

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

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 18 ANIMALS (11 CATS AND 7 DOGS) AND COSTS

BETWEEN:

FAYE PARKINSON

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Corey Van't Haaff, Presiding Member

For the Appellant:

Self-represented and Pene Billingham, representative

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

October 21 & 24, 2013

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 appeal is from the September 23, 2013 (delivered and referred to as September 24, 2013) Reasons for Decision (“Reasons”) issued by Marcie Moriarty, the Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (“the Society”). The appeal was filed on September 26, 2013 and heard by a one-person panel in a telephone hearing on October 21 and October 24, 2013. The Appellant gave evidence and at times was assisted by her representative, Pene Billingham, who also took part in direct and cross examinations. The Society was represented by counsel and called an expert witness, veterinarian Dr. Adrian Walton and called Provincial Special Constable and Society employee Laura Lavigne. The Society also relied on Ms. Moriarty’s affidavit sworn October 15, 2013 as evidence in the proceedings. The call was recorded.
3. The Appellant is appealing the Society’s decision to seize eighteen animals from her residence (11 cats and 7 dogs) on September 7, 2013. She is seeking the return of some but not all the animals and she says she cannot choose which animals she wants returned. The Appellant is also appealing costs.
4. The first decision since the amendments to the PCAA came into force on March 20, 2013 is *A.B. v British Columbia Society for the Prevention of Cruelty to Animals*, (August 9, 2013) and that decision is currently the subject of an application by the Society for judicial review where one of the issues is the appropriate standard of review to be applied to decisions made by the BC Farm Industry Review Board (“BCFIRB”).
5. This hearing is conducted on the same basis as set out in *A.B. v BCSPCA*, specifically that appeals under Part 3.1 of the PCAA are not required to be conducted as true appeals, and that BCFIRB is not required to defer to decisions of the Society. Rather, the onus is the Appellant 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 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 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.
6. The Society proceeded with the appeal on the understanding that its participation was without prejudice to its application for judicial review in *A.B.*.
7. During the course of the hearing, the Appellant advised that she did not believe that she had certain documents or certain photographs referred to. However, after a careful review I am satisfied that proper disclosure was made and that she actually did have every

document referred to, and had every photograph reviewed and discussed. At a few points in the hearing, the Appellant suggested the animals in the Society's care were not her animals. Despite the Appellant's suggestion to the contrary, I am also satisfied that the Society did have the actual animals that lived at her house at the time of the September 7 seizure.

II. Brief Summary of Decision

8. Section 20.6 of the *PCAA* permits a panel, 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 animal. For reasons that will be explained in detail later, I have dismissed this aspect of the appeal.
9. In my opinion, based on the totality of the evidence heard in this appeal, it is not in the best interests of any of these animals, as the total group, as a smaller group, or individually, to be returned to the Appellant. If any of the animals were to go back, with or without conditions, I am satisfied that the dogs and cats would not maintain good health and that some (and ultimately all) would again be found in distress. I have concluded that the Appellant, despite her best intentions and despite her professed love for her animals, is not able to properly care for the animals, and is not able to recognize the signs of distress or the causes leading to distress, and as a result, cannot protect the animals from circumstances likely to cause distress. As a result, I direct that the Society, in its discretion, may destroy, sell or otherwise dispose of the 7 dogs and 11 cats.
10. I am reserving my decision on costs, pending receipt of further information which I detail below.

III. The Society's Powers and Duties

11. 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*, "Relieving Distress in Animals".
12. 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. 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: s. 20.2(3).
13. 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.

14. Sections 20.2(4) and (5) 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.

15. Ms. Moriarty, as the Chief Prevention and Enforcement Officer with the Society, makes its review determinations and it is her September 24, 2013 Reasons that are the subject of this appeal.

IV. The Appeal Provisions

16. The right of appeal to BCFIRB is a result of recent legislative reforms to the *PCAA* which gives lay people an alternative to a more formal judicial review or judicial appeal. These reforms give BCFIRB broad evidentiary hearing, investigation and inquiry powers and broad remedial powers upon hearing an appeal: ss. 20.5 and 20.6.

V. Documents and Exhibits Relied Upon by Panel

- Exhibit 1 the appellant's emails and those of her representative sent on or about October 8 including an email with attached photographs, collectively;
- Exhibit 2 the expert witness contact form, the CV of Dr. Walton and the supplemental report of Dr. Walton collectively;
- Exhibit 3 the affidavit of Laura Lavigne, sworn October 9;
- Exhibit 4 the affidavit of Leanne Thomson sworn October 9;
- Exhibit 5 the affidavit of Marcie Moriarty including all the exhibits contained within and including the electronic versions of the photographs contained within;
- Exhibit 6 the affidavit of Ulla Herlev, sworn October 18, 2013.

VI. Decision Being Appealed

17. In the Society's September 24, 2013 Reasons, Ms. Moriarty summarized the following documents she relied on in coming to her decision: the Notice of Disposition, the Warrant and Information to Obtain, notes of SPC Carey, notes of SPC Thomson, statement of SPC Lavigne, statement of SPC Thomson, veterinary reports, notes and invoice from Dr. Walton, Shelter Buddy file summary 157427, photographs taken during and after the

warrant, and numerous emails from the Appellant. She also reviewed the decision made by the Society in 2008 to seize 58 animals from the Appellant and her court history concerning animal cruelty.

