

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 1 DOG AND 4 CATS

**BETWEEN:**

E.M.

**APPELLANT**

**AND:**

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO  
ANIMALS

**RESPONDENT**

## **DECISION**

**APPEARANCES:**

For the British Columbia  
Farm Industry Review Board:

Corey Van't Haaff, Presiding Member

For the Appellant:

E.M.

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

August 4, 2015

Location of Hearing:

Teleconference

## **I. Overview**

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*).
2. The appellant appeals the July 3, 2015 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society).

## **II. Brief Summary of Decision**

3. Section 20.6 of the *PCAA* permits the BC Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society in its discretion to destroy, sell or otherwise dispose of the animal.
4. For reasons that will be explained in detail later, I have decided to order that the four cats and one dog will not be returned to the Appellant and that the Society be permitted in its discretion to destroy, sell or otherwise dispose of the animals. I note the Society says it plans on adopting the Animals to a compassionate person or family capable of providing the Animals with clean living conditions and necessary veterinary care.
5. I will deal with the issue of costs below.

## **III. The Society's Powers and Duties**

6. The Society under the *PCAA* is mandated to prevent and relieve animals from situations of cruelty, neglect and distress. The Society can seize animals from the care and custody of their owners or take custody of abandoned animals, as authorized by the *PCAA*. The Society's investigation and seizure powers are set out in Part 3 of the *PCAA*, entitled "Relieving Distress in Animals".
7. The March 20, 2013 legislative reforms, set out in Part 3.1 of the *PCAA*, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: *PCAA*, s. 20.2(1), (2). If a review is requested, the Society must review the decision and must not destroy, sell or dispose of the animal during the review period unless it is returning the animal: *PCAA*, ss. 20.2(3).
8. 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.

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

20.2 (4) The society, following a review, must

(a) return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting

(i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and

(ii) any matter that the society considers necessary to maintain the well-being of that animal, or

(b) affirm the notice that the animal will be destroyed, sold or otherwise disposed of.

(5) The society must provide to the person who requested the review

(a) written reasons for an action taken under subsection (4), and

(b) notice that an appeal may be made under section 20.3.

#### **IV. The Appeal Provisions**

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

Appeals under Part 3.1 of the *PCAA* are not required to be conducted as true appeals, and BCFIRB is not required to defer to decisions of the Society. In my view, the appellant has the onus to show that, based on the Society's decision or based on new circumstances, the decision under appeal should be changed so as to justify a remedy. Where, as here, the Society has made a reasoned review decision, BCFIRB will consider and give respectful regard to those reasons.

However, that consideration and respect does not mean the Society has a "right to be wrong" where BCFIRB believes the decision should be changed because of a material error of fact, law or policy, or where circumstances have materially changed during the appeal period. BCFIRB can give respect to Society decisions without abdicating its statutory responsibility to provide effective appeals.

The clear intent of this reform legislation was to give BCFIRB, as the specialized appeal body, full authority to operate in a way that is flexible and accessible to lay persons, and to use its expertise to ensure that decisions are made in the best interests of animals. The procedure followed by BCFIRB is a flexible approach specifically crafted to accomplish the intent of the legislation in the context of animal welfare and lay participation. This includes taking into account developments occurring since the Society's decision was made. This is entirely in accord with the inevitably fluid nature of the situation, and well within the powers granted by section 20.5 of the *PCAA*.

#### **Preliminary Issues**

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

12. The Appellant objected to the inclusion of Exhibit 15, an email from veterinarian Dr. Ken Langelier to Ms. Moriarty regarding the costs for a proposed medical intervention for the Tinker as it was not delivered in time and the late delivery did not allow her time to properly prepare and respond. The Society argued that Exhibit 15 should be considered as it was current information,

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<sup>1</sup> *BC Society for Prevention to Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331

highly relevant and probative, and that the Appellant did have five days to read it. The Appellant responded that she received 235 pages of material and BCFIRB set out a strict timeline that she complied with and in her view the Society did not respect.

13. The reality is the *PCAA* appeal process is fluid. When live animals are seized and are found to be in need of veterinary care, that veterinary care often comes at several points during the original timeline for document disclosure and written submission set out by BCFIRB on receipt of an appeal. Additionally, parties are advised that despite late submissions, both parties are free to introduce evidence and testimony at the oral hearing. Late submissions or evidence will be disallowed where its admission would undermine the fairness of the hearing.
14. I advised parties to include Exhibit 15 in the appeal and I would reserve my decision. My decision is that Exhibit 15 is allowed. It is relevant as it assists me in having a very clear picture of the level of veterinary intervention Tinker needs, and in the best interest of the cat, I need complete veterinary and other information. Its admission in my judgment does not render the hearing unfair given that this is one piece of evidence, the Appellant did have 5 days to review it and it is concerned mainly with particular costs the Society indicated it would not be seeking.
15. I am not excusing the late reply by the Society. I note that the information received by the Society about Tinker was sent from the veterinarian on July 28, 2015 at 7:51 am according to the email thread, yet was not presented to the Appellant or to BCFIRB until July 31, 2015 at 2:04 pm (the day before a long weekend, where the hearing was scheduled for 9:30 am Tuesday, the next business day). The Society must find a way to produce documents about a case under appeal with minimal delay. That said, for the reasons outlined in the previous paragraph, I will allow the evidence and give it the weight it needs to assist me in making my decision.
16. There were no other objections made about any material being entered into evidence or any witnesses being called to testify. The telephone hearing process does not require that all material be discussed or read into the record and I wish to expressly note that I have carefully reviewed all of the evidence and submissions referred to above, including all witness affidavits, even if the witness did not participate in the hearing.
17. I note that this appeal is a specialized administrative tribunal process. As such, I am not bound by the same rules of evidence that apply in a court of law, as made clear by s. 40 of the *Administrative Tribunals Act* and which ensures that BCFIRB can make decisions under the *PCAA* efficiently and based on reliable evidence rather than having to engage in legal discussions that may have little to do with the reliability of evidence or the best interests of animals:

#### Information admissible in tribunal proceedings

40 (1) The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

(2) Despite subsection (1), the tribunal may exclude anything unduly repetitious.

(3) Nothing is admissible before the tribunal that is inadmissible in a court because of a privilege under the law of evidence.

(4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence.

(5) Notes or records kept by a person appointed by the tribunal to conduct a dispute resolution process in relation to an application are inadmissible in tribunal proceedings. [emphasis added]

18. The fact that a broad range of evidence is admissible before BCFIRB does not necessarily mean that all that evidence is to be given the same weight. I make this point because the Appellant presented an abundance of testimony and cross examination on what she deemed to be incomplete, inaccurate and misleading information contained in the ITO (Information To Obtain a Search Warrant). Although the Appellant did not ask me to exclude information that came about as a result of the search warrant, she did point out that that would be the case in a criminal matter and that this year, the 800<sup>th</sup> anniversary of the *Magna Carta*, should have seen a heightened level of compliance with the rule of law. I recognize that concern, but note that respect for the rule of law also means respecting the purpose and intent of these *PCAA* appeals, where the best interests of the animals are paramount and any decision must have the ultimate goal of ensuring that if seized animals in distress are to be returned, that they not be returned to situations where they will again fall into distress. The Appellant was reminded of this several times during the hearing.

19. Material Admitted Into Evidence:

**Appellant:**

- a) Appellant Notice of Appeal (**Exhibit 1**)
- b) Appellant's Documents July 20, 2015 (**Exhibit 2**)
- c) Paterson, Knowles, Corbett Witness Contact Form (**Exhibit 3**)
- d) Len and Rose Bakker Witness Contact Form (**Exhibit 4**)
- e) Appellant's final reply submission dated July 29, 2015 (**Exhibit 14**)

**Respondent:**

- a) BCSPCA Binder (Tabs A-Z & AA-GG) – (**Exhibit 5**)
- b) July 24, 2015 affidavit of M. Moriarty - (**Exhibit 6**)
- c) BCSPCA Written Submission dated July 22, 2015, (**Exhibit 7**)
- d) SPC Matt Affleck - Witness Contact Form; (**Exhibit 8**)
- e) Dr. Langelier - Expert Witness Contact Form; (**Exhibit 9**)
- f) July 14, 2015 Costs Submission; (**Exhibit 10**)
- g) July 13, 2015 Emails (2 pages) from M. Moriarty to Appellant; (**Exhibit 11**)
- h) Supplemental Costs Submission (dated July 20, 2015); (**Exhibit 12**)
- i) Dr. Langelier's July 26, 2015 report; (**Exhibit 13**)
- j) Email between Dr. Langelier and Ms. Moriarty on July 28, 2015 at 7:51 am delivered to BCFIRB at July 31 at 2:04 pm (**Exhibit 15**)

**Decision Being Appealed**

20. On June 11, 2015, the Society seized several cats and kittens and one dog from the Appellant's property. The Appellant surrendered some of the cats/kittens and requested the return of three cats (Squirt, Tinker and Perry) and one dog (Shilo). The decision of Ms. Moriarty not to return the animals was issued on July 3, 2015 and appears below. However, on the same date, July 3, 2015, an additional seizure took place and one kitten (Black Kitten) was seized. The Appellant also disputed this seizure and requested the kitten be returned. On July 13, 2015 Ms. Moriarty wrote an

email to the Appellant stating as follows: “I have received your dispute with respect to the Black Kitten. As per my reasons provided in my decision regarding the other seized animals, I do not feel it is in the best interests of this kitten to be retrained. To make this easier, I would recommend that this kitten just be included in the appeal to BC FIRB. Are you amenable to this recommendation?” For ease and at the initiation of Ms. Moriarty as described above, and with the agreement of the Appellant, Black Kitten was added to this appeal and collectively these five are the “Animals”.

