

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

Cite as: R. v. Bailey, 2009 NSPC 3

**Date:** January 29<sup>th</sup>, 2009  
**Docket:** 1845756, 1845758, 1845760  
1842487, 1842580, 1845755  
1845757, 1845759  
**Registry:** Digby, Nova Scotia

**Between:**

Her Majesty The Queen

v.

Dana Bailey and Gail Benoit

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DECISION

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**Judge:** Jean-Louis Batiot, J.P.C.

**Heard:** June 26<sup>th</sup>, October 24<sup>th</sup> and November 4<sup>th</sup>, 2008

**Written decision:** January 29<sup>th</sup>, 2009

**Charge:** 446(1)(c) CC, 11(1) ACPA, 11(2) ACPA  
129 CC, 270(1) CC, 446(1)(c) CC, 11(1) ACPA,  
11(2) ACPA

**Counsel:** Murray Judge, Crown Prosecutor  
  
Michael K. Power, for the Defence

**By the Court:**

[1] The defence began on June 26th, 2008 with an application for a stay for Abuse of Process. As it was based, in part, on the evidence to be introduced at trial, the Crown, eventually, presented its evidence. Mr. Power, for the defence, could add to that evidence, through cross-examination, and defence evidence, as the most practical and complete way to present the evidence on that issue: **R. v. Watt**, 2008 NSCA 25; 263 N.S.R. (2d) 328 (N.S.C.A).

**EVIDENCE**

[2] Mr. Joyce is now Chief Provincial Investigator, for the SPCA since June 1<sup>st</sup>, 2008, after having served four and a half years as its Provincial Investigator, the two paid positions within this organization, which otherwise depends on volunteers. He had some knowledge of the defendants through Ms Jessica Hunt, the former Chief Prosecutor. Indeed a file exists on the defendants at SPCA, but he did not read it. He was aware also of the Originating Notice issued by the Defendants some time before, but is not involved in these matters.

[3] He is not opposed to the sale of puppies, only that it be done in a reasonable manner.

[4] Ms. Noel, also an SPCA officer, does not have any formal training except that which she has received on the job from Mr. Joyce.

[5] She had heard of Mr. Bailey and Ms. Benoit but had never seen the file and never worked

with Jessica Hunt, the former Chief Officer. She has had no contact with Ms. Nugent or Ms. Taylor, the original complainants and providers of the reasonable grounds to obtain the first warrant. Her work has been mostly with the Metro shelter in Dartmouth. She has no views with respect to puppy mills as long as the operators abide by the law and do their work properly.

[6] As a result of a complaint, Mr. Joyce and Ms Noel came to talk to Mr. Bailey and Ms. Benoit in September of 2007, at their home, with respect to a puppy which had died shortly after it was purchased from them. The Defendants did not want to speak to the officers and ordered them off their property.

**A) Seizure on October 24h, 2007**

[7] A further complaint came on the 23<sup>rd</sup> of October 2007 to the SPCA office which triggered this investigation. Given the information provided, other warrants were obtained, executed on the 24<sup>th</sup> of October 2007.

[8] Both officers attended at the accused's property, with two search warrants, one for the automobile and the other for the dwelling house and out-buildings. They were looking for two puppies, one brindle, the other one white, alleged to be in distress. Given the reception they had received in September, they were accompanied by RCMP officers.

[9] Nancy Noel describes “*my first seizure*”, to seize two puppies described in the Search Warrant. Accompanied by several officers including Constable Fleck of the RCMP, they arrived at a detached blue bungalow, the Defendant’s home, in the County of Digby. Constable Fleck knocked at the door, nobody answered. Dogs were barking outside.

[10] Mr Bailey opened the door. The officers encountered heated discussions and profanities on the part of the defendant. The three RCMP officers were at the door with the search warrant. Constable Fleck showed him the search warrant. Mr. Bailey’s reaction was “*get the fuck off my property*”. But he opens the door and Mr. Bailey yelled to Gail Benoit: “*police, search warrant*”. Constable Fleck comes into the house, sees Ms. Benoit; Mr. Bailey steps outside, yelling, cursing, swearing, out of control, uttering constant profanities. Ms. Benoit yells “*no, you’re not coming into myf--ing house*”. They inspected the dwelling, the first floor, downstairs, in the basement. They saw kennels but no dogs. Upstairs there were terriers and two boxers, in good shape, which did not require attention. The two dogs the officers were looking for could not be located, from among some ten dogs and four puppies in the upstairs of the dwelling.

