

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 COST OF CARE
REGARDING THE SEIZURE OF 65 CATS AND 15 DOGS

BETWEEN:

XIN (IVY) ZHOU

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

COSTS DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Corey Van't Haaff, Presiding Member
Brenda Locke, Member
Chris Wendell, Member

For the Appellant:

John Swain, Counsel

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

April 25 and 26, 2016

Location of Hearing:

Teleconference

INTRODUCTION

1. This costs decision is as a result of an appeal filed by Xin (Ivy) Zhou on March 23, 2016 regarding the seizure of 65 cats and 15 dogs. The matter was heard over two days, April 25 and 26, 2016. A decision was released on May 10, 2016. That decision dealt with the just 32 cats and 10 dogs, which were the subject of the appeal. The decision in that case was that the Society was permitted, in the Society's discretion, to destroy, sell or otherwise dispose of the animals which the Appellant requested returned and which were the subject of that appeal, including the kittens.
2. The appeal also disputed the costs requested by the Society. This decision is about costs.
3. Section 20 of the *Prevention of Cruelty to Animals Act* 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.
4. 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)".
5. The Society has asked for its costs with respect to the Animals, including costs associated with providing the animals with food, shelter and other care of \$72,166.08.

I. THE PARTIES' SUBMISSIONS ON COSTS IN GENERAL

The Society's submissions

6. The affidavit of Ms. Moriarty states:

Costs in this case were beyond the norm because cats from amongst the animals were kept in a specialized new facility opened by the Society in Surrey, BC. This facility allowed us to quarantine these cats. Owing to the various contagious illnesses outlined by the veterinarians, the Society had to intensively tend to these cats. Management level staff was called upon and spent numerous hours attending to these cats. Additionally, the dogs from amongst the seized Animals suffered ringworm and have been undergoing extensive treatment related to the same. The costs outlined below underestimate quite significantly

the true costs incurred by the Society. However, in order to expedite this matter and for purposes of certainty and finality of the B.C. Farm Industry Review Board's decision making process, the Society is willing to present these underestimated totals at the hearing.

*The Society is seeking costs in the **total amount of \$72,166.08**, pursuant to s. 20 of the Act, as follows:*

- A. *Veterinary, Supply and Staff Claim Costs: **\$19,558.08**. (see paragraph 29 below for details).*
- B. *Surrey Facility Staff Costs: \$18,978.00 (see para. 39 below and TAB 39, pp. 679 and 718)*
- C. *SPCA time attending to seizure: \$735.00. (see para. 31 below for details)*
- D. *Housing, feeding and caring for the Animals (February 16 to March 2, 2016): \$2,925.00. (see para. 32(A) below for details – dogs only)*
- E. *Housing, feeding and caring for the Disputed Animals and Kittens (March 3, 2016 to May 9, 2016): \$29,970.00. (see para. 32(B) below)*
- F. *TOTAL: \$72,166.08.*

*Respecting paragraph 28(A) above, the Veterinary, Supply and Staff Claim Costs are broken down as follows totalling **\$19,558.08** (see TAB references for each sum):*

Tab 39, p. 719	\$460.68	Tab 39, p. 728	\$7032.28
Tab 39, p. 714	\$236.44	Tab 39, p. 723	\$387.49
Tab 39, p. 682	\$365.50	Tab 39, p. 724	\$719.20
Tab 39, p. 686	\$108.66	Tab 39, p. 711	\$476.46
Tab 39, p. 696	\$474.17	Tab 39, p. 698, 699	\$90.61
Tab 39, p. 732	\$83.91	Tab 39, p. 725	\$207.38
Tab 39, p. 729	\$55.06	Tab 39, p. 740	\$321.70
Tab 39, p. 716	\$52.08	Tab 39, p. 741	\$105.78
Tab 39, p. 697	\$190.42	Tab 39, p. 735	\$520.00
Tab 39, p. 693	\$237.08	Tab 39, p. 736	\$1326.68
Tab 39, p. 690	\$389.43	Tab 39, p. 737	\$500.00
Tab 39, p. 706	\$159.87	Tab 39, p. 742	\$105.78
Tab 39, p. 709	\$710.76	Tab 39, p. 743	\$105.78
Tab 39, p. 707	\$340.23	Tab 39, p. 744	\$493.58
Tab 39, p. 710	\$978.99	Tab 39, p. 745	\$827.75
Tab 39, p. 708	\$59.09	Tab 39, p. 746-751	\$887.98
Tab 39, p. 700	\$547.26	Total	\$19, 558.08

The costs referenced at paragraph 28(B) concerns our estimate for costs incurred in caring for cats seized from the Appellant at the Society's specialized Surrey facility. This facility allows for quarantining of cats with contagious disease and sickness and allows for treatment of their specialized health needs. The Appellant's cats had to be quarantined and receive intensive care at the Society's new facility in Surrey given their contagious

sickness. The costs are a very conservative estimate as we relied extensively on management staff with hourly rates well in excess of \$13.50 per hour (which is the amount used for calculation purposes in TAB 39 p. 679). We have run this costing for the 26 day from seizure ending on March 12, 2016, on which date the last batch of cats was transferred away from the specialized facility.

