IN THE MATTER OF THE *PREVENTION OF CRUELTY TO ANIMALS ACT*,
R.S.B.C. 1996, c. 372
ON APPEAL FROM A REVIEW DECISION OF THE BC SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS CONCERNING THE SEIZURE OF 65 CATS AND 15 DOGS

BETWEEN:

XIN (IVY) ZHOU

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry Review Board:	Corey Van't Haaff, Presiding Member Brenda Locke, Member Chris Wendell, Member
For the Appellant:	John Swain, Counsel
For the Respondent:	Christopher Rhone, Counsel
Date of Hearing:	April 25 and 26, 2016
Location of Hearing:	Teleconference

I. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*).

2. The Appellant appeals the March16, 2016 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society).

II. Brief Summary of the Current Decision Under Appeal

3. Sixty-seven cats and 15 dogs were seized on February 16, 2016 from the Appellant's property when they were determined to be in distress. The Appellant maintains that some of these dogs and cats were being boarded as part of her boarding business and do not belong to her. Two cats were euthanized as they were deemed to be in critical distress, a point on which the Appellant disagrees. One dog died while giving birth. The Appellant only requests the return of 32 cats she claims are hers; six dogs she claims are hers, and four dogs she claims belong to her daughter. Of the other animals, she claims some owners have abandoned them, some wish to claim their animals, and four animals either belong to her friend, mother or father, and she would like all four back. As for the cost component of this appeal, the appeal includes the costs of care for all animals seized as the Appellant was, at the time of seizure, the owner or the person responsible for the animals. Some kittens were born post-seizure and the Appellant wished for the kittens to be returned to her.

4. Section 20.6 of the *PCAA* permits the BC Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society in its discretion to destroy, sell or otherwise dispose of the animals.

5. For reasons that will be explained in detail later, the Panel has ordered that the Society be permitted to retain all the animals referred to in this appeal and requested returned (the 32 cats and the six dogs, plus her daughter's four dogs (listed as six dogs in the Society's decision) plus the additional named two dogs (listed as three dogs in the Society's decision) belonging to the Appellant's mother and father) and any kittens born since and not listed in this appeal to dispose of at its discretion. The Appellant will not have any animals returned to her. Animals that were seized but that do not form part of this appeal will be dealt with by the Society separately from this appeal. Although the Appellant made arguments on this appeal in relation to "Third Party animals," the Panel does not address those arguments in this appeal.

6. For reasons set out below, the Panel has reserved on the issue of costs pending further submissions from the parties.

III. The Society's Powers and Duties

7. The Society under the *PCAA* is mandated to prevent and relieve animals from situations of cruelty, neglect and distress. The Society can seize animals from the care and custody of their owners or take custody of abandoned animals, as authorized by the *PCAA*. The Society's investigation and seizure powers are set out in Part 3 of the *PCAA*, entitled "Relieving Distress in Animals".

8. The March 20, 2013 legislative reforms, set out in Part 3.1 of the *PCAA*, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: *PCAA*, s. 20.2(1), (2). If a review is requested, the Society must review the decision and must not destroy, sell or dispose of the animal during the review period unless it is returning the animal: *PCAA*, ss. 20.2(3).

9. The *PCAA* does not set out any specific process for the review. Administratively, the Society's current process where a review is requested is to prepare a disclosure package and then to invite submissions from the owner concerning the return of the animals and to consider these submissions in light of the investigation results to determine whether it is in the animals' best interests to be returned to their owners.

10. Sections 20.2(4) and (5) of the *PCAA* set out the Society's options following a review:

> 20.2 (4) The society, following a review, must
> (a) return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
> (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
> (ii) any matter that the society considers necessary to maintain the well- being of that animal, or
> (b) affirm the notice that the animal will be destroyed, sold or otherwise disposed of.
>
> (5) The society must provide to the person who requested the review
> (a) written reasons for an action taken under subsection (4), and
> (b) notice that an appeal may be made under section 20.3.

IV. The Appeal Provisions

11. We are guided by the approach to appeals under the *PCAA* which is set out in detail in *A.B. v British Columbia Society for the Prevention of Cruelty to Animals*, (August 9, 2013), which decision was upheld by the Supreme Court on judicial review[1]. In summary, the right of appeal to BCFIRB gives persons adversely affected by certain decisions of the Society an alternative to a more formal judicial review or judicial appeal. The reforms give BCFIRB broad evidentiary, investigation, inquiry and remedial powers upon hearing an appeal: ss. 20.5 and 20.6. The *A.B.* decision reads in part:

> Appeals under Part 3.1 of the PCAA are not required to be conducted as true appeals, and BCFIRB is not required to defer to decisions of the Society. In my view, the appellant has the onus to show that, based on the Society's decision or based on new circumstances, the decision under appeal should be changed so as to justify a remedy. Where, as here, the Society has made a reasoned review decision, BCFIRB will consider and give respectful regard to those reasons.
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> However, that consideration and respect does not mean the Society has a "right to be wrong" where BCFIRB believes the decision should be changed because of a material error of fact, law or policy, or where circumstances have materially changed during the appeal period. BCFIRB can give respect to Society decisions without abdicating its statutory responsibility to provide effective appeals.
>
> The clear intent of this reform legislation was to give BCFIRB, as the specialized appeal body, full authority to operate in a way that is flexible and accessible to lay persons, and to use its expertise to ensure that decisions are made in the best interests of animals. The procedure followed by BCFIRB is a flexible approach specifically crafted to accomplish the intent of the legislation in the context of animal welfare and lay participation. This includes taking into account developments occurring since the Society's decision was made. This is entirely in

[1] *BC Society for Prevention to Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331

accord with the inevitably fluid nature of the situation, and well within the powers granted by section 20.5 of the PCAA.

V. Preliminary Issues

12. All affidavits and witness statements, emails, photographs, videos, and materials submitted were entered into evidence. Parties were sworn before giving oral testimony.

13. This hearing was originally scheduled for one day but when the Panel was advised on the number of witnesses each party intended to call, it added an additional day to the hearing, and required much of that time, even though the Appellant did not call any witnesses at all, ultimately. The Appellant also requested she be able to use an employee at her counsel's law firm as her interpreter. This was permitted. At the start of the hearing the Appellant's counsel advised that the interpreter was not available and that the Appellant instructed him to proceed without an interpreter. The Panel permitted this and is satisfied that the Appellant was satisfied that she could proceed with the appeal without an interpreter.

Material Admitted Into Evidence

Appellant:

a) Appellant Notice of Appeal (perfected on March 23, 2016) (**Exhibit 1**)

b) Appellant's email re Society's witnesses, Submission (9 pages) unsigned Zhou Affidavit (via email April 8, 2016 (**Exhibit 2**)

c) Appellant's signed Zhou Affidavit (via email April 8, 2016) **(Exhibit 3)**

d) Expert Witness Contact Form for Dr. Kam Brar and Dr. Renu Sood (via email April 12, 2016) **(Exhibit 4)**

e) Witness Contact Form for SPC Laura Lavigne, Marcie Moriarty and Christina Lu (via email April 12, 2016) **(Exhibit 5)**

f) Appellant Final Reply Submission (4 pages) (via email April 18, 2016) **(Exhibit 6)**

g) Signed Zhou Affidavit #2 (via email April 18, 2016) **(Exhibit 7)**

Respondent:

h) BC SPCA initial document disclosure – Tabs 1-38 (via email April 1, 2016, hard copy received April 4, 2016) **(Exhibit 8)**

i) BC SPCA documents disclosure – Tab 39 (pages 735-760) (via email April 5, 2016) **(Exhibit 9)**

j) BC SPCA document disclosure – Tab 40 (pages 761-771) (via email April 7, 2016 **(Exhibit 10)**

k) BCSPCA written submission (48 pages) (via email April 14, 2016) **(Exhibit 11)**

l) Signed Affidavit of M. Moriarty dated April 13, 2016 (via email April 14, 2016) **(Exhibit 12)**

m) Expert Witness Contact Form for Dr. Emilia Gordon and Dr. Adrian Walton (via email April 14, 2016) **(Exhibit 13)**

n) Witness Contact Form for SPC Leanne Thomson (via email April 14, 2016) **(Exhibit 14)**

o) BC SPCA Authority (*R v Gerling*, 2016 BCCA 72) (via email April 14, 2016) **(Exhibit 16)**

p) April 20, 2016 General Workup Document from Dr. Walton (via email April 21, 2016) **(Exhibit 17)**

BCFIRB:

q) BCFIRB April 13, 2016 preliminary decision re: additional hearing date and witnesses **(Exhibit 15)**

VI. The Appeal

Brief History

14. The Appellant operates a business breeding and/or boarding dogs and cats at her Surrey property on Colebrook Road. She previously operated a similar business at a Surrey property on Partridge Crescent. At that property, there had been concerns about the animals, and the Society's veterinarian Dr. Emilia Gordon visited that property on January 13, 2016 and noted that a large number of cats in the population displayed signs of upper respiratory (URI) and ear infections. These problems, she wrote, particularly the URI, are likely related to poor husbandry and chronic stress. Other possible contributors included poor bio-security and inappropriate use of prescription and non-prescription human and veterinary medications. Dr. Gordon said the cat housing area failed to meet the Canadian Veterinary Medical Association (CVMA) Code of Practice for Canadian Cattery Operations [the Code] in the following areas: Housing and Accommodation, Care and Supervision, and Behavioural Needs. Specific examples include inappropriate long-term use of single housing; inappropriate management of communal housing (fighting); lack of scratching posts/enrichment devices; poor/non-existent record keeping; and inadequate socialization.

15. The Appellant moved the animals, in stages, to a new property at Colebrook Road in Surrey with all animals at Colebrook Road by February 7, 2016. It was from this property that the Society determined the animals were in distress and from where seizure took place on February 16, 2016. Fifty-nine cats and sixteen dogs were seized; two cats were euthanized after being determined to be in critical distress, and one dog died while giving birth. Some animals were returned to their rightful owners, and other third-party claims to have animals be returned are currently being investigated by the Society. The Appellant in her submissions to the Society accepted that she is the person responsible for all these animals under the *PCAA*. The Appellant said that since she cannot contact many of the third-party owners, the Society should not be able to dispose of them.

