

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 COSTS OF
CARE REGARDING THE SEIZURE OF 3 DOGS

BETWEEN:

JOELLE MBAMY

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

COSTS DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Corey Van't Haaff, Presiding Member
Diane Pastoor, Member

For the Appellant:

Paul Varga, Counsel

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

March 23, 2017

Location of Hearing:

Teleconference

I. INTRODUCTION

1. This costs decision arises from an appeal filed by Joelle Mbamy after the seizure of her three dogs on January 23, 2017, and the subsequent written review by the Society on February 21, 2017 that determined the dogs would not be returned to the Appellant.
2. The Appellant appealed to BCFIRB within the four day limitation period set out in s. 20.3(2) of the *PCAA*. Unfortunately, due to an error, the Society notified the shelter that it was free to adopt out the dogs. One of the dogs (whose name is “Dolce” but who the Society called “Meko” – referred to in this decision as Dolce) was adopted out before the error was discovered.
3. When the appeal was first filed, the Appellant sought the return of all three animals, and the parties filed written submissions on that basis.
4. However, on March 22, 2017, one day before the scheduled appeal hearing, the Appellant notified BCFIRB that she wished to withdraw her appeal of the seizure of the dogs, and that she only wished to address costs on the appeal.
5. As the appeal from the seizures has been withdrawn, we can only proceed on the basis that the seizures were valid. The only remaining issue before the Panel is whether the care costs claimed are reasonable. One of the issues arising here is whether, based on the Society’s error in adopting out Dolce prior to the time permitted by the *PCAA*, the Society should be entitled any of its care costs incurred with regard to the seizure of that dog.

II. RELEVANT STATUTORY PROVISIONS

6. Section 20 of the *PCAA* sets out the Society’s statutory right to reasonable care costs arising from a seizure:

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.

(3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.

(4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.

(5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.

7. Section 20.3(1) of the *PCAA* grants an Appellant a right to appeal from any dispute about the amount of care costs to which the Society is entitled. This is set out in ss. 20.3(1) (c), reproduced below:

20.3 (1) A person who owns, or is an operator in relation to, an animal, or a person from whom custody of an animal was taken under section 10.1 or 11, may appeal to the board one or more of the following:

(c) the amount of costs for which an owner is liable under section 20 (1);

8. Section 20.6(c) provides that on hearing an appeal the board may “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)”.
9. The Society has asked for care costs, including veterinary costs, with respect to all three dogs, although it has decided not to advance a daily care rate for the dog Dolce who was adopted out prematurely. As outlined in Ms. Moriarty’s affidavit, the s. 20 costs are claimed at **\$5,660.42** in the event the hearing of this appeal is completed on March 23, 2017.

III. SUBMISSIONS

10. The March 17, 2017 affidavit of Ms. Moriarty, as excerpted here, states:

Cost of Care

20. The Society is a non-profit organization. It is almost exclusively funded by donations from private individuals. Operations such as relieving animal distress by taking animals into the custody of the Society are part of our organization’s statutory mandate. However, holding animals strains our resources.
21. The Society incurred and continues to incur expenses with respect to the Remaining Animals, including costs associated with providing the Remaining Animals with food, shelter and other care. Subject to the hearing of this proceeding concluding on March 23, 2017, the Society is seeking costs in the total amount of \$5,660.42, pursuant to s. 20 of the Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372 as follows:
- A. Veterinary Costs: \$2,972.76
 - B. SPCA time attending to seizure: \$161.30
 - C. Housing, feeding and caring for the Remaining Animals: \$2,526.36
 - D. TOTAL: \$5,660.42
22. The veterinary costs are found in the Binder as follows totalling \$2,972.76:
- Tab 28, p. 231 \$ 2,351.68
 - Tab 28, p. 233 588.00
 - Tab 28, p. 234 33.08
 - Total \$ 2,972.76
23. The Society also incurred labour costs respecting its special provincial constables’ investigations and seizure of the Animals. I estimate the costs associated with investigating, seizing and transporting the Animals at approximately \$161.30 (\$16.13 per hour x 5 hours (approx.) x 2 SPCs).