[11] The officers went to the garage, the outbuildings and Mrs. Benoit opened an arched garage door. They enter; looking down and to his left Mr. Joyce saw a cardboard box, 20 by 20 inches, or so, with four white puppies in feces and urine. No white dog was found. The officers also found the brindle one, indeed a couple, with big bellies (so big they could not walk), spread out legs, ribs showing, crying, indicating a wormy condition. They all were in need of de-worming, food, water

and care. The officers could not recall any evidence of mites or cuts or abrasions on their bodies.

[12] Mrs. Benoit grabs a black and white puppy by the scruff of the neck and thrust it onto Ms. Noel's chest, who cradles it in her arms. The warrant was for a brindle puppy. Ms. Benoit says this was the puppy in the Search Warrant. Ms. Benoit walks towards Ms. Noel, left side onto left side, steps on her foot, shod in steel towed boots, and shoves her, left shoulder to left shoulder, as she exits the garage, by Ms Noel.

[13] Having the two puppies the SPCA officers return to their truck, Nancy Noel first, Mr. Joyce following her and two RCMP off closing ranks. Ms. Benoit takes video pictures and states to a Constable, in no uncertain terms: *you look like a cabbage patch doll, lick my c --t.*

[14] The officers noted that the puppies were kept in feces, had no food or water, were cowering and apparently afraid unlike most puppies who "*love everybody*". Indeed in Ms Joyce's experience she has never seen a puppy cower. The mixed German Shepard in the cage, about ten weeks old, was climbing in a confined space, had water; yet had a protruding belly, an indication of worms. Puppies general get afflicted by them; yet it is a condition that can be easily treated, for about a dollar twenty five. The spaces were messy. The four puppies in the box were barking, crying, feces on the newspaper at the bottom of the box. There was neither food nor water.

[15] Puppies have different personalities and some certainly may cry and whine. The puppies'

bodies were so distorted they could hardly walk or move, their back legs splayed and back bones were showing. Adequate care is water access twenty four hours a day seven days a week, food and they must be kept in a clean environment, with proper hygiene.

[16] The Defendants' house, otherwise, was pretty tidy and clean. Indeed their own pets were in good condition.

[17] Mr. Joyce explained the work done to measure the puppies once taken into care, and meeting their needs, including their proper feeding and medication against worms. The cross-examination was extensive and detailed. Mr. Joyce does not have a bias against puppy mills, has no position on them, but wishes to see puppies well cared for. There was no reason for him to contact Mr. and Mrs. Benoit pursuant to section 11 (3) of the **Animal Cruelty Prevention Act**, S.N.S.,1996, c. 22 (thereafter **ACPA**) in an attempt to educate or otherwise correct the situations observed on the 24<sup>th</sup> of October in part because, and quite likely mainly, because of the reception they had received in September. He had never been to their home before, neither had he dealt with them before.

#### **B) Second seizure**

[18] Based on their observation of the garage and the state of the puppies there, the officers prepare a second search warrant executed on the 26<sup>th</sup> of October, 2007, on the grounds that there were animals in distress, uncared for. It dealt with eight puppies. Only seven were located. The RCMP officers knocked on the door repeatedly; there was no answers. Eventually Ms. Benoit

opened the back door, called puppies in. The officers knocked again. They did not receive an answer. As they had business in the garage, the Officers broke open the lock and removed the dogs from that garage, visited on the earlier visit. Ms. Benoit was then present. She ordered the Officers not to enter the home, then not to enter the kitchen as she was on the phone with her lawyer.

[19] Ms. Noel, who has had pets all her life, has been with the SPCA for two and a half years, handling mostly cats, dogs, puppies etc., in different states of health, from distress to good health, perhaps ten to a hundred a day, describes these puppies as in distress, with bellies protruding, anus distorted, a sign of the presence of worms.

[20] The concerns were living conditions of the puppies, their “wormy” states, the dirty cages with feces on the newspaper, no water, the need for veterinary care.