Society's Decision Under Appeal

16. In her March 16, 2016 written reasons, Ms. Moriarty, Chief Prevention and Enforcement Officer of the Society, found upon review that the dogs and cats were in distress when they were seized, and she declined to return the 32 cats plus nine dogs requested by the Appellant (the Panel is aware these numbers differ from the number of animals the Appellant requests returned in her submissions). The decision is excerpted here:

> "While I will go into the changes you have made in the new facility, it is clear that these changes have not been enough.
>
> **Facility**

I have reviewed the submission provided on your behalf regarding your new facility and would agree that there has been an improvement from your previous housing situation. I can appreciate that you have undertaken a number of renovations and have taken some steps to try and better accommodate the number of animals in your care. I acknowledge that the video footage provided does on the surface show rooms that appear "clean" in that they are not covered in feces, dirt, or clutter. However, the assertion that these conditions were "sanitary" definitely are refuted by the medical conditions of the Animals and will be explored in depth further in my decision. I would go as far as to say that the old adage "do not judge a book by its cover" applies in this situation.

While it was suggested that your facility "would have met or exceeded the requirements set out by the College of Veterinarians of British Columbia" you have not provided me with any expert opinion to support this assertion. In any event, the condition of your current facility at the time of the seizure is not the major issue in this case. Granted, there were concerns with housing for the dogs and some of the cats and so in no way am I suggesting that your current facility was adequate or properly being used to accommodate the number of animals in your care. I acknowledge some improvements and in fact, I would suggest that the improvements from your previous housing situation should have made it even easier for you to follow biosecurity protocols that have been urgently recommended by not only the BC SPCA, but your own veterinarian, for the Animals. Yet this did not happen. Dr. Brar provided the following opinion during a phone message received by the BC SPCA on February 7, 2016:

> - most of Zhou's cats have Chronic Rhino Sinusitis
> - viral respiratory infections/bacterial respiratory infection is present in the environment. Pets are fine after a course of antibiotics but again they get sick.
> - the new facility has better ventilation and is more spacious but the building is still under construction.
> - Zhou needs more "manpower"
> - Zhou has been told to wear gloves/hand santizer stations; paper towels
> …

A home inspection conducted by Dr. Brar on January 17th, 2016 confirms that bio-security measures were gone over with you including sanitizing, using gloves and not cross contamination. It was again emphasized by your own vet that you needed more staffing to which you responded that you were not able to hire anyone due to bylaws. Again, the major issue identified in the property was its lack of cleanliness and lack of bio-security measures in place. Of most concern was the fact that your own vet expressed his opinion that even in the new facility, "the current situation was unmanageable" and would not get better. This does not support or inspire a decision that it would be in the best interest of the Disputed Animals to be returned. Again, the condition of the Animals at the time of seizure strongly refutes this and leads me to believe that even with an improved facility, you are still not able to adequately care for animals in your custody and keep them free from distress.

I would like to address here the suggestion made in the submissions on your behalf that I should personally be consulting with Dr. Brar about his opinion on your care of animals and the facility. I would argue it is not position to seek out evidence on your behalf and in fact, it could be a breach of his patient client relationship for him to speak with me without explicit permission from you. You have had ample time to request a veterinary expert report from Dr. Brar to support your assertions that it would be in the best interest of the Disputed Animals to be returned. Such a report has not been produced and in fact, all of the evidence before me from Dr. Brar very much goes against a decision in favour of return of the Disputed Animals.

Medical Conditions

I would first like to address the submission made on your behalf that you provide adequate care for each animal in your custody and that "every animal exhibiting signs of medical problems" was taken to Dr.

Brar. In support of this argument, I have been provided with over 200 pages of medical notes and invoices. While I appreciate that these do provide evidence that at times you have sought medical treatment for some animals in your care, I do not take it to support a finding that I should be confident to return the Disputed Animals to your care as I could be confident that you would a) recognize when the animal needed veterinary treatment, b) take that animal to a vet and c) follow up on veterinary recommendations. In fact, there is ample evidence that would refute this position and I will deal with each separately:

Recognize when an animal needs veterinary treatment

The fact that two animals removed at the time of the seizure met the definition of critical distress under the Act and had to be euthanized is without a doubt evidence that would refute this assertion. It is tragic to think the level of additional suffering that these animals would have faced if we had not attended with a warrant and provided them with immediate relief from their pain. This is an extreme example of you either not recognizing, or simply ignoring, the medical needs of an animal, but there are other less extreme examples that are set out in the ITO. While your submissions seem to suggest that you actively sought veterinary treatment for your animals, the evidence suggests this was not always the case. In fact, a number of the 200 plus pages of vet documents produced were a result of the BC SPCA ordering you to seek that veterinary treatment. For example orders were issued in June 2014, November 15th and January 11th that resulted in you taking animals to a vet. This was not unprompted action.

As an animal owner, you have a positive duty to ensure your animals remain distress free and this duty does not include having the BC SPCA there to order you to do so. I would argue that as an individual who not only owns animals, but actively profits off of them either by breeding, boarding or a combination of the two, owes an even greater debt to these animals to ensure they are given the very best of care or in the very least, meet the legal requirements under the law.

Take the Animal to the Veterinarian

This part goes hand in hand with the first duty to recognize when an animal needs veterinary care. One example of you recognizing that animals in your care required veterinary treatment but not seeking that treatment is noted in the ITO where Dr. Brar confirms that you brought in some sick kittens in December 2015 and they were diagnosed with highly contagious kennel cough and Bordetella. Dr. Brar recommended that all of the cats in your care be treated due to how contagious these conditions were and yet you only took medication for the sick kittens. This in my opinion demonstrated a callous disregard to the health of animals in your care.

A more recent example of you failing to take animals to the veterinarian can be found during this recent seizure. While I do not intend on going through the medical records and concerns noted in the seized Animals, I do rely on all of the medical documents. Dr. Gordon comments in general that she has "never seen a population of cats with so much infections disease [in her career] and [she has] seen some pretty bad hoarding cases in shelters." The overwhelming majority of the cats seized and at least nine of the dogs tested positive for ring worm which is extremely contagious, requires intensive bio-security and treatment protocols when being treated in a population (verses the situation of one animal in one home.) I have absolutely no confidence that you would be able to treat the Disputed Animals appropriately if returned to you.

Follow up on Veterinary Treatment

Again the ITO sets out a history of failures in this area. Your own veterinarian notes that during his visit of our facility on January 17, 2016, he had to throw out expired medication, that he diagnosed several of the cats at that time with ring worm and clearly indicated that this was a highly infectious fungal condition that required treatment, and he even provided you with a binder to keep track of all of the medical concerns, medications and treatments for each individual animal. At the time of the seizure this binder was

not being used and it was clear that you had not followed up on all of the veterinary recommendations. As a result of your failure, animals suffered in your care.

Biosecurity

Much has been mentioned in this decision about bio-security issues at your facility. This is not news to you. In fact, in reading the documentation and history it reads like a broken record on this topic. Again and again, you have been told that if you are going to run a business, housing and breeding animals, you need to implement and adhere to certain biosecurity measures. This is not about keeping a "tidy" place. Nor is it about having fancy bedding structures. These are serious measures that are required to be in place and followed in order to prevent the immense suffering that occurred in this situation. I cannot overstate this issue enough. In the month that we have housed the Animals, we have had to utilize countless staff, volunteers, veterinarians, and animal health technicians to properly care for these Animals and see them on the road to recovery. You have admitted that you are not able to hire individuals to assist you due to bylaws (I am not sure if this relates to licensing or not but for the purposes of this decision it does not matter.) Given the above, I have no reason to believe that if these Disputed Animals were returned to you that you would now suddenly implement biosecurity measures that would prevent this extremely level of disease and infection from happening again.

Conclusion

After reviewing all of the evidence before me, I have absolutely no faith that if these Disputed Animals were returned to you that they would remain distress free. You have demonstrated repeatedly that you are unable to provide appropriate care for animals in your custody and have shown callous disregard at times for their health and wellbeing. I find it disturbing that despite being well informed by both the BC SPCA and your own veterinarian about the environment concerns and infections present even in your new facility, you would continue to breed these animals and thereby place any newborns in harm's way. The only reason I can see for this is that you place profit over animal welfare. I have no doubt that if I was to return these Disputed Animals to you, that we would soon see them (or their progeny), or new boarded animals back at the BC SPCA. As such, I am not prepared to return the Disputed Animals to your custody.

The Society's Case

17. The Society relied on all its submitted material and submissions, and the Panel reviewed and considered all material, submissions, and testimony, whether or not we refer to it here.

18. In her affidavit, Ms. Moriarty testified that further to the removal of 67 cats and 15 dogs (the "Animals") from the Appellant's property at Colebrook Road in Surrey, two cats were deemed to be in critical distress and euthanized and Ms. Moriarty attached the February 19, 2016 report of Dr. Adrian Walton which provided further details on the euthanization of both cats. An additional report was obtained from the lab at the Animal Health Centre on February 29, 2016 in relation to one of the euthanized cats, and that report was attached. Shortly thereafter, one pregnant dog went into cardiac arrest, post birthing via Caesarean section, and died, and the February 23, 2016 report of Dr. Walton detailing the incident along with the Animal Health Centre report from March 3, 2016 was attached.

19. Following the seizure, two of the cats claimed by the Appellant gave birth to eight kittens while in the Society's care. Ms. Moriarty surmised that the Appellant likely would seek the return of the kittens as well.

20. On April 1, 2016, the Society's relevant materials were provided to the Panel and to the Appellant and additionally by supplemental correspondence on April 5, 2016 and April 7, 2016 referencing additional tabs to be added to the documents that the Society relied on.

