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CASE SUMMARY: COURT ORDERED MINISTER OF AGRICULTURE TO REVIEW INSPECTOR'S DECISION TO SEIZE AND NOT RETURN ANIMALS TO THEIR OWNER

Administrative law – Decisions of administrative tribunals – Ministerial orders – Animals – Seizure and disposition of animals; Judicial review – Compliance with legislation – Interpretation – Standard of review – Correctness

Judicial review from Minister's review of seizure of animals under Animal Protection Act.

[Brennan v. Nova Scotia \(Minister of Agriculture\)](#)

[2015] N.S.J. No. 239

2015 NSSC 171

Nova Scotia Supreme Court

June 10, 2015

M.J. Wood J.

The applicant owned and bred Newfoundland Ponies in Nova Scotia. Beginning in 2011, she had periodic dealings with inspectors from the Nova Scotia Department of Agriculture regarding welfare of her animals. In December 2014, an inspector seized five animals pursuant to the *Animal Protection Act*, S.N.S. 2008, c. 33.

The applicant requested the Minister of Agriculture review the inspector's decision to seize and not return the animals. The Minister delegated the authority to conduct the review to the Deputy Minister. The Deputy Minister issued a decision retaining the animals.

The applicant sought judicial review of the Deputy Minister's decision. On judicial review, the Court held the Minister's review under the *Animal Protection Act* is with respect to the inspector's decision an animal will not be returned. The inspector's initial decision may be made quickly with little opportunity for the owner to provide input. The Minister's review allows for a more timely reflection with the owner being given a better opportunity to make their case for return of the animal.

The Court held the standard of review of the Deputy Minister's decision is correctness. The Deputy Minister was required by the legislation to consider the inspector's decision, the information before the inspector, and new information provided to the Deputy Minister. The Deputy Minister's obligation was to decide, on all of the evidence, whether the owner is fit to care for the animal.

The Court held the Deputy Minister asked himself two questions: (i) whether the owner was fit to care for the seized animals and (ii) whether the inspector's initial decision to seize the animals was correct. The Court held both of these issues may be relevant to the Minister's review; however, by limiting the review to these specific questions, it was not clear whether the Deputy Minister independently considered the broader question of whether the animals should be returned. The Deputy Minister's conclusions suggested the only decision he made was that the initial seizure of the animals was correct.

The Court held the Deputy Minister was wrong with respect to the formulation of the questions to be decided on the Minister's review and, in relation to the scope of that review, his interpretation of the *Animal Protection Act*. The Deputy Minister should have described the review as a broad consideration of whether the animals should be returned to the owner.

The Court allowed the judicial review. The appropriate remedy was to return the matter to the Minister for a further review under the *Animal Protection Act* in accordance with the principles set out in the decision.

This case was digested by [Joel A. Morris](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact him directly at jmorris@harpergrey.com or review his biography at <http://www.harpergrey.com>.