

- [4] Where an inspector or agent of the Society for the Prevention of Cruelty to Animals (the “SPCA”) has reasonable grounds for believing that an animal is in distress, he or she may order the owner to take such action as may be necessary to relieve the animal of its distress or have the animal examined and treated by a veterinarian at the expense of the owner. These are commonly known as compliance orders. Any such orders must be in writing and must specify the time within which any required action shall be performed. Such orders may be modified and are generally revoked once the required actions have been completed.
- [5] In certain circumstances, an inspector or agent of the SPCA may remove an animal from its owner’s care and take possession of it for the purpose of providing it with food, care or treatment to relieve its distress. This can be done in one of three situations: (1) Where a veterinarian has examined the animal and has advised the inspector or agent in writing that the health and well-being of the animal necessitates its removal; (2) Where an inspector or agent has inspected the animal and has reasonable grounds for believing that the animal is in distress and the owner of the animal is not present and cannot be found promptly; or (3) A compliance order respecting the animal has been made and has not been complied with.
- [6] When an animal has been removed from the care of its owner, and the SPCA has provided an animal with food, care or treatment, it may serve the owner with a statement of account for those services and the owner is made liable for the amount stated. If the owner refuses to pay such an account within five days of service of the account on him, the SPCA may sell or dispose of the animal and reimburse itself out of the proceeds.
- [7] The owner of an animal who considers himself aggrieved by a compliance order or by the removal of an animal may appeal against the order or request the return of the animal by notice in writing to the Board.

Factual Background

- [8] Several years ago, Mr. Pryor became interested in the breed of horses known as “Canadians”. They are a breed of horse developed only in Canada and are strong and sturdy animals. Although from Guelph, Ontario, Mr. Pryor purchased a farm on Manitoulin Island with a view to raising his horses there. This he has now done for over twenty years.
- [9] His farm was 120 acres of pasture, stone and bush. The horses had the run of the entire acreage. Mr. Pryor had arrangements to take the hay off of several local farms and used that hay to feed the horses. If need be he bought additional hay from area farmers from time to time. When the events which give rise to this case occurred, Mr. Pryor had 18 mares, 2 stallions and 1 colt. All but one mare had been born and raised on this farm.
- [10] In February of 2013 the SPCA received a call from Dr. Seabrook, a veterinarian from Manitoulin Island. She had concerns about whether the horses were receiving adequate food. Her concern was based on something told to her by a third party, and her driving

by the farm and seeing no source of food. Agent Lapping of the SPCA (qualified as an expert in equine care and management) drove to the farm and made observations from the public roadway. She saw several horses pawing at the ground, which she interpreted as foraging for food. She noted that their hind quarters were more angular than round, which she thought to be unusual for this breed of horse. She noted their spines to be prominent and their abdomens to be almost pendulous. She could see no hay available to them. She noted that a stand of trees appeared to have the bark eaten from them and it appeared to her that the horses had eaten the bark. Based on her observations she was concerned that the horses did not have adequate food or shelter. She applied for a warrant to enter the property to investigate further but was initially declined. She undertook further surveillance of the property over the next week or so and was given no reason to believe the horses had received any hay or other food. On March 19, 2013 she applied once again for a warrant to enter upon the farm property and this time it was granted.

- [11] The search warrant was executed on March 22, 2013 and in the pasture she found 18 mares. Their body condition was not ideal, but nor were they overly thin. She found many had hooves that were badly cracked and overgrown. It was apparent to her that the horses had not had any hoof care in a long time. Normally, a horse would have its hooves trimmed about every six weeks. She proceeded on to a shed which housed two stallions and one colt. They had no dry bedding and there was no hay or water in the shed. She judged their body condition to be poor based upon their visible skeletal structure.
- [12] Agent Lapping was accompanied by Dr. Bruce Robertson, a veterinarian retained by the SPCA to examine the horses. He confirmed the observations of Agent Lapping and together with her came to the view that the horses were in distress and that compliance orders should issue requiring their owner to take corrective action. With respect to all 21 horses, it was ordered that:
- (1) They be provided constant access to potable water;
 - (2) They be provided access to free choice good quality hay;
 - (3) They be provided access to free choice mineral or salt lick;
 - (4) They have their hooves trimmed by an experienced farrier to return their hooves to an appropriate size, shape and length;
 - (5) Those with hooves with severe cracks be tended to by an experienced farrier and that recommendations made by the farrier be followed;
 - (6) The horses be examined by a veterinarian for nutrition and parasite control, that treatment recommendations be followed, and that a report be provided with the examination findings and treatment recommendations.

