

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
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:

Faye Parkinson
Pene Billinghamurst, representative

For the Respondent:

Christopher Rhone, Counsel

INTRODUCTION

1. On November 7, 2013, this panel issued reasons for decision on Faye Parkinson's appeal challenging (a) the Society's decision confirming the seizure of eighteen animals from her residence (11 cats and 7 dogs) on September 7, 2013, and (b) the Society's assessment of the costs for which it says Ms. Parkinson is liable under s. 20(1) of the *Prevention of Cruelty to Animals Act*:

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 the Act with respect to the animal.

2. The Society claimed costs of \$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). This amount covered the period from September 7, 2013 (the date of seizure) to October 21, 2013.
3. The November 7, 2013 reasons decided the appeal as it related to the Society's review decision confirming the seizure, ruling that the Society, in its discretion, may destroy, sell or otherwise dispose of the animals¹. However, I deferred my decision on the costs appeal pending the receipt of further information and submissions on the following matters set out at paragraphs 105-108 of the November 7, 2013 decision:

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 practice the extent of an owner's liability under s. 20(1). In this regard, I note 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 has also

¹ Decision, para. 104

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.

ISSUE

4. The central issue regarding costs in this case relates to the boarding and feeding components originally claimed by the Society: \$4840 (cat boarding and feeding) and \$4620 (dog boarding and feeding), totaling \$9460.

SOCIETY'S ADDITIONAL EVIDENCE

5. Ms. Moriarty's most recent affidavit (November 13, 2013) has reduced the amount claimed for the boarding and feeding components. The amount has been reduced from \$9460 to \$7310. I note as well that this lower amount covers a longer period of time (to November 8, 2013 rather than October 21, 2013), and that it is, as noted below, final in the sense that the Society does not intend to claim any additional boarding fees or veterinary costs.
6. Ms. Moriarty explained that while the Society does indeed engage volunteers at its shelters and in relation to fostering animals outside shelters, volunteers in the Burnaby shelter where the majority of these seized animals are kept are not used in the care of animals involved in animal seizure operations. By policy the care of seized animals is provided almost exclusively by society paid employees. Therefore the Society maintains the cost of care remains at \$15 per dog and \$10 per cat per day.
7. The Society also said it attempts to limit recoverable costs by using trusted volunteers to foster seized animals. With the exception of veterinary and similar costs, the Society "does not routinely seek compensation to pay its volunteer fosters concerning animals fostered in such circumstances".
8. Ms. Moriarty's November 13, 2013 affidavit goes on to state as follows:
 7. Given the foregoing, the Society will not seek recompense from Ms. Parkinson for the animals during the time period during which they were fostered.
 8. On November 12, 2013 I discussed this matter with Mr. Ryan Voutilainen, the Society's Burnaby Branch Manager. Mr. Voutilainen has informed me, and I verily believe, as follows

(note, start date for animals' boarding charges is September 8, 2013 (day after seizure date), and end date for animals remaining consistently in foster is the date following release of BCFIRB's decision, November 8, 2013):