21. The Society issued its review decision on July 3, 2015, providing the following reasons for not returning the animals (I include the bulk of the decision below due to the detail of information it provides, setting out the Society’s position):

*“In making any determination regarding what is in the best interest of the Animals, I consider any past history of animal care as it assists me in answering the question as to whether you would be able to ensure the Animals remained distress-free if they were returned. This is a duty owed by an owner pursuant to section 9.2 of the Act. As is set out in the ITO, you have a significant history with the Society dating back to October 2006. Between October 2006 and February 2015, the Society has received 19 calls regarding concerns of animals in distress on your Property. You have been provided with both verbal and written recommendations and directives to resolve situations of concern and relieve animals of distress. It is evident from this extensive history, that the Society has provided you with more than enough opportunities to demonstrate that you are capable of keeping animals free from distress and comply with the Act. As a lawyer, you are in a unique position in that you have a greater familiarity with legislation and the application of the same. Your obligations as a “person responsible” for an animal pursuant to the Act have been explained to you on multiple occasions and yet, it appears that you continue to fail to consistently meet these expectations. As a result, animals in your care suffer.*

*There is one particular case from your history that gives me significant concern. This case is summarized in the Shelter buddy file #105875 involving a horse in critical distress on your property. I was not personally onsite to view this horse, but a photograph included in this decision speaks volumes. This horse was emaciated - skeletal would be a better word to describe him. A reasonable person would have taken steps to relieve this animal of distress and yet, even after his condition was pointed out to you, you failed to seek immediate veterinary care. This failure greatly concerns me as to your ability to recognize when animals in your care required veterinary treatment. This concern is not limited to this past case but is evident in this recent seizure. While you have attempted to explain the condition of this horse as being simply age related (37 years old), this does not in my mind (nor the laws) provide an excuse for the level of suffering that this horse experienced. As animal guardians we have a duty to provide veterinary care – even to old animals and to make difficult end of life decisions.*

#### *Living Conditions for the Animals*

*There were significant concerns regarding the living conditions of the Animals and these are detailed both in the ITO but especially in the veterinary report of Dr. Langelier. While Dr. Langelier did not have the benefit of being on site during the warrant, he did review the significant number of photographs taken by the constables and provided his opinion based on the photographs and the condition of the Animals at the time he examined them. I appreciate that this is not as good as him actually attending, however, I do consider his report in making my decision.*

*Dr. Langelier summarizes his findings as follows:*

- I have a discussion attached to this letter but in summary, the premises seen in the photographs and examinations of the animals seized demonstrate:*
- 1) A state of squalor where there is an accumulation of garbage and disarray of materials throughout the home and yard.*
  - 2) Excessive moisture with pooling of foul water, spillage and resultant mold and mildew on many surfaces with rotting of wood and other substrates.*
  - 3) Fecal contamination and litter throughout the living environment.*
  - 4) Remaining pets carrying infectious diseases including fleas, ear mites, upper respiratory infection.*

- 5) *Environmental contamination of roundworm parasites and flea egg, larvae and pupae*
- 6) *A highly probable air quality concern.*

*The degree of filth and contamination and animals with untreated illnesses would result in the pets seized becoming re-infected if they return. At particular risk are any young kittens in this infectious environment as seen by the death of one kitten with roundworm infestation, severe upper respiratory disease and fleas. The adult cat seized is also pregnant and the kittens in her care would be at high risk if returned to this environment...*

*You have provided me with some very detailed and comprehensive submissions in which you argue that Dr. Langelier's statements are "extremely judgmental and one-sided." I appreciate that some of the debris noted could be removed and the animals kept from certain rooms. I also appreciate the fact that you indicate you had a plumbing problem that accounted for some of the excessive moisture and that you have now had this fixed. However, it is clear from Dr. Langelier's report, the photographs and the attendance of the constables that there are some major environmental concerns for the Animals that you are minimizing or simply unable to recognize.*

#### *Medical Condition of the animals Seized*

*Dr. Langelier has also provided a detailed report concerning his findings upon examining the animals seized from your Property. I rely on the contents of both of his reports in making my decision but will briefly repeat some of his findings. In his report dated June 27, 2015, Dr. Langelier summarizes the medical condition of the animals as follows:*

*The degree of suffering seen by these animals was severe. The extent of ear mites in all individuals was some of the worst I have ever seen and the animals were constantly scratching at their ears or shaking their heads. The weakness from flea bite anemia and eyes closed with purulent material seen in the kittens was severe and any individual seeing these animals in such a compromised state should have sought veterinary care or assistance of the SPCA or others.*

*He goes into greater detail in his June 13, 2015 report but summarizes by saying:*

*In my opinion the cats in particular were suffering severe neglect and many were in distress when presented. All animals examined had ear mites, fleas and in many cases severe roundworm infestation. The parasites and lack of nutrition and other infectious diseases such as severe upper respiratory disease were leading to chronic suffering and some of these individuals were close to dying from this neglect of basic pet care.*

*You have provided submissions regarding these findings and allege that Dr. Langelier is exaggerating and that having ear mites are not the "end of the world." The fact is that in many of the cases, the fleas or ear mites were not just minor but "was severe enough in some of the kittens that had hundreds of fleas which would invariably result in severe enough blood loss that they would have died of anemia" and one of the cats was left with permanent inability to blink due to damage to the nerve from ear mites. He goes on to also provide reasons why these conditions, if left untreated, can be severe.*

*Your submissions are extremely heartfelt and I have no doubt that you are missing your animals and believe that you were providing adequate care. Unfortunately, the evidence of the experts demonstrates otherwise. Your long history of apparently not being able to recognize animals in distress in your care is troubling.*

*I appreciate that you have surrendered a significant number of the animals seized and that decreasing the number of animals in your care could assist in certain circumstances in ensuring that any animals returned would be properly cared for. However, the reality of your circumstance is that you still have a number of animals in your home (cats/horses) that we have had to issue orders for and while there has been some compliance, there has again not been complete compliance. Adding even more animals again to the mix would be, I feel, negligent on my part as I would simply be setting you up for failure. I would urge you to comply immediate with any outstanding orders for animals currently in your custody and to concentrate on ensuring these animals remain free from distress.*

*Based on all of the above, I do not feel that it is in the best interest of the Animals to be returned."*

22. It is this July 3, 2015 decision, along with the addition of the seizure of the Black Kitten that is under appeal.

### **Brief Summary**

23. The animals were seized from the Appellant's home in her presence. Both parties have introduced material that the Appellant is a lawyer. The day after the first seizure, the Appellant was removed under the *Mental Health Act* and kept against her will overnight in the hospital. She was, according to her, forced to submit to a CT scan. She was released the following day and she returned home to find that an additional kitten had been seized, new orders of the Society had been issued, and a cat that was originally caught by the Society had been released to stay on the property. The Appellant, who is referred to by initials for the protection of her privacy, objected during the hearing to the Society's involvement, she said, in her removal, and her detention and the application of radiation to her head. These matters are not matters BCFIRB can hear and as such, no decision or opinion or order will be made regarding these issues.
24. It should also be noted that there remain ongoing investigations of the Appellant regarding additional cats/kittens and horses.

### **The Society's Case**

#### **Ms. Marcie Moriarty Affidavit**

25. Ms. Moriarty swore an affidavit that said the Society had received about 19 complaints concerning the treatment of animals in the Appellant's care from October 2006 to February 2015. These dealings are detailed in the ITO. The Society referred to one historical instance where, on September 9, 2010 a non-ambulatory, severely emaciated horse was found in critical distress. The Appellant advised that she would not call a veterinarian. The Society attended the Appellant's property and found the horse moaning and shuddering. The Society seized the horse and it was immediately euthanized by a veterinarian called to the property for humane reasons.
26. Ms. Moriarty believed that the dog and cats should not be returned as it would not be in their best interests according to the findings set out in her "Reasons", quoted above.
27. The Animals were found in distress due to unacceptable living conditions and the medical issues noted in Dr. Langelier's reports. In Ms. Moriarty's opinion, and based upon Dr. Langelier's advice as outlined in his opinion, and based upon the photographs and property description described in the evidence before her, the Animals' living conditions were sufficiently unsanitary so as to pose a significant risk to the animals' health and well-being.
28. Ms. Moriarty has no confidence in the Appellant's ability to maintain the animals in an environment that would keep them free from distress and has concluded that the Appellant does not appear to appreciate signs and symptoms of distress in animals (given the Appellant's prior history and in particular the issue with the horse, and the state in which the Animals were housed and lack of treatment for obvious medical issues experienced by many of the Animals). Ms. Moriarty notes the veterinarian Dr. Langelier's June 27, 2015 report which stated: "the lack of compassion or

awareness is cause for alarm that return of these animals to these same premises will result in return to disease conditions and parasitism."