The Society also incurred labour costs respecting its special provincial constables' investigations and seizure of the Animals. I estimate the costs associated with investigating, seizing and transporting the Animals at approximately **\$735.00** (\$17.50 per hour x 7 hours (approx.) x 6 Society staff involved in the seizure) (conservatively estimated).¹

In addition, the Society's costs to house, feed and care for the Animals exceed **\$32,895.00** which have been calculated as follows:

G. **Costs for the Animals = \$2,925.00**

- i) *Costs for Dogs = 15 days (February 16, 2016 to March 2, 2016 (being the date at which costs were capped as per TAB 16)) x \$15/dog x 13 dogs (15 dogs - 1 dog died while birthing - 1 redeemed dog on February 17, 2016) = \$2,925.00*
- ii) *Costs for Cats (see para. 30 above)*
- iii) *Costs for the Disputed Animals and Kittens = \$29,970.00:*
- iv) *Costs for Dogs = 69 days (March 3, 2016 to May 10, 2016 (being ten days after the anticipated date of the Tribunal hearing)) x \$15/dog x 11 dogs = \$11,385.00*
- v) *Costs for Cats = 59 days (March 12 to May 10) x \$10/cat x 30 cats (34 cats - 4 in foster care (TAB 39, p. 674)) = \$17,700.00 (other cats included in calculation for under para. 30 above).*
- vi) *Costs for litter of Kittens = 59 days x \$15/litter of kittens x 1 litter (2 litters - 1 in foster care (TAB 39, p. 674 and 676)) = \$885.00*

To simplify costs in this matter, we calculated the cost per dog as \$15.00 per day. However, the actual cost was far greater as we were dealing with dogs infected with ringworm which required ongoing management above and beyond management that is required of healthy dogs. Furthermore, our staff hourly wage has increased making the current cost per day per dog \$17.07. But to simplify the hearing and bring this matter to expedited conclusion we agree to the charge of \$15.00 per day as follows:

H. *Food cost feeding dry food plus occasional canned food and treats: \$2.00/day*

I. *Staff time at a rate of \$12.00 per hour: \$6.00/day*

¹ In past decisions I estimated staff costs at \$12.00 per hour. However, those costs grossly underestimated our pay to staff, which in fact averages about \$17.00 to 20.00 per hour, not \$12.00 per hour.

- i) 10 minutes kennel and dog cleaning: \$2.00
- ii) 10 minutes morning feeding: \$2.00
- iii) 10 minutes evening feeding: \$2.00

J. Overhead Costs: \$7.00/day (see below)

Respecting the cats, for certainty and to expedite we have used a lower per diem amount of \$10.00 per day per cat. But my estimate is actually \$13.07 per day per cat:

K. Food cost: \$1.00 per day

L. 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

M. Overhead Costs: \$3.00/day.

Regarding overhead costs (item (c) in para. 33 and 34 above), the Society's Shelter incurs costs to maintain the facility, a portion of which costs directly benefited the Animals. This includes expenses associated with utilities (heating/electricity); general facility upkeep and maintenance; administration costs including ordering supplies and managing staff (cleaning and food supplies for animals); taxes on land use; maintaining the Society's computer office and other management systems; interacting with the Animals throughout the day beyond the mere feeding and cleaning of kennels including ensuring their emotional contentment; interacting with, directing, training and coordinating volunteers and other staff members, all for the benefit of the Animals (note: staff costs noted in this paragraph are over and above staff costs associated with any one particular animal, which are discussed under "staff time" above).

I have underestimated overhead costs allocated per Animal at about \$7/dog and \$3/cat. These costs are estimates only and, as noted above, our costs are likely far greater particularly in this case. Actual total costs are very difficult to calculate absent advice from a forensic accountant. The costs to retain a forensic accountant to determine the actual costs will outweigh the benefits of potentially recovering boarding costs from the Appellant.

The Appellant's Submissions

7. The Appellant's position on costs is there are areas where they are not reasonable. The Appellant says that the fact that she did not receive the Society's breakdown of cost until halfway through the appeal prejudiced her ability to thoroughly examine and raise objections to the costs as presented. The Appellant asserted that the Society only provided

full details of costs on April 5, and in the Appellant's April 8 submissions and April 18 affidavit the Appellant was of the position that it did not have enough time to deal with the issue of costs. The Appellant did however identify the following concerns with costs during the two day hearing.

