

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 13 CATS

BETWEEN:

DIANE BAKER
ANGUS LEMURE

APPELLANTS

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:

Diane Baker
Angus Lemure

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

February 22, 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. 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.
4. For reasons that will be explained in detail later, I have decided to order that the 13 cats, despite being well-loved by the Appellants, will not be returned to the Appellants and instead, will remain with the Society (BCSPCA) which is permitted to destroy, sell or otherwise dispose of the animals. The thirteen cats were seized from the Appellants on January 3, 2016 when they were determined to be in distress. The Appellants had found themselves homeless and living in Gates Park in Port Coquitlam with the 13 cats which were kept in a homemade shelter on castors for mobility.
5. At the outset of the hearing, the Society said that in light of the situation in which the Appellants found themselves, it would waive the boarding and seizure costs (the SPC time) and only request costs equal to the veterinary invoices for veterinary examination and treatment for 3 of the 13 cats. I will address the issue of costs below.
6. I also understand from the Appellants that they have filed a civil claim regarding some of the matters at hand. I have no authority regarding a civil claim and make no comment on it.

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 review¹. 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*.

V. Preliminary Matters

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

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

13. Before the hearing and during the review of submitted material, the Panel identified areas where it might need assistance in understanding some of the issues presented, which the Board is entitled to do:

PCAA sec. 20.5(4) The board, at any time before making a determination in an appeal, may (a) inquire into matters relevant to the appeal, and, as part of that inquiry, obtain the advice of persons who are knowledgeable about those matters.
14. To assist the Panel, the Panel summonsed a representative from Richmond Animal Protection Society who had expertise in cattery operations, cat shelters, cat cage requirements, and related issues. There was no objection from either party to this witness.
15. The Society requested that the Panel summons the Society's witness, veterinarian Dr. Kuldeep Chahal, as the Society could not reach him. The Panel did summons Dr. Chahal but the Panel was advised he would be out of the country on the date of the hearing. Because the Panel wanted a veterinary interpretation of veterinary records produced by the Society, the Panel summonsed local (to the place of seizure) veterinarian Dr. Sangyun Kim as its own witness to interpret the veterinary medical records of Dr. Chahal. There was no objection from either party to this witness.
16. During the hearing, on a few occasions, the Appellants were assisted with understanding questions posed to them, and expressing their answers, by the daughter (Tanya Baker) of one of the Appellants. The Society did not object to this practice and I was satisfied it was of assistance to the Appellants and to the Panel. Although Ms. Baker at times needed the assistance of her daughter to understand or express herself, I am satisfied that both Ms. Baker and Mr. Lemure, the Appellants, were able to answer my questions and the Society's questions and provide important information to the Panel to assist it in making its decision. I am also satisfied that each Appellant understood the purpose of the hearing and what was at stake.
17. At the end of the hearing, just immediately before closing the hearing, one of the Appellants, Mr. Lemure, said that I had not heard the last from him and he intended to continue to pursue this issue. At the time of his declaration, I had yet to deliberate to consider the evidence and testimony, yet alone make a decision. I did not permit his declaration to influence my decision-making in any way.
18. Finally I note that the Society was unable to identify for me which 3 cats were referred to by ID numbers in the veterinary records. This could have presented a problem for the Panel with identifying which cat was which number, if a different disposition decision had been made by the Panel. In view of my decision, I need not pursue this issue further, as I am satisfied that the 3 cats were among the cats seized and subject to this appeal.

Material Admitted Into Evidence

Appellant:

- a) Appellant Notice of Appeal (perfected on January 25th) **(Exhibit 1)**
- b) Appellant Submission (via email February 5th) **(Exhibit 2)**
- c) Appellant Final reply submission (via fax February 18th) **(Exhibit 3)**

Respondent:

- a) BC SPCA initial document disclosure (via email January 28th Tabs 1 -22) **(Exhibit 4)**
- b) BCSPCA written submissions (via email Feb 16th and via courier Feb 17th) **(Exhibit 5)**
- c) M. Moriarty draft Affidavit #1 dated February 11, 2016 (via email Feb 16th and courier Feb 17th) **(Exhibit 6)**
- d) Expert Witness Contact Form (SPC Laura Lavigne and SPC Brandon Isenor) (via email Feb 16th and courier Feb 17th) **(Exhibit 7)**

VI. The Appeal

Brief History

- 19. This is a very sad case. Both Appellants are in receipt of disability benefits according to their testimony. The Appellants have apparently provided an acceptable home for their 13 cats, many for a considerable length of time. The Appellants expressed, on several occasions, their love for their cats, which they consider to be like their children and which mean the world to them. The 13 cats are Kittie, living with the Appellants since 2004, Mario since 2002, Misty since 2002, Boo since 2002, Socks since 2014, No 7 since 2014, Sad Face, Askhim, Boots, Bapsy, Yogi, Lulu, and Paws.
- 20. The Appellants said that if they had been able to find a home, these cats would not have been seized. The Appellants said they are both First Nations people and this seizure has made Mr. Lemure feel powerless, and that being homeless has been difficult for both Appellants but it is the loss of the cats which has been devastating. Both Appellants stated that there are few resources to assist people in their position.
- 21. The Society, prior to seizing the cats, offered the Appellants the opportunity to surrender all but the oldest cats, for which the Society would then try to arrange some temporary boarding at its own shelters at no cost to the Appellants.
- 22. The Appellants declined this offer as they could not possibly choose which cats to keep and which cats to surrender. This Panel is particularly moved by the Appellants' expression of love and total devotion for these 13 cats, and fully understands how they felt they could not make such an impossible choice. This Panel is also impressed by the level of work performed by the Appellants in constructing a temporary mobile cat shelter which was designed for the sole purpose of keeping the 13 cats with the Appellants as an entire family unit while the Appellants sought out a permanent home.
- 23. The cats were never left alone at Gates Park as one or both Appellants were always present. After several weeks since the Appellants became homeless, the cats were ultimately seized on January 3, 2016.

Society's Decision Under Appeal

24. In her January 18, 2016 written reasons, Ms. Moriarty of the Society concluded that the seizure of the 13 cats took place in accordance with the *PCAA*. She decided not to return the cats to the Appellants. The review decision is excerpted here:

I turn now to the question as to whether or not it would be in the best interest of the Cats to be returned to you. In making any determination regarding the best interest of the Cats, I consider whether you would be able to ensure the Cats remained distress-free if they were returned. This is a duty owed by an owner pursuant to section 9.1 of the Act. I also consider the history leading up to the seizure of the Cats. The BC SPCA first received a concern regarding your Cats on November 19, 2015. SPC Isenor met with you in Gates Park and viewed the Cats. At that time, the Cats did not meet the definition of distress in the Act, however, SPC Isenor did offer you an opportunity to surrender a few of the Cats as he recognized the challenges you were going through being homeless with 13 Cats. You declined the option of surrender.

