

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 FIVE DOGS AND ONE CAT

**BETWEEN:**

DIANA ANDRUSEK

**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:

Diana Andrusek

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

January 8, 2016

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 December 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 the Current Decision Under Appeal**

3. Five dogs and one cat were seized from a property in Mission on November 14, 2015 (according to the Notice of Disposition) when they were determined to be in distress. The identity of the animals is confusing. For a reason unknown to me, each animal went by at least two names, with the Society renaming the animals, and those new names appear in veterinary records after the seizure. I have determined that the dog Leroy is Jake, the dog Lady Boo is Riley, the dog Polly is Marley, the dog Baby is Sophie, the dog Max is Rusty, and the cat Coconut is Asher. This decision will refer to the animals by the names I have underlined except where it is necessary to refer to both names for clarity.
4. 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 animals.
5. For reasons that will be explained in detail later, I have decided to order that the 5 dogs and 1 cat will not be returned to the Appellant and instead, will remain with the Society (BCSPCA) which is permitted to destroy, sell or otherwise dispose of the animals. I note that the Society has said it intends to adopt the animals to a compassionate person or family capable of providing the animals with appropriate accommodations and care so that the animals do not once again fall into a state of distress.
6. I will deal with the issue of costs below.

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

7. 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".
8. 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).

9. 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.
10. 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**

11. 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*.

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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

## V. Preliminary Issues

12. All affidavits and witness statements, emails, photographs, and materials submitted were entered into evidence. Parties were sworn before giving oral testimony.
13. The Society objects to the inclusion of Exhibit 6, an email dated January 6, 2016 from the Appellant containing a photo link to photos of the Appellant's residence. At some time on January 7, 2016, the photo link at London Drugs became inoperable and the photos remained inaccessible at the time of the hearing. The Society said since it had not seen the photos, they should not be admitted.
14. The Appellant disagreed and wanted the photos admitted to show how the conditions in her house and yard had improved.
15. In response to a question from the Panel on why the Society did not review the files on the day of delivery, counsel's response was that he was busy and the Society is not his only client.
16. The reality of the process under the *PCAA* is that no party has the luxury of time; not the Appellant, not the Society, and not the Board and Panel. It should be noted the Panel did make time to review the photos upon receipt on January 6, 2016.
17. In this case, the process, which takes (with rare exception) 29 days from receipt of a perfected appeal to delivery of the written decision and reasons, is focused on the best interests of the animals, as it is the animals who are in limbo during the hearing and whose care and decisions about care carry a cost. In this case, the timeline was made especially tight due to a request by the Society, which sought and received an extension of two days at the first stage of document exchange which period took place over the Christmas and New Year holiday.<sup>2</sup>
18. In my view, the extension sought by the Society was the cause of the extra short timeline between final reply and hearing date. As a result, the Society was in the position where it needed to arrange its schedule to allow it the opportunity to review submissions and supporting documents and photos in a timely fashion, as did the Panel.
19. I therefore allow the admission of Exhibit 6 as I find the Society was at least partially responsible for the extra tight timelines and therefore should have performed a more timely review of the evidence.
20. Having admitted Exhibit 6, I should note that these photos do not play a central role in this decision. There were additional photos submitted into evidence by both parties which provided a good understanding of the condition of the home at the time of seizure and after efforts were made to clear the home of clutter. There were also other photos of the yard. As pointed out later in this decision, the condition of the yard was not in dispute nor was it a factor in the seizure of the

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<sup>2</sup> I wish to note, for completeness, that the two day extension granted to the Society did not create any unfairness to the Appellant in advancing her case. The Appellant, I think it can be fairly said, did not stick to her submission schedule and was given a full opportunity to advance her case in writing and orally. The Appellant was the Appellant in another hearing under the *PCAA* before the Board recently, and was familiar with its process and timelines.

animals nor in my decision, and the clutter in the home was also not a determining factor in my decision.

21. There was another issue that arose at the hearing. One of the witnesses the Appellant wished to call, a veterinarian named Dr. Chahal from Cheam Veterinary Clinic, was unable to come to the phone as he was busy at work. I indicated we could move forward with the hearing and if there was time, we could call him again. The hearing lasted until 5 p.m., at which point there was no time left to call this witness back, and no request to do so by either party. Based on the other evidence submitted by the Appellant, it appears this veterinarian saw one animal prior to it belonging to the Appellant. I determined that in the circumstances I would not require his testimony to make a decision. In fact the Appellant brought other witnesses who testified about the condition of that one dog prior to it coming into the care of the Appellant and as will be seen later in this decision, the decision does not turn on that evidence. In fact, I have decided this appeal on the assumption that that evidence is accepted.
22. Finally, the Society objected to the inclusion of the Appellant's veterinary witness Dr. Jalan from Clearbrook Animal Hospital as an expert witness as the Appellant did not complete the correct form, or as the Society put it, the Appellant was non-compliant with the rules. The Society said Dr. Jalan could speak to facts but could not be admitted as an expert. The Appellant wanted Dr. Jalan admitted as an expert and acknowledged that she may have completed the wrong form but she did provide notice of his testimony in her submissions. The Society has not argued that Dr. Jalan is not a properly qualified veterinarian. In the circumstances of this case, Dr. Jalan's evidence, which was subject to cross-examination by the Society, will be received as expert evidence, on the same basis as, and considered along with, the veterinary evidence tendered by the Society.

### **Material Admitted Into Evidence**

#### **Appellant:**

- a) Appellant Notice of Appeal (perfected on December 9<sup>th</sup>) (**Exhibit 1**)
- b) Appellant (via email Dec 13, 2015 re costs) (**Exhibit 2**)
- c) Appellant Submission (via email December 24<sup>th</sup>) (**Exhibit 3**)
- d) Appellant email with photo link and photo's of yard (via email Jan 4, 2016) (**Exhibit 4**)
- e) Photos from Katherine Gray of Leroy at Cheam Veterinary Clinic (via email Jan 5, 2016) (**Exhibit 5**)
- f) Appellant email with photo link and photo's of residence (via email Jan 6, 2016) (**Exhibit 6**)
- g) Appellant witness list (via email Jan 6, 2016) (**Exhibit 7**)
- h) Appellant email with 9 photos (via email Jan 6, 2016) (**Exhibit 8**)
- i) Appellant email with 2 photos (via email Jan 6, 2016) (**Exhibit 9**)
- j) Appellant submission (via email Jan 6, 2016) (**Exhibit 10**)
- k) Cheam Vet medical form – (via email Jan 7) (**Exhibit 17**)

**Respondent:**

- a) BC SPCA initial document disclosure (via email December 16<sup>th</sup> Tabs A – Q) (**Exhibit 11**)
- b) BC SPCA further document disclosure (via email December 17<sup>th</sup> Tabs R and S) (**Exhibit 12**)
- c) BCSPCA written submission (via email Jan 4<sup>th</sup> and via courier Jan 5<sup>th</sup>) (**Exhibit 13**)
- d) M. Moriarty affidavit dated January 5, 2016 (via courier Jan 5<sup>th</sup>) (**Exhibit 14**)
- e) Expert Witness Contact Form (Dr. Herbert and Dr. Richter) (via courier Jan 5<sup>th</sup>) (**Exhibit 15**)
- f) Witness Contact Form Christine Carey (via courier Jan 5<sup>th</sup>) (**Exhibit 16**)

**VI. The Appeal**

**Brief History**

- 23. This case is the second time both the Appellant and the Society have appeared together before BCFIRB. I issued a decision on the seizure of 5 dogs and 1 cat on October 14, 2014. In that decision, which was quoted from in the Society’s written reasons, I ordered that the Society be permitted to retain the four dogs (one had been euthanized by the time of the hearing) and one cat and at its discretion, to destroy, sell or otherwise dispose of the animals; and that the Society’s entitlement to costs was varied and the amount the Appellant was liable for was \$5884.67.
- 24. The history is important to the Society. It takes the view that this Appellant has had animals removed on more than one occasion, and emphasized the statement in the October 14, 2014 decision that the Appellant seems “unable to change the unsanitary condition of [your] home...and unable to recognize when to seek veterinary care.” Ms. Moriarty states in her written reasons that she finds that she is repeating verbatim what she had written in her last decision in 2014, and that this is at least the 16th time that the Society has been involved with the Appellant’s animals and the Appellant has given her no reason to believe that somehow this time things would be different. Ms. Moriarty also states that she has significant concerns regarding the Appellant’s ability to limit the number of animals in her care to an appropriate number that she can adequately provide this proper level of care for. “Again, within just over a year (she had) acquired 6 more Animals and again, there have been concerns with the living conditions and veterinary care provided to these Animals. This is a pattern that cannot be ignored.”
- 25. The history is also important to the Appellant. The Appellant recognized past conflicts with the Society and made statements to the effect that she did not want a repeat of previous seizures and was willing to improve her situation and make changes, and be more cooperative with the Society.
- 26. Both these points of view will be dealt with in my decision below. For present purposes, it will suffice to say that I have not allowed the history to enter into my assessment of what the facts were with regard to these particular animals in this particular case. However, having found (without regard to that history) that the animals were in distress in this case, that history is necessarily relevant to the decision whether I should order the animals returned to the Appellant, a question I have answered “no”.

