

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Brennan v. Nova Scotia (Agriculture)*, 2017 NSCA 3

**Date:** 20170103

**Docket:** CA 447379

**Registry:** Halifax

**Between:**

Annette Brennan

Appellant

v.

Nova Scotia (Minister of Agriculture)

Respondent

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**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 Newfoundland ponies found to be in distress. Subsequent departmental reviews as well as two judicial reviews affirmed the seizure and the refusal to return the ponies to the owner. The owner appealed, complaining that in his decision the Deputy Minister had failed to address her submission that she had not been given an opportunity to alleviate the ponies' distress prior to their seizure and that therefore the seizure was "illegal" with the result (so she argued) that the Minister lost all jurisdiction to deal with the

matter.

Consequently, the owner said the reviewing judge erred by failing to reverse the Deputy's decision. She asked that the appeal be allowed and the Newfoundland ponies returned to her care.

On appeal to this Court the appeal was dismissed, the reviewing judge's decision and confirmatory order were affirmed, with costs on appeal to the respondent. The Court followed the extensive analysis contained in its reasons in *Nova Scotia (Agriculture) v. Rocky Top Farm*, 2017 NSCA 2. Arguably, the Deputy Minister did not "ignore" the owner's complaint that she had not been given a chance to cooperate by offering new proposals for the ponies' care. In any event, the appellant's fitness as an owner was the critical issue and in light of the fact that departmental officials had occasion to investigate her treatment of her animals no less than 15 times over a 3-year period, it cannot be seriously suggested that the Deputy erred in affirming the refusal to return the ponies to the owner.

The submission raised in *Rocky Top Farm*, and repeated in this case, that securing the cooperation of the owner to relieve the animals' distress operates as a kind of "condition precedent" without which inspectors acting on a complaint have no authority to do anything, was rejected. The owner 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. Staff in the field are not obliged to "balance" the owner's "interest" against the animals' health and well-being. An inspector or peace officer is not required to "obtain" or "secure" an owner's cooperation before taking steps to immediately relieve the animal's distress as contemplated in the *Act*. On the contrary, the obligation is to "endeavour" to obtain such cooperation. A reasonable effort is all that is required.

In this case the reviewing judge was right to refer the dispute

back to the Deputy for a reconsideration rather than embark upon an inquiry himself and substitute his decision on the merits for that of the Deputy.

Note: This is a companion appeal to *Nova Scotia (Agriculture) v. Rocky Top Farm*, 2017 NSCA 2

*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 11 pages.*