The BC SPCA received additional concerns regarding the Cats and their living situation and on December 30th, SPC Lavigne met with you and learned that you had been living in the park since the beginning of November. SPC Lavigne had a number of concerns regarding the living conditions of the Cats and some physical concerns. She provided you with the option of surrendering some of the Cats or suggested temporarily rehoming some of the Cats until you had found a place to live. SPC Lavigne even offered to contact the local branches of the BC SPCA to see if they could provide compassionate board from some of the older cats until you found permanent, adequate housing. All of these options were declined, and we had no other choice but to issue you orders to provide adequate shelter, space and ventilation for the Cats and to have one of the cats examined by a veterinarian. As of January 3rd, 2016 you had not been able to find accommodation for the Cats and as a result they remained in distress and were seized by the BC SPCA.

I received your dispute on January 4th, 2016 in which you sought return of all of the Cats. I also spoke with you about the BC SPCA's concerns regarding your Cats and again suggested some options, which included the ability to surrender some of the cats in order to make your search for housing easier. I explained that the major concern was housing and that as long as you were homeless, I could not return the Cats back to the enclosure from which they were removed. Again you refused the options and indicated that you wanted all 13 Cats back and that you were looking for housing and would have it by February 1st, 2016. I responded that unfortunately, the BC SPCA is not a boarding facility and we would not be able to board these Cats for a month while you searched for housing. Pursuant to section 20 of the Act an animal owner is responsible for the costs of care incurred by the BC SPCA during the dispute period whether the animals are returned or not. This was also explained to you as your boarding costs alone are \$130 per day (\$10 per cat per day) and I had wanted to mitigate your costs.

I was contacted by Ms. Cricket Minich, who is a social worker and indicated that she was assisting you with the BC SPCA documentation and wished to speak to me about the situation. I spoke with Ms. Minich at length and again explained the situation and that we were absolutely willing to entertain the return of some of the Cats, but that housing needed to be secured. Ms. Minich indicated that she would be meeting with you on the 12th and providing you with the disclosure package. You confirmed during our conversation today that you did have a meeting set up with Ms. Minich and you were aware that she had important documentation to pass on to you regarding the dispute. However, I am informed that you did not attend that meeting and only met with Ms. Minich on January 15th, when you received the documentation. During our call today you argued that you had not had sufficient time to provide a response as you only received the documentation on the 15th. I have considered your objection, however, I do not feel that an extension was necessary as 1) you were responsible for not picking up the documentation on the 12th and 2) you had been informed by me during our conversations post warrant that the single most important thing that needed to be addressed was housing. As of today, January 18th, 2016 you confirmed that you do not have housing and have no reasonable prospect of housing in the next week.

It is clear from reviewing the history that we have had numerous conversations with you about the importance of providing the Cats with adequate housing. We have also provided you with a number of different options to assist you during this very challenging time, however, all offers of assistance have been

rejected. I am also informed that you rejected offers of assistance from other agencies (Port Coquitlam By-Law) and individuals (Ms. Minich) to assist in finding housing for you and/or your Cats. As such, I conclude that we have given you ample opportunities to relieve the distress in your Cats and you have not availed yourselves of these opportunities.

I acknowledge that I simply can't imagine your personal situation of being homeless, especially during the winter time, and that finding affordable housing is a challenge at the best of times, let alone housing that will accept 13 cats. However, my role is to answer the question of what is in the best interest of the Cats at this time. I have reviewed your heartfelt submissions and appreciate that you love your Cats. However, love in this situation is not enough. I simply cannot return the Cats to the same situation from which they are removed. As such, I do not feel that it is in the best interest of the Cats to be returned.

The Panel's Witnesses

Dr. Sangyun Kim

25. In response to Panel questions, Dr. Sangyun Kim testified that he has been a veterinarian in BC since 2003 and works in Port Coquitlam. He was called to give veterinary evidence concerning 3 of the 13 seized cats which were previously identified by the Society as requiring veterinary attention. The cats were examined by another veterinarian, Dr. Chahal. As noted above, Dr. Chahal was not available to testify, so Dr. Kim was called to review and interpret the veterinary record for the Panel. Thus, Dr. Kim had not personally seen the 3 cats but was in possession of and reviewed a copy of the Society's medical records for the 3 cats.
26. Regarding the record for cat 390032, Dr. Kim testified that the cat was "okay in general". It had an ear problem that could be prevented with medicine and a skin and ear infection with mites. He stated the cat's body condition score (BCS) was "okay" and that the cat was treated simply with ear and oral antibiotics for 14 days. He stated that if that treatment was followed, the cat would be cured of the problem, but if not, the cat could develop a secondary infection as ear mites can cause infections and then would require additional medication. The records indicate the attending veterinarian did not notice anything abnormal. BCS was okay, hydration was okay, there were no symptoms of exposure to high ammonia levels, gingivitis was not severe in this case. The skin and ear problems are hygiene-related. There were no lung or eye issues.
27. Regarding the record for cat 390036, Dr. Kim's evidence was, in his words, the same as the last cat (cat 390032). This cat was a 2-year old cat, BCS okay, hydrated, friendly, a bit scared, same skin and ear conditions from ear mites. This cat received medication and ear drops and oral antibiotic for its skin. The eye discharge could be an indication of high ammonia levels or could be a flu-like symptom. It was only one eye that was watery with no pus. He stated that if the eye condition was serious, the veterinary record would have said something else; this was a mild irritation. Regarding tenderness in the abdomen, it could be indigestion, it could be a parasite requiring deworming, and the tenderness was a cause for concern if the pain did not go away on deworming. Recommended treatment was ear mite medication, ear drops and deworming. The general health was "not so bad" and the ear mites could cause a secondary infection and should be addressed. The eye discharge was minor and the belly was nothing of concern at that point; it was a minor issue.
28. Regarding the record for cat 390039, Dr. Kim's evidence was that this was an older cat with nasal discharge and build-up in the eye, discharge from the eye, mouth and nose, ear mites, a secondary infection in the ear, a skin issue, a distended belly which could be an issue, in that it might be an internal organ or digestive issue. This cat was not in good body condition. This could have been as

a result of an internal organ or kidney problem. This cat needed to be dewormed, get drops for ear mites and antibiotics for its skin. Dr. Kim stated that the examining veterinarian did not do much except mention the abnormal findings and this cat needs more tests which should be done as soon as possible. The record stated that it is a friendly cat with no mention of poor appetite. Dr. Kim said that tests should be done right away and he did not see any test results in the file. Dr. Kim stated that this cat's ears were in bad condition and had been for a while. It had a chronic infection and was hypoplastic, as it had been inflamed for so long. As a result the ear canal was blocked and that made the infection even worse. It is a painful condition. An ear infection can affect balance. Medication doesn't just fix the problem because mites will come back with continued exposure. It is a common condition and is contagious to cats.

29. Under questioning from the Society, Dr. Kim said it is possible for a cat to be described as both friendly and depressed as in friendly but scared or fearful in a new environment, or it may just be trying to hide. Dr. Kim confirmed that with a contagious ear infection, the cat should be isolated as the contaminant is airborne.
30. There were no questions from the Appellants.