21. Ms. Moriarty's evidence is that, based upon her review of the materials, the Disputed Animals were found in distress due to unacceptable living conditions and the various medical issues noted in Dr. Gordon's reports. In her opinion, and based upon Dr. Gordon's advice as outlined in her opinion, and based upon the photographs and property description described in the evidence before her, the animals' living conditions were sufficiently unsanitary as to pose a significant risk to the animals' health and well-being.

22. Ms. Moriarty stated that she had no confidence in the Appellant's ability to maintain the animals and kittens in an environment that would keep them free from distress. She said the Appellant does not appear to appreciate signs and symptoms of distress in animals or to be able to alleviate distress appropriately, or to limit numbers of animals in her care (given the Appellant's prior history and the state in which the animals were housed and lack of treatment for medical issues experienced by many of the animals).

Witnesses

Dr. Adrian Walton

23. Dr. Walton is a veterinarian licensed to practice in BC. He examined the animals and reviewed each of his findings as he reported on them in Exhibit 12.

24. Dr. Walton testified that of particular note, one cat was significantly underweight with a large oral lesion and which had between 30% and 40% of its body glow green when viewed under a black light, which was indicative of ringworm. He testified that he had never seen so much ringworm on an animal in his entire career. That much ringworm would have taken several weeks duration to accumulate. That cat was euthanized as being in critical distress.

25. Dr. Walton testified a young kitten he examined could not urinate and he could not find a penis or a vulva and the inability to urinate would be painful and this kitten was also euthanized.

26. Dr. Walton testified that a pregnant dog that had been in the attic (along with the cat with severe ringworm) was in early labour. The dog became uncomfortable and Dr. Walton received Society approval to do a C-section. The dog collapsed prior to surgery and all puppies were dead and sent to the Abbotsford lab. The mother dog also died. An infection in the lining of the uterus and bacteria in the blood caused the collapse.

27. Dr. Walton reviewed each of the seized animal's conditions. One cat had such a serious URI (upper respiratory infection) it was "swallowing air like crazy" and vomiting.

28. He said he was strongly suspicious of ringworm when viewing the condition of the animals, based on his observation that one cat already glowed green with ringworm. Those with apparent ringworm and URIs were kept separate from healthier animals even though all were exposed. Animals with minimum signs can sometimes fight off the infections and infestations, he said.

29. In response to questions from the Appellant, Dr. Walton testified that ringworm infections could be of long or short duration depending on an animal's immune system. A URI can cause discharge and a healthy cat can get it with a three to seven day incubation period. Giardia has a one to two week incubation period.

30. In response to a question about the necessity of services he provided, Dr. Walton testified the exams were necessary, the C-section was necessary. Exams of clinical signs and investigations were necessary, as he saw enough evidence of ringworm and URIs. An optional service was the anesthetizing of one cat to shave its feet, as it might have been possible just to restrain that cat, and one x-ray was optional but he discounted that price in full by 100%. The boarding of one animal at his clinic was optional as it could have been sent back to the Society.

31. In response to Panel questions, Dr. Walton said there was no chance the cats acquired ringworm during their transport to the Society as lesions take several days to a week after exposure to show. There was no opportunity for cross-contamination as they were crated and, as the cats came in, they were examined, gloves were changed, and samples were taken sterilely. With the URIs, all symptoms were seen at the facility immediately after seizure: sneezing, coughing. The virus is airborne and every time an animal sneezes, they inhale the virus and it replicates and it would take several days of replication before he would see clinical signs. Swabs were taken and put in sterile tubes. The tests are not that sensitive to a few airborne particles as the swab goes from the animal's pharynx to the sterile tube.

32. Dr. Walton said he heard sneezing and coughing in every room. Some cats are capable of living healthy with chronic URIs and in the worst case, cats could develop pneumonia. In this case, Dr. Walton testified that a lot of these cats had severe URIs with blocked nasal passages and eyes watering.

33. Dr. Walton testified that ringworm spreads like wildfire and in a normal situation ringworm would cause dermatitis which would resolve in a day to a week. If the animal gets a secondary infection, a bacterial infection, they could turn into "a giant living scab" and the infection could enter the organs. Ringworm causes itchy scratchy self-traumatizing activity and is not a pleasant disease, he said. Dr. Walton testified that anytime his clinic gets a suspected case, the room is shut down for 24 hours and treated with an antifungal. "We pray we don't get it" he said.

34. Dr. Walton testified that you never put a dog or cat in an attic as the fiberglass insulation can embed in the skin and burn as an irritant. The mere fact they were in an attic is bad, he said. Being in artificial light can be okay for an animal depending on its nutrition levels but may not be ethical. Animals must have continual access to water as you would never know when they might be thirsty. A situation could develop where they may need water and if an animal needs water, it must be there.

35. The protocol for dealing with ringworm is to shut down a facility for at least 30 days and steam clean everything to kill it. The facility must be sterilized. If protocols are not followed, animals could get re-infected.

36. Dr. Walton confirmed he was at the seizure on February 16, 2016 inside the home including the attic, where he saw firsthand cats nesting in the fiberglass, and in the outbuilding.

Dr. Emilia Gordon

37. Dr. Gordon is a veterinarian licensed to practice in BC and is the Society's Senior Manager - Animal Health. She wrote a report dated March 29, 2016 which was admitted into evidence. The report is excerpted here:

> Owner of animals has a history of failure to provide veterinary care and permitting animals to remain in distress. A warrant was executed February 16, 2016. 84 animals were found on the property. Two animals were in critical distress and required immediate euthanasia. Four neonatal kittens were sent directly into foster care, three animals required immediate veterinary hospitalization, and the remaining 75 animals were sent to BC SPCA facilities where they required immediate assessment for suspected infectious disease including feline upper respiratory infection (URI), dermatophytosis (ringworm), and gastrointestinal parasitism.
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> POPULATION HEALTH FINDINGS: Physical examination by a veterinarian was performed on all cats at intake and repeated within 24-72 hours after intake. Many of the cats showed visible signs of URI at intake. URI was also known to be chronically present in the population. Feline URI is caused by a complex of contagious viral and bacterial pathogens, and is associated with poor housing conditions and poor population management. It can be transmitted directly between cats or indirectly via inanimate objects or human caretakers. It is not airborne.
>
> Clinical signs include sneezing, congestion, conjunctivitis, oral ulcers, and oculonasal discharge and can progress to pneumonia or chronic nasal/sinus infection. 15 of the cats displaying clinical signs were sampled for diagnostic testing to determine what pathogens were present in order to prescribe a population health plan. Swabs were taken from the back of the throat and from the conjunctival membranes and submitted to Idexx Laboratories for polymerase chain reaction (PCR) testing for common URI pathogens. Many cats tested were positive for more than one pathogen, indicating co-infection. Six catstested negative for all pathogens. All positive cats tested positive for at least one of thebacterial pathogens (Chlamydophila, Bordetella, Mycoplasma). While Mycoplasma can be present in clinically normal cats, both Chlamydophila and Bordetella are not typically detected in clinically normal cats and are highly correlated with poor husbandry practices. Viral shedding (Herpes and Calicivirus) can also occur in clinically normal cats (based on limited studies), but the rates in this population (27% shedding Calici and 20% shedding Herpes) are higher than what is typically reported in studies, as well as being higher than baseline levels observed in other population sampling at BC SPCA facilities over the past few years. There were also two cats diagnosed with pneumonia (via x-rays and/or ultrasound), which is likely a secondary complication from untreated URI. These results indicate that the cats from the ZHOU property were clinically ill due to URI pathogens.
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> Ringworm: About a third of the cats and three of the dogs showed signs of skin lesions at intake consistent with dermatophytosis or ringworm, a fungal infection of the hair shafts. Ringworm is a contagious and zoonotic condition that can be self-limiting in individual, healthy, non-stressed animals housed in hygienic living conditions. Ringworm can also cause severe disease and/or population level outbreaks in groups of animals who are unhealthy, stressed, or housed in substandard conditions with inadequate biosecurity. The infection tends to be more severe in cats (vs. dogs). Clinical signs include hair loss with varying degrees of inflammation. The infective spores can live for years in the environment and are highly resistant to disinfection except for with specific disinfectants. They can be readily transmitted on inanimate objects and by human caretakers unless strict biosecurity precautions are in place.
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> Due to the serious nature of this condition in populations of animals, and zoonotic risk to staff, all 75 of the animals who were brought directly to BC SPCA facilities underwent diagnostic testing

for ringworm. All animals had toothbrush samples taken (by brushing the coat to collect hair and spores) and plated for fungal cultures at an in-house laboratory,
which is the gold standard diagnostic but can take up to two weeks for results. 12 animals also had polymerase chain reaction (PCR) tests for ringworm sent to Idexx laboratories. This test has a lower sensitivity (detection rate) but only take 1-3 days for results.

71 of the 75 animals tested positive for ringworm via fungal culture, and 8 of the 12 animals tested were positive for ringworm (Microsporum) via PCR testing. The culture results are further reported via a quantitative measure based on the number of colonies. P3 is the highest number of colonies (> 10 per plate) and usually reflects active infection with shedding of fungal spores (it can also reflect heavy environmental contamination). 58/59 cats and 8/16 dogs had P3 level positives, with the remaining single positive cat and four positive dogs testing positive at lower levels (P1 or P2, indicating < 10 colonies per plate).

All of the positive cultures were examined microscopically to confirm the species. 69/71 animals were positive for Microsporum canis, the most serious species of ringworm in companion animals. 2/71 animals, both dogs, were positive for Trichophyton mentagrophytes, another ringworm species with similar clinical signs, transmission, and treatment. These results indicate that the vast majority of the animals from the ZHOU property were either infected with or heavily exposed to ringworm.