[21] An incident occurred when Nancy Noel tried to get the door of the home opened; Mrs. Benoit slammed the door in her face. She explains her action: to prevent her animals from exiting the house. On the evidence, there were no dog coming towards the door at that time. That day nothing was seized from the house. Ms. Benoit was upset, emotional and eventually arrested and handcuffed as she tried, in Ms Noel’s words *“to take my head off at the door slamming the door in my face”*.

### **EXPERT EVIDENCE**

[22] Doctor Carnegie, DVM, qualified to give opinion evidence in the diagnosis and proper care of puppies, has examined the older puppies seized from the defendants. His recollection is quite clear and refreshed by his letters and the photographs which he has inspected. All the puppies were infected with round worms, which take thirty days to get to adult stage and with the other two conditions, giardiasis and coccidiosis, caused by very small parasites, invisible to the naked eye, which can cause diarrhea, and straining for bowel movements in puppies. Diarrhea can cause death within 48 hours in a puppy so it must be taken seriously.

[23] All the puppies had extended bellies, an indication of an advanced wormy state. All were treated, quite inexpensively, with various drugs. They received regular food and water. They showed marked improvements within one week: their coat began to shine again, their flesh covered their bones, and their bellies shrunk, all the while gaining weight; they became more playful, interactive, aggressive, normal puppies, barking, moving, active.

[24] The presence of coccidiosis and giardiasis would be seen within two days through the straining for a bowel movement, and diarrhea. It would take some thirty days to see symptoms of round worm. There is no evidence as to how long such animals would have to be infected before other symptoms such as patchy or dull coat and poor social attitude would be visible. It appears to be a matter of days. Most dogs could have worms; this should be a well known fact to most dog owners, particularly experienced dog owners, or of those in the business of buying and selling dogs.

## DEFENCE EVIDENCE

[25] Both Mr. Bailey and Ms. Benoit are disabled, and are involved in the puppy brokerage business, selling puppies, but do not run a *puppy mill*. Ms. Benoit appears to be very busy, having handled some *twenty eight to thirty thousands* dogs/puppies in the last thirteen years.

[26] Both of them complain of the past procedures against them initiated by the SPCA several years ago. It went to trial; their conviction was appealed successfully; they were found not guilty at the second trial; this was appealed successfully by the Crown, which eventually stayed the charges, given the time already allocated to that procedure, the age of the charges, the time requirements and the small potential fine in case of conviction.

[27] From Mr. Bailey's point of view (and Ms. Benoit as well), this most recent interest of the SPCA follows an aggressive Discovery proceedings, about two months earlier, in the civil law suit they launched against the SPCA. There was a visit by Ms. Noel and Mr. Joyce in September and eventually the warrant on October 24th, which appeared to have been prompted by a T.V. program, critical of Ms. Benoit's business practices in the selling of puppies. Apparently, those puppies had been shown on T.V. the day before. Ms. Donna Nugent and Ms. Taylor had called Ms. Benoit to possibly make a deal with her. Their discussion, in a public place was captured on film. Eventually she sold one of the puppies that day in Truro.

[28] At any rate, when the SPCA arrived with Constable Fleck and others at about 3:00, 3:30 in the afternoon of the 24<sup>th</sup> of October Mr. Bailey describes the scene where he was detained by Constable Fleck, who denied him permission to return to the bathroom and use hot water to relieve the discomfort from his hemorrhoids. He describes the execution of the search warrant as he stood some fifteen feet from the garage. The only thing he saw was Ms. Benoit picking up a puppy and shoving it into Ms. Noel's hands. Ms. Benoit was saying that they got what they wanted and now they should "*get the f--k out of here*".

[29] He describes the care that he provides to the puppies, food, water, and the newspaper under the cage to collect the feces. The puppies' bellies were enlarged because he gave them too much food as they appeared hungry: he overfed them that day. They buy the best of food in quantities adequate for the number of puppies they have on hand of different types, from German Shepard, Huskies mix to "Terri Poos". Their own dogs are Boxers. He also described the consequences of these raids by the SPCA on their daughters who had to change school and go to Weymouth school because of the abuse they face at their own school in Digby, and the adverse consequences on their puppy selling business.

[30] Indeed they both describe themselves as puppy brokers, distinguishing this from a puppy mill. They only buy them, or take them on consignment, and sell, on the expectation of a sale.