Ms. Janet Reid

31. Ms. Reid testified she has been running the Richmond Animal Protection Society shelter since 1998, and it has held more than 700 cats at one time and is currently housing approximately 460 cats. Cats are housed in 10 heated buildings and huts. Some cats are caged for medical reasons, some cats are tame and some cats are feral. All cat housing is cleaned daily, cats are fed (including wet food at night) and they receive veterinary care. Ms. Reid's job is to manage the 11 staff and 150 volunteers who work 7 days a week, manage the veterinary bills of \$6,000 - \$8,000 per month, manage the transportation of cats and manage the medication of cats.
32. Some cats are kept in cages such as those with inner ear disease or those being tested for stability. Some such cats are kept in cages for 2 months while being tested. The shelter has had cats with leukemia which have been caged for 3 months. An average cat cage is 6 feet deep, 4 feet wide, and the height is 6.5 feet, with numerous runs and shelves and cat scratchers. Smaller cages measuring 3 feet by 4 feet by 3.5 feet high might keep a cat for no more than a month, and no more than two cats are kept in a cage that size but not for longer than a month or two. There is a shelf in them for cats to sleep on which is away from their kitty litter, and their food and water is kept far away from their kitty litter, and there is enough room up and down for a cat to exercise. You could, Ms. Reid said, put two cats together but not for a long period of time.
33. Ms. Reid explained that the shelter has taken cat colonies and those cats are kept together in pens. These pens are a 20 foot by 20 foot fence around a Sunbury cedar shed surrounded by grass or tile or pine pellets on the outside, and insulated and heated inside with shelving units and litter and food and water. Some colonies, such as the 15 taken from a cement plant, all end up together in a hut which also has a little front porch and peaked roof measuring 7 feet at the peak. The porch measures 10 feet by 8 feet.
34. Ms. Reid testified that if there are too many cats, they could fight but even if the colony is friendly, she is not sure on the impact of housing them together on their health, but that cats will slow down if not moving and exercising enough. They could get diabetes or lipidosis or they could stop eating

or, if they are a cat that likes to spend a lot of time being still, such a cat will not like another cat moving around it. She has never seen 13 cats in a small enclosure and she based her opinions on what they do at the Richmond shelter.

35. Ms. Reid said there is a “red book” at the city shelter that she believes is from the SPCA that veterinarians put together and which contains recommendations (not rules) regarding the care of cats. Ms. Reid opined that cats that are kept outside need to be able to get out of the rain and would need an area for fresh air, and would need various kitty litter containers for bathrooms. She could see 13 cats managing in a 12 foot by 12 foot by 7 foot high enclosure but not much smaller than that. It would need 2 to 3 litter boxes and the Richmond shelter uses roughneck totes which are deep, though an older cat would need something lower to jump into. Thirteen cats would need at least 2 waters and 2 foods not near the kitty litter, and beds for each cat, and scratchers.
36. In response to the Appellants’ questions referencing a 6 foot x 6 foot x 32 inch high (in the middle) cage, Ms. Reid said the shelter has used a 6 foot x 3 or 4 foot x 6 foot cage for cats that were sick in order to monitor or medicate a sick cat and that such cages had two floors for jumping and distance from the litter box.
37. Ms. Reid was asked whether it was good enough to house the 13 cats in a cage of the 6 foot x 6 foot x 32 inch size as described above, with two floors, 2 dishes at the bottom level and 4 at the top level, well away from kitty litter, and blankets top and bottom and a lot of exercise and Styrofoam for warmth and a tarp and two lights (battery) inside and 2x4 lumber sides for scratching posts, where the 13 cats are individually exercised outside of the cage during the day and the cage is cleaned morning and night? Ms. Reid replied that it seemed like a good job setting it up in the short term but in the long term the size was inadequate, even if the cats are taken out on individual leashes. She said it was a pretty small cage and a domestic cat would prefer to be with a person in a house or apartment or be with 1 or 2 cats, and a cat would not be happy as a pack animal as they are not pack animals. A group of cats will tolerate each other but in a small area, it is detrimental to their physical and emotional health. They could stop eating or not move as much and it would be hard to monitor the activity and health of 13 cats in a cage that size. Keeping cats together in a cage like that is a hard situation, she testified, as mentally they would start to pee when they are unhappy and can act out or overgroom or pull their hair out, which are some of the things she has seen in other cats. Ms. Reid did acknowledge that if a group of cats had been together for a long time, it is a consideration not to separate them.
38. In response to questions from the Society, Ms. Reid said it is important that the cats experience day and night, and cannot have constant darkness. Water should be rinsed and changed at least twice a day or more if dirty. Cats can play and spill water and even at the shelter it is possible that cats that spill their water will be without water overnight, for 7 hours. All staff and volunteers at the shelter are trained to watch the cats and if anything looks strange, capture and transport the cat to the veterinarian. Ms. Reid said she would be concerned if a cage took 5-10 minutes to open as a cat could have a seizure. The situation of opening the Appellants’ cage and taking each cat out and for a walk sounded difficult, like it would take the better part of the day.
39. At the shelter, staff do a lot of laundry to prevent urine smell which still happens (she said it might smell like urine when staff arrive but not when staff leave). Cats pee constantly in some areas or if the litter isn’t changed often enough. 13 cats in a cage would need at least two litter boxes with litter waste being scooped at least twice a day. Blankets and cushions can get vomited on all the

time or be covered with food debris and must be kept flea free. Cats can act out by urinating when they are unhappy which is how many cats end up at her shelter. If blankets get urine or spray on them they will smell like ammonia. Ms. Reid defines short term (in a cage) as 7 to 10 days with usually 1 or maybe 2 cats if the 2 could not be separated. Ms. Reid believes that a litter box that is being scooped properly and is filled with good quality litter should not smell. If it smells, the litter box is too small for the cats or there is not enough litter being used.

The Society's Case

40. 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

Special Provincial Constable Brandon Isenor

41. SPC Isenor testified he was concerned about the Appellants' 13 cats at his first meeting with them on November 19, 2015. He observed the cats in a mobile cage in a Port Coquitlam park by the baseball diamond draped in a tarp at the top and sides, and having chicken wire and Styrofoam-like material plus 2x2 or 2x4s and plywood with 2 levels for the cats to sleep on the upper level and have their food and litter on the lower level.
42. When he arrived on November 19, 2015 at 1:41 pm, the temperature outside was 6 degrees celsius and he measured the temperature inside the cat cage at 15 degrees celsius. There was a slight smell of urine from the structure. Only Ms. Baker was present and she asked him to wait for Mr. Lemure so they made small talk until Mr. Lemure arrived some 30 to 45 minutes later. SPC Isenor asked to see the cats' living conditions and physical and medical condition. Mr. Lemure took the cats out one by one and SPC Isenor inspected the cats. SPC Isenor said he did not see much wrong with them and there was no ailment that he could notice at that time. He said he told both Appellants the cage was only a temporary solution but since the Appellants were looking for a place, he decided to let it slide for a bit so he did not issue orders. He was typically stationed in Vancouver and he did not return to Gates Park in Port Coquitlam until he attended the January 3, 2016 seizure with SPC Thompson, who applied for the warrant.
43. SPC Isenor said that at the time of seizure, the cats were at the same location and he spoke with Mr. Lemure as Ms. Baker was not at the scene. Mr. Lemure was upset and swearing and the SPCs took the cats out of the cage as best they could and got them into carriers then into their vehicle. SPC Isenor said the cats were taken due to a concern about their shelter and pre-existing medical condition mentioned from SPCs Lavigne and Thompson.
44. On January 3, 2016 at the time of seizure, the tarps were affixed to the cage and there was a strong smell of ammonia. SPC Isenor had to physically lie in the cage to reach a cat and believed there was fresh or existing urine on the bedding or blankets. Two kitty litter boxes were dirty with visible feces but he did not recall how much. His concern was with ammonia as it could cause medical effects. He did not get a headache but his eyes watered. His nose did not run but he felt sick.

