

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 FOUR CATS

**BETWEEN:**

H.L.

**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:

H.L., self-represented

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

May 15, 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 H.L. (referred to by initials to protect her privacy) appeals from the April 13, 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). Ms. Moriarty's decision rejected the Appellant's request that the Society return to her four cats which the Society removed on March 12, 2015. This appeal, filed under s. 20.3 of the *PCAA*, was filed on April 16, 2015. The appeal was heard by a one-person panel in a telephone hearing on Friday May 15, 2015. H.L. was self-represented but had a companion available for moral support. She and called Timothy Porter, Leslee Smith, and Kathleen Ellis as her witnesses. The Society was represented by counsel and called Special Provincial Constable Toni Morrison, and Brenda Hirst as its witnesses. BCFIRB called veterinarian Dr. Jeffrey Grognet and Jason de Ruiter to assist it in this matter. The telephone hearing was recorded.

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

3. Section 20.6 of the *PCAA* permits 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 will be returned to the Appellant, subject to conditions which must be satisfied by the Appellant prior to any return.
5. I will deal with the issue of costs below but my order is that the Appellant is liable for the costs, as described 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 Matters**

11. Before I turn to the evidence, I wish to outline four preliminary points relating to this appeal.

12. First, 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 (ATA)* 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:

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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

### **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]

13. Second, in accordance with s. 40 of the *ATA*, all statements, emails, materials, and photographs submitted were entered into evidence. There were no objections made about any material being entered into evidence or any witnesses being called to testify. The Society did not object to the late submission of the Appellant's documents and material. 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 several photographs only briefly discussed and not all viewed during the hearing, whether or not I refer to all of it in the course of this decision.
14. Third, an appeal triggers an evidentiary obligation on the Society. Section 20.3(4) of the *PCAA* requires that "on receiving notice under subsection (3), the Society is a party to the appeal and must provide to the Board, as soon as reasonably practicable, every bylaw and document in relation to the matter under appeal." A copy of the SPC's handwritten field notes were provided very late in the process, and the Society did not provide a copy of the Investigation Detail at all despite the Society's reference to it in its evidence, described below. I must remind the Society that BCFIRB is to have all documents in a timely manner and it is up to the Panel to decide on the importance of every document and the weight each should be given.
15. Finally, I briefly address the Appellant's participation on this appeal without representation. I asked the Appellant if she had developmental delays and she replied that that is what she had been told. She said she has been slow all her life and there was a lot she did not understand, that's why she has many questions. She said at the beginning of the hearing that she has never been involved with anything like this (the hearing) before. Throughout the hearing, the Appellant was provided with opportunities to ask questions, which she often availed herself to. The Appellant called three witnesses and with a suggestion from the Panel on how to elicit testimony by asking questions, she was able to do that. She asked limited questions on cross examination. She did present a full account of her view of the matters leading to the seizure and was able to respond, quite vigorously at times, to Society and Panel questions. I am satisfied that the Appellant completely understood the matter at hand and its consequences to her (she did, for instance, launch an appeal and meet the timelines and conditions for doing so). I am fully satisfied that the Appellant mounted a thoughtful and viable appeal and was involved with and understanding the process as it transpired.

### **Brief History Leading to the Seizure**

16. The Appellant lived in a rental unit with her four cats. The Appellant has been described as developmentally delayed. She receives services from Community Living British Columbia (CLBC), a statutory authority for constituted under the *Community Living Authority Act*. The services she received from CLBC included a social worker and entitlement to once a week housecleaning services if she wishes.

17. The Appellant was removed from her home on March 11, 2015. While the precise basis for the removal of the Appellant is not entirely clear and is not an issue for me to resolve on this appeal<sup>2</sup>, it arose in circumstances precipitated by a neighbour's complaint about smells coming from the Appellant's apartment. This complaint led the Appellant's landlord to commence an eviction process that was to take effect March 31. At the same time, the landlord called CLBC to assist the Appellant with the transition. The eviction process led to the Appellant agreeing to allow CLBC cleaners in to clean the apartment on March 6, which involved multiple cleaners and 16 total hours of cleaning. It also led to CLBC on March 11 removing the Appellant from her home and then making a CLBC home available for the Appellant as transitional accommodation, but unfortunately that CLBC home does not allow cats. Because this left no one to care for the cats, a CLBC social worker called the Society to advise that the four cats remained in the apartment without care. As shown in the evidence below, the Society on March 12, 2015 found the apartment in what its officer described as "very dirty living conditions" when it attended to remove the cats despite the 16 hours of cleaning that had been done several days earlier.

### Decision Being Appealed

18. Ms. Moriarty, the Society's Chief Prevention and Enforcement Officer, issued her review decision on April 13, 2015. She determined that SPC Morrison reasonably formed the opinion that the cats were in "distress" as defined by Section 1(2) of the *PCAA*. Ms. Moriarty was also satisfied that SPC Morrison reasonably formed the opinion that the appropriate course of action was to take custody of the Cats "in order to relieve their distress". Ms. Moriarty noted that after the cats were seized, she provided the Appellant with an opportunity to provide submissions as to why she should return the cats, but she had not received anything by the April 13<sup>th</sup> deadline.
19. The pertinent part of the review decision stated:

Having satisfied myself that the seizure was performed in accordance with the Act, I turn now to the question of whether the Cats should be returned to your custody. When I spoke with you on March 31<sup>st</sup>, I explained this deadline and what I was looking for in any submissions - namely that you address where the Cats would live if returned and how you would ensure their good health. Without any submissions, I am left with only the information leading up to the warrant and the reality of your current situation to consider. This reality is that you have been removed from the Property and are currently in care until at least the end of May. I am informed that efforts have been made to find a suitable home that would take the Cats and yourself but that this is not realistic. In addition, I am very much concerned about the conditions that led up to the seizure of the Cats. It is my understanding that prior to the warrant, cleaners had been sent to your Property by your social worker and despite 16 hours of cleaning, the Property was still a concern. The Cats themselves had medical concerns including flea infestation.

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<sup>2</sup> The basis for the removal of the Appellant from her apartment was described in Ms. Moriarty's affidavit both as an "eviction" and a "removal under the *Adult Guardianship Act*". CLBC witness Ms. Hirst described the removal as both voluntary and involuntary. While it does not change the decision I have to make today, I do find it relevant to note that the basis for the removal may well have had a bearing on the fate of the cats. As the *Adult Guardianship Act* appears only to authorize removals by court order, only the *Mental Health Act* would allow forcible removal for assessment. However, if this was the basis on which the Appellant was removed and taken to see a doctor, that psychiatric assessment did not result in a *Mental Health Act* certificate for detention. In this context, it is noted that the eviction, which the Appellant agreed to, did not take effect until March 31, 2015. As such, the Appellant may have had a legitimate argument that she had an ongoing right of access to the apartment until March 31 even if she was not living there, as being a location where she could have tended to the cats on daily visits to the end of March and made efforts during that period to find cat-friendly accommodation thereafter. For reasons that will become evident later in this decision, Ms. Moriarty was unable to consider any such arguments as part of a case for early return of the cats, as the Appellant was quite understandably in no position at that time to respond pursuant to the review process and the complicated legal provisions at play, and the Appellant was, in any event, refused keys to the apartment after she had been convinced to turn them over.