18. In the Society's Reasons, Ms. Moriarty stated that she satisfied herself that the seizure was performed in accordance with the *PCAA*.
19. Ms. Moriarty's affidavit relied on the totality of the evidence before her but specifically notes that she relied on the fact that SPC Carey reasonably formed the opinion that the animals were in distress as defined by the *PCAA* and that SPC Carey reasonably formed the opinion that the appropriate course of action was to take custody of the animals in order to relieve their distress.
20. She also referenced past cruelty investigations concerning the Appellant, dating back to 2006. Of particular note, the Society seized 58 dogs and cats found in the Appellant's possession and found to be in various degrees of distress, details of which are in the November 28, 2008 report of Dr. Steinebach. As a result of that seizure, the Appellant was charged with animal cruelty both criminally and under the *PCAA*. The Appellant pled guilty to the offences under the *PCAA* and was prohibited from owning or possessing more than four animals (all of which must be neutered) until August 27, 2012. After being found in breach of this condition twice, the conditions were extended to August 27, 2013.
21. On September 3, 2013, the Society got a call regarding animals on the Appellant's property and the Society tried to contact the Appellant to no avail. A warrant was obtained and a search executed on September 7, 2013. Deplorable conditions of the Appellant's premises along with non-availability of food and water for some of the animals led SPC Carey to conclude the 18 animals were in distress as defined by the *PCAA*. All animals were seized and inspected by a veterinarian, Dr. Walton, whose notes on the condition of the animals form part of the record.
22. The Appellant was not present for most of the search as she asked to be taken to the hospital after the RCMP entered her home, and was, by ambulance.
23. After an exchange of emails and some confusion over whether or not the Appellant received all the documents disclosed, the Society rendered its decision. In part it read:

Having regard to all of the above I must conclude that the animals were in distress at the time of seizure and that if they were returned to you they would again deteriorate. Your lengthy history with the BCSPCA and your apparent inability to meet the basic needs of the animals in your care leads me to doubt whether you would be able or willing to comply with the terms and conditions that would be included in any agreement of care to return the animals. You have demonstrated that not only do you not comply with orders issued by the BCSPCA but you similarly have difficulty in complying with the orders of the court, I think that it is important to note that it only apparently took you 10 days from the end of your prohibition on owning or possessing more than four spayed or neutered animals to amass a further 14 animals. In our telephone conversation, you seemed to suggest that you still owned these

additional animals but that, prior to August 27, 2013, they were residing with your daughter. This of course would be in breach of your court order not to “own” more than 4 animals. I am not convinced that it is in the best interests of the animals to be returned to you. As has been previously explained to you both in 2008 and with respect to this current case, you are responsible for all costs of care associated with your animals pursuant to section 20 of the Act. To date, boarding costs total \$3280 and veterinary costs are approximately \$2000.

VII. The Appellant’s Case

24. The Appellant appealed the Society’s decision, saying her animals are healthy and that she was permitted by a previous court order to have a “show dog” – a Sharpei – which by definition means unaltered. She also disputed the costs claimed by the Society for daily care and seeks the return of her 7 dogs and 11 cats back although she later says she only wants some not all of her animals back.

VIII. Condition of Appellant’s Home and Animals

25. The Appellant submitted photographs that she said were taken shortly before the seizure. Her photographs show some dogs, apparently a puppy and a dark Sharpei, and some cats possibly kittens, but many photographs are so blurry one cannot see detail. Cages in the living area are visible in many photographs, as are leashes on dogs in the house and outside. The photographs show that the house is cluttered and it appears there is some staining on one large rug; the kitchen counters appear cluttered.
26. The Appellant described herself as someone who lives life for the animals and loves them so much. She said her neighbours have made her life hell as she believes they wish to purchase her residential lot.
27. She described the kitty litter availability as having five litter pans plus a huge kiddy pool filled with kitty litter. She changed the litter frequently and scooped every day and said she will do it more often in the future. She cleaned the containers with baking soda and lined the bottoms with paper. She acknowledged that male cats “squirt” all over the house. She alternated which cats came into which parts of the house so they can all run around for exercise.
28. She had dog crates for dogs and caged the small dogs with their own food to eat. She described the small dogs as two pounds each. The female Sharpei was in the back yard and was on a chain as there is no adequate fence. The dogs sleep inside for warmth.
29. She didn’t think of her animals as thin and often put her own food dishes on the floor after eating to see if any animals might like her food.
30. She said the animals get panicky when groomed and she had some clippers but they don’t work so she uses scissors the best she can. She has bathed her animals before and will do so again.

31. The Appellant also said that some of her animals don't get along with others, and she blames this, partially at least, on the Society's raid in 2008 when the animals were spooked. She also believed that during the 2013 seizure, one of her kittens was stepped on by the Society's staff.
32. She acknowledged that her home is small and said she has a lot of stuff and also used dog crates as storage. She has fans and air conditioning in summer.
33. On cross examination, the Appellant said she is 71 and in pretty good shape with some health issues and is able to do as much as she can for any of her animals. Her son helps her around the house at times when she asks, but she doesn't ask unless it's absolutely necessary. She has paid a handyman to help clean around the side of the house and clean the roof.