24. The Society's costs to house, feed and care for the Remaining Animals at the Society's premises is at the sum of \$17.07 per day (74 days — January 23, 2017 to April 6, 2017 (being the anticipated date of the BCFIRB Decision)) x 2 dogs = \$2,526.36.
 25. If the hearing of this proceeding concludes on April 4, 2017, the Society is seeking costs in the total amount of \$6,138.38 as follows:
 - A. Veterinary Costs: \$2,972.76 (paragraph 18)
 - B. SPCA time attending to seizure: \$161.30 (paragraph 19)
 - C. Housing, feeding and caring for the Remaining Animals: \$3,004.32
 - D. TOTAL: \$6,138.38
 26. The Society's costs to house, feed and care for the Remaining Animals at the Society's premises is at the sum of \$17.07 per day (88 days — January 23, 2017 to April 20, 2017 (being the alternate anticipated date of the BCFIRB Decision)) x 2 dogs = \$3,004.32.
 27. The sum of \$17.07 per day is broken down as follows:
 - A. Food cost feeding Hills Science Diet: \$2.00/day
 - B. Staff time at a rate of \$16.13 per hour: \$8.07/day
 - i) 10 minutes kennel and dog cleaning: \$2.69
 - ii) 10 minutes morning feeding: \$2.69
 - iii) 10 minutes evening feeding: \$2.69
 - C. Overhead Costs: \$7.00/day(see below)
 28. Regarding overhead costs (item (c) above), the Society's Shelter incurs costs to maintain the facility, a portion of which costs directly benefited the Remaining Animals. This includes expenses associated with utilities (heating/electricity); general facility upkeep and maintenance; administration costs including ordering supplies and managing staff (cleaning and food supplies for animals); taxes on land use; maintaining the Society's computer office and other management systems; interacting with the Remaining Animals throughout the day beyond the mere feeding and cleaning of kennels including ensuring their emotional contentment; interacting with, directing, training and coordinating volunteers and other staff members, all for the benefit of the Remaining Animals (note: staff costs noted in this paragraph are over and above staff costs associated with any one particular animal, which are discussed under "staff time" above).
 29. I estimate overhead costs allocated at about \$7 per day. I acknowledge these costs are estimates only. Actual total costs are very difficult to calculate absent advice from an accountant. The costs to retain an accountant to determine the actual costs will outweigh the benefits of potentially recovering boarding costs from the Appellant...
- and
31. The Society relies upon its entitlement to reimbursement for all costs it incurred caring for the Remaining Animals prior to returning the Remaining Animals to the Appellant's custody. The Society does not waive its rights under section 20(2) of the Act and the Society specifically seeks payment of the above sums from the Appellant prior to any return of the Appellant, should the BCFIRB order the same.
 32. Animal owners usually do not pay the Society after animals are returned. The Society's cost to enforce awards usually outweighs possible recovery. As such our normal practice is to forego collection. This is to the detriment of our statutory mandate, which is to enforce the Act. In particular, and as stated above, we have limited funds, which are derived almost exclusively from private donation.
11. Since the above affidavit was filed, the Society has taken the position that it is reasonable to reduce the costs of housing, feeding and caring for the two remaining dogs, at \$17.07

per day, by the number of days between when the seizure appeal was withdrawn (March 22, 2017) and the day the costs were projected to (April 6, 2017).