### **Dr. Ken Langelier**

29. Dr. Langelier is a veterinarian in British Columbia and a member of the CVBC in good standing. He received his DVM in 1981 and his practice is cats, dogs, exotics and wildlife, with cats and dogs split 40/60 respectively.
30. Dr. Langelier provided a letter dated June 13, 2015 to the Society that said, in part, that he examined 2 cats, 9 kittens and one dog on June 11, 2015 and in his opinion, the cats in particular were suffering severe neglect and many were in distress. All had fleas and ear mites and many had severe roundworm infestation. The parasites and lack of nutrition and other infectious diseases such as severe upper respiratory disease were leading to chronic suffering and some were close to dying. He summarized that the animals were in various stages of distress and many require further testing, most importantly he said they required good nutrition and a healthy environment. He said his opinion is that the severe lack of care constituted cruelty.
31. One cat had the inability to blink due to nerve damage from ear mites. It also had permanent head tilt due to damage to a cranial nerve causing a permanent balance loss. This cat, later identified as Tinker, had ear canals completely filled with mites and wax. All cats and the one dog had ear mites and all cats had ear canals completely filled with mites and build up. One kitten had four canine teeth fractures that were painful. Most kittens had upper respiratory disease with such severe nasal and ocular disease they could barely breathe out of their noses or see. All kittens had thick ropey bowels which made him suspect heavy roundworm, infestation. The dog Shilo was overweight with ear mites and stomatitis and gingivitis.
32. Dr. Langelier's June 27, 2015 letter presented additional information after he had been asked to review the photographs the Society took of the Appellant's home in conjunction with his follow up exam. The letter said that when the cats were presented for examination, the ammonia and fetid odour on their fur was so extreme that he was immediately alerted that the environment from where these animals were kept had poor air quality and was unhealthy. He said he has serious concern for any animals that remain on premises as well as for return of any seized animals back to these premises.
33. He summarized that he saw in the photographs and his exam of the animals a state of squalor where there is an accumulation of garbage and disarray of materials throughout the home and yard, excessive moisture with pooling of foul water, spillage and resultant mold and mildew on many surfaces with rotting of wood and other substrates, fecal contamination and litter throughout the living environment, remaining pets carrying infectious diseases including fleas, ear mites, upper respiratory infection, environmental contamination of roundworm parasites and flea egg, larvae and pupae, and a highly probable air quality concern.
34. He wrote that the degree of filth and contamination and animals with untreated illnesses would result in the pets becoming re-infected if they are returned, particularly young kittens from the respiratory infections which did cause one kitten's death after seizure. The adult cat seized was pregnant and the kittens in her care would be at high risk if returned to this environment. He concluded that the degree of suffering seen in the animals was severe and any individual seeing

these animals in such a compromised state should have sought veterinary care or assistance of the Society or others.

35. Dr. Langelier wrote another follow-up letter about Tinker and the Black Kitten on July 26, 2015 saying that Tinker initially presented with severe ear mites, a head tilt, and facial nerve paralysis on the right side. After cleaning his ears and treating the mites, upon scoping the ear canal to assess the ear drum, it was noted that the ear canal had scarred so severely that the ear canal was permanently closed half way down. The head tilt and lack of the ability to blink in this case had also not cleared up so x-rays were taken to evaluate the skull and middle ear and sent to a radiologist Dr. Crews, for interpretation which was attached to his letter and included reference to enlarged lymph nodes indicating ongoing infection/inflammation and many absent or broken teeth requiring surgery. The radiologist report included: "The lung parenchyma has a mild increase of bronchial markings with no focal lung pathology." ... "Differentials include chronic allergic or inflammatory bronchitis, or bronchial fibrosis secondary to chronic toxin inhalation."
36. Dr. Langelier included an explanation of the above comment as follows: Dr. Crews is noting that there is lung pathology occurring from chronic exposure to irritants such as high ammonia and moulds or other toxins. High levels of ammonia were present in this home and this cat's fur was extremely odorous from ammonia. Dr. Langelier also concluded that Tinker's inability to blink will affect his sleep and could cause dryness and injury, and may require surgery.
37. Dr. Langelier wrote that the Black Kitten was not gaining weight and further testing revealed the presence of cryptosporidium, a small intestinal parasite, and a pathogenic bacteria Clostridia perfringens Alpha Toxin. The presence of these organisms in this kitten indicates other pathogenic diseases in the environment of that home. The presence of these two pathogens in a young kitten indicated the environment is infective to other pets and potentially people.
38. He concluded that the significance of this finding is further evidence of the harmful effects of animals remaining or be returned to this environment.
39. Dr. Langelier wrote in his July 28, 2015 email (Exhibit 15) that Surgery is needed for both ears on Tinker and that in his many years as a veterinarian he has never seen such long neglect resulting in this severe damage and suffering.
40. Dr. Langelier's oral testimony reinforced his findings in his written opinions. He said that when the animals were first presented to him, he noticed an odour strong enough that it caused him to have concern for the environment where the animals were. The odour was ammonia. The cats were underweight and the kittens emaciated with ear mites so bad that the ears could hardly be cleaned, they were so caked with material. The cat with head tilt could not have its ears cleaned thoroughly. All cats and the dog had ear mites and fleas. The cats had licked their fur causing it to break off and the kittens had upper respiratory disease with their eyes and nose clogged with discharge. They had dental disease and thick ropey bowels later determined to be infections and worm infestations.
41. Dr. Langelier said Shilo, the dog, had stomatitis, an inflammation in the mouth that could indicate underlying dental disease or immune disease. His gums were bright red and very inflamed and sensitive to touch, and had gingivitis (inflammation of the gums at the edge of the tooth). The dog was uncomfortable with ear mites. He shook his head so much and there were so many mites you could see them moving. He said that the dog could not be treated in isolation; that all animals

would have to be treated or the dog would risk re-infection. The dog did not smell as bad as the cats but the ammonia odor was present.

42. Speaking of the flea infestation, Dr. Langelier said the fleas numbered in the hundreds on the kittens with one kitten dying of anemia (he also noted the dead kitten had serous atrophy – no fat in the body and even newborn kittens have some fat deposits for a reservoir of energy. It also had a bone fracture). The result of the fleas biting and drinking the kittens' blood was that the kittens were losing more blood to fleas than their bodies could produce.
43. The mites caused itchiness and scratching created sores and the skin around the ears could allow secondary infection. Tinker had damage to his facial nerve and could not blink and Dr. Langelier suspected the damage had existed for some time due to the boney change and scar tissue closing the ear. He said the resulting symptoms would definitely be noticeable to the owner. Tinker also suffered trauma to all four canines with fractures where you could see the pulp and bacteria gets in and causes infection where it becomes like a volcano sending out infectious material; and this Tinker needed two surgeries on his teeth. He said only after radiological investigation would they know the extent of the spread of infection, and the costs for investigation and surgery could reach \$8,000 (done by specialists). Surgery was needed to remove the infection, prevent pain and eliminate infection so close to the brain. The damage to Tinker in the way of head tilt and loss of ability to blink was permanent. On re-exam, Tinker had raspier than anticipated lung sounds due to allergic or inflammatory bronchitis, likely from ammonia inhalation.
44. The upper respiratory disease in the kittens was because the mom cats shed the herpes virus when stressed and this affects the eyes of kittens and the infection spreads. The disease also progresses because the kittens were malnourished and had parasites, so the disease escalates.
45. The chronic parasite load caused the intestines to fill with worms and the intestines swell and are sore and the bowel fills with disease. At the dead kitten's post mortem exam, he found roundworm in the lungs and intestines. The other kittens vomited and pooped worms when they were treated after seizure. If the parasites are still, present on the owner's property or in other animals, the risk of re-infection is high and it is hard to clean eggs in damp environments. Worms can sit dormant in an animal's muscles and pass from pregnant mom cats to kittens. Adults are more resistant and the disease is more severe in kittens.
46. Three of the cats/kittens were severely malnourished with two being underweight and one emaciated. A number of the kittens had low body scores. Worms made this worse. Adults may not absorb nutrition and kittens with upper respiratory disease may not be able to smell or see food.
47. Squirt, one of the cats, was underweight, considered malnourished and pregnant and had flea infestation.
48. Dr. Langelier also commented that the physical surroundings where the animals were seized from caused him grave concern, after reviewing the photographs. He saw fire and chemical hazards, cleaner and Drano stored together, swallowing and strangulation hazards, obstructions that could fall and prevent escape, concerns with ammonia based on his smelling of the animals and seeing a photograph of a test strip that indicated a higher presence of ammonia, water hazards that could drown kittens and could be a source of infections, damp surroundings that could harbour parasites and fungal infections, rat and mice droppings that could expose animals to roundworm, electrical

cord exposure which could cause electrocution, In summary, Dr. Langelier said it was a big concern for any animal living in that environment.