IX. Circumstances Around Seizure

34. The Appellant said she was either not home or too ill to answer the door when the Society had attended in the days prior to the September 7, 2013 seizure. She said she is still frightened from the experience of the 2008 seizure which she refers to as a break-in.
35. The Society's SPC Carey entered through the window and the dogs began barking. She said the Society let all the dogs loose inside the house and some of her animals may have pooped and stepped in it and spread it around or she may have missed some on clean-up, who knows? She said it made sense the dogs would poop when someone came through the window.
36. The previously neat play pens for the dogs were a mess after the Society entered the home. The Society brought junk from behind things and from storage areas. She doesn't remember any dirty dishes piled up. Two cats were sharing one food and water bowl and the male cat did not look the greatest as he lost some fur in a prior fight with another male cat inside the house. The Appellant agreed that most animals were badly matted with urine stains; she said she did not have a groomer but groomed the animals herself but the short coated animals needed no grooming.
37. When asked about the strong urine smell described in the affidavits of the SPCs, the Appellant said she cleaned all the time, and usually if she smelled something, she would pick up poop which she usually did every day though she missed sometimes. She disputed the existence of large piles of excrement. She did not know how some water buckets became dirty. She does acknowledge many crates and debris on the deck. She agreed the yard needed cleaning. She agreed the ground was worn outside by the dog's chain. She agreed the kitchen was cluttered but disputed that it was dirty. She does say her house is very dusty.
38. The Appellant did concede during her testimony that some things were soiled and her outside Sharpei did not like cats so she had to watch them continually as the dog liked to "play" with the cats. Dogs and cats would be put in and out of cages according to which

dogs or cats were coming inside loose. She said her animals don't live in cages but do spend time in there.

39. She disputed allegations regarding a lack of available water and added that the veterinarian did not report any dehydration.
40. A SPC took extensive photographs of the Appellant's home at and after the seizure. These were put to the Appellant, who either did not have memory of some details, or disputed allegations. She said it is a lie that there were significant quantities of feces and urine in her home and she denies a strong smell of urine. She agreed some animals had longer nails but she usually keeps their nails down pretty good. She doesn't always notice the poop right away and when looking at one photo, said she should have cleaned that up. She said the dogs didn't go near the dirty bucket of water. She said the can of air freshener in a cage was a toy for a dog, and what appeared to be a roll of masking tape was actually a teething ring for a dog.
41. She said most of her dogs have discharge from their eyes and she wiped them every few days. She did not seek veterinary advice for the eyes as it was not a life threatening condition. She mentioned that she had seen a few veterinarians but did not provide any proof of visits nor could she recall when those visits occurred but agreed it could have been years earlier.
42. She stated that while some of the animals described by the Society sound familiar, she thought some of the animals referred to may not in fact be her animals. After some discussion, the Appellant appeared to recognize the animals as hers, after hearing descriptions.
43. She said there is always food down for the animals just in case. Only the cats were matted as they were not groomed enough.

X. Prior History With Society

44. The Appellant was cross examined at length about her prior history with the Society and 2008 seizure. The Appellant disputed the number of animals seized in 2008, saying 42 animals were taken, not 58. She also said the Society makes up its orders ahead of time. She said police attended her home in the past but found nothing wrong. She said her neighbours make up stuff. She said the pictures taken were terrible and were fabricated.
45. The Appellant described the 2008 seizure as a time when she was taking in other people's animals that were in bad shape and she got into trouble. After the court ordered her to have no more than four animals, her daughter came and took the rest of the animals.
46. In response to panel questions, the Appellant said many of the dogs that went to live with her daughter following the 2008 seizure came back a week or so before the September 7, 2013 seizure, being driven from Arkansas to Seattle then to her home in Mission. She attributed their thin condition, the poop between the pads of her animals' feet (described

by the veterinarian) and the fact that they were not clean enough and smelling of pee (but not to a high degree) to the travelling.

XI. Appellant's Argument

47. In summary, the Appellant argued that a lot of what the Society says is not true. She cannot stress enough how the Society made things up and had done so for years. She says the rooms were ripped apart by them; they picked up old stuff on the floor and found old feces. She felt totally robbed. She may have missed some dirt in the cages and she did have a problem with dust but she was baffled by the way the Society talked about her and didn't want them around. She says there is nothing wrong with cardboard boxes as they are like chew toys and are thrown out when dirty. She keeps her animals in playpens to keep them safe and says it's like babysitting children. She says she does not take her animals to the vet unless it was really needed as money is tight. She loves her animals and does not know where -- or if -- she went wrong. She just wanted to know where her animals were.
48. The Appellant's representative said it was a total contradiction that there were no photos of the test strips yet the constables removed their masks inside the home when it was supposed to smell so strongly. The Appellant remarked that one photo of her cat indicated that someone put glue on the cat's eyes.

XII. Desired Outcome

49. The Appellant is not seeking a return of all her animals, just 2 dogs and 6 cats. She says that if she had fewer animals, she would have new ways of doing things. It would be helpful if someone shared best practices with her as she is old school and she cares for her animals the best she can. She didn't want the Society involved as they are liars and they make false notes in their records. She can borrow money for future veterinary bills and can have her home fixed with some government grants. She might want to earn some extra money through breeding her dog. She agreed to follow any mandates the panel may set.
50. She specifically asked for Baby and Miracle back and a couple of kittens and the Sharpei who had its eyes done in 2009 as it is an excellent watch dog and she lives alone and is scared of her neighbours. With respect to some of the other dogs she stated that if they can find good homes elsewhere, that is fine; if not, she will take them back.

