

NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia (Agriculture) v. Rocky Top Farm*, 2017 NSCA 2

Date: 20170103

Docket: CA 447378

Registry: Halifax

Between:

Nova Scotia (Minister of Agriculture)

Appellant

v.

Nelson E. Millett, carrying on business as
Rocky Top Farm

Respondent

Judge: The Honourable Mr. Justice Jamie W.S. Saunders

Appeal Heard: September 13, 2016, in Halifax, Nova Scotia

Subject: **Animal Protection Act**, S.N.S. 2008, c. 33, as amended. **Statutory Interpretation. Standard of Review. Powers of the Minister. Scope of Ministerial Review. Scope of Judicial Review. Fitness to Care for Animals. Judicature Act**, R.S.N.S. 1989, c. 240. **Civil Procedure Rule 7.11. Remedies.**

Summary: Following an investigation, departmental inspectors took custody of cattle found to be in distress. Subsequent reviews by the Provincial Inspector and the Deputy Minister affirmed the seizure and the refusal to return the herd to the owner. The Deputy Minister's decision was reversed by a judge on judicial review who determined that the ministerial decision was factually and legally flawed, that the seizure by staff in the field was "illegal" and that the proceeds obtained following the sale of the cattle should be paid to the owner, together with costs.

On appeal to this Court, the Crown's appeal was allowed, the reviewing judge's decision was set aside, and the question of fitness was remitted to the Minister for a proper consideration.

Extensive analysis of the various standards of review engaged in this case, depending upon the administrative law or curial context. The reviewing judge mischaracterized the object of the *Act*. Its only purpose is to provide for the protection and aid of animals who have been neglected by those charged with their care. The judge erred in concluding that there had to be a "balancing" between preserving the animals' health, and the owner's "interests". That error colored the judge's view of the interaction between the inspector(s), the owner and the police on the day of the seizure. The judge imported criminal law concepts into a forum where they did not belong. Here, the owner had repeatedly ignored or refused to answer questions concerning ownership of the cattle. Departmental officials had made reasonable attempts to obtain the owner's co-operation. Nothing more was required. The seizure was not "illegal". The judge erred in taking upon himself the inquiry as to whether the owner was fit to resume care and custody of the herd, instead of remitting that question to the Minister for a fresh, and independent assessment.

Directions were given to the Minister explaining the question that was to be asked and answered. The appeal was allowed and the owner was ordered to pay costs to the Crown.

Note: This is a companion appeal to *Brennan v. Nova Scotia (Agriculture)*, 2017 NSCA 3

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 26 pages.