45. SPC Isenor recalled that on November 19, 2015, he thought the cats would only be in the cage for one to two weeks longer and there was food and water then but no water that he could recall on January 3, 2016.
46. In response to questions from the Appellants, SPC Isenor said the cage was clean on January 3, 2016 and he agreed the cats may have peed a little when they got scared at being removed, but the urine smell was present when he first opened the cage. SPC Isenor does not recall mentioning mutilation in November. He confirmed he used a digital thermometer on November 19, 2016 to learn the temperature in the cage. At the time of his November visit, SPC Isenor testified, he believed the cats were in an adequate temporary solution and the Appellants could surrender the cats at any time if they could not care for them.
47. In response to Panel questions, SPC Isenor testified he did not include information on the temperature (thus it was not included in the ITO) as he would have typically issued orders but did not that day. His "slight" concern about the cats was that they were living outside and the cage was unsanitary considering the number of cats. The cage had inadequate ventilation and a slight odour. He assumed the odour came from the blankets as the smell was in the upper level and the litter boxes were at the lower level.
48. SPC Isenor does not know which of the 13 cats went to the veterinarian.
49. Regarding a November 23, 2015 complaint received by the Society about the cats living at the park, SPC Isenor closed the complaint as it was duplicate information he already investigated and he had no further concerns. On December 13, 2015 in response to an investigation by SPC Lavigne, he told her what he saw in November.
50. SPC Isenor said he told SPC Lavigne where the cats were located and what the shelter was comprised of but never said anything about his concerns increasing. The cats were under the awning protected from rain and snow plus a concrete wall at one side, but there was considerable distance between the cover of the overhang and the top of the cage. He estimated the cage was 4 to 5 feet wide, 3 feet deep and 5.5 feet tall. The complaint received was about inadequate housing for cats living under a tarp.
51. At this first inspection, he did not see any veterinary issues and at his second visit at the time of seizure nothing alerted him to any physical issue but he admitted he did not look at the cats and just put them in carriers without hurting them. He concluded that the Appellants had been trying to find housing but the situation had gone on too long for 13 cats.
52. SCP Isenor confirmed he did not seek medical attention for his own symptoms after the seizure and did not use ammonia test strips as he was more concerned with getting the cats into SPC Thompson's vehicle as a crowd was forming and he was concerned with just getting out of the park.
53. On final questioning from the Appellants, SPC Isenor said he was concerned the cats were in distress at the time of seizure as they had no water, a lack of ventilation, and medical issues, and his concern was due to space.

Special Provincial Constable Laura Lavigne

54. SPC Lavigne testified that in mid-December she was given very vague direction to the Appellants in the park and on December 13, 2015 she attended the general area reported on, in the park. On December 28, 2015, the computer system alerted her that her colleague SCP Isenor had visited the Appellants at this park earlier. He told her he had met the Appellants by the building and they had cats in a cage.
55. On December 30, 2015, SPC Lavigne found the Appellant sitting by the overhang and explained her concerns, the first of which was that the Appellants had spent a full two months living in the park, with 13 cats, in one cage. In her opinion, it was quite a small space for these cats. The cage was wrapped in a tarp with no opening. When she looked inside, the cats she saw were alert. There were dishes with food and one bowl was empty. She asked if she could provide water but Ms. Baker said no, she wanted to wait for Mr. Lemure. SPC Lavigne said she insisted so the cage's laces and ropes were opened enough that she could reach in and pour water in the bowl. The cats drank it immediately. SPC Lavigne said Ms. Baker said she didn't like to open the cage without backup in case a cat escaped. SPC Lavigne said since it was early in the morning; she wondered how long the cats had been without water.
56. One of the cats, Socks, had a weepy eye. SPC Lavigne wanted to take baby steps and figure out how to care for the situation. The Appellants said they were waiting for callbacks for a place to live and SPC Lavigne asked if they had friends who could help. SPC Lavigne said the Appellants could surrender some cats to the Society and keep some in the shelter for free room and board but the Appellants wanted to keep them all. SPC Lavigne thought some of the younger cats could be easily adopted out. SPC Lavigne was also concerned the cats were not all spayed and neutered. She did not want these cats adding to the population plus male unneutered cats could spray.
57. She did not do a hands on inspection as she did not want to lose a cat in the park and she did not look at every cat, but she requested Socks be examined by a veterinarian within 12 hours and she would then sort out the others for space and smell.
58. She told the Appellants the cats needed proper ventilation, the cage was not big enough, and although the cage might have been okay for a very limited time, by no means was there room for 13 cats to live, breathe, and use the bathroom.
59. SPC Lavigne estimated the cage to be 5 feet high 4 feet wide and 3 feet deep, on castors, completely wrapped like a present. In her opinion, it was an urgent situation as it had been going on for 2 months. She offered the Appellant the opportunity to surrender all but the four oldest cats, and she would find temporary boarding for the four oldest cats.
60. SPC Lavigne called the Appellant later on December 30, 2015 and she confirmed to Mr. Lemure that if the Appellants did nothing she would take the cats. She said that the Society does not have a lot of choice so would apply for a warrant.
61. On December 31, 2015, she spoke with the Appellants to see how they were making out and gave a 2-day extension for them to find a home. She said she did not see the point in waiting any longer as one cat needed to see a veterinarian.

62. On January 2, 2016, the Appellants said they had asked people at church for help but got no assistance so SPC Lavigne repeated her offer regarding the surrender of all but four cats (which would be boarded), but Mr. Lemure declined as the cats were all his kids. She did not attend the seizure.
63. In response to questions from the Appellants, SPC Lavigne was asked how she determined each cat was in distress if she did not see each cat and SPC Lavigne replied that she felt the 13 cats were in immediate distress due to lack of space, fresh air, exercise, and care.
64. In response to Panel questions SPC Lavigne could not say with certainty which cats went to the veterinarian though she could make a guess from the descriptions of two of the cats. She said she was unfamiliar with the “red book.”
65. When asked specifically what was inadequate about the cat shelter, SPC Lavigne said none of it was adequate. It was a large box, completely wrapped up with no light and no ventilation and if there was an ongoing cold snap she does not know how the Appellants could maintain the cats. She agreed she did not use either a thermometer or ammonia strips on December 30, 2015. Her focus was mainly the living conditions and lack of space. The smell was off-putting, there was no light although she assumed the tarp was open at times. She did not know why the Society, after seizure, waited two days to take 3 cats to the veterinarian but said if something was urgent, the cats would have gone in sooner.
66. SPC Lavigne testified that when she attended the park, the situation had been going on for two months, but when SPC Isenor attended well before her, he had given the Appellants a break. By the time SPC Lavigne herself was involved, she knew there was very little chance things would change in a timely manner. In her opinion, 2 months was a reasonable time to make alternate arrangements.
67. On December 31, 2015, she said she allowed the extension after a discussion with her supervisor that they were not comfortable seizing the cats on New Year’s Day.