XIII. Costs

51. The Appellant disputes the amount of costs owing to the Society. She said it doesn't cost much to feed dogs and cats, the Society has volunteers who are responsible for walking and cleaning so there is no labour charge for that, and the Society makes money when it sells animals. The Society's fees were way too high and a little dog might cost \$2-3 a day and \$4 is still too much for a big dog for food.

XIV. The Society's Case

52. The Society called its expert witness, veterinarian Dr. Walton. In addition to Dr. Walton's September 11, 2013 letter detailing his examination of 17 seized animals (corrected in testimony to 18 animals) and multiple clinical computer records and handwritten clinical notes, there was an October 9, 2013 update to his September observations, which was not the result of a new assessment of the animals.

XV. Dr. Walton's Evidence

53. Dr. Walton testified that he examined the animals following their seizure on September 7, 2013. Of these animals, which were mostly dogs, he thought a few were pregnant and, in general, a lot were suffering from extreme matting and urine and feces in the area from rectum right down to their feet and in between pads. A few cats had significant dental issues. Body condition is scored from 1 (emaciated) to 9 (obese) with 5 being normal. Some animals were significantly underweight, scoring 2 and 3. Urine and feces staining happens when animals sit in their own waste, and the matting in their pads happens if they are walking in their own waste. Almost all animals had ocular dermatitis which is not normal, even in flat-faced animals. He asked if Society staff who attended the Appellant's premises experienced any eye issues themselves as he suspected chronic elevated ammonia levels – a by-product of urine. They affirmed this. Dr. Walton reported having to wear gloves while examining the animals due to excessive urine and feces on the animals.
54. Dr. Walton testified that his professional opinion was that several animals were suffering from poor body condition (specifically animals 308055, 308052, 308067, 308062) and that since no medical conditions were noted that could have caused this poor condition, the nutritional demands of these animals were not being met by the owner. Dental disease could have accounted for thin body condition and the dental disease was obvious on cursory exam so should have been noted by a lay person and treated. Animal 308067 had painful ingrown nails, had recently been pregnant (contributing to poor body condition) and had an ear infection, easily noted on this cat. Again, it is his opinion this should have been noted by a lay person and treated. The two Sharpeis had skin issues due to environmental or food allergies and required long-term monitoring.
55. None of the issues were acute; instead they were evidence of a chronic disregard of the animals' medical needs. All could have been dealt with under veterinary supervision. Many animals showed heavy matting with urine and feces, indicative of lack of regular grooming. The animals showed evidence of prolonged neglect of easily seen medical issues, and extremely poor care of coat and nails. In his opinion, the animals should not be returned as the medical issues were easily observable yet not acted upon.
56. Dr. Walton commented on the affidavit of Ulla Herlev, a paralegal with Society counsel's law firm, sworn on information and belief following a conversation with Ms. Moriarty. This affidavit listed the weights of the three cats and one dog that were previously noted as having poor body condition. Three animals' weights increased after seizure; the fourth

did not but that cat had dental surgery while in custody, which would account for continued weight loss due to pain in the mouth, Dr. Walton concluded that the three that gained weight had significant weight gains of 10 and 25 per cent, and since the animals did not have medical issues, the thin body condition was due to lack of uptake of food and not receiving enough calories. He states that a lay person would have noticed the dental issues, by lifting the cat's lip and seeing loose rotting teeth. The ingrown nails would have also been easy to see.

57. The Appellant did not take much issue with Dr. Walton's evidence. She said his oral report was very good and she would like to use him as her veterinarian. She said she could not determine if Dr. Walton was right but she could only attest to the condition of the animals. Dr. Walton reviewed many of the animal's conditions on a case by case basis. He agreed it appeared the Sharpei's eyes had been done at some point and needed it again.
58. Asked by the Appellant if the animals were distressed due to the Society's entry into her home, Dr. Walton agreed that could be stressful but he couldn't comment on degree of distress. He said the state of the animals when appearing in the clinic was that some were very nervous but the next day (September 8) when he visited the shelter, the two Sharpeis were much more social and the Papillions – the small dogs—did not seem stressed at all. He noted that the animal's eyes on the 8th were not as bad after being washed at the shelter than they were on the 7th. He clarified he saw seven dogs and two cats on September 8 at his clinic, and nine cats on September 8 at the shelter.
59. In response to the panel's questions, Dr. Walton explained the poor body condition could be from not being fed but also from inadequate caloric intake to meet the needs of the animal; for instance, kidney failure or Irritable Bowel Syndrome could affect nutritional absorption. On first exam, noting low body scores, he took a wait and see approach. If the animals continued to lose weight, there could be a systemic cause or a behavioural cause such as pain from dental preventing eating of available food. After he completed exams on September 8, he advised shelter staff that if they noticed anything medically wrong, he would do a follow-up.
60. He said the animals should gain weight within a couple of weeks if the issue was availability of food. That turned out to be the case. He said there was no evidence that any of the animals was so emaciated as to be near organ shutdown. He explained it was possible to house a large number of animals and have them all be healthy. In this case, some animals appeared healthy but were living in unacceptable and inappropriate conditions. Animals are extremely resilient and will do what they need to do to survive. The animals were walking in their own feces and urine to the extent that excrement filled their foot pads. Despite some healthy animals being amongst the Appellant's animals, there was no evidence of proper animal husbandry. In his opinion, if the healthy animals were returned, they would not fare any better than the unhealthy ones. In an ideal situation, there would be regular grooming and dental and veterinary care, and environmental enrichments to prevent animal dominance and submission. Each animal would require some time alone, away from the pack, to gain quality of life. Each would

require its own food bowl and one litter pan per cat, spread far apart to prevent dominance over a particular area. He again said almost all the animals had eye inflammation.