Having regard to all the above, I am not prepared to return the Cats to you as I do not believe it is in their best interest. I do believe that you care deeply for these Cats but your current situation is just not conducive to their well-being. Section 9.1 of the Act requires that an owner must care for the animal and protect them from circumstances that are likely to cause the animal to be in distress in the future. At this time in your life, I am concerned that you would not be able to do this.

### **Material Admitted Into Evidence:**

#### **Appellant:**

- a) Appellant Notice of Appeal and related documents 6 pages (**Exhibit 1**)
- b) Appellant's April 29, 2015 3 page response (**Exhibit 2**)
- c) April 11, 2015 letter from Ms. Warick (**Exhibit 9**)
- d) Revised Witness Contact Form (Leslee Smith and Kathleen Ellis) (**Exhibit 10**)

#### **Respondent:**

- a) BCSPCA initial disclosure from April 21, 2015 – (**Exhibit 3**)
- b) BCSPCA cloudshare link received by email April 30, 2015 - (**Exhibit 4**)
- c) BCSPCA email May 5, 2015 re Linda Harbo email April 28, 2015- (**Exhibit 5**)
- d) BCSPCA documents (bound) beginning with May 6, 2015 affidavit of M. Moriarty includes the BCSPCA review decision - (**Exhibit 6**)
- e) SPC Toni Morrison and Brenda Hirst Witness Contact Form; (**Exhibit 7**)
- f) BCSPCA Written Submission dated May 8, 2015, (**Exhibit 8**)

### **The Panel's Witnesses**

20. There was no veterinary evidence called by either side and the Panel needed a veterinarian's opinion to determine how the condition of the apartment might affect the health of the cats, along with related issues. There was also no witness other than the Appellant herself being called to address the condition of the apartment prior to the cleaning. For those reasons, the Panel called its own witnesses with regard to those issues.

#### ***Jason de Ruiter***

21. Mr. de Ruiter testified he contracts through CLBC and has worked with the Appellant for 6-7 years. He runs and administers the cleaning contracts.
22. He attended the Appellant's home – a one bedroom, one bathroom living room/ dining room apartment on the third floor of a 3 storey walk-up - on March 6, 2015. This cleaning visit followed the landlord's notification to CLBC that he was intending to evict the Appellant owing to the smells coming from the unit.
23. The Appellant was present when Mr. de Ruiter attended on March 6. He stated that the apartment was very cluttered, full of items, broken furniture, bags and boxes. The porch was full of bags of garbage, the kitchen counter was full of items like dishes, pots and pans, and every surface of the apartment was covered with articles. The floor was very dirty with cigarette butts, loose rolling papers, and furniture destroyed by the cats. The carpet and floors were sticky and damp and there

were feces and vomit on the floor and cat food everywhere. There were maggot casings under furniture and multiple bags of dirty cat litter on the porch. The windows were dirty. He brought protective gear as he knew what to expect, but only wore gloves himself. It was quite worse than previous years.

24. He stated that the Appellant's apartment smelled bad like an animal smell, kind of like urine but mostly a top soil smell. He would not describe it as a strong urine smell but more like earth decaying, rich top soil, quite an assaulting smell. He opened the windows as it was too intense to stay in there enclosed. A cross breeze brought relief.
25. There were cigarette butts on the floor, counter, table and in containers that Mr. de Ruiter said were so the Appellant could salvage tobacco from them later. There were butts and kibble on the floor together mostly in the living room but not as intense coverage elsewhere. There were fruits and vegetables on the counter to eat and it was in the fridge where he found rotting food. He noted three jugs of urine cleaner on the floor and believes the Appellant was pouring the cleaner directly onto the carpet. The carpets were so dirty he said he couldn't tell what were feces or vomit or possibly urine with cleaner on top.
26. There were bags of clothing and inside her apartment he saw a half-filled bag of household garbage like the Appellant was trying to clean up as she knew he was coming. He was not injured moving through the apartment as he was careful, and he saw fleas but he personally never gets marks from flea bites. Three cleaners worked for a combined total of 16 hours and removed enough garbage to fill an empty dumpster then fill the oversize garbage area beside the dumpster then fill a pickup truck two times, with both of those truckloads taken to the dump.
27. Mr. de Ruiter said he first met the Appellant 7 years ago when he first started a cleaning contract for the Appellant's home, that she was messy then and that staff focused on cleaning the kitchen for health reasons. In a typical 2 hour cleaning visit once a week (two cleaners one hour each so the visit was one hour), they spent half the time sanitizing the kitchen. The Appellant has a collection of stuff. It has got progressively worse over the years. The cats were clearly fed, way overfed in his opinion, and he did not see water out but it may have been in the bathroom, he wasn't sure.
28. On March 9, 2015, Mr. de Ruiter contacted a CLBC social worker, Ms. Hirst, to advise that they had spent 16 hours cleaning the apartment since March 6, 2015.
29. The Appellant's removal from the apartment, the Society's involvement and the photographic evidence tendered at this hearing all relate to the period following that 16 hours of cleaning.

***Dr. Jeffrey Grognet***

30. Dr. Grognet confirmed he was a member of the College of Veterinarians of BC. He has never seen the Appellant's apartment nor her cats, but was provided with the photographic evidence submitted by the Society with photographs of the inside of the Appellant's apartment.
31. In response to Panel questions, he said depending on how long loose kibble was on the floor, it might be rancid if it was a month ago but if current, it would not be too bad. If rancid, it could cause food poisoning but cats are fairly picky and if alternate food other than rancid, they would choose that. Cats would also eat food over cigarette butts and there was no health risk to the cats from the butts. Feces and urine on the cats' food could contribute to contamination of food and

would be undesirable to the cats as well as providing a source of moisture, which could cause bacteria to turn the food “off” within a day or so. There is a health risk to cats from feces and vomit if they get it on their paws and clean themselves and consume the bacteria. Urine would be a source of moisture and if urine wetted the food it could permit the growth of bacteria, and that could create a bacteria load and cause food poisoning, as bacteria produces toxins which could be poisonous to a cat and could also cause intestinal infection and disturbances.