The Appellant’s Case

68. The Appellants relied on all their submitted material, video, and submissions, and I reviewed and considered all material, submissions and testimony, whether or not I refer to it here.

Witnesses for the Appellant

Lanita Peddie

69. Ms. Peddie has known the Appellants for 10 years and met them through Tanya Baker. When Ms. Peddie would visit Tanya Baker’s home while the cats were staying there prior to being moved to the park, she constantly smelled the cats even though the Appellants were constantly cleaning. She smelled cat pee on the Appellants’ clothing. She said she can smell pets in other people’s houses too, or on people on the street. Mr. Lemure had built a cage on wheels and she helped him drag and push it and the cats never cried or whined. She heard the cats at night and Mr. Lemure slept next to the cage. He cleaned poop constantly and talked and cuddled and played and watered and leash-walked the cats. The cage was big enough for the cats to run and play in up and down,

and it had a lamp inside and he opened one side of the tarp for light if it was not too cold. When it was cold he took more precautions. He insulated the cage and added netting and blankets and she never heard the cats upset. The cats all seemed happy considering there were 13 in a cage. It had toys, two floors, the cats seemed content and well-loved considering they were “all shoved in a cage.” The blankets were changed, the litter was changed. Mr. Lemure got food from the SHARE food bank and neither of the Appellants abused their cats whatsoever. The cats should not have been removed. The Society should have worked with the Appellants rather than taking their babies. The Appellants loved their cats like their children and even had previous cats cremated upon their death and kept their ashes; that was how much they loved their cats.

70. In response to Society’s questions, Ms. Peddie said the Appellants lost their home on Mary Hill in November 2015. The cage had two push on and off battery operated lights hanging inside on chicken wire. When living at the park, the sides of the cage were open on nice days. The lamp was on mainly at night. Ms. Peddie saw the cats every other night as she would visit the park every second night when she accompanied Tanya Baker who would bring hot meals to the Appellants. She would visit for 60 to 90 minutes. Usually this happened around 5:30 pm to 7:45 pm. She saw the cats getting walked and held. She did smell ammonia on the Appellants’ clothing and in the cage. The cats had food and the water was full unless a cat or the Appellants had dumped it, and then the Appellants had bottled water to replace the water. The cats ran up and down in the cage and played and sharpened their claws on the wood. The cats were not fighting just playing. Ms. Peddie confirmed the cage was big enough for her to stand up inside and she is 5 feet tall and weighs 200 pounds.

Tanya Baker

71. In Tanya Baker’s written statement, she explained that when the Appellants were evicted from their home, they stayed with Tanya Baker for two weeks, which was all her landlord would allow, then became homeless, moving into nearby Gates Park.
72. Tanya Baker testified that she is 37 years old and her mom, Diane Baker (the Appellant) has always had cats, though maybe not 13. She and the Appellants live in Port Coquitlam, fairly near each other (and near the park, originally). Some of the cats were sisters and none of the cats were neglected. The Appellants did the best they could in the circumstances. The Appellants researched how to keep cats warm and put newspapers in a pillow case and a tarp over the cage for protection from moisture and wheels on the cage bottom for mobility. One cat, Socks, had a drippy eye but it was hereditary as the sister cat had it too; they were born that way and the veterinarian told her to clean it and she was following veterinary instructions. The Appellants had a veterinary appointment but the Society took the cats before that.
73. Tanya Baker said she visited the Appellants and the cats daily and there were always blankets in the cage and she brought blankets to the Laundromat. There were 17 blankets and people kept giving the Appellants more. There were always clean blankets.
74. Tanya Baker felt the removal of the cats was a bit harsh and stressed the cats. Mr. Lemure could have removed the cats from the cage rather than Society staff.

75. Tanya Baker said the size of the cage was 6 feet front to back, 6 feet high and 3.5 to 4 feet wide, and it was protected from snow as the cage was situated by the park building which had a roof overhang. The Appellants and the cats were dry; it was a perfect shelter for them.
76. One cat was spraying while in the cage and she did smell ammonia but it had nothing to do with the litter boxes.
77. When asked if she measured the cage, she said no, but the cage was currently on her balcony, and when asked if the cage was 5x4x3, she said no. She could lay down in it. It was 6 feet, taller than her, by 6 feet by 4 feet (more than twice her width hip to hip).

Diane Baker

78. This Appellant testified that when SPC Isenor first came to Gates Park in November, he never said a thing. He had no concerns, and said he would only come back if the cats were mutilated. While in Gates Park, the Appellant said they did the best they could and the cats were well taken care of.
79. On December 30, the Appellant did speak to SPC Lavigne and was given a piece of paper and the Appellant did open the cage and told the SPC that she had trouble with authority figures stemming from childhood. There was no water dish at the time for the cats. The cats were asleep. The Appellant said in the civil pleadings there were mistakes regarding identity of the SPC present [this was agreed upon by the Society as some mistakes may have been made, but has no bearing on this case.] SPC Lavigne, according to the Appellant, was power-tripping and the Appellant was uneasy being there by herself.
80. The Appellant was not there the day the 13 cats were seized but saw the video and the way the cats were removed caused her stress.
81. Only one blanket smelled of urine when she cleaned the cage and when the cats were seized, they were hiding. The seizure was done in a very bad way. The Society should have asked Mr. Lemure to remove the cats. The Appellant does not understand how the Society could determine the cats were in distress and at this point in the hearing, the Appellant asked to speak with her daughter and the daughter said her mom was old and confused and doesn't know what to say and, as noted above, assisted her mother in giving evidence.
82. The Appellant went on to say that when the cats lived in a house with her and Mr. Lemure, they were very close. They ate, slept and played together and the cats would watch TV with them. They were clean, fed and watered. It was the same routine when the Appellants and the 13 cats stayed temporarily with Tanya Baker for 2 weeks. The cats don't drink water at night as they sleep. Water is changed when it is spilled. The cats always had blankets. There was always food. Dirty blankets were kept in a separate bag.
83. In the park, it was the same routine in the cage with clean food, water and blankets. The cats got Temptation treats at night. Fresh water was available from the building at the park. The cats knew how to operate the touch lamps and would touch them themselves. During the day the cats got fresh air and watched the birds, even in the rain when the tarp was closed, there was an open part. It was shut tight at night to keep them warm. There were 5 dishes of food.