- [13] Items 1, 2 and 3 were to be complied with by March 25 at 1:00 p.m. Item 4 was to be complied with by April 5 at 1:00 p.m. and Items 5 and 6 were to be complied with by March 28 at 1:00 p.m.
- [14] There was one mare that appeared lame in the front legs. With respect to that mare, the compliance order was that:
- (1) The horse be examined by a veterinarian;
 - (2) The treatment recommendations of the veterinarian be followed and a report provided;
- [15] These were to be complied with by March 26 at 4:00 p.m.
- [16] With respect to the two stallions and one colt the compliance order required that:
- (1) The horse be examined by a veterinarian;
 - (2) The treatment recommendations of the veterinarian be followed and a report provided;
 - (3) Clean, potable water be provided at all times;
 - (4) Adequate and appropriate clean dry bedding be provided for them.
- [17] Items 1 and 2 were to be complied with by March 26 at 4:00 p.m. Items 3 and 4 were to be complied with by March 25 at 4:00 p.m.
- [18] The final compliance order required that old farm equipment be removed from the pasture or be roped off from the horses. This was to be done by March 25 at 1:00 p.m.
- [19] On March 25, Agent Lapping returned to the farm to determine whether the compliance orders were being met. She found that the horses were being provided with hay, water and salt licks. The stallions had been given proper bedding. Mr. Pryor indicated that he was having difficulty locating a veterinarian and farrier to assist him, and that in any event he did not feel they were necessary. Mr. Pryor was told once more that this had to be done.
- [20] On each or March 26 and 27 Agent Lapping tried to contact Mr. Pryor to determine what efforts were being made to contact a veterinarian and farrier. On both occasions she was only able to reach his answering machine and left a message for him to contact her.

- [21] On March 28 Mr. Pryor e-mailed SPCA Regional Inspector Martin to advise that a farrier named Joseph Martin would tend to the horses and that a veterinarian would be obtained. Mr. Pryor left a number where he said he could be reached but when Mr. Martin returned the call he got only a generic recorded message.
- [22] On April 2, Regional Inspector Martin attended at Mr. Pryor's farm where he observed Mr. Pryor providing food and water for the horses. Mr. Pryor advised that his farrier would not be available until after April 4 and that he had not yet been able to secure a veterinarian but was trying. Mr. Martin explained the importance of complying with the orders, which had now been outstanding for some time. In order to give him the day to contact a veterinarian and secure dates for examination of the horses by the veterinarian and farrier, he extended compliance with those conditions until 5:00 p.m. that day, issued a notice of the modification of the orders and stressed to Mr. Pryor the importance of confirming that dates had been set for examination of the animals by the veterinarian and farrier.
- [23] The SPCA heard nothing further from Mr. Pryor that day. The following morning he left a message at the SPCA office advising that he had not been able to secure a specific date for the farrier to attend and that he had not yet been able to secure the attendance of a veterinarian. Mr. Pryor's evidence was that he had specified the week (the week following April 4) as the date his farrier would attend the farm to look after the horses' hoof care. Given that the farrier did, in fact, attend his farm the week following April 4, I accept that this is likely what was told to the SPCA. However, in my view the SPCA was not obliged to accept his statement to that effect. Mr. Pryor had a history of involvement with the SPCA and it is clear that he has not always been cooperative with them. He did not provide any means by which the SPCA could independently confirm that he had a farrier who would be tending to his animals as stated. He gave no particulars of his efforts to obtain a veterinarian and no indication of when he might be able to make arrangements for one to attend.
- [24] Given its history with him, and the scarcity of information being provided, the SPCA was of the view that Mr. Pryor was making little effort to comply with these terms of the orders. It applied for and obtained a warrant allowing them to attend at the farm to determine if the animals remained in distress.
- [25] Agent Lapping, Dr. Robertson, and a farrier named Douglas Hurley were among those involved in executing the warrant on April 4. All three determined that no hoof care had been provided to the horses. All three found the stallions and colt to have poor body condition and muscle wasting.
- [26] Douglas Hurley was qualified as an expert in farrier services and treatment of equine hooves. He has been a farrier for 29 years after completing two years of equine studies at Humber College and a further year of study at Wolverine Farrier School. Although he was of the view that all of the horses required significant hoof care, he identified eight mares whose hooves were very badly cracked or overgrown and required immediate attention. He testified that it had to have been at least six to eight months since the horses