32. If cats living in those conditions were healthy they run the risk of being able to pick up something even if their health was good, so there was a risk of future problems but even so, cats generally are clean so they would avoid urine and fecal contamination and would go to the bathroom in a manner to minimize the risk, as much as possible. A healthy cat could tolerate and avoid some contamination. The snapshots could not tell the future so he doesn't know what might happen. Without knowing if the cats and situation at the Appellant's were high risk or low risk, he couldn't say.
33. It is possible for the cats to be healthy and the contamination poses a greater risk to humans but if the cats had room to hide and stay clean and avoid contamination, they could continue to be healthy. If there was a medical concern and they were showing symptoms, they would have to be examined.
34. When asked if fleas were a medical concern he said a fairly minor one for an adult cat and was easy to treat. If not treated and there were enough fleas they could cause anemia and skin irritation or be tapeworm carriers but adult cats usually do not become anemic. Skin irritations usually involve hair loss and some scabs, and can be irritative. Cats with fleas do not require veterinary care as you can buy flea treatment at the store. Only if they develop a skin infection and start losing weight would they require veterinary care. It is not common that fleas would require veterinary care as most cats tolerate a flea load very well. Less than ten percent of cats with flea infestations develop skin infections, most are just irritated and scratch without secondary problems. Ear mites are diagnosed by a veterinarian who looks to see the actual mite with an otoscope which magnifies, or they swab and look at the swab under a microscope. With these tools, someone else could diagnose ear mites. It happens often that owners do not know their cats have ear mites and fleas. Ear mites can cause irritation and if all cats have established ear mites but do not show symptoms, it can still cause inflammation in the ear.
35. On questioning by the Society, Dr. Grognet said when in a closed environment with strong odours, cats if given a choice would just move away from the source of smell. If odour is concentrated near the floor they could move higher. If there was a top soil smell it may not be a risk, but would just smell bad. Cats tend to get away from odours on the floor by going up on furniture.
36. When asked if tobacco was toxic if ingested, Dr. Grognet said yes but if there was vomit on the floor the more likely cause would be hairballs as the cats clean themselves and the number one reason for cats to throw up is hairballs. Eating certain plants can cause throwing up but it is fairly rare for a toxin to cause vomiting. He said if the cats did eat cigarette butts they would be more physically irritating than toxic.
37. Dr. Grognet explained that flea bites might cause reactions due to their saliva, not the bite itself. Cats are usually oblivious to flea saliva. It is possible if a cat was contaminated with feces and bacteria and scratched a flea bite it could introduce infection. Some cats certainly suffer from skin irritations.

38. Dr. Grognet said he recommends preventative care with an annual veterinary exam once a year but in practical terms only one third of cat owners adhere to this, two thirds do not.
39. Speaking to reactions from urine, Dr. Grognet said it could cause red eyes or sneezing but those reactions have not been recorded in cats (they have in pigs).

## **The Society's Case**

### ***Brenda Hirst Testimony***

40. Ms. Hirst testified she works at CLBC. She knows the Appellant and that she had four cats taken from her possession and knows the condition of the apartment. She knows Mr. de Ruiter.
41. On March 6, 2015, Ms. Hirst got a call from the Appellant's landlord stating he got a complaint from her neighbour about the smell of cat feces from the apartment and that he was going to evict the Appellant but wanted a meeting to try and support her through the eviction. The meeting was held apparently at Ms. Hirst's office, with the Appellant in attendance, the cleaner, the landlord and Ms. Hirst on March 6, 2015.
42. On March 9, 2015 Ms. Hirst received an email from Jason de Ruiter that the apartment had been cleaned for a total of 16 hours when the Appellant agreed to let his crew in to clean on March 6<sup>th</sup>.
43. Ms. Hirst stated that she saw the apartment herself for the first time on March 12 while CLBC was taking the Appellant under the *Adult Guardianship Act*. I note that Ms. Hirst's recollection of March 12 is not consistent with the weight of the evidence - including the Society's records and the Appellant's evidence - that the Appellant was removed on March 11 and that the Society attended pursuant to a warrant on March 12, 2015.
44. Ms. Hirst testified that the cleaner reported to her on March 9 that the apartment was uninhabitable. Ms. Hirst spoke to the Appellant about leaving voluntarily right away (it was not clear from evidence whether that conversation took place March 6, March 9, or March 11, but was likely the 6th). The Appellant said unless she could take the cats she was not leaving. Ms. Hirst decided it was too dangerous to the Appellant's health to stay in the apartment as - in response to the Society's direct question if it was unsanitary – it was her view that it was unsanitary.
45. Ms. Hirst reported that the Appellant was removed from her home against her will. She has volunteered to go into Home share<sup>3</sup> and can leave there, but she has nowhere else to go, so CLBC extended the time she could stay in Home share for a few months until the Appellant can find an apartment. CLBC will pay for her to stay until July.
46. Ms. Hirst testified that the Appellant is free to use or not use CLBC services unless and until they use the *Adult Guardianship Act*. The Hospital had a psychiatrist assess the Appellant and that psychiatrist confirmed that the Appellant was able to make her own decisions. Ms. Hirst testified that the Appellant is her own person and can say whether or not she wants CLBC services.

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<sup>3</sup> As I understand it from the evidence, "Home share" is a CLBC service whereby the person receiving the service is living with or in a residence run by, a CLBC contractor.

47. Ms. Hirst reported that the Appellant got into trouble when she stopped using housekeeping services about six months ago. Ms. Hirst said the Appellant did not want the cleaners touching too much.
48. Ms. Hirst said it was up to each individual Home share if they take cats or not. CLBC did try to find a place that would take four cats but only had one week to look.
49. Ms. Hirst entered the Appellant's apartment two days after Mr. de Ruiter's email about the 16 hour of cleaning. She said it was in pretty bad shape. She was advised to wear gloves and a mask but chose not to so as to not frighten the Appellant. There was no odour, she said, as it had been cleaned. The floor was tacky with urine and there were cigarette butts and there was both fresh and moldy food. She did not experience any flea bites while she was in the apartment for a total of 15 minutes. She then left to wait outside while an RCMP officer spoke privately to the Appellant and Ms. Hirst said the Appellant agreed to go with the RCMP voluntarily.
50. Ms. Hirst said the Appellant has a semi-independent worker and a cleaner available to her as she wished.
51. Ms. Hirst explained that the decision to remove the Appellant for self abuse and self neglect under the *Adult Guardianship Act* was based on information from the meeting with the cleaner and the Appellant and landlord where the Appellant admitted things got out of hand. The decision as subjective - there is no checklist or protocol. The cleaner took photos of the fridge and the garbage on the deck and photos were sent to a hoarding task force and it was felt there was enough information to remove the Appellant (those photos were not submitted into evidence).
52. When asked by the Panel why Ms. Hirst referenced the pet rats that the Appellant used to own some 20 years earlier which she had said were removed by the Society as they were eating each other, Ms. Hirst said she offered that information when asked by the Society if the Appellant had previous dealings with the Society.

***Special Provincial Constable Toni Morrison***

53. SPC Toni Morrison confirmed she was a SPC appointed under the *Police Act* and that she attended the seizure of the cats on March 12, 2015.
54. Admitted into evidence was a copy of SPC Morrison's field notes. The notes explained the timeline leading to the seizure and documented conversations with social workers and the Appellant's home share worker. The notes indicated the Appellant was distraught over her own removal and worried about her cats. The notes indicated that speaking through her Home share worker, the Appellant wanted the cats put back in the apartment she paid rent for and she won't surrender her animals as they are her family. The notes indicated the Appellant expressed the fact she could leave and wanted her apartment keys back to go and care for her animals.
55. SPC Morrison's field notes also said when she entered apartment #305 "a lot of clutter and household items piled in apartment – carpets soiled, dark staining on carpets, sticky. 2 litter boxes in bathroom – floors filthy, curtains – windows dark stinky substance on lower surfaces, window sill and floor trim. 4 cats caught, 1 black dsh adequate weight 1 torbi dmh underweight 1 tabby dsh overweight 1 torti dsh overweight – cats had a lot of missing fur – heavy scabs on cats neck and throughout body. Very dirty living conditions."