Giardia: Giardia is a protozoal gastrointestinal parasite that infects a variety of mammalian species, including humans. While theoretically zoonotic, transmission between humans and companion animals is currently thought to be rare. Transmission is through the fecal-oral route and is common in high density housing environments with inadequate sanitation practices. Clinical signs include diarrhea, flatulence, weight loss, and less commonly inappetance and vomiting.

Fecal samples (Ova & Parasites with Giardia ELISA through Idexx Laboratories) were run individually on 12 cats and a pooled sample from 8 dogs. The canine sample was pooled because if any dogs were positive, all would require treatment. Four of the cats were positive for Giardia, and the canine sample was also positive. Because of the highly contagious nature of this condition, and because the treatment can replace a standard dewormer that is given to all animals at shelter intake, we elected to treat all animals.

38. Dr. Gordon summarized her findings by writing:

"The extremely high level of infectious disease in this population caused these animals considerable distress. Animals were suffering from concurrent respiratory, dermatologic, and gastrointestinal disease with no (or very inadequate) treatment provided. Some of the diseases, such as Chlamydophila, Bordetella, and Ringworm are virtually never detected in clinically normal cats. Others, such as the remaining URI pathogens and Giardia, may sometimes be detected at low levels in clinically normal animals but were clearly present at excessive rates and causing clinical disease in this population. The pathogens that cause URI, ringworm, and giardia are microscopic. A facility can appear "clean" at times but still be heavily contaminated with these pathogens. It is not possible to reach this level of infectious disease in a facility, particularly in young animals who were presumably healthy (or at least healthier) upon entry, without incredibly poor biosecurity/husbandry/ animal management. The rate of P3 positive ringworm cultures is the highest I have ever seen in a population of animals, and I have treated hundreds of shelter animals for ringworm over the past ten years. The overall rate of infectious disease in this population, specifically in the cats, is higher than I have ever seen in any group of cats, and I have treated thousands of cats for infectious disease including many from hoarders, cruelty/neglect

> cases, and overcrowded shelters. Reaching this level of infectious disease requires at least months of failure to provide adequate veterinary care and failure to provide sanitary conditions. All of the infectious disease in this population was spreading in an uncontrolled fashion due to poor housing, stress (caused initially by not having basic welfare needs met and likely further exacerbated by being sick), and nonexistent biosecurity. The animals not already clinically ill were at greatly elevated risk of becoming clinically ill, particularly from ringworm, which was heavily contaminating the environment. Without an enormous investment in veterinary care, appropriate animal management, and biosecurity there was no chance that these animals would get better. Rather, individually and as a group, they would simply deteriorate and experience further distress."

39. In her oral testimony, Dr. Gordon explained she practices private and shelter medicine and advises the Society on shelter medicine including population health and veterinary forensics.

40. Dr. Gordon testified that URIs can cause congestion and sneezing and some ocular discharge, oral ulcers can be present. One animal can cause an outbreak but you should not have this unless you have poor animal husbandry. It was very unusual to see so many animals affected. In most cases, when you test animals, you would see viral URIs. In this case, every cat that tested positive had bacterial URIs. It was very unusual and made her know that she would have to treat each affected cat with antibiotic therapy (antibiotic therapy would not be used if the infection was viral).

41. Dr. Gordon testified her other concerns were the lack of environmental choices for the cats and the lack of adequate enrichments to reduce stress. There was also poor ventilation which contributed to URIs.

42. Dr. Gordon testified that ringworm causes hair loss and inflammation of the skin and 71 of the 75 animals had ringworm and she had never seen anything like this. She testified that even in a shelter outbreak that was treated, you wouldn't see skin lesions as cats would get better after treatment. In this case, one-third of the cats had active lesions and 58/59 cats were shedding P3 (explained above in her report) and 8/16 dogs were shedding P3 with three dogs having skin lesions. She had never seen this level of P3 without active infections and the levels of contamination likely exceeded how the tests were interpreted. There was heavy contamination.

43. Dr. Gordon testified that with giardia, it was 100% possible to prevent the transmission of giardia by using careful surveillance when bringing in new animals and also by cleaning up feces immediately so there was no animal contact with them. It's "doable." She testified that with URIs, inappropriate group housing can perpetuate URIs. Most cats, she said, would not choose to be in a cattery. They need exploration and space and positive socialization and cleanliness.

44. Dr. Gordon explained the population treatment plan for the cats was to provide treatment for the three diseases and to prevent transmission of the diseases to healthy animals.

45. Dr. Gordon testified it was unlikely all the cats were sick before arriving at the Appellant's property but she was aware of the level of care there so that level of care set the stage for the transmission of infectious diseases. Prevention is easy; treatment is difficult, said Dr. Gordon. There is a published strategy to prevent such transmission of disease.

46. Dr. Gordon testified this situation would have become worse and worse as the animals got sicker and more infectious, and the situation would not have gotten better by itself. The facility needed to be shut down and cleaned with antifungals while empty before any animals were reintroduced.

47. Dr. Gordon clarified that she had attended the Appellant's previous residence on Partridge Crescent in Surrey to advise on proper procedures and to try to work with the Appellant. URIs and the facility were of concern to her, and 11/26 cats then had clear URI signs which was a high number. There were medicines for other species present and no enrichment for the cats for behavioural needs or housings. There were no medical records. It was group housing and she observed fighting. A few cats were so sick, she had recommended immediate veterinary care. There were no measures to prevent cross contamination. Much of the facility was not compliant with the Code and although all the cats had beds, food, water, and litter, Dr. Gordon said "cats need so, so far beyond this." The facility was not appropriate for cat breeding and there was poor socialization of kittens.

48. Under cross examination, Dr. Gordon said that the cats in the Society's care are doing "much, much better" and are finished treatment with a handful of animals still getting treatment. When asked how she would rate the Society's ability to care for animals with infectious diseases, she said an 8/9, as sometimes, at the very beginning, there can be trouble identifying problems as there are no veterinarians in the shelters. She said the Society's protocols for dealing with infection diseases are also around an 8/9 with ringworm and URIs being the ones they most worry about.

49. Dr. Gordon testified that when a veterinarian makes a recommendation, it is usually as a result of a collaboration with the client to the point of agreement and that most recommendations come with a nuance – finding something the client can do. It is optional from a legal standpoint, as a veterinarian cannot compel a client to treat an animal but if the animal is in distress, veterinarians will report it. When asked if a client does whatever the minimum is, as recommended by a veterinarian, is the animal still in distress, Dr. Gordon testified that it might be, depending on whether the animal is in distress or is a safety risk. Veterinary medicine, she said, is part art and part science and any treatment plan for a population needs diagnosis, treatment, and biosecurity, or a different way of doing things. Plans need to incorporate all aspects. Plans can have different costs and efficacy and minor variations can occur, such as a particular oral medicine might be more expensive, but it might also clear a disease faster and be well tolerated in a shelter setting but yes, another veterinarian might choose a different treatment protocol.

50. Dr. Gordon testified that neither the Code nor the Shelter Standard is prescriptive and that the Shelter Standard was supplied to the Appellant. These standards are meant to apply in any situation and a lay person can interpret them. They are goals not procedures. A person is not required to use them but they would help. The Code of Catteries is the minimum as it is more detailed than the Standard.

51. When asked if the Appellant's facility was tested at the seizure, Dr. Gordon testified that the Society does not offer commercial testing services and a veterinarian can work with an outside lab to do such testing.

52. In response to questioning, Dr. Gordon did not find mention of a population plan in Dr. Brar's records or emails until the bottom of Exhibit 8 page 168, a notation which Dr. Gordon identified as a comprehensive population plan. It did not mention isolating animals or wearing protective clothing other than gloves. Dr. Gordon said suits are not part of the plan depending on how the

animals are being handled. Dr. Gordon did not know if she had all of Dr. Brar's records for the Appellant's animals.

53. When asked if the Appellant had implemented the Dr. Brar plan, would it have resolved the ringworm and URI and giardia, Dr. Gordon testified that she could not say for sure, but if all aspects of the plan were followed and the animals re-checked and appropriate referrals made, then yes, this plan was a necessary starting point covering the main areas. It was an appropriate start, she said. She said an evolving and inherent part of any plan is follow-up, and rechecks need to be done and then additional action taken, depending on what was found. She testified she would never make treatment guarantees and a veterinarian cannot guarantee they can fix the problem. Dr. Gordon said it was unlikely that she and Dr. Brar, in January, and at the time of Dr. Brar's email, knew the extent of ringworm infection. The plan may have looked reasonable but more information came to light later on. She does not have Dr. Brar's individual records to see what cleaning was prescribed. Based on Dr. Brar's summary, if the Appellant addressed the isolation of sick animals, performed all follow-up, and adjusted the plan as she progressed, it could have been a good plan.

54. Dr. Gordon testified that when they do vaccines in the Society hospital, they do a physical exam at the time of vaccination and what they do next depends on what they find. If they discover something, they attempt to treat it.

55. Dr. Gordon testified that veterinary care providers are advocates for animal health and welfare and it would violate protocols not to release an animal that could go home to its family. If an animal is sick, depending on the type of sickness and what can be done, it may be in distress. Not every sick animal meets the definition of distress under the *PCAA*.

56. She felt the animals seized had to be treated in isolation as, even though they are suffering from the same disease, there is an interaction between the environment and the host, and animals can clear themselves of disease at different rates. She does not submit all animals to a particular length of treatment if they don't need it. Another veterinarian may possibly conclude differently about isolation in a different environment but not in a shelter environment. There needn't be a waiting period after cleaning an environment but the cleaning has to be adequate for the situation.

57. When asked about best practices, Dr. Gordon said 15 minutes of staff time to feed and clean an animal is standard animal husbandry and that excluded the provision of veterinary care, medications, communications, record keeping, and environmental enrichments. It also excluded facility design and breeding and reproduction activities.

58. In response to Panel questions, Dr. Gordon testified that muzzles should never be used to prevent barking as it removes an animal's ability to pant.

