Ms. Irving did not have time to properly socialize all of her dogs. Both Ms. Angell and Mr. Gallant testified about their pups being very wary of people. On the other hand, she tendered a photograph of a happy customer receiving a playful pup and I believe some pups and dogs were more comfortable with people than others were. Most dogs appear to act quite appropriately towards the APOs as seen in the video on the date of seizure even though they are strangers. Several clearly show they are fond of Ms. Irving, and this is consistent with the evidence of several defence witnesses. When she travelled to get meat or for any other reason, it appears she tried to bring one or more dogs along with her. I also accept the evidence showing that she was kind and playful with her dogs when going through the yard. She spent as much time as she could with her dogs given the number she had and all the work she had to do.

[117] Ms. Irving did not keep proper medical records. While there is a great deal of evidence that she administered many vaccines herself, and evidence that some of the dogs got the rabies vaccine, I accept the evidence of Dr. Slipiec and Dr. McLeod that animals kept outdoors should all receive the rabies vaccine at the appropriate intervals. Without a proper record keeping system I fail to see how this could be done for this number of dogs.

### **COUNT 3**

[118] Counts 1 and 2 are true criminal offences. Ms. Irving cannot be held liable for wrongful acts pursuant to these charges without *mens rea*. On the other hand, count 3 is a quasi-criminal offence

meaning that if the Crown proves beyond a reasonable doubt that Ms. Irving's dogs were in distress, she must establish on the balance of probabilities that she used reasonable care to prevent it from occurring (*R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299; 1978 CanLII 11). It makes sense, therefore, to decide Count 3 before moving on to Counts 1 and 2.

[119] Section 4 of the provincial *Act*, referenced in count 3 refers to causing or permitting an animal to be or continue to be in distress. Distress is defined in section 2(2) and 2(3) of the *Act* as follows:

- (2) Subject to subsection (3)...an animal is in distress if it is;
  - (a) deprived of adequate food, water, care or shelter,
  - (b) injured, sick, in pain or suffering; or
  - (c) abused or neglected.
- (3) An animal is not considered to be in distress if it is handled:
  - (a) in a manner consistent with a standard or code of conduct, criteria, practice or procedure that is prescribed as acceptable; or
  - (b) in accordance with generally accepted practices of animal management.

[120] Section 18 of the *Act* provides that regulations may be made regarding facilities and standards of care for animals kept for sale, hire or exhibition. Regulation 3 accepts two publications as setting out acceptable standards for the purpose of section 2(3)(a) of the *Act*. The publications are: *Mush With P.R.I.D.E.* and *A Code of Practice for Canadian Kennel Operations*, published by the Canadian Veterinary Medical Association, 1994 (the 1994 Code).

[121] Under section 2(3) of the *Act*, if Ms. Irving's operations are in accordance with either of these two publications or in accordance with generally accepted practices of animal management she cannot be found guilty of count 3 even if I were to find the animals were in distress.

[122] *Mush With P.R.I.D.E.* has been filed in this case (Exhibit D-3). For reasons I will state briefly, I find that Ms. Irving's operations are not in accordance with that publication. I do not know, however, if her operations are in accordance with the 1994 Code, as it has not been filed.

#### **WHO MUST FILE A PUBLICATION REFERRED TO IN THE REGULATIONS?**

[123] Instead of filing the 1994 Code, the Crown filed a second edition of *A Code of Practice for Canadian Kennel Operations*, dated May 2007, without objection by defence counsel. (Exhibit P-1) The second edition has never been incorporated into the regulations. It appears to me that both counsel proceeded as if the second edition was approved of in the regulations. It has not been.

[124] I pointed this issue out to the Crown prosecutor and Ms. Irving sometime after their cases were closed and final arguments presented. I advised them that if either had any applications to bring to deal with this issue, I would consider that application even at that late stage provided they brought their application within 10 days. Neither has made any application, though Ms. Irving, who is now self-represented, sent the Court an email dated June 3, 2013 with a reference to the Canadian Veterinary Medical Association's website. That does not deal with the absence in evidence of the 1994 Code of Practice. As neither the Crown nor defence has applied to reopen the case to file the 1994 Code, I do not consider that to be an option at this time.

[125] The question at this point is, who was required to file it if the parties wanted the Court to consider it. Must the Crown negative the provisions of subsection 2(3) of the *Act* as part of its case in proving that the accused committed the offence in count 3? Must they file the 1994 Code and prove the accused failed to meet its standards?

