

**IN THE DISTRICT COURT
AT MANUKAU**

**I TE KŌTI-Ā-ROHE
KI MANUKAU**

**CRI-2018-092-012517
[2022] NZDC 541**

**ROYAL NEW ZEALAND SOCIETY FOR THE PREVENTION OF CRUELTY
TO ANIMALS INCORPORATED**

Prosecutor

v

JAMINE ANNE WALLACE

BARBARA GLOVER

Defendant(s)

Hearings: 18 - 21, 24 - 28 January 2022
1- 4 February 2022

Appearances: L Radich, Y Olsen and S Arnerich for the Prosecutor
D Gardiner for the Defendant Wallace
A Cranstoun and K Stoikoff for the Defendant Glover

Judgment: 31 March 2022

VERDICTS AND REASONS OF JUDGE K GRAU

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Introduction

[1] Barbara Glover and her daughter Janine Wallace face 35 charges each under the Animal Welfare Act 1999 (AWA)¹. They live at a large rural property south of Auckland, at Mangatangi, where various livestock are farmed and where Ms Glover and her daughter, as “Volkerson Kennels,” have been breeding German Shepherd dogs for many years. It does not appear to be in dispute that Ms Glover owned the dogs and Ms Wallace had the bulk of the responsibility for their day to day care.

[2] The charges arose after repeated inspections by SPCA² inspectors beginning in July 2017 and after statutory notices were given to Ms Wallace and Ms Glover following those inspections, indicating areas of concern and requiring them to take steps to improve the care of the large number of dogs on their property. After a second inspection in early August 2017 Ms Wallace and Ms Glover voluntarily surrendered the ownership of five dogs to the SPCA. The SPCA returned in October 2017, and seeing no improvement, returned again the following day with an SPCA veterinarian and seized 15 dogs. In May 2018 inspectors returned to the property, located six unattended dogs in a bush area at the back of the property and removed them.

[3] The charges relate to the two inspections in October 2017, and to the dogs located at the back of the property in May 2018.

[4] In general terms, the SPCA case is that Volkerson Kennels had far too many dogs at the property without adequate facilities and personnel to care for them properly. The SPCA alleges that there were many dogs housed in unsanitary conditions, inappropriately tethered, not given adequate access to water, shelter and nutrition, and not having their behavioural needs met. The SPCA also alleges that there were ill dogs at the property who should have, but had not, received medical treatment.

¹ Each defendant faces 29 charges of failing to meet the physical, health and behavioural needs of an animal (ss 10, 12(a) and 25 AWA) and six charges of failing to alleviate pain or distress of an ill animal (ss 11(1), 12(b) and 25 AWA). One charge was dismissed during the hearing (charge 26 against Ms Wallace and charge 62 against Ms Glover).

² Throughout this judgment, for ease of reference I refer to the SPCA. The prosecutor is the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated.

[5] The defence case, again in general terms, is that Ms Wallace and Ms Glover were very experienced and skilled in the breeding and care of German Shepherds, the dogs were loved, healthy and well cared for, and the care of all of the dogs met or exceeded the Code of Welfare for dogs.³

[6] The hearing proceeded as a judge-alone trial which began on 18 January 2022. Ms Wallace and Ms Glover had originally faced three additional and more serious charges,⁴ and they had elected trial by jury on those three charges. I granted the prosecutor leave to withdraw the three electable charges which enabled the trial to proceed as a judge alone trial.⁵

[7] I reserved my decision following the three-week hearing. Counsel for the SPCA and for Ms Wallace subsequently filed written submissions. Counsel for Ms Glover did not file submissions. Instead Ms Glover filed written submissions herself. Ms Glover also made an application for the charges to be dismissed under s147 of the Criminal Procedure Act 2011. I declined that application.

[8] The procedure in ss 105 and 106 of the Criminal Procedure Act 2011 applies. The Court having heard counsel and the evidence must consider the matter and find the defendants guilty or not guilty of each charge. I am required to give reasons for my verdicts. Those reasons are set out below.

General legal principles

Onus and standard of proof

[9] The starting point is the presumption of innocence, I must treat the defendants as innocent until the prosecution has proved their guilt. The presumption of innocence means that the defendants did not have to give or call any evidence and did not have to establish their innocence. The prosecution must prove that each defendant is guilty

³ The Animal Welfare (Dogs) Code of Welfare 2010, a code of welfare issued under the AWA. The Code sets out minimum standards and recommendations relating to the care of dogs. The Code was updated in 2018. The 2010 code applied at the time relevant to the charges.

⁴ Ms Wallace faced two charges and Ms Glover faced one charge of reckless ill-treatment of an animal under s 28A AWA.

⁵ *RNZSPCA v Wallace* [2022] NZDC 460. At the conclusion of the hearing, those three charges were formally dismissed; being CRNs 18092504021, 18092504010, and 18092503967.

beyond reasonable doubt. That is a very high standard which will have been met only if at the end of the case I am sure that the defendants are guilty.

[10] It is not enough for the prosecution to persuade me that the defendants are probably guilty, or even very likely guilty, but as it is virtually impossible to prove anything to an absolute certainty when dealing with the reconstruction of past events, the prosecution does not have to do that either.

[11] A reasonable doubt is an honest and reasonable uncertainty left in my mind about the guilt of the defendants after I have given careful and impartial consideration to all the evidence.

[12] I also remind myself that where the defence have asserted statutory defences the burden of proof is on them to establish that defence on the balance of probabilities.

Sympathy and prejudice

[13] I must come to my verdict solely upon the evidence that was before me in this court. I put aside any feelings of prejudice or sympathy. I observe this is a particularly important matter in this case where the allegations concern the neglect of dogs, including puppies, but also where the defendants find themselves before the courts facing criminal charges after many years of breeding and showing dogs, apparently with considerable success.

Evidence

[14] I have considered all of the evidence that was been put before me, in particular the evidence of the witnesses and the exhibits produced. In weighing the evidence, I have considered submissions made by counsel, and by Ms Glover, however, it is for me to decide what evidence I accept or do not accept.

Defendant giving evidence

[15] Janine Wallace has given evidence. She did not have to do so. The fact that she has does not change who must prove the allegations. The question remains the same - has the prosecution proved guilt beyond reasonable doubt? What she said in

the witness box is evidence, the same as all the other pieces of evidence. By going into the witness box she did not have to prove anything.

[16] Ms Wallace has explained her version of events. She has strenuously denied all of the alleged offending. She has given detailed responses to every allegation. Put simply, she says that each time the SPCA inspected the property, they were only seeing dogs at a particular moment in time, and in places where they did not live, but where they had been placed only temporarily, for example after exercise or while their accommodation was being cleaned. She said all of the dogs were at ideal weights for their breed, according to international German Shepherd standards. None of the dogs were ill, and she was treating the dogs that had any problems with their ears or skin. Instead, any dogs that were ill, had become so through their subsequent care from the SPCA. Her position was that the SPCA unfairly targeted her and her mother's operation, with their motivation not being the wellbeing of the dogs, but rather to take the kennel's best breeding stock for the SPCA's own commercial purposes, either for breeding or for use as a fundraising tool.

[17] If I believe Ms Wallace, then the proper verdict is not guilty because she (and her mother) will not have done (or failed to do) what the prosecution alleges. If what she said leaves me unsure, again the proper verdict is not guilty because I would have been left with a reasonable doubt. If what she said seems a reasonable possibility, the prosecution will not have discharged its burden and I must find her, and her mother, not guilty. The prosecution is of the view that the positions of the two defendants are aligned because of the way Ms Glover ran her defence. I agree, and the submissions Ms Glover personally filed after the trial reinforce that view.

[18] However, if I do not believe Ms Wallace's evidence, then I do not move from that assessment directly to guilt, because to do that would be to forget who has to prove the case. Instead I must assess all the evidence I accept as credible and reliable and determine if that evidence satisfies me of guilt beyond reasonable doubt.

Inferences

[19] I will need to draw inferences in order to determine some factual issues. For example if I reject Ms Wallace's evidence that any unsupervised dogs tethered on

“choke chains,” had only been tethered in that manner for a short time (and likewise for the dogs found in May 2018 tethered to trees at some distance from the main farm dwelling and buildings) I will need to draw an inference as to how long those dogs had been there, tethered in that manner. Any inferences I draw must be conclusions from facts that I accept are established, not by guessing or speculating.

Separate charges and defendants

[20] I must determine each charge on the basis of the evidence that relates to that charge and that defendant (although as noted above, the same result will follow for each defendant on each charge, given the way the defences were run). I must consider each charge separately and come to a separate decision on each.

Expert Evidence

[21] A number of witnesses gave evidence as expert witnesses. Those include aspects of the evidence of the SPCA inspectors as well as the evidence of the veterinarians called by the prosecution.

[22] Ms Wallace’s case also included a number of witnesses who gave expert evidence; a veterinarian, two German Shepherd breeders and a former dog obedience instructor and dog show judge who inspected Volkerson Kennels in January 2018 and commented on the living conditions of the dogs at that time.

[23] In assessing the evidence of those witnesses, I have regard to their qualifications and experience, but it remains for me to decide whether to accept their evidence and if so, how much weight to place on it. They gave their evidence in relation to their areas of expertise, but I have a broader perspective to consider their evidence in the context of all of the evidence in this trial.

The charges and applicable law

Statutory context

[24] The AWA imposes core obligations on people who are responsible for the care of animals. It also provides for codes of welfare which establish minimum standards

and promote best practice and appropriate behaviour. The long title of the AWA states there is a duty of care on owners and persons in charge of animals to attend properly to their welfare.⁶

[25] The expressed purpose of the AWA is to require people who own or are in charge of animals to take all reasonable steps to ensure that the physical, health and behavioural needs of the animals are met in accordance with both best practice and scientific knowledge.

[26] The purpose of the AWA is implemented by ss 10 and 11.

[27] Section 10 imposes a positive obligation on owners and people in charge of animals to ensure the physical, health and behavioural needs of the animals are met in that manner.

[28] The expression “the physical, health and behavioural needs” of animals is defined in s 4 as follows:

In this Act, unless the context otherwise requires, the term “physical, health, and behavioural needs”, in relation to an animal, includes—

[(a) proper and sufficient food:]

[(ab) proper and sufficient water:]

(b) adequate shelter:

(c) opportunity to display normal patterns of behaviour:

(d) physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress:

(e) protection from, and rapid diagnosis of, any significant injury or disease,—
being a need which, in each case, is appropriate to the species, environment, and circumstances of the animal.

[29] Section 11 imposes an obligation to ensure an ill or injured animal receives treatment that alleviates any unreasonable or unnecessary pain or distress being suffered by the animal.

[30] Sections 12 and 13 make it an offence of strict liability to fail to comply with the obligations imposed by sections 10 and 11. The prosecution does not need to show a defendant acted intentionally or carelessly.

⁶ Discussed by the Court of Appeal in *Balfour v R* [2013] NZCA 429 at [12]-[13].

[31] There is a statutory defence in section 13 if a defendant can prove, on the balance of probabilities, that they took reasonable steps to comply with the obligations imposed by sections 10 and 11, or that the act or omission took place in circumstances of emergency, or that there was a relevant code of welfare in existence and the minimum standards of the code were in all respects met or exceeded.

[32] Sections 10 and 12(a) do not require proof of actual injury or disease. That is because the reference to “protection from and rapid diagnosis of any significant injury or disease” in the s4 definition of physical health and behavioural needs puts the focus on preventing the risk of injury or disease to animals to ensure those needs are met.⁷

[33] In my view the minimum standards set out in the relevant welfare code need to be interpreted in light of there being no requirement of proof of actual injury or disease.

[34] Relevant to this case, with regard to tethering, the minimum standards in the relevant code of welfare require that:

- (a) Dogs must not be contained or tethered in a way that causes them injury or distress; and
- (b) Collars must fit comfortably without damaging the skin or restricting breathing.

[35] The recommended best practice that follows sets out that dogs should not be left unattended or routinely tethered by choke-chains or other devices which tighten around the neck. It is also recommended that collars should be checked frequently, particularly in young growing dogs, and loosened if they become tight to prevent effects such as chafing or restriction of breathing.

⁷ *Balfour v R* at [31].

[36] Although the best practice recommendations have no legal effect and are included to encourage higher standards of animal welfare,⁸ they demonstrate the animal welfare focus on prevention.

[37] Having regard to the Act and the welfare code, in my view a successful defence to a charge involving an allegation of inappropriate tethering would require more than simply establishing that a dog had not actually been injured or was in distress, when the Act under which the Code is established does not require proof of actual injury, but rather evidence that an animal was not protected from injury. Put another way, the minimum standards must enforce the purpose of the Act and the welfare obligations imposed under the Act. The Act and the welfare code need to be read consistently. To find otherwise would mean the welfare code overrides the Act under which the code is made.

[38] Accordingly, I accept the prosecution submission that the focus must be on the risk of injury, i.e. a dog tethered in a manner that risks causing injury or distress to the dog would not meet the code of welfare's minimum standard for tethering.⁹ Likewise, in respect of housing, I consider that a dog housed in a manner that risked causing injury or distress to the dog would not meet minimum standards.

The charges

[39] As noted above, there are 29 charges against each defendant under s10 AWA of failing to meet physical, health and behavioural needs of an animal.

[40] For these charges the SPCA must prove beyond reasonable doubt that:

- (a) The defendant was the owner of, or was in charge of, the particular dog.
- (b) The defendant failed to ensure the relevant dog's needs (according to good practice and scientific knowledge) were met. In this case relevantly by:

⁸ As the Code of Welfare states at section 1.4.

⁹ The submissions filed in behalf of Ms Wallace said that approach "is broadly accepted." Ms Glover's submissions did not engage with the applicable law.

- (i) Unsatisfactory tethering (either by use of a short lead, choke-chain lead, lead tangled around a tree or lead twisted around a leg);
- (ii) Unhygienic conditions (unclean crates, urinary/faecal build up);
- (iii) No or inadequate shelter;¹⁰
- (iv) Unsafe housing;
- (v) No access to water;
- (vi) Inadequate nutrition (underweight dogs);
- (vii) Matted coats;
- (viii) No behavioural enrichment.

- (c) That it occurred within the period related to each charge.

[41] Intention is not necessary, but if the defendants prove on the balance of probabilities that they took all reasonable steps to ensure the relevant animal's needs and/or that the relevant minimum standards in the Animal Welfare (Dogs) Code of Welfare 2010 were in all respects met or exceeded, then they have a defence to the charge.

[42] There are five charges against each defendant of failing to alleviate pain or distress of an ill animal.

[43] For these charges the SPCA must prove:

¹⁰ In the context of the AWA adequate shelter is not limited to protection from the elements but also includes wider aspects of the animal's accommodation, such as light, space, ventilation and cleanliness: See *Balfour v R* at [37].

- (a) The defendant was the owner or was in charge of the dog that was ill, in this case, relevantly, with ear or skin infections.
- (b) The defendant failed to ensure the dog received treatment that alleviated any unreasonable or unnecessary pain or distress being suffered by the dog.

[44] In this case it does not appear to be at issue that Ms Glover was the owner of the dogs the subject of the charges, and that she and Ms Wallace were persons in charge in relation to those dogs.¹¹

[45] In relation to the statutory defences provided by s 13, if such defences are to be advanced, a defendant is required to provide a notice within seven days after the service of the summons, or “within such further time as the court may allow.” The notice must specify the reasonable steps the defendant will claim to have taken, and/or the relevant code of welfare in existence at the time of the alleged offence and the facts that show the minimum standards established by that code were in all respects equalled or exceeded.

[46] In this case there has not been a notice that complies with s 13(3). However, in July 2021 shortly before an earlier trial date that did not proceed, Ms Wallace provided many hundreds of pages of documents to the prosecutor. The SPCA does not argue that these do not fulfil the requirements of s 13(3), as they make the defence clear - that the dogs were healthy and well looked after and minimum standards of care were met. Ms Glover did not file any notices, but her counsel confirmed at the hearing that Ms Glover wished to rely on the same matters raised by Ms Wallace. Again the prosecution does not take issue.