59. Dr. Gordon said that the Society doesn't remove or seize all animals that are sick or injured (and thus meeting the definition of distress). For example, if an animal has cancer or a broken leg, that animal may meet the definition of distress therefore, other of factors, including the living conditions must be considered.

60. Dr. Gordon testified that it was more than just the poor animal husbandry practices that she identified with the Appellant, there were also facility problems such as no ability to sanitize particle board floors in some cat rooms, and poor heat/cooling and light in the dog areas.

Dr. Gordon testified that it would not be possible for one person to provide adequate care to this number of animals.

Special Provincial Constable Leanne Thomson

61. SPC Thomson is a Special Provincial Constable appointed pursuant to the *Police Act* and an employee of the Society since 2007 (an SPC since 2008).

62. The ITO sworn by SPC Thomson was admitted into evidence.

63. SPC Thomson testified that she seized the animals from the Appellant's property on February 16, 2016 and had had previous interactions with the Appellant including an animal cruelty complaint on April 30, 2014 at the property on Partridge Crescent in Surrey. The Appellant ran a boarding facility for dogs and cats there. Some of the issues encountered included dogs being muzzled to control barking which prevented panting, inadequate ventilation, lack of water, lack of veterinary care, and lack of natural daylight when animals were locked in a wood structure with no windows. Orders had been issued in April 2014 and in May 2014. Orders also included directing the Appellant to provide adequate housing for cats including hiding places so they could withdraw from other animals as dogs could enter where the cats stayed. In June 2014, when orders had not been complied with, 18 dogs and 15 cats were seized. The conditions at that time, said SPC Thomson, were similar to the ones at the February 2016 seizure: several dogs and cats in distress, poor ventilation, veterinary issues, no daylight, hazards and debris, no hiding spots for cats.

64. On November 27, 2015 at the Appellant's Colebrook address, another SPC applied for a warrant on a complaint that a cat declaw surgery was performed at the house. An order was issued by that SPC. On November 29, 2015, SPC Thomson rechecked the other SPC's earlier order, and had a translator on the phone. On November 30, 2105, the Appellant was in the process of transferring the animals to the Colebrook property from Partridge Crescent; the dogs were at Colebrook but the cats had not yet been moved. The dogs were kept outside and in a barn kennel. On December 3, 2015, a boarder complained that when she picked up her dogs, one was dead. On December 29, 2015, the City of Surrey removed 23 of 25 dogs as being over the permitted number of animals.

65. On January 6, 2106, Surrey by-law enforcement reported to the Society that the cats at the Partridge Crescent property were sick with eye discharge and sneezing. SPC Thomson said she attended the Colebrook property to recheck the dogs and asked if she could also see the cats at the Partridge property but the Appellant declined. There were three to four dogs at the Colebrook property. On January 13, 2016, the cats were seen by Dr. Emelia Gordon at the Partridge Crescent property.

66. On January 14, 2016, Dr. Kam Brar (sometimes referred to as Dr. Kam), the Appellant's veterinarian, went to check on the cats and SPC Thomson received those records on February 4, 2016. By February 7, 2016, all the animals were at the Colebrook property and on February 16, 2016, SPC Thomson applied for a search warrant.

67. SPC Thomson testified that on her general walk through, a min-pin dog was in a Vari-Kennel with no water. She heard barking and checked the cellar and found blankets but no animals. She went up the attic ladder and found several dogs and cats, with dogs in cages and cats in cages and cats loose. It was dark but she located and flipped on a light switch. In her notes, she described the

animals as ‘A’ being inside the house, ‘B’ being in the cat building, ‘C’ being the dogs in the barn, and ‘D’ being the dogs in another area.

68. SPC Thomson testified that the cats had respiratory and ocular issues, some cats were lethargic, and there was a foul odour in the attic. The dogs were generally in good body shape but some had hair loss and one dog that had ringworm was in with other dogs.

69. SPC Thomson testified that she seized all the animals due to their living conditions, including those in the attic with no daylight, poor ventilation, and lack of veterinary care. She labeled all the animals, and the dogs were taken to the Society’s Chilliwack facility and the cats to the Society’s Surrey facility. Dr. Walton examined all the dogs in Chilliwack then examined all the cats in Surrey, which were each segregated due to being contagious.

70. On April 12, 2016, there was another seizure, the results of which are currently in progress.

71. Under cross examination, SPC Thomson testified that the Society’s own hospital, when it performs vaccinations, does not perform health checks unless requested and paid for by the owners; it is not part of the vaccination protocol. The vaccines are often administered by a technician not a veterinarian. It’s just “a jab and out with a vaccination certificate.”

72. SPC Thomson explained that the purpose of the cruelty investigation form is to provide Ms. Moriarty with an overview of the file and is not the full file. The form is filed out for every warrant that SPC Thomson executes.

73. SPC Thomson explained that when she called Dr. Brar for more information on more animals, he had not examined all the cats as he ran out of time. SPC Thomson explained that veterinarians’ recommendations can be either mandatory or discretionary depending on the level of distress of an animal.

74. SPC Thomson testified that she understood the Appellant’s English well enough when the Appellant described muzzling the dogs to prevent barking as she had received complaints from the City. SPC Thomson said it was acceptable for a person to muzzle their dog on a walk or to prevent aggression.

75. SPC Thomson explained levels of personal protection gear including boots, gloves, hair nets, Tyvek suits. Lower levels of protection are used with contagious animals if the person is not coming into contact with another animal; full gear is used if the person will see other animals.

76. SPC Thomson testified she does not know the Code verbatim but is familiar with it. With biohazard training, she knows how to gown herself and how to spray down vehicles after contagions have been present. She did not recall how many animals were in each vehicle or how many vehicles were used to transport the animals but thinks they used under five vehicles. She was not involved with the loading.

77. SPC Thomson testified as to her recall of the definitions of distress under the *PCAA* and she testified that a sick animal is in distress and if that animal was improving she may leave orders for the owner to correct the distress. SPC Thomson testified that causation is not a factor in considering distress. She testified she does not have a higher expectation of a business owner as all

owners have the same burden and owners making money off an animal do not owe it a greater debt and there is no policy about this.

78. SPC Thomson said she attends every complaint she gets and has attended many unfounded complaints.

79. SPC Thomson testified that the Appellant did not perform handwashing, had surfaces in her kennel that could not be cleaned, and was not using the binder for record keeping.

80. SPC Thomson testified that she is not required to have a veterinarian on site during a seizure. With the testing on the seized animals, samples were taken offsite and sent to the lab, with samples taken for ringworm after the animals were removed from the site, and samples taken for the giardia test were collected from feces while the animals were offsite.

81. SPC Thomson testified that Ms. C. Lu, a payroll worker at the Society, attended the seizure to translate but the Appellant had her own translator there, Mr. Wilson.

82. In response to Panel questions, SPC Thomson testified that muzzles should not ever be used to control barking as it prevents dogs from panting. The facility on Colebrook in Surrey had particle board floors in some cat rooms and no ability to be sanitized. There was insufficient light and ventilation in the facility, so SPC Thomson seized the animals for more than just practices; it was also due to the inadequate facility.

The Appellant's Case

83. The Appellant relied on all her submitted material and submissions, and the Panel reviewed and considered all material, submissions and testimony, whether or not we refer to it here.

84. The Appellant called no witnesses and did not testify beyond providing two brief affidavits. She was not cross examined on her affidavits.

85. In her April 8, 2016 affidavit, the Appellant attested that her clients are primarily Chinese-speaking. She is renovating her property to serve clients and animals better. She said she has spent $170,000 in renovation costs to ensure the property is safe, sanitary and capable of housing animals. She submitted to the Society and the Panel 200 pages of veterinary bills to demonstrate she is willing to care properly for the animals.

86. In her affidavit, the Appellant's evidence was that a plan is being developed to complete the necessary renovations and practices required to satisfy any concerns of the Society. This includes but is not limited to completing the renovations, hiring more staff members, finding a veterinarian who speaks Mandarin, and finding an animal hospital and pharmacy with Mandarin speaking staff members. She said all of the training documentation and guidelines will be translated into Mandarin in order to train Mandarin speaking staff better, and all of the animals, when returned, will be placed in a kennel or hospital facilities as needed in order to care for the animals until her plans are complete enough for the return of the animals to her property.

87. In her April 18, 2016 affidavit, the Appellant testified that the facility is located on 15 acres, and that she has more than 30 years of experience working with and caring for animals. This includes 20 years of experience working with, breeding, and boarding animals in China.

88. Her evidence was that from January 2016 thorough to the date of the seizure, the Society brought an interpreter only once, on January 13, 2016. During the December 2015 visit to an animal hospital for the treatment of sick cats for kennel cough, the communication with Dr. Brar was sometimes without assistance of his Mandarin speaking assistant which might have resulted in misunderstanding and missing some of Dr. Brar's instructions. The Appellant swore that a certified translator with experience in Health Care and Medical translation was contacted about translating the Code of Practice for Canadian Kennel Operations and the Code of Practice for Canadian Cattery Operations into Mandarin. The cost is estimated to be $5,000.

89. The Appellant's evidence was that work is being done to solve the problems she and her property have had with the City of Surrey which have resulted in the delays in finishing the construction of the facility, and that an architect referred by the City of Surrey, Gerry Blonski, has been requested to assist.

90. The Appellant's evidence was that an arrangement can be made for the animals to be kept in suitable facilities, as necessary, while work on her facility is being completed.

91. Further, the Appellant's evidence was that a registered DVM will be engaged regarding the care of animals moving forward in the form of a six-month agreement for someone from the Doctor's office to visit the property every week or two weeks to check on the animals, examine her biohazard effectiveness, and make sure she is properly carrying out all of the Doctor's recommendations. This agreement will have the option of being extended for an additional six months as needed to keep the animals from distress.

92. The Appellant also testified that a software designer who can design Mandarin based software programs has been hired to make it easier for Mandarin speaking staff and Mandarin speaking clients to track, review, and manage each animal's care.