had received any hoof attention, and that they were at risk of ligament and tendon injury, founder, and infection. He was of the view that because the horses were skittish, because of the extent of the work required, and because of the unsanitary conditions at Mr. Pryor's farm, the horses would need to have the farrier work done at another location where they could be safely sedated. He was of the view that the horses were in dire need of hoof treatment.

- [27] Dr. Robertson, qualified as an expert in veterinary medicine, confirmed that the eight mares identified by Mr. Hurley required urgent hoof care. He was also of the view that the two stallions and colt had not improved since his last visit to the farm. They continued to have poor body condition and the stallions appeared to be suffering from pitting edema. They were lethargic and generally weak. He signed certificates indicating that the health and well-being of eight mares, the two stallions and the colt necessitated their removal to a proper place where they could be provided with food, care and/or treatment in order to relieve their distress.
- [28] Based upon her own observations of the animals, and the concerns identified by Dr. Robertson and Mr. Hurley, Agent Lapping determined that eight mares, two stallions and the colt would be removed. Of these, the removal team was unable to corral two of the mares, with the result that only 9 horses were taken on April 4. The statutory bases for removal were section 14(1) (a) of the Act (because Dr. Robertson advised Agent Lapping in writing that the health and well-being of the horses necessitated their removal), and section 14(1) (c) of the Act (because Mr. Pryor had not complied with the orders requiring him to obtain farrier and veterinarian services for the horses).
- [29] On April 5, Mr. Hurley trimmed the hooves of the horses that had been removed. For his safety, most of the horses had to be tranquilized while the trimming took place.
- [30] On April 10th, the SPCA returned to Mr. Pryor's farm with a view to removing the two horses it had been unable to retrieve on April 4. It found that one of them had received appropriate hoof care and no longer needed to be removed. It remained unable to corral the second horse. It returned on April 12 to try again and at that time found that this last horse had also received appropriate hoof care and that its removal was no longer warranted.
- [31] Mr. Pryor did not appeal the issuance of the various compliance orders to the Board. He did appeal the removal of his horses. On April 17 he participated in a teleconference with the SPCA and a Board member at which time it was indicated that most, if not all the horses, were no longer in distress and were available for return to him on payment of various costs related to their care.
- [32] On April 18, the SPCA delivered to Mr. Pryor a statement of account for \$29,582.97. That Statement of Account indicated that the horses had been provided with the required food, care and attention, leaving the inference that all were then ready for return. In fact, the statement of account was in error. When the various amounts itemized in the statement are added together, the total comes to \$19,754.15. It is not clear when Mr.