[47] I consider it is in the interests of justice to allow the defendants to advance the statutory defences under s 13. In any case the defence, which included reference to

¹¹ During the hearing Ms Wallace’s counsel stated that Ms Wallace accepts she was in charge of the dogs: NOE 414, line 33. Ms Wallace’s evidence included that the dogs were her mother’s, that they both contributed to the day to day upkeep of the dogs but that she had the lion’s share of the responsibility.

reasonable steps and minimum standards was advanced at great length at the hearing and it would not be fair to ignore it.

[48] As the prosecution has noted, the adoption by Ms Glover of the defences raised by Ms Wallace, means that the positions of each are aligned. Ms Wallace's evidence about the care of the dogs was unchallenged by Ms Glover. Ms Wallace confirmed to Ms Glover's counsel that her answer to each charge she faced would be the same for each charge her mother faced. Ms Glover's written submissions that she filed after the trial do not, for the most part, engage with the trial issues, but their overall flavour is consistent with Ms Wallace's case, that is that their dogs were healthy and well cared for and their dogs should not have been taken from them. My findings on each charge will therefore necessarily be the same for both defendants.

The SPCA investigation

First inspection on 28 July 2017

[49] The SPCA visited the property for the first time on 28 July 2017 after receiving information raising concerns about the welfare of the German Shepherd dogs at the property.

[50] Kevin Plowright was the most senior SPCA animal welfare inspector involved in the inspections that ultimately led to the charges before the Court. He was one of two inspectors on the first inspection; the other was Laurie Davis who also gave evidence at the hearing.¹²

[51] Mr Plowright described the 28 July inspection as starting at approximately 12.14pm when he and other inspectors arrived and went up the driveway. They saw dog pens containing German Shepherd puppies next to the cottage and other dogs tethered by short leashes to a picket fence around the main dwelling. The inspectors were met by Anne Glover, another daughter of Barbara Glover. She advised she was not sure which dogs would or would not bite. The inspectors decided to leave and return when Barbara Glover and Janine Wallace would be present.

¹² Ms Davis took over from Mr Plowright as the officer in charge of the investigation after Mr Plowright left his position at the SPCA in mid-2019.

[52] The two inspectors returned approximately an hour later and were met by Ms Wallace and Ms Glover at the entrance of their front yard. Ms Wallace and Ms Glover were asked to show the inspectors all of the dogs they had at the property.

[53] The inspectors made a number of observations about the dogs they saw that day and took photographs. The issues that caused them particular concern were the tethering of dogs on short choke chains,¹³ some of whom appeared to have been there for a considerable time. Mr Plowright considered that the dogs were so restricted in their movement they were unable to display normal patterns of behaviour. Some were without access to shelter or water.

[54] The housing conditions of many dogs was also a cause for concern. Some were in dog runs. Some were in farm buildings - including a garden shed containing puppies, a utility shed, cattle yards, a deer shed, and a woolshed where dogs were contained in sheep pens. Where the dogs were contained there were generally large build-ups of faecal matter and a strong smell of urine, suggesting a lack of regular cleaning and a lengthy confinement there. Inadequate ventilation and light, and the lack of a clean area to sleep in were also noted.

[55] The inspectors discussed their concerns with Ms Wallace and Ms Glover. They had identified 63 dogs on the property (32 adult dogs and 31 puppies) and were of the view that there was not sufficient housing or personnel to be able to care for them all.

[56] The inspectors issued an "AWS130 Instruction to Prevent or Mitigate Suffering" to Ms Wallace and Ms Glover, requiring them to remedy the problems identified in a specified time period.¹⁴ Mr Plowright described it as a list of instructions to get the defendants back on track to comply with the Code of Welfare and the AWA. The instruction required:

¹³ Also called choker chains, check chains and slip chains. They are a chain that can tighten up and loosen off, being designed to slide in and out.

¹⁴ An AWS130 Instruction to Prevent or Mitigate Suffering is issued pursuant to section 130(1)(b) of the AWA when an inspector has reasonable grounds to believe an animal is suffering or is likely to suffer unreasonable or unnecessary pain or distress. The instruction requires the person to whom the notice is given to take all steps the inspector considers are necessary or desirable to prevent or mitigate the suffering of the animal. Section 130(2) prescribes an offence if a person fails, without reasonable excuse, to comply with any requirement of an inspector under subs(1)(b).

- (a) Daily cleaning of all enclosed puppies and dogs.
- (b) Adequate ventilation immediately and daily.
- (c) Adequate shelter from all weather elements that was “mindful of cleaning and opportunity for dogs to display normal patterns of behaviour.” That was said to be required immediately for all dogs that had no shelter on the day.
- (d) Existing enclosures to be improved within 5 months, by 31 December 2017. This instruction referred to purpose-built kennels and Mr Plowright said Ms Wallace and Ms Glover told him they were looking at rebuilding kennels and that could be done within the time period.
- (e) Flooring on puppy pens to prevent mud and to provide dry living conditions within seven days.

Second inspection on 4 August 2017

[57] Inspectors Plowright and Davis returned on 4 August, in the mid-morning. Mr Plowright’s first observation was a lack of change. The shed where the puppies were kept was still odorous. The cattle yards contained a dog on a short tether with an upside-down bowl in a dirty living area. He saw no improvement in that area or in the deer shed. Some cleaning was going on in the latter, but in his view the dogs were defecating, sleeping and eating all in the same area and there were bones in with faecal matter again. The wool shed had not been cleaned. There was also a concern about the slat flooring being inappropriate for dogs. There were dogs tethered by short leads to a fence.

[58] Inside a double garage there were dogs in air cargo crates. Mr Plowright said they had not been made aware of dogs being in there but they heard barking. They asked Ms Wallace about them, then went in to inspect. Mr Plowright said the dogs were in a filthy condition and it was very odorous. It indicated to him a long-term confinement for dogs to be defecating and urinating in the same place as they sleep.

[59] The dog kennel runs were still in poor condition and the inspector again saw dogs tethered outside without shelter.

[60] Mr Plowright said it was a disappointing re-inspection with no meaningful improvement. He and Ms Davis discussed their findings with Ms Wallace and Ms Glover, telling them there were no facilities and far too many dogs. He told them the SPCA would have to start seizing dogs if matters did not improve but they would rather work with them to get compliance.

[61] Ms Wallace and Ms Glover agreed to surrender five dogs of their choosing.¹⁵

[62] Another AWS 130 Instruction was issued after this re-inspection requiring:

(a) All dogs in “crates and garage, puppy shed 1, 2 and 3, wool shed, yard, all kennel runs at the property” to be “fully cleaned and disinfected immediately and cleaned on a regular basis.”

(b) Access to adequate shelter immediately.

[63] These requirements were expressed as being in addition to the previous notice issued the week before.

Third inspection on 11 August 2017

[64] A third visit followed a week later, on 11 August 2017. The inspectors arrived mid-morning again. The purpose of the visit was to re-check compliance.

[65] Mr Plowright observed an attempt to put further cover on a pen that was housing puppies and it had been moved so that it was not on the same area of grass. However, there were nine eight and a half week old puppies in a too-small pen with no water, as an unsuitable bowl had been knocked over.

¹⁵ Regina (a two year old adult female), Dazzle (eight month old female), Furbo (four year old male), Fina (four year old female) and Jemma (three year old female).

[66] Two dogs were in crates in the garage. There was fresher newspaper but no meaningful improvement.

[67] Two adult dogs were in a double portable run which had been water blasted. It was much cleaner and contained water.

[68] Three dogs were tethered by short leashes and choke chains. Mr Plowright said he had spoken to Ms Wallace or Ms Glover about their use multiple times. Ms Glover had referred to it as “leash training,” but Mr Plowright said the inspectors had expressed their concerns about that manner of tethering.

[69] A dog was tethered in the utility shed without access to water. Another dog was running free. Mr Plowright observed that the area had been cleaned out “a bit” and looked better, although there was no bedding, which would have been ideal. Other areas were also cleaner.

[70] The deer shed stables were also improved, although concerns remained about the porous floor absorbing and retaining urine. As they were leaving the deer shed area, Mr Plowright heard dogs barking in the deer shed. They had been told there were no dogs in the deer sheds, only in the stable area. He asked Ms Wallace if she was going to show them the dogs in the deer shed. Ms Wallace apologised and told him dogs had only been in there for three days. Mr Plowright said the conditions in there (ammonia levels and faeces) suggested otherwise.¹⁶

[71] There was a discussion with Ms Wallace about the number of dogs on the property with Mr Plowright saying the numbers did not add up. He had seen 61 dogs on that day, they counted 63 at the first inspection but five had been surrendered. He said he was told that sometimes dogs come and go, but he got no real answer.

[72] Mr Plowright also discussed with Ms Glover and Ms Wallace the option of surrendering more dogs to get numbers to a more manageable level, but that option was declined.

¹⁶ The deer shed building had stables at the back end and a shed at the front end containing a number of cubicles.

[73] Another AWS130 was issued requiring the following actions to be taken immediately:

- (a) Any dog tethered must have a minimum 2-metre tether and access to adequate shelter at all times.
- (b) Water vessels to be secure and unable to be tipped over.
- (c) Double garage containing dogs in crates, dirty conditions and high ammonia level to be cleaned and ventilated.
- (d) Two adult dogs confined inside deer shed with no natural light and exposed to high ammonia levels to be relocated and provided with opportunity to display normal patterns of behaviour.

[74] Those requirements were in addition to the two previous AWS 130 Notices. The notice was given to Ms Wallace and Ms Glover.

[75] Ms Davis said, following those three visits to the property, they had a number of concerns. To the front of their minds was the amount of dogs at the property and the lack of facilities to hold them. They did not know how many dogs there were because the numbers changed from visit to visit. She said as they moved through the inspections it became apparent there were dogs they were not being shown. They were also concerned with cleanliness, ventilation, the smell inside some of the places where dogs were confined, lack of water, short tethering and no shelter.

[76] Ms Davis said at this point the inspectors were trying to change the behaviour of Ms Wallace and Ms Glover by instructing, giving advice and education. She said their intention was to try to support Ms Glover and Ms Wallace to drop their numbers.

Fourth inspection on 12 October 2017

[77] The 12 October inspection was a follow-up to check compliance. Mr Plowright and Ms Davis went together, arriving late morning, around 11:30am.

[78] Ms Davis explained that the reason for the longer gap between re-inspections in this case (some eight weeks, whereas the first three inspections were a week apart) was to give an opportunity for improvement when there was a large amount of work that needed to be done. Initially Ms Glover and Ms Wallace had been receptive to the advice they had been given but Ms Davis said it became quite apparent at the October visit that nothing was happening. Dog numbers were not dropping and they were finding dogs continuously in the same welfare compromised positions.

[79] Ms Wallace and Ms Glover showed the inspectors the construction on the new kennel block. It was large, 20m x 6m, with boxing steel reinforcing and drainage going in. Mr Plowright believed it could house 17 dogs.

[80] A dog, Anelly, was tethered in the utility shed on a one-metre tether.¹⁷ Ms Wallace was asked about the tether and said she tried to chain as recommended but Anelly got tangled on the back legs and injured and that was why she liked a short tether. There was an amount of faeces suggesting the dog had been there for some days. Some of the faecal matter was white, being dried up.

[81] Another dog had no water in its bowl, and was tethered outside on a short lead with a choke chain without shelter.¹⁸ There was nothing by way of behavioural enrichment for this dog, nor for Anelly.¹⁹

[82] Inside the double garage were three dogs inside crates. Mr Plowright's notes recorded "Three dogs were shut in crates within the garage, frantic scratching and barking from one of the dogs. No water for any dog, garage smells of urine, garage very dirty." The crates were unclean, containing faecal matter.²⁰

[83] A dog was tethered by a lead to a tree. It was without shelter. There was digging and scratching around the area where it was tethered. Mr Plowright considered it had

¹⁷ This dog's conditions relate to charge 1 (Janine Wallace) and charge 37 (Barbara Glover).

¹⁸ Charges 2 (Wallace) and 38 (Glover).

¹⁹ Section 4 AWA defines physical, health and behavioural needs as including the opportunity to display normal patterns of behaviour. There is no minimum standard in the Welfare Code.

²⁰ Charges 3 (Wallace) and 39 (Glover).

[88] An adult dog was also inside the deer shed. There was faecal build up and urination on the porous concrete surface. The dog was a female tethered by a short chain in a small area. There was no bedding. Three other dogs were untethered in cubicles. Mr Plowright said there was no ventilation, a bad smell, and there were bones lying amongst the faeces. Ms Wallace had told him the female tethered dog had to be chained because of fights with the others.²⁶

[89] In the woolshed there were five seven-month-old pups in shed pens without water. The woolshed “stunk” of urine and faeces. The dogs had chewed on wooden rails. A water bowl was knocked over. Bones lay amongst faeces. A dog was trying to climb out over the rails.²⁷

[90] Mr Plowright’s view was that dog housing, for a dog living in it most of the day, needed to be cleaned at least once a day, but ideally faeces would be picked up in the morning and the evening. Tipping over of bowls could be prevented by the use of concrete bowls or stainless-steel buckets tied by their handle.

[91] The inspection was disappointing from Mr Plowright’s perspective and he and Ms Davis left to discuss the outcome. They did not issue another notice because they did not consider the previous instructions had been complied with. They decided to bring a veterinarian with them to re-inspect all of the dogs the following day.

Inspection on 13 October 2017 and seizure of 15 dogs

[92] Accordingly, on 13 October 2017 Mr Plowright and Ms Davis returned. Accompanying them was Dr Jess Beer, the SPCA’s head veterinarian. A local community constable and animal control officers also attended. They arrived late morning around 11:30am, spoke to Ms Glover and advised her of the reason for the re-inspection. They read her the Bill of Rights. She explained Ms Wallace was due home soon and asked them to delay the inspection, but they told her they would continue.

²⁶ Charges 8 (Wallace) and 44 (Glover).

²⁷ Charges 9 (Wallace) and 45 (Glover).

[98] Dr Beer explained that the point of a choke chain is to stop behaviours. Thus it was designed to punish, and was normally only used as a leash attached to a human who would direct the choke chain. But when a dog was wearing it without a human there to modify the degree of punishment, it was then a permanent punitive device that could punish physically by choking the dog and would cause fear and concern.

[99] There were three adult dogs in the old runs: Astro,²⁹ Dolly³⁰ and Mafia.³¹ The runs had been cleaned since the previous day, by being hosed out. Mr Plowright said it was still the same poor environment with not much sign of the dogs getting out and a lack of stimulation. Ms Davis said these dogs were seized on Dr Beer's advice that the dogs were underweight, had matted coats and ear infections.

[100] Dr Beer said the runs smelled of faeces and urine. There were "disgusting looking" bones in there. It looked like the runs had been recently cleaned but that did not take away the smell coming from the wooden kennels at the back. Dr Beer described Mafia as having an ear infection requiring treatment. He was later treated and it resolved. Dolly had an infection in both ears, as well as a poor coat, matted with dirt and faeces. She had ongoing treatment for quite a long time.

[101] Ms Wallace had arrived home by now, was informed of what the SPCA was doing and was given her Bill of Rights. She asked what grounds the SPCA had to remove the dogs and Mr Plowright advised her to look at the AWA.

[102] A dog, Casper, was in the cattle yards with inadequate shelter, dirty conditions and was tethered by a short leash to a choke chain without access to water.³² Casper was seized.

[103] Another dog, Zeta, was also in the cattle yards with inadequate shelter and was tethered without water in dirty conditions.³³ Zeta was seized.

²⁹ Charges 11 (Wallace) and 47 (Glover).

³⁰ Charges 12, 13 (Wallace) 48 and 49 (Glover).

³¹ Charges 14, 15 (Wallace) 50 and 51 (Glover).

³² Charges 16 (Wallace) and 52 (Glover).

³³ Charges 17 (Wallace) and 53 (Glover).

[104] The inspectors realised there were also dogs in a room off the utility shed, where they had not been taken to before. Ms Wallace opened it for them. Inside behind the locked door was Debbie, a female dog inside a crate in dark and dirty conditions. Debbie had signs of an ear infection and there was matting to the dog's coat, described as faecal matter clumped in big knots of dirt.³⁴

[105] Dr Beer said they did not even know there were dogs in the utility shed. She described Debbie as "sort of hidden away." There was no light; the area was closed up and dark. Debbie was in a crate too small for a dog of her size, "just hidden amongst all this other junk." Her coat was "pretty hideous." There was a lack of gloss to the hair, and the fur was matted in a manner consistent with her being kept in cramped quarters. She had a very green discharge from the ears that was quite pus-y. Dr Beer said that was without a doubt something that would be obvious to anyone. She said you could smell it from afar. The ears took some time to resolve with systemic and topical medication. There was no indication of any previous treatment. Inappropriate treatment could also have resulted in this condition.