VII. Submissions, Analysis and Decision

93. The Appellant framed her appeal in terms of violation of natural justice (fair process) owed to her by the Society. The Appellant alleged that the Society violated natural justice in the manner in which it conducted its investigation and seizure, holding the Appellant to a higher standard due to her business activities (related to the owning of animals and operating a boarding/breeding facility), providing arbitrary time periods in which the Appellant was to make corrections or obtain care without providing a reasonable opportunity to do so. The Appellant argued that in making its decision not to return the animals, the Society failed to give proper weight to the facility improvements and said that the Society's finding that the animals would return to distress is vague and too broad in scope. The Appellant argued that the Society's claim for costs is unreasonable (which we address under Costs below).

94. The Appellant's position is that the Society's process was unreasonable as, at the reconsideration (review) stage, the Appellant provided medical invoices and receipts for more than $170,000 in renovations to the Colebrook property. The Appellant's position is that she submitted more than

200 pages of documentation and Ms. Moriarty's written reasons were issued the next day and the Society could not have properly considered all that material in such a short period. It was patently unreasonable and violated natural justice.

95. The Appellant also took issue with what she sees as the Society holding the Appellant to a higher standard due to her business activities (related to the owning of animals and operating a boarding/breeding facility) relying on the following passage from the Society's March 16, 2016 decision, *supra*:

> I would argue that as an individual who not only owns animals, but actively profits off of them either by breeding, boarding or a combination of the two, owes an even greater debt to these animals to ensure they are given the very best of care or in the very least, meet the legal requirements under the law.

96. This Appellant said that this statement is evidence that the Society unfairly applied a standard not supported by the *PCAA* during their investigation and decisions, making both patently unreasonable and a violation of natural justice.

97. The Appellant said it is the role of the Society and the purpose of the *PCAA* to provide ample warning to the parties before taking action. In this case, she said there was no warning at all. The Society based its decision on Dr. Brar's January 17, 2016 report and the Appellant did not have enough time to make improvements. Dr. Brar failed to examine all the animals as he ran out of time. The Appellant tried to get a plan and comply with the plan to satisfy the Society. Dr. Brar did not have a Mandarin speaking assistant attend and that was problematic. The Appellant made good faith efforts and said the fact the Dr. Brar exam was not fully done on all the animals was the triggering cause of the seizure yet it was Dr. Brar who did not return to complete the exam. There was no opportunity for the Appellant to make adjustments to her actions and plan and that violated the intent of the statute. Further, the Appellant believed it was unfair for the Society to rely on prior investigations involving a different facility with different animals. The care and money invested into this facility showed a good faith effort to work within Society guidelines.

98. In her submission, the Appellant conceded that many of the animals seized were in distressed conditions or "tragic states" but before making a determination of ownership and care, she says the Society has to consider whether the Appellant was the "author of those misfortunes or simply a custodian of the results." The Appellant's position is that the chain of custody regarding the tests was inadequate as Dr. Walton testified that there was only 15 minutes of contact with the cats whereas the cats were actually together during the six hours of the seizure, during which time they could have become contaminated; her position was that the cats could have become contaminated by the way the Society handled them, and prior to taking the samples. Dr. Gordon said she could not understand how the cats could be so infected with P3 yet not show signs of infection which speaks to some irregularities and cross contamination during a window of time the animals were together. The Appellant argued that something happened that was unusual and unforeseen.

99. The Appellant's position was that according to Dr. Brar's report, 2/13 or 20% of the animals had indicia of ringworm, yet a month later at seizure, 95% were infected. If the Appellant were doing something improper, it would have shown up the month before. Some unusual event that must have occurred was not indicative of her level of care.

100. The Appellant's position is that the Society did not return the animals as the Appellant was unwilling and unable to care for them yet in the Society's written reasons, the dominant issue

described was the care of the animals and biosecurity not the facility. The Appellant is confident the facility will be fit for animals when it is complete. The issue of the Appellant being unwilling or unable to care for the animals is refuted by the fact that she spent $170,000 to adhere to Society guidelines. Dr. Brar's report and emails indicated that he hoped the issues would be resolved. The amount of her expenditure indicated a willingness to achieve the Society's requirements. Her language was some impediment to being able to achieve them. But the Appellant's strength is her language which serves her Chinese clientele, and the Code is not available in Mandarin. The Appellant is willing to do whatever is necessary to satisfy the Society. Her plan is to have a Mandarin speaking veterinarian visit periodically to give confidence to the facilities and training of staff, and she will work out details with the City of Surrey regarding whether or not her location can be licensed for boarding animals. Her position is that once the City signs off, the Society would know it meets the standard as it will also when the veterinarian signs off.

101. The Appellant asserted that one of the biggest mistakes she made was bringing animals into an incomplete facility and she has now had the opportunity to clean and sanitize the facility to permit the return of animals. Her position is that an outbreak such as hers is not unique to her and both Drs. Gordon and Walton described similar outbreaks at other facilities.

102. The Appellant also took issue with the Society's finding that the animals would return to distress if returned saying this is vague and too broad in scope. The Appellant says that natural justice requires the Society to state the type of distress the animals would return to, when they would return to distress, the evidence that the person responsible for the animals could cause the distress, and that the person responsible for the animals would absolutely fail to alleviate the distress. Here, the Appellant argues that the Society has only made a vague generalization that the animals would return to distress which is violation of natural justice and ultimately her charter rights.

103. One of the reasons the Appellant did not testify, according to her counsel, was that the Society had advised that it may recommend criminal charges and the Appellant did not wish to prejudice herself. The Society denied this, saying it is the Crown who brings charges, but the Appellant's counsel did not wish anything she might say to be used against her.

104. The Society's position in this appeal is that it is up to the Appellant to demonstrate that the Society's decision ought to be changed to justify a new remedy (i.e. to have the animals returned to her). The Society relies on an earlier decision of BCFIRB, (*A.B. v. BC Society for the Prevention of Cruelty to Animal)* affirmed on appeal *BC Society for the Prevention of Cruelty to Animals v. British Columbia (Farm Industry Review Board), 2013 BCSC 233*), where the Panel articulated the nature of the appeal as follows, at paragraph 93:

> In my view, the Appellant in a case like this has the onus to show that, based on the Society's decision or based on new circumstances, the decision under appeal should be changed so as to justify a remedy. Where, as here, the Society has made a reasoned review decision, BCFIRB will consider and give respectful regard to those reasons. However, that consideration and respect does not mean the Society has a "right to be wrong" where BCFIRB believes that the decision should be changed because of a material error of fact, law or policy, or where circumstances have materially changed during the appeal period. BCFIRB can give respect to Society decisions without abdicating its statutory role to provide effective appeals.

105. The Society's position is that the test in this case is whether or not Ms. Moriarty's written reasons were reasonable and fully supported by the evidence and including additional evidence that came forward in this appeal. Nothing heard in this appeal undermines those written reasons. There was a lack of biohazard control at the Appellant's property and the animals were sick and in distress. These concerns were persistent. The Appellant said that changes will be made but provided insufficient evidence supporting this. The cats had to be held in a special facility to control the contagious illnesses they had. These are the types of controls the Appellant should have had in place and, at the end of the day, the best interests of the animals are not to be returned and instead for the Society to find new owners for these animals.

106. The Society submitted that animals are removed which are in distress or sick, if the owner is unable to or unwilling to relieve that distress, and in this case, the Appellant was overwhelmed and unable to address the needs of these animals thus they were removed as they were in distress. The highly contagious URIs had existed for around three months, such as when cats were seen coughing and sneezing on November 29, 2015. Seven cats were visibly sick then.

107. With respect to the Appellant's allegations, the Society submitted that there was no evidence of cross contamination after seizure. The distress was caused by unacceptable housing including the ringworm infestation and cats sleeping in fiberglass. The biohazards were not distress but caused distress. The Appellant allowed ongoing sickness. Dr. Brar's chronology noted that the Colebrook facility lacked cleanliness and biosecurity measures. Although the veterinarian had only examined 13 cats, he did not return after this and the Appellant could have called in another veterinarian. The Appellant has had ample time to rectify the animals living conditions. The only reason Dr. Brar even attended the Appellant's facility was because the Society said a veterinarian ought to attend.

108. Regarding the notion of the language barrier, the Society asserted it is not up to the Society to inform owners about the care they should give their animals and in this case the Appellant had a high obligation to inform herself how to care for animals as she was taking animals into her home to care for them. The Code was given to the Appellant in January and the onus was on the Appellant to have it translated.

109. The Society asserted that the Appellant's claims of renovations to her home/facility are self-serving and there was no explanation about what the invoices were for and how they related to the safety and sanitation of the facility and for the health and safety of the animals.

110. The Society did not dispute that the Appellant took her animals to the veterinarian but rather asserted that she failed to ensure that she sought proper veterinary care for all the animals all the time.

111. The Society said that the Appellant, by her own affidavit, has not completed the renovations to prepare for any return of animals and she instead talked of how an arrangement can be made for suitable arrangements for the animals. The Appellant admitted she cannot take the animals back now and she provided no assurances of a third party that could care for the animals presently. The Society cannot board the animals and the Society relied on *Baker and Lemure* v. *BCSPCA*, (BCFIRB March 7, 2016) and its finding that an Appellant cannot rely on wishful thinking when there is nowhere to put the animals.

112. The Society asserted that it did not hold the Appellant to a higher standard as she was profiting from the animals; instead the Society holds any person with that number of animals to an appropriate standard for that number of animals. The issue is not profit; but if taking in animals for profit, the person needs to understand how a large animal facility operates. The Appellant flaunts her experience yet maintains that it is the Society's duty to inform her of how to care for animals.