[31] He says that the dogs were in good condition, did not need professional attention, just a bit

more food which he gave to them, particularly those of Pat Harlow's, from Bear River. He is aware that all dogs have worms, and they rely on the representations of their owners as to whether the puppies had received treatment or not. As a result of the SPCA's involvement, they do not have a vet now (this may change), nor did they have one at the time. They believed that medication was to be given and then wait for ten days before doing it again. There are no standards for dogs except adequate food, water and attention and keeping them clean.

[32] On the 26<sup>th</sup> of October he was attending upon his dying mother and passed by the police station in Digby, saw lights there. He arrived home to note, from the camcorder, that Ms. Benoit had been arrested and taken to the Detachment. He joined her there.

[33] The SPCA and Doctor Carnegie, since he is paid a retainer, will say anything as "*[t]hey just want to nail us*".

[34] Ms. Benoit is 38, has had her business registered in the last three years, Puppies R'Us, and has sold between twenty eight and thirty thousand dogs or puppies over some thirteen years. She just has a few breeding bitches, four or five dogs of her own, Boxers. She buys and sells, she is a broker. She makes contact with people through the Internet, newspapers, her own references and her satisfied

clients for referrals. She used to use radio years ago. Her training is personal knowledge through experience and her own dogs. The SPCA has never liked her selling dogs and had pursued her since 1993.

[35] As a result of their past confrontations, they have sued the SPCA. She recalls the visit of the SPCA in September and she recalls getting three puppies from Pat Harlow in Bear River. She had taken their photos to send them to a potential buyer in Elmsdale the night before traveling to the city. She met Ms. Nugent and Ms. Taylor at Tim Horton's in Elmsdale, as agreed earlier. Ms. Taylor was holding the puppies in the air. Ms. Benoit remarked that someone was paying attention or looking at them. The potential purchaser said she was not interested; it was all right with Ms. Benoit who decided to go, because she already had a sale for one of the puppies. Ms. Taylor asked to come along. She was not invited. They did make a sale in Truro, and were unable, due to car problem, to go back to see Ms. Harlow that night (who was asking \$200.00/per puppy and had not received anything from Ms Benoit), called her to let her know that they looked after those puppies at home and the next day the SPCA showed up, on the 24<sup>th</sup> of October.

[36] These dogs were Valley Bulldogs Boxer puppies. (Photo 12, photo 14, taken one hour before the SPCA came). When the SPCA arrived Mr. Bailey was in the tub looking after himself and his hemorrhoids. There was a knock, the advise of a warrant, and Ms. Benoit called her lawyer, Mr. Power. She took the officers to the garage, opened the door, reached for the brindle puppy. She was fed up. She handed the brindle over to Ms. Noel, with the words: "*this is what you want now fly the*

*f-k out of here*". She did not sling the puppy. She would not do that. She believed the SPCA was setting her up. If she had tackled Ms. Noel she would have felt it. If she did step on Ms. Noel's foot, *it is nowhere near what they put us through*. She had wanted to shut the door because of her dogs loose in the house and she did not slam doors in people's face. Police shoved her against the sink and she fell to her knees, hurting her; and she is disabled and fell to the floor. The SPCA may have been there for about a half an hour that day.

[37] The next day the SPCA was executing its warrant she tried to contact Mr. Power without any success. The SPCA was taking the pups from the garage to their vehicles. She was not told what they wanted. They came back in looking for the Cocker Spaniel which she had sold.

[38] Eight puppies were seized including Husky mix and "Terri Poos". The Husky mix she obtained October 22<sup>nd</sup>, one hundred dollars a piece, from Hillgrove.

[39] She was hauled all the way ("*her feet did not hit the ground*") and *they threw me in the truck*.

[40] She sells about twenty four hundred dogs a year, two hundred a month, she says. She sees the SPCA action as a witch hunt against her for allegedly running a puppy mill. She does not; she is a broker.

[41] She had picked up the three puppies from Bear River the night before going to Elmsdale. She

indicated she also picked them up on the way to Elmsdale. But she took pictures of them to send to Elmsdale the night before. She thought *Dana* [Bailey] had given them too much food. The SPCA is interfering with her business of selling dogs. It's all about the money. She accepts the owners' representation re de-worming; otherwise she will do it.