84. In response to questions from the Society, the Appellant described the number and colour of food dishes, and said some cats, like Kittie, were very fussy and had its own food dish while other cats shared. She corrected herself to say there were 7 cat dishes in total, and some of those dishes were double dishes. The Appellant recalled mistrusting SPC Lavigne when SPC Lavigne asked the Appellant to open the cage; the Appellant was afraid Boo would escape and that SPC Lavigne would take the cats. The Appellant said the cage did not smell of urine but instead smelled of patchouli as she liked to spray that scent. The Appellant said she now resides with Mr. Lemure in a shelter where can have a couple of cats but not 13.
85. In response to Panel questions, the Appellant said they lived in a house for 7 years. In the past, when they lived in New West, they were once homeless for a month and that month they spent 2 weeks at the daughter's home and two weeks homeless before finding their previous home.
86. Currently, the Appellants have been homeless since November and are currently in a temporary shelter. They are looking for a home and are waiting for a callback on a basement suite. The damage deposit is a concern for them and the Ministry. It is hard for the Appellants, she said, to find housing due to discrimination as she and Mr. Lemure are First Nations, and they are on income assistance, and the system requires credit and criminal record checks. The shelter where they now are allows two pets per person. Shortly, they will be moved to a hotel even though they are still looking for a place. The Appellant is not sure if the hotel will take cats. She has no place to put the cats. Her goal is to have a home by March 1, 2016.
87. The Appellant's daughter Tanya Baker then explained, trying to help her mother communicate, that since her mother and Mr. Lemure have been in a shelter for two months, the policy is to move couples to the Ramada hotel at the end of two months time. The hotel option is paid for by income assistance.
88. The Appellant explained that the hotel probably won't take 13 cats. The Appellant said the cats could be boarded with friends even though no friends had been able to help thus far. The Appellants aid if the cats were returned to them, they would not house them in the cage again. The Appellant said Countryside Kennels in Port Coquitlam could take the cats if they all had their shots but the Appellant would need a payment plan for the boarding fees and for the veterinary fees, and had not yet spoken to any of them regarding this. The Appellant explained it was hard to find housing at Christmas and she had been unable to find friends to help because of the holidays and as of today had not yet lined up anything. She thinks it might be different now, though, as the holidays won't interfere.

Angus Lemure

89. Mr. Lemure, the other Appellant, testified that he is at this hearing to talk about the cats. There is, he said, a difference between house cats and outside cats, and his cats are normal, gentle, kind house cats. They play when they want to. He said he got kicked out of his home and built the cage overnight and the cats had lots of food to eat. He used to build cages in his past for animals when he lived in the country and there was no SPCA. He currently lives on a pension and the way he looks, his appearance, looks shady, he said, and landlords see him and won't rent to him. The landlords talk nice to him but he won't dress up to their liking. He has had cats for 13 – 14 years and no one has ever complained. Even the Society gave him cat food for that brief time he was homeless in New Westminster. The cats, while at Gates Park in the cage he built, had everything

they needed. On November 19, when SPC Isenor arrived, he had no concerns about the cats and said he would only come back if the cats were mutilated, but on January 3, 2016 two people came and took the cats away.

90. In response to questions from the Society, Mr. Lemure said 2 cats were spayed, 2 were neutered and the rest were not and he would get that done when he could get that done. He would pay for it if he got a part time job as that is how he got it done before. He was working on December 30, 2016 when Ms. Baker was visited by SPC Lavigne. He works at a hotel from 10 am to 5 pm and Ms. Baker looked after the cats at that time.
91. The cats were never left alone. They ate with the cats, and it was always him or Ms. Baker with the cats. Regarding whether a landlord would rent to a couple with 13 cats, the Appellant said he doesn't tell the landlord how many cats he has, and they don't ask; he just says he has cats.
92. In response to Panel questions, the Appellant said he will probably have housing March 1, 2016 because he will change his appearance when he sees a landlord and dress up like a "normal" man with no holes in his jeans. He thinks he will look nice so he can get a place for his cats.
93. He said he is positive he will get a place for his cats as he wants his cats back. When the Panel asked him what would happen if he did not have a place, he said he is thinking positively. When the Panel asked him about his back-up plan if he did not have a place, he did not have a plan as he is positive he will have a home.
94. He said there is a difference between a basement suite and an apartment or house in how you have to pay damage deposits and how many cats you can have. He testified he could stand and lie down and turn around in his cage.
95. He confirmed he had no money for a kennel.
96. When asked by the Panel to address the issue of costs, Mr. Lemure said he had no comment.

VII. Submissions

97. The Appellants' position is that when the Society gave documents to the Appellants and the Appellants went to Court with those documents in hand, they were advised the documents were false and there was no proof that the Appellants did anything wrong. When people are homeless, Mr. Lemure asked, what do they do? The cats, he said, were taken because the Appellants were homeless. The Appellants do not understand why they cannot see their cats. They love their cats and the cats were well looked after and taken care of by the two of them. The only reason the cats were taken is because they were homeless and in fact the Appellants met the standards of being animal owners.
98. The Society's position is that the Appellants apparently continued to lack accommodation suitable for the 13 cats. It argues that Ms. Moriarty reasonably concluded this situation is causing the 13 cats to experience distress as defined in the *PCAA* and if she returned the cats, they would be returned to a situation of distress. The main concern is for the well-being of the 13 cats and where those cats would be best off living. The Appellants said they will not put the cats back in the cage but also said they do not have anywhere else to put them.

99. The Society said that in terms of the seizure, the evidence is clear the 13 cats were in distress not just because of veterinary care that was needed but because the cats were deprived of water and appropriate shelter, suitable space and exercise, and were living in an unsanitary space due to ammonia levels.
100. The Society asserted that Janet Reid had a good level of experience with cats and essentially said it was inappropriate to keep cats in this type of shelter for a prolonged period of time. Although there was divergent evidence of the size of the cage, the Society submitted the SPC description of the cage as 5x4x3 with 2 levels is accurate. Janet Reid, the Society said, testified that anything smaller than 12 feet x 12 feet x 7 feet was inappropriate and even that was really tight and a colony of 13 cats in close quarters would suffer physically and emotionally. It was difficult to monitor the cats' health conditions individually.
101. The Society said its intervention was needed to remove these 13 cats from distress as if they had not intervened, the cats would still be in the park. The *PCAA* prohibits conditions that affect their physical and emotional health and the distress is in keeping them in a cage at the park.
102. The Society said two months' time is entirely unacceptable and the Society already relaxed its standard to provide the Appellants an opportunity to find housing. The Society reminded the Panel that it did not have the authority to order that the Society hold the animals past the day of the decision. The Society said this venture was already costly.

VIII. Analysis and Decision

103. 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.
104. For ease of understanding, I will take each component of distress that was alleged regarding these 13 cats. I note that any one of these elements is sufficient to constitute distress.
105. First, I will say that I have great sympathy for the Appellants who have asserted throughout that they have done everything they can, considering the circumstances, and that they loved and cared for their cats adequately throughout their homelessness. There is no dispute regarding the Appellants love for their cats. And I agree with the Appellants' position that if not for their homelessness, their cats would not be an issue. I heard no evidence that the care and housing of these 13 cats was an issue prior to the homelessness of the Appellants.
106. I also appreciate that the Society showed great compassion by providing the Appellants with an extended time frame to find alternative housing for the cats in these difficult circumstances.
107. There was no evidence that these 13 cats were abused or neglected. In fact, it appeared to me to be the opposite. These cats were treated with love, played with, fed, watered, and exercised on a leash

daily. I find that the 13 cats were not in distress due to being abused or neglected within the meaning of s. 1(2)(c) of the *PCAA*, quoted above.