- a. 308050 Dog: To Foster 15 October, 2013 = 37 days in care x \$15 = **\$555**
 - b. 308051 Dog: In shelter – Never in Foster = 62 days in care x \$15 = **\$930**
 - c. 308052 Cat – To Foster 13 October; returned to shelter October 21 to October 26 = 40 days x \$10 = **\$400**
 - d. 308053 Cat – To Foster 23 September = 15 days x \$10 = **\$150**
 - e. 308054 Dog – To Foster 13 October = 35 days x \$15 = **\$525**
 - f. 308055 Dog – To Foster 29 September = 21 days x \$15 = **\$315**
 - g. 308056 Dog – To Foster 03 November = 56 days x \$15 = **\$840**
 - h. 308057 Dog – To Foster 23 September = 15 days x \$15 = **\$225**
 - i. 308058 Dog – In shelter – Never in Foster = 62 days x \$15 = **\$930**
 - j. 308059 Cat – To Foster 30 September = 22 days x \$10 = **\$220**
 - k. 308060 Cat – To Foster 20 September = 12 days x \$10 = **\$120**
 - l. 308061 Cat – To Foster 20 September = 12 days x \$10 = **\$120**
 - m. 308062 Cat – In shelter – Never in Foster = 62 days x \$10 = **\$620**
 - n. 308063 Cat – To Foster 30 September = 22 days x \$10 = **\$220**
 - o. 308064 Cat – In shelter – Never in Foster = 62 days x \$10 = **\$620**
 - p. 308065 Cat – In Foster 28 September = 20 days x \$10 = **\$200**
 - q. 308066 Cat – In Foster 28 September = 20 days x \$10 = **\$200**
 - r. 308067 Cat - In Foster 20 September = 12 days x \$10 = **\$120**
9. The above totals \$7,310.00 (total boarding fees claimed by the Society). Given the limited number of volunteer foster families available to the Society, we were unable to foster out all the animals for all of the time. This is less than the amount noted in my October 15, 2013, affidavit, which did not include information concerning foster volunteers.
 10. BCFIRB also asked me to comment upon the following:

[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.

11. Subject to unforeseen issues that may arise in other cases, the Society's general practice will be to cease charging boarding fees when BCFIRB releases its decision allowing the Society to dispose of animals pursuant to the Prevention of Cruelty to Animals Act. Therefore, the Society is content in this case with an order capping boarding fees on the day following issuance of BCFIRB's decision, being November 8, 2013 (generally the Society will not have time to begin to adopt animals out on the same date as a BCFIRB decision, and it did not in this case). Undoubtedly the Society will not adopt out all animals at once and immediately upon the release of BCFIRB's decision. Nevertheless, the Society is willing to waive these additional sums in this case.
12. I note that the Society will now have to incur significant medical costs on many of the animals prior to adoption, including dental procedures on a number of the cats and entropion surgery on two of the dogs. Nevertheless, to assist in resolving this matter expeditiously the Society is waiving its claim to such costs.
13. To summarize, the Society seeks the following:
 - a. Boarding fees: \$7,310.00
 - b. Veterinary fees: \$2,780.48
 - c. Special Provincial Constable time attending to the seizure: \$240.00

TOTAL: \$10,330.48

APPELLANT'S SUBMISSIONS

9. The Appellant in her written submissions provided copies of veterinary bills for animals that may include more than the seized animals, and said that was proof her animals received veterinary care. These documents were part of a 100-page submission that included veterinary invoices and pedigrees and registration papers for animals that may or may not be part of the group of seized animals, as some of the records dated back to 1993.
10. The Appellant also provided her own assessment of the commercial value of some of her seized animals using her own account of pedigreed ancestors of some of her animals, but did not offer a dollar value.
11. She then estimated the following values:

"reg male shar-pei ch sirred 5.500 blue chia apple head long coat male 2000 excelent conformation mother and four pups as i havent seen the pups ill say 600 each for the pups. two chau females gd breeders 800 each one with star on head a brown and white pappion 1500 if i can replace him three himilian kittens a picture on the floor in my kitchen appox 500 each two 7 weeks old in kittens in

kitchen 500 each older male pure himilain male cat hes pure so if i can find one unnewterd male like that id say three thousand if i can find one...”

DISCUSSION

12. Regarding costs, the *PCAA* states

- 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.

13. It is noted that the *PCAA* has been revised since *Haughton* to make express reference to “reasonable” costs.²

14. Section 20.3(1)(c) gives an appellant the right to appeal “the amount of costs for which an owner is liable under section 20(1)”. Section 20.6(c) allows BCFIRB to “confirm or vary the amount of costs for which an owner is liable under section 20(1) or that the owner must pay under section 20(2)”. Read together, these sections make clear that an owner is liable only for reasonable costs incurred by the Society. If BCFIRB finds that the Society has made charges for what BCFIRB finds were not reasonable costs incurred, BCFIRB may vary the amount of costs for which an owner is liable or must pay under s. 20.

