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**** HIGHLIGHTS ****

- * A Justice of the Supreme Court of Nova Scotia has issued a decision which clarifies the obligations of the Nova Scotia Minister of Agriculture, concerning appeals from decisions of animal protection inspectors in relation to the seizure and detention of livestock "in distress". The Minister is not required to consider whether or not the seizure or detention by inspectors were lawful and may uphold a seizure and removal even if the seizure was unlawful. The Nova Scotia Animal Protection Act is primarily concerned with animal welfare. The Minister must conduct a fresh review of all circumstances regarding the wellbeing and fitness of owners to care for their animals. (*Brennan v. Nova Scotia (Minister of Agriculture)*, [CALN/2016-001](#), [\[2015\] N.S.J. No. 548](#), Nova Scotia Supreme Court)

**** NEW CASE LAW ****

Brennan v. Nova Scotia (Minister of Agriculture); [CALN/2016-001](#), Full text: [\[2015\] N.S.J. No. 548](#); [2015 NSSC 361](#), Nova Scotia Supreme Court, M.J. Wood J., December 18, 2015.

Animal Possession -- Seizure and Taking of Animals in Distress -- Appeal to Minister in Nova Scotia.

Annette Brennan ("Brennan") applied to the Nova Scotia Supreme Court for judicial review of the decision of the Nova Scotia Minister of Agriculture (the "Minister").

The Minister's delegate, the Deputy Minister of Agriculture (the "Deputy Minister"), issued a decision on June 24, 2015 in which he concluded that 5 ponies that had been seized by provincial inspectors should not be returned to Brennan.

This decision was made pursuant to a previous judicial review decision dated June 10, 2015 [reported at [CALN/2015-15](#); [\[2015\] N.S.J. No. 239](#); [2015 NSSC 171](#)] in which Wood, J. had allowed Brennan's application for judicial review from a decision issued by the Deputy Minister on March 10, 2015 and directed the Minister to reconsider the decision.

An inspector, acting under the authority of the Animal Protection Act, 2008 S.N.S., c. 33 (the "Act") had refused to return 5 Newfoundland ponies that had been seized from Brennan's farm, which the inspector concluded were in distress.

Inspectors had visited the Brennan farm on 14 occasions between 2011 and 2014. They found animals in distress on these occasions and gave Brennan directions to alleviate the distress.

On December 14, 2014, an inspector again visited the Brennan farm. On this occasion the inspector decided to seize 5 ponies and to not return them to Brennan, without giving Brennan an opportunity to relieve the distress.

Section 23(1) of the Act permits an inspector who finds an animal in distress to, among other things, take custody of the animal. Section 23(2) of the Act provides that before doing so, the inspector must find the owner and attempt to obtain the owner's cooperation to relieve the animal's distress. It provides:

- (2) Before taking action pursuant to subsection 91), an inspector or peace officer shall take reasonable steps to find the owner or person in charge of the animal and, where the owner is found, shall endeavour to obtain the owner's co-operation to relieve the animal's distress.

Section 26(5) of the Act provides that when an inspector concludes that the owner is "not a fit person to care for the animal" the owner shall be notified that the animal will not be returned but that the owner may, within 72 hours, request a review of the decision by the Minister.

In his first decision, the Deputy Minister concluded that:

1. The animals were in distress when they were seized.
2. The Act does not require the inspector to provide the owner with an opportunity to relieve distress if there is a demonstrated pattern of causing distress.
3. The inspectors were correct in placing the horses in the custody of the Department of Agriculture.
4. That he "must find that Annette Brennan is not 'a fit person to care for' the seized animals as defined in s. 26 of the Act. Accordingly, the seized horses will not be returned."

In the June 10, 2015 decision referred to above, Wood, J. granted the first application for judicial review and directed that the matter be returned to the Minister for further review under s. 26(7) of the Act.