12. The Society maintains its claim to veterinary costs for all three dogs and costs for SPC time as per Ms. Moriarty's affidavit. The Society submits that the animals were in the condition they were, and needing the veterinary treatment the veterinarians required, due to how the owner had handled the dogs. It is the owner's responsibility to put the dogs back to good condition.
13. The Society states that Dolce (the Springer spaniel that was adopted out in error) was treated overnight with fluids due to the poor condition the dog was in when seized, due to the Appellant's care of the dogs. It submits that "rightly or wrongly" the legislation requires the owner to pay for reasonable costs for the animal. It argues that nothing in the *PCAA* says that the owner is not responsible if the dog is adopted out.
14. The Society has clarified that there were no costs related to a spay since the dog had already been spayed.
15. The Appellant's position is that while she appreciates the Society's position not charging some costs of care for Dolce, BCFIRB may and should remove all costs associated with this animal because the adoption was done out of time, which prejudiced the ability of the Appellant to have Dolce returned, which was one of the reasons the appeal of the seizure was withdrawn.
16. The Appellant says the Society had no discretion to adopt Dolce when it did and, not to criticize the Society's mistake, the Appellant should not be responsible for veterinary costs of a dog she will never see again. She submits that while this is not a court of equity, section 20 does permit equitable relief. Such relief should be granted in this case as, in view of the premature adoption, there would have been no ability to return Dolce to the Appellant's care even if the appeal had been successful, at least not without expending further considerable legal costs which she could not afford.
17. The Appellant says she is not asking for some special benefit due to the Society's mistake but is asking (a) for Dolce's care costs in their entirety to be reduced to zero, and (b) to credit the Appellant the amount of money the Society received for Dolce's adoption (which was \$384.94). The Appellant submits that BCFIRB has discretion to grant these requests.
18. With regard to the other two dogs, Bella and Beto, the Appellant submits that if their blood collection fees were charged to assist the hospital there is no objection, but if those amounts were charged to assist the Society they are objected to. In response to this point, the Society submitted, and we accept, that the collection fees are charged by veterinarians who treat the animals in the animals' best interests and not at the direction of the Society. If the veterinarians determine they need to assess the animals' blood, and a collection fee

was required, it had nothing to do with advancing the Society's case and only to do with the animals' best interests.

19. The Appellant submits she has no objection to the costs of \$17.07 per day for the two other dogs and has no dispute regarding the SPC costs. However, she submits that the length of time for the cost of care should be reduced to 59 days, and that the costs for Dolce to be eliminated.
20. The Society says that section 20(1) makes the Appellant liable for costs. Making an argument that BCFIRB direct that the Society cannot recoup its costs for veterinary care is akin to damages or is a punitive measure and BCFIRB has no discretion to award damages or apply punitive measures.
21. The Society says it took into account its mistake and did not request costs for Dolce's boarding from January 23, 2017 which it was not required to waive, but did so without making any admissions.
22. The Appellant argues that it is well within BCFIRB's discretion to determine whether or not Dolce's veterinary care was reasonable. The Society did not ask for boarding and care costs and for the same reason it could have not asked for veterinary costs. If this is not within BCFIRB's jurisdiction then why did the Society not ask for other costs of care for Dolce?
23. The Appellant requests one year to pay should she be found to be liable for any amount.
24. The Society submits that the adoption fee received for Dolce is an administrative amount so cannot be accepted as a deduction and that providing time to pay is not within BCFIRB's jurisdiction; the Appellant and the Society can discuss timing to pay any amount owing.

IV. ANALYSIS AND DECISION

The daily rate

34. The Panel finds that the daily rate of \$17.07 is reasonable. The Society has supported its claim with a breakdown of costs for food, shelter, and care, and this amount is not disputed by the Appellant. The Board has found this amount to be reasonable in previous appeals.
35. The Panel therefore finds, as submitted by the Society and not opposed by the Appellant, that the care cost daily for the two dogs, Bella and Beto, is reasonable at \$17.07 per day, from January 23, 2017 (the day of seizure) to March 22, 2017 (the day the appeal was withdrawn), which we determine to be 59 days. Thus, the total reasonable daily rate care cost for which the Appellant is liable for these two dogs is \$2,014.26 (59 x \$17.07 x 2).

36. As noted above, the Society has not claimed the daily rate for the care of Dolce. Thus there is no claimed amount on this item that is properly at issue on this appeal.

SPC Costs

37. The costs for SPC attendance at the seizure was \$161.30. The Society erroneously said this was for the SPCA to attend but clarified it was actually for the Special Provincial Constable to attend. The Appellant did not object to this amount and the Panel finds it reasonable that the cost for the SPC to attend is \$161.30, and that the Appellant is liable for this reasonable cost.

Veterinary costs

38. Veterinary invoices totalling \$2972.76 were as follows:
- \$2,351.68 (Rose Valley Veterinary Hospital for \$401.79 for Beto, erroneously called Beko; \$514.56 for Bella; and \$1,317.88 for Dolce, erroneously called Meko)
 - \$588.00 (BCSPCA Penticton Veterinary Hospital for a four-hour callout by Dr. Tigchelaar)
 - \$33.08 (Lakeshore Animal Clinic for urinalysis for Bella).