15. The Society referred to the process it used to come up with the cost of care, which included estimates of the daily cost of food, estimates of staff time for kennel cleaning, feeding, and operating expenses, and the formula of operating costs divided by space allotted to particular type of animal divided by number of type of animal for an individual animal cost per day.

² When *Haughton* was decided in 2010, s. 20(1) stated that: “The owner of an animal taken into custody or destroyed under this Act is liable to the society for the costs incurred by the society under this Act with respect to the animal”: *Haughton v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCSC 406 at para. 12. While the former section appeared to cover any or all costs asserted by the SPCA, the Court in *Haughton* interpreted the section as authorizing only reasonable costs: “The Society must show that it has incurred costs and that the costs must be reasonable (s. 20 of the Act and *Ontario Society for the Prevention of Cruelty to Animals v. Straub*, [2009] O.J. No. 2052, 2009 CanLII 25138 (On. S.C.)). The costs are the Society's costs not the costs the owner would have incurred (s. 20(1) of the Act).”

16. The Appellant argued that the costs are not reasonable as volunteer labour is used, and that the costs sound too high to her mind.
17. I find that the Appellant's argument about volunteer time has merit only in relation to the animals that were placed into foster care; however, the total reasonable amount for care has now been revised downward to exclude those fostered animals. The Society in responding to my questions about costs revised its totals to reflect just the costs of the animals in care, and deleting the costs of animals in foster care.
18. The Appellant provided no reliable evidence or serious argument regarding the amount of time spent caring for each animal in care, the operating costs, or the wages of those caring for her animals. The Appellant, through her representative, suggested that the Society is all over the map with respect to cost, saying the *Haughton* decision put the costs at \$8 per day per cat and \$15 per dog. That submission suggests that the panel or BC FIRB argue the matter with the Society.
19. The panel will not argue this matter with the Society and relies on the information before it to make a decision. My guidance comes in the word "reasonable." I find it to be unreasonable for the Society to have to provide an audit of costs to determine an exact figure for cost of care for each animal type. Based on the evidence provided by the Society, I am satisfied that it is reasonable that the costs are set at \$10 per day per cat and \$15 per day per dog kept at the Burnaby facility. The per-animal costs of care are itemized in paragraph 8 above and I determine the total cost of care to be \$7310.00. I note also that the Society capped boarding fees in this case to end on the day after I issued my seizure decision, and has waived its claim to additional sums incurred by an inability to immediately adopt out the animals.
20. The Society submitted invoices for veterinary costs. The Appellant provided not argument against veterinary costs or treatments other than to ask why the Shar Pei had its eyes done when they were already done in 2010. The total for veterinary fees is \$2780.48. I find it reasonable to provide necessary veterinary care to relieve suffering and maintain the health of these animals, and I find the amount claimed to be reasonable. I note that the Society has waived any right to seek additional veterinary reimbursement after the date of the seizure decision.
21. I also find it reasonable that the Society claim \$240 for labour costs for the reasonable and necessary performance of its duties to protect these animals under the *PCAA*..
22. The Appellant estimates differing values for differing animals including those born while in custody of the Society, providing no proof to support her statements. She testified that the Society will receive monies for the sale of her animals.

23. The Society is silent on the issue of the value of the animals, most of which presumably will be sold.
24. The Society, under s. 20(3) of the *PCAA*, is entitled to keep the proceeds of a sale or other disposition of an animal. However, if the proceeds of a sale or other disposition exceed the reasonable costs which I have already decided upon, the Appellant may, within 6 months of the date the animals were taken into custody, claim the balance from the Society: s. 20(4). Issues regarding the entitlement of the Appellant to the proceeds from the sale of animals or animals conceived prior to the original seizure are matters between the Appellant and the Society.
25. For certainty, and based on the Society's representation that additional veterinary costs and boarding fees will not be sought in this matter, my decision on the appeal is that the total amount of reasonable costs owed to the Society by the Appellant is \$10,330.48 as a final total.

Dated at Victoria, British Columbia this 10th day of December, 2013

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

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

Corey Van't Haaff, Presiding Member