8. The Appellant's submissions on costs were that Dr. Gordon testified that the time spent per cat was closer in most cases to 30 minutes and it was rare to be 60 minutes and that 45 minutes was considered reasonable.
9. The Appellant submitted that the charges for some of the workers listed with names, such as "Jenelle", were unreasonable as there was no justification of her need or place so should not be included and some of the medical supplies should be considered overhead such as page 680. The continual use of protective suits was unreasonable as most of the cats' illness after March 3 did not require protective gear yet the protective suits continued to be purchased, and at times they were indicated for Chilliwack when the cats were in Surrey and only six dogs in Chilliwack had ringworm.
10. The Appellant asserted that it is unreasonable to attribute Vancouver overhead to Chilliwack, and that cats which were fostered out should not have a per day cost of care associated with them.
11. The Appellant submitted that Dr. Walton said that some charges were for non-essential items including boarding charges so those were unreasonable.
12. The Appellant's position was that half the cost of boarding of the dogs was for feeding and that it should be closer to 15-20% of the overhead charge; and the same with the cats.

II. ADDITIONAL ISSUE REGARDING COSTS

13. The Panel raised an issue and asked for additional submissions from the parties on the issue of costs, specifically for each party's position on section 20, given *that section 20 refers only to the liability of an "owner" and does not include "the person responsible for the animal" found in other sections, it is unclear to the Panel what the authority is for the Society to claim the costs of the Third Party Animals. As this was not an issue addressed by either party, we would also ask the Society to provide its view as to the proper interpretation of section 20 supported by any relevant authorities.*

The Society's submissions

14. The Society position on this issue is that section 20 imposes liability upon "The owner of an animal taken into custody or destroyed under this Act . . . for the reasonable costs incurred by the society under this Act with respect to the animal" and that BCFIRB's jurisdiction is confined to the Prevention of Cruelty to Animals Act and does not extend to other means by which the Society may recover costs associated with animals seized under the Act. The Society asserted that this issue seemed to have been overlooked by the legislature when the statute was amended.

15. The Society said that counsel for the Appellant asserted in submissions and by correspondence that the Appellant did not own all the seized animals. She apparently boarded some for others. Determining which animals were subject to the Appeal was complicated as it has been difficult to determine precisely which animals Ms. Zhou claims to own and which belonging to others. The Society said that the Appellant's counsel's submissions were not entirely clear, except to point to a sheet of paper apparently prepared by the Appellant which lists disputed animals and others allegedly not owned by her (Exhibit 8, Tab 15, pp. 113 to 117). The list was never appended to an Affidavit. There is no direct evidence from the Appellant asserting which animals she owned and which she did not.
16. The Society argued that during submissions, the Appellant's counsel adopted this sheet of paper as the definitive evidence of ownership. According to this sheet, the Appellant is responsible for the following animals: Thirty-two (32) cats that she claimed belonged to her; six (6) dogs she claimed were hers, and four (4) dogs she claimed belonged to her daughter, for a total 32 cats and 10 dogs (the "Disputed Animals"). These 42 Disputed Animals represent a fraction of the animals seized from the Appellant (sixty-seven (67) cats and fifteen (15) dogs). The same sheet only lists 9 animals belonging to "clients" and 4 dogs allegedly belonging to her daughter [Exhibit 8, Tab 15, pp. 115 to 117]. There is no mention of the numerous other animals.
17. The Society argued that *BCSPCA v. Sudweeks*, 2002 BCSC 1892 is instructive on this issue. In that case "owners" of certain animals were out of the country when their animals were seized. In disputing costs, they claimed some animals belonged to others and they had affidavits to supposedly back this up. The Court found that they were nevertheless "owners", although their ownership may have been non-exclusive. As such, they were liable to compensate the Society under s. 20 of the *Prevention of Cruelty to Animals Act*.
18. The Society said that in the present case neither the Appellant nor her daughter testified or provided affidavit evidence respecting the dogs. The Appellant's lawyer submitted that per the sheet of paper apparently drafted by the Appellant, her daughter owns four of the dogs. But the Appellant sought custody of those dogs herself. The onus rests with the Appellant to refute her apparent ownership (through custody) of the Animals. In *Sudweeks* at para. 22, the Court said ". . . the evidence falls very short of establishing that exclusive ownership of the animals is with the two daughters. . . ." The same is true in the present case: the evidence falls very short of establishing exclusive ownership of the dogs is with the Appellant's daughter.
19