61. He also said when he examined animals on September 7, his own eyes were burning by the 3rd or 4th animal.

XVI. The Moriarty Affidavit

62. The Society also relied on the affidavit of Ms. Moriarty (EXHIBIT #5) which set out her credentials and the mandate of the Society to prevent and relieve animals from situations of cruelty, neglect and distress. On occasion, the Society seizes animals from the care and custody of their owners to relieve the animals from situations of distress, as well as taking abandoned animals into custody and arranging for food water shelter and veterinary treatment.
63. Ms. Moriarty notes that while the 18 animals were in custody, five puppies were born; four lived.
64. Her evidence is that the animals were found in distress as defined by the *PCAA*. They were deprived of adequate food, water, shelter, ventilation, light, space, care or veterinary treatment; and were kept in an unsanitary conditions, not protected from excessive heat or cold, were injured, sick, in pain or suffering, and were neglected, even though the condition of animals varied depending on where they were housed and their ages. The Appellant should have been aware of her responsibilities in relation to the animals given her prior history with the Society and the courts but instead she has displayed an inability or unwillingness to provide proper care for the animals and an unwillingness to cooperate with the Society in relation to inspections of her home. The Society has an exclusive mandate to relieve animals from situations of distress but given its other policing obligations and limited funds, it cannot provide continual policing in relation to one person and set of animals. The Society believes if the animals were returned to the Appellant, they would again be found to be in situations of distress and that if there were any given gaps in policing, the animals would fall into distress. Even with continual policing, they would likely fall into distress.
65. The Appellant is responsible for the cost of caring for her animals following their seizure which totaled \$12,408.48 broken down as follows: \$2780.48 (veterinary costs), \$240 (staff time for seizure), \$4840 (cat boarding and feeding) and \$4620 (dog boarding and feeding) from September 7 to October 21, 2013.

XVII. SPC Lavigne's Evidence

66. The Society also relied on the affidavit of SPC Laura Lavigne. As a result of the panel's review of this affidavit and a request by the Appellant, SPC Lavigne was asked to attend the hearing for cross examination on her affidavit. SPC Lavigne assisted SPC Carey with the execution of a search warrant at the Appellant's home, accompanied by an RCMP

officer. She attached to her affidavit a statement she prepared on September 10 of her observations at the seizure.

XVIII. Condition of Premises Inside and Out

67. SPC Lavigne's statement said she observed the rear of the property as being in severe neglect with overgrown vegetation, broken fencing and an old trailer and tarp along the fence line. A tan Sharpei was seen and she heard its chain dragging. She proceeded to the front of the house and saw SPC Carey climb in a side window. She heard a number of dogs barking. SPC Carey opened the front door and the RCMP checked that the house was safe to enter. SPC Lavigne noted a strong smell of ammonia, feces and dampness. A non-insulated enclosed porch led to the main house through sliding glass doors. The front room had windows partially covered with fabric. Four Chihuahua-type dogs were contained in an area surrounded by walls, debris, cupboards, rusty folded exercise pens, and a garden gate. The area was extremely cluttered and contained large amount of feces in varying degrees of decomposition. Two stacked wire crates were seen, one containing newspaper and a food bowl and the other containing two cats, crowded with dirty dishes, dirty little box, a cardboard box soaked and stained with unknown liquid, and a filthy hair-covered upholstered stool. The cats looked unkempt with stringy greasy coats. A child's turtle-shaped wading pool was filled with cat litter, and there was a scoop and shovel. Contents appeared wet and soiled and the smell was offensive. Large piles of household items or clothes were piled around and it was hard to maneuver. The living room had windows partially covered and one empty rodent cage with kitty litter was on the floor. The mudroom led to the back yard where the Sharpei was chained. There was a medium plastic dog crate with kibble, one bone, and a bowl of filthy slimy water. The back deck was littered with debris and several dog crates. There was a dog house but the Sharpei couldn't get in as it was covered with debris. The Sharpei was chained with a heavy chain which wore down the ground where it was dragged. Feces in various stages of decomposition, including fresh, were seen, and the chain had created piles of feces and debris on both sides of the area where it was dragged. Two bowls of dirty water were available. The dog did not seem friendly but had hair loss around the eyes, some discharge and folded eyelids. The bedroom was extremely cluttered and two wire cages were empty though the lower cage contained an empty bowl, newspaper, and a dirty litter tray. The upper cage had several bowls - one with kibble, one with water, and newspaper. Another rodent cage with similar contents inside was seen. The kitchen windows were covered with fabric. That room was cluttered and dirty with dried food and debris on the counters and in the sink. Two wire dog crates were stacked up, the lower one containing a black Sharpei; the upper one a nursing cat and two kittens. Cages were dirty with accumulated dirt and hair on the bottom and sides, soiled dishes and newspapers. Two other cages were seen. One had no animals, one had a Chihuahua which did not have access to food or water.
68. In each room, SPC Lavigne used a PHydriion Ammonia strip turning, variably, yellow or green over a period of up to 30 seconds.