Beto

39. The Society requested the amount of \$401.79 for veterinary care for Beto. The Appellant did not object to this once she received an explanation about the purpose of the blood collection fee. The Panel finds that the veterinary care cost of \$401.79 for Beto is reasonable, and that the Appellant is liable for this reasonable cost.

Bella

40. The Panel finds that the veterinary invoice for \$33.08 for Bella is reasonable and that the Appellant is liable for this reasonable cost. The \$514.56 veterinary care cost for Bella is also reasonable and was not object to by the Appellant once she received an explanation about the purpose of the blood collection fee. The Panel finds it reasonable that the veterinary care for Bella is \$514.46, and that the Appellant is liable for this reasonable cost.

Dolce

41. The Society requests veterinary care costs in the amount of \$1,317.88 for Dolce, the dog that was mistakenly adopted out after the appeal was filed. The Society submits that these veterinary costs were to treat the dog's condition which was due to the Appellant's

treatment or care (or lack thereof) of the dog. The Society argues that nothing in the *PCAA* states that an owner is not responsible for veterinary costs because the dog is adopted out, and further, that the Board cannot prevent the Society from recouping its costs for veterinary care as some sort of “damages” or punitive measure for the Society having adopted out the dog in error.

42. In response, the Appellant argues that BCFIRB does have flexibility to deduct the veterinary charge from any amount the Appellant might be liable for as the dog Dolce is not available for return should that have been awarded, and that if Dolce had been ordered returned, the cost for the Appellant to pursue an additional legal remedy, given the dog was no longer available was both beyond her financial means and was in fact one of the reasons why the Appellant withdrew her appeal.
43. The Panel is sympathetic to the Appellant’s arguments but is not persuaded. It is obviously very unfortunate that the dog Dolce was adopted out prior to the expiry of the relevant statutory time limit. However, the reality is that the Appellant has decided not to challenge the validity of the seizure, and as such we can only proceed on the basis that the seizure was valid. At the time of the seizure, the Appellant was responsible Dolce’s care and well-being. In the wake of the seizure, Dolce required overnight care and, according to invoices which were not disputed, three hospital day charges, four overnight hospital charges and IV fluids. These charges did not enrich the Society nor were they incurred on the whim of any person. Without any evidence to contradict the necessity of the veterinary care arising from a seizure whose validity is not disputed before us, the Panel finds these charges to be reasonable.
44. The issue of the premature adoption is a separate issue, and does not affect the reasonableness of the veterinary charges consequent on the seizure up until the date of adoption. Dolce was entitled to receive necessary veterinary care because she needed it. Dolce had the right to be free of distress and the right in the dog’s own best interests to be returned to a distress-free state. This right for the dog to be distress-free was not dependant on the ability to regain custody of the dog; it was simply legally required, for the dog’s own best interests. The Society cannot in our view be punished for a later mistake because it took reasonable steps to ensure necessary medical care for Dolce prior to that mistake. Given that the appeal of the seizure has been withdrawn, we do not think it would be appropriate for the panel to vary Dolce’s reasonable veterinary care costs on the assumption that the appeal would have been granted if the seizure was put in issue.
45. At the time of seizure, Dolce belonged to the Appellant; Dolce was in need of veterinary care; and Dolce received veterinary care. The Appellant is responsible; both morally and legally, for the cost of veterinary care for Dolce, given the circumstances of this case. At the moment of seizure, Dolce had relied on the Appellant to provide the care that this dog needed to remain free of distress. We repeat again that the Appellant has not challenged the Society’s seizure which was predicated on the view the Appellant failed this dog in that respect. The Panel finds no reason to reduce the liability of the Appellant related to the veterinary cost for Dolce, and finds that the reasonable cost of veterinary care for Dolce is

\$1317.88, and that the Appellant is liable for this reasonable cost. If the Appellant has any remedy for premature action on her property without her consent, she must pursue that elsewhere.