Pryor noticed this error, but it was not brought to the attention of the SPCA by him. He offered to pay \$6,000 for the return of his animals. The SPCA was not willing to compromise to that extent. The horses remained in the care of the SPCA pending the hearing of Mr. Pryor's appeal to the Board. The appeal was heard on May 8, June 5, 6, and 7 of 2013. The Board released its decision on June 27, 2013 and determined that the horses were legitimately removed in accordance with the Act and that they were to be returned to Mr. Pryor upon payment of the SPCA account of \$32,226.78. Mr. Pryor did not agree with the decision of the Board, including the requirement that he pay this amount. He appealed the Board's decision to this court. The horses have remained in the care of the SPCA since. The cost of their care now amounts to close to \$108,000.00.

The Position of the Appellant

- [33] Mr. Pryor takes the position that his horses should be returned to him immediately because removal was unnecessary to meet the concerns of the SPCA. He says the condition of the stallions and colt simply reflected a typical reduction in body mass consistent with the end of the winter season. Although he acknowledges that some of the horses required hoof treatment he says that he had made arrangements for a farrier and all farrier services could have been delivered at his farm.
- [34] Although he was willing to concede that he should perhaps contribute something to the care and treatment of the animals undertaken by the SPCA, he feels the amount claimed is unreasonable in all of the circumstances.

The Position of the Respondent

- [35] The SPCA takes the position that the removal of the horses was justified on the basis that they were in distress, that they required treatment that could not reasonably be administered on Mr. Pryor's farm, and that removal was recommended by the veterinarian. In addition, it says removal was justified because Mr. Pryor failed to comply with orders issued by it.
- [36] In its view, the costs of treatment and care incurred are very reasonable given the number and nature of the animals in question.

Analysis

- [37] Central to the actions of the SPCA was its determination that the horses in question were in distress.
- [38] Distress is defined in section 1 of the Act as the state of being in need of proper care, water, food or shelter or being injured, sick or in pain or suffering or being abused or

subject to unnecessary hardship, privation or neglect. It is worth noting that this definition of distress does not require that the animals be at risk of imminent harm. It does not require that the animals be in immediate danger.

- [39] The evidence of Douglas Hurley, an expert in equine hoof maintenance, was that the proper care of a horse requires that its hooves be trimmed every six weeks or so. Failure to do so can lead to dangerous infection, undue stress on ligaments and tendons, and pain and disability in the horse. In his opinion, given the condition of their hooves and the amount of hoof he trimmed from them, they had not received any hoof care for at least six months, and possibly for years. Dr. Robertson deferred to Mr. Hurley's expertise on hoof treatment but also opined that regular hoof care is very important to the overall health of a horse and that the hooves of these horses had been badly neglected.
- [40] I have little difficulty determining that the mares which were removed from the farm were in distress as defined in the Act. Their hooves were in need of proper care and had been subject to unnecessary neglect.
- [41] With respect to the stallions and colt, the evidence of Dr. Robertson, an expert in veterinary medicine, was that they were badly undernourished and suffering quite severe muscle wasting. Agent Lapping, who was qualified as an expert in equine care and management was of the view that they were in poor body condition which was indicative of not receiving proper food and water.
- [42] Mr. Pryor did not call expert evidence. His evidence was that these horses were provided ample food and water and that although they may have been slightly lean, they were in no way emaciated or malnourished. His position was that their physical condition was typical of horses such as this in late winter. He questions how, if they were so significantly malnourished, they could have been made fit for return to him by April 18, a scant two weeks after their removal. As Dr. Robertson testified, the condition of these horses quickly resolved once they were given food, water, supplements and were dewormed. They did not require sophisticated veterinary care aside from sedation for hoof treatment.
- [43] On a consideration of all of the evidence, I am satisfied that the two stallions and the colt were also in distress as defined by the Act. I accept the evidence of Dr. Robertson and Agent Lapping that their body condition was poor and indicated a lack of proper food and water.
- [44] Given that the horses were in distress as defined by the Act, it is next necessary to determine if their removal was justified. Insofar as section 14 of the Act applied in this case, removal of the horses for the purposes of providing food, care or treatment to relieve their distress is authorized if: (a) a veterinarian has examined the animals and has advised in writing that the health and well-being of the animal necessitates its removal; or (b) an order respecting the horses has been made under section 13 and the order has not been complied with.