69. SPC Lavigne testified she was employed in her 20th year with the Society, investigated an average of 250 complaints a year, and has been involved with a total of 100 – 200 seizures. She attended the September 7, 2013 seizure to generally assist SPC Carey and confirmed that her September 10 report reflected her observations to the best of her memory. SPC Lavigne was suited up with protective clothing and a mask, due to contamination. She noted the very strong odor and described it as unpleasant and offensive – ammonia, urine, stale feces, and musty. It wasn't long before her eyes were burning and, within half an hour, she felt her skin burn. The smell was worse in some rooms than others.
70. SPC Lavigne went through the Society's electronic photographs, adding additional detail and commentary about the amount of filth, hair, staining, old food-encrusted dishes, wet smelly feces with lots of smears in cages, and fur stuck to sides of cages. She explained the ammonia test strips turned colour depending on amounts of ammonia in the air and the strips just confirmed their own observations about ammonia. The strips were for the Constables' own safety to help them determine if ammonia levels were hazardous. The strips were a crude method of testing but gave a general idea of ammonia levels from urine but did not measure anything from feces.
71. Her notes followed the order in which she moved throughout the home. The clutter made it challenging. After the animals were collected and put into vehicles, some were taken to the Burnaby shelter and some to the Dewdney Animal clinic. All the cats needed an exam but could it was agreed by the SPCs that they could wait. The dogs were clearly suffering with painful eyes so they went directly to the veterinarian to get relief.
72. She confirmed the four animals' weights, as detailed in the Herlev affidavit, by calling the shelters and confirming the weights by speaking to an animal care attendant, and an animal health technician.
73. In her opinion, based on performing numerous search and seizures, that these animals were not receiving even the basic care required. The odour was bad enough but was made worse by the excessive filth, and feces, and unclean food and water, and an outside area where the dog did not have shelter but did have painful-looking eyes.
74. On cross examination, the Appellant suggested the size and number of individuals in the home caused the crowdedness but SPC Lavigne denied this was the reason. SCP Lavigne explained how the test strip tests were taken (by pulling strip, adding distilled water and counting) from the middle of the room. She acknowledged that, depending on where the Sharpei was attached outside, the dog could have sought shelter on the porch. She could not confirm what the debris and filth consisted of. She did not witness any stuff being moved. She noticed dirty dishes in the kitchen but did not notice clean dishes in the hallway cupboard. She explained animals could choke on people food—it could be harmful or it could be fine, depending on the animals. She acknowledged that there would have been some stress to animals during seizure.

75. In response to panel questions, SPC Lavigne explained that she didn't know where the test strips came from or if they were accurate scientific tools. She explained she filled a syringe with distilled water and carried it in her pocket. Strips are originally brick red/brown colored, then turn yellow to indicate ammonia in the air and then green indicating a higher level. She thought there were one or two levels even higher than the yellow or green. At the highest reading, constables may bail out. She did not think the fecal and filthy smears were the result of improper cleaning but rather from animals rubbing or laying in filth. She explained that she could taste ammonia in the back of her throat and she recognized the taste as ammonia. SPC Lavigne said that SPC Thomson did remove her mask at times to speak or because she was sweating. Masks are quite hot so people sometimes take them off for short periods of time.

XIX. Society's Argument

76. The Society argued the *PCAA* grants it the exclusive mandate to prevent and relieve animals from situations of cruelty neglect and distress, and that *Eliason v SPCA*, 2004 BCSC 1773 summarized the scheme of the Act as follows:

The scheme of the Act clearly was 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.

77. Pointing to the evidence, the Society argued that the current issues regarding a lack of skin and dental care and unsanitary living conditions are similar to those detailed in the 2008 veterinary report prepared for the 2008 seizure and related hearing. The Appellant plead guilty to charges and was placed on restrictions and those conditions were extended by a year due to breaches. Despite the order, the Appellant did not neuter all her animals, even up to the September 7, 2013 seizure. She did not comply with permitting the Society into her home on two hours notice.
78. On September 7, the conditions in the Appellant's house were deplorable. Dr. Walton remarked that his own eyes burned when examining some animals at his clinic, due to urine on the animals. There was heavy urine and fecal staining. SPC Lavigne testified as to the odour and varying degrees of fecal decomposition.
79. Although the Appellant claimed the animals were not kept in cages routinely, Dr. Walton's comments on the amount of filth between the toes of the animals and the amount of filth seen on the cages indicated that they were kept caged for lengthy periods of time, definitely long enough to urinate and defecate. Nose irritation, likely from rubbing on cages or from auto immune causes, was noted by Dr. Walton but the Society speculated it was from rubbing.
80. The Appellant was more concerned with the pleasure she derived from the animals than the animals' welfare and she did not care for them or their welfare in an appropriate way. She had the returned Arkansas animals for ten days and couldn't handle the task of caring for them in that time. She did not hire a groomer and she did not relieve their distress. Dr. Walton mentioned longer-term skin and eye conditions.