In that decision, Wood, J. relied on the recent decision of Moir, J. in *Rocky Top Farm v. Nova Scotia (Agriculture)* [2015 NSSC 21](#) (CanLII) in which the Court concluded, among other things, that the Deputy Minister was required by the Act to consider all information, old and new, to determine whether a person was fit to care for animals; that the standard of review under the Act was correctness, and that it was not sufficient for the Deputy Minister to uphold a decision when the Deputy Minister concluded the inspector's decision was "reasonable".

In his first decision, Wood, J. concluded:

1. That the Deputy Minister must independent consider the broader decision of whether seized animals should be returned [at para. 24] and that it would be an error to only consider whether the initial seizure was lawful [at para. 26].

2. That:

[26] The Act does not "require" the Deputy Minister to make any such finding. What he is required to do is to decide whether the animals ought to be returned and, as part of that, he may assess Ms. Brennan's fitness to care for them.

3. That:

[28] I believe that the Deputy Minister was wrong in defining the review as limited to the correctness of the seizure decision and whether Ms. Brennan was fit to care for the ponies. It should have been described as a broad consideration of whether the animals should be returned to her.

4. That:

[39] For the reasons outlined above, I am satisfied that the Deputy Minister was wrong in his formulation of the question to be decided on his review. He was also wrong in his interpretation of s. 23 and in

particular his conclusion that s. 23(2) had no application where an owner had previously demonstrated a pattern of causing or permitting an animal to be in distress...

When the matter was returned to the Deputy Minister for review, the Deputy Minister made no further comment concerning the inspector's decision to seize the ponies or whether the inspector contravened s. 23(2) of the Act in doing so.

The Deputy Minister limited his review to the issue of whether the 5 ponies should be returned to Brennan and concluded in a decision dated June 24, 2015 that "based upon my fresh and independent review of the evidence, I am satisfied that these 5 ponies should not be returned to Ms. Brennan". The Deputy Minister's reasons included his review of the previous directives given to Brennan over a 3 year period concerning how to care for her ponies as well as advice and nutrition and general management from inspectors and her own veterinarian practitioner. He concluded that Brennan's actions had demonstrated that she did not have the ability to act on the information and directives she had received concerning the care for the ponies and to avoid distress. This evidence satisfied him that the ponies should not be returned to her.

Decision: Wood, J. dismissed Brennan's application for a judicial review of the Deputy Minister's second decision [at para. 19].

Wood, J. rejected Brennan's argument that the ponies had to be returned to Brennan as the inspector's seizure was illegal stating, at para. 13:

[13] Ms. Brennan argues that if a seizure takes place without the prerequisite required by s. 23(2) it is illegal and the animals must therefore be returned without consideration of any other issues, including the fitness of the owner to care for them. I disagree with this suggestion. The Animal Protection Act is directed to animal welfare and the authority to seize and detain animals is governed by their wellbeing and the fitness of owners to care for them. It would be unreasonable and incorrect to interpret the legislation as dictating that the failure to follow the statutory procedure for seizure must override the best interests and welfare of the animals.

Wood, J. concluded that even though the question of whether the seizure was lawful was not included in the Deputy Minister's second decision, the decision was nevertheless was reasonable and should not be interfered with, stating at para. 17 and 18:

[17] An administrative decision maker is not required to deal with every argument raised before them and failure to do so does not automatically mean that the decision will be set aside. This should only take place where the decision is unreasonable because it falls outside the range of acceptable outcomes taking the entire circumstances into account (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*),

[2011 SCC 62](#) (CanLII) at para. 16-17).

[18] Although I am surprised by the Deputy Minister's decision to ignore the seizure issue, I cannot say that his emphasis on the fitness of Ms. Brennan to care for the ponies and his conclusion not to return them is unreasonable in all of the circumstances. The interests of animals and their wellbeing are appropriate matters for the Deputy Minister to prioritize in deciding how to deal with seized animals.

**** CREDITS ****

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