49. Dr. Langelier testified that the pools of foul water and what appeared to be mould or mildew was of concern regarding air quality, and that he saw black mould on the walls, water marks on the ceiling and water staining in the wood in the basement and bathroom. Wet wood could release mould and could result in lung pathology such as that found in Tinker, plus wet wood could release other toxins inhaled by animals.
50. Regarding fecal matter seen in the photographs, Dr. Langelier said it looked like there was no clean surface in any photograph. Cats try to be cleaner animals and pick clean spaces but there was no choice for them to choose anything but fecal matter and dirt. The kittens tested positive for clostridial infection, transmitted through feces as it is a bowel inhabitant. It is microscopic and cannot be avoided if present. Even new or healthy animals could carry the organism and infect another animal. If all animals that were seized were treated and returned, they will become re-infected if nothing was done to the environment.
51. On cross examination, Dr. Langelier testified he was concerned regarding the care the animals received and he had taken animal welfare courses, lectures regarding animal hoarding and what concerns to look for. He acknowledged he did not attend the property and, as he had indicated, provided his views based on the photographs and the condition of the animals. He did not learn of any of the Appellant's explanations of the photographs and was unaware of a plumbing problem that had been fixed. He said, however, that this would not change his concerns regarding mould on the ceilings and walls and the water leeching into wet wood, as he saw in the photographs. If he was told the water damage on the ceiling had been fixed, he would not change his opinion unless all the ceiling tiles and walls were replaced but even then the photographs led him to believe there was still a lot of wet-looking wood.
52. At the request of the Appellant, Dr. Langelier went through several numbered photographs pointing out where he saw wetness and what appeared to him to be mould. He agreed he could not definitely say mould but he could say he had a high level of concern.
53. Dr. Langelier said it was correct that the animals could be treated with Revolution once, then again in 30 days but said it would be needed longer than that.
54. Dr. Langelier said that considering one kitten died, he did not think the cats were doing well and he had ongoing concerns and said the animals needed follow-up treatment. When asked what the Appellant should have noticed in many of the kittens that were happy and reasonably weighted, Dr. Langelier said all were underweight and all were scratching at their ears and bodies and many had diarrhea and staining on their behinds and were so thin and the upper respiratory disease caused their eyes to be crusted and noses to be crusted and if the Appellant cleaned these with water and Polysporin he would have said that was inadequate. The cats/kittens needed systemic treatment not topical creams.
55. When asked about Shilo's mouth, Dr. Langelier said he did not pursue the cause or biopsy the gums, and that it could be acute or chronic. The teeth look good and Shilo is a heavy dog and it was possible the disease could have developed in the past year. The ear mites in Shilo looked recent. He said annual checkups are important as animal's life cycles are shorter than humans and

animals do not react to pain as humans do so a veterinarian might see things owners would not notice. When Shilo was at his office at time of the seizure, he shook his head severely so Dr. Langelier would be surprised an owner would not notice a problem.

56. Tinker had the strongest urine odour and Dr. Langelier agreed that tomcats like Tinker can spray and do have stronger smelling urine. He agreed that even though Tinker was underweight he could understand an owner thinking the cat's weight was okay. The kittens would have looked thin to anyone. Tinker's head tilt and inability to blink should have been noticed and even though it could have been caused by a car accident, ear infection was the highest on his suspected list of causations. Tinker may have been able to be treated if he was treated early but now he needed surgery. The pocket of infection must now be physically removed as it had burst through the ear drum. It will not resolve on its own as it is in the skull. Options other than surgery would be dependent on the ability to relieve pain. Euthanasia was an option.
57. Revolution only treats parasites and not the other diseases the kittens had. Dr. Langelier said the squalor seen in photos such as #1927, #1963 and numerous others formed much of his concern with the animals' environment.
58. Dr. Langelier said the amount of visible fecal matter around litter boxes and food dishes was concerning, especially in photos #1915, that cats like to avoid fecal matter in litter boxes and that in the box in the photograph, there was too much poop for him.
59. He agreed he did not see the entire house, only the areas photographed but even if other areas were clean, there was still a high risk of contamination for the animals, and of disease. In the photos he saw, it looked like there were no clean surfaces.
60. The small Black Kitten was a "poor doing kitten" underweight with diarrhea. Underweight kittens will not grow to their potential. Perry, the cat, had health issues and needed probiotics and antiviral supplements and intravenous fluids when he came in. His white blood count was elevated (normal range for a white blood count is 19,000 maximum and Perry's white blood count was 35,000) indicating he was fighting a bad infection. Squirt was thin and might be pregnant.
61. Dr. Langelier said dogs develop bonds and he might be experiencing stress losing a pack member such as the Appellant but he can bond with someone else. He agreed that dogs that are walked are physically and mentally better off than dogs that are confined.
62. When asked if he thought Shilo could be returned, Dr. Langelier said he was concerned with the environment which was hazardous to his health, ear mites, ammonia inhalation, and a severe concern regarding parasites. He agreed Shilo was a happy well-fed dog.
63. The Black Kitten after seizure continued to lose weight rather than gain as expected and it was determined it had roundworm and clostridial infection and other diseases. This was not a case of a healthy kitten suddenly crashing; the kitten was doing poorly from the beginning.
64. Dr. Langelier responded to Panel questions about pain. He said the cats/kittens would experience chronic pain similar to having a bad cold with painful sinuses and the bowels would be painful with the parasite load.

65. Upper respiratory infections can get out of hand despite the best of care, but he still recommends veterinary care not to stop the virus but to check for ulcers and secondary infections. Doing nothing, he said, is not an option. Treatment options are not always magic cures and in retrospect he would have euthanized the kitten that died rather than attempt to treat it. It was his judgment call to treat.
66. Shilo may go outside but the environment is a big concern with wet wood and mould, and the long term effect of these irritants and toxins. The Stomatitis cause isn't known and depending on what the cause is, different treatment options would need to be investigated. Shilo was at substantial risk due to environmental concerns in his view.

### **Matt Affleck**

67. Special Provincial Constable (SPC) Matt Affleck will be an employee of the Society for four years this month. He prepared and swore both ITOs. As both ITOs are submitted into evidence, there is no need to summarize them here.
68. In his oral testimony, SPC Affleck said he attended the Appellant's property with the search warrant on June 11, 2015 after 10:00 am. He advised the Appellant why he obtained a warrant and "Charter warned" her. His colleague flea-combed Shilo and flea dirt and live fleas were found, and the dog was put into the car for safety. Inside the home the smell of feces and ammonia was so overwhelming they had to leave within two minutes and then get and wear respiratory masks which have filters on the nose and mouth. There was empty food bowl on the floor and hundreds of flies flying around. Some food was rotting and molding and some not. Kittens were running around. As cats/kittens were caught, they were caged and labeled.
69. In the kitchen there was lots of furniture covered in feces and boxes and piles of dry crusty to fresh piles of feces inches thick behind stuff. There were thick stools, dry stool, fresh stool and mouldy diarrhea, all types of feces. The ammonia smell was overwhelming. There was black mould like substance on the walls and moisture in the kitchen where the floor looked soaked. Kittens were caught in the living room and kitchen.
70. In the hallway and open bathroom door, there was a lot of wet soaked wood with a black mould like substance on the walls. The drawer was open and so overfilled the drawer could not be closed. It was a concern as cats get into lots of things. The sink was overflowing into the basement and floor. Although he is not trained in mould, there was a black substance on the walls. There was a musty smell and ammonia. The bedroom door was closed and there was a litter box inside and the floor was covered in litter and he could smell mould through his respirator. Ammonia could be smelled 20 feet from the house. It made his eyes uncomfortable but he did not wear his goggles. The staff with him had to take breaks as the shelter staff had poorer respirators and needed to get outside more often.
71. Another bedroom had a big bed and blankets and a strong ammonia smell and was so cluttered there was not much room to move around.
72. He said he was advised by the Appellant not to go down the stairs to the basement as they were not sturdy. He looked down and it was very dark so he opened the door and could see big ceiling beams soaked with water and dripping. The floor was wet and the joists covered in black slimy

substance. There was about a six foot area near the furnace littered with large rodent feces. He did not see any rats or mice. He did not find any animals in the basement.

73. Nine kittens and two cats and one dog were taken and many cats disappeared and seemed semi-feral. They tried to catch more with live traps. His colleague flea-combed the cats and he took notes. His concerns for the cats/kittens were fleas, kittens' eyes and mucus in their nose and discharge and unsanitary living conditions. Photograph #2066 is a q-tip the staff at the veterinary clinic used to clean the ears of the cats, with three q-tips per ear per cat. The photo was representative of what came out of each cat's ear.
74. Photo #2065 was the ammonia strip that his colleague took and it measured 30 ppm ammonia which was quite high.
75. He saw the animals back at the Society shelter and checks in often and talks with staff and says Shilo is called by name by the staff.
76. SPC Affleck said he returned to the property with a warrant on July 3, 2015. He had previously left orders with the Appellant's friend who was feeding the animals when she was in the hospital as he was concerned about ear mites with the remaining animals, and Dr. Langelier had said the mites were highly contagious. When the order was not followed he obtained the second warrant. On the day of the second seizure, the outside of the property looked the same, the inside seemed to have fewer feces in the main living room but he said the pictures did not do the house justice – literally there were dried feces everywhere in the house, inches of it behind furniture and appliances. He said the Appellant said she did a bit of sweeping and cleaning the outside of the windows.
77. He caught three cats but one escaped. He seized the Black Kitten because of the histories with the other kittens and it was also underweight and had fleas. He said he released the other cat (one of the three cats caught) as it had a dose of Revolution and he called Ms. Moriarty who said that since the Appellant took steps to relieve the distress and the cat had access to the outdoors, he could not seize it.
78. That cat, Suzie, appeared pregnant so the Appellant may now have kittens. There were bowls of cat food. There was water in an unclean container.
79. SPC Affleck said he spoke to the Appellant about the condition of her home but she downplayed it and said she chose to live this way and did not think it was a poor condition.
80. On cross examination, SPC Affleck said that he did not do the test strip for ammonia and it appeared to be between 30-50 ppm of ammonia; he also said the smell of ammonia was overwhelming.
81. He was asked to indicate which photos showed "boxes" which he referred to, and SPC Affleck went through several: #1945, #1941, #1974 but could not answer how many boxes he saw. He confirmed he saw black mould throughout the house and in the living room and around the floor boards but was not sure which walls. His knees got wet when he kneeled on the floor looking for cats in the kitchen in front of the appliances. He could see and feel it for himself. He did not know which room was tested with the ammonia strip, but the smell was strong through the entire house. He did not touch the slime in the basement but had seen enough slime to know it was slime.