[126] Prosecution of offences under the *Act* are governed in part by *The Summary Offences Procedure Act, 1990*, S.S. 1990-1991, c. S-63.1. Section 4(4) of that *Act* adopts section 794(2) of the *Criminal Code* which states:

The burden of proving that an exception, exemption, proviso, excuse or qualification prescribed by law operates in favour of the defendant is on the defendant, and the prosecutor is not required, except by way of rebuttal, to prove that the exception, exemption, proviso, excuse or qualification does not operate in favour of the defendant, whether or not it is set out in the information.

[127] The issue presented here is similar to that dealt with by Rothery J. in *R. v. D.C. Holdings Ltd.* For the reasons stated in that case, I find that if Ms. Irving wished to rely on any exception, exemption or proviso to section 2(3)(a) of the *Act*, she had the burden of proving it (See *R. v. D.C. Holdings Ltd.*, 1996 CarswellSask 722; 151 Sask. R. 158). *Mush With P.R.I.D.E.* has been filed so I will consider its contents to determine whether it provides Ms. Irving a defence under section 2(3)(a). The 1994 Code has not been filed in evidence and its absence does not provide Ms. Irving with a defence.

[128] In proceeding in this fashion, I only add that if I had any reason to believe that the 1994 Code would permit the many deficiencies I have found with respect to adequate food, water, shelter and care of her dogs, I would have gone further in encouraging the parties to provide it to me and considered reopening the case and filing it even after closing argument in order that she not be prejudiced in her defence. She was no longer represented by counsel when I raised the issue.

### **MUSH WITH P.R.I.D.E. NOT COMPLIED WITH**

[129] *Mush With P.R.I.D.E.* deals with sled dogs. Ms. Irving told APO Howden that her huskies were sled dogs. He did not see a sled on the property to indicate she was running them or training them as sled dogs. A sled was, however, shown in some photographs tendered by the defence. *Mush With P.R.I.D.E.* (Exhibit D-12) states that any trainable dog can be a sled dog and that northern breeds evolved specifically as sled dogs (Page 25). Therefore, even though there is little evidence she ran these dogs as sled dogs, since many are huskies, or husky-cross, I find that recommendations made to sled dog owners in *Mush With P.R.I.D.E.* have some application. The following recommendations, with page numbers, were not followed by Ms. Irving:

Her yard had poor drainage and a soil surface. Steps she took to deal with that were not sufficient to alleviate the risks identified, such as dog hygiene and disease organisms which can be harboured in the soil. (Page 4)

Mush With P.R.I.D.E. states that fresh meat products require refrigeration or freezing (Page 13). The two dead animal carcasses we see in the photographs in Ms. Irving's yard do not come close to fitting this description.

I am satisfied that many dogs were malnourished and had poor body condition scores. She did not meet the requirements of proper diet as recommended. (Page 13 - 14)

She fell far short of the record keeping recommended in Mush With P.R.I.D.E. (Page 22)

I am satisfied that she kept more dogs than she could handle. It is recommended that an owner should not keep them if she does not have time to exercise them. She did not review her needs and honestly evaluate her dogs. (Page 25 -26)

She did not appear to have a realistic plan for every pup that was born. (Page 28)

She did not socialize her puppies as in the manner suggested by "familiarizing them with as many different situations as possible by taking them on walks...having children play with them, exposing them to crowds, etc." (Page 31). This is not surprising, given the number she had.

[130] Not only was her operation not consistent with suggestions made in Mush With P.R.I.D.E. I am satisfied, based on the evidence of APO Howden, Dr. Slipiec and Dr. McLeod that she did not meet generally accepted practices of animal management. Furthermore, while a Code of Practice for Canadian Kennel Operations, 2<sup>nd</sup> Edition, has not been adopted by the Regulations made under the *Act*, I find it is still useful in determining what the Canadian Veterinary Medical Association recommends and that it is some indication of generally accepted practices. Some of its recommendations are as follows:

Aged or infirm animals should not be housed outdoors.

Tethering of dogs, for example tying a dog to an immovable object such as a stake or a building as a primary method of confinement is not acceptable. This seems somewhat inconsistent with the acceptance of tethering in *Mush With P.R.I.D.E.*

A large part of the diet was bones and raw meat. This is not recommended in the Code of Practice. However, this Code acknowledges that contrary opinions exist.

Using clean water and food containers.

Areas with dirt floors require good drainage.

Preventing contact with wild and stray animals to facilitate parasite management.

All dogs should be under the supervision of a consulting veterinarian.

Regular grooming appropriate to the breed.

[131] Ms. Irving is not exonerated by virtue of the exceptions, exemptions and provisos mentioned in subsections 3(a) and (b) of the *Act*.