- [45] On the evidence before me, it is clear that the required veterinary examination and written advice was provided. It is equally clear that Mr. Pryor had not complied with orders which had been designed specifically to alleviate the distress in question.
- [46] In my view the SPCA acted very reasonably towards Mr. Pryor. It recognized that it may be difficult for him to get a farrier and veterinarian to attend at his property on short notice. It gave him additional time to locate these services and was willing to grant additional time if it could be assured the services were in place. When those assurances were not forthcoming, they did what had to be done.
- [47] As a result, I would confirm the Board's determination that the horses were lawfully removed by the SPCA on April 4, 2013.
- [48] In my view, the bigger issues are:
1. What expenses are the SPCA entitled to claim under section 15(1) of the Act?
 2. If the SPCA insists on payment of ineligible expenses as a precondition of return of the animals, should it be entitled to claim further legitimate expenses incurred thereafter?

What Expenses are the SPCA entitled to claim under Section 15(1) of the Act?

- [49] Section 15(1) of the Act says that Mr. Pryor may be made liable for an account of the SPCA respecting food, care or treatment of the animals. As indicated above, on April 18 the SPCA rendered a statement of account for food, care and treatment amounting to \$29,582.97. Mr. Pryor's copy of that invoice was filed as Exhibit 36. As I have noted, the items in this statement of account were improperly added and the total ought to have been \$19,754.97. I have little doubt that had this error been brought to the attention of the SPCA, the required revision would have been made immediately. Of more interest is whether each of the items claimed were *properly* claimed by the SPCA. Although Exhibit 36 did not include the various invoices and time sheets in support of the amounts claimed, Exhibit 33 includes all expenses claimed by the SPCA to September 10, 2014 and would therefore necessarily include the amounts referred to in its statement of April 18. I propose to consider the eligibility of each item claimed in Exhibit 33, and to determine from the supporting documents what part of the amount claimed relates to the period of time between April 4 and April 18, 2013.
- [50] The first item claimed is for "Staff Care" of \$20,122.67. This is the amount for the entire period between April 4, 2013 and September 10, 2014, a period of 487 days. The average daily amount is \$41.32. I have little difficulty with the notion that these horses required day to day attention in order to be properly fed, watered, exercised and groomed. If the average cost was \$41.32 per day, the cost for the two week period between April 4 and 18 would have been **\$578.48**.