56. The notes also indicated the Appellant attended the shelter to see her cats and wanted a copy of the paperwork that SPC Morrison said she had given to the social worker. SPC Morrison advised the Home share provider she could drop a copy of the paperwork off.
57. SPC Morrison testified that the call centre received a call on March 10, 2015 from Brenda Hirst that the Appellant was going to be removed under the *Adult Guardianship Act* and had no next of kin, and hoped that the Society would attend to take the cats, but it was too short notice for the Society to attend the day the Appellant was removed. She learned there was also an eviction notice and it was unclear who had legal access to the unit. Ms. Hirst told SPC Morrison that she was concerned the cats would become abandoned and she advised the SPC that the Appellant did not like the Society due to a previous dealing in 1998 involving pet rats. SPC Morrison learned that there had been an attempt to clean the apartment which was unsuccessful (by cleaners) and thus the Appellant was removed for self-neglect.
58. The SPC did attend the next day (March 11, 2015) and left a notice on the door at approximately 11:30 am as there was no answer. SPC Morrison called Ms. Hirst and left message to advise of this and to try and gather more information. Ms. Hirst called her back in the afternoon to confirm the Appellant's removal and subsequent release from the hospital and the Appellant's statement that she would not surrender cats to Society and Ms. Hirst's concern for the cats. Ms. Hirst advised the SPC that the Appellant would be in respite care for about three months and was unsure if there was any food or water for the cats and that conditions were not livable for the Appellant even after cleaning. Ms. Hirst told the SPC that after 16 hours of cleaning, there was still rotten food, carpets soaked in urine and cigarette butts everywhere.
59. SPC Morrison swore the ITO (Information to Obtain A Search Warrant) on March 12, 2015, obtained the warrant and with another SPC and one staff member called the property manager for access to the unit, which was granted. They entered the unit and obtained the four cats, took photos (SPC Morrison took the 15 photos entered into evidence) and left the Society's notice in the apartment.
60. SPC Morrison noted that there was a black substance on the floor and carpet in the heavy walkway areas which was sticky. Other areas were visibly covered in the substance to some degree. The air smelled strongly of cigarette smoke and old dirt. She did not see feces or urine. She did see clutter and her understanding was there had already been 16 hours of cleaning and the removal of three truckloads of trash plus a dumpster filled. She had no other knowledge of the apartment.
61. One cat had significant fur loss. There was not any water available for the cats and the SPC did not remember any bowls being present. She suspected parasites as there were scabs on the cat's coat – all had some degree of scabbing. Nothing else was noted.
62. At the shelter it was further observed that two cats had ear mites and four cats had fleas and one cat had fur loss which was irritated by scratching. Two cats had no hair loss at all. There were small scabs on the collar scruff of the cats. In her experience, the scabs were caused from scratching at fleas. The cats did not see a veterinarian as the Society has trained staff – animal care attendants are trained to diagnose external parasites which keeps the cost down for owners, as the condition was not serious enough for veterinary treatment. The cat with ear mites was given Revolution, the cats with fleas were given Advantage and all were given Capstar which killed fleas quickly and “promotes fast healing” (the other medications provided long-term killing of fleas). The cats were dewormed and vaccinated.

63. SPC Morrison said no one advised the Society of anyone else available to care for the cats.
64. Under cross-examination, SPC Morrison said she did leave a copy of the documents in the apartment and she also confirmed she sent a copy of all the documents to Ms. Hirst.
65. Upon questioning by the Panel, SPC Morrison said she was not told of the conditions of the apartment before cleaning and has no notes on conditions prior to the cleaning. She knows the cats had fleas as she received training in 2007 on flea medications during a week-long training session for animal care attendants where flea medications were taught.
66. SPC Morrison said she left (this was unclear) March 11, 2015 and left copies of the search warrant ITO, Notice of Disposition and attachments. When asked if the door notice was still hanging on the door handle when she entered the apartment on March 12, 2015 she said she did not recollect with certainty.
67. SPC Morrison said it took from 14:26 when they arrived on March 12, 2015 until 14:46 to collect the cats and take the photographs. She made a note, she said, that there was no food or water but there could have been empty bowls, no food or water was visible. She did not note any empty bowls. When asked, she said she looked around the apartment and did not observe food or water for the cats and she was absolutely sure there was no food or water.
68. When asked directly by the Panel why the cats were seized, SPC Morrison said they were abandoned. When asked why the review decision said that Ms. Moriarty was satisfied SPC Morrison reasonably formed the opinion that the cats were in distress as defined by section 1(2) of the *Act* and further that she was satisfied that SPC Morrison reasonably formed the opinion that the appropriate course of action was to take custody of the Cats in order to relieve their distress, SPC Morrison initially said she could not answer why that appeared in the Review Decision.
69. SPC Morrison said she formed the opinion the cats were abandoned and had no food or water and no one to care for them, so they were removed. She then said she made a determination the cats were in distress. When asked by the Panel to explain her handwritten notes, she acknowledged there was no note regarding distress in her field notes and no mention of food or water and that information must have come from her memory. She said that she makes notes called "Inspection Details" on the Society's internal system from her field notes. She was advised by the Panel there were no Inspection Details included in evidence. She said she does Inspection Details from field notes and memory. She believes she did the Inspection Details the same day but could not recall with certainty.
70. She had no explanation why there was no mention of costs in the review decision and she said other than fleas and ear mites, there were no medical concerns that she was aware of.
71. On additional questioning by the Society, SPC Morrison said the cats had scabs and it was her determination the cats were lacking care and possibly veterinary treatment and the home was unsanitary. She would have preferred to ask the cats' owner for more information and had tried to do that. She said the floor had black substance which made it unsanitary and that surfaces were grimy and there was not a lot that was clean. She did not see feces on the floor. There were not excessive feces in the litter box but it was in need of cleaning. She did not observe hairballs or vomit and said the black substance was unlikely hairballs.

72. She noted on the cruelty investigation form that the owner was away from the apartment for a while and with no one to help, that was neglect and she considered that the cats had fleas and she considered that flea treatment was part of necessary care.
73. She described in response to Panel questions the procedure for the Society staff to diagnose ear mites. If there was black debris in the ear, that was blood which was the fecal matter of mites. She did not know if staff used a scope but said generally they use a Q-tip.
74. When asked to clarify her reasons for seizing the cats she said abandonment falls under neglect. She took the cats as they were in distress but she did not list that in her field notes. She said the filed notes were for her own purposes and she believes Ms. Moriarty had a copy of the Inspection Details. She cannot recollect when she provided her field notes to Ms. Moriarty and she confirmed she relied on her field notes and recollection to write the inspection details, and she could not recollect when that was, but was likely the same day.
75. In response to Society questions, she said in her mind she considered the apartment unsanitary and therefore the cats were in distress, she said abandonment is neglect and dirty apartment and scabs on cats are all distress.