## Society's Decision Under Appeal

27. In her December 3, 2015 written reasons, Ms. Moriarty of the BCSPCA declined to return the 5 dogs and 1 cat to the Appellant. The decision is excerpted here:

I turn now to the question of whether the Animals should be returned to your custody. While I will rely on all of the documents listed above in making my decision, I note the following:

You have a significant history with the BC SPCA and instead of outlining this history in my decision, I have attached my previous decisions regarding animals removed from your custody over the years as they provide a detailed overview and I do not feel that it is necessary to duplicate for this decision. However, your history does play a pivotal role in my decision in this particular instance.

In addition to my decisions regarding your animals in the past, I have included the decision of the BC Farm Industry Review Board (BCFIRB) dated October, 14, 2014, whereby BCFIRB upheld the decision of the Society to not return animals to your custody that had come into the custody of the BC SPCA in 2014. After reviewing all of the evidence, Ms. Van't Haaff concludes the following:

*In determining whether or not the Animals would remain in good health if returned to the Appellant, I am convinced that the Appellant would continue to love her Animals and have a sincere desire to help them but would remain incapable of doing so. I am convinced, based on the testimony of SPC Carey about a previous home visit and the current home visit that led to the August 1 seizure, that the Appellant would allow her home to become unsanitary and, more so, I am convinced that she would not notice how unsanitary her home had become. She believed, I think genuinely, that she cleaned and disinfected daily, yet the photographs of her home and the testimony of SPC Carey indicated this could not have been true.*

I am also not convinced that the Appellant would provide consistent veterinary care as necessary. She did not notice symptoms of pain in the Mastiff and did not take the Kuvasz to the veterinarian when it was poisoned.

I therefore find that the Animals would not remain in good condition if they were returned to the Appellant so I order the Society to retain the four dogs and one cat and at its discretion, to destroy, sell or otherwise dispose of the animals. I should note that I do not find it is necessary to provide the Appellant with an opportunity to improve her situation to allow any return of the Animals. The Appellant has proven to me that she is unable to change the unsanitary condition of her home, as evident with her history, and is unable to recognize when to seek veterinary care, as is evident with her Mastiff and Kuvasz.

I have included this portion of the BCFIRB decision as Ms. Van't Haaff raises the same concerns that the BC SPCA has regarding your ability to maintain animals in your care in good condition by ensuring that not only their living environment is adequate but that they receive appropriate and timely veterinary care. In addition, we have significant concerns regarding your ability to limit the number of animals in your care to an appropriate number that you can adequately provide this proper level of care. Again, within just over a year you have acquired 6 more Animals and again, there have been concerns with the living conditions and veterinary care provided to these Animals. This is a pattern that cannot be ignored.

The specifics of what led up to the seizure of the Animals this time are set out in detail in the ITO and the veterinary concerns with respect to the Animals are set out in the vet reports. Photographs have also been provided. For the purposes of my decision I rely on the findings as set out in the veterinary reports which demonstrate a variety of concerns for each of the Animals removed. You have argued that you were providing treatment for each of these Animals, but the reality is the results of the veterinary examination suggest otherwise. In addition, the condition of the living environment provided for the Animals was woefully inadequate and contributed to their health concerns. You have argued that there were parts of your home that were in good condition and that we simply did not photograph those areas. In speaking with SPC Carey, I understand that the purpose of the photographs taken were to show the conditions of the home that the Animals had access to, and to depict why the conditions were unsuitable for the Animals to remain in

the home. There may have been areas that were clean but these were not sufficient and the Animals were not limited to those areas.

Finally, you have alleged that the warrant was unnecessary and that you were willing to cooperate with an inspection. The ITO clearly sets out the timeline leading up to this warrant and it is evident that you were given the option of voluntary inspection on November 4th but had asked for an extension – which was provided. While it is true that there were some challenges scheduling a follow-up, the fact remains that on November 10th SPC Carey did email you and request you contact her for a time to meet the next day. She did not hear from you and thus left a second warning and a warrant was eventually obtained. The reality is that if you had actually cleaned up the Property to provide an adequate environment for the Animals and provided them with the vet care they needed between October 30th (when we first attended) and November 14th when we executed the search warrant, we would not have had to seize the Animals. This did not happen and thus I am not persuaded by your arguments that a warrant was not necessary and you were willing to cooperate and comply to [sic] any recommendations.

You have again provided articulate and detailed submissions as to why you feel the Animals should be returned to you. I have reviewed all of your submissions and as I have always noted during our years of communication, you are a passionate about your animals. Unfortunately, as was emphasized by Ms. Van't Haafft [sic] above, you seem “unable to change the unsanitary condition of [your] home...and unable to recognize when to seek veterinary care.”

In making my decision in this case, I find that I am repeating verbatim what I had written in my last decision in 2014. This is at least the 16th time that we have been involved with your animals and you have given me no reason to believe that somehow this time things would be different. You have demonstrated an inability to self-limit the number of animals in your care to a manageable number and thus, I do not have any faith that you would adhere to any agreement to return one or two animals to your care. Furthermore, while you have argued that certain parts of your current home are clean and they may be currently adequate, your pattern of behavior leads me to have serious concerns that the conditions would remain adequate.

I will also draw your attention to the costs section of this decision whereby BCFIRB concludes that you are liable to the Society for \$5884.67 in costs of care incurred by the Society in caring for your animals. We have not yet received payment of any of these costs. While the fact that you still owe money to the BC SPCA does not factor into my decision on what is in the best interest of the Animals in this case, I do feel that it demonstrates a lack of follow through on your part and goes to the question I need to address in this decision as to whether I can have faith that you will follow through on your promises to care for the Animals better if they are returned to you. I will also take this opportunity to again demand payment of this debt to the Society by no later than December 31, 2015.

Having regard to all the above, I am not prepared to return the Animals to you as I do not believe it is in their best interest...”

## **The Society’s Case**

28. The Society relied on all its submitted material and submissions, and I reviewed and considered all material, submissions and testimony, whether or not I refer to it here.

## **Witnesses**

*Dr. Claudia Richter*

29. Dr. Claudia Richter, a veterinarian, wrote a report dated November 15, 2015 which was admitted into evidence. She examined three of the six animals: the dogs Leroy (Jake) and Lady Boo and the cat Coconut. She made the general observation that all three animals had very dirty coats, partially from severe flea infestations, partially from dirt. I will state at the outset that I have accepted



Dr. Richter's evidence, which was clear, supported by the record and not shaken in cross-examination.

30. Her report on Leroy stated that Leroy is a male neutered Great Pyrenees Mix estimated to be between 6 and 9 years old. Leroy was very withdrawn from humans, turning his head away from touch and avoiding eye contact. He reluctantly walked on a leash. His coat condition was poor, covered from head to tail in severe flea dirt. There were no more live fleas found, the SPCA reportedly treated all animals with flea medication on intake the night before. His coat was thin on the abdomen and over his back and there was a patch of inflammation and thickening of the skin where fur was missing on his neck. There was fecal soiling around the anus, underside of the tail and the hind end. A tapeworm segment was seen on the anus. Her hands were black after being in contact with Leroy. Leroy's coat had an intense odour of feces and dirt to it. Both of Leroy's ears were filled with brown debris and both ear pinnae appeared red. Leroy did not let her look at his ear canals on initial examination. Leroy had grade 2-3 dental tartar - tartar covering 50-75% of the visible surface of the teeth. He also had gingivitis over his premolar and molar teeth. His incisors on the top were worn down.
31. Dr. Richter observed that Leroy walked slowly and appeared to be trying to shift weight more towards his front end. A mild to moderate lameness was present in the left hind. Closer examination of the hind end revealed a grinding feeling on manipulation of the left knee and moderate pain on extension in both knees. He had decreased range of motion in both hips, but no pain was noted. While in decent body condition with a body condition score of 4/9, Leroy showed general muscle loss, especially over his back and hind end.
32. Dr. Richter's assessment was that Leroy suffered from severe flea infestation causing intense itchiness that cannot go unnoticed by an owner that lives with the animal. The hair loss on his abdomen, legs and neck and inflammation seen on his neck stem from flea bites and the dog scratching severely. Itchiness to this degree will cause severe discomfort to an animal. The inflammation and scratching will eventually cause skin infections. Fleas also transmit tapeworm, a gastrointestinal parasite that in large infestations can cause blood loss, poor nutrition and gastrointestinal problems such as diarrhea. One tapeworm was seen around Leroy's anus, likely more parasites are present in his gastrointestinal system. Given the severity of Leroy's flea infestation, any pet owner would be able to notice a problem and should have sought veterinary advice. In addition, Leroy appeared to be suffering from bilateral otitis externa (ear infections). This condition will lead to inflammation and pain in the ear canals and is also intensely itchy, a fact that is hard to overlook when living with an animal. Both of Leroy's ears were red and inflamed, easily visible to even an untrained eye. Both ears also smelled from the infection present, likely a *Malassezia* (yeast). Leroy's reluctance to have his ears examined shows the clearly painful nature of this disease. He may have shown reluctance to have his head touched, scratching of his ears as well as shaking of his head. Dr. Richter said that all of these signs should have prompted a veterinary visit with Leroy.
33. Leroy appeared to be painful in his hind end, apparent by his lameness and reluctance to walk very fast as well as the lower carrying of his hind end. The clinical signs of pain in his knees point towards inflammation, likely from a chronic cruciate ligament rupture (ACL in humans), likely in both of his knees. This condition is frequently seen in large breed dogs of either 2-4 or 7-10 years of age. It is a chronic condition where inflammation in the knee and cruciate ligament leads to osteoarthritis and eventually to rupture of the ligament. She suspected that Leroy has a long-