[132] For the reasons previously stated I find that she deprived her dogs of adequate food, water and shelter between April 6, 2010 and June 4, 2010. In doing so she also deprived them of adequate care. She also failed to provide them adequate care by failing to exercise them as often as they required, failing to protect them against wild and stray animals thereby opening them to potential risk of injury or disease and failing to keep proper medical records to ensure that they received adequate vaccinations at appropriate intervals.

[133] Because these animals were deprived of adequate food, water, care and shelter they were in distress as defined by the *Act*. Ms. Irving did not exercise reasonable care to prevent their distress from occurring.

[134] She is therefore guilty of count 3.

## COUNT 1

[135] Because the definition of distress in the *Act* refers to deprivation of adequate food, water, care and shelter, there are similarities between count 3 and count 1. However, the mental element in count 1 is much different. While I have found Ms. Irving guilty of count 3 because she failed to exercise due diligence, a conviction under count 1 requires that Ms. Irving be found to be wilfully negligent.

[136] I find that Ms. Irving was negligent in failing to provide adequate food, water, care and shelter for her dogs. The Crown argues that her negligence was wilful. They point out that she knew how to properly care for dogs as demonstrated by the fact that she gave advice to her customers. The Crown argues that she did not live up to her own standards. Add to this the fact that Dr. Slipiec and APO Howden told her what she needed to do to remedy the situation and the Crown says they have proven count 1 beyond a reasonable doubt. They point to *R. v. Galloro* as support for the proposition that when an animal owner fails to follow sound advice from someone such as a veterinarian, that is an indication of wilfulness (*R. v. Galloro*, 2006 CarswellOnt 4315; 2006 ONCJ 263).

[137] While I do not disagree with *R. v. Galloro*, this case is distinguishable. Ms. Irving worked long and hard hours in the care of her dogs. She did little else but try to provide for them. She was hampered in many ways by the excessive rainfall in 2009 and 2010. She could have hired more help, improved drainage, improved shelters, provided proper water and nutrition, kept better medical records, reduced the number of dogs or done other things so her animals would not be in distress. While she was negligent in providing food, water, shelter and care, and while she clearly lacked due diligence, I am not satisfied that she was wilful in her negligence.

[138] For this reason I find her not guilty of count 1.

**COUNT 2: PEPPER, THE KOMONDOR AND THE WOLF-CROSS PUP**

[139] The Crown argues that count 2 relates to three dogs in particular namely Pepper, the Komondor and the wolf-cross which had difficulty walking.

[140] Though Ms. Irving caused these three dogs and others to be in distress under count 3, I find she is not guilty of count 2 which charges her with wilfully permitting them to be caused unnecessary pain, suffering or injury contrary to section 445.1 of the *Criminal Code*, for reasons which I will now state.

[141] With respect to Pepper, I find she had a very strong emotional tie to this old dog. She spent a considerable amount of money on medicine and surgery to keep it alive. This does not support the Crown's argument that Ms. Irving's conduct was criminal and wilful under count 2.

[142] The Komondor had a good body condition score. Though it was matted, wet and dirty, I am not satisfied that Ms. Irving realized she may also be in pain due to urine scalding on her skin.

[143] The wolf-cross pup was dropped off along with its sibling by someone who felt Ms. Irving could care for it. Given the large number of dogs she had, she should not have taken them in. She realized something was wrong with this animal and instead of seeking proper treatment, she spoke to Dr. McLeod at a time he obviously was rushed. He gave her some off the cuff advice which she appears to have followed, with no improvement. She did not return for follow up treatment. The fact that she sought out treatment and acted on it in the first place, leads me to conclude that her conduct towards this animal was not criminal and wilful within the meaning of count 2.

## CONCLUSION

[144] Ms. Irving is not guilty of count 1 and 2. She is guilty of count 3.

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J. Plemel, J

**APPENDIX “A”** OBSERVATIONS WHILE VIEWING THE VIDEOS OF THE SEIZURE ON JUNE 4, 2010.

In the first minutes of the video we see dogs in a very cluttered yard. The dogs are obviously excited, which is not unusual given the strangers who have just arrived, meaning the APOs and members of the RCMP.

As the video progresses, we see wooden dog houses with the flat roofs. Many dogs sitting on roofs of dog houses or on bales.

9:13:09 - We see a white long haired dog which looks extremely dirty and matted. Mr. Howden described this one as never having been groomed and wet with caked mud. He had seen this dog on a previous visit in much the same situation.