- [51] The second item claimed is for Trucking Expense related to April 4, 2013. The invoices establish that the SPCA incurred these costs in removing the horses from Mr. Pryor's farm. The issue is whether the costs of removal qualify as expense related to the food, care or treatment of the animals. I accept the evidence of Mr. Hurley and Dr. Robertson that at the time of removal it was deemed necessary to remove the animals in order to provide them with the care or treatment they required. But does removal constitute care or treatment as provided in the Act? For the following reasons, it is my view that it does not. To begin with, the applicable provisions of the Act differentiate between removal, on the one hand, and food, care and treatment on the other. For example, in section 14(1), removal is authorized for *the purpose of* providing the animal with food, care or treatment. Accordingly, the section contemplates that the provision of food, care or treatment *follows* removal. Section 14(1.2) allows a justice of the peace or provincial judge to make an order for payment of food, care or treatment to an animal *pursuant to its removal*, indicating again that the Act regards removal and food, care or treatment as separate events. Section 17(6)(d) makes this same differentiation using these same words. In addition, the imposition of statutory liability should generally be clear and unequivocal. Indeed, it would have been an easy matter to provide specifically that an owner is liable for the costs of removal of animals. The failure to do so supports my view that costs of removal are not recoverable and are not to be included as costs of food, treatment or care. Accordingly, I would disallow the claim for removal costs. I should note that I have considered the two cases submitted on this issue by counsel for the SPCA. The first case was *Burns v. Ontario Society for Prevention of Cruelty to Animals* [2002] O.J. 5655, a decision of Cosgrove J., in which he accepted and relied upon the case of *Sheets v. Ontario Society for Prevention of Cruelty to Animals* [1984] O.J. No. 1339 as authority for the proposition that the Court has the power to require payment of the Society's removal costs. The second was the *Sheets* case itself. In my view the court in *Sheets* did not find that removal costs were recoverable by the SPCA and provided no analysis on that specific issue.
- [52] The next item is for veterinary services. There are five invoices relating to the period of April 4 to 18. The first is for \$8,660.32, which includes the time Dr. Robertson spent assisting in the removal of the horses on April 4. As I have noted above, it is my view that costs related to removal of the horses are not eligible expenses. The invoice does not differentiate between services relative to removal and services related to the care and treatment of the horses, however, it does indicate that the services were provided over the day of removal and the following day. In the circumstances it is appropriate to attribute one half of the invoice amount, namely \$4,330.16 to the costs of care and treatment of the animals. The second invoice specifies that the expense related directly to the care of the Pryor horses was \$321.00. The remaining invoices are appropriate on their face in the amounts of \$246.34, \$601.16 and \$228.26. Total veterinary charges incurred between April 4 and 18 which relate to the care or treatment of the animals is therefore **\$5,726.92**.
- [53] The next item is for hay, feed and supplies. There can be little doubt these are eligible for recovery. It is difficult to determine from the invoices which of these items were specific to the period April 4 to 18, but dividing the total claimed of \$27,462.22 by 487 days, the per diem amount is \$56.39. 14 days at this per diem rate amounts to **\$789.46**.

- [54] The next item is for farrier services. There is only one invoice for the period April 4 to 18, indicating farrier services rendered in the care and treatment of the animals of **\$904**. I accept this amount as an appropriate expenditure.
- [55] The last item claimed is for stall rent. It is apparent that stall rent is normally \$220 per month. For nine horses that amounts to \$1,980. On a daily basis, it amounts to \$66.00. For the 14 days between April 4 and 18, the total would be **\$924.00**. I accept this as an appropriate expenditure for the care of the animals.
- [56] The total of these amounts is \$8,922.86. This is the amount the SPCA was entitled to demand from Mr. Pryor for the return of his animals on April 18, 2013.

Entitlement of SPCA to Claim Expenses Thereafter

- [57] Had the statement of account delivered by the SPCA on April 18, 2013 required payment of \$8,922.86, and had Mr. Pryor then refused to make payment and filed his appeal to the Board and thereafter to this court, thereby requiring the continued care of the horses by the SPCA, I would have little difficulty finding that the ongoing costs of food, care and treatment for the horses would be properly claimed by it.
- [58] However, the statement of account then delivered by the SPCA was overstated by more than \$20,000. It does not seem fair or equitable to me that Mr. Pryor's refusal to pay a statement that was grossly inaccurate should now result in additional liability to him of more than \$95,000.

Conclusion

- [59] The horses were ready for return on April 18, 2013. The Statement of Account issued by the SPCA that day is a tacit admission to that effect. The amount properly recoverable by the SPCA as of that date was not the \$29,582.97 claimed, but \$8,922.86.
- [60] Accordingly, it is ordered that the horses be returned to Mr. Pryor upon payment of \$8,922.86.
- [61] If the parties are unable to agree on the costs of this appeal, they may make written submissions to me within 45 days, limited to three pages each, plus attachments.

R. D. GORDON, R.S.J.

Released: November 12, 2014

CITATION: Pryor v. OSPCA, 2014 ONSC 6485
COURT FILE NO.: C-13-0010
DATE: 20141112

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID GEORGE PRYOR

Appellant

– and –

ONTARIO SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS

Respondent

RULING ON APPEAL

R. D. GORDON, R.S.J.

Released: November 12, 2014