standing rupture of the left stifle with severe arthritic changes given the crepitus and thickening in that stifle. The right knee seemed to be slightly less severely affected at this point. This condition is very painful without treatment especially when seen in both legs at the same time and in a large breed dog such as Leroy. She prescribed Leroy Gabapentin (pain medication) as an emergency treatment on Sunday night as she did not want him to be in pain overnight until they were able to examine him further on Monday morning. The decreased range of motion in his hips may stem from hip dysplasia or arthritis. She did not feel that Leroy showed any pain from this condition, but this may cause him problems in the future.

34. Leroy suffers from moderate dental disease. This is causing him mild pain at this point, but will eventually lead to more discomfort.
35. When Leroy was examined, he appeared to be withdrawn from humans, he avoided contact and touch. She did not observe his behaviour with other animals. Being in pain from all the above diseases may have caused him to avoid touch, but a behavioural disorder cannot be excluded especially in a dog that has lived under extreme circumstances as Leroy has.
36. Dr. Richter's report provided an update from Leroy's diagnostics and treatments performed on November 16th 2015. She stated that Leroy appeared more comfortable and she was able to clean both of his ears and perform an ear smear evaluation. The ear smear showed an infection with yeast. These infections are often associated with food allergies, but can also be seen with unsanitary conditions or inflamed skin that predisposes to said infections. A blood panel was performed. It showed signs of chronic inflammation, likely caused by the inflammation in the skin from the flea infestation. It is also possible that parasites in the gastrointestinal system caused those changes.
37. Dr. Richter's assessment of Coconut (referred to as Asher in her report) was that Coconut is a male neutered, black and white Domestic Short Hair cat, estimated to be 8-12 years old. Coconut appeared slightly thin with a body condition score of 3/9. His coat condition was poor. He had a fair amount of flea dirt on his skin. There were no more live fleas found, the SPCA reportedly treated all animals with flea medication on intake the night before.
38. The white parts of his fur, especially on his feet, were brown discoloured. His coat was thin all over his body and there were some areas where hairs were broken. There were several scratch marks over the back of Coconut's neck and the skin on his abdomen was red. There was crusting around his nose and lips, presumably from flea dirt and licking flea dirt.
39. Coconut suffered from severe dental disease. He had multiple missing teeth; some ulcerations were seen and some possible cavities. Oral exam was limited as Coconut was resisting. Coconut's heart rate was fast and he had a grade 2/6 heart murmur. His lungs sounded normal. Abdominal palpation was normal.
40. Coconut appeared moderately to severely painful on palpation of his upper back, just behind his shoulder blades. After examining this area, Coconut was increasingly uncooperative.
41. Dr. Richter's assessment was that Coconut suffered from moderate flea infestation. Flea infestations will cause intense itchiness that cannot go unnoticed by an owner that lives with the animal. The thinning of the coat and scratch mark on the neck likely originate from intense itching.

Itchiness from flea infestations to this degree will cause severe discomfort to an animal. The inflammation and scratching will eventually cause skin infections. The coat condition in Coconut is very easily recognizable as abnormal and in combination with the scratching should have prompted a veterinary visit a long time ago.

42. The pain on his back is fairly severe and she elected to treat Coconut immediately with pain medications until further diagnostics could be done the next day. Coconut's dental disease is severe. He has lost multiple teeth and has multiple further lesions. Some ulcerated areas were seen, likely from where teeth fractured off.
43. Dr. Richter provided an update on Coconut from diagnostics on November 16th 2015, noting that a radiograph was taken of his chest, abdomen and spine. The radiograph showed one healed fracture of a spinal process on his chest, as well as one healing fracture just in front of the first one. This would have happened a few weeks prior to her examination and, given Coconut's pain level the day of examination, she assumed he had been in pain for a few weeks. Given that he responded strongly to even light palpation of his spine on first examination, she thinks any owner petting the cat should have noticed this injury. The cause of this injury is undetermined at this point, but it would require a fair amount of trauma for this bone to break. Asher had a full blood panel when presented at Burnaby Veterinary Hospital as well to ensure that his weight loss did not have an underlying metabolic cause. His eosinophil count was moderately elevated. The eosinophilic cells are a type of white blood cell that is commonly elevated in parasitic infestations.
44. Dr. Richter's assessment of Lady Boo (referred to as Riley in her report) was that she is a female brown and white Great Pyrenees Mix dog. Her reproductive status is unknown. She is estimated to be middle aged. She is overweight with a body condition score of 7/9. She was very friendly on examination. Lady Boo's coat condition was poor. She had mild flea dirt over her body. There were no more live fleas found, the SPCA reportedly treated all animals with flea medication on intake the night before. The white areas of her coat were brown from dirt staining. There was a small area of hair loss over her mid back, there was some matted fur found in that area as well. The underlying skin was mildly inflamed. The skin on her abdomen and inside of her legs was red and the hair was thin in that area as well. Lady Boo had an intense odour.
45. Lady Boo had very mild pain on palpation of her lumbar spine, but no discomfort when moving around. Her nails were moderately long on all four feet. She had mild thickening of both her knees on examination, but no signs of pain on manipulation. Riley had moderate grade 2-3 dental tartar, but no visible lesions on her teeth. She had mild inflammation of her gingiva.
46. Lady Boo suffered from moderate flea infestation. Flea infestations will cause intense itchiness that cannot go unnoticed by an owner that lives with the animal. The thinning of the coat and scratch mark on the neck likely originate from intense itching. Itchiness from flea infestations to this degree will cause severe discomfort to an animal. While the flea infestation was not as severe as seen in Leroy, the areas of red skin especially over her back are easily visible and recognizable as abnormal and should have prompted a veterinary visit for evaluation. Lady Boo was likely licking and scratching over a lot of areas on her body, a fact that is hard to overlook when living in close quarters with a dog.
47. Lady Boo suffers from mild to moderate dental disease. This is causing her mild discomfort at this point, but will eventually get worse.

48. The most concerning part of the examination of Lady Boo was her weight. She was visibly overweight. With the mild discomfort in her back and the thickening of her knee joints, Dr. Richter suspects she suffers from early arthritis commonly seen in large breed dogs. Her weight will make it harder for her to move around and put a lot of strain on her joints and will eventually lead to pain.
49. Dr. Richter was called as a witness. She confirmed she wrote her report dated November 15, 2015.
50. In response to questions from the Appellant, Dr. Richter said it was substandard for an animal to be in its own excrement in a confined area, which is what SPC Carey told her. She did not observe the animals' housing, just the animals themselves.
51. She confirmed that the fecal staining on Riley was present for at least a week or two when she saw the dog and it was stuck to his fur not just in a small area. The dog's left hind leg was really painful and he was hunched up, reluctant to put weight on it. He was in a fair amount of pain. She explained that dogs don't necessarily cry when in pain but are still in pain when they show other signs such as being withdrawn. His ears were also painful.
52. Dr. Richter said Coconut (Asher) the cat had a body score was 3 out of 9 and she prefers 4-5, and has gained 600 grams while in BCSPCA custody which is a fair amount for a cat. Dr. Richter does not think this cat is in good shape at all. He had pain on his spine so you could not pet him. It was so painful he was not cooperating in any way with an exam. Since receiving pain medications he has gained weight and is like a different cat. The level of pain the cat was in is not okay; she was shocked at the level of pain "Asher" was in the first night she examined him.
53. Lady Boo (Riley) was dirty and Dr. Richter has other clients who have outdoor dogs who are not as dirty as Lady Boo. He would have felt discomfort from fleas and it would have been more than mild; it would have been very uncomfortable. The itch is noticeable.
54. All three animals had really red skin likely from licking and had multiple scratches from scratching.
55. In response to Panel questions, Dr. Richter said there was not a smell of ammonia on the animals, and that they all smelled like feces. Dr. Richter said she felt like the dirt on the cat's paws was from mud or feces as they were "really, really, really dirty". This is especially bad for cats as they are clean animals. She said both dogs and cats would try to get away from feces and if they could not escape the feces could cause a health condition. She did not think they were able to escape feces due to the amount of staining present. She said the birds in cages in an enclosed area with feces present as with the dogs and cat was not acceptable.
56. When asked about the effects of pain on Leroy, Dr. Richter said if 1 was no pain and 5 was excruciating, Leroy was at a 3-4, and being a big dog, he would have been very slow to get up or down. If a client with a dog like Leroy was her patient and wanted to take no action, and the dog had Leroy's condition and degree of pain, she would report that person. As a minimum, the dog needs anti-inflammatories for pain and possibly some type of owner-provided physiotherapy. That would be minimal treatment; doing nothing was unacceptable.