82. SPC Affleck went over the process to get a warrant and the steps that had been taken and agreed it was his duty to be fair all the time. He said he presented information in the ITO about the 19 calls and did not say if they were good or bad. He did not see a letter or notes the Appellant referred to. He said he knew the Appellant had concerns with how her horse Spirit was killed. He said he got the warrant on the incident not on her history. Regarding the comment in the Society's notes that said the RCMP did not believe the animals were in distress, he spoke to the RCMP officer who told him that the animals were in distress and he did this prior to writing the ITO. The second warrant was applied for after SPC Affleck spoke to the Appellant and she was still not complying with orders. There is still, currently, not enough Revolution to do all the cats/kittens that the Appellant has. He said he does recall saying that during the second time he was in the house, it did not smell as bad, but it was still extremely strong and he assumed the smell was lessened as the Appellant had fewer cats.
83. In response to Panel questions, SPC Affleck said he took Shilo as there were unsanitary conditions. The ammonia could cause problems as could the feces. On the second warrant he took the Black Kitten as the Appellant had taken no steps to relieve its suffering.

### **The Appellant's Case**

84. Arlene Sanford-Knowles' affidavit stated that the Society attending the seizure advised her that Shilo would not be taken. She also wrote that she fed the animals when the Appellant was taken to the hospital and that Shilo was the Appellant's constant companion and was fed very well and had up to date shots and went on regular walks. Mrs. Sanford-Knowles was not available when called to be a witness.
85. Tom Paterson provided a letter of support about the Appellant walking Shilo regularly. He was not available to act as a witness when he was called.

### **Margaret Corbett**

86. Mrs. Corbett testified about knowing the Appellant through her horse, and Mrs. Corbett testified to the rudeness of the Society during the time the horse was euthanized and how un-peaceful the dead horse appeared. She was concerned that people are not euthanized for being thin and the night before the horse's death, he was running to the fence.
87. Mrs. Corbett said she often saw Shilo with the Appellant and she and the dog often talked and she had never seen a dog as happy, as Shilo was adopted as an older dog and he loved the Appellant. The dog and cats seemed to roam around the Appellant's property happily though she had never been inside the Appellant's house.

### **The Appellant E.M.**

88. In the Appellant's affidavit dated July 20, 2015, the Appellant wrote that an initial allegation that she had not been home for 10 days tending to her animals was as a result of an angry friend making such a report. When she was called by the Society which had the RCMP report and wanted to

investigate, she advised that she would bring the kittens outside of the home for inspection but would not allow the Society to enter her home without a warrant.

89. The next day, the Society showed up with a warrant and entered her home. There were two police officers and six Society employees. Shilo was held in her car to keep him from escaping. The Appellant sought legal advice and was basically told to cooperate. The Society started moving furniture around and closed her windows so her cats would not escape. The Society caught Tinker and Squirt and Tinker's head tilt does not hinder him at all. The cats were upset in cages in the van and she told the cats she would try to get them home. She was sad and felt powerless to save them. The Society also caught all but two kittens.
90. She disagreed with the paperwork she was provided and shocked to see facts structured in such a way that they did not tell the truth. Information was slanted to get the warrant and files were deliberately misstated or omitted. The affidavit went into detail about the horse (Spirit) who was euthanized by the Society in 2010. Her affidavit went through most paragraphs and photographs from the Society and in summary, the Appellant said the Society's SPC acknowledged that most of the 19 complaints did not go anywhere.
91. The affidavit said that the SPC got the RCMP to state things not in the original police statement and if the RCMP officer thought her house was the worst he had seen he didn't have much experience. There were not 15-20 cats and kittens with infected eyes; there were a few. She soaked crusty eyes in warm water and applied Polysporin. Polysporin, she wrote, could be seen in one photograph.
92. She did have a plumbing problem and had called a plumber the week before the seizure; the sink was plugged and the taps leaking causing the sink to overflow. She bailed it when she could. The same water drained into the basement. The plumber fixed the problem on June 17, 2015.
93. Her property is on a road frequented by people out for a walk who look at an eagle's nest in her backyard, and when they do this some have called the Society about various matters. Quite a few calls were initiated by a neighbour she thinks.
94. She is devastated by the seizure of Shilo for both him and her and this has taken the joy out of her life. Their walks were one of the best parts of her life. She had Shilo since 9 months old. He had shots in 2013 and 2014. She gets him shots so he can go into a kennel once a year as she likes to go away once a year. Her vet has said whatever she is doing to take some of the excess weight off of Shilo is working and to keep it up. She was concerned as she heard the Society does not call Shilo by his name and this is confusing for him [the Panel clarified with the Society that Shilo was being called by his name Shilo]. During their walks, Shilo is off leash for part of it on a trail or plays ball or swims in a creek. She had not noticed Shilo scratching so did not use flea treatment this year but had it available. She would have taken him for his annual checkup this month and the veterinarian presumably would have found the ear mites.
95. The affidavit states that the day after the raid, when she arrived home after work, the RCMP were waiting for her with a warrant under the *Mental Health Act*. She was shocked, unloaded her hay, fed the horses and called her friend. At the hospital she was asked about a dead cat which she knew nothing about. Later she spoke to a doctor who asked about a dead cat and statements made to the doctor about six inches of feces in her home. The Appellant replied that that was a gross

exaggeration. The Appellant explained that all this started with a friend who was mad at her. The hospital kept her overnight due to several things that the Appellant felt were signs of anxiety and stress. She was told she would be getting a CT scan. The next morning she was released and was told she could live as she wished. When she returned home, she learned of the new Society notice. She believes the Society caused her to be picked up and that is another abuse of power.

96. On June 16, 2015, the Society was again at her home saying the costs were rising for her animals which had been seized and she agreed to sign over the kittens except Perry and the young one (which she was told was not possible) and Tinker and Squirt and Shilo. The next day she took a cat to the veterinarian and purchased flea treatment and was told the cat had ear mites. She had to purchase the flea/ear mite treatment a few doses at a time over the next several days, for financial reasons. By the time she did this, the Society had taken the Black Kitten on the second seizure on July 3, 2015. At that seizure one cat named Suzie was caught but when the SPC called the Society office he was told to release Suzie as she had been treated with flea treatment. Even though the Black Kitten also had been treated, it was seized, due, she wrote, to malice on the part of the SPC.
97. The Appellant's affidavit denies there was mould in the house and she always had food and water for the cats and dog.
98. The affidavit also went through some photographs explaining the Appellant's view of what was shown. For instance, in photograph #1971 the Appellant says she feels violated looking at the photo which is a room used for storage, and she put up nice curtains and she sees a nice picture on the wall which her mom's friend had painted.
99. The Appellant's unsigned, undated affidavit in response to Ms. Moriarty's July 24, 2015 affidavit states that the Society did not respond to any of the Appellant's legal issues raised and that the Society believes it is above the law, which was stated to her in a phone call with Ms. Moriarty. The Appellant objects to the language of the ITO and to the Society's review reasons which state there was a history of 19 calls, giving the impression the Appellant was guilty of 19 complaints which was not true. The Appellant believed this was an attempt to distort the facts as it implies the Appellant was doing something wrong. The basis of the rule of law is fairness and there is nothing fair in this presumption. The Appellant feels her request for review and information presented fell on deaf ears. The Appellant says she never received a signed copy of the review reasons and only got an email copy. The Appellant feels if the Society were run properly it would not be necessary to run up veterinary bills with a veterinarian who offered opinions on people's mental states and it would not be necessary to spend funds on legal fees. She also stated the Black Kitten seized on the second raid was happy at the time of seizure and there is no proof that three weeks later, any issues with the kitten were because of anything she did or did not do.
100. In her oral testimony, the Appellant said she set out a lot of concern about legal issues and the main issue is that the SPC Matt Affleck is a nightmare out of control. She said the records show the RCMP said they were not concerned about animals in distress but the SPC misstated the truth. She said her basic *Charter* rights to privacy were taken away based on SPC's exaggerated statements he knew not to be true.
101. The Appellant said the cats were not in distress and she has had 6-7 dogs over the time since her mother died and that's why she keeps cat dishes on the counter. She had until the end of the day June 30 to comply with Society orders and the SPC over-reacted and had the time to get a

telewarrant but no time to call her again to see if she complied (he had called her but she was not available). She felt he could leave “whatever” until after the holidays as it was already late in the day. She was going to buy more treatments and was thinking of using what she had bought that weekend. She did buy some treatments also after the second seizure for her remaining cats which was her plan all along.