113. Before proceeding with the analysis, we want to address the issue of standard of review as it was raised by the Appellant. Appeals to BCFIRB under the *PCAA* are not true appeals and BCFIRB is not required to defer to the decision of the Society. As held by Grauer J. in *BC Society for the Prevention of Cruelty to Animals v. British Columbia (Farm Industry Review Board), 2013 BCSC 2331*:

> [25]The FIRB thus rejected the "true appeal" model – favouring not a hearing de novo, but rather a more flexible approach that maintained the onus on the appellant to justify overturning the Society's decision, but did not necessarily defer to that decision through application of a "reasonableness" standard. A "correctness" standard would be applied, not limited to the record before the Society, but taking into account all relevant factors including any material changes that occurred during the appeal period.

114. While the Appellant has framed the issues on this appeal in terms of violations of natural justice, we observe here that this is not judicial review. It is a broad appeal from the Society (one specialized body) to an administrative tribunal with specialized animal welfare knowledge. We are not limited in the grounds of appeal we can consider to questions of law or jurisdiction. The Panel did not find that the Society violated a requirement of procedural fairness, however, a finding that the Society violated a requirement of procedural fairness would in our view, in the circumstances of this case, be insufficient to dispose of this appeal, given that BCFIRB has broad evidentiary and remedial powers to bring some finality to the substantive issue on appeal of what is in the best interests of animals. Further, in our view, the broad nature of appeal allows the Appellant to raise any demonstrable procedural unfairness by the Society before BCFIRB which procedural unfairness would normally be cured by the rehearing of the issues on appeal.

115. We also observe that in her submission the Appellant argued that certain violations of natural justice resulted in her *Charter* rights being violated. This assertion was not developed in oral argument so we are unclear on the nature of any alleged breach of a Charter right. We note here for completeness that section 45 of the *ATA* applies to BCFIRB in its mandate under the *PCAA* and it prohibits tribunals to which it applies from deciding constitutional questions relating to the *Charter*.

116. Having dealt with these preliminary matters, we now move on to consider the issues on appeal. In deciding this appeal, we have proceeded on the basis that the Appellant has an onus to show, based on the Society's decision or changed circumstances, that the remedy she seeks (return of the animals) is justified. We will first consider the circumstances of the seizure to determine whether the animals were in distress at the time of seizure and then consider whether to return the animals would return them to a situation of distress.

117. The *PCAA* sets out the following definition of "distress" in section 1(2):

> 1 (2) For the purposes of this Act, an animal is in distress if it is
> (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
> (a.1) kept in conditions that are unsanitary,
> (a.2) not protected from excessive heat or cold,
> (b) injured, sick, in pain or suffering, or
> (c) abused or neglected.

Seizure of the dogs and cats

118. The veterinary evidence of both Drs. Gordon and Walton was accepted in full by the Panel, as was the submitted reports and emails of Dr. Brar. The reports and emails of Dr. Brar, the Appellant's own veterinarian, were helpful and enlightening and were accepted as factual (and especially in light of a lack of any concerted effort by the Appellant to refute his findings) by the Panel. The testimony and evidence of SPC Thomson with respect to the factual events around the seizure of the animals was also accepted. However, the Panel places no weight on her views around causation of illness and how that relates to distress as the Society did not rely on those views in its written reasons. On this point, we have relied on the views of the expert witnesses. SPC Thomson's other testimony was helpful and was accepted by the Panel as being factual. The affidavit evidence of the Appellant was also accepted and was helpful.

119. While we understand the Appellant's decision not to testify, her failure to do so made it difficult for the Panel to assess her evidence. In order to determine if the Appellant was both willing and able to improve the level of care she provided to the animals, and in order for the Panel to test the assertions (and indeed to more fully explore them) made in her affidavit regarding her plan, the Panel would have liked to learn the precise status of the work she was performing on the facility and additional details of her plan with regard to staff, veterinary care and inspection, and related matters, but was denied this opportunity. The Panel was unable to probe the assertions made in the Appellant's affidavits to the level needed to provide the Panel with the confidence necessary to ensure the best interests of her animals could be served by remaining with her.

120. The Panel specifically finds that animals were housed in a facility/residence where URIs, giardia, and ringworm were invasive and persistent. Dr. Gordon's testimony was that 71 of the 75 animals had ringworm and she had never seen anything like this. She testified that even in a shelter outbreak that was treated, you wouldn't see skin lesions as cats would get better after treatment. In this case, one-third of the cats had active lesions and 58/59 cats were shedding P3 and 8/16 dogs were shedding P3 with three dogs having skin lesions. She surmised that since it was bacterial not viral infection, it could only have been caused by living with such a high level of contamination. Dr. Walton testified that of particular note, one cat was significantly underweight with a large oral lesion and between 30% and 40% of its body glowing green which was indicative of ringworm. He testified that he had never seen so much ringworm on an animal in his entire career. It was of several weeks duration. That cat was euthanized as being in critical distress.

121. The Panel is of the opinion that these animals were sick, in pain, or suffering due to the pervasive and long-standing infections of ringworm, URIs, and giardia and they were in distress.

122. Dr. Walton testified that he saw for himself that some cats were being kept loose in the attic where they were bedding in fiberglass insulation. The Panel was offered no information on how many animals had access to the insulation or for how long, but the Panel finds the possibility of injury, pain or suffering from bedding in fiberglass to be great and thus finds that at least for some of the animals, they were deprived of adequate shelter. There were also cats kept in rooms with particleboard floors which could not be sanitized (and which may have facilitated the transmission of many infections due to an inability to sanitize) and that biosecurity measures were both necessary and were shared with the Appellant by her own veterinarian Dr. Brar yet not adequately implemented, and for this reason, the Panel finds that at least some animals were deprived of adequate shelter due to a lack of sanitation and the resultant risk for sickness.

123. The Panel also finds that the animals were deprived of care and veterinary treatment. While it is true that the Appellant had taken some of the animals to the veterinarian, and had Dr. Brar come to her facility to examine some of the animals, she failed to properly follow-up on each animal's health and take additional necessary steps to return the animals to good health and maintain the animals' good health. She did not keep appropriate medical records for each animal, as advised to (and assisted with) by Dr. Brar. The Appellant was also provided with an English copy of the Code in January and the Code was written to assist any owner to understand the needs of cats in a cattery situation. The Panel finds that the Appellant was obliged as part of her business and as part of her obligation to prevent the animals in her care from being in distress to have understood the Code or understood otherwise what the requirements were, and the Panel does not accept, as a reason for failing to care for the animals, the Appellant's position that she did not understand the Code. The onus was on the Appellant to understand the Code or to understand the necessary requirements to keep the animals in her care from being in distress. The Appellant claimed that she had 30 years experience caring for animals. Given that degree of experience, she should have had adequate skills in animal husbandry, biosecurity, and administrative abilities required to manage a facility of this size and, importantly, to care for that number of animals in her control.

124. The Panel finds that the Appellant failed to follow (either by failing to understand, choosing not to follow, or just not caring) what is required for good animal husbandry and that her lack of understanding or willingness resulted in her animals and the animals in her care being in distress for lack of care and lack of veterinary care, being defined by the Panel as including follow-up treatment and monitoring sufficient to return the animals to good health and relieve their suffering.

125. The Panel also finds that the Appellant failed completely to have enough assistance to be able to care for the number of animals under her care and control. Dr. Gordon testified that basic animal husbandry required 15 minutes per animal for feeding and cleaning, not including veterinary care, record keeping, and administering medications. The Appellant swore in her affidavit that she did not have any employees as the City would not permit that. There were 84 animals in the care of the Appellant and that just the basic care (without the medications that were necessary for the diseases the Panel already determined the animals suffered from) it would take this one Appellant 21 hours a day to provide, which is not possible given the requirements of sleep and personal care.

126. For this reason, the Panel finds that the Appellant failed to care for the animals. The Panel does not excuse the Appellant from acting in the best interests of the animals because she was prohibited from hiring staff and that prohibition caused her to act not in the best interests of the animals. She should not have accepted animals nor had a large number of her own animals if she did not have enough hours in the day to care for them and could not or would not hire staff.

127. The Panel is of the opinion that, in the circumstances of this case, it is not necessary that every single seized animal be suffering a direct effect from any situations that are defined as distress in order to be found to be in distress. The Panel, in the circumstances of this case, is of the opinion that the fact that the level of contamination that existed with regard to diseases including URI, giardia, and ringworm, was sufficient to put every animal in distress due to their exposure and very high risk of contracting the sicknesses. The Panel finds, in the circumstances of this case, that the fact that there were not enough hours in the day to provide care to all animals put every single animal in distress due to lack of care. And the fact that not every animal contracted the contagious diseases that were prevalent at the facility/residence does not subtract from our finding that every animal was denied adequate shelter and veterinary care. The risk of the contagions being on so many surfaces where the animals were is enough for the Panel to come to this conclusion in the circumstances of this case.

128. The Panel is not persuaded by the Appellant's argument that she was held to a higher standard due to her business activities and that she was denied natural justice. The *PCAA* requires that the best interests of the animals be paramount and while these animals were in her care and control, their best interests were not paramount and in fact, were not adequately considered, if judging by their lack of care, veterinary care, and adequate shelter.

129. The Panel is also not persuaded by the Appellant's argument that her language challenges meant she could not understand the Code or her own veterinarian in some cases, or that the Society failed in only bringing one interpreter once to her property. The Panel is of the view that it is not the Society's obligation to provide services in Mandarin, as the Society itself also asserted. The Panel is also of the opinion that it is not the obligation of the Society to advise owners of what they must do with the animals in their care on a repeated basis and over a prolonged period of time, as was the case here, and as asserted by the Society. The onus was on the Appellant to provide the necessary level of care for her animals and the animals she was boarding.

130. Finally the Panel is not persuaded that the infections resulted from something done or not done during the seizure or transport of the animals. The incubation period was longer than six hours, and there was no credible evidence put forward that the infections could have been acquired through cross-contamination and appeared in a test during the time of seizure.

131. The Panel therefore concludes, based on the totality of the evidence, that every animal that was seized was in distress and was appropriately and reasonably and correctly seized by the Society.