## FINDINGS

### A) Abuse of process

[42] Pursuant to s.12(4) of the **ACPA**, Mr. Joyce and Ms Noel, peace officers within the meaning of that Act, have powers to investigate allegations of cruelty to animals. They did so, by obtaining a warrant as per the provisions of s. 2B of the **Summary Proceedings Act**, RSNS 1989, c. 450.

[43] Their grounds to obtain such a warrant were provided by Ms. Nugent, who was very specific and detailed in her description of the two puppies, their dirty state, protruding bellies and anuses, the mite poop present in their ears, and the bite marks on their bellies. Mr. Joyce believed her and started the proceeding. There is nothing irregular in this.

[44] At trial, it is clear Ms Nugent has been campaigning against Ms Benoit for some times, for what she sees as animal abuse. There is no evidence that aspect was known to Mr. Joyce, who acted in good faith, in accordance with his duties.

[45] There was reasonable ground for Mr. Joyce to investigate, and he did so in accordance with his authorizing Statute.

[46] In executing the first Search Warrant, the officers obtained further evidence of animals in distress (*lack of adequate care, food, water or shelter*, s. 2(2)(a) of **ACPA**). They thus obtained another Search Warrant to seize those animals. **ACPA** only provides for such eventuality in the case of a dwelling house, but not other buildings (s. 12).

[47] A great deal of time has been expended on whether the SPCA was in effect retaliating for being the defendant in a civil lawsuit. There is no evidence to conclude that it did, and that its actions, through its officers, were improper. Mr. Joyce and Ms Noel were aware of the previous proceedings, but only superficially; they did not know the defendants personally; and acted on the reasonable grounds provided or obtained, and nothing more. The Society has a duty and the powers to prevent cruelty to animals, and may act when it has reasonable grounds to act. It had in this case. It may appear suspicious, but only to the defendants.

[48] It is also argued that there is abuse, given the campaign Ms. Nugent has waged against Ms Benoit, on the Internet, through e-mails. Some samples were provided. It is clear she is an advocate for the proper care of animals, and is outspoken about it; yet her observations of the puppies were detailed and accurate, appeared to come from an informed observer, who also testified at trial, and are worthy of belief, providing reasonable grounds to initiate the investigation.

[49] There is no evidence that the SPCA was in anyway aware of, or a party, to Ms. Nugent's campaign. **R. v. Shirose** [1999] 1 S.C.R. 565, dealing with a police's reverse-sting operation, to sell drug to the accused, amounting to drug trafficking, but has no application to the case at bar.

[50] The Crown, in the previous proceedings, exercised its discretion to stay the proceedings, at the third trial, and did so on reasonable and substantial grounds (substantial court time; a possible \$200.00 fine; no expectation of further prohibition). It is not evidence of abuse of process.

[51] It is also argued that the role of the SPCA is that of a conciliator, not a prosecutor, at least at the beginning of an investigation (s. 12(2), **ACPA**). Indeed there is evidence that the Society has done that with other defendants. On the facts of this case, however, the defendants have clearly stated in September 2007, when this was attempted, that the only way the officers would be able to continue to discharge their duty was through a Search Warrant, and the defendants have been vocal and abusive in conveying this message. The officers were aware of this position. On both the 24th and 26th of October, 2007, both defendants, and Ms Benoit, particularly, adopted that same abusive attitude, preempting any useful dialogue and conciliation. The officers were justified in acting more forcefully. Indeed, the defendants' behaviour forestalled any other avenue.

[52] On the evidence, this is only the second prosecution against the defendants, by the SPCA, on different allegations of cruelty, the first one really being only one cause, with two trials and two appeals. Given the numbers of puppies Ms Benoit claims to sell, about 200 per month, or some

twenty-eight to thirty thousands up to October 2007, this could hardly be abuse of process. Above all, present were the necessary reasonable grounds for the officers to act.

[53] There is no “...*affront to fair play and decency ...disproportionate to the societal interest in the effective prosecution* “ in this case (**R. v. Conway** [1989] 1 S.C.R. 1659). There is no abuse of process. It is a justifiable prosecution under a provincial statute, for allegations, founded on reasonable grounds, of animals in distress.

#### **B) Animals in distress**

[54] I will deal with the charge contrary to s. 11(2) of **ACPA**: that the defendants,  
*between the 24th and 26th days of October, 2007, did, being an owner of an animal or persons in charge of animals, to wit, puppies/dogs, cause or permit said animals to be in distress.* [I have amended and pluralized “persons” and “animals” , to reflect the evidence, as per s. 601, **Criminal Code of Canada**, R.S.C. 1985, Chap. C-46, see **R.v. Wallace**, 2002 Carswell NS 158].