57. The pain from the lameness and the ear infection would be obvious to an owner. The dental disease is common and more difficult for an owner to notice, which is why animals need regular veterinary visits.
58. Coconut was in a fair amount of pain from dental disease and needs treatment. He had severe, severe dental disease. His broken bone was starting to heal so there was no way it would have been broken just at the time of seizure.
59. Lady Boo had inflamed skin that an owner would have noticed.
60. Dr. Richter's biggest concern with these animals was the lack of veterinary care they received. Both Leroy and Coconut were in pain for a while and could not have waited another 2-3 more months without pain medication.
61. On follow up questioning from the Society, Dr. Richter confirmed that dim light is unnatural for a dog to continually live in, and they need a cycle of dark and light, and that in a small environment, fleas have a party in there, which is likely why Leroy had such a bad infestation.

*Special Provincial Constable Christine Carey*

62. SPC Carey attended the Appellant's home originally as the Society receive a cruelty complaint from the Mission RCMP that a dog of the Appellant's had allegedly killed a kitten.
63. SPC Carey posted a notice on the Appellant's door on October 30, 2015 stating she needed to inspect the animals on October 31, 2015. On November 4, 2015 (the second visit) SPC Carey attended the Appellant's home and spoke to her (the appellant was driving away but then came back) and the Appellant asked for more time and she wanted to rectify the situation in her home and didn't want to go through the previous seizure situation again. SPC Carey wanted to cooperate and arranged to come back the following Monday as she was very concerned about giving more time. She was worried about possible evasion. The Appellant wanted to know in writing why SPC Carey was there and SPC Carey thought, "here we go again". She noticed there was more debris and garbage bags outside on that visit indicating to her that the Appellant had been cleaning. They discussed Billy (the dog alleged to have killed the kitten) and SPC Carey was told he had been re-homed in Vancouver. The Appellant denied there were any animal health issues, and SPC Carey agreed to wait until the Monday for inspection (what would have been the third visit on November 9, 2015).
64. SPC Carey confirmed she seized the 5 dogs and 1 cat because when she entered the dwelling home on the third visit, which was rescheduled from November 9, 2015 to November 13, 2015 due to a staffing issue at the Society, the conditions inside were causing distress for the animals. The mudroom floor was filthy where the two dogs were confined, the doors were closed and when she opened a door to enter, the dogs were desperate to get out. There was a powerful smell of ammonia, her eyes and throat were burning, it was very dark as the lights were heavily coated with dust, there were garbage bags, bird cages, boxes; "it was dirty, so dirty".
65. She entered pursuant to a warrant and saw Leroy with apparent hair loss, redness, a bloody tail and right away checked for fleas. She saw fleas running, with many on his tail. She saw fleas on Lady Boo. The dogs smelled very bad. She took the dogs outside and determined they met the definition

of “distress” as they were deprived of adequate sanitation and medical care as there was no flea treatment. She formed the view that the redness of the dogs’ skin, the apparent filthy condition of the dogs’ coats, no open windows, unsanitary conditions, mould and debris caked onto the floor all equalled distress. She stated that she should have worn a breathing apparatus but did not as it scares animals. As she had not performed a strip ammonia test before, she used two strips and both strips indicated higher than 20 and lower than 30.

66. Coconut the cat was in a room with the birds. The lights did not work. She felt the cat’s body weight was poor and it had hair loss and was scabby. She took all animals but the birds as they had clean paper, food, water and were bright, alert and active.
67. At the shelter after seizure, the cat was really hungry, biting at the container of food. The cat ate all the food until it was gone. The cat tried to bite the veterinary staff if they tried to touch the cat and there were an alarming number of fleas which nobody could miss.
68. In response to the Appellant’s questions, SPC Carey testified that at the time of seizure, her view was that the situation in the home caused distress and that the animals were in distress, not just one or the other. SPC Carey said she only took photos of what she felt was relevant. She agreed the dogs seemed well socialized. Although they displayed a degree of fear when someone unknown came into the house, the dogs could have simply wanted to play outside and she did not know what was in their minds, but they wanted outside regardless of her attendance. They were not fearful of her.
69. The large 5x5 window was dirty with lots of rotting debris visible when looking through it, although she did not check what the debris was.
70. SPC Carey said she wasn’t sure of the impact of the Appellant’s previous history on her, but she felt like the Appellant did not try to make contact, and also the Appellant stretched the time out for 13 days. She agreed she did not respond to the Appellant’s text on the Saturday of the seizure as she was there to execute the search warrant. SPC Carey felt it was clear on the original notice posted on the Appellant’s door why she was at the property and after she rescheduled the visit, four days passed with no contact. She clarified that she only took photos of areas that supported her conclusion that the animals were in distress.
71. In response to Panel questions, SPC Carey admitted a mistake in stating the readings on the ammonia strips were greater than 30+. She acknowledged that she has no special training in hoarding, and categorized the Appellant’s home situation as extreme as she believes a situation is either extreme or minor with no in-between.
72. SPC Carey reviewed many photographs as requested and said in her opinion there were feces and rotting garbage bags torn open and poop and rotten substances. She described the two dogs (Leroy and Lady Boo) as being constantly in the one mud room as it was the same two dogs on all three occasions she attended the property. She would have seized the dogs regardless of whether they were in that space or outside, as they had poor coats and were infested with fleas. She agreed she did not submit the “before” photos of Leroy she received from Ms. Gray (the previous owner) as they were not relevant to the condition Leroy was in with the Appellant. SPC Carey said that with regard to other photos what could be carpet was heavily soiled and was wet, possibly with feces and garbage from torn bags, and there were dark feces on the mudroom floor and she believed

there to be mold on the ceiling of the mud room. The smell of ammonia overpowered all other smells. There appeared to be urine in the mud room. There was caked on debris on and around the stove.

73. On further questioning by the Appellant, SPC Carey admitted she could not say for sure if it was feces as there was a lot of it, none of which she wanted to get close to and the lighting was poor but she believed it to be feces. She agreed what she thought was wet urine spots could have been spilled drinking water. She said after the Appellant attempted to do some cleaning (between an earlier visit and the seizure) there was still significant debris on the floor and mold on the walls, and that it was the Appellant's responsibility to care for her animals' health and welfare and "that's on (her)."
74. During the same seizure of Leroy, Lady Boo and Coconut, SPC Carey also took custody of the dogs Polly (Marley), Baby (Sophie) and Max (Rusty). The animals were seized, according to SPC Carey, as they were living in unsanitary conditions, and lacking light, with a strong smell of ammonia and filth, and had poor coats, and thus were in distress. The animals were described as, variably, in poor body condition, scabby with hair loss, flea infested.

*Dr. Ashleigh Herbert*

75. Dr. Herbert confirmed she is a veterinarian licensed to practice in BC.
76. In her report, Dr. Herbert stated that BCSPCA Burnaby Branch Manager Ryan Voutilainen requested (on behalf of SPC Christine Carey) the examination of three dogs being housed at the Vancouver SPCA. She was advised that the animals were seized as part of an investigation along with two other dogs and one cat. The only history provided was that all animals were housed together and they were treated with Advantage (flea treatment) and Strongid (internal parasite treatment) at the SPCA. SPC Christine Carey provided the identifying information for each dog as it was presented for examination, which took place at the Vancouver SPCA.
77. In her written report dated November 15, 2015, Dr. Herbert examined Baby (referred to as Sophie in the report), a white Great Pyrenees mix mature intact female dog, and noted the following areas of concern: the hair coat was very dirty and flea dirt or feces were seen in various locations on the skin, no live fleas were seen (was previously treated with Advantage), there was an area of alopecia (hair loss) on the left side of the muzzle, and the skin was red and inflamed. There was also a small focal area of hair loss on the right side of the muzzle, on both hind legs there were two loosely attached dewclaws with very long nails, all the other toe nails were also very long, and there were several spots of staining on the hind legs from a bloody discharge and the vulva was moderately enlarged (presumed recent heat cycle). The left ear flap was very red, swollen and crusted discharge could be seen at the opening of the ear canal and the ear canal was narrowed due to inflammation, and a very large amount of brown discharge was seen. The ear-drum could not be visualized due to the narrowing of the ear canal and amount of discharge. The right ear flap was also red, and a small amount of crusted discharge could be seen. The ear canal was narrowed, and brown discharge was crusted at the end of the canal. During the examination the dog was repeatedly shaking her head and tried to pull away when the ears were examined. When the outer ears were lifted both ears had a very strong odor often associated with an ear infection caused by *Malassezia* (yeast). There was marked dental tartar on the teeth in the back of the mouth, and

moderate dental tartar on the teeth at the front of the mouth. There was mild gingival swelling throughout the mouth.