[106] Dr Elsa Flint was another veterinarian who was called as part of the prosecution case. She has qualifications in animal behavioural medicine. She has published academic papers on animal behaviour and authored books on dog and cat care and behaviour. She had not visited the property but provided her views based on photograph booklets and video clips from the various SPCA inspections where body worn cameras were used. Dr Flint saw no reason to keep an adult dog shut in a small crate when she said any dog, including a pregnant dog, needs exercise.

[107] Another dog in the utility shed, Paris, was also taken out of a crate.³⁵ Paris' coat was in poor condition.

[108] There was no bedding or freedom for the dogs in the crates to show normal patterns of behaviour. There was no visual stimulation, with a concrete floor and plywood walls to the top.

³⁴ Charges 18, 19 (Wallace) and 54 and 55 (Glover).

³⁵ Charges 20 (Wallace) and 66 (Glover).

[109] Paris and Debbie were seized.

[110] In the woolshed, Desney was found. She had ear infections and skin problems. She was seized. Dr Beer examined her. Both ears were significantly and chronically infected. Dr Beer noted the dog's ears were being held down because of discomfort. She considered the issue had been there for weeks or possibly months. It would have been apparent to a layperson. Dr Beer said that if you were to touch this dog on her head you would have noticed it.³⁶

[111] Desney and Debbie were later found to be pregnant.

[112] Three puppies, Elite³⁷ Puppy,³⁸ and Emma,³⁹ were housed in the woolshed. There was a draft coming up through the floor, they were trying to get out, and the inspectors considered there was a risk of injury from slats on the sides of the cubicles, because the puppies could climb up them like a ladder, fall back and put a leg in the slats. The three puppies were also seized.

[113] In the woolshed Mr Plowright also noted signs of chewing on wood and claw marks, indicating to him a lack of stimulation and dogs chewing out of boredom.

[114] There was faecal build up underneath the woolshed, not from sheep but from dog faeces and urine falling through.

[115] Dr Beer described the woolshed as an unsafe environment. She said she believed these were adolescent puppies that need safe places to run around but there were slatted wood floors. She had regularly seen dogs with ripped nails or broken digits from those sorts of surfaces. She was surprised they did not see such from the dogs they saw housed in there. The wood being porous also meant a potential for disease, and she understood a lot of these dogs had diarrhoea when they returned to the SPCA. It was an area that could not be cleaned effectively. The smell of urine and faeces was "quite invasive and assaulting" to the senses of dogs.

³⁶ Charges 21, 22 (Wallace) and 67, 68 (Glover).

³⁷ Charges 23 (Wallace) and 69 (Glover).

³⁸ Charges 24 (Wallace) and 70 (Glover).

³⁹ Charges 25 (Wallace) and 71 (Glover).

[116] Dr Beer said all dogs need things to interact with and to chew on, so the chew marks to that degree could be an expression of boredom, frustration and anxiety because they do not have other outlets for normal dog behaviour.

[117] A dog, Dani, was located next to the hay barn. It was shaking its head; a sign of likely ear infection. Dani was also seized.⁴⁰

[118] Dr Beer said Dani's ear was red and painful to the point where she did not believe they could touch it appropriately. Dani was treated with topical medication and an oral anti-inflammatory because getting the topical medication in was sore and uncomfortable for him. This could have been prevented if detected earlier. Certainly, it had been present for days, and, as soon as someone handles a dog, the level of pain would have indicated discomfort in that area and that veterinary treatment was required. Dr Beer did not consider it likely that Dani had received appropriate care and treatment for his ear infection.

[119] Inside the hay barn there were two dogs. Mr Plowright said they had not been to the hay barn on previous visits, as Ms Wallace told them there were no dogs in there. The barn had two metal latches with a pin to keep the door shut and it could not be lifted out. Mr Plowright gave it a couple of knocks from underneath using a cinder block, but it did not budge. He then got one of the field officers to tap it from underneath with a hammer.

[120] The first dog, Parelle, had no water, and was tethered on a short lead with a lack of lighting. She was underweight.⁴¹

[121] Another dog, Ritza, was tethered inside a small enclosure in the hay barn.⁴² The tether was twisted up around the dog's rear leg, at the "hock." The dog's leg was forced up forward next to its head. Mr Plowright considered that the dog had likely been there some time. The leash was very tight around the leg. It was a small area with no obvious water. Another SPCA officer, Andre Williams said it was very dark and

⁴⁰ Charges 26,27 (Wallace) and 62, 63 (Glover).

⁴¹ Charges 28 (Wallace) and 64 (Glover).

⁴² Charges 29 (Wallace) and 65(Glover).

they used torches. He saw obvious swelling in the dog that was tethered and tangled around its leg.

[122] Dr Beer said that Ritza could not move. Her expression indicated anxiety and most likely pain. There were faeces very close indicating she had been unable to get up to relieve herself. She was trapped.

[123] Dr Flint's opinion of Ritza's condition was that the dog was helpless, and it would be very distressing and very painful for her. She wondered if the dog had been distressed about being caged and trying to escape. There was no reason to tether a dog within a cage by itself unless it was particularly aggressive. But even that would be unacceptable; if that was the case she considered they should be working on its behaviour and not having to put it in that position.

[124] The SPCA inspectors released the leash to allow Ritza's leg to go back to the normal position and they unwrapped the leash, which was embedded into the leg. Dr Beer said you could not see the definition of the dog's toes in a photograph because the entire foot was swollen.⁴³

[125] The dog could not or would not put its leg on the ground after release.

[126] Dr Beer considered the rope would have been around Ritza's leg for hours, not just a few minutes. In Dr Flint's view the rope was wound around the leg which means it had been moving around in that area to make that happen and the wound was not a fresh wound.

[127] In cross examination Mr Plowright denied that entry had been gained to the hay barn by smashing the door. Dr Beer also rejected the proposition that the SPCA had entered that barn in a way that was highly unsettling for the dog with the result that the dog got tangled in the lead. She said it took hours for the tangling to occur, and so the entry of people would not have created that injury.

⁴³ Exhibit 1, photographs, p 81.

[128] Ritza and Parelle were seized, bringing the total number of dogs seized to 15. Inspector Davis said the 15 dogs were all microchipped and they were registered to Ms Glover.

[129] A further AWS 130 instruction was issued and handed to Ms Wallace and each action was discussed.

[130] The instructions were:

- (a) Front property runs, two adults, female with matted and dirty fur requires grooming within 48 hours.
- (b) Female pup in run next with no shelter. Shelter required immediately.
- (c) Any crated dog must not be crated for any longer than one hour.
- (d) Every dog must have access to fresh water, suitable sleeping area, dry, free from urine and faecal matter,
- (e) Woolshed flooring is not suitable for housing dogs due to risk of injury.
- (f) Tethered dogs must not be tethered by choke chains and must have a minimum of 2 metre length: immediately.
- (g) Ensure all dogs have opportunity to display normal patterns of behaviour: immediately and daily.

[131] The 15 seized dogs were taken into SPCA custody. Dr Beer's view was that the condition of the seized dogs was generally poor.

[132] Mr Plowright's overall view was that the sheer volume of dogs was the biggest issue, along with the number of people there to care for them. He said they never really knew how many dogs Ms Wallace and Ms Glover owned. Every time they found more dogs in areas they had not seen before. They had found Ritza and Parelle in the hay barn, but they had previously asked about that hay barn and were told there were no

dogs there. Although there were now new enclosures under construction, they would still not have been sufficient to house all the dogs.

[133] Dr Beer had general concerns about the care of the dogs. She said a dog is:

...an intelligent animal that is domesticated to be our pet also requires emotional and mental enrichment, so the ability to express normal behaviours, the ability to play. I mean, there's ultimate - ideally a breeding situation would have dogs growing up in a home. They shouldn't be in any sort of outdoor facility in that respect because I feel they miss out on that important one on one socialising towards living in a home, so facilities should be far more like the environment we want those pets to go to, and that was quite clearly lacking when I arrived at the property.

[134] Dr Beer gave examples of emotional or behavioural enrichment as:

Certainly, toys, as a simple thing, physical areas in which they can run, play, tumble, interact socially with other dogs without causing injury to themselves. Mental stimulation such as brain stimulation, cognitive games, training... I see a large number of dogs in my industry that have lacked these things as a young animal and therefore have huge social issues as they get older which can be expressed as fear or aggression, even, and it is very important that breeders are providing that appropriate stimulation for puppies' brains to develop and to prevent some of the boredom behaviours or frustration behaviours that we see in dogs that are kept in inappropriate conditions.

[135] Although the dogs might have been in a rural setting on a farm, she said a lot of the dogs she saw were closed off from that. They were unable to see the fresh air, unable to see or smell the stock, and "...things such as peace was completely invaded by the vocalisation from the dogs." She said she actually uses the smell of stock as enrichment for some dogs, but "...when you're trapped in a room that smells of your own urine and faeces and lots of other dogs are barking you do not have access to the supposed enrichment."

[136] Dr Beer also considered that all of the dogs were slightly underweight. She said there was a combination of low body weight and condition. For some of them there was poor muscle configuration which contributed to a lot of the dogs having very sloped backs, which was a concern with German Shepherds.

[137] Dr Flint's general impressions of the conditions of the dogs' housing was that it was well below an acceptable level of hygiene. The kennelling she would expect to

constantly can end up with neck injuries. In her view it is preferable not to tether a dog, but if it is necessary, it should be on a flat collar. A dog should not be left unsupervised if tethered. Even on an ordinary lead they can get tied up in it or get limbs caught. Dr Flint also accepted in cross examination that choke chains are not illegal.

[141] Dr Flint considered that the photographs she had based her assessments on made it “fairly obvious” this was not just a temporary situation or a momentary lapse but had been going on for a long time. In cross examination, with reference to the photographs she said were of dogs with severe skin problems, she did not accept the proposition that the dogs were overall quite healthy and not suffering from disease when they were seized.

Ritza

[142] Ritza was started on pain relief and antibiotics immediately. Dr Beer said as time passed the initial indent on her leg turned into a large lesion of dead skin and treatment was continued. It was unsuccessful. Due to the severity of the injury and the poor prognosis of options such as amputation or surgical repair, a decision was made to euthanise Ritza, some 11 days after she had been taken out of the hay barn.

[143] Robert Hardcastle, a veterinary pathologist, examined Ritza on 30 October 2017. In broad terms there was nothing abnormal. The dog was in generally fair body condition in terms of its overall amount of muscle and fat and was not particularly skinny or overweight.

[144] In terms of the right rear leg, there was a wound around the circumference just above the hock or ankle joint involving a laceration to the back part of the limb and Achilles tendon, which was cut or damaged. The area was surrounded by granulation tissue, at the healing stage, when the body is trying to form a scar. The skin around the area was discoloured, indicating it was partially necrotic or dead tissue.

[145] It was essentially a strangulation of the area and would have caused a significant amount of pain. It could have taken a few hours to lead to the tendon becoming necrotic and rupturing. Minutes would be unlikely because it takes a period

of time of sustained loss of blood flow to cause the cells to die. A few days was unlikely too.

[146] In cross examination Mr Hardcastle doubted that walking the dog to the SPCA vehicle after the injury occurred would have exacerbated it. He accepted it was possible that there were a number of things that could go wrong with a wound like this; it could become infected or the dog could self-traumatise.

Interview of Janine Wallace on 9 November 2017

[147] Ms Wallace attended a voluntary interview with SPCA inspectors, Mr Plowright and Ms Davis, on 9 November 2017. She was accompanied by Mr Ray Sheath who was recorded as acting as her support person as well as (he said) standing in for her mother, Ms Glover.⁴⁴

[148] Mr Plowright told Ms Wallace that the welfare of the dogs was to the forefront, and he advised that the seized dogs would not be returned. He asked if there was anything they should know about the dogs they were holding that might assist in giving them the full care that was needed. Ms Wallace told him what food they were on, that they were not used to men, and that a number of dogs had been receiving medical treatment for ear conditions.

[149] Ms Wallace spoke at length about the establishment and history of Volkerson Kennels and her experience. She also explained that, as well as aiming to improve the German Shepherd breed, there had been an armed home invasion on her mother and sister, and she said they wanted to have protection. Ms Wallace said the kennel was not commercial; it was a hobby and a passion. She and her mother had hands-on roles and they had a large selection of people helping out on a volunteer basis. Her sister Anne was not involved.

[150] Ms Wallace would not comment on how many breeding bitches and stud males Volkerson Kennels had, nor how many were currently pregnant. However she did provide the numbers of litters that had been produced each year since 2010,⁴⁵ as well

⁴⁴ At the hearing, Ms Glover disavowed that position through her counsel.

⁴⁵ One litter in 2010 and 2011, two in 2012, three in 2013, seven in 2014, three in 2015 and 2016

as the achievements of Volkerson Kennels in the showing world. Showing was a regular activity and took place in different areas. Ms Wallace said there would be between three and five people at the property caring for the dogs when she was away showing the dogs.

[151] The farm was a large one with cattle, red deer, goats and sheep as the main animals, and her sister Anne was the main carer for the stock animals. There was also a paid contractor who was there four out of seven days, along with other workers.

[152] Ms Wallace confirmed they kept records of flea treatment, worming and anything important to the dogs. She had no comment on any other record keeping such as sales contracts with people who purchased dogs.

[153] Ms Wallace described her daily routine with the dogs as starting at 4.30 to 5.00am. All the enclosures and kennels were cleaned daily by her and by other workers, the puppies were fed and put out in their day pen for sunlight and fresh air. She worked all day with the dogs from morning to night. She fed the dogs on the property every day, once a day, and the puppies were fed twice a day.

[154] Ms Wallace explained they were having problems with their water blaster, both the first time the SPCA arrived and then on 12 October.

[155] Ms Wallace was asked to explain where and how the dogs were housed on the farm. She said the dogs were rotated and not all the same dogs stayed in the same places.

[156] In relation to the dogs in the hay barn, Ms Wallace said they had been put there a few days before and had shelter and were warm. Ritza had been prepared for showing and was being shown at Kerikeri on 14 October. Ms Wallace said Ritza was the only dog she had not prepared for the show before the inspectors arrived. She said she did not have any dates of when Ritza was put there, but she was there on a lead and was a top bitch and she did not want to talk about it at the moment.

[157] Ms Wallace gave details of some of the veterinarians they used; Takanini vets for routine matters, a specialist for breeding through artificial insemination, and a number of others that she did not name.

[158] Ms Wallace declined to comment on who decided where dogs went for housing and tethering, and who was responsible for the cleaning routine.

[159] In relation to dogs in crates in the garage, Ms Wallace said crates were rarely used. If dogs were there, it was overnight, and they were taken out first thing in the morning. She declined to comment on where all the dogs were normally housed.

[160] Inspector Davis asked Ms Wallace whether the smell of ammonia affected her at all, when Ms Davis said she had found the smell of ammonia in the deer shed and garage so extreme that she was gasping and gagging and her eyes were watering. Ms Wallace said it had not affected her, nor any of the people that have been there, nor the dogs. They had no ill dogs, and the deer shed was clean. They had water blasted the concrete and tried using disinfectant as Ms Davis had recommended, but it hurt the dog's feet.

[161] Ms Davis also referred to walking past the deer shed on one of the inspections, Ms Wallace had telling them there were no dogs there, but Mr Plowright heard a dog barking. When they went back, there were two dogs. Asked if she had forgotten or was deliberately trying not to show them, Ms Wallace said she had been in shock.

[162] With reference to Ritza, Ms Wallace said that "you were smashing the door down with sledgehammers and crowbars, the haybarn. You didn't open the latch and open the doors." She said Ritza "would've gone mental." She said Ritza was given water and fed on Thursday evening. They couldn't have dogs running loose in the haybarn because they dig out. It was warm and dry and was temporary. They had tried using a two-meter chain as the SPCA suggested and one of the bitches, Tiffany, hurt her back leg so they did not want to use chains.