[55] S. 2 (2) of the same **Act** provides that *[a]n animal is in distress ... where the animal is*

*(a) in need of adequate care, food, water or shelter; or*

*(b) injured, sick, in pain, or suffering undue hardship, privation or neglect.*

[56] The defendants say that the animals in their care were not in distress, were well taken care of in the short time they were in their possession; they knew about the possible health issues to which puppies are exposed, but these were not present; and they relied on their owner's representation of any treatment, which, they say, they had received.

[57] Both Mr. Joyce and Ms Noel saw, upon seizure, that the puppies were in distress: distended (swollen) bellies, protruding anuses, lack of water and/or food, dirty cages/kennels/boxes. The conditions were not terrible, but below reasonable standards, and not treated. Indeed, after proper diagnostic and care, the puppies mended quickly, within a few days.

[58] The defendants attack the credibility of not only the officers, but also of Dr. Carnegie, their veterinarian, since he is paid by the Society, and thus biased, they say.

[59] Dr. Carnegie's evidence was straightforward, knowledgeable. He formulated his opinion from well observed facts. I have no hesitation to accept it as factual and truthful. It is his business, his profession, and he brings to it the necessary independence of mind, and objectivity.

[60] His evidence shows without a doubt these puppies were in distress from a physiological point of view, unnecessarily so as the cure was simple, inexpensive, and very effective, over a very short time. Such a distress could easily have been prevented, by a timely assessment and actions.

[61] He observed puppies that had been neglected and were in a distressful state given the obvious symptoms: pot belly, lack of body fat, poor physical appearance, presence of adult parasites, diarrhea, what could be described as a listless attitude, the straining for bowel movement. All were due to poor hygiene and lack of care. Once proper hygiene, food and water, and medication were administered, he said, their state changed drastically and rapidly.

[62] I reject the defendants' evidence on that point. Specifically, the extended bellies were not caused by overfeeding, but by worms, or other conditions, which had not been treated. Indeed Mrs Harlowe's evidence -- she is the owner of the two puppies, the subject matter of the first Warrant -- is specific: *I never wormed them... All dogs have worms... I did not say I had wormed them, to Gail [Benoit].* This contradicts the defendants' evidence. All the evidence, including that of Dr. Carnegie, contradicts that of the defendants on that point as well. I find that the puppies were *in distress*, as defined in subsections (a) and (b) of s. 2(2) of the **Act**: they lacked *food and water* and were suffering from *privation and neglect*.

### C) **Mistake of fact and due diligence**

[63] This is a strict liability offence: **R. v. Sault Ste Marie (City of)** (1976), 30 C.C.C. (2d) 257, affd [1978] 2 S.C.R. 1299. The defendants may establish a defence of mistake of fact or due diligence, on a balance of probabilities. The ultimate burden of proof always rests on the shoulders of the Crown to prove its case beyond a reasonable doubt.

[64] With respect to the defendants' belief that the puppies were fine, if such was argued as a mistake of fact, it would be unjustified. Both have enough experience in their business to know the symptoms of the presence of parasites; they should have been able to identify them. They did not. Indeed they deny the existence of their actual state. Yet their presence were visible to any informed observer. There is no a mistake of fact.

[65] On first observation during the execution of the Search Warrants, Mr. Joyce and Ms Noel remarked on the lack of food and water, the feces on the newspaper used for bedding. Mr. Bailey said it was his responsibility to look after the puppies, and did so regularly. The defendants presented photographs of the same kennels/cages, showing them to be clean and properly bedded. I do not accept Mr. Bailey's evidence on that point. That was not their condition at the time of the officers' observation.

[66] Obviously, conditions will change hourly, and the defendants are not held to a standard of perfection. Puppies will drink the water provided, eat their food, urinate and defecate, at any time. A person in charge is not expected to provide actual care 24 hours a day, only reasonable care.

[67] It is clear, from the evidence, puppies ought to have water at all times. They ought to live in a clean environment. They did not, except for the German Shepherd. The defendants did not have a system in place to ensure they were cared for properly, particularly during daylight hours. Nor was there any provision for a some liquid replacement for Ms. Harlowe's puppies, which had been

weaned from their mother's milk at home.