## **The Appellant's Case**

### ***H. L. Evidence and Testimony***

76. The Appellant provided a typed note (exhibit 2) that stated she would take care of flea management and that her home was not as bad as stated. She said in the note that she does not yet have a place to rent but is saving to find one and could board her cats until then if need be, and that her cats are everything to her and she has only their best interests at heart.
77. The Appellant testified that after her ferrets died she went into a bad depression and should have gotten help and is paying dearly for it now. She let everything go when she lost her ferret and didn't care about anything except her cats and looking after them.
78. The Appellant said she was removed from her home on March 11, 2015 by police and Brenda Hirst and was taken to the hospital and the psychiatric ward. The doctor came and she was very upset as she wanted to get home to her cats. She was released from the hospital the same day around 3:30 pm. The doctor tricked her into giving him her keys and kept them.
79. She was taken to the Home share and was not aware her cats did not have food and water as indicated and found this out the next day and asked for her keys back but was refused. She was never allowed back and all her things were thrown out and she lost everything and the cat food was taken to the Society without her permission.
80. She stated that where the animals are concerned she loves them dearly and if they were infested with fleas her own legs would have been bitten because fleas like to bite her, and she had no marks. She understand fleas as she had a cat with fleas when she first moved in there and it took her three months to get rid of those fleas (years earlier). There was no vomit or feces or cigarette butts in the floor and she knows this is hard to prove as she was removed on March 11<sup>th</sup>. She has not been allowed to see her cats and was misled about this.

81. The Appellant said she misses her cats very much and is not good at giving evidence. She buys hard food and water and soft food for her cats and there were no piles of hard food sitting around for months. She cleans up the hard food that falls out of their bowl. Her animals are not brutally mistreated. She did not know they had ear mites nor was she given a fair chance to take the cats to the vet or get flea treatment, as she did not have the money right then.
82. The Appellant thinks that Brenda Hirst is speaking hogwash when she said the Appellant would have a nervous breakdown at losing her cats. She agreed she was devastated beyond belief when they were seized and when she was taken to hospital; but she did not need to go to the hospital.
83. She agreed she was to blame and takes responsibility for her apartment but it is hogwash if anyone says she does not love her cats as she loves them dearly.
84. She said if she gets the cats back she will pay the Society's costs but they are not reasonable as she had food for a few months and the Society said she abandoned her cats but she was in the hospital and couldn't get out. She is happy to pay something but \$60 for the seizure and \$3000 is not reasonable. She cannot pay in 7 days and wants the cats back so badly that she will pay somehow but cannot do it in 7 days.
85. The Appellant lost her husband years ago and the cats are her babies and if she gets the cats back she will do better than what she did and she knows she is to blame.
86. Under cross-examination, the Appellant said she was staying in Home share respite until June 10<sup>th</sup> and cats are not allowed but she can find another place to live and will look for an apartment or basement suite where animals are allowed; she is awaiting this tribunal's decision before looking for a place that can take cats as she has to know if she needs to be looking for a place that can take animals. She agrees she can move anywhere she wants whenever she wants.
87. The Appellant testified she does not know why she was removed from her home. She was sitting on the couch and there was a knock on the door and Ms. Hirst was there with police. The Appellant was in her pajamas. Ms. Hirst had never been there. On March 6 the cleaners were there and the Appellant had been in the process of moving and had a lot of boxes and had not found an apartment yet but knew she had to be out by March 31, 2015 as the current place was not the best for her. She agreed to the landlord evicting her. She had lived there 7 years and it was a nightmare living there.
88. The Appellant said Mr. de Ruiter was there on March 6 and had been there before and said he would help but never did much. The weekly cleaners would only stay half an hour. Mr. de Ruiter only took one load of garbage from her apartment and there were no feces or vomit on the floor. There was urine as the cats sometimes peed on the floor but she cleaned it up the best she could using the cleaner. She did not use tons of it but mixed it with water and got on the floor and wiped the spots on the carpet. There was no kibble on the floor and Mr. de Ruiter did not open the windows as they were open. She said her place was a mess and it did smell but there were no feces or cigarette butts and no cat food all over. Yes she smokes and there were butts in a can.
89. She has not taken her cats to the veterinarian recently as it costs a lot of money and she does not have that kind of money but was waiting until the end of March when she got money to buy Advantage flea medicine. She got the first 3 cats from a neighbour down the hall when she moved in 7 years ago and brought them up from babies except she got the black cat over a year ago as a one year old, from a friend. She did have the cats neutered or spayed and had vaccines at that time

and has no proof now as all her stuff was thrown out. A charitable group paid for the spaying and neutering.

90. She does not understand the Society's questions about the ferrets as this has nothing to do with that; they caught adrenal disease which is an unpleasant disease and is fatal and she has seen it before when she used to work in ferret rescue. Even with treatment the ferrets still die, and that was what caused her ferrets deaths.
91. In response to Panel questions the Appellant said she feeds the cats kibble in a bowl by the kitchen on a rug on a placemat and has water next to the dish and both are always full. They are fed wet food in the morning and night, when they get one tin. She has two litter boxes for the cats in her bathroom and does have a bag of used litter on her porch. She cleans the boxes every two days and has bought flushable litter and she cleans the boxes to empty and then washes and dries the boxes and refills with fresh litter. The cats do pee in the house but not often. She had only one bottle of cleaner for urine as the bottle costs \$35 and no way would she have had four. Once a month she gives all the cats hairball remedy. She provides bottled water for her cats as she really does not like tap water and she makes sure the water is full all the time.
92. The Appellant said Mr. de Ruiter did not walk around her apartment and she does not know what smell he was complaining of.
93. If she got the cats back, she would find a place to board them until she found a place to live that takes cats. They might be boarded for a month and she cannot afford it but would make do and would find the money. She would be able to get the money together, and then would do her best to find a place to rent that allows cats.
94. The Appellant said she did vacuum her house until the vacuum broke and then she used a broom to sweep the carpet or used a little hand vacuum. There were never feces on the floor. If there was a hairball she would pick it up and flush it. When she moved into the apartment it was not painted, the rugs were dirty.
95. The Society asked the Appellant about the rats she owned a long time ago. The Appellant does not see what this has to do with the current situation but agrees she has no fondness for the Society and has heard a lot of bad stories about them. She said she had about 100 pet rats and they were not wild rats and they were not eating each other and that was a very long time ago. She does not see the purpose of bringing this up as it has nothing to do with her wanting her cats back. She also said she had been evicted before they sent in the cleaners so was moving anyway.

***Testimony of Timothy Porter, Leslee Smith, and Kathleen Ellis***

96. The Appellant called her friend Mr. Porter, and two clerks from the drug store where she has her prescriptions filled. None had ever met her cats and none had ever been in her apartment. All three testified that the Appellant loves her animals, and talks about them a lot. Mr. Porter said the Appellant spoils her cats with toys and food and they are her children. Ms. Smith said the Appellant is an avid animal lover and was devastated when she lost her two ferrets at Christmas. Ms. Smith said the Appellant said she went to Bosley's to try to avoid the disease that killed her ferrets. Ms. Ellis said the Appellant cared for her animals very deeply and was extremely upset when her ferrets died. She said the Appellant would never intentionally hurt an animal and buys things for her animals before herself.