Return of the animals

132. Having determined that the seizure of the animals was justified, the Panel turns now to the best interests of the animals, specifically the 32 cats and the six dogs belonging to the Appellant and requested to be returned, along with all other animals requested to be returned including the kittens born while at the Society, the animals belonging to her mother, her father, her daughter, and her client.

133. The Panel notes that the legislative framework was described in *Eliason v SPCA*, 2004 BCSC 1773 where Mr. Justice Groberman (as he then was) stated:

> The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of.

134. The Panel also notes the following passage from *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.):

> The goal and purpose of the act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as the Plaintiff's counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in the distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain the good condition in which it was released into its owner's care.

135. This is not a case where the Appellant showed a total disregard for the health of her animals. In fact, the evidence showed that the Appellant had, on many occasions, taken animals to the veterinarian for care and treatment. And when the Society told her she ought to have a veterinarian come to the property to inspect the animals, the Appellant did hire Dr. Brar to attend.

136. The problem, when considering the best interests of the animals, is that the only conclusion this Panel can arrive at is that the Appellant has no understanding, at best, of the fact that veterinary care is a continuum that involves noticing symptoms and noticing the link between environment and health, and addressing that link, including seeking appropriate veterinary care when and as necessary, and then following the treatment the veterinarian advises. Further, appropriate veterinary care includes following up on the health of the animals, such as when an animal does not get better or the symptoms of one animal spreads to another. And also that the degree of vigilance goes up on the part of the animal caregiver when the number of animals goes up.

137. It does not appear the Appellant has the ability to act in the best interests of her animals and the animals in her care. She did call Dr. Brar to inspect the animals but when he only had time to inspect 13 animals, there was no evidence that the Appellant tried to hire him back or get another veterinarian in to examine and treat the huge majority of animals that were not examined. Further, there was no evidence that the Appellant followed the record keeping instructions that Dr. Brar left with her, which would have assisted her in seeking appropriate treatment and follow up for her animals and those animals in her care. Even more, there was evidence that expired medication and medications for species other than dogs and cats were at the Appellant's property and that Dr. Brar had to throw some of them out. It baffles the Panel that the Appellant would not understand something like an expiry date, given how important it would be to the best interests of the animals.

138. The Panel found a lack of persuasive evidence supporting the Appellant's plan for the animals to keep them in good health, should they be returned. In her affidavit, the Appellant attested to abstract plans such as finding a Mandarin speaking veterinarian, or getting staff, or having the Code translated or hiring a software developer to write a program in Mandarin to assist with record keeping. These were all ideas that had a forward thinking connotation which were not backed up with evidence about who would be hired and when. Further, the Appellant has had since February 16, 2016 to have accomplished some of these components of her plan but there was no evidence that this had been done. Given the number of years of experience the Appellant had working with animals, and the ongoing contact with the Society, the fact that these steps have not been taken sooner reflect poorly on the Appellant's commitment to the best interests of the animals in her care.

139. The Panel was also not persuaded that the renovations to her property would fully and completely address the best interest of her animals, should they be returned. The Panel could not determine which invoices were for what work, and how that work directly and significantly linked to improving the conditions in the best interests of the animals.

140. The Panel was not persuaded that there was a sincere effort to hire staff especially in light of the fact that the Appellant already attested that the City would not permit her to hire staff, and that the City had concerns about her property and business, and her failure to apply for a plumbing permit. Although the Panel understands the issue of a business license or permit is not within its authority and in fact does not play a role in making a decision of what is in the best interests of these animals, the Panel is heavily influenced by the fact that the Appellant's own position is that her renovations are incomplete and she has nowhere currently to put the animals. She does indicate she will find a third party solution for boarding the animals, but she did not offer sufficient evidence of whom or where that place would be. Despite the onus on her, the Appellant did not speak to these significant issues.

141. The Panel was also of the opinion that this Appellant has already had many opportunities to create a housing and care situation for these animals that would serve their good health and best interest and she had thus far failed to achieve the level of housing and care necessary to provide for their best interests. The Appellant suggests that the prior investigations are not relevant as they involve different animals and a different facility. But the Panel observes that the Appellant had animals seized in 2014 for, as SPC Thomson said, many of the same conditions as were evident in the February 2016 seizure. Dr. Gordon attended the Appellant's previous property and found many of the animals to be suffering from sickness and poor animal husbandry practices and inadequate sheltering and inadequate or non-existent biosecurity precautions, as well as a dearth of enrichments for the cat housing, all to the detriment of the animals, yet the Appellant has consistently failed to adequately address these issues since then.

142. The Appellant's own veterinarian Dr. Brar advised her to keep medical records and to follow biosecurity protocols, but even he said that the Appellant only did the minimum required, and as the Panel determined, the Appellant failed to follow up on the health of her animals to ensure the minimum continued to be sufficient for the animals' best interests.

143. The Panel is not persuaded that it is acceptable for the Appellant to simply wait for the Society or others to tell her what to do, and then blindly follow the letter of those recommendations, believing those actions alone would prove she has acted in the best interests of her animals' health. The Panel is of the view that a continuous monitoring of the ever-changing health needs and health risks is required for animals, especially, as we learned from Dr. Gordon, in a cattery situation where illnesses can become epidemic.

144. And it should also be noted that the Panel is of the view that, with respect to the staffing (or lack of it) issue, and the fact that one person could not possibly provide food and cleaning let alone veterinary care or kennel management, there was no evidence brought forward that this lack of staffing was a recent issue and that the Appellant suddenly found herself overwhelmed. In considering the totality of the evidence, it was clear the Appellant had not ever properly staffed her facilities, whether for reasons of cost and impact on profit, or for reasons of the limitations of City bylaws. It seems to the Panel odd that the Appellant would restrain herself from hiring staff, solely because she was prevented from doing so by a City bylaw when she apparently ignored the fact

that the same City had not permitted her to run the type of business she ran, and thus seized her animals.

145. In considering if the Appellant should be provided with an opportunity to have these animals returned to her, the Panel is of the view that in the circumstances of this case the Appellant would be both unwilling and unable to take whatever steps are necessary to ensure the animals would remain in good health and in fact, the Panel is of the view, based on her past behavior and the suffering of these animals, that these animals would surely return to being in a state of distress if returned to the Appellant. Therefore, it is the decision of this Panel that the animals not be returned to the Appellant and instead that the Society be permitted to dispose of them as it sees fit.

VIII. ORDER

146. Section 20.6 of the *PCAA* reads as follows:

> 20.6 On hearing an appeal in respect of an animal, the board may do one or more of the following:
>
> (a) require the society to return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
>
> (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
>
> (ii) any matter that the board considers necessary to maintain the well-being of that animal;
>
> (b) permit the society, in the society's discretion, to destroy, sell or otherwise dispose of the animal;
>
> (c) confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2).

147. The Panel orders that pursuant to section 20.6(b) of the *PCAA*, the Society is permitted, in the Society's discretion, to destroy, sell or otherwise dispose of the animals which the Appellant requested returned and which are the subject of this appeal, including the kittens. The Panel notes that the Society has indicated it intends to find appropriate adoptive homes for the animals.

Costs

148. The Society's March 16, 2016 decision addressed the issue of the return of the animals claimed by the Appellant (her 32 cats and six dogs and her family's four dogs). The Society's decision also addressed the issue of costs. Given that the Appellant was not claiming ownership of all the animals seized, the Society accepted the list of "Third Party Animals" and advised that it would make every attempt to contact the individuals identified as owners and give them an opportunity to have their animals returned subject to payment of section 20 costs owed as of March 2, 2016.

149. For those animals not being claimed by the Appellant or for which contact information was not provided, the Society advised it would be guided by s. 17(a) of the *PCCA* which addresses disposition of abandoned animals.

150. The March 16, 2016 decision makes clear however, that the Society's position is that the Appellant is responsible under section 20 of the *PCCA* for the costs of care incurred whether or not the animals were returned. In her affidavit, Ms Moriarty breaks down the Society's costs as costs for

all animals seized up to March 2, 2016 and then costs for only the Disputed Animals for the period from March 3, 2016 to May 9, 2016.

151. The Appellant, in her Notice of Appeal, takes issue with the reasonableness of the costs assessed.

152. At the hearing, the Panel heard detailed submissions from the Society and the Appellant as to the reasonableness of the costs incurred. However, the Panel has decided to reserve our decision on appeal concerning the reasonable costs of the Society as an issue has arisen upon which we require further submissions.

153. Section 20 of the *PCAA* provides as follows:

> Costs of taking action and proceeds of disposition
>
> **20** (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.
>
> (2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.[emphasis added]

154. Given that section 20 refers only to the liability of an "owner" and does not include "the person responsible for the animal" found in other sections, it is unclear to the Panel what the authority is for the Society to claim the costs of the Third Party Animals.

155. One case that may have some limited application is *BC SPCA v. Sudweeks*, 2002 BCSC 1892 at paragraphs 20-22 and the parties may want to address the significance of it, if any, in their submissions.

156. Given that this was not an issue addressed by either party, we would also ask the Society to provide its view as to the proper interpretation of section 20 supported by any relevant authorities, no later than no later than **4:30 p.m., Wednesday, May 11, 2016**.

157. The Appellant will then have until **4:30p.m., Friday, May 13, 2016** to respond.

158. If either party is of the view that section 20 is limited in application to only the Disputed Animals, the Panel would appreciate the parties' submission on how that finding would impact the costs claimed by the Society.

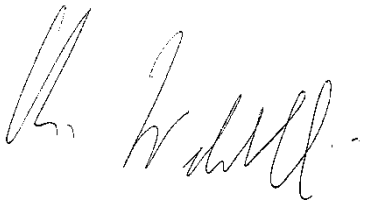
159. The Panel will provide its decision on costs as soon as practicable.

Dated at Victoria, British Columbia this 10th day of May, 2016

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
Per:

Corey Van't Haaff, Presiding Member

Brenda Locke, Member



Chris Wendell, Member