[68] The defendants are experienced dog owners. To all appearances they keep their own, in the house, very well. Obviously the defendants used very different standards when it came to the puppies kept in their business of "dog broker", and did not provide the same quality of care.

[69] Knowing that all dogs have parasites, one would expect the defendants, due to their extensive experience, to assess accurately the presence of worms and other parasites, and take necessary precautions to deal with the presence of such parasites. They may rely on the representations of their owners; yet are not absolved from using their own experience and observation, and assess accurately the conditions of the animals. They may need professional assistance. It is their decision. But they ought to inspect objectively each animal brought into their care, and have a plan in place to remedy any identified issues.

[70] Given the numbers of puppies they deal with, at the minimum they ought to examine and assess each puppy's physical state (weights, size, age), and health status, record these and any other relevant observations they may make. Photos, given the ease of doing so now with digital equipment, may help them. They did nothing of the sort. Indeed the defendants ignored the state of health of their charge, and were blind to their most basic needs. I do not accept their evidence there was no problem. The evidence is overwhelming: the puppies were in need of food, water, care and

attention of a veterinary.

[71] The defendants simply ignored the obvious signs, hoping for a quick turnaround, and a quick profit -- which could be considerable -- with little investment on their part but for some effort and time. They apparently did not even have a single dose of the most popular and common medication to administer to these puppies, and did not take any step to ascertain their needs. They did not show due diligence to avoid the commission to the actus reus of the offence.

[72] At the very least, in light of the number of puppies/dogs they handle, coming from different homes, and the known risks of infection, they ought to consider a practice, such as the one at the SPCA kennel: institute a cleaning cycle, to prevent or protect the dogs and puppies from worms: day one, bleach and water, the second day a chemical is used to deal with parasites; and that cycle is repeated every two days along with daily cleaning.

[73] Their asking prices appear to be several hundred dollars per puppy. Their cost, on the evidence, one to two hundred dollars. It is thus a profitable business, with little overhead when the puppies are taken on consignment, and little work if they are not looked after properly. The defendants have allowed the pursuit of easy profits to trump the proper supervision and care for the well being of these puppies.

#### **D) Assault and Interference**

[74] Ms Noel was a peace officer, in the execution of her duties, pursuant to **ACPA**. Ms Benoit

knew it. Faced with a Search Warrant, lawfully issued, Ms. Benoit had to comply. She could argue later, in court, any legal issues. In fact she was not objecting as to its legality, only that, in an emotional outburst, she did not agree with the presence of the officers on her property, and barred Ms Noel from coming into the home. A Search Warrant does not depend on the permission of the landowner for its execution; indeed it supercedes that right. I accept the evidence of Ms Noel on that point. Ms Benoit was unfortunately too emotional then and at trial, for a trier of fact to rely on the accuracy of her recall.

[75] In effect, Ms Benoit acknowledges the assault against Ms Noel, on the 24th of October 2007, by saying, at para 36 above, *“If she had tackled Ms. Noel she would have felt it. If she did step on Ms. Noel’s foot, it is nowhere near what they put us through”*. Ms Noel felt both. Indeed, on the whole of the evidence, I find that Ms Benoit, in anger, stepped on Ms Noel’s foot and pushed her with her left shoulder.

## CONCLUSIONS

[76] The Application for a Judicial Stay is dismissed as there is no abuse of process.

[77] On the totality of the evidence, the Crown has proven, beyond a reasonable doubt, that the defendants, as *persons in charge*, have breached s. 11(2) of the **ACPA**.

[78] Pursuant to **R. v. Kienapple**, [1975] 1 S.C.R. 729, since the charges pursuant to s. 446(1)(b) [my amendment] of **C.C.C.**, or s. 11(1) of **ACPA** describes substantially the same delict, a stay is ordered to avoid double jeopardy.

[79] The Crown has also established, beyond a reasonable doubt, that Ms Benoit has committed the offences, as charged, contrary to ss. 270 and 129 of the **Criminal Code of Canada**.

[80] Therefore, I find Ms Benoit guilty of these two criminal offences. I find both defendants guilty of the provincial offence contrary to s. 11(2) of the **ACPA**.

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Jean-Louis Batiot, J.P.C.