102. She said she took offence to the SPC referring to garbage in her yard and asked him to show her all the garbage as in her opinion there was no garbage. She had lots of concerns over legal issues and the Society was very slack and abused every right she had. She has ordered information about how the police came to take her away but is going through the office of privacy. She was subjected to a CT scan – a high degree of radiation – and has no doubt the Society was at the root of that. The length they will go too is because they say they have immunity.
103. The dog was well cared for and showed no suffering. If her environment has any detrimental effects they would have shown up by now. There is lots of room for all the cats she cannot find homes for. With her cat’s upper respiratory infections, they are treatable and she could do the same treatment anybody else could do. She does not like the characterization of her mistreatment of animals.
104. Regarding the squalor moisture and mould, the bathroom did get a light moldy colour but when the sink dried up there was no mould or mildew or rotting wood. The remaining pets have now all been treated with Revolution.
105. On cross-examination, the Appellant said the issues with the animals are common so do not justify seizure. She did not know they had ear mites. She hadn’t heard of the strange organisms. She was going to treat with Advantage that weekend. Her cats come and go and she would apply flea treatment as they came home; she would not go search for them.
106. She had never really counted how many cats she had but it was at least 10 adults, could be 12, and she had ten adult Revolutions. Nine kittens were taken, two left behind then they took one. The kittens seemed fine until they were seized. As kittens get bigger, they tend to look skinnier. The eye problems were minor. Photograph #1908 – when the eyes looked like this, she would swab with warm water and then apply a topical antibiotic.
107. The day of the seizure she fed cats then ran out of food and needed to purchase more that day. She typically buys cat food every other day.
108. When asked if her home was sanitary for her animals, the Appellant said there were feces, the cats pooped behind things over the years and it was on her list of things to do to get behind the appliances or make those areas inaccessible to the cats. She had thought of doing this before the seizure and her plan before the seizure was to get new floor so if she pulled things out there would be room to clean or push things closer to the walls. There is only one kitty litter box and she did not know that cats tracking excrement on their feet would be a problem.
109. She does not get her cats vaccinated as only the dog goes into a kennel and it is necessary. She said her comment about survival of the fittest was taken out of context regarding the cats and obviously she would take an animal to the veterinarian if it had a broken leg or something but she took Jerry the cat to the vet to be neutered and she took Frosty the cat this year and he was healthy and if she

was so bad, why were her cats so healthy? She said she did not know her cats needed treatment to the level they did and in 2010 she spent \$200 for sick kittens and they didn't survive so there was no need to take these ones. Sometimes kittens don't do as well, and past veterinary care makes no difference.

110. The Appellant said her life was a progression. In 2002 her mom died and she has managed on her own since then. The income and pension went when her mom died. She doesn't work fulltime as she was helping her mom. Then other things went wrong; the roof needed replacement in 2007, the water pump in 2008 and she always has a plan and she had started working on her animal plan with Jerry's veterinary visits last year, and Tinker this year and now with this upheaval everything is on hold.
111. In response to Panel questions, the Appellant says the Society is selling cats half price and they cannot deal with the cats they have, sitting in cages for months and her cats have a certain life at her home and she wants them home. The Society has no need for any more animals. Her animals have a home where someone loves them.
112. She noticed Tinker's head tilt. His face had got puffy at the side then he tilted his head. She would have done something if there was something obvious like blood but there wasn't so she just watched him and a short while later his puffy face popped and goo came out so she cleaned him up and thought that was the end of the issue. He still tilted his head and she thought that that was just the result of the puffy face, not some continued infection. Since there was no blood it didn't cause her a lot of concern.
113. She is frustrated by the mess her cats make and she hates the male cat spray which makes most of the smell but she washes the plastic tubs she has around to protect furniture from the spray.
114. She does not plan for kittens to be born and was planning on having the male cats neutered. Jerry got fixed a year ago, tinker was to be fixed this year, and Hunter and Blue after that. It is always a possibility there could be more litters but if she sees a cat in heat, she separates it from the males.
115. She said the Society implies she is cruel and mean to animals and nothing can be further from the truth, she does her best for them. It would be better if they were not born but she does not like to give kittens to people she does not know. This "bumper crop" of kittens she feels responsible for and prefers to keep them if she cannot find homes of people she knows. Lifestyle-wise, her home is the best for cats; she believes they have the best life there with lots of space. Two have been killed on the road but mostly, drivers drive slow. When the one litter of kittens died in 2010 she took it that was an unhealthy litter. Compared to living in a subdivision or busy road, her lifestyle provides the best life for the cats.
116. With Shilo, her home inside and outside is the best situation for a dog. She does laundry each week and only missed one week right before the seizure. If Shilo had any symptom of illness she would take him to the veterinarian. When questioned on this by the Panel, the Appellant said as proof, she has had 6-7 dogs who have died for various reasons but Buffy a cocker spaniel once sent her a mental message that he was sick and she looked at him and his face and neck was swollen so she took him to the vet who lanced a huge abscess and drained it. When asked if she saw the abscess prior to the dog sending her the mental message, she said it just came up. If something is obvious, she will go to the veterinarian.

117. Under additional cross-examination, the Appellant said Shilo had no ill effect being home during the water leak – it was not radioactive.
118. Regarding costs, the Appellant said they were far too high. She did not ask for Shilo to be seized and kenneled, and she has Revolution for the cats. The Society decision was not rational or reasonable and there was no reason to take the animals in the first place. The Appellant said the kenneling costs were the cost of doing business and it was outrageous for the Society to take her animals and expect her to pay for them. The spiraling costs amount to extortion. She is not sure why she should bear the cost for the amount of time the appeal process takes. The whole experience could have been handled easier by the Society suggesting she take her animals to the veterinarian.

### **Analysis and Decision**

119. The Appellant's position is that the first warrant grew out of unfounded information – namely her being missing and that SPC Affleck exaggerated everything and blew it out of proportion. He breached her civil rights. The Appellant said she appealed the very first day she could and wrote three letters but was told the Society was immune but her position is that the Society is not immune from the rule of law. The Appellant said she was on her way to having the plumbing problem fixed and she would have treated the remaining cats/kittens just prior to the second seizure. If SPC Affleck had been reasonable he could have waited until after the holiday so she could comply with the order. The issue with the plumbing is now fixed and the fact she did not do laundry that week was more a matter of bad timing. There had never been moisture in the house. Shilo was in good condition and would therefore remain so and she was going to treat his fleas and she was unaware of the ear mites. The upper respiratory infections of the kittens were genetic and now that they have it, you just have to deal with it. Perry and Blue have no eye conditions. This has nothing to do with the house, neither with the eye problems or the upper respiratory problems. Even the Society did not know there were ear mites until after the animals were seized. The Society never made a full disclosure and they twisted facts about Spirit the horse. The Society implied urgency with the warrant that was not founded. The Society record was incomplete and every right she had was violated. With Shilo she was never given a chance to take steps to relieve his distress as she did not know he had ear mites. The Appellant said the Society lacks common sense and has no knowledge of the animals they protect and their fees amount to extortion. The process amounts to prosecution without defense; the inquisition all over again. She now lives in fear and anxiety.
120. The Society's position is that the Appellant's primary emphasis has been on the execution of the search warrant and in fact a summary of each of the 19 calls was attached to the ITO given to the justice of the peace. It is not this tribunal's job to decide if the ITO was sufficient. This is about the best interests of the animals. Animals' best interests are not subordinate to a wrong search and seizure. If these animals were returned they would again be submitted to distress as Dr. Langelier testified to at length. His reports are thorough and he was cross-examined by the Appellant (a lawyer) and by the Panel and Dr. Langelier was steadfast about the substantial risk to Shilo. BCFIRB has made it clear in the *Krecul* decision and in *HL* that if there is a significant risk to the health and well being of an animal due to unsanitary conditions, animals ought not be returned. The Appellant downplays the condition of her home and although the cats could leave, their food is at home so they will return. All the seized cats had health issues from the environment. As further justification for the seizures is the fact that one kitten died. As Shilo ages, he may suffer due to the

environment and although there is no certainty, the risk is substantial. The Appellant has done no significant remediation and cannot see the condition of her home and cannot treat the medical issues of her animals.

## Seizure

121. Distress is defined as follows in s. 1(2) of the PCAA

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.

122. In my view, regardless of the incident that led to the first search warrant being granted, there was ample concern for the health and wellbeing of the cats and dog in the Appellant's care for the Society to conclude that the animals were in distress.

123. The first point I want to make in this regard is that my threshold focus is on the validity of the seizure of the animals. I am not reviewing the warrant to enter the premises or whether the underlying ITO justified the JP in issuing the warrant. As previous BCFIRB decisions have noted, the question whether a warrant to enter property should have been issued under s. 13 of the PCAA is a separate question from whether, in acting on a warrant, the Society had proper grounds to seize an animal under s. 10.1 (abandoned animal) or s. 11 (animal in distress). BCFIRB's role is focused on whether the seizure of the animal was justified and if so, whether or not to uphold the decision not to return the animals. BCFIRB cannot assume the superior court's role in reviewing a warrant to enter property. A person seeking to challenge the warrant to enter must exercise the Court process to challenge a warrant: *Binnerley v. BCSPCA*, April 15, 2014 (BCFIRB), paras. 23-26. As noted in *Havelock v. BCSPCA*, March 20, 2015 at para. 105:

I want to make it clear that in making this determination, I am not assessing whether the ITO contained sufficient information to justify a search warrant. Further, I will resist the temptation to get into questions about whether certain information should or should not have been included in the ITO. Assessing all that is a court's job. My more specific function at this stage of the decision is focused on determining whether, based on the objective information before the Society, Ms. Moriarty was correct or reasonable in concluding that there was, in all the circumstances, sufficient information before the Society to justify removing the animal on the basis that it was in "distress", a definition that includes an animal being "deprived of adequate care or veterinary treatment".