78. The report noted that a follow-up visit occurred on November 16, 2015 at Burnaby Veterinary Hospital and the ears were swabbed, diagnosed with chronic otitis externa and cleaned. The dog's urinary tract was examined as it was noted she was frequently attempting to urinate, but only a few drops of urine were seen. On examination of the urine there was an increase in red blood cells and bacteria found. A diagnosis of urinary tract infection was made. A urine culture and sensitivity was started to confirm the diagnosis and to determine the best antibiotic treatment. No bladder stones were seen on radiograph.
79. Max (referred to as Rusty in the report) appeared to be a cream Labradoodle mix mature male neutered dog. The Body Condition Score was 4/9. On close examination the following areas of concern were noted: the hair coat was extremely dirty and flea dirt or feces were seen in various locations on the skin. No live fleas were seen (was previously treated with Advantage). Matting was present on various locations, especially on the ventral aspect of the body, and between the hind legs. On the lower back area there were several patches of thinning hair coat and crusting of the underlying skin. Around both eyes there was a 1 cm wide ring of hair loss, and the underlying skin was crusted and inflamed. Both ear canals contained a moderate amount of yellow waxy discharge and a large amount of hair. The upper and lower canine teeth on the right side had mild attrition or wear. There was marked dental tartar on the teeth in the back of the mouth, and moderate dental tartar on the teeth at the front of the mouth. There was mild gingival swelling throughout the mouth.
80. At a follow up visit on November 16, 2015, Dr. Herbert wrote the dog's ears were swabbed and a diagnosis of chronic otitis externa due to yeast overgrowth was made. The ears were cleaned, and a matt of fur was removed from one ear canal, and the fur within the ear canal was plucked.
81. Polly (referred to as Marley in the report) appeared to be a white Great Pyrenees mix mature female dog. The Body Condition Score was 4/9. On close examination the following areas of concern were noted. The hair coat was very dirty and flea dirt or feces were seen in various locations on the skin. No live fleas were seen (was previously treated with Advantage). There was generalized erythema (reddening of the skin). There was a scar on the top of the muzzle. There were several small open wounds along the right side of the mouth. Along the back there were multiple 0.5 cm round raised scabs, it was difficult to determine if these were wounds or sores due to infection. There was a scab on front of the left lower hind leg. On the right inner thigh there was an epidermal collarete (circular lesion of flaking skin that occurs with superficial skin infections). The hair coat was thin along the back of both hind legs. During the examination the dog turned to chew along the back of the hind legs. There was brown waxy discharge on the ear flaps. There was severe attrition or wear of the lower incisors (teeth at the front of the mouth), down to the gumline on two. There was marked dental tartar on the teeth in the back of the mouth, and moderate dental tartar on the teeth at the front of the mouth. There was mild gingival swelling throughout the mouth. Along the right side of the ribcage there was a hard, round, boney mass attached to the underlying rib (possible previous fracture site with excess bone formation during healing). This area was not painful during examination.
82. At the follow up exam, Polly had skin swabs (cytology) indicating a minimal amount of yeast and only the occasional bacteria was noted. A diagnosis of mild pyoderma (skin infection) was made.



Treatment includes bathing with a medicated shampoo (ie. Cortisoothie). Chest radiographs were taken to investigate the boney mass on the ribs. On the radiographs there were several ribs on the right side that had a growth on the costochondral junction (junction between the boney and cartilaginous portions of the rib). A radiologist review of the radiographs was pending at the time this report was written.

83. Dr. Herbert's (whose evidence I accepted) written report, summarized, in part, that on examination, these three dogs revealed numerous significant issues. All dogs had extremely dirty hair coats, fleas and overgrown nails. Fleas cause a dog to be very itchy. The frequent scratching can cause inflammation of the skin, which can lead to skin infections. The scratching and chewing is noticeable behavior to anyone in close contact with the dog. One dog was seen chewing at her hind legs during her examination. Fleas can also transmit tapeworms when they bite a dog. Nails that have become overgrown cause discomfort and can change how a dog walks on the affected feet, and are at risk for being torn or broken.
84. All the dogs had dental disease, which develops due to a buildup of bacteria and plaque when daily dental care with brushing is not provided. Over time the bacteria spread under the gum line and eventually cause infection of the tooth root. This also results in receding of the bone around the tooth root. The bacteria can also spread throughout the body causing infection in other organs such as the skin, urinary bladder, liver, or heart. The infected tooth root and associated inflamed gums are painful. When the teeth are worn on hard surfaces the pulp cavity (center canal in the tooth) is opened. The pulp cavity contains nerves and blood vessels. When exposed this causes pain and allows bacteria to spread into the blood stream, potentially causing infection at the tooth root or throughout the body.
85. Two dogs had ear infections, which are itchy, painful and if left untreated cause narrowing of the ear canal and eventually deafness. Dogs are often observed scratching their ears or shaking their heads. When painful, they become reluctant to have their heads pet or their ears touched. One dog was seen repeatedly shaking her head and pulled away when her ears were examined. The extent of swelling and narrowing of the ear canal seen on this dog only occur with chronic ear infections that have been left untreated, or recur very frequently.
86. One dog had a urinary tract infection, a painful condition that irritates the lining of the urinary bladder. This irritation causes an urge to urinate frequently and painful urination. If left untreated the infection can spread to the kidneys and cause kidney failure.
87. Dr. Herbert opined in her report that these dogs were in distress from their various afflictions. They were not provided with basic grooming and veterinary care. Any dog with these conditions would be exhibiting certain behaviors due to the pain and discomfort they were subjected to. These behaviors include but are not limited to scratching, chewing at themselves, head shaking, frequent urination, and straining to urinate. These were all observed during the short time they were examined and housed at the Vancouver SPCA. The lack of basic care resulted in suffering and distress for all three dogs.
88. Dr. Herbert testified that she did write the November 15, 2015 report and re-confirmed the dogs' conditions on examination. She noted the open sores on Polly's (Marley's) mouth were open and were not healing. The dogs smelled like feces not ammonia or urine. The dirty coats do affect the

health of dogs and lead to scratching, skin irritation and potential infections. Baby (Sophie) was in pain with her bladder infection and the crusting on her skin was uncomfortable.

89. Dr. Herbert re-assessed Leroy on November 24 and after he had started on a couple of pain medications, Leroy appeared more comfortable when compared to the November 14 exam. She saw Leroy again on December 11<sup>th</sup> and diagnosed a mild skin infection and prescribed antibiotics.
90. Dr. Herbert testified, and I accept, that the afflictions these dogs had caused distress but were easily treatable if the dogs were provided with veterinary care. Dr. Herbert said basic care included grooming and cleaning the dogs coat and environment. She commonly sees owners who have dogs that are shaking their heads or straining to urinate bring them in in a short period of time. Dr. Herbert repeated that the urinary tract infection in the bladder was painful during urination and uncomfortable when the bladder was not full.

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

91. The Appellant relied on all her submitted material and submissions, and I reviewed and considered all material, submissions and testimony, whether or not I refer to it here.

### **Witnesses for the Appellant**

#### *Talis Steidl*

92. Ms. Steidl testified that she is a neighbour of the Appellant, living within the residence (a compound with multiple dwellings) and knows her dogs are well-behaved, sweet and very nice in good condition, well-fed, walked every day. She says the Appellant is loving towards her dogs and has a great heart. She has been inside the Appellant's home a few times and has seen an improvement; on a scale of 1 to 10, it's a 10; she's gotten rid of a lot of stuff.
93. On cross-examination, Ms. Steidl said she did not tell SPC Carey she had been in the Appellants home when asked (during an SPC visit possibly late in October when the animals were not seized) as she did not understand the situation so had no right to say anything. She said she had been in the mudroom and did not know how dirty it was but with dogs comes mud. She did not see any traumatic injuries on the animals the Appellant described and said the Appellant was upset about the Society saying the animals were mistreated and upset about the vet bills. She did not see any fleas but did not inspect them and did not see any animal in pain – they were happy and got along.
94. Ms. Steidl admitted that she did take a dog from the Appellant, a chow named Billy who escaped and killed a kitten and surrendered that dog to the SPCA as a stray as she wanted to help the Appellant and the Chow needed a brush and didn't work well with the other dogs. She said the dogs occasionally did escape through the window.
95. In response to Panel questions, Ms. Steidl said the Appellant needed help as she had five dogs and one with temperament issues and she thought the Appellant would get into more trouble with neighbours and the law and thought she would help to lighten the load. She felt bad for Billy and still thinks she did the right thing. She said the Appellant was aware she was taking Billy as she feared Billy would be hurt or killed by someone.