[163] Ms Wallace said they had followed the instructions the SPCA issued. After the first inspection each dog was groomed and washed. More people were engaged to

exercise and play with the dogs. The instruction for daily cleaning happened and there was adequate ventilation. As regards shelter, the dogs were working dogs and had to be capable of working in all weathers. Behavioural specialists had suggested the dogs should be put on one metre leads. The dogs had to learn what a lead was. They were getting new kennels built because the SPCA said they were substandard. As regards concerns about behavioural enrichment, the dogs worked on the farm and were exercised. They had happy healthy dogs.

[164] Ms Wallace said she would like to take a positive path and work together with the SPCA. She accepted there were areas that had room for improvement. When the new kennels were completed, she wanted the inspectors to visit and see if there was anything they had overlooked. She also said they were in the process of reducing numbers and what they wanted to achieve was to get their dogs back.

Further inspections

[165] Inspector Laurie Davis said there were subsequent re-inspections, on 24 October 2017, 22 November 2017, 8 February 2018 and 27 March 2018. In broad terms there were significant improvements; lower dog numbers and it was relatively clean. Some dogs had bedding. There were still areas of concern in that they were not completely sure if they were being shown all the dogs on the property or if dogs were being hidden. In December they found a number of adult dogs and puppies being kept in a garage of one of Ms Wallace's friends.

Inspection on 18 May 2018 and seizure of six dogs

[166] In May 2018 Mr Plowright received a call from an animal control officer, Rhys Heatley, that someone had reported sounds of distressed dogs coming from the back of a bush block thought to be on Ms Glover's farm. Mr Plowright met the animal control officer and the complainant in the late morning of 18 May, at 11:20am, and he and Mr Heatley walked for 10-15 minutes from a neighbouring property to the direction the barking was coming from.

[167] They found six German Shepherds tethered to trees:

been no issue. But one dog's chain was tangled (Tiffany), and, even if there had been water in its bucket, it would not have been able to reach it.

[169] The six dogs did not have anything to do, such as toys to play with.

[170] The dogs were left where they had been found. They could not be taken back the way Mr Plowright had come. The inspectors left on foot and returned to their vehicles. They then travelled to Ms Glover's and Ms Wallace's property by road, arriving through the main entrance at 1:18pm.

[171] Ms Davis was there with other SPCA inspectors. Ms Davis said it was cleaner, she did not see any dogs tethered without shelter or water as she had previously, and she saw no dogs in the woolshed or the deer shed when Ms Glover's daughter Anne led her around. She made her way to the kennel block where Ms Wallace was cleaning. When she finished her inspection, Mr Plowright arrived.

[172] Mr Plowright spoke to Ms Wallace about the dogs in the bush and started to read her the Bill of Rights. Ms Wallace said she would call the Police and went inside the house.

[173] Mr Plowright with five others - other SPCA inspectors and animal control officer Mr Heatley - returned to the dogs, this time travelling in two four wheel drive vehicles. They drove for around 15 minutes, got stuck, and then walked for 10 to 15 minutes after that.

[174] They released one dog each and stopped at a stream at the bottom of the area to give the dogs a drink, as some dogs were very thirsty. Then they returned with the dogs in their vehicles. Back at the main house area they filled out a notice and a blank surrender of ownership form and left them on the door, as no one was willing to speak to them.

[175] Dr Douglas Dreyer, a senior Auckland SPCA veterinarian, examined the six dogs the SPCA had removed from the property.

[176] Tiffany was underweight or thin. She was covered in mud. The hair was matted on the base of the tail and underneath that was a superficial dermatitis of a chronic nature. The dermatitis was brought on in that area usually by a flea allergy which caused an itch and the dog then “self-mutilates.” Dr Dreyer said they had to anesthetise and clip the whole mat off and put the dog on antibiotics and steroids to clear up the skin problem.

[177] Dr Dreyer explained that, by chronic, he meant it takes time for a mat of hair to form over a skin problem. There was also an infection in the skin and some thickening of the skin due to self-trauma which does not happen overnight but also takes a few days to get to that stage. Self-trauma was where a dog has an itch and continues to bite or agitate it, so it gets itchier and worse.

[178] Dr Dreyer said the skin condition would have been apparent to a layperson. If someone was dealing with the dog on a daily basis, they would see this forming on the base of the tail at the back. He could not say how long the condition had been there, but it was certainly longer than a couple of days. It would have caused the dog a lot of bother from the constant irritation and self-mutilation. It could certainly have been prevented if it had been noticed sooner. Neosoothe (topical antibiotic) would have helped, if it had been used.

[179] The Purina scale of body condition was used to determine that the dog was thin. That is an internationally accepted scale running from one to nine, with one being emaciated, nine very obese, and five being the ideal body condition. A visual scoring of muscle mass was done, and “what’s palpable and how much fat is there”. In further explanation of the Purina scale Dr Dreyer explained that it involves the amount of muscle or body mass compared to the bones, such as being able to feel the spinal cord when running hands over the spine. Muscle mass below it would indicate a thin dog, whereas muscles on the same level of the spine indicates an ideal weight. Chest condition was assessed as to what can be seen of ribs and how ribs are covered. Also assessed is whether the dog has a “tummy tuck” or how bad it is. Therefore the assessment is from above, and from both sides.

[180] Thin was either a three or four on that scale. Tiffany scored a three.

[181] They sedated the dog to examine the ears. There was a superficial infection of the outer ear canal. Once they cleared out the ears it was fine, but Dr Dreyer said he imagined it would be like a human having an earache.

[182] Under cross examination he did not accept Tiffany had an infection caused by coming into contact with a chemical substance. In re-examination he explained that chemical contact would have shown far more extensive damage to the skin than was seen. He agreed that, had the dog been treated with Neosoothe, it would have reduced the irritation and helped the healing process. He could not accept that there was no matting and it was instead the dog's coat re-growing. He said he saw a definite mat.

[183] Princess also scored a three out of nine on the Purina scale, so was in thin body condition. She also had a coat covered in mud and was very dirty. Both ear canals were full of earwax but just needed to be cleaned out. There was no skin or ear infection. Dr Dreyer agreed in cross examination that the dog was otherwise in good health and had a good temperament.

[184] Tiana scored 3.5 out of nine on the Purina scale, between thin and underweight. Her ears were examined under sedation, and there was wax build up that was cleaned out, but no inflammation. The coat was matted and covered in mud. Dr Dreyer agreed in cross examination that the dog was healthy.

[185] Image was given a score of 3 out of 9 on the Purina scale. Again, the coat was dirty; covered in mud and with matting on the ventral chest area. The dog was anaesthetised to examine the ears. There was a severe pustular exudate from both ears, and it was too painful to examine them without anaesthesia. They flushed out a brown waxy exudate then a pustular exudate to try to examine the tympanic membranes to make sure they were not damaged. They put the dog on a protracted course of antibiotics, systemic as opposed to local, as they did not want a drug that could affect the dog if the tympanic membranes were broken. Dr Dreyer considered the condition would have been causing the dog "a fair amount of bother." It was showing signs of pain. This advanced ear problem would have been obvious to a layperson. It could have taken a week to two weeks for the infection to get to this stage.

[186] In cross examination Dr Dreyer agreed that Image looked in good condition in a photograph but disagreed the ear condition would not have been manifest to a layperson. He did agree that German Shepherds are a breed of dogs known to get ear infections. In re-examination he said the dog would have been scratching at its ears or crying from the pain from the ears. And the smell of the discharge would have been recognised by a layperson unless the dog was not handled or seen for a long time.

[187] Image was referred to Dr Simpson who flushed Image's ears on 27 October 2018 and recorded it had gone well.⁵² She also recorded that the SPCA vets had done a very good job with two previous procedures and most of the infection previously seen had cleared. A lot of debris had also been removed previously. Quite a lot of waxy debris had built up again already and the thickened ear drum and canal in the right ear and the pushed back ear drum in the left ear were signs that the ear disease had been chronic (from months to years) and would have been very painful.

[188] Dr Simpson said Image's right ear canal was ulcerated and bleeding. The ulcers would also be painful when the ears were handled, or medication put in. She considered the pain to be the reason that Image was "now very head shy" and was resisting topical medication "to the point of trying to bite her handlers". That was even though Image was said to be "a lovely dog" and other parts of her body could be touched without problems.

[189] Dr Simpson prescribed prednisone tablets, and an anti-inflammatory steroid used to treat a broad range of canine medical conditions.

[190] Antonio had a body score of 3.5. Dr Dreyer could not examine him without sedation as Antonio was extremely aggressive. The ear canals were fine, with just a bit of wax build up. Generally he said this dog was just underweight and full of mud. In cross examination Dr Dreyer described the weight as more underweight than thin.

[191] Neli had a body score of three out of nine. The coat was dirty with mud and matting all over it. There was a mild wax build up in the ear canals that just needed a

⁵² Dr Simpson's evidence was produced via a statement of agreed facts.

clean out. Dr Dreyer agreed in cross examination that in a photograph Neli looked alert, well, and had a good coat.

[192] As a whole Dr Dreyer believed the dogs were either underweight or in a thin body condition, their coats were very poorly looked after because they were full of mud and had not been brushed out, and their body condition was poor with the matting of fur.

[193] In cross examination Dr Dreyer was referred to German Shepherd breed standard weights, with which he was unfamiliar. He said that, in using the Purina scale, you do not take the breed of the dog into consideration. It was used as a body scoring condition for all breeds.

[194] Dr Dreyer agreed he had found all of the six dogs were well hydrated.

[195] Mr Plowright described as an "...absolute fantasy" the defence proposition that the dogs had only been put there temporarily. He also considered it was an attempt to show the number of dogs had been reduced when it had not.

The defence case

[196] Ms Wallace gave evidence over a number of days. Her evidence occupies some 500 pages of the notes of evidence.

[197] The following is a general summary only of the key aspects of Ms Wallace's evidence. I mean no disrespect to her, but my concern is to not unnecessarily lengthen an already lengthy decision. I record I listened carefully to and considered all of the evidence she gave at the hearing, along with all of the other evidence. Ms Wallace's responses to the specific allegations that are the subject of charges are set out below in the discussion of the charges.

[198] Ms Wallace spoke at length about the history of Volkerson Kennels and her and her mother's extensive experience with the training, handling and care of German Shepherds. She said their dogs were of the highest quality. Volkerson Kennels was a

private kennel, not a commercial or boarding kennel. It was a hobby and a sport she and her mother had been following all their lives. They had never been a puppy farm. In relation to a comment Mr Plowright had made about a \$5000 fee to purchase a puppy, she explained that it was a fee for a family pet, in order to give families the chance to have such a high quality puppy. It would be subject to GST, but she had nothing to do with bookkeeping.

[199] Approximately 50 dogs were registered to Volkerson Kennels in 2017 and 2018. Half would have been puppies, aged three months or over. They used a range of veterinary advice.

[200] The puppies were born in the home and kept there for six or seven weeks so that the mothers and puppies were supervised and socialised. At weaning the puppies were put out in the puppy shed. They had newspaper down and a puppy bed that was washed every morning. Sometimes the mother was loose so she could run around in close proximity to the babies. Weaning was usually completed by eight weeks. They never left toys with any dogs no matter the age because they could tear them apart. They tried to give the puppies as much fresh air as possible. They were outside loose on the lawn playing, then confined to an area to rest so they did not over-exercise.

[201] Ms Wallace described her routine for the care of the animals as starting at 4 to 4.30 am, and said that she could decide when she was going to do tasks. Usually she dealt with the puppies very early. The pups were exercised, toileted, fed and changed. She was also training dogs which she would do early before cleaning kennels. International agricultural students helped them to train, play and clean up the kennels.

[202] 2017 was an unusual year. They had not had a lot of puppies previously. The dogs were very healthy, otherwise they could not have got pregnant or had such large litters. Her mother, herself, and her sister Ann were also very anxious at the time because her mother and sister had experienced a very serious armed home invasion where they were attacked at night. Therefore they had a lot of dogs around the house as guards.

[203] Ms Wallace responded to and refuted all of the concerns or criticisms the SPCA had. She said the dogs the SPCA saw tethered were only there temporarily. As were dogs in crates. The old runs had stained concrete, but cleaning was done. Tethers were 1.4m in length. Choke chains were used worldwide. Puppies were taught to be tethered and how to relax on a tether. They listened to the SPCA and got 2-metre chains, but that was not required by the Welfare Code. All of the dogs had access to water. It was normal for dogs to be out on the grass. They had no need to hide dogs as they had a large farm and used it. The dogs displayed normal German Shepherd behaviour and characteristics. They were well socialised and had a very rich environment which most dogs do not have. The SPCA had criticised the smell of ammonia but that was not measured; and everyone had a different sense of smell and a different opinion. Dogs urinate and that is not offensive to dogs. They tried to use detergent as the SPCA told them, but the dogs reacted to it.

[204] They had been shocked when the SPCA came. They talked, listened carefully and agreed on a time for the new kennels to be built, brought forward to suit the SPCA. It was difficult in 2017 as there was a building boom and an election, so it was hard to get people for construction work. They told the SPCA they would work together to make it a success and they wanted the best for their dogs, but Mr Plowright told them there had never been one success story.

[205] The kennel had a lot of success in 2017 in dog shows. It was an extraordinary year and Ms Wallace showed 18 dogs of different ages in competitions throughout New Zealand. When she was not there to oversee cleaning, there were students, her mother and her sister to care for the dogs.

[206] Ms Glover did not give evidence. As I have already noted she had no obligation to do so. It does not add to the case against her. The prosecution must prove her guilt.

General credibility findings

[207] I set out below some general credibility findings in relation to the evidence of the principal prosecution witness, Kevin Plowright, and the defendant Janine Wallace. I also make some brief observations about the credibility of the other witnesses.

Kevin Plowright

[208] Mr Plowright gave his evidence-in-chief over a day and a half of court time, and then was extensively cross examined by counsel for Ms Wallace for approximately three days. His evidence occupies slightly over 300 pages of the notes of evidence.

[209] I had ample time to form the view that Mr Plowright was well experienced in his role and he gave his evidence in a straightforward manner without exaggeration. He made concessions where appropriate. He was unshaken in cross examination. Despite its length, and some of the propositions that were put to him, he remained mostly patient. He appeared very knowledgeable about dogs and animal welfare as would be expected. He was assisted by the notes he had taken in relation to the various inspections which were made within 24 hours of the visit, and he had made those notes with reference to body-worn camera footage of the inspections.

[210] I accept Mr Plowright's evidence that what the SPCA inspectors were trying to achieve was to work with Ms Wallace and Ms Glover to improve the living conditions of the dogs at the property.⁵³ I observe that Ms Wallace criticised the fact that no charges had followed from the AWS130 notices, despite the SPCA saying they had not complied with the instructions.⁵⁴ But it was evident the SPCA was continuing to try to seek improvement, with prosecution being a last resort. Ms Davis said likewise. Both inspectors referred to a contemporaneous investigation of another dog breeder where the concerns had been put, addressed by the breeder and the investigation concluded. That accords with common sense and reality for a charitable organisation concerned with animal welfare.

[211] I do not accept either, as Ms Glover alleges in her written submissions, that the SPCA was overly concerned with the numbers of the dogs when the focus should have been on welfare. It was the number of dogs without adequate facilities or enough people to care for them that the SPCA was concerned with. That is about dog welfare.

⁵³ It was never put to him that, when Ms Wallace said she wanted to work with the SPCA to make it a success, he told Ms Wallace there had never been one success story.

⁵⁴ As did Ms Glover in her written submissions filed after the hearing.

dogs between inspections in July and October 2017, but she could not give any numbers. The SPCA inspection never got to the bottom of how many dogs Ms Wallace and Ms Glover had at their farm at any time. Nor did the Court.

[219] My second observation is that Ms Wallace would change her evidence to suit her case. For example, Ms Wallace's evidence about the use of the sheep shed for housing dogs shifted repeatedly. She had initially said it was only a temporary measure. She had also said that when she described a dog being in a particular place temporarily, it did not mean overnight. She also said dogs were in the sheep shed because of the weather and this was only a moment in time (although she did not say where their actual home was). When it was put to her that dogs would be housed there for days, her response was that people work in there, so it is a good spacious area. She added that bedding was taken out in the morning and washed or thrown out. When her inconsistency was pointed out, i.e. that bedding indicated dogs were in there overnight, she said she thought she was talking about tethering and that dogs would sometimes overnight there. She then said that, when she meant temporary, it was until the new kennels were completed.