124. Of course, to the extent that the ITO contains information that bears on the evidence or grounds for the decision to seize the animals – the question of whether the animals were in distress – I can consider that in the context of the evidence as a whole. On that issue I will simply observe that although I agree with the Appellant that the internal notes say the RCMP did not think the animals were in distress, and that information was not communicated in the ITO, SPC Affleck contacted the RCMP in advance of the ITO and asked for clarification as it appeared the reference to no distress may have been in error. The notes read that the person of interest was not seen around the property in 10 days; COM (which was the Cowichan RCMP) was on POI (the Appellant) property at time of call and saw many cats and kittens (some with upper respiratory infections), several

horses and a dog on the property; water and an open bag of food was seen out for the animals; RCMP did not believe any animal to be in distress...” It seems to me that the description of some cats/kittens with upper respiratory infection conflicts with the assessment of no animal in distress, at least the definition of distress in the *PCAA* or at least conflicts enough that the Society rightfully requested clarification. That clarification led to the ITO. I should note that the internal Society document quoted above was attached to the ITO and was available to the Justice of the Peace who granted the warrant. More importantly, of course, the RCMP’s comments do not determine, in this appeal process, the question of whether the animals were in distress based on all of the circumstances and evidence.

125. The fact was that once the Society entered the property, it found several animals in varying degrees of distress. One kitten was so sick it died shortly after it was seized. All the cats were underweight; and all the kittens were underweight, with many having obvious discharge from their eyes and noses, with some crusted shut, according to photographs.
126. Further, the condition of the home convinced the Society that there were unsanitary conditions causing distress and for all these reasons, it seized the animals it was able to catch. The fact that what was initially thought of as only fleas turned out to be fleas and ear mites actually makes the seizure more compelling to me. The kittens were losing blood to the fleas’ feeding behavior; the ear mites were causing pain and were filling the ears of the cats and kittens with copious amounts of residue that it had to be scooped out with q-tips. The volume of material on each q-tip was extreme, and SPC Affleck estimated three q-tips per cat.
127. Even the dog, Shilo, had fleas and ear mites that caused him to shake his head so much you could see the mites moving, according to Dr. Langelier. The dog also had an untreated stomatitis and it was necessary to further investigate to see if this was chronic or if it might be due to environmental concerns.
128. I have no difficulty whatsoever in determining that the seizure was both reasonable and correct and ought to have occurred. The definition of distress in s. 1(2) of the *PCAA* was met in the cats/kittens and dogs as, in my opinion and supported by veterinary evidence, they were kept in unsanitary conditions, were deprived of veterinary care, were sick and were suffering, and some were deprived of adequate food.

### **Return of Animals**

129. Having determined that the seizure of the animals was justified, I turn now to the best interests of the cats and the dog, and whether their best interests are served by returning them to the Appellant or having them remain with the Society to dispose of at its discretion.
130. I note that the legislative framework was described in *Eliason v SPCA*, 2004 BCSC 1773 where Mr. Justice Groberman (as he then was) stated:

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

131. I also note the following passage from *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.):

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

132. I will split the question of the return of the animals into two groups: the cats/kittens in one group and the dog separately.
133. The cats/kittens were suffering. Dr. Langelier said the degree of suffering seen by these animals was severe. The extent of ear mites in all individuals (cats/kittens) was some of the worst he had ever seen. In many cases the cats/kitten were suffering from severe roundworm infestation, which caused pain and risked the animals' health. The cats/kittens lacked proper nutrition. The weakness from flea bite anemia and eyes closed with purulent material seen in the kittens was severe and any person seeing these animals in such a compromised state should have sought veterinary care. Yet the Appellant did not seek veterinary care.
134. The question for me is whether, if these animals were returned, they would remain out of "distress" as defined in the *PCAA*.
135. The cats were thin as were the kittens with one being emaciated. The Appellant suggested that kittens look thin as they grow.
136. The Appellant had an earlier litter of kittens all die from upper respiratory infections, and testified she believes it is genetic and can indicate an unhealthy group of kittens. Veterinary medicine did nothing to help that litter of kittens some years ago, ergo, in her mind, veterinary care won't help the current kittens. There is a deep flaw in this reasoning. Veterinary treatment, particularly veterinary treatment sought early in the disease process, can, as Dr. Langelier testified, prevent secondary infection and can produce some pain relief. It can also bring about a decision to euthanize rather than wait for sick kittens to languish and die, as one kitten did.
137. The Appellant also did not seek veterinary care for the infected eyes of the kittens, instead choosing to swab them with warm water and an application of Polysporin, which Dr. Langelier testifies was not the correct medication for a systemic disease.
138. Some of the cats and kittens had diarrhea and the Appellant did not seek veterinary care for them. Dr. Langelier testified that the roundworm and parasitic infection in the bowels of the animals would cause pain, yet the Appellant did nothing to alleviate this health issue.
139. The Appellant did nothing for her adult cat Tinker who according to her assessment had some swelling abscess that she watched until it burst then did not give much more thought to, despite the fact that it caused the cat to have head tilt. The Appellant seemed comfortable with assessing her cat's level of discomfort or pain or disease by determining that blood equaled a need for veterinary intervention and Tinker's lack of blood meant no intervention was necessary. She further testified that Tinker retained his top cat status, so the head tilt did not hinder him. The fact, according to veterinary evidence, is that Tinker cannot blink and has an infection in his skull that now needs to be physically removed.
140. I do not believe that if the cats or kittens were returned, they would remain in a condition that protected them from being in distress. In fact, I believe if the cats were returned they would

become sicker and would infect any other cats or new kittens to also become sick. In my view, in this case, this Appellant has no ability, based on her own testimony, to recognize suffering or distress or even basic symptoms of health issues in her animals. That lack of recognition of distress is either compounded by her unwillingness to get veterinary care, or is the reason for not getting them care; either way, it is unacceptable.

141. Based on this, in the best interests of the cats/kittens including the Black Kitten, the cats will not be returned to the Appellant. The lack of veterinary care and inability of the Appellant to determine when to seek veterinary assistance and her great ability to overlook the suffering of her cats/kittens is enough reason not to return the cats. The fact the cats were underweight, malnourished, and in one case emaciated, is another reason to not return the cats, again in their best interests. However, should anyone believe they need additional reasons, the information about the unsanitary conditions of the house which I will apply to the beautiful dog Shilo also applies to each cat and each kitten, even though I will not list it here for the cat group.
142. Shilo is a happy well-fed dog who seems active. The Appellant says she loves her dog and since it was not in distress, he should be returned.
143. I disagree that Shilo was not in distress. He had flea infestation and ear mites and although neither of these maladies was as bad in him as in the cats, the Appellant did not seek veterinary care. Shilo had a stomatitis that was not treated or even recognized, creating a serious risk of being a precursor to other health issues, either chronic or acute (either way, requiring a different level of veterinary intervention). The Appellant failed to seek veterinary care for the dog and thus Shilo clearly met the definition of distress.
144. I believe that if given the chance, the Appellant would have treated Shilo for fleas and ear mites, as she said she would. So when I consider whether or not Shilo should be returned, I must consider the condition of the house where Shilo lives. The question for me is whether the conditions of the appellant's home at the time of seizure were actually "unsanitary" as that term is understood in the *PCAA*, whether that state would be likely to be corrected and whether, if it is not corrected, Shilo would foreseeably be subject to the conditions that gave rise to the distress that gave rise to these proceedings.
145. I have reflected on the meaning of the phrase "kept in conditions that are unsanitary" and the application of that language to the facts here. The term "unsanitary" is not further defined.
146. As the meaning of "unsanitary" is not defined, I have applied the principle that language is to be read in its entire context, in its grammatical and ordinary sense, harmoniously with the scheme and object of the Act. See also *Interpretation Act*, R.S.B.C. 1996, c. 238, section "Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."
147. I note about this part of the definition was that it was added to the *PCAA* in 2011: *Prevention of Cruelty to Animals Act, 2011*, S.B.C. 2011, c. 7. The amendment clearly broadened the definition of "distress".
148. Following the amendments, the Society did not have to establish an actual deprivation or harm to animal. The legislature has now deemed that "distress" will also be present where the animal is

kept in conditions that are unsanitary, or is not protected from excessive heat or cold (whether or not actual injury or disease is shown). These amendments are significant. They are protective. They do not require proof of actual harm at that moment. Instead, they reflect the circumstances that create a significant risk of harm to an animal. The amendments make clear that animals can be protected if the conditions are sufficiently risky to warrant protective action.