## Analysis and Decision

97. The Society acknowledged that this hearing was not about whether the Appellant loved or cared for her cats - Ruby, Cleopatra, Spiky, and Little Precious - and of that, there was no dispute. For the record, I also believe the Appellant loves and cares about her cats. The Society submitted, and I agree, this appeal is about what was in the cats' best interests.
98. The Appellant's submission is that she now has a plan to move in to her own apartment as soon as possible and will again provide a home for the cats. She will take the cats to the veterinarian once a year and would cooperate with the Society and would seek help if she gets down and out again. She acknowledged it was her fault and she would never let it happen again and she loves her cats very dearly and really does care for them and wants them back. Her position is that for the six or seven years, she has had the cats (3 of them) she took care of them, and when she became depressed at Christmas 2014 at the death of her two ferrets, her house became dirty. She recognizes now that she would have to ask for help if she became depressed again. She explained she had the cats vaccinated and neutered when she got them, and she feeds them and waters them and cares for and loves them, and keeps their litter box clean.
99. The Society's position is that the Appellant clearly shows a love for her cats but her home was unsanitary, and that is why the Appellant was removed in the first place. The Appellant was no longer there to care for the animals and she cannot return and the cats had nowhere to go. As such, it was abundantly clear the Society had to seize the cats and can't be faulted for that seizure. The Society said Mr. de Ruiter's testimony was that the soil smell was very bad and there were feces and urine and it was unhygienic for human or animals. There was no one to care for the cats and they had fleas, scabs and infections and could suffer from fleas according to veterinary testimony.
100. The Society submitted that whether or not it was in the mind of the SPC that the cats were in distress, it was exclusively the decision of Ms. Moriarty to make in the second instance. The SPC did not see food or water although it could have been eaten due to the day the cats were unattended. It was not to fault the Appellant but it was distressing to the cats to become neglected, which would have happened if not seized. The Society submitted suffering from ear mites might qualify as injured and not cared for and that the veterinary evidence was that cats should see a veterinarian once a year, although only one-third of cats did so.
101. The Society submits that there is no concrete plan and it will be difficult to find a home that will take four cats, as is evidenced by CLBC's inability to find a respite home for the Appellant that would take cats. The Society cannot accommodate holding these cats and needs turnover and cannot provide lengthy residencies to the cats while assuming those costs.
102. The Society also submitted that although the decision to not return the cats might seem cruel to the owner, the statute is framed that it is the best interest of the animals that is paramount. There is nowhere to send the animals now and it is unnecessary for the tribunal to look to the future to determine if the cats would return to a state of distress as there is nowhere for these four cats to go if returned to the Appellant.
103. The Society also said that the tribunal does not have the jurisdiction to order the Society to continue to hold the animals.

## *The Seizure*

104. In my view, the Society was justified in removing the animals on the basis that they were abandoned within the meaning of s. 10.1 of the *PCAA*:

### **Abandoned animals**

**10.1** (1) In this section, "**abandoned animal**" includes an animal that

- (a) is apparently ownerless,
- (b) is found straying,
- (c) is found in a rental unit after expiry of the tenancy agreement in respect of the rental unit, or
- (d) if a person agreed to care for the animal, is not retrieved from that person within 4 days following the end of that agreement.

(2) If an authorized agent is of the opinion that an animal is an abandoned animal, the authorized agent may take custody of the animal and arrange for food, water, shelter, care and veterinary treatment for it.

105. While none of the specific illustrations of an “abandoned animal” is satisfied here – in this case, the cats were left inside a paid-for apartment (at least until month end) and the Society was alerted to the animals’ existence as their owner was removed from the apartment by a government agency - I note that the illustrations given in s. 10.1(1) of the *PCAA* are not exhaustive. Section 10.1 states that an abandoned animal *includes* an animal in one of the listed circumstances. The definition of “abandoned” is inclusive and this differs from the exhaustive way in which the term “distress” is defined below.

106. The use of the word “includes” shows that the legislature wisely recognized that other situations might well arise where an animal has been abandoned for the purposes of the *PCAA*. The examples given in the definition are of course of great assistance as they both define particular situations and also inform the larger meaning of the word. In the latter regard, they reflect the purposes of the *PCAA* and the interests of animal welfare by making clear that an intention to abandon an animal is not necessary for an animal to be abandoned in fact. In other words, it is not necessary for me to find that the Appellant intended to abandon the animals. If they are “abandoned” on an objective basis, the statutory definition is met. In this case, it is clear to me that in circumstances where the cats were present and unattended in an apartment to which the owner was either not permitted to return or believed she was not permitted to return, they were “abandoned” for the purposes of s. 10.1.

107. The question whether the cats were also in distress is more difficult. 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.*

108. It is important to address the distress issue because, if distress also existed, the circumstances that gave rise to the distress – which may differ from what led to “abandonment” – are relevant to the question whether the animals should be returned.
109. In approaching this issue, I note firstly that it is important to apply the definition of distress in light of the circumstances that existed at the time of the seizure. For “distress” to exist, it is not enough that the Society believes that distress is likely to arise at some future date. Rather, distress must exist at the time of the seizure. If they don’t, the balance struck in the *PCAA* is that rights of the owner prevail and the Society cannot remove an animal unless the animals have been abandoned. It is only if distress exists at the time of the seizure that it is relevant to consider, in deciding whether to *return* the animals, the likelihood that the animals would again become distressed if they were returned to the owner.
110. Is it appropriate to consider whether the animals were in distress when this was not the stated basis for the removal by the officer? On reflection, I agree with the Society that if the animals were in fact in distress at the time of the seizure, the interests of animal welfare are such that that issue remains relevant for the review decision and the appeal even if the officer purported only to act on the basis of “abandonment”. Animal welfare cannot suffer because an officer has been incomplete in his or her assessment or incomplete in filling out a form.
111. That of course begs the question of whether the cats were in distress at the time of the seizure here.
112. The Society argues firstly, based on the officer’s observations, that the cats were deprived of adequate food and water. I have struggled with the evidence on that issue because while SPC Morrison testified that there was no food or water left out for the cats, her handwritten field notes made no mention of that important issue. Further, as noted earlier in this decision, I was unfortunately not provided with a copy of the typed Investigation Detail she suggested would have included this information, which information the Society was under a duty to provide. Given that she does not recall even seeing empty dishes, I am frankly not confident in the reliability of her memory on this issue. All that having been said, it does stand to reason that any feeding bowls would have been empty or nearly empty with no prospect of being refilled by the time the Society arrived given the circumstances of the Appellant’s departure.
113. It is important to note that there was no evidence these cats had ever been without food or water prior to the Appellant’s admittance into the hospital. The photographic evidence presented by the Society show the Appellant’s apartment had flats of cat food and flats of bottled water which the Appellant testified she gave the cats to drink. The cats were described as one was adequate weight, one underweight and two overweight with no veterinary evidence that the weights caused any risk of health issues. As such, I am prepared on balance to conclude that the cats were deprived of adequate food and water at the time of the seizure, but that the reason for this lay in the unusual circumstances that resulted in her leaving the apartment, rather than due to any neglect of the animals. As will be noted below, I have confidence that the cats would have adequate food and water if reunited with the Appellant.
114. The Society also argued that the animals were in distress on the independent basis that they were “kept in conditions that were unsanitary”. I addressed the meaning of “unsanitary” in *Krecul v. British Columbia Society for the Prevention of Cruelty to Animals* (June 26, 2014) at paragraphs 83-92. I adopt that discussion here. For present purposes, I will simply quote from paragraphs 90-92 of that decision:

[90] 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.