81. The Appellant's own testimony described interspecies aggression, referring to the Sharpei which did not like cats.
82. Three of four animals with low body score gained weight, once they received adequate care and nutrition. This is proof they did not receive adequate care and nutrition in the Appellant's care. The four animals in her custody since the court order in 2010 did not go to the veterinarian for any care. The Appellant argued these animals were weighed normal amounts but suddenly lost weight at the time of seizure, but this was discounted by the veterinarian. Dr. Walton noted one dog was dehydrated, supporting SPC Lavigne's comment about lack of available water. The Appellant downplays the nail issue whereas the veterinarian said it would be painful. Dr. Walton noted the environment at the Appellant's home would cause distress and, if the animals are returned to that environment, they will return to being in distress. Easily observed medical conditions were not acted upon but should have been. The four animals in her possession were running through filth even before the Arkansas animals were returned.
83. The Appellant did not accept responsibility and displayed animosity toward the Society. Her own representative said four animals is her maximum while the Appellant suggests eight is ideal. She admitted to considering breeding an animal in the future. She did not appreciate her own limitations. She should have known basic animal husbandry but lacked the wherewithal to recognize and relieve distress. She has a history with the Society and her current negative comments toward the Society indicate she won't let them monitor her animals' welfare in the future.
84. As for costs, the Society argues that the onus is on the Appellant to show that the Society's costs were unreasonable. The Appellant has not tendered any evidence to supporting varying the costs. The Society is not charging for the care of puppies born in custody nor is it charging for animals that are in volunteer foster care. The Society relies on *Haughton v. BCSPCA* [2010] BCJ No. 546 both for its methodology and the fact that \$10 per cat and \$15 per dog are reasonable reflection of the cost incurred by the Society.

XX. Decision

85. In all material respects, the Society and Appellant met all deadlines for filing and for exchanging documents.
86. I now consider the legislative framework.

Section 9.1 of the *PCAA* provides:

9.1 (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.

(2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.

87. "Section 1(2) provides:

- 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.

XXI. Were the Animals in Distress at the Time of Seizure?

88. At the time of seizure, the 18 dogs and cats living with the Appellant were each at differing levels of health. Some were described as good; some were described as having poor body condition. None were in critical distress or were described as emaciated.
89. Almost all the animals suffered from excessive ocular tearing due to elevated ammonia levels. Although I do not find the results of the test strips to be at all helpful, I accept Dr. Walton's testimony that the dogs and two cats suffered from eye issues and he himself felt the effects of excessive ammonia levels just from the animals while at his clinic. I find this conclusion was supported by both SPC Lavigne's testimony about the smell and the photographs taken of various litter boxes and other material looking soaked and filthy. I also note Dr. Walton's observation that many of the animals' eyes looked improved just one day after removal from the Appellant's home. I am satisfied that all the animals were deprived of adequate ventilation.
90. Most animals had urine and feces matted into their feet and around the rectal area and down toward their feet. Dr. Walton describes this as resulting from walking or laying in their own filth, and being confined in close quarters; a conclusion supported by SPC Lavigne's observation on the type and volume of excrement and dirt in cages and litter boxes, and as shown in photographs. The Appellant said it wasn't as bad as the Society suggests and offers her own photographs as evidence. I find the photographs taken at the time of the seizure to be more compelling and, combined with Dr. Walton's observations, lead to me to conclude that there were a significant number of animals with urine and fecal staining caused by being in their own filth.
91. Four animals were designated as having low body scores. Dr. Walton suggested possible causes but said if the animals gained weight after being removed from the home and being properly fed, then it was fair to conclude those animals were not getting proper nutrition from the Appellant, either due to lack of food or lack of caloric absorption. The Appellant suggested there was always food down for the animals but also describes conflict between animals that could lead to dominance over food. The condition of the dishes of food, especially old food, leads me to conclude that at least four animals, and likely more, were deprived of adequate food.
92. The condition of the home, as described by SPC Lavigne and as demonstrated in the photographs, leads me to conclude, after seeing the amount of wetness, dirty litter,

volume of feces, amount of filth, and old hair and dirt in and around the cages, that the conditions in the home were unsanitary.

93. The condition of many of the animals, such as the one with ingrown nails, and the many with excessive body matting, the ones with urine and fecal staining, the one needing dental surgery and the one with the missing testicle, lead me to conclude the animals were living in unsanitary conditions, were neglected and, in most if not all cases, were suffering.
94. One dog was suffering from dehydration as described by Dr. Walton, and SPC Lavigne noted more than once that water was not accessible or available to animals, so I conclude that some animals were deprived of adequate water.
95. The photographs of the home, along with SPC Lavigne's testimony, lead me to conclude that the animals were deprived of adequate space. I am not convinced that the animals were deprived of adequate light or shelter, but I do not need to be convinced of these two matters to conclude that all the animals were in some level of distress at the time of the seizure.

XXII. If the animals were returned to the Appellant, would they again be in distress?

96. I conclude that the animals would be in imminent danger of being in distress if they were returned. The Appellant's home is in such a state of neglect, with terrible sanitation due to filth, excrement and urine, that I cannot see how this will change if left to the Appellant. The Appellant provided no evidence of any changes she has made inside her house during the time the animals have been in custody. She does not indicate that the safety issues such as the possibility of falling debris have been addressed. Her representative, in an email dated October 8, 2013, acknowledged that the Appellant needed to make changes but there was no evidence of any improvements inside the home between the seizure and the hearing.
97. More important, the Appellant has had animals seized in the past, in 2008, and many of those animals had the same health conditions as are observed now. Although the Appellant provided reasons for the state of affairs at that time as being due to helping others with their animals, the fact remains that the animals in her care in 2008 were not being cared for and were seized.
98. The Appellant provides no evidence that the four animals she was allowed to keep between 2008 and 2013 ever visited a veterinarian for any care. These animals showed chronic health issues related to matting and staining and other conditions. The Arkansas animals that were returned to her and were in her care for about ten days prior to seizure, were matted with urine and fecal staining -- by her own admission -- but she blames that on the travel ten days earlier. She did nothing to alleviate those conditions in those ten days.