149. The question as to when circumstances are sufficiently problematic as to be “unsanitary” for the purposes of *the PCAA* raises other considerations. It is clear to me that the word “unsanitary” must have some boundaries. It cannot be trivialized; it cannot, for example, be interpreted as merely “really dirty”. The word cannot be interpreted to invite mere speculation as to what might possibly happen. The 2011 amendments must be interpreted in accordance with the larger protective purposes of the **PCAA**. In this regard, while they broaden the definition of distress, they also reflect the flavour of the other definitions of “distress”.
150. To accept the definition of unsanitary as merely “dirty” or “really dirty” would mean that animals could be seized for no other reason than a subjective assessment regarding the level of dirt in one’s home. Surely this was not the intent of the legislators – to make it possible to seize otherwise healthy animals from merely dirty homes.
151. All this leads me to conclude that these new terms were intended to invite and require a fact-based judgment connected with a significant risk to the animal’s health and well-being. In this context, a condition will be “unsanitary” when it is so filthy as to carry a significant risk to the animal’s health and well-being.
152. This is consistent with the dictionary meaning of the word. The *Canadian Oxford English Dictionary* (2004) defines “sanitary” as “of or pertaining to the conditions affecting health, the promotion of good health, or protection against infection”, hygienic; free from or designed to kill or prevent germs, infection, etc...” To read “unsanitary” consistent with this definition and the associated terms in the definition of “distress” (ss. (a), (a.2), (b), and (c)) is entirely consistent with looking for a threshold of cleanliness that carries a significant risk to the animal’s health and well-being, as the animal’s best interests are paramount.
153. The Appellant’s home, according to the photographs and the testimony of SPC Affleck, was filled with feces and smelled of ammonia and had rotting food out and had large rodent droppings in a wide area in the basement (whether or not the animals went down there) and had enough moisture around that floors were wet, water stains were visible on ceilings and walls and wood and drawers and cupboards. Further, there were dark spots that were described as mould-like substances by SPC Affleck and referred to as mould by the veterinarian and in my own conclusion, given the water visible and staining and pattern and appearance, and given no other explanation by the Appellant, I find on the balance of probabilities that this was mould. The Appellant did not offer any explanation for what was appearing on the walls and other areas other than to question witnesses about their mould experience.
154. I conclude from the photographs that there were vast amounts of feces in the home, from thick piles against walls behind furniture to one white chair the Appellant says was in her living room which appears to have splatter and a pool of diarrhea on it, likely dried.

155. I conclude there was the presence of significant amounts of ammonia, a conclusion gathered from the testimony of SPC Affleck that the ammonia smell was so bad, he had to wear a respiratory device and that he continued to smell ammonia and mould through the mask, and from Dr. Langelier who said that when the cats were presented for examination, the ammonia and fetid odour on their fur was so extreme that he was immediately alerted that the environment from where these animals were kept had poor air quality and was unhealthy.
156. And I conclude from Dr. Langelier's evidence citing Dr. Crews' report regarding Tinker that there is lung pathology occurring from chronic exposure to irritants such as high ammonia and moulds or other toxins. High levels of ammonia were present in this home and this cat's fur was extremely odorous from ammonia.
157. I conclude from Dr. Langelier's testimony that eggs from parasites, and viruses and diseases, can all lay dormant around the house and property and can continue to re-infect animals. The presence of these organisms in the dead kitten, he said, indicate other pathogenic diseases in the environment of that home. The presence of two pathogens in a young kitten indicated the environment is infective to other pets and potentially people. He also found roundworm in the lungs and intestines of the dead kitten and said if the parasites are still present on the owner's property or in other animals, the risk of re-infection is high and it is hard to clean eggs in damp environments.
158. Based a careful consideration of all the evidence, I conclude that in the circumstances of this case, the Appellant's home is unsanitary and does carry a significant risk of harm to the dog (and the cats/kittens) and I have no confidence, based on the lack of insight by the Appellant, that this condition would change (a point on which I elaborate below). For this reason, I conclude that the risk of harm to this dog is significant and real (the risk was also described by Dr. Langelier as significant), and that is enough reason for me to order that the dog not be returned in his best interests. I understand that this will have a great impact on the Appellant and it was a difficult conclusion for me to come to as the affection she has for her dog is evident. However, in addition to the veterinary evidence and photographic evidence and my complete belief that the risk is significant and real for Shilo, I am also swayed by the Appellant's description of a previous dog, Buffy, who required veterinary care. Buffy, according to the Appellant, had to communicate mentally with the Appellant before the Appellant recognized the presence of an abscess that caused swelling in Buffy's face and neck. Although the Appellant did then take Buffy to the veterinarian as any responsible owner should have, she testified that the swelling only happened at the time of mental communication and she had not otherwise noticed it. I worry that Shilo, if he became ill or injured (both of which are real possibilities in my view), may be unable to communicate in such a way as to lead to receiving veterinary care, and I am concerned about the very real possibility that the Appellant would otherwise not notice symptoms of poor health.
159. In considering whether to return Shilo, I make reference to comments made by the British Columbia Court of Appeal in *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at paras. 37-38, in responding to the argument that the Society must always give an owner "another chance" before it seizes animals:

In my view, s. 11(a) must be given a broad purposive interpretation. The words "does not promptly take steps that will relieve ... distress" sometimes will lead to the authorized agent making orders and giving directions, in other circumstances he or she may conclude that the person responsible for the animals is

unable to take the necessary steps or it may be apparent that the person is unwilling to take steps to relieve the distress. The cases referred to by the chambers judge illustrate these varied scenarios.

160. The word "promptly" suggests a consideration whether the person can or will take the necessary action.
161. In this case, the Appellant in fact had not appreciably changed the unsanitary condition of her home between the first and the second seizure, except for some sweeping and cleaning the outside of some windows. The fact she chose to clean the outside of the windows confounds me, and is further proof that the Appellant completely fails to appreciate the health risks to her animals that exist in her home. It is my decision that this Appellant neither can nor will take necessary action. She might, as I said, seek veterinary care for the fleas and ear mites, but I do not think it would go beyond that. I am not even convinced that she would seek veterinary care unless someone told her to do so, as she does not seem to reliably recognize the signs of distress in her animals. For that reason, I do not believe she needs an opportunity to promptly take steps to relieve Shilo's distress.
162. I also want to address the Appellant's assertion that the Society has no room for and does not need any more animals including her own, and that the fact the Society has an abundance of cats/kittens and keeps them in cages is not a better situation than returning them to the Appellant's home.
163. I can appreciate the Appellant's view that caging her previously free-roaming cats/kittens and to some degree caging her dog Shilo, who is used to long walks and outdoor play, is not a better situation than returning them to her care. The difference for me is that while in the care of the Society, the cats/kittens and the dog will receive the veterinary and nutritional care and support they need to maintain or return to good health. This is clearly in their best interests.
164. Further, in my view, while the current confinement of the cats and the dog is not ideal (even though it meets acceptable levels of living), at least the cats/kittens and the dog have some real prospect of finding a permanent home free of the type of significant health risks that exist at the Appellant's home. And for the sick animals that are suffering, they will, through veterinary care, adoption, or euthanasia, be able to cease that suffering. It is a very sad reality for me that the possibility of death for even one of these animals is preferable to being returned to the Appellant.

## **ORDER**

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

**20.6** On hearing an appeal in respect of an animal, the board may do one or more of the following:

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

166. It is my order that pursuant to section 20.6(b) of the *PCAA*, the Society, in its discretion, may destroy, sell or otherwise dispose of the cats Perry, Tinker and Squirt, and the Black Kitten, and the dog Shilo.

### **Costs**

167. Section 20 of the *PCAA* provides:

- (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.

168. 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)”.

169. The Society has asked for its costs defined as \$5,194.96 as follows:

- Veterinary costs \$1,387.42
- SPC time to attend seizure 1 \$144 (\$12 x 12 hours)
- Boarding of animals from day of seizure until day of decision (August 18, 2015) \$3,060 (\$10 a day for a cat x 3 cats and \$15 a day for a dog for care, boarding, feeding and overhead costs)
- Veterinary costs related to Black Kitten \$107.54
- SPC time to seize kitten \$36
- Boarding of the kitten \$460 (\$10 per day July 3 – August 18)

170. The Appellant says these costs are unreasonable as she did not wish the animals to be boarded and could have cared for them without cost other than food at home. She believes this is the cost of doing business for the Society.

171. The Society believes the costs are reasonable. The boarding fees are comprised of amounts for food, staff time to feed the animals, and staff time to clean the kennel plus an estimated amount representative of the cost to maintain a shelter including utilities, taxes, and management/computer systems and attending to veterinary instructions. The reasonable costs requested are \$10 per cat per day and \$15 per dog per day.

172. The Appellant has provided me with no useful information regarding the reasonableness of the costs. She said she already purchased flea treatment so should not have to pay for it again. She says she did not ask for the animals to be removed although I have determined it was necessary. She does not address the significant health issues the veterinarian had to assess and treat and she seems to think those costs are the cost of doing business. She makes no argument about the reasonableness or necessity of the veterinary intervention.

173. Without any information to the contrary, I find that the Society's costs as requested are reasonable. The Society has presented reasonable costs in terms of boarding and SPC time. It has presented reasonable veterinary invoices for reimbursement.

**ORDER**

174. I order that the Appellant pay the amount of \$5,194.96 to the Society as the reasonable costs incurred by the Society with respect to the animals.

Dated at Victoria, British Columbia this 18 day of August, 2015

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**



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Corey Van't Haaff, Presiding Member