[91] 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.

[92] 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.

115. Applying this test to the facts, the cats were kept in an apartment where the Appellant lived. There was testimony about a bad smell but it was not described as causing an irritant to the eyes or lungs. In fact Jason de Ruyter specifically said it was not described as a strong urine smell. This evidence was supported by the Appellant’s testimony that it did smell of urine at times as the cats did sometimes urinate on the carpet but she would clean it to the best of her ability.
116. The evidence in this case was that there were feces and vomit on the floor and carpet causing wet black staining (evidence disputed by the Appellant), but even if that evidence is accepted, Dr. Grognet said that when in a closed environment with strong odours, cats if given a choice would just move away from the source of smell. If there was a top soil smell it may not be a risk, but would just smell bad. Cats tend to get away from odours on the floor by going up on furniture. Dr. Grognet also said depending on how long loose kibble was on the floor, it might be rancid if it was a month ago but if current, it would not be too bad. If rancid, it could cause food poisoning but cats are fairly picky and if alternate food other than rancid, they would choose that.
117. The veterinary testimony did not support a significant risk of harm to the cats due to this smell, or to the presence of feces or vomit, of which there was much dispute. In the end the veterinarian testified that if cats living in those conditions were healthy they run the risk of being able to pick up something even if their health was good, so there was a risk of future problems but even so, cats generally are clean so they would avoid urine and fecal contamination and would go to the bathroom in a manner to minimize the risk as much as possible. A healthy cat could tolerate and avoid some contamination. Dr. Grognet said it is possible for the cats to be healthy and if the cats had room to hide and stay clean and avoid contamination they could continue to be healthy.
118. While this case falls close to the line, I am of the view that although the conditions in the apartment were tremendously unappealing, the “unsanitary” ground did not justify the seizure in this case. However, even if I had found that the “unsanitary” test had been met, it would not have altered my decision on the return of the animals for the reasons and on the conditions set out below.
119. For completeness, I will address the two other arguments the Society advanced with regard to distress.
120. The Society and indeed SPC Morrison submitted that the lack of treatment for ear mites and fleas could constitute an “injury” or a deprivation of veterinary treatment. I am not satisfied that the mere presence of ear mites and fleas in cats constitutes an injury that would justify removing cats under the *PCAA* given the evidence of the veterinarian who described many owners as being

unaware of the existence of fleas or mites. Additionally the Society did not seek veterinary care itself for these cats, apparently leaving the issue to its shelter staff to deal with. Despite Ms. Moriarty's conclusion that the Cats themselves had medical concerns including flea infestation, I find insufficient evidence that the condition of the cats themselves was an independent basis for removal on that ground. I cannot fault the Appellant for not seeking veterinary care that doesn't appear to be necessary when the Society itself did not seek veterinary care for these cats.

121. Finally, SPC Morrison advanced the view that abandonment of the animals necessarily also meant that they was neglected for the purposes of the definition of "distress". On this issue, I appreciate that in common usage, the terms "abandonment" and "distress" might be seen to overlap, but it seems to me that in choosing separate terms, the legislature intended that they be given separate meanings. In this regard, abandonment would appear to focus on situations where the connection between an animal and its owner has apparent been broken – where, for whatever reason, the owner is no longer there to care for the animal. Neglect, it seems to me, would involve situations where the owner could still in the picture, but caring for the animals falls below the standard that a reasonable owner would exercise in caring for the animal. While abandonment can of course give rise to other deprivations (such as lack of adequate food and water), I do not think it can be said that abandonment is identical to neglect.

### *The Return of the Cats*

122. Having determined that the seizure of the animals was justified, I turn now to the best interests of the cats and whether those interests are best served by returning them to the Appellant or having them remain with the Society to dispose of at its discretion.
123. 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]

124. 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.

125. This case is unique for a couple of reasons.
126. First, these cats were not abused or neglected, and were not in pain or injured or sick or suffering. The balance of the evidence is that these cats (three of which have lived with the Appellant since birth and for 7 years) were healthy. The Appellant's claims of having adequate food and water were supported by the photographic evidence. Her claims of washing the litter boxes were also supported by the photographic evidence showing litter boxes that appeared to have been washed inside the plastic at some point; if the boxes were never washed, one would expect a greater accumulation of filth. I find that the cats would remain in good condition, as they apparently have been the entire time they have lived with the Appellant. Second, most of the circumstances that justified the seizure arose from the Appellant's removal from her apartment in circumstances that have now changed, and the Appellant appears to have come to grips with the deteriorating

condition of her apartment which was caused by her depression as a result of the death of her ferrets.

127. The real issue is whether it is likely that, when the Appellant leaves CLBC accommodation, they once again find themselves in circumstances where they are “abandoned” because she resumes the behavior that got her removed and separated from the cats this time, or will place them in distress because the abandonment results in a deprivation of food and water, or possibly exposes the cats to conditions that are would cross the line to being unsanitary.
128. In my view, the Appellant demonstrated insight regarding the circumstances that led to the removal of the cats. She agreed she was to blame for the circumstances, and she took responsibility for her apartment. Combined with the events of the past several months, I am confident that lessons have been learned such that there is no foreseeable significant risk to the cats which would justify refusing to return to them to the Appellant.
129. In making this finding, I do not wish to be overly critical of the Society. As Ms. Moriarty noted, the Appellant did not respond to the written opportunity to be heard that she was given, which would have been the ideal opportunity to advise Ms. Moriarty as to any alternative arrangements she had made for the cats’ care while she was in the CLBC Home share situation.
130. At the same, the Appellant was at that time facing very difficult circumstances of her own. Mounting her written defence to the seizure, especially at the review decision level, was necessarily made more difficult in the aftermath of her removal and as a result of her developmental delays. In hindsight, it would clearly have been better for the Society to have attempted to contact her directly or through CLBC for purpose of exploring alternative care for the cats while she was in her Home share situation. But be that as it may, this appeal is not limited by the information that was tendered during the Society’s written submissions process. This case is, in fact, a good example of why the flexible process created by *the PCAA* allows BCFIRB to make decisions based on a fuller body of information than may have been available to the Society.
131. This appeal did examine the issue of how the Appellant would attend to the care of the cats if they were returned to her given her current living circumstances. She stated that if she got the cats back, she would, despite her financial situation, find a place to board them until she found a place to live that takes cats. They might be boarded for a month and she would find the money. She would be able to get the money together, and then would do her best to find a place to rent that allows cats. She sensibly testified that she needs to know the ultimate decision regarding her cats before locating a rental apartment or suite that permits cats (as obviously this would not be necessary if she was not having her cats returned).
132. Animal owners are of course entitled to keep their animals in boarding facilities and certainly many situations can arise that a prudent person could imagine: animals being boarded during vacations, home repairs, in emergencies and when the health conditions of an owner make it so she cannot take care of the animals. Indeed, there are a variety of options available. Owners could appoint temporary caretakers or could, as the Appellant suggested here, place the animals in a boarding facility.
133. As it is my view that the animals are not at significant risk of harm if returned to the Appellant, it is my view that the Appellant should be given the opportunity to proceed as she has suggested despite the fact that she is temporarily living in accommodations that do not allow cats – it being clear that