9:13:25 - We see 2 dogs tied near plastic dog carriers which are smaller than the dogs themselves. The ground in front of these carriers is worn down so there is no grass but only mud and water which the dogs are standing in.

9:13:38 - A white muddy looking husky standing in water with three pallets around but no dog house.

9:14:15 - 4 dogs. 2 in a muddy area, one inside metal vehicle rim and another on a wooden pallet. If either stepped off, they would be on wet ground. Nearest dog house to them is small and flat roofed, also on wet ground with no pallet under it. Perhaps they have access to it. 2 other dogs in background, one on the base of an overturned dog carrier, with what appears to be lots of straw on the ground.

9:15:28 - 2 dark looking dogs standing in mud and water; one looking particularly wet and unkempt.

9:15:53 - A husky standing on a flat roofed dog house surrounded by churned out mud and water. House is on pallet, but difficult to see how dog gets into the dog house without first stepping through the mud and water.

9:16:04 - 2 dogs chained together near a dog house which looks too small for the 2 of them. Ground not as badly churned up. Overturned pail within their reach - is this a water pail? No other pail in view.

9:18:15 - White dog in front of metal quonset, lots of straw and access to dog house. Looks like a bone in reach but not much on it.

9:18:35 - 2 huskies in front of round metal granary, in mud and water, no access to a dog house and it does not appear that the granary would be their intended shelter as the door to it is closed off at the bottom - perhaps they could jump over it to get in.

9:22:30 - We see some of the APOs after they have walked down the back way to the west entrance. There is a log across the road which appears is there for the purpose of blocking traffic (though maybe someone could drive around it). A dog jumps out from the edge of the bush, wooden structure/grain bin. Notable because it is a considerable distance from the other dogs we've seen to this point. This one is tied to an old white car with rope which is not very long. Dog looks very unkempt and straggly - longer hair dog. There is a white pail overturned near it and the dog at one point has the leash over the pail so it looks like the leash likely tips the pail over when the dog pulls. No other pail in sight. There is a white husky dog on the opposite side of the road.

9:26:45 - 2 white dogs on top of a dog house, with a great deal of mud in front of the house, one jumps off into the mud when APOs are near.

9:29:12 - A husky, in the mud on a short leash under a large tree with a dog house and several pallets, again here the ground is churned up.

9:29:59 - Shows what Howden calls the remnant of a carcass - perhaps a horse hoof or something - says it does not resemble nutrition.

9:32:19 - 2 dark coloured dogs in mud chained together near dog house which appears too small. The roof of the dog house is not flat and it appears to be broken up so rain can get in. Pail in front of it is tipped over. Dog house is sitting in mud and does not appear to be on pallet. The dogs are standing in mud. Howden comments why put them together like this if not for breeding. Howden says dog house is in muck and it is as wet inside as it is outside.

9:32:47 - Dogs in wire pen - lots of pallets but mud inside and around is quite churned up, some dog houses inside.

9:34:01 - Komondor it is filthy. Everything up to his stomach looks wet and muddy, also up his chest and up to chin - the whole coat looks in terrible condition. Standing on driveway and in mud. At first Howden said he does not think this is the Komondor but at 9:34:23 says it is, he stands corrected. Appears to be the dog put into the transport crate by Howden at 9:43:40.

9:50:32 - When APOs are using their poles to catch a dog near house, we see a close up of the dog and it appears very poorly groomed.

9:53:04 - Some dogs obviously have considerable strength as shown when they are being brought by APOs to transport.

9:55 - APOs going into trailer with a substantial amount of clean dry straw. Sides of trailer look darkened but no reason to suspect they are wet. Ms. Irving says a brown substance near entry to trailer is likely manure.

9:59 - They go into the house.

End of first DVD. For the last part of this DVD the APOS and RCMP are leading dogs to trailer. Some of them get muddier on the way. Note, Howden points to manure in the trailer.

## Disc 2

10:45 a.m. - Video approaching front of yard after putting a dog into semi-trailer.

10:55 - Dogs being taken out of a churned area/pen. It doesn't look too muddy but we do see a water puddle close to the front of one of the dog houses.

Previously at 10:51 - We see dogs taken from this area walked through water on the way to semi.

10:57:30 - See what appears to be meat on top of one of the dog houses in this pen. Howden said it was rotten and raw. No dog food bowls visible. Some pails which appear to be secured.

11:24 - Inside shot of a second cargo trailer. No straw on floor which appears very clean with a mat (rubber mat) covering it and clean walls.

11:27 - Some of the dogs' feet look clean before they are removed and taken to the trailers - some would have gotten dirty en route to trailer.