[220] As another example, Ms Wallace could not say who had tied Ritza up the night before she was found with her leg tangled in the lead; saying it was five years ago. She said she had not put her there. Then she accepted she had seen Ritza the night before in the hay barn. When it was pointed out that she had said in her interview Ritza was tethered so she would not dig out, Ms Wallace then accepted she had left Ritza tethered in the hay barn. She also said she had not tied Ritza up where she was found. Asked if she was saying the dog had been moved in the interim, she said she had given Ritza and Parelle water, and said she could not remember.

[221] My next observation is that Ms Wallace was prone to exaggeration. In her interview in November 2017 she had said the inspectors were smashing the hay barn door down with sledgehammers and crowbars to gain entry. That supported her case that Ritza's injury was caused in a matter of minutes by a fright - contrary to the medical evidence about the length of time it would have taken for the injury to be caused, as well as Mr Plowright's evidence of how entry was gained. A photograph

was also produced to the court as part of Ms Wallace's case labelled "bashed the haybarn door 10 x with it [a builders concrete block]. It eventually became apparent that Ms Wallace was well back from the hay barn door when SPCA inspectors entered and was unable to see how entry was effected (although she said she could hear it).

[222] Ms Wallace was often unwilling or incapable of giving a straight answer: For example, she said under cross examination that she did not accept there was a risk of injury from dogs being housed in the wool shed. She said people worked there and it was MPI approved. When it was put to her that it was not MPI approved for the housing of dogs, she responded that MPI do not have documents for kennels. Asked to give the reason why she would say it was MPI approved when that did not relate to dogs, her response was to ask the prosecutor if he was saying it was good enough for people but not good enough for dogs. I found myself regularly having to ask Ms Wallace during her cross examination to answer the questions she was being asked.

[223] As another example, Ms Wallace was asked to comment on the prosecution evidence that dogs in general prefer to defecate away from where they are housed. Ms Wallace first said that all dogs were different, and they would just decide themselves and it was a natural process. Asked again, she gave a general example that some dogs will defecate in a kennel even after having been out for a run, and some will not. Asked a third time, she said it would be lovely if they were all like that and said she agreed in part. When pressed she said she could only talk about her dogs. When asked if she would agree that it appeared there was a large proportion of her dogs that seemed to prefer to defecate where they live and sleep, she said it depends on how many times they are going, what they have been fed and how they have been trained. She also appeared to suggest a dog seen in a photograph had defecated because a person had arrived, and that the kennel had just been water blasted. I comment that this evidence also appeared to me to be at odds with her evidence of rigorous training in general and of giving families a chance to buy a world class puppy as a family pet.

[224] Ms Wallace was utterly unwilling to accept any proposition put to her by the prosecution, however reasonable. As a general example, she was asked whether she accepted there were any shortcomings regarding the dogs' care at all. She did not (although I note she had accepted there were areas with room for improvement when

she was interviewed in November 2017). She said the animal husbandry was exemplary and that is revealed in the results that come out of Volkerson Kennels. In particular, she would not accept there were any shortcomings in relation to Ritza, despite that Ritza was obviously injured. Nor would she accept that Ritza would not have been injured if she had not been left tethered and unattended. Her response included that “I don’t know if that was staged.” Nor would she accept the SPCA had a fair concern that she had not been upfront about the number of dogs at the property, saying “... this has all been fabricated and it’s been a created story to give it drama.”

[225] There was a repeated insistence that the dogs were “working dogs.” This moniker was used, among other things, to justify dogs being outside without shelter, and to assert that the dogs were of ideal weight despite veterinarian evidence that they were not. Even if the dogs did work on the farm, I do not consider the law relating to animal welfare provides for lesser obligations on their owners. Nor, despite the repeated reference to the German Shepherd breed being classified as a ‘working dog’ did it appear likely from the evidence that many, or any, of the dogs were thus employed, when Ms Wallace made it clear that the farming operation was very separate from the dog kennels and she had nothing to do with the farm operation. Nor did her sister Ann (who dealt with the farm) have anything to do with the kennels.

[226] There was the implausibility of some of Ms Wallace’s evidence. For example:

- (a) Ritza’s injury: Ms Wallace continued to insist there was nothing wrong with Ritza. However, I could see the dog’s injury with my own eyes in photographs. The video footage made it even clearer. When that video was shown to Ms Wallace she still would not accept there was a problem with the dog’s leg. Yet it was obvious the dog could not put its injured leg down, consistently with how she was found with her lead acting as a tourniquet on her leg.
- (b) That a water blaster, which must have been used every day (if it was true that dog enclosures were cleaned daily) just happened to have broken down on exactly two of the days when the SPCA inspected the

property – the time of the first inspection on 28 July 2017 then again on 12 October 2017.

- (c) That Ms Wallace and her mother had a lot of help with the dogs from international students who were volunteer workers at the farm. At one stage she said there were 37 people from 30 countries staying anywhere between a week to five or six months. It was said there were two to seven at any one time, who stayed in the cottage and in their house. In my view, however, if there had been such assistance, the dogs' conditions would not have been as the SPCA inspectors found them.

Nor were there any signs of these people in the SPCA's case, beyond one photograph of (the bottom half of) a person cleaning out a puppy pen in the deer stables on 4 August 2017. Ms Wallace referred to this photograph a number of times to assert that dog enclosures (that one and others) were cleaned regularly. She said that this was just one example but there were many others. Yet there was no other evidence of the presence of any other workers, which I would have expected if there was always a team of workers (even a small team) helping with the care of so many dogs.

Ms Wallace said the SPCA spoke to various people and took photos of international students on their body-cam footage. If that was so, I would have expected it to be produced as part of the defence case, or at least put to the SPCA witnesses.

Ms Wallace would not, or could not, provide any other supporting evidence of the presence of these workers, either to the SPCA when they interviewed her in November 2017, or to the Court, stating that she would not breach their privacy. When asked about declining to answer SPCA questions about these workers in her interview, Ms Wallace's response was to refer to what she said was an invalid search warrant,⁵⁶ and then to say she could give all names, addresses and

⁵⁶ At various times in her evidence Ms Wallace referred to illegal search warrants. I had not

phone numbers. She also said maybe some could write and explain their experiences and that it was so valued even the Danish Government paid for their students to come and work on the farm.

It is important I note here that Ms Wallace did not have to provide evidence on this (or any other) issue. But because she did not, it makes it easier to accept the prosecution's case that there were insufficient personnel to care for the dogs properly.

- (d) There were repeated assertions of evidence being suppressed by the SPCA, or of other evidence that was available. But no such evidence was provided to the Court.
- (e) There was the odd coincidence that Ms Wallace was not responsible for the three dogs who were arguably in the worst state; Debbie, who was said to have been in the garage as her mother said it was the best place for her, Ritza who Ms Wallace had (at least initially) denied putting in the haybarn (and then denied putting her in the place she was found), and Tiffany, who was said to have a skin infection because someone else (unnamed) had poured a chemical on her.
- (f) That the SPCA's investigation was not motivated by animal welfare but was designed to take Volkerson Kennel's best breeding stock for financial purposes - either to breed from them or sell them, and/or as a fundraising exercise. While Ms Wallace may believe this to be the case, there was no evidence at all for her contention. Mr Plowright's response to Ms Wallace's belief they had been deliberately targeted by the SPCA as a result of an ill-intentioned complaint was to accept they were deliberately targeted, but that was because of animal welfare problems. He said they (the SPCA) had "bent over backwards to avoid today" (i.e.

previously been aware of any search warrants executed as part of the SPCA's investigation, and it did not form part of the SPCA's case. I had assumed from Ms Wallace's evidence there might have been a ruling that the search warrant was unlawful, but Mr Radich advised that was not the case. Ms Glover's written submissions filed after the hearing also contain complaints about an unlawful search warrant.

[228] However, as I have already recorded, rejection of Ms Wallace's account does not automatically lead to a finding of guilt. I must consider the evidence that I do accept in relation to each charge against each defendant and decide if it proves each charge beyond reasonable doubt.

Other defence witnesses

[229] A number of witnesses were called as part of Janine Wallace's case.

- (a) Janet King, an experienced breeder of German Shepherds who owned a private kennel. I found her evidence was generally credible and reliable. In my view she did her best in cross examination to answer honestly the questions that were put to her. Of particular relevance were questions put to her about the coat condition of the dogs, when she explained that a dog coat can very quickly pick up faeces (even after only slight contact), and that she considered it possible for a coat to look messy, or "a bit daggy," on the surface as a result of the moulting process of the German Shepherd breed of dog. However, I prefer the evidence of the inspectors and veterinarians who actually viewed and treated the dogs, and who rejected the possibility of moulting being an issue.

Her evidence was also not wholly beneficial to the defence case. Ms King explained that the largest number of dogs she had cared for at any one time was 11, and this constituted essentially a full-time job. When asked about caring for 30 adult dogs and 30 puppies she said it would be a manageable number, but also that it would be "a huge amount of work for one person." She also explained that she would only use a choke chain when she was close by and in attendance. She also agreed with Dr Beer that a dog not in optimal health can still become pregnant and give birth to a litter of puppies.

- (b) Susan Chaytor was a former obedience instructor who had owned, showed, bred and judged dogs, but not necessarily German Shepherds. She completed a report on the state of the dogs and their living and

housing conditions at Volkerson Kennels dated 27 January 2018. She found no evidence of lack of care or treatment or undernourished dogs. I found her evidence of little to no relevance to the charges which relate to conditions at the property at an earlier time. It is also apparent that the property had been significantly cleaned up after the 15 dogs were seized in October 2017. The new kennel block had been built by then and dogs were no longer in the woolshed, deer shed, hay shed or cattle yards. Nor did the SPCA have any particular concerns about the conditions when they returned in May 2018, apart from the six dogs they located at the back of the farm. I observe here that some of the photographs produced as part of the defence case showed areas of the property in a pristine state, which was a stark contrast to how it looked when the SPCA were inspecting it in 2017.

- (c) Adrian Damsteegt, a veterinarian, gave evidence of providing services to Volkerson Kennels. In 2016 – 2017 he had provided Dermotic antibiotic ear drops, eye drops, calcium supplements and flea treatments. He could not say which animals the Dermotic related to but said it would be recorded in the records he provided. He said it would be by way of a prescription for a specific animal. He agreed it would not be recommended or good practice to keep some stock and self-diagnose, or to open a bottle to use on one animal then use it on another. He did not prescribe any treatments for skin infections during that period.

I comment that Dr Damsteegt's evidence did not assist the defence case. In particular, the defence did not produce any of his records which would have demonstrated the particular dog that had been prescribed antibiotics. I infer that can only be because no prescriptions related to any of the dogs who were found with infected ears. And he confirmed that Ms Wallace's practice of treating the dogs herself with antibiotics she had on site, was not good practice.

- (d) Raymond Sheath, a retired police officer and German Shepherd breeder, was to give evidence. Ultimately his evidence was produced via s 9 agreement. I had concerns about his independence, when he was present at Ms Wallace's interview in 2017 and took an active part. I do accept that he has had experience with German Shepherds. However, I cannot accept his assertion that German Shepherds as a working dog might appear to the untrained eye to be in need of feeding. I prefer the evidence of professionally trained veterinarians applying an international standard in that regard. Nor do I accept his distinction between "town dogs" and "working dogs" when there was no evidence in this case beyond Ms Wallace's assertions that their dogs worked on the farm, which at best could only have applied to a small number, and when it was instead apparent that the dogs were bred for showing and for sale.

Decisions on charges

[230] My reasons for verdicts on each of the charges follow.

[231] As I have already noted, I do not accept Janine Wallace's evidence. Although Ms Wallace appears to believe strongly that her position is correct, it does not accord with what the SPCA saw and recorded, the medical and other expert evidence the SPCA called, and in some cases, with what I saw myself during the hearing in photographs and in some video footage. In general, I consider the SPCA's concerns about Volkerson Kennels were well founded. It was poorly run and there were far too many dogs that could be cared for adequately.

[232] Ms Wallace has demonstrated she had, and continues to have, no insight into the concerns raised by the inspections that have ultimately led to this prosecution.

[233] Ms Glover has demonstrated likewise by way of her written submissions that she personally filed after the hearing, obviously without any input at all from her own counsel. There is little that is of relevance to the charges in those submissions but there is much re-litigation of matters that had already been determined pre-trial. Ms Glover also raises issues about the identity of the dogs. However, during the trial Ms Wallace

evidence that a build-up of faeces causes a risk to health as well as causing stress to the dog.

[239] I am also satisfied that any behavioural enrichment was lacking for a dog confined inside in that manner for a period that was not short. There was no ability for the dog to move around beyond a very small and dirty area. There was nothing for it to do. Ms Wallace said Anelly was watching everything that was going on. But there could have been little to nothing for a dog to see inside a shed used for storing tools and farm equipment. Even if there had been anything to watch, behavioural enrichment must necessarily require more, when a dog's behavioural needs include the opportunity to display normal patterns of behaviour. As both Dr Beer and Dr Flint explained, dogs need activities to keep them mentally stimulated.

[240] Accordingly, I find that Ms Wallace and Ms Glover failed to ensure Anelly's physical, health and behavioural needs were met. I am not at all satisfied, in terms of the s13 defence, that they took any reasonable steps to comply with their obligations, when the dog was not there for only a moment in time. Nor am I satisfied on the balance of probabilities that the minimum standards of the code of welfare for dogs were "in all respects met or exceeded."

[241] I reiterate here that the defence witness Janet King, an experienced breeder, agreed in general that because of the nature of choke chains, a person would be close by when they were used. I also note the defence tendered a photograph of dogs tethered with short leads and choke chains to a fence at a national dog trial to suggest this form of tethering was not inappropriate.⁵⁸ That did not assist the defence case. Clearly those dogs were placed in that manner for a short period awaiting their turn and owners would have been in close proximity supervising them. As Mr Plowright also pointed out, those dogs were on lush grass, it was obvious they had not been there long and would not be there long. There was no risk of injury to them. That was not the case for Anelly.

⁵⁸ Defence Exhibit F.

Charges 2 and 38: A puppy tethered to a fence on 12 October 2017

[242] This dog was unnamed in the charge, but Ms Wallace identified the dog as Casper. Casper was outside tied to a picket fence on a short leash with a choke chain. The SPCA inspector considered he had been there for some time. There was a water bowl near him, but it was empty. The SPCA considered that there was no behavioural enrichment available for the dog.

[243] Ms Wallace said Casper was only there temporarily. He had just been trained and was supposed to be resting. He had water and had been playing with it; it was around his bowl. The ground was bare because her sister liked her lawn and garden fence free of weeds. There was wear and tear because it was a gate used all the time. The lead was 1.4m long.

[244] I find this charge is proved. I am satisfied that this dog had been tied to the fence for an extended period, not tethered there momentarily after a training session. Given I do not accept that Ms Wallace and Ms Glover had the level of help from international students that Ms Wallace asserted, I cannot accept there would have been time for such endeavours with the number of dogs present. I also note the attendant unlikelihood of multiple dogs always being tethered in various places when the SPCA arrived. As Mr Plowright remarked, no matter what time they turned up he never saw a dog being taken for a walk on a leash.

[245] I do not accept that the ground was bare because it had been treated with Roundup. Or that it was wear and tear from the gate. The ground is bare only to the point of where the dog would have been able to move. The line of bare earth around the dog is also uneven, in stark contrast to a photograph produced as part of the defence case that shows a clear straight line in what appears to be a different section of picket fence, which would be more consistent with use of a weed killing agent. There are also signs of digging under the fence, suggesting a dog being held there for an extended period of time with nothing else to do. Concrete blocks have been put under the gate which would be consistent with preventing a dog from digging, and not with the use of a gate for the quad bike to go through, as Ms Wallace contended. Nor could she say what had caused the holes, beyond it was “various things.”

[246] As with charge 1, I find that Ms Wallace and Ms Glover failed to ensure this puppy's physical, health and behavioural needs were met.