Attendance of a veterinarian at the seizure

46. The Panel notes that, over and above the \$1317.88, the Society has claimed a veterinary invoice for \$588, related to the attendance of a veterinarian, Dr. Tigchelaar, at the seizure itself.
47. BCFIRB has in the past approved as reasonable veterinary attendance costs at a seizure where there was evidence that a veterinarian's attendance was medically necessary given the Society's prior knowledge of the animals' level of distress (such that veterinarian might be required to make an assess of critical distress and potential euthanization or determine whether animals are fit for transport) or where there are compelling reasons for concluding that animals had been deprived of necessary veterinary care and the attendance of a veterinarian is essential to allow the Society to make an animal-by-animal assessment as to which animals should be removed and which should not: see *Simans v. BCSPCA*, December 2, 2016, para. 182.
48. On the other hand, BCFIRB has not automatically approved all veterinary expenses, as in *Andrusek v. BCSPCA*, October 14, 2014 at para. 107 where a second veterinarian was retained after the seizure to assist the Society in connection with its review decision. Further, in *Zhou v. BCSPCA*, June 6, 2016, at para. 39, a medical invoice was varied as it was determined that boarding one cat at a veterinary clinic was done but was not required medically, and the Society could have reasonably boarded the cat elsewhere.
49. In this case, there was no opposition to this veterinary charge however the Panel reviewed it in any event. The Panel is of the view that in the circumstances of this case, the Society was reasonable to have requested that a veterinarian attend the seizure to review the condition of the animals as well as the living conditions of the animals and the contribution of those living conditions to a finding of distress. The Panel finds it reasonable that the Society would want the veterinarian's advice and his impression of the availability of adequate food, water, shelter, ventilation, light, space, exercise, care, and veterinary treatment; and his impression of whether or not these dogs were kept in conditions that were unsanitary, or were unprotected from excessive heat or cold, or injured, sick, in pain, suffering, abused, or neglected.
50. As such, the Panel finds it is reasonable for the Appellant to be liable for the amount of \$588 for the veterinarian to attend this seizure, given the particular circumstances of this case.

Claimed credit for adoption fee

51. As noted above, the Appellant argues that any costs amount she is liable for should be reduced by the adoption fee of \$299 (the Panel does not find that the taxes or registration fee or microchip fee would be a proceed of sale).
52. We note at the outset that the Society has not claimed the \$299 adoption fee as a care cost. Rather the Appellant is seeking to have that adoption fee, which the Society received from a third party for Dolce, set off against the costs for which it is liable under s. 20(1) of the *PCAA*.
53. Section 20(4) of the *PCAA* states that: “If the proceeds of a sale or other disposition *exceed* the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the *balance* from the society.” [emphasis added].
54. Section 20(4) makes clear that the Society is entitled to keep adoption fees except to the extent that this would profit the Society relative to the care costs incurred. The apparent legislative purpose here is, at least in part, to prevent the Society from having a financial incentive to remove an animal. In this case, as the proceeds from Dolce’s adoption (\$299) clearly do not exceed the amount the Appellant is liable for (\$5030.87), the Appellant would have no ability to make a claim under s. 20(4).
55. Should the panel, in its discretion under s. 20.6(c), deduct the \$299 adoption fee from the \$5030.87 care costs on the basis that the Society has already, by that amount, obtained a partial set-off of its care costs for Dolce?
56. The Society has emphasized that the \$299 fee is an “administrative fee”, meaning that it reflects that the Society itself incurs costs in carrying out the adoption process. We think that is a reasonable position in the circumstances of this case.
57. Had there been evidence that the adoption fee was clearly out of proportion to the administrative cost of facilitating the adoption, we might have been prepared to consider granting some relief on this ground to avoid the prospect of the Society receiving double compensation (care costs that did not take into account the profit from a sale). However, given the amount, and given the reality that the Society does necessarily incur administrative time and cost in attending to an animal’s adoption, we are not prepared to recognize this amount as having realistically set-off any of the claimed care costs relative to the seizure.

V. ORDER

63. The Panel confirms that costs for which the Appellant is liable under section 20(1) is **\$5,030.87** (\$2,014.26 + \$161.30 + \$33.08 + \$401.79 + \$514.56 + \$1,317.88 + \$588)

Dated at Victoria, British Columbia this 21st day of April 2017.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD Per:



Corey Van't Haaff, Vice Chair and Presiding
Member



Diane Pastoor, Member