11:35 - Howden describes this as dried dog feces - it is relatively close to the location of some of the dogs.

11:44:31 - We see Howden trying to open a clasp - he says he couldn't get the dogs apart. RCMP use bolt cutters to cut chains at 11:45:28. There are also clasps at the end by the dogs' necks which appear not to be rusted.

11:25:15 - We see a dog house on pallets, no straw. Dog on pallet is as tall or taller than the house. Howden makes comment this dog would have to crouch to get in. I agree. Dog house looks too small for the dog.

11:25:35-38 - We see a husky walking in circles in very small pen before it goes into a dog house. Howden says area is wet and muddy and video supports this. A fair bit of straw around the outside of the pen but not inside. Dog also has access to house which appears to be outside pen. Howden makes comment that there is no room to exercise properly.

11:26:15 - 4 dogs on pallets in muddy area. One in particular only seems to have access to a small bottom half of a dog carrier (perhaps to lie in) and then a larger top half near it - perhaps to give it shelter. None of them appear to be near anything resembling adequate shelter.

11:52:09 to 1:52:18 - Pen which we have seen before - pallets - Howden says what we see there on the ground is mud and feces and video appears to support this.

11:53:57 - Howden says these are galvanized and rubber garbage cans full of rotten bones. There are three and we see someone remove lids. Possible dogs have already chewed meat off and they are destined for dump. Howden says, although not visible on video, these are crawling with flies. Not at all clear from video.

11:55:52 - Small amount of what Howden says is meat scraps wrapped in plastic in an outdoor freezer which Howden says was working. Not nearly enough for 80 dogs.

11:58:18 - Clean plastic garbage like can containing a partially full bag of kibble according to Howden. Again, not enough for 80 dogs.

11:58:48 - A decomposing moose carcass. It looks disgusting. Howden describes the smell in this area as horrendous - stating it was completely in the sunlight. Ms. Irving states she moves it into shade as the day progresses but could not this day as it was the day of seizure.

11:59:14-16 - Camera focusses on what appears to be feces and Howden states there must have been a dog tied close to this carcass as there is an accumulation of feces there.

2:01 - The police and APOs remove a green tarp covering a large bag of something. A lot of flies under the tarp on and around this bag. A small hole is apparent at a bottom corner. Howden believes something has likely chewed it open. The bag is opened by the APOs and it is a gooey rotten mass crawling with maggots. Howden stated the smell was undescrivable. He obtained a sample with the intention of having it analysed but the smell of it was making him sick so he disposed of it.

2:37 to about 2:47 - We see Pepper, he walks up driveway, although not agile, somewhat better than I would have expected. At back of truck is examined. Eventually dog helped into back of police vehicle. Up to this point dog is standing or walking the whole time.

3:28 to 5:34 - No recording. Howden believes it is because they are waiting for a truck to return to pick up more dogs.

Note: APOs use of control poles throughout - very patient with dogs.

Note as well that Ms. Irving, though obviously emotional, appears to be healthy and vigorous throughout the day. She testified she was healthy and strong at the time.

5:48:21 - The APOs are there to take the two dogs we saw earlier on the initial walk through, in front of the big dilapidated wooden shed. One is a dark dog, the other light. The light dog looks very dirty and unkempt. They are in mud, their dog house is in mud and there is no straw in sight. Not clear if the dog house is or is not on a pallet in this photo - but there is now a piece of plywood in front of the dog house and Ms. Irving is standing on it.

At 5:49 we see a large trough which may be the horse trough where Ms. Irving stored dog food. It

has a large cover on it.

As a whole dogs seemed to act appropriately with APOs and some openly show they like Ms. Irving - ie at 5:59:20 she walked backwards and accidentally slipped - immediately two dogs jumped towards her and on her as if to lick her and play with her. This while in immediate vicinity of APOs who were there to take them away.

6:07 - We see a large chain link pen with lots of pallets and one dog house.

Disc 3 starts at 6:16.

Among other junk we see an abandoned coin operated Pepsi cooler. It has something sitting on it so perhaps it is being used as a table. We also see a large metal tire rim.

6:23:27 - Officer uses bolt cutters to cut chain connecting two dogs.

6:33 - Ms. Irving herself takes a dog from the place where it is chained up to the trailer and puts it into a plastic carrier while authorities watch on.

6:37 - Another one tied to the abandoned car. This one appears very poorly groomed. Dogs accompany Ms. Irving willingly.

7:09 - Ms. Irving with small dog in house, after house has been searched for about 15 minutes.

7:11:39 - Disc ends.