- (a) The use of a choke chain for an unsupervised dog over an extended period risked injury to the dog, perhaps even more so for a young puppy. Ms Wallace would not accept there was any risk of the dog perhaps jumping up and getting his lead hooked over one of the pickets. That was despite the presence of paw marks on the picket fence.
- (b) There was no water available. It is clear from the photograph that the inside of the bowl was as dry as the outside. The dog could not just have tipped the water out or there would have been signs of it, in and on the bowl.
- (c) There was no shelter at all. Of course, that would not matter if the dog had only been there for a short time. But I find it had not.
- (d) There was no behavioural enrichment. The dog was alone with nothing to do. The amount of digging beneath the fence line suggests the boredom or frustration behaviours Dr Beer said were seen in dogs kept in inappropriate conditions. Although the dog was outside so that it might be expected there would have been more for it to observe, as I found, above, in respect of the dog Annelly, I consider that behavioural enrichment, which is necessary to meet behavioural needs, requires more than the ability for a dog left tethered for an extended period only being able to observe, but not able to do anything.

[247] Given my finding that this dog had been in the situation it was found in for some time, I cannot accept that Ms Wallace and Ms Glover took reasonable steps to comply with their obligations or that they met the minimum standards of the code of welfare for dogs.

Charges 3 and 39: Three dogs housed in crates in the garage on 12 October 2017

[248] Mr Plowright had made notes that three dogs were shut in crates within the garage. There was frantic scratching and barking from one of the dogs. There was no water for any dogs. The garage was very dirty and smelled of urine. The crates themselves were unclean with faecal matter.

[249] Ms Wallace said one crate had a box of newspaper next to it and there had been a dog in there having fun. She could not see a dog in a second crate and did not think a dog was in there. She did not accept there were any concerns. She said you could see clean paper in one crate. One of the crates was IATA approved to transport large dogs on long flights. Dogs were there only temporarily; if a bitch was coming into or in season, if hurt, or to teach a dog to be in a crate, as a lot of families use them, as recommended by the SPCA. Crates were cleaned every morning. The dogs did not have water in their crates but had frequent access to water when they were taken out and exercised.

[250] I find this charge is proved. I accept Mr Plowright's evidence that the urine and faecal matter in the crates indicated that the dogs had been there for some time. It is consistent with the expert evidence that dogs do not like to defecate and urinate where they are, only doing so if they have to. I do not accept the dogs were only there for a short time and were frequently taken out for exercise and hydration. Aside from the lack of personnel available to do so, I note here Mr Plowright's observation that when he goes onto properties standing in dog faeces is always an issue. However, on this property there were 63 dogs, but whenever the inspectors moved around the areas, there were no dog faeces; instead it was all contained to a cage or tethering area.

[251] These crates were unhygienic, and there was no water or behavioural enrichment. There was nothing for these dogs to do or even see.

[252] The fact that dogs may be put in crates for transport by air or to be confined overnight does not mean that in these circumstances Ms Wallace and Ms Glover have met their obligations under the AWA or have taken all reasonable steps or met minimum code standards. As I have found, these dogs had been there for an extended time. They were there in the middle of the day, not crated to sleep or for transport.

They could not have been out for exercise and toileting or there would not have been the amount of faeces and urine the inspector noted.

[253] I note that one of the minimum standards for kennelling, shelter and ventilation requires that dogs must be able to urinate and defecate away from the sleeping area. It is clear this minimum standard was not met. Nor is the standard met in respect of sanitation; that faeces and urine must not be permitted to such an extent that they pose a threat to the health or welfare of the dog.

[254] I record here I do not accept the contention that dogs are not bothered by the smell of urine or faeces. I accept Dr Beer's evidence that dogs' ability to smell far exceeds that of humans, so that what we consider as noxious is much worse for a dog. In contrast Ms Wallace's contention that urination is not offensive to dogs, because they urinate outside to tell males a bitch is on heat or to mark territory, completely misses the point. Nor can I accept that the SPCA inspectors had a different or lower level of tolerance to ammonia levels so that they were perhaps exaggerating the situation. They were experienced inspectors. Inspector Plowright said they had been in "the worst of the worst, so we've got a very good gauge on that sort of thing." That is what I would expect. I do not consider they required a meter to measure it, as appeared to be suggested. I accept their evidence about the smell of urine and faeces/ammonia levels that they encountered.

Charges 4 and 40: Female dog tethered to tree at the back of the house on 12 October 2017

[255] These charges relate to a female dog the SPCA alleged was tethered without shelter and without behavioural enrichment. Inspector Plowright's notes were "no shelter area around tree, dirt, the holes dug." He did not accept a tree was adequate shelter; as although there would be shelter from sun, it would not stop the dog from getting wet. He believed the dog was constantly tethered there. There was lush grass everywhere beyond the end of the chain but no grass within it. The bare area was circular, coming to an abrupt end and replaced by grass where the dog could not reach. He accepted there was a water bowl that could have had water in it. He did not accept the dog was tethered temporarily, saying they had seen it there on other visits.

not there only temporarily, or at least not for an extended period, I give the benefit of the doubt to the defendants and find them not guilty on this charge.

Charges 6 and 42: Three adult dogs in the old runs on 12 October 2017

[261] This representative charge relates to unhygienic conditions, lack of access to water and no behavioural enrichment for three dogs housed in what was described during the trial as the “old runs.”

[262] I accept Mr Plowright’s evidence that there was a large build-up of faecal matter. I could see it for myself. There were skid marks through it in one enclosure. Another photograph showed significant amounts of faeces. I could also see the state of the water bowls, which contained either nothing, or sludge, or some greenish looking remnants of water. These dog enclosures looked filthy. Mr Plowright called it disgraceful. I agree. And there was nothing for these dogs to do, apart from the ability to look outside.

[263] I reject Ms Wallace’s contentions that the enclosures looked like this only because the concrete was old and that the enclosures were cleaned daily. Nor do I accept that the water blaster just happened to be broken on that exact day. Nor do I accept the water looked as it did because it was bore water.

[264] I find it significant that Ms Wallace could not or would not explain the skid marks (except to say German Shepherds are very active). In my view they demonstrate that the dog was necessarily walking through its own faeces, or “poo-skating” as Mr Plowright rather colourfully (and accurately) described it. It is self-evident from looking at the photographs that this is some days’ worth of faeces, as Mr Plowright said. And it could be seen the following day that these runs were not in the same state. That can only be because they had actually been cleaned by then. I do not accept either that the dogs themselves were clean as Ms Wallace asserted. I accept Mr Plowright’s evidence that they were not, consistently with what would be expected if dogs were living in such conditions.

[265] I find this charge is proved. The dogs had clearly been confined for some time in enclosures where the level of sanitation was very poor. The water containers had no water, or only water unfit to drink. There was nothing for these dogs to do, in common

[274] It follows that I reject any defence that reasonable steps were taken to ensure Image's physical, health or behavioural needs were met, or that minimum standards were met.

Charges 9 and 45: Five puppies in the wool shed on 12 October 2017 (representative charge)

[275] Five seven-month-old puppies were in the woolshed. Mr Plowright said the woolshed stank of urine and faeces. Wooden rails had been chewed by the dogs. There were bones lying amongst faeces. A water bowl was tipped over. A dog was trying to climb over the rails risking injury. Although he accepted that a woolshed could be used for a range of different farm purposes, he did not consider it a suitable area to house dogs. There was a continual up-draft through the slatted floor. It was designed for sheep faeces to fall through, not for dogs. He did not accept the chewing of rails was caused by a different animal. Nor did he accept that a build-up of faeces underneath were from other animals.

[276] Ms Wallace disputed these puppies were in unhygienic conditions without access to water or behavioural enrichment. She said it was cleaned every day.

[277] There was considerable dispute in general about the conditions in the wool shed and how long dogs were housed there. I will return to this issue when I consider some of the later charges. But for now, I would say that I do not accept these puppies were only there temporarily, given the evidence (which I accept) of the build-up of urine and faeces and the signs of chewing. I have already referred to Ms Wallace's shifting evidence about the length of time dogs were housed in the wool shed. Clearly dogs were there more than a moment of time, given she said in relation to these puppies that it was cleaned every day. Daily cleaning would not have been required if puppies and dogs were only there briefly. I accept Mr Plowright's evidence about the dogs chewing the rails.

[278] It follows that I consider the housing of these puppies in this location did not ensure the physical health and behavioural needs of these puppies was being met, given the lack of hygiene, the inadequate shelter (when there was an up-draft through the flooring) and because the dogs appear to be merely "warehoused" without anything for them to do, but chew on rails.

Charges 10 and 46: Monty on 13 October 2017

[279] Monty was a young dog tied up outside with a choke chain on a short lead. He had no water.

[280] Ms Wallace said that Monty lived inside the main house, as well as the cottage, and a friend's house. Monty was just washed and groomed for a show. She said you could see water just below the water container from the dark colour on the ground. She said Monty was very relaxed.

[281] It appears to me from the photograph I saw that this dog can barely sit down. It is at the furthest end of its lead. If it moved any further forward its breathing would be restricted by the choke chain. The water container looks completely dry. I do not accept you can see water underneath the bowl. There is nothing for this dog to do, except perhaps to dig under the fence, which appears to have occurred. I do not accept this is just another moment in time, although it would appear to be a different dog to the one who was found there the day before.

[282] Mr Plowright did not accept the proposition that this tethering practice taught puppies how to go on a lead. He considered it as absolutely reckless to be tethering puppies by a choke chain on a short lead. He said leash work would start by holding the leash to walk a dog. And you would use a comfortable collar in a comfortable area for the dog to sit to teach it to be relaxed and comfortable while being tethered. The evidence of Dr Beer and Dr Flint also raised serious concerns about the use of choke chains on unsupervised dogs.

[283] I find this charge is proved in respect of the tethering. I cannot accept that Monty had just been put there for a short time only, as was the explanation for this dog, and all of the other dogs found tethered in various places. It is not a credible explanation for so many dogs. In the case of this dog, Ms Wallace was not even on the property when the SPCA arrived. As with the earlier charges involving choke chains, I consider that leaving a dog unsupervised in this manner for any extended time puts it at risk of injury.

[284] Although there was no shelter, no water, and nothing for this dog to do, I do not find the shelter, water and behavioural enrichment aspects of this charge proved beyond reasonable doubt. That is because it appears that Monty was not in that position the day before,⁵⁹ and given Dr Beer's concession in cross examination that a change of location would be behavioural enrichment.

[285] The s 13 defence cannot succeed in relation to the use of a choke chain for the same reasons I have already given on the other charges above.

Charges 11 and 47: Astro on 13 October 2017

[286] The charge relating to Astro alleges inadequate nutrition and a matted coat.⁶⁰ Astro was in the old runs as he had been the day before. The runs had been hosed out, but they still smelled of urine and faeces. Both SPCA inspectors said Astro (along with Dolly and Mafia) were removed under veterinary guidance. Mr Plowright's evidence was that it was the same poor environment with a lack of stimulation and not much sign of them getting out of there. Laurie Davis explained that Dr Beer deemed Astro to be thin. Dr Beer said that in general the dogs seized were not happy, healthy dogs.

[287] Ms Wallace disputed Astro had a matted coat or that he was underweight.

[288] There was no specific evidence in the prosecution's case about Astro's weight/body condition or the condition of his coat. Dr Beer only said that she felt all the dogs were slightly underweight. I accept that Dr Beer had genuine and valid concerns about the health of this dog and that Astro (along with the other dogs seized that day) was very likely underweight, as she had assessed. It is also likely Astro had a matted coat, given the conditions he was in, but there was no specific evidence about it. In my view, the generality of the evidence that the dogs were slightly underweight and the lack of specific evidence about the state of Astro's coat does not meet the high standard in a criminal trial of proving a charge beyond reasonable doubt. Accordingly, I find the defendants not guilty on these charges relating to Astro.

⁵⁹ The dog identified by Ms Wallace as Casper (the subject of Charges 2 and 38) was there the day before.

⁶⁰ An allegation of no shelter was not pursued.

[289] I note that another aspect of the charges relating to Astro was a lack of behavioural enrichment. I have already found that aspect was proved in relation to the three dogs in the old runs the day before (Astro being one of those dogs).⁶¹ Although Astro was in the same conditions as he was the day before, - which included a lack of behavioural enrichment - I consider it would be a doubling up and oppressive to convict the defendants on these charges in respect of that aspect alone. It was only the next day, and it appears to me the real concern on that day was the health of this dog, which is what led to it being seized.

Charges 12-13 and 48-49: Dolly on 13 October 2017

[290] Dolly was in the same conditions as Astro, housed in the old runs where they had been seen the day before. Dr Beer said about Dolly that she had "...the usual poor coat, matted, dirt faeces...". Again, the only comment about weight was that she felt all of the dogs were slightly underweight.

[291] I accept Dr Beer's evidence that Dolly's coat was matted with dirt and faeces. That is consistent with the conditions she (along with the other two dogs in the old runs) was found in. Given the conditions here, it would have been surprising if her coat was not matted. I reject Ms Wallace's evidence which I understood to be that Dolly had a long coat, which was more susceptible to matting, but that Dolly was nevertheless clean. I find it implausible that Dolly's coat would have been in a good clean condition.

[292] I find this charge proved in respect of the matted coat and lack of behavioural enrichment. However, as with Astro, although I accept in general the concerns about the weight of these dogs, and I accept they were very likely underweight, the evidence was not specific enough to reach the high standard of beyond reasonable doubt.

[293] I am not satisfied the defendants took all reasonable steps or met or excelled the minimum standards in the welfare code. The various explanations about the state of these runs were implausible, in particular the broken water blaster. As Dr Flint said, a good stiff broom, a hose and safe detergent could have been used. Nor can I accept Ms Wallace's evidence that detergent use was unsatisfactory because dogs reacted to

⁶¹ Charges 6 and 42.

it. A different detergent could have been tried, and a properly cleaned out area would have had the detergent removed along with the filth. Dolly's matted coat must have been caused by the unhygienic conditions she was confined in. And she was in there without activities or stimulation, beyond being able to see out of the front of this cage. I do not accept that the presence of bones described by a vet as "disgusting looking" in those conditions could amount to behavioural enrichment either.

[294] Dolly also had an ear infection in both ears. Inspector Laurie Davis referred to head shaking. Dr Beer said the ears were the majority of the problem with this dog. The ears required treatment, then ongoing treatment and care for some time.

[295] Ms Wallace had told the inspectors that Dolly (along with a number of other dogs) had been treated with Dermotic. She confirmed that in her evidence. Ms Wallace said she did not believe she had taken Dolly to the vet for the ear infection. She said she knew her dogs and a light ear infection was normal. If serious, of course they were taken to the vet. She was critical of the SPCA's treatment.

[296] I find this charge is proved. I have no doubt that Dolly was ill with an untreated ear infection. This should have been obvious given the dog was shaking its head, a sign of likely ear infection. Dr Beer's clinical notes also referred the ear looking like it was "bordering on pruritis" as implying it was irritated or itchy. There was also a creamy discharge. That should have been obvious if the dog's needs were being adequately met. In response to a suggestion that such a problem could still arise notwithstanding best efforts, Dr Beer said with appropriate care and prevention it can be managed very well without flareups. I find, therefore, that Dolly was suffering unnecessary pain or distress.

[297] I am also sure that the defendants did not ensure Dolly received treatment to alleviate unnecessary pain or distress. The condition ought to have been obvious. Indeed, Ms Wallace said she was treating it. But if so, that treatment was clearly unsuccessful and/or inappropriate, given the evidence of her own veterinarian that this was not good practice.

[298] In terms of the s 13 defence I cannot be satisfied all reasonable steps were taken or minimum standards were met or exceeded. The code of welfare requires owners or persons in charge who observe dogs showing signs of significant or chronic pain,

suffering and distress to seek immediate veterinary attention. Even if I accepted that Ms Wallace was treating this dog herself (which I doubt), I do not consider Ms Wallace's administration of an antibiotic not prescribed for this dog amounts to taking all reasonable steps. It would have been obvious this dog had a problem with its ears so that veterinary attention should have been sought.

Charges 14 -15 and 50-51: Mafia on 13 October 2017

[299] Mafia was the third dog in the old runs, seized as a result of concerns about his weight, his coat and an ear infection.