99. Most importantly for me, I see no evidence that the Appellant understands the true condition of her home, its terrible effects on her beloved animals, the actual suffering and distress the animals are experiencing, and the awful future they face if they continue to reside with her. The Appellant blamed the Society and individuals with the Society for some of the disarray in her home, and blamed travel for the condition of her animals. She minimized the filth and dirt and smell and presence of urine and feces in her home.
100. Disturbingly, she acknowledged that old poop was found when the Society moved some old papers, as if it was the Society's fault for moving the old papers. She was aware of the discharge from her animals eyes but decided against getting veterinary treatment as it the condition wasn't life threatening. All of the above leads me to conclude the Appellant doesn't understand the vast spectrum between excellent health and critical distress. She seems unable to recognize when animals need veterinary care and, in fact, did not even recognize the dangerously thin condition of some of her animals. She did recognize a need for grooming but excused the lack of grooming by saying her clippers broke so she muddles through as best as she can.
101. The Appellant professed a love for her animals and, in fact, all animals. She said she goes out of her way to help other animals she felt needed help. The intent behind her feelings of love may be sincere, but she fails totally in execution. Her love for her animals is negated by her apparent willingness to have them live in horrible conditions. She seems unaware of the distress they are in.
102. For these reasons I cannot order a return of all or even of any of the animals to the Appellant as I am certain they would again become animals in distress. I am also convinced that should distress occur again, the Appellant would not take any action to alleviate the distress.
103. I have also considered the emotional impact to the animals caused by the decision to seize and not return them. The Appellant, as I have said, professes great love for her animals; she misses them and wants them back. The evidence instead shows the animals are kept in various locations (some in cages) inside and outside of the house, and they seem to get very little personal attention, given the evidence about the length of time that some must spend in cages. One cat is described as almost feral, which is not disputed by the Appellant. One dog, the brown Sharpei, is described as aggressive even to the Appellant. The black Sharpei watch dog spent most of its time on a chain outside, given the repetitive wear in the yard. The kittens must barely know the Appellant and the puppies born while in custody have never met the Appellant. Although I am sure the Appellant feels bonded with some of the animals, there was no evidence the animals shared that feeling. Dr. Walton described the small dogs as not stressed during the first exam. He described the big dogs as more social the next day at the shelter. Any emotional bond the cats or dogs may have with the Appellant is more than negated by the terrible condition of the home and the neglected condition of most of the animals.
104. For all these reasons, I find it is not in the best interests of the animals as a group or any of the animals individually to be returned to the Appellant. Pursuant to section 20.6 of the

PCAA, I direct that the Society, in its discretion, may destroy, sell or otherwise dispose of the 18 animals (7 dogs and 11 cats, plus all animals born while in custody) seized on September 7, 2013.

XXIII. Costs

105. I have identified three issues arising from the submissions of the parties on which I need further information and as such I have decided to reserve my decision on the appeal concerning the reasonable costs of the Society.
106. First, the Society has estimated the cost of care for a dog is \$15 a day and the cost of care for a cat is \$10 a day relying in part on an evidentiary finding in *Haughton*. The Appellant has said that the costs are too high as the Society uses volunteer labour to provide some or all of the labour to care for her seized animals. As s. 20(1) of the PCAA makes the owner liable for the Society's reasonable costs, a legitimate issue would appear to arise if it were the case that volunteer labour was included in the cost estimate calculations. In order that I may properly address this objection, I am requesting that the Society provide a further affidavit to address the issue of whether and to what extent volunteer labour has been included in the Society's daily animal care costs respecting the seized animals.
107. Second, an issue arises as to how the Society determines in principle or in practice the extent of the owner's liability under s. 20(1). In this regard, I noted from Ms. Moriarty's affidavit that the Society wishes to act on its Notice of Disposition as soon as possible so that the cost of caring for the animals may be limited. However, the Society also said that it maintains its right to seek redress from the Appellant respecting all of its past and future costs of caring for the animals and their offspring. In view of these statements, I require the Society to explain how it determines when the Appellant ceases to be responsible for its reasonable costs and what impact that has on any order I may issue in this appeal.
108. Third, I would also ask the Society to provide its view as to whether an Appellant would have a further right of appeal if, following my appeal decision, the Appellant were to receive a further invoice from the Society.
109. I request that the Society provide me with an affidavit copied to the Appellant along with any explanatory submissions addressing the questions I have set out above along with any issues the Society considers naturally arising from them, by end of business on **November 15, 2013**.
110. The Appellant will then have until end of business on **November 22, 2013** to respond.
111. The Society will have until **November 27, 2013** to provide any final reply, following which I will render my decision.

112. I reserve the right to convene a further conference call to address any issues arising out of the submission process, if I consider it necessary to do so in order to properly inform myself on these issues.

Dated at Victoria, British Columbia this 7th day of November, 2013

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read 'C. Van't Haaff', written in a cursive style.

Corey Van't Haaff, Presiding Member