she can only have the cats back if their best interests are reflected in a proper boarding arrangement while the Appellant remains in accommodation that does not allow cats.

134. The Appellant is aware that there is a cost for such boarding and that she would be responsible for such costs. The Appellant is also aware from the hearing that she would have to arrange this herself (subject to any help CLBC might provide) and that the Society is not prepared to provide further accommodation for her cats while arrangements are made.

## Order

135. Section 20.6 of the *PCAA* provides 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).

136. Section 20.6 of the *PCAA* makes clear that this Board can require the Society to return an animal to its owner with conditions regarding any matter the board considers necessary to maintain the welfare of the animal.

137. In my view, to maintain the health of the welfare of the cats and in the cats' best interests, and in the unique circumstances of this case, the first term of the order requires that the effective date of the order be delayed by four calendar days to give the Appellant a fair opportunity to arrange for the boarding or other care of the cats. Thus, the Order will read as follows:

Effective at the end of the business day on June 5, 2015, the Society is required to return to the Appellant's care the four cats subject to this decision provided that the Appellant, prior to that time:

- (1) Provide the Society with written notice of the boarding facility location where the cats will be boarding and a written confirmation from the boarding facility that they will take her four cats until such time as she moves to accommodation that accepts cats.
  - (2) Pay the Society's reasonable costs of caring for the animals during the four day period (June 2 -5, 2015) in the amount of \$144, being the total cost of four days of boarding all of the cats (\$10 per cat per day less the cost of food of \$1 per day, given that the Appellant's cat food was provided to the Society and not used for reasons that had nothing to do with the Appellant).
138. If the Appellant fails to comply with conditions 1 or 2 of my order as set out above, the order for return will not be effective, and the Society will be permitted, in its discretion, to destroy, sell or

otherwise dispose of the animals. It is noted that the Society said it will attempt to find loving adoptive homes for the four cats if they are not returned to the Appellant.

## Costs

139. The review decision did not address the issue of costs. When asked why not, counsel for the Society did not know but advised there was no statutory requirement that they be in the review decision and the Society assumed costs were at issue. Costs, counsel said, were affirmed in Ms. Moriarty's affidavit at paragraph 24. I accept that costs form part of this appeal as it would be unreasonable to force the parties to mount a second appeal to deal with the sole issue of costs.
140. In reference to the costs of cat food given the Appellant's cat food which was given, without her consent, to the Society, counsel said it was re-donated outside of the Society, and that care costs per cat were \$10 per day including \$1 for food. Counsel confirmed details of the manufacturer's food provisions were confidential and asked me to leave the manufacturer's name out of this record.
141. Costs of \$10 per day per cat include all overhead costs for the care of the cats. I accept that a cost of \$10 per day per cat is reasonable, subject to what I have to say below.
142. The Society also claims \$60 for the cost of the Society to attend the home and seize the cats. I find this cost to be reasonable.
143. Section 20 of the PCAA provides:
- 20** *(1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.*
- (2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.*
- (3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.*
- (4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.*
- (5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.*
144. The decision about costs was troublesome for me.
145. First the Appellant's cat food was provided to the Society without her consent but presumably to be used by her cats. Through no fault of the Appellant's, the Society's agreement with a pet food manufacturer meant the donated pet food could not be used. I am unwilling to find it reasonable to have the Appellant pay for her own cat food which turned into a flow-through donation as well as pay to have her cats fed. I therefore reduce the reasonable care cost expense from \$10 per cat per day to \$9 per cat per day.
146. This leaves me with the decision on how much of the care costs should reasonably be attributed to the Appellant in this case.

147. I have struggled with the fact that the Appellant had an apartment, which I have already found to be suitable for the cats, paid for until March 31, 2015; that the Appellant was not able to retrieve her keys; that Appellant may well, in light of that, had the right to go back to her apartment to care for her cats even if she was staying in Home share. Understanding the complex web of legislation in this case, including the Appellant's rights as a renter, would be difficult for anyone. It is frankly difficult for me to understand why CLBC did not provide information regarding this to the Appellant or assist her in seeking to obtain keys and gaining access to her apartment. It does seem unfair that the Appellant was not assisted more in this regard, given the importance of her cats and her desire and request to have them returned.
148. However, at the end of the day, I do not think any of this can alter the Society's entitlement to costs. Even if it were the case that the Appellant was wrongly prevented from returning to her apartment – which finding I am not in a position to make - the Society had to take the situation as it found it, and acted in good faith in seizing the cats in circumstances where the Appellant could not return to her apartment to feed and water her cats. The Society is therefore entitled to its costs of \$9 per cat per day for the 82 days the cats were in care ( $\$9 \times 82 \times 4 = \$2952$ ). All this being said, I would hope that the Society would take all this into account in considering what if any collection proceedings to commence in this unfortunate case.
149. To be clear to the Appellant, she must pay only \$144, the cost of four days care for the four cats **prior to and as a condition of** picking up her cats. That is the limit of what she must pay prior to picking up the cats. She remains liable for the remaining 82 days the cats were in care, but she does not need to pay that amount ( $82 \times \$9 \times 4 = \$2952$  plus \$60 = total of \$3012 ) before picking up the cats. To be very clear to the Appellant, if she does not pay the \$3012 she is liable for, she will not lose her cats for the reason of non-payment.
150. I order that the Appellant is liable to pay the costs of **\$3012** to the Society. This is separate from the \$144 she must pay prior to picking up her cats.
151. I wish to make one final comment. The Appellant did understand that she became depressed over the death of her ferrets and as a result, allowed the condition of her apartment to deteriorate. The Appellant's testimony and other testimony indicated that the Appellant does not like cleaners to be in her home and touch her things. While I understand how she feels about this, I would strongly encourage the Appellant to avail herself of the CLBC's cleaning service to assist her in making her home as pleasant as possible for her beloved cats. I would also encourage the Appellant to use other services of the CLBC in an attempt to avoid depression or any other situation that might place her cats in a poor condition.

Dated this 1st day of June, 2015

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**



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Corey Van't Haaff, Presiding Member