[300] In cross examination it was put to Dr Beer that Mafia's coat had been described by someone else as matted and in bad condition but she was not involved. However, Dr Beer said she could see the knots. In contrast, Ms Wallace said Mafia had a short coat and short coats do not mat. She said he was clean.

[301] Laurie Davis had noted head shaking. Dr Beer said the ear infection needed treatment and she said it went well, although he required future cleans.

[302] Ms Wallace said she was treating Mafia. She added that if Mafia had an ear infection on 13 October he should have been treated, but instead the SPCA put him into the pound for two weeks just to let it flourish. She said Mafia was at the vets probably not even three weeks prior. She remembered it precisely. But she also accepted she had not taken him to the vet in relation to an ear infection.

[303] For the same reasons I have given above for the charges that relate to Dolly (charges 12-13, and 48-49) I find the charges relating to Mafia are proved and I reject the defences. I am sure Mafia had a dirty matted coat because of the unsanitary conditions he was in and that he lacked any behavioural enrichment.⁶² He also had an obvious ear infection causing unnecessary pain or distress, that was either untreated or inappropriately treated.

⁶² As for the dogs Astro and Dolly, I consider it is very likely that Mafia was underweight, but the evidence does not make me sure.

Charges 16 and 52: Casper on 13 October 2017

[304] Casper was tethered in the cattle yards on a short lead with a choke chain. Ms Wallace had identified Casper as being the dog who was the subject of charge 2, who was tethered to a picket fence the previous day.

[305] The same explanation was given as to Casper's presence, namely that he was tethered there temporarily after a training session. Ms Wallace said that Casper lived inside at night, in the house or the cottage.

[306] I find this charge proved in respect of the tethering, given my findings on earlier charges concerning the use of choke chains to tether a dog unsupervised for an extended period. I do not accept this dog was only there for a moment in time. I reject the coincidence that this dog happened again to have just been very recently tethered somewhere after being trained.

[307] The charge is also proved in relation to access to water. This dog did not have any water. The fact of a tipped over bowl, and the dry ground around it, also suggests more than just a moment in time. It appears the area was even dirtier than it was the day before. Given I reject the proposition the dog was not there momentarily or only for a very short time, I am also satisfied that its needs were not being met in terms of having access to water.

[308] I reject any defence of all reasonable steps taken or meeting the welfare code.

[309] As with the other dogs found tethered, beyond having a nice view (as Mr Plowright said), there was no other stimulation for the dog. However, given my findings above on charges 10 and 46 in relation to Monty, I also give the defendants the benefit of the doubt on this aspect of this charge. That is because it would likewise appear that Casper was not there the previous day, and given Dr Beer's concession that a change in location would be behavioural enrichment.

[310] For the same reasons, I cannot be sure about the aspect of the charge that relates to inadequate shelter. While I have found that this dog was in this location for more than a very brief period, it was not there the day before and I cannot be sure it spent the night there. I therefore give the defendants the benefit of the doubt on the allegation of inadequate shelter.

Charges 17 and 53: Zeta on 13 October 2017

[311] Zeta was in the cattle yards tethered in dirty conditions with no water. Dr Beer referred to her body condition score of 2 out of 9 on the Purina scale. Her coat was matted and stained with faeces.

[312] Ms Wallace rejected Dr Beer's conclusion that Zeta was underweight. She described Zeta as a small and very feminine girl of good weight. She had earlier said that Zeta was probably a little bit heavy, and she repeated that opinion in cross examination. She denied that the dog had a matted coat; instead she said Zeta was losing her winter coat and the SPCA did not understand the matting processes of a dog.

[313] I prefer the veterinary evidence that this dog was underweight. She had a score of two out of nine. That near the bottom of the scale; a score of 1 is emaciated. The inference is inevitable that there was insufficient access to nutrition.

[314] I also prefer the prosecution evidence that this dog did have a matted coat. She was said to have faecal staining on her coat. That is also consistent with the conditions she was found in. I also consider that the poor condition of her coat is apparent from the photographs of this dog. Veterinary notes recorded a bad condition with heavy matting on limbs and underside, as well as smell.

[315] I can see no signs of anything that would have provided any behavioural enrichment for this dog. She was tied up inside a dirty area with nothing to do or keep her occupied.

[316] Given those findings I find this charge is proved and a defence cannot succeed. This dog's needs were not being met for her to have been found in this state. Nor could I accept that all reasonable steps were taken to comply with the relevant obligations or that this dog's care met minimum standards, when minimum standards require adequate nutritious food and for coats of long haired dogs to be groomed and/or clipped at a frequency that will prevent suffering and distress due to matting or infestation by parasites.

Charges 18-19 and 54-55: Debbie on 13 October 2017

[317] Debbie was a pregnant bitch found in a crate in a room off the utility shed. She had a matted coat and signs of an ear infection.

[318] Ms Wallace's explanation was that Debbie was being monitored and observed because she was in whelp (pregnant). They were concerned about her aborting. She was on antibiotics. She was taken out for walks, exercised and given water. Her mother and a Japanese student spent one to two hours a day grooming her. She had been in and out of the house. Her mother had thought this was the best place to put her.

[319] I find the first charge relating to Debbie is proved (charges 18/54). Ms Wallace's explanations are simply fanciful when this dog, and another, were found in a locked dark room, away from the main dwelling house. I do not accept the SPCA were using torches just "for effect." I consider Dr Beer was correct to describe her as hidden away, given that Ms Wallace had to come and unlock the door for the inspectors after they heard the dogs barking in there. That is evident from the photographs. Her matted coat is also evident. Dr Flint described it as dishevelled and looking like she had probably been sitting in faeces and urine in the crate. Mr Plowright said you could see obvious matting. The dog was having to lie in faeces. I do not accept Mr Plowright was lying, as Ms Wallace alleged. Or that Dr Beer who saw her (or Dr Flint who saw the photographs) was wrong. I could see it for myself. I cannot believe a dog being groomed by two people for one to two hours daily would look like the dog I saw.

[320] Although I do not need to decide why Debbie was kept in there, I record that I find it likely Debbie was being hidden from SPCA inspection, as a pregnant bitch who was shortly set to increase the population of Volkerson Kennels at the very time when the SPCA wanted its population reduced. If this dog really was being monitored (hourly as Ms Wallace contended) due to her pregnancy, a discharge, and a concern she was losing her puppies, it is inconceivable she would have been locked away as she was.

[321] The second charge relating to Debbie's ear infection is likewise proved when Dr Beer's evidence is that Debbie had a puss-y green discharge that would have been obvious to anyone and there was no indication of prior or appropriate treatment. I reject Ms Wallace's evidence that this was a light ear infection that was being treated.

both ears. She recalled noting that the dog was holding her ears down because of discomfort. She believed parts of the skin were untreated as well. She said the ears and skin were “actually stinky” and it had been going on a while; weeks to possibly months. It would have been apparent, by touching the dog’s head. It could have resolved in one to two weeks if identified and treated at an appropriate time. She did not accept that a dog having a large litter (as Desney subsequently did) was indicative of a healthy dog.

[327] Ms Wallace said Desney was a very strong healthy bitch, and she was being treated with Dermotic ear drops, lightly massaged into the ears. She was also receiving an antibiotic tablet once a day. Ms Wallace was asked if she had taken Desney to the vet for this ear infection. Ms Wallace said Desney had been to the vet but said it had been five years and she could not say when. Ms Wallace also expressed the view that an unhealthy bitch would not conceive at all. She said Dr Beer’s evidence in that regard was in relation to mongrels, whereas Ms Wallace (and her mother) were breeders with a combined 100 years of experience over six decades. Ms Wallace rejected the proposition that Desney had a matted coat.

[328] I find that charges 21 and 57 are not proved because I could find no specific evidence in the prosecution case as to the state of Desney’s coat. While the conditions in the woolshed appear to me to have been unhygienic (so that it is very likely she did have a matted coat) I cannot be satisfied to the high criminal standard that applies to these charges.

[329] I find that charges 22 and 58 are proved. This was an obvious and ongoing ear and skin infection that had either not been treated or was being inappropriately and/or inadequately treated. I repeat the comments I have already made in respect of other dogs with ear infections that Ms Wallace claimed to be treating herself. I am sure that Desney was suffering unnecessary pain or distress and the defendants did not ensure she received appropriate treatment to alleviate it. If they had taken Desney for veterinary treatment, I would have expected veterinary records and there were none in respect of this or any other dog found on this property with ear problems.

[330] In those circumstances, for the same reasons that apply to other dogs with obvious ear infections, there can be no successful defence of taking all reasonable steps and/or meeting minimum code of welfare standards.

Charges 23-25 and 59-61: Elite, Puppy and Emma on 13 October 2017

[331] I deal with these charges together. The allegation is that Elite, Puppy and Emma, three puppies found in the woolshed on 13 October 2017, were unsafely housed. The prosecution evidence was of a draft coming up through the floor, a faecal build up underneath the woolshed, a very bad smell, and inappropriate slatted flooring and sides where the puppies were contained. It was a porous surface, and there was a risk of injury from the slats. There were signs of chewing on wood and claw marks indicating boredom.

[332] Ms Wallace said Elite and the other two puppies were in perfect condition. There was no problem with them walking on the slats on the floor. No dogs had injured feet. The woolshed was 90 years old, and railings had been gnawed by other animals over many years; including sheep, goats, llamas and calves. Their dogs were not bored; they had a very diverse life because of all of the natural environment. There was no accumulation of faeces underneath the floor. Any faeces under there was from the previous owner's time. It was a warm and dry environment.

[333] I have already referred to Ms Wallace's evidence about housing dogs in the woolshed. Put bluntly, she could not give a straight answer as to how long dogs were there, beyond that it was temporary. Regardless of how long they had been there, I am sure these dogs were there for longer than they ought to have been, given the conditions.

[334] I do not accept the faecal build up was from the previous owner, which would have been some 35 years before the inspection. I do not believe 35-year-old faeces would smell to the extent that Dr Beer called it "quite invasive and assaulting" to the senses of dogs, or that it would have appeared as it did in the photograph. It also appears obvious that there would have been a significant up-draft through the slatted floor, meaning that proper shelter was lacking. There was no sign of any bedding for the puppies, despite Ms Wallace's assertion that bedding – duvets and dog beds - was taken out and washed, daily (which had also contradicted her evidence that dogs did

not stay there overnight, before she changed her evidence in that regard). And Ms Wallace's evidence that you would not see any bedding anywhere during the day was improbable too, when, if bedding was being washed, it would have necessarily have been put out to dry afterwards.

[335] I reject Ms Wallace's explanations and I accept the prosecution evidence. When I consider the evidence that I accept about the smell, the draft coming up through the floor, the lack of bedding, and the issues with the slatted wood floor and sides, I am satisfied beyond reasonable doubt that this was unsafe housing for puppies. Although there was no evidence that any dogs had injuries to their feet caused by the slatted flooring, I accept Dr Beer's evidence that such flooring risked injury to feet. I note again that proof of actual injury is not required. I note too that although the welfare code makes reference to the use of a slatted floor, it states that there should be no gaps capable of injuring the feet. Accordingly, the housing of these three puppies was a breach of the obligation imposed by s 10 AWA to ensure the physical, health and behavioural needs of the puppies were met in accordance with good practice and scientific knowledge.

[336] Nor can a s 13 defence succeed when the minimum standards in respect of kennelling require sheltered sleeping quarters, and the prevention of build-up of faeces and urine to an extent as to pose a threat to health or welfare.

Charges 26 and 62: Dismissed

Charges 27 and 63: Dani on 13 October 2017

[337] Dani was shaking his head, when he was found next to the hay barn. The SPCA inspector and the vet considered that was a sign of likely ear infection. Dr Beer said Dani's ear was red and painful; so painful as she recalled it, that it could not be examined appropriately. In cross examination she said that if any treatment was being given, not only was it not working, but it was potentially making it worse. The situation could have been prevented if detected earlier. Veterinary treatment was required.

[338] Ms Wallace had told the SPCA inspectors that Dani was being treated for ear mites.

[339] In her evidence Ms Wallace said Dani was a very friendly, healthy boy. He was being treated with Dermotic ear drops that are only available from the vet. She said it was nothing serious. With weather changes and warmth, dogs can sweat in their ears, or problems can arise from food or from ear mites. She said ear mites are the equivalent of nits for people, and this (what the SPCA did in seizing this dog) would be the same as taking children with nits off their parents and putting them in a foster home. Ear infection, mites or ear problems that need cleaning out were normal in the life of a dog. Ear drops were always on hand and at any sign of an uncomfortable ear the dogs were treated immediately. They had never had a serious ear problem.

[340] I find this charge is proved, for the same reasons I have given above in relation to the other dogs who were found with obvious ear infections. I also note here that Ms Wallace had told the SPCA inspectors in her interview in November 2017 that they kept records of flea treatment, worming and anything important to the dogs. Accordingly, if this dog, or others, were being treated, I would have expected to see a record of it. Again, I remind myself that a defendant in a criminal trial is not required to prove anything. But the lack of evidence in this regard makes it easier to accept the prosecution case.

Charges 28 and 64: Parelle on 13 October 2017

[341] The SPCA had previously asked about the hay barn and were told no dogs were in there. Parelle was the first of the two dogs found inside on 13 October 2017 after the inspectors gained entry. The SPCA considered Parelle was an underweight dog tethered on a short lead in dark conditions with no water.

[342] Both Mr Plowright and another inspector, Andre Williams, described it as dark. Mr Williams said they used torches to see inside.

[343] Ms Wallace said Parelle was a happy healthy boy. He was not on a short lead, but was on a show lead, at least 1.4m long plus the neck collar. The dogs did not live there; it was not their home. It was just temporary, for that moment in time. Parelle had water (a bucket knocked over in all the commotion), excellent nutrition and was not underweight. The hay barn had natural light. It was not logical to say a torch was needed. The dogs were tethered there so they would not dig out, because they would be at risk if they did so, from deer in a neighbouring paddock.

[344] I find this charge is proved with respect to the tethering, lack of access to water, and lack of behavioural enrichment. I cannot accept that this dog, (or the other, Ritza) were in the hay barn for only a moment in time. The hay barn was tightly closed up, which would have been unnecessary if they were only to be there for a short time. In my view they had been there at least since the previous evening. It was Ms Wallace's evidence that Ritza had been put there the night before.

[345] Parelle's lead is short, only enabling the dog to get just to the outside of the metal caging it was tied to. There is only a limited ability to move around. I consider that there is a risk of injury for a dog so tethered, unsupervised, for an extended period and without anything to keep it occupied. I accept Mr Plowright's evidence that ideally a two-meter tether, a chain, would provide room for a dog so housed to move safely and would reduce the risk of entanglement.

[346] As I have noted, there was nothing for this dog to do. I accept the evidence of two SPCA inspectors that it was dark, and therefore there was also little for it to see. I do not consider that the presence of another dog (Ritza) would have provided any opportunity for socialisation, when it was dark and that other dog was also tethered, in a small cage and completely unable to move.

[347] I do not accept that there was water in the dog's bucket, and that it was only knocked over when the inspectors entered. I will return to this aspect (i.e. the manner of the SPCA's entry) in more detail when I consider the evidence relating to the second dog, Ritza – I simply note here that I do not accept there was the high level of "commotion" involved in the entry to the barn that Ms Wallace alleged.

[348] Accordingly, the obligations to ensure Parelle's physical, health and behavioural needs were not met in a manner in accordance with good practice and scientific knowledge.

[349] Nor am I satisfied the defendants took any, let alone all, reasonable steps to comply with their obligations or that minimum code standards were met.

[350] This finding does not apply to the allegation in the particulars of this charge that the dog had inadequate nutrition/was underweight. In common with a number of the other charges above that related to the weight of dogs seized on 13 October 2017,

I consider it very likely that these dogs were underweight, and thus did not have adequate access to nutrition, but the evidence was at a level that was too general for me to be satisfied to the high criminal standard.