108. There was no evidence that any of the cats were injured, sick, in pain or suffering, except for three cats which required veterinary care and which I will deal with under the section of being deprived of veterinary treatment. Indeed 10 of the 13 cats received no veterinary care presumably because they were not injured, sick, in pain or suffering. I find these 13 cats were not in distress due to being injured, sick, in pain or suffering, within the meaning of s. 1(2)(b) of the *PCAA*, quoted above.
109. There was no evidence that these 13 cats were not protected from excessive cold. The cage was described as being kept under shelter of a roof overhang, in a cage wrapped with tarp, filled with blankets and surrounded by a Styrofoam-like material for warmth. On the only occasion when the temperature inside the cage was taken, the temperature was 15 degrees celsius. This cannot be considered excessively cold especially when there are some cats that live outside in such temperatures. I find that the cats were not in distress due to being unprotected from excessive cold, within the meaning of s. 1(2)(a.2) of the *PCAA* quoted above.
110. With regard to s. 1(2)(a.1) of the *PCAA*, the Society argued that the smell of urine on the cat cage caused it to be unsanitary. There was no veterinary evidence that any of the cats suffered from any effects of the ammonia. Both SPC Lavigne, when she was partially in the cage with her arm, and SPC Isenor when he was fully in the cage, described minor eye irritation and feelings sick, but did not need nor seek medical intervention and did not report any significant effects or lasting repercussions. Witness Janet Reid described her own shelter where cages may smell of urine in the morning when staff arrive but do not smell of urine after staff finishes cleaning them. The fact that a blanket might have been urinated on or the littler boxes may contain waste material, in and of itself, is not sufficient to find the conditions unsanitary.
111. It is clear to me that the word “unsanitary” must have some boundaries. It cannot be trivialized; it cannot, for example, be interpreted as merely “really dirty”. The word cannot be interpreted to invite mere speculation as to what might possibly happen. The 2011 amendments must be interpreted in accordance with the larger protective purposes of the *PCAA*. In this regard, while they broaden the definition of distress, they also reflect the flavour of the other definitions of “distress”.
112. To accept the definition of unsanitary as merely “dirty” or “smelly” would mean that animals could be seized for no other reason than a subjective assessment regarding the level of dirt or smell in one’s home. Surely this was not the intent of the legislators – to make it possible to seize otherwise healthy animals from merely dirty homes.
113. All this leads me to conclude that these new terms were intended to invite and require a fact-based judgment connected with a significant risk to the animal’s health and well-being. In this context, a condition will be “unsanitary” when it is so filthy as to carry a significant risk to the animal’s health and well-being. In this case, I cannot find that the cage and ammonia smell carried significant risk to the cats’ health and well-being, even though the veterinarian Dr. Kim opined that the ear and skin issues of the 3 cats described in the records were hygiene-related. I am not persuaded that the level of hygiene in the cage reached the point of posing a significant risk to the health of the cats when the veterinary testimony was that two of the cats were not so bad and had

nothing abnormal noted. I find that the 13 cats were not in distress due to being kept in conditions that are unsanitary within the meaning of s. 1(2)(a.1) of the *PCAA*.

114. This leaves s. 1(2)(a) of the *PCAA*, which I quote again for convenience:
 - 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,
115. There was no evidence the cats were deprived of food and I find the cats were not in distress because of being deprived of food.
116. There was conflicting evidence regarding availability of water. The Appellants acknowledged that water gets spilled at times when the cats play and when they notice it empty, they fill it, though possibly not overnight. The Society reported there was no water when SPC Lavigne attended on December 30, 2015 and the cats drank immediately when she introduced water into the cage. SPC Isenor had no concerns regarding the cats and one would presumably think that meant he was not concerned that the 13 cats were denied water. The Appellants' witness Tanya Baker describes the availability of water and bottled water from the park building. The veterinary records showed two of the cats brought in were hydrated and one would presume the 10 that were not brought in were also hydrated. The one cat described as dehydrated had a distended abdomen that needed additional testing but nothing suggested that cat was denied water within a single cage where 12 other cats had water. I find the cats were not in distress because they were denied water.
117. I also find the cats were not in distress because they were denied ventilation or light or exercise or care. Although the cage may have at times been wrapped tightly, there was ample testimony that part or entire sides of the cage tarp was open for air or light or to watch birds for entertainment for the cats and also there was testimony that was not disputed that the cats were each leash exercised daily. In addition to daylight, there were two light fixtures, battery operated, in the cages which were used, and which one witness described as going through batteries.
118. I also do not find that the cats were in distress as they were denied veterinary treatment. Only 3 of the 13 cats were seen by a veterinarian. Despite the Society giving the Appellants 12 hours on December 30 to have one cat seen by a veterinarian, the Society itself did not take that cat to a veterinarian until January 5, even though the cats were in the Society's custody on January 3, 2016. Further, the cats were described by SPC Lavigne as waiting to see the veterinarian but if anything had been urgent, they would have been taken in sooner. And it was confirmed the Appellant did have an appointment to see their veterinarian on January 6, 2016 and presumably that veterinarian would come to similar conclusions as Dr. Chahal. For those reason, I am satisfied the cats were not in distress for being denied veterinary treatment.
119. All this leaves the issue of adequate shelter and space. This is in my view the most concerning issue on the facts of this case. Although, again, I must acknowledge the great lengths the Appellants went to in order to keep their cat family intact, I find that the shelter and space were not adequate and did not satisfy the requirements of the *PCAA*. I find that the 13 cats were in distress due to living in inadequate shelter and having inadequate space. I attribute no blame to the Appellants for their failure to keep their cats from being in distress for these reasons. I find that the cage was simply far too small to adequately house 13 cats for any but the very shortest length of time.

120. I will pause here to note that, in assessing whether an animal has adequate shelter and space within the meaning of the *PCAA*, the question is not whether the circumstances are perfect or ideal, and that is certainly not the test I am applying. The issue is whether the circumstances fall below the minimum that is required to prevent current harm or a foreseeable risk of harm to the animals owing to the lack of shelter and space. From an animal welfare perspective, the fact that the worst outcomes have not yet materialized can obviously not be the test.
121. Janet Reid testified that the Appellants did a good job setting the cage up in the short term but in the long term the size was inadequate, even if cats were taken out on individual leashes. She said that her shelter uses smaller cages measuring 3 feet by 4 feet by 3.5 feet high which she might keep a cat in for no more than a month, and no more than two cats are kept in them. She said it was a pretty small cage and a domestic cat would prefer to be with a person in a house or apartment or be with 1 or 2 cats, and a cat would not be happy as part of a pack as they are not pack animals. A group of cats will tolerate each other, but in a small area this is detrimental to their physical and emotional health. They could stop eating or not move as much and it would be hard to monitor the activity and health of 13 cats in a cage that size. Keeping cats together in a cage like that is a hard situation, she testified, as mentally they would start to pee when they are unhappy and can act out or overgroom or pull their hair out.
122. When I consider the size of the cage, even using the most generous size estimates from the Appellants, and based on all the evidence before me, it is inconceivable to me how 13 cats could co-exist and remain healthy or happy in such a small area over the medium or long-term. There was no opportunity for any of the cats to seek out privacy and the evidence was that cats are not pack animals. We heard from the Appellant that one of her cats is a finicky eater and must eat from its own bowl and it is difficult to imagine how that one cat could be easily separated from 12 other cats to happily eat alone from its bowl.
123. I find that in the circumstances of this case, these 13 cats each were in distress due to having inadequate shelter and space. I do not find the fact that a daily leash walk sufficiently mitigated the lack of space. And although I appreciate the Appellants were trying to provide entertainment for their cats by feeding birds so the cats could watch, this still seems to me to be too crowded a living space for far too long to allow these cats to be free of distress.
124. I therefore find that the Society was correct and reasonable to seize the 13 cats.