*Katherine Gray*

96. Ms. Gray testified she has known the Appellant for less than a year, and had originally got the dog Leroy from someone in a parking lot when that person referred to Leroy as a nuisance. She took him home on the spot. She photographed Leroy and he had a raw spot on his neck. She took the photo time-dated in April 2015 at her property. Leroy was missing a toe, had “icky” teeth and not great skin, smelled and was dirty. She cleaned him and had him from April to August but wanted to re-home him as her neighbours set off fireworks which frightened Leroy.
97. She was aware the Appellant had owned Great Pyrenees before so contacted her and they corresponded by email and met on Ms. Gray’s property. The Appellant then came a second time to pick up Leroy and take him to her home. He had been neutered by Cheam Veterinary as it was less expensive, not by her regular vet. She had his toe checked, got antibiotics and had teeth cleaned before leaving for the Appellant’s home. Leroy walked with a saunter as his hips were not great. Ms. Gray had wanted to go see Leroy at the Appellant’s home and had originally wanted to deliver him personally but the Appellant was accommodating so she didn’t think twice. Ms. Gray went on the Appellant’s say-so.
98. When Ms. Gray visited the Appellant’s home it was full of stuff but the backyard was clean with no smell of dog feces. There was water available for the dogs. Everything she viewed was through slats in the fence or gate. Leroy came to the gate and she was able to pet him through slats in the gate. She watched him go in and out of the house through a breezeway. Ms. Gray said this was better behavior than at her home where Leroy was afraid to go inside the house. Ms. Gray was apprehensive of the condition of the Appellant’s home but Leroy looked good and was not in distress. She watched for 30-45 minutes.
99. Ms. Gray visited the Appellant’s home again after the seizure and saw that it had been cleaned up with less stuff. She had been told there were terrible fleas and wanted to make sure for her own peace of mind that she had made the right decision in giving Leroy to the Appellant.
100. Ms. Gray told the SPCA she would take Leroy back, and did not understand why the birds were left with the Appellant if conditions were so bad. Ms. Gray told SPC Carey in a “really long conversation” that from the short time she viewed Leroy, he seemed content.
101. On cross-examination, Ms. Gray said Leroy had a bald patch but doesn’t recall seeing inflammation and would have noticed when she felt his chest. When asked about how the veterinarian on seizure described Leroy, Ms. Gray said that is not how she knows Leroy but she thought Leroy did have hip pain when in her care and she gave Leroy greenlipped mussel and a lyco supplement. She did not follow up with the Appellant on this issue and did not get invited into the house and now understands why.
102. In response to Panel questions, Ms. Gray said Leroy looked fine during her first visit to the Appellant’s property and she was relieved to see Leroy look happy. She did not see indicators of pain or limping or see him scratch; he just sauntered to the gate like he always did.

*Lisa Correale*

103. Ms. Correale said Leroy had no fur on a spot on his neck where his collar used to be and it was she who took the dog to Cheam Veterinary. She is a neighbour of Ms. Gray's. Leroy liked to dig and was a messy and dirty dog. The veterinarian mentioned the dog's missing toe and the skin infection on his chest and provided a prescription which Ms. Gray applied according to directions, but there was no direction on any follow-up care. She said Leroy seemed happy because if he was not happy, he would whine. Ms. Correale also noticed a big improvement in the Appellant's home on the second visit after Leroy was seized, and if she and Ms. Gray and the BCSPCA could make check-in visits, she would be fine returning Leroy.
104. In response to Panel questions, Ms. Correale said Leroy was in a loving home though admittedly the home was not in the condition she would choose to live in, but loving and getting fed. She was comforted that the back yard was clean. She had expected to see feces with so many dogs but she didn't see that.

*Dr. Vishesh Jalan*

105. Dr. Jalan is a veterinarian at Clearbrook Animal Hospital.
106. Dr. Jalan saw Coconut on September 30, 2015. Coconut had a bare area on his skin and was given a flea bath and Capstar (to kill fleas right away), an antibiotic for skin scabbing, and Revolution for fleas with 6 months of treatments in the box. Coconut stayed for a day to allow drying after his bath. Dr. Jalan said he did a full physical exam and he put an X in the mouth on his records which meant something was wrong and he would have communicated that with the Appellant. If Coconut had dental issues, the antibiotics would help and he would need a blood test before a dental, but there was nothing in Dr. Jalan's records about this.
107. Dr. Jalan saw the deaf Great Pyrenees Baby (Sophie) on October 2, 2015 as she had an ear infection. He prescribed Canaural drops which are antifungal, antibacterial and anti-inflammatory, plus he cleaned the ears. There was no recommendation for follow-up. He also prescribed EpiClean which is an ear cleaning solution and recommended cleaning every 3-4 days as if the dog's ears were clean there was less chance for an infection. He gave Revolution and Advantage for fleas, both in drop form. [Given Dr. Jalan's evidence about the state of Baby (Sophie) on October 2, 2015, the findings of Dr. Herbert (summarized above) arising from her November 15, 2015 examination, including her findings regarding Baby's ear infection, is significant.]
108. In response to Panel questions, Dr. Jalan confirmed those were the only times he saw those animals and stated that if the Appellant followed his prescribed monthly treatment, the two animals shouldn't have fleas. Dr. Jalan clarified that the X in the mouth in his records means that dental disease is present but he forgot to write down the extent. He did not record the condition of the skin or mouth and said the ears might be waxy but might clear when bathed. He said he would have checked for pain and if present he definitely would have recorded that in his records. He is confident the cat and dog were not in pain. There was nothing wrong with the cat's heart and if there was a murmur of 3 or more he would have heard it, but 2 or less he might have missed it. He said the animals if untreated for fleas could be re-infested within one week.
109. Under cross examination, Dr. Jalan confirmed he performed the examination himself.

*Diane Andrusek*

110. The Appellant said she has not had the best relationship with the Society but is open to it. She tried to be in touch with emails and when they showed up on the what she recalls was October 27<sup>th</sup> and returned on October 31<sup>st</sup>, she was never told why and never received an explanation until she received the Society's material in this appeal. The Society posted a notice re the ITO and appeared the next day to seize the animals. The Appellant felt the SPC should have called.
111. The Appellant said she misunderstood the ear treatment for Baby and also cleaned Max's ears with the cleaner.
112. The Appellant said she did not have the animals that long and Leroy came with preexisting conditions.
113. She said the Society is prejudicial toward her and if SPC Carey had come, she would have let her in but she did not let her in in the previous weeks as she was on her way to work. The photographs from the Society are very prejudicial as they did not photograph the clean areas.
114. The Appellant said she will get Polly seen by a veterinarian and Lady Boo was on a reduced diet and Coconut was being treated by a veterinarian and she was told by Dr. Jalan to get rid of fleas and scabs before doing his teeth. She would have attended to the veterinary needs of Baby and Coconut if she had the opportunity to do so.
115. She will apply flea treatment as she is advised.
116. The animals have lots of water and food and space and go for walks 2-3 times a day.
117. She said she kept the Labradoodle Max's curly coat short and could not attend to the matting around the dog's penis.
118. She is open to any proposed care plan and will maintain the animals in good condition and attend to their medical needs.
119. On cross examination, the Appellant said two dogs, Lady Boo and Leroy were kept in the mudroom and the others in the main part of the house. She does not know how Coconut the cat was injured and she only petted him around the head and ears as they were engaging slowly. He was a recent addition to her family. She got Polly January 2015, Lady Boo summer 2015, Baby February 2015, and Max December 2014. Only Coconut and Baby saw the vet as the others had no problems. After the last seizure, she said, she has been more aware of her animals' needs. She takes care of their ears and eyes and clips hair in their ears. She did not notice Baby straining to urinate. Polly has fleas but got flea treatment on a regular basis. She had given all the animals Advantage flea treatment 2-3 days before the seizure, having been given some by a friend.
120. The Appellant said she really "busted her chops" cleaning after the seizure as she likes where she lives and wants to make changes in life generally speaking. Her home is cluttered but not filthy. Portions of her home are clean. The mudroom looks like it's covered in filth but was just dirty and the dogs did not urinate or defecate in there. Baby did until she was toilet trained. There were no

feces on the mudroom floor. She concedes her home was not as clean as it is now but she wants to get the animals back.

121. When asked about the October 14, 2014 BCFIRB decision about veterinary checks being a necessary component of pet care, she said she did not recall it being put that way. She does not understand when to take them to the vet but yes if there are issues she will take them to the vet and if she sees symptoms she will take them to the vet. When asked if she had too many animals, she said she was thinking about that, it was on her mind off and on.
122. In response to Panel questions, she said she will be more aware now even though when she did see things before, she took her animals to the vet. She cannot think of why her animals got fleas and they were scheduled for a flea treatment.
123. The Appellant said Dr. Jalan told her she could wait to take Coconut in for dental work. When she notices dental issues with her animals, she gives dental bones or gets bones at her butcher.
124. She did not notice Baby straining or did not see it as straining. She would pee a couple of times before or after work but the Appellant just thought Baby was trying to fully empty her bladder. As she becomes aware of things, the Appellant said she will get them, checked. Her plan now and in the future is to take them to the vet regularly. She said she did notice Leroy's lameness but that had not changed since he arrived. She said she was now aware of the symptoms of pain in an animal. She has the ability to hire a veterinarian and transport her animals there. Now that she has started to clean, there is no going back.
125. When the panel asked why it should believe she would do things differently in the future if she hasn't done them in the past, the Appellant said that was a gray zone as she does not know for 100% sure but she's seen changes in the mudroom and that's part of the path for her. The Appellant said she doesn't want to go where she was a year ago and feels she is on a different path – a better path.

## **VII. Submissions, Analysis and Decision**

126. The Appellant's position is that there was never any need for the Society to attend her home, break in and seize the animals as she was okay with the Society attending; she was just never told why the Society wanted to attend and given the nature of her past dealing with the Society, she wanted an explanation, verbal and written because regardless of who comes to your door, an explanation is generally expected and given.
127. The Appellant waited on the agreed upon date of November 9 (and continued to wait on November 10 and 11) but no one from the Society showed up and the Appellant had not checked her email to learn of the delay. On November 13, the Appellant came home to the notice of warrant pending. The Appellant feels this supports her notion that the Society has "a vested interest in continuing to perceive (her) in a particular way."
128. The Appellant said that the Society only photographed dirty rooms and that yes, those particular rooms were not as clean, however she has since made significant improvements, and that there were valid reasons to separate her animals.

129. The Appellant said the Society just assumed her animals were in distress. She asked is it “not a logical presumption to ‘assume that when a new person(s) unknown to them comes and peers in a window, etc., that these animals might bark, etc.?’” She said that Baby her deaf dog must have been terrified by the seizure and therefore was put into a state of distress.
130. The Appellant agrees that the veterinary information as written is bad, but her dogs are described as tomboys, playful, active and therefore dirty and appearing possibly underweight in one case. She said that Max had some mats but was not heavily matted. All dogs had been scheduled for bathing and there was a huge container of ‘dog wash shampoo’ by her bathroom tub, a photo of which was not taken by SPC Carey.
131. The Appellant disputes the assertion there was rotting organic debris, and that the dogs were confined. She claimed the photos and statements written and taken only show a very slanted, skewed and prejudicial perspective.
132. The Society’s position is that for the Animals to be emotionally and physically content they must not be in a state of distress due to unsanitary living conditions and the medical issues noted in the reports of Dr. Richter and Dr. Herbert. The Society has no confidence in the Appellant’s ability to maintain the Animals in an environment that would keep them free from distress given the Appellant’s prior history and the state in which the Animals were housed and their lack of appropriate veterinary treatment.
133. The Society further said that keeping the Animals in the conditions in which they were found by the Society, and failing to treat readily apparent veterinary ailments, should suffice to refuse a return of the Animals to their owner but this case presents further reason to avoid such return, in particular, that the Appellant has had an unfortunate and lengthy history with the Society dating back to 2005, during which period the Society has taken custody of over 70 animals apparently belonging to the Appellant. The Appellant has also failed to cooperate with the Society’s investigations, which has hampered the Society’s ability to determine the status of animals in her care, or to provide direction respecting appropriate animal care. This history, the Society said, underscores its grave concern that should the Animals be returned to the Appellant, they will not receive appropriate care and housing in future and as such they will return to a situation of distress. The Appellant has demonstrated an inability to provide proper veterinary treatment as needed, or a home with sufficient space, that is sanitary and properly ventilated. There is a substantial future risk that the Appellant will continue to fail to afford proper veterinary treatment and will continue to keep the Animals in an unsanitary, poorly ventilated and excessively cluttered home for the Animals.
134. The *PCAA* sets out the following definition of “distress” in section 1(2):
  - 1 (2) For the purposes of this Act, an animal is in distress if it is
    - (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
      - (a.1) kept in conditions that are unsanitary,
      - (a.2) not protected from excessive heat or cold,
    - (b) injured, sick, in pain or suffering, or
    - (c) abused or neglected.

135. For clarity, in this case specifically, I have little concern over the amount of clutter such as blankets on the bed or clothing on the floor. There was no evidence presented in this case that this type of clutter caused harm or potential harm to the animals.
136. I am not convinced that the dusty light bulbs caused such a lack of light as to constitute distress. Evidence was given by several witnesses that the dogs were frequently walked or playing outside, and that at least on some occasions, the mudroom door was left open to allow the dogs access to the fully fenced yard. I find that the animals had sufficient light.
137. Likewise I am not convinced that the animals were confined to a small space including the two dogs in the mudroom. First of all the space was not so small as to prevent the animals from moving. Second, I find SPC Carey's suggestion that the two dogs were constantly confined to the mudroom to be speculative. She attended three times, each time when the Appellant was not home. People often confine their animals to a particular room while they are at work. Considerable evidence attested to the yard exercise the dogs got and the walks they got.
138. The "quality of air" issue was not easy to deal with. On one hand, SPC Carey gave direct evidence of her observations, and of her ammonia test, albeit with a higher reported number than was actual. On the other hand, the birds were not removed from the same environment and none of the veterinary evidence referred to an ammonia smell, which is evidence I have heard on multiple occasions on appeals where this issue has arisen and which question was asked of the veterinarians on this appeal. While the two test strips showed a level of ammonia, there was no veterinary evidence that any animals suffered from the effects of breathing in foul air. On balance, I have not been convinced that foul air would have been a basis for this removal.
139. I do however find ample evidence that the presence of feces was excessive and was responsible for causing health reactions in the dogs. The Society's veterinary evidence, which I accept, was that the dogs smelled badly of feces and one dog had crusted feces on his body. That veterinary evidence also made clear that this exposure to feces could cause infections such as were evident on the skins of some of the animals. I accept Dr. Richter's opinion that she did not think the cat or some of the dogs were able to escape feces due to the amount of staining present, such as the extreme staining on the cat's front paws. There was also ample evidence of extreme dirt on the coats of the dogs, with one veterinarian remarking that even dogs who live outside fulltime are not as dirty as the Appellant's dogs.
140. I also find ample evidence that these animals were infested with fleas which caused irritation, itchiness, skin irritation and scratch marks, as seen on most of the animals, and tapeworms, as seen on one of the dogs. Although the Appellant claims she had and was about to again apply flea medication, even her own veterinarian witness Dr. Jalan testified that if the treated animals were then untreated, they would be re-infested within one week, and if the Appellant followed instructions and applied the flea treatment regularly, the animal would not have fleas.
141. I also find that upon seizure, several maladies were discovered including ear problems, urinary tract infection of the bladder, a broken bone, and more than one animal in significant pain.
142. Combined, I am able to conclude easily that the five dogs and one cat met the definition of distress in that they were living in unsanitary conditions and were, variably, sick, in pain, injured and/or suffering, as will be detailed in the next section. In determining that the conditions were unsanitary,



I find the home was more than simply grossly untidy or even dirty. There were resultant health risks for the dogs and cat, from feces which were apparent on the floors and other areas, to the extensive dirt and filth, and torn apart garbage bags, and the existence of an environment conducive to fleas in such numbers that the infestation on Leroy was, according to Dr. Richter, severe, causing intense itchiness that cannot go unnoticed by an owner that lives with the animal. The hair loss on his abdomen, legs and neck and inflammation seen on his neck stem from flea bites and the dog scratching severely. There was also the dog with a tapeworm segment in his anus, likely from the flea infestation.

### **Return of Animals**

143. Having determined that the seizure of the animals was justified, I turn now to the best interests of the one cat and the five dogs, 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.

144. 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.

145. 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.

146. I find it necessary first to clarify a few issues for the Appellant.

147. No one including me disputes the fact that she loves her animals deeply and has a bond with them, such as with Baby her deaf dog who looks to her constantly for direction. But the Appellant misunderstands the issue of distress. Just because an animal in her care, such as Leroy and Coconut, came into her care with health issues, she is not relieved from addressing those health issues if they cause the animals distress. She cannot rely on the fact that Leroy had a bad back-end and was already lame as a reason to not seek veterinary care and not recognize signs of pain. Although she claims, correctly, that he walked like that from when he came into her care, she did not recognize his signs of pain and did not address them with a veterinarian. The Appellant is also responsible, when she does seek veterinary treatment for her animals, to monitor their progress and seek additional treatment if a particular course of medication is not working, such as with the ears of Baby. The act of seeing a veterinarian is not the entire journey but simply the first step. The Appellant is of the view that her history is that she had previously sought veterinarian advice for some of her animals' ailments, but the question is whether the panel has sufficient confidence that she will seek out and take veterinary advice in every appropriate circumstance in the future. For clarity, the fact she may have once taken Coconut and Baby to the veterinarian for fleas and an ear infection respectively does not change or address the fact that she did not take or did not monitor the flea, dental and ear situations with all of her other animals. Further, it matters little that others

saw her walk the dogs, as lack of exercise was not in dispute, nor was the fact that Leroy seemed happy and may have been better off than where he previously was. The animals seized are entitled to have decisions made about their best interests, not about their “better-than-before” interests.

148. The reality of this situation is we have an owner, the Appellant, who loves her animals but is incapable of caring for them in such a way that will prevent distress. The Appellant wasn't sufficiently aware of the pain Leroy was in to seek veterinary care for him. She believed and testified that he was in the same condition at seizure as when she acquired him. This is unacceptable if that condition at acquisition caused him untreated pain. The dog improved after receiving two types of pain relief. He should have received this pain relief very soon after arriving at the home of the Appellant. He should not have had to suffer for months because, to the Appellant, he did not look any different than before. His coat was thin and there was a patch of inflammation and thickening of the skin where fur was missing on his neck, and this warranted veterinary attention. The Appellant should have seen that Leroy had dried poop on him. She should have sought treatment for his red ears. Because she did not, Leroy was in pain and suffered.
149. The Appellant was not sufficiently aware of Baby's health to make the connection between her dog's attempts at emptying her bladder several times on a walk, and having a condition such as the actual urinary tract infection she had; and then to seek veterinary care. As a result, Baby suffered and was in pain.
150. The cat Coconut had a broken bone that was healed and a second broken bone that was not yet healed, indicating it happened within the previous 4 or so weeks. The Appellant had no awareness at all that this cat could not be touched anywhere on the back as it was too painful (Dr. Richter exclaiming in her oral testimony that she was “shocked” at the amount of pain the cat was in). Instead, the Appellant said she just limited her touching to the cat's head. The Appellant's choice, for whatever reason, not to touch her animal except on the head meant that she neglected to detect that the cat was in pain and the cat suffered without veterinary care.
151. Polly had a skin infection and inflammation and marked dental disease with open sores in her mouth. Max had a skin infection and inflammation and marked dental disease. Lady Boo had some areas of red skin and was seriously overweight. Several dogs had ear irritations and build-ups of wax, and all were described as very dirty, suffering from various levels of flea infestation, and exhibiting an intense odour of feces.
152. Although the Appellant did take Baby and Coconut to see a veterinarian, she was unable to completely comprehend how to use the ear medication prescribed for Baby and she failed to keep Coconut flea-free or properly apply follow-up flea treatment after his flea treatment at the clinic.
153. I conclude that despite her love for her animals, the evidence in this case shows that the Appellant has not satisfied me that she is capable of seeking appropriate veterinary care for her animals in a timely and meaningful manner. She does not always notice symptoms of pain or discomfort or emerging health issues, and the best interests of the animals suffer because of this. Although the Appellant says she will do better, and I believe she may do better, I do not think her efforts will foreseeably, and with regard to the animals at issue on this appeal, reach a level that is satisfactory in preventing their suffering and distress. The Appellant says she is open to providing veterinary care as directed but she has no one to direct her. Even if I was convinced that she could follow a

regularly scheduled care plan (and I am not as she has not provided any type of care plan in her defense) such a plan would not allow for emergency situations.

154. The Appellant has made great strides in clearing her place of clutter and she is sincere in her desire to go down a new and better path and not repeat the situations she experienced in the past regarding her animals. She clearly removed clutter and garbage from her home and there was never any dispute about the cleanliness of her back yard. However, in viewing photos and hearing the testimony of SPC Carey, it is apparent that the de-cluttering and cleaning has not reduced or eliminated the unsanitary situation of her home. It appears there is still mold on the walls and it appears there may still be filth and possibly feces on the floor. The cleaning the Appellant has done is admirable but insufficient to give me confidence that she could provide a sanitary home for her pets.
155. In considering whether to return Leroy, Lady Boo, Polly, Baby, Max, and Coconut, 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.
156. The word "promptly" suggests a consideration as to whether the person can or will take the necessary action.
157. The Appellant's history of having animals seized due to lack of veterinary care and lack of sanitation in the matter I decided upon on October 14, 2014 are the exact same issues before me today. Yes, the Appellant has, since the seizure, cleaned up some of her home; it is not enough to change the unsanitary nature in her home. And yes, she has sought veterinary care for two of her animals with two isolated incidents, but that is not good enough and did not prevent her animals from being in pain and suffering. The Appellant's promise to do better is, in my opinion, sincere but still insufficient.
158. I must also consider the history of the Appellant. It was only 15 months ago that I ordered that four dogs and one cat not be returned to the Appellant for her failure to provide a sanitary home and her failure to seek veterinary care for the animals. History has repeated itself here. While I have not allowed that history in any way to impact my assessment of what the facts of this particular appeal were (I approached these incidents entirely afresh), I am of the view that I can consider this recent history in coming to the conclusion that the Appellant would be unable to make the necessary changes necessary to serve the best interests of these animals, and indeed she should not be given an opportunity to do so with the current seized animals.
159. The actions and beliefs of the Appellant regarding the level of care she is able to provide for her animals apply to all the animals at issue on this appeal. Some may have suffered more than others, but in my view, all five dogs and the one cat are all at a very real risk of falling into distress if they

are returned to the Appellant. In the best interest of the animals, I will not be returning them to the Appellant.

## VIII. ORDER

160. 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).

161. 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 five dogs and one cat.

### *Costs*

162. 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.

163. 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)”.

164. The Society has asked for its costs of \$6,712.81 as outlined in Ms. Moriarty’s affidavit. There are additional costs incurred by the Society, but the Society waives the same to allow a final decision at this time. The breakdown is as follows:

- a) Veterinary and grooming costs \$1,067.81:
  - Burnaby Veterinary Hospital Ltd. –\$1007.81
  - The Groom Shop - \$60.00

- b) SPCA time attending to seizure: \$120.00 (labour costs associated with investigating, seizing and transporting the Animals at \$12 per hour x 5 hours (approx.) x 2 SPCs)
- c) Housing, feeding and caring for the Animals: \$5,525.00 (the Society's costs to house, feed and care for the Animals at the Society's facility total approximately \$10/day/cat and \$15/day/dog for 65 days. Cat costs are determined as food cost: \$1.00 per day, Staff time at a rate of approximately \$12.00 per hour: \$6.00/day
  - i) 10 minutes kennel and cat cleaning: \$2.00
  - ii) 10 minutes morning feeding: \$2.00
  - iii) 10 minutes evening feeding: \$2.00
- d) Overhead Costs: \$3.00/day.
- e) In relation to the dogs (from amongst the Animals), the sum of \$15 per day per dog is broken down as follows: food cost feeding Hills Science Diet: \$2.00/day, staff time at a rate of \$12.00 per hour: \$6.00/day
  - iv) 10 minutes kennel and dog cleaning: \$2.00
  - v) 10 minutes morning feeding: \$2.00
  - vi) 10 minutes evening feeding: \$2.00
- f) Overhead Costs: \$7.00/day

165. The Appellant does not feel she should pay the amount the Society asks for, because if SPC Carey had answered her email the whole situation could have been prevented as the Appellant was more than happy for the constable to come there again. She is also more than happy to pay the vet bills as she would have done that anyways. The kennel costs are what they are and that volunteers do the kennel staff work and the food is donated by Hill's.
166. The Society points to Exhibit 14 and says kibble is donated but other food may not be and that there are volunteers at the facility but also employees which are real people paid by the Society, as in paragraphs 25-35.
167. It is reasonable to me that the veterinary costs should be borne by the Appellant. The veterinary care provided was required and was provided immediately in order to prevent further suffering and to alleviate or mitigate pain for some of the animals. Some needed intervention to treat infections for instance. The cat needed pain relief for a broken bone which had to be diagnosed. I find the invoices to be reasonable.
168. It is reasonable to me that the boarding costs be borne by the Appellant as someone had to provide care and shelter for her animals during this process, and her home and level of care was not adequate. I find these costs reasonable.
169. I also find it reasonable for the cost of the SPCs to attend the seizure and associated tasks to be reasonable and borne by the Appellant.

170. The Appellant provided no evidence that any of these amounts were unreasonable, only that the boarding was unnecessary as the animals should not have been taken.

**ORDER**

171. I order that the Appellant pay the amount of **\$6,712.81** to the Society as the reasonable costs incurred by the Society with respect to the animals. The Society asks me to consider various payment options if I decide to return the animals to the Appellant but given my decision, I do not need to further consider these arguments.

172. There is one final matter I wish to comment on. I understand and sympathize with the Appellant's desire to own and love an animal or animals. Since the 2013 change to the *PCAA* (which vested authority to hear certain animal seizure appeals with this Board), I have twice now found the Appellant to be unable or unwilling to prevent her animals from being in distress or returning to being in distress. This is heartbreaking for her, I am sure, and certainly difficult on the animals. I urge the Appellant to consider her limitations in being able to care for multiple animals, or even one animal, before she takes in another animal. Her love for her animals has thus far proven to be destructive to those animals.

Dated at Victoria, British Columbia this 22<sup>nd</sup> day of January 2016

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**



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Corey Van't Haaff, Presiding Member