Charges 29 and 65: Ritza on 13 October 2017

[351] Ritza was the second dog found in the hay barn. Ritza was tethered inside a small enclosure without water. The tether was twisted very tightly around Ritza's back leg. The second SPCA inspector, Andre Williams, saw what he said was obvious swelling to the leg. Dr Beer said Ritza was trapped. Dr Flint said it would have been very distressing and very painful for the dog. The prosecution evidence was that the dog could not bear weight on this leg after it was released. The leash was embedded into the leg and had to be slowly unwrapped. Ritza received medical treatment after she was taken into SPCA custody, but it was unsuccessful, the leg worsened, and she had to be euthanised. The evidence of Mr Plowright, Dr Beer, Dr Flint and Dr Hardcastle (the veterinary pathologist) was that this injury would have taken some time to occur.

[352] Ms Wallace described the housing as only temporary. She said Ritza was going to a show in Kerikeri the next day. She blamed the dog's injury on what she said was the commotion caused by the inspectors gaining entry into the hay barn. She said this dog was very calm, sensible and loving. The dogs were taught to respect a lead and relax. Ritza was an adult and was show trained. The dogs knew how to sit down and rest. She denied there was anything wrong with the dog's leg when she was untangled and was walked out. Ms Wallace said Ritza stretched her leg out and put it down and was trying to get away from the person walking her out. Ms Wallace criticised the treatment Ritza received at the SPCA and alleged Ritza got an infection there.

[353] This charge is proved. If this dog had not been left tethered as it was for an extended period of time, she would not have got tangled in her lead, ultimately with fatal consequences. Four of the SPCA's witnesses expressed the opinion that this injury was not caused in a matter of minutes.

[354] I reject Ms Wallace's evidence entirely. It had no basis in reality.

refrain during this trial, that Ms Wallace knew better, but it ignored the reality that cutting off the blood supply to the dog's leg over a period of time had caused tissue death in the leg.

[355] It is obvious that the conditions Ritza was found in fell well below the obligations imposed on owners and persons in charge of an animal to ensure an animal's physical, health and behavioural needs are met in accordance with good practice and scientific knowledge.

[356] The other particulars in this charge pale into insignificance somewhat, given the tethering issue and its tragic result. However, I record that I find the other aspects of this dog's conditions also amounted to a failure to meet the animal welfare obligations; when there was no water, the dog could not move away from its own faeces and was lying in smelly hay, and there was no ability for it to move at all or even to "express" (in Dr Beer's words). As Dr Beer also said, the other dog there was greeting them, but they heard nothing from Ritza, so that Dr Beer was not sure they even knew Ritza was also in there.

[357] The tethering in this manner did more than risk injury - it caused injury. There can be no defence of reasonable steps being taken or of meeting minimum standards for a dog that was found in such a wretched state.

Charges 30 -36 and 66-72: The six dogs located at the back of the property on 18 May 2018

[358] The remaining six charges against each defendant relate to the six dogs located in May 2018 in a bush area at a significant distance from the farm dwelling and buildings. SPCA inspectors were alerted to the presence of these dogs following a report by a neighbour of distressed-sounding dogs. The inspectors found the dogs by going through a neighbouring property and walking in the direction of the barking.

[359] All of the dogs were chained to trees, with indications from the worn ground and lack of any vegetation within reach of the dogs in their areas, that they had been there some time. All were underweight or thin. None had shelter. Most of the dogs had no water. Some were very thirsty when they were released. Most were dirty or matted, two had skin infections and one had an ear infection.

[360] Ms Wallace's evidence was that the dogs had been put there temporarily to rest after a training session that morning, for a couple of hours while their housing was being cleaned. They had natural shelter. The dogs were in good condition and were hydrated. None were underweight. The dogs who had skin or ear issues were being treated. She said this sounded like revenge by the SPCA and that these dogs had been stolen.

[361] I reject Ms Wallace's explanation for the following reasons:

- (a) It is obvious these dogs had been there for some time, given the conditions they were found in, and that the SPCA was only alerted to their presence because of their barking. Aside from the worn ground around the dogs, I would not expect dogs happily resting after exercise to be barking in distress to the point where a concerned member of the public has alerted authorities and the SPCA inspectors have found the dogs from following the noise, all of which would have taken a considerable length of time.
- (b) The remoteness of the area makes it most unlikely that the dogs would be left there just for a few hours (Ms Wallace's evidence ranged from two to four hours) while their housing was being cleaned. It was some 1.8 kilometres from the main dwellings and buildings "as the crow flies." It would have been considerably further by vehicle or on foot. The efforts the SPCA had to make to get there were considerable.
- (c) The location of these dogs makes it more likely, in my view, that the dogs were being hidden from SPCA detection. Ms Wallace asserted these dogs were "stolen" and "it sounds like revenge." At the time the SPCA found these dogs civil proceedings were in progress relating to the disposal of the dogs that had previously been seized. I consider that Ms Wallace (and her mother) would have been motivated to demonstrate they had reduced dog numbers to support their case to have the dogs returned. As well, there had already been previous occasions when it appeared that dogs were being hidden; most notably in the utility shed where the pregnant bitch, Debbie, was found in October

2017. Inspector Laurie Davidson also said in December 2017 they found dogs kept in a garage at a property of a friend of Ms Wallace. I record that I do not need to decide beyond reasonable doubt that the dogs were being hidden, but in my view this more likely explanation is an additional reason to prefer the prosecution case.

- (d) The thirstiness of some of the dogs on their release is also consistent with having been tethered without water for an extended time. It is beside the point that Dr Dreyer accepted these dogs were well hydrated when he examined them. By the time he saw them, they had been given plenty of water.
- (e) The dogs were all thin; again consistently with having been left unattended for an extended time.

Charges 30-31 and 66-67: Tiffany

[362] Mr Plowright described Tiffany as very thin. Dr Douglas Dreyer assessed Tiffany as a “three” on the Purina scale, with thin being either a three or four. Tiffany’s movement was restricted by a chain tangled around a tree. Tiffany had a wound, or inflamed skin, on her rump. There was no shelter.

[363] Dr Dreyer described a chronic dermatitis condition (usually brought on by a flea allergy in that area) that would have taken some days at least to get to that stage, and it would have been apparent to a layperson having anything to do with the dog on a daily basis. It was causing the dog a lot of bother, and it needed treatment. He rejected the proposition that this condition was caused by chemical contact with the skin, as he said a chemical burn would have caused far more extensive damage. Nor did he accept the dog was not matted; he saw a definite mat.

[364] Ms Wallace’s explanation of the condition of Tiffany’s skin was that Tiffany had a chemical concoction thrown on her. It was being treated and was healing nicely. She denied that any of her dogs would have had any fleas. She denied there was any matting; instead she said that this was a new coat coming through. Ms Wallace also considered that Tiffany was in ideal condition for a German Shepherd/ working dog. Ms Wallace explained the entanglement of the lead as being created by the invasion

of the SPCA people, when it had been a quiet relaxing environment until that moment. She said Tiffany was hydrated.

[365] I find charges 30 and 66 are proved, given my finding that Tiffany (and the other five dogs) were not tethered where they were found only for a matter of a couple of hours or so, but had been there for some considerable time.

[366] In respect of charges 30 and 66:

- (a) I consider that the tethering was unsatisfactory when this dog was tethered for an extended period and was unsupervised. The lead was already tangled around the tree restricting movement, and the risk of further entanglement leading to distress or injury could only increase the longer she was left in that manner. I observe that it appears all of these dogs were already distressed – that is why and how they were located. In contrast Ms Wallace has again blamed a tangled lead on the SPCA's arrival, as she did in respect of the dog Ritza. I reject her explanation. It is simply fanciful. I observe Ms Wallace suggested she had evidence to show this was the case. But no evidence was provided.
- (b) There was no adequate shelter in these circumstances, given I have found this was not a temporary situation. Being tied underneath a tree might be satisfactory shelter for a short time on a hot day. But these dogs had been there much longer, it was coming into winter and there would have been no protection from cold, wind or rain.
- (c) There was no available water. The prosecution evidence included that she was one of the dogs who was very thirsty. She found the nearest puddle and almost drank it dry. Then when they got to the stream, she drank from it for about a full minute. In my view this demonstrates the dog had been without water for a considerable time.
- (d) I accept the veterinary evidence that the dog was thin, and it follows, that it had inadequate nutrition. It is also consistent with a dog having been left unattended for a considerable time. Although Ms Wallace

made frequent reference to German Shepherd standards to assert her dogs were a proper weight and had good body condition, those standards were never provided to the Court.⁶⁴ Mr Sheath's evidence in support does not assist, when he had not actually seen this or any other of the dogs in question. In contrast the relevant code of welfare requires a dog exhibiting a "thin" body condition score in conjunction with any other physical or behavioural indicators of malnutrition to receive appropriate remedial action. Self-evidently that is not possible when there is no acceptance of the dog's condition.

- (e) Neither this dog, nor her companions, had anything to do or to keep them occupied. That would not have been an issue if they had been there for a short time, but they had not.

[367] I also find charges 31 and 67 are proved.

[368] Tiffany's skin infection is obvious. I could see it for myself in the photographs. I reject Ms Wallace's somewhat vague allegation of a (unknown) third person throwing a chemical over this dog. I prefer the veterinary evidence that this sort of dermatitis is usually caused by a flea allergy causing an itch that the dog continues to bite or agitate, making it worse. The dog was clearly suffering unnecessary pain or distress. I do not accept that there was any adequate treatment. There could not have been any, given my finding that these dogs had not merely been placed in this area to rest only for a few hours.

[369] Given my findings above, a s 13 defence cannot succeed on either or both of the charges relating to Tiffany. There have been no reasonable steps taken, nor have minimum code standards been met in respect of any of the particulars.

⁶⁴ I also accept Dr Beer's evidence in relation to breed standards set for the weight of German Shepherds. She was asked to respond to the proposition that the dogs (on 13 October 2017) were perfect having regard to those standards. Her response was to say that "...unfortunately breed standards are not the ideal health of many of our pets." She said she would rather apply veterinary body scores because "...that's the health of the animal."

Charges 32 and 68: Princess

[370] I find these charges are proved and a defence cannot succeed. I do not need to repeat the reasons. Like Tiffany, Princess had no shelter, was underweight (3 out of 9 on the Purina Scale) and, as with all of these six dogs, she had no form of behavioural enrichment.

[371] I note that, although there was evidence this dog's lead was also tangled around the tree, the tethering does not form part of the particulars for this charge. However, I also note the photographs show a considerable amount of wear around the tree from the chain, which is further evidence these dogs had been tethered there for an extended period, not temporarily.

Charges 33 and 69: Tiana

[372] These charges are also proved, and a defence cannot succeed, for the same reasons; in respect of a lack of shelter, inadequate nutrition and no behavioural enrichment. I note Tiana had a slightly better Purina scale score than Tiffany and Princess, at 3.5, but I accept she was still underweight.

[373] I also note that this dog appeared to have a bucket within reach. I could not find any evidence in the prosecution case that the bucket was empty. It was nevertheless put to Ms Wallace that it was empty, and she said she did not know, she was not there. Given that is the extent of the evidence I could find on this aspect, I am left with a doubt as to whether or not the dog had access to water. Accordingly, that aspect of the charge is not proved.

Charges 34 and 70: Antonio

[374] The charge relating to Antonio is likewise proved, for the same reasons. His body score was also 3.5, and he was described as between underweight and thin, "...so more to the underweight part than thin." Accordingly, I find that there was inadequate nutrition for this dog. Ms Wallace's evidence that Antonio was a champion, athletic and well-muscled, does not persuade me otherwise. He may well have been at some stage, but I am concerned with the conditions he was found in. And there are the same issues as for the other five dogs as to lack of shelter and behavioural enrichment. Nor can a defence succeed.

[375] The charges relating to Antonio do not include lack of water in the particulars, as Antonio was one of the dogs who did have water.

Charges 35 and 71: Neli

[376] These charges are identical to the charges relating to Antonio. Neli's body score was three, so she was thin. There was no shelter or behavioural enrichment. The charge is proved, and a defence cannot succeed, for the same reasons.

Charges 36 and 72: Image

[377] The charges for Image are also the same as for Antonio and Neli, in respect of lack of shelter, inadequate nutrition and lack of behavioural enrichment, and they are proved for exactly the same reasons. She was found in the same conditions and Dr Dreyer scored this dog as 3, or thin.

[378] The charges for Image also include as particulars, untreated skin and ear infections. When this dog was found with the others, she had her head on a tilt and was shaking her head. Dr Dreyer could not examine the ears because of a severe pustular exudate from both ears. Anaesthesia was required for examination and treatment. Waxy and pustular exudate was flushed out. The ear canals were described as very thick and with "just a load of muck down there." The dog was put on a protracted course of antibiotics. Dr Dreyer said it would have taken anything from a week to two weeks to get to this stage and it would have been obvious to a lay person. The dog would have been scratching at her ears or crying from the pain, and there was the smell of the discharge as well. That would have been recognised unless the dog had not been seen or handled for a long time.

[379] Image was also later treated by Dr Simpson, whose evidence was produced via a statement of agreed facts. Dr Simpson said there were signs the ear disease had been chronic (months to years) and would have been very painful.

[380] Ms Wallace said Image was in ideal condition, had a lovely coat, and her ears were standing up. She was treating Image with antibiotics and ear drops and she had treated this dog by the tree. If a microscope had been used, she thought they possibly would have seen the ear drops still in the ears, but she had now been told it is absorbed into the bloodstream. So, if they had taken a blood sample, they would have seen the

dog was under treatment. In relation to the smell of the discharge, she said that was an interesting comment and that everyone has a different sense of smell. When she had cleaned the ears out that morning there was no smell or discharge. Asked whether she accepted Dr Dreyer's findings, she said it could be possibly correct, but she was not there, she did not know where the dogs were identified, and she knew Image was healthy that morning.

[381] Dr Dreyer and Ms Wallace cannot both be correct about the state of this dog's ears. I reject Ms Wallace's explanation. I consider it most unlikely a person would carry ear drops to treat a dog in a remote location. I prefer the evidence of the veterinarian which I accept. There is also Dr Simpson's evidence which is consistent with it. This was a bad and obvious infection. If Ms Wallace was treating it herself, she should not have been. There was no evidence of veterinary care having been sought. Accordingly, I find this aspect of the charge is also proved, and as with the other charges that involved ear infections a defence cannot succeed.

[382] I did not, however, find any evidence, about a skin infection, therefore I do not find that aspect of the charge is proved.

Result

[383] The verdicts are set out in the following table.

Charges 1/37	Guilty
Charges 2/38	Guilty
Charges 3/39	Guilty
Charges 4/40	Guilty
Charges 5/41	Not guilty
Charges 6/42	Guilty
Charges 7/43	Guilty
Charges 8/44	representative charge: guilty in respect of one of the four dogs (Image).
Charges 9/45	Guilty
Charges 10/46	Guilty: unsatisfactory tethering only
Charges 11/47	not guilty
Charges 12/48	Guilty: in respect of lack of behavioural enrichment and matted coat
Charges 13/49	Guilty

Charges 14/50	Guilty: in respect of lack of behavioural enrichment and matted coat
Charges 15/51	Guilty
Charges 16/52	Guilty: in respect of unsatisfactory tethering and no access to water
Charges 17/53	Guilty
Charges 18/54	Guilty
Charges 19/55	Guilty
Charges 20/56	Guilty: in respect of matted coat
Charges 21/57	Not guilty
Charges 22/58	Guilty
Charges 23/59	Guilty
Charges 24/60	Guilty
Charges 25/61	Guilty
Charge 26/62	Dismissed
Charges 27/63	Guilty
Charges 28/64	Guilty: in respect of unsatisfactory tethering, no access to water and no behavioural enrichment
Charges 29/65	Guilty
Charges 30/66	Guilty
Charges 31/67	Guilty
Charges 32/68	Guilty
Charges 33/69	Guilty: in respect of inadequate shelter, no access to water, and nutrition
Charges 34/70	Guilty
Charges 35/71	Guilty
Charges 36/72	Guilty: in respect of inadequate shelter, nutrition, behavioural enrichment, and untreated ear infection.

[384] For all of the reasons outlined above, I have found Ms Wallace and Ms Glover guilty on 32 charges, and not guilty on three charges. In relation to a number of the charges, I have found Ms Wallace and Ms Glover guilty in relation to some but not all of the alleged failures of their obligations. Where that is so, I have listed the aspects

on which I have found the charge proved. Where I have simply listed guilty, I have found all aspects of the particulars of the charge proved.

Judge K Grau

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 31/03/2022