Return of Animals

125. Having determined that the seizure of the animals was justified, I turn now to the question whether they should be returned. The only issue, really, is that of the Appellants' homelessness and their ability to find suitable subsequent housing for the 13 cats. The Appellants said several times that the only reason the 13 cats were taken was because the Appellants were homeless and although it is a fine point, the cats were taken as the size of the shelter they were kept in while the Appellants were homeless was causing the cats to be in distress.

126. 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.

127. 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.

128. The Appellants have said that they would not put the cats back into the cage. I appreciate that the Appellants may have concluded that the cage did not provide an adequate home for the cats, or that in response to Society concerns that the cage was the issue, the Appellants may feel that by removing the cage, they remove the source of distress.

129. However, this is not enough to serve the best interests of the 13 cats. I asked the Appellants what their plan was. I asked the Appellants if they could take the 13 cats to the temporary shelter where they were currently staying and they said they were only allowed four, and wanted to keep all 13 cats.

130. I asked the Appellants if they had any friends who could keep the cats temporarily until they found housing for themselves. They said some friends might be able to help but they had not solidified any plans.

131. I asked the Appellants if the hotel would take the 13 cats and they replied that they did not know and had not enquired.

132. I asked the Appellants what their Plan B was, and they said they did not have a Plan B. I asked about the kennel they mentioned and if they had explored making any arrangements for a payment schedule for either having the cats vaccinated to enter the shelter or for the shelter fee itself, and the Appellants said they had not made those enquiries.

133. I asked the Appellants how I could consider giving back the cats when they had nowhere to put the cats and the Appellants replied that they did not know but they were thinking positively and were sure they would have housing by March 1, 2016.

134. Unfortunately I cannot rely on the Appellants' wishful thinking. It is not in the best interests of the cats to be returned to a situation where the Appellants have nowhere to put them. At the time of the hearing, in fact, the Appellants had nowhere to put the cats even if I did decide to return the cats. As support for my decision, I note that in the Society's January 18, 2016 written reasons, it states: "I explained that the major concern was housing and that as long as you were homeless, I could not return the cats back to the enclosure from which they were removed. Again you refused the options and indicated that you wanted all 13 cats back and that you were looking for housing and would

have it by February 1, 2016.” It is clear to me that the Appellants’ belief that they would have housing on February 1, 2016 was inaccurate.

135. As sad as it is, I cannot return the cats to a situation where they would surely return to distress either for being homeless without adequate shelter and space, or being abandoned. The Appellants provided me with no other feasible option to consider, and if they had, I certainly would have given it every consideration.
136. I did consider 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.
- The word "promptly" suggests a consideration as to whether the person can or will take the necessary action.
137. The reality is the Appellants have not made any headway in finding a home for themselves and they have made no plan whatsoever to try to find alternate housing for the 13 cats. I do not believe that the Appellants have been able to change their current situation as of the date of the hearing, which was almost 4 months after losing their home. I cannot change this reality and I do not believe that the Appellants would be able to promptly relieve the distress these cats would again be in if they continued to be homeless and unable to adequately shelter their 13 cats.
138. As it is not in the best interests of the cats to be returned to a situation where they will certainly be in distress again, I am permitting the Society to keep the cats and not return the 13 cats to the Appellants.
139. I am very sad for the Appellants and for their 13 cats which, by all accounts, have formed a loving family. In fact I am guided by that love in making this decision and determining that despite the wishes of the Appellants to be reunited with the cats, I must make the decision with my primary focus being the best interests of these 13 well-loved cats. Those best interests are to remain with the Society.
140. I do wish to note that I did consider the possibility of returning just one or a small number of cats to the Appellants, despite the fact that they previously were offered this possibility and declined to take advantage of it. The reality is that even one cat in an outside cage, with limited space, with Styrofoam sides and a tarp and blankets for warmth (but lacking the body temperature of other cats for additional warmth) is not in the best interests of the cat. The space was a temporary solution at best and the evidence from Janet Reid was that an average cat cage is 6 feet deep, 4 feet wide, and the height is 6.5 feet [larger than the cage at hand], with numerous runs and shelves and cat scratchers. She said she would not put two cats in such a cage for longer than a month. I had already determined these cats spent much longer than that in the small cage. More importantly, the Appellants did say they would not use the cage again, and they did not know if the Ramada, where

they were heading to live, would take any cats. Without any information on the Appellants' housing and ability to keep a cat, I am unable to make such a decision to return any cat.

141. I would have considered returning some or all of the cats if the Appellants had provided me with some information on where those cats would live, but the Appellants instead advised me that they did not know or have any plan.

IX. ORDER

142. 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).

143. 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 13 cats.

Costs

144. 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.

145. 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)”.

146. The Society has asked for its veterinary costs of \$851.88 as outlined in Ms. Moriarty's affidavit, saying that Dr. Kim took no issue with the care that Dr. Chahal provided to the cats and the Appellant offered no information contrary to the care the cats received. The Society waived the boarding and staff time fees, and is only claiming the veterinary costs. The breakdown is as follows:

- a) Veterinary costs: **\$851.88** (inclusive of Society discount of \$351.00):

Tab 10, p. 40	\$229.33
Tab 10, p. 41	\$255.58
Tab 10, p. 42	\$366.97
Total:	\$851.88

147. The Appellants are disputing the cost. When I reviewed with Mr. Lemure the fact that the Society is not asking for reimbursement of the SPC staff time or for the cost of boarding, but only for the veterinary bills, Mr. Lemure said that he has no comment. Although the Appellants were both clear they are disputing the costs, they provided no testimony or evidence or information regarding the reasonableness (or not) of the veterinary bills.
148. I accept the veterinary invoices as being reasonable. There was no information put forward by the Appellants disputing these invoices. The Society rightfully incurred costs to seek veterinary care (which resulted in diagnoses for the 3 cats of ear mites, skin infections and, in one cat, abdomen problems) and treatment for issues found by the veterinarian. The veterinarian called by the Panel to interpret the veterinary report made no issue with the appropriateness of the examinations or findings.

X. ORDER

149. I order that the Appellants pay the amount of **\$851.88** to the Society as the reasonable veterinary costs incurred by the Society with respect to the animals.

Dated at Victoria, British Columbia this 7th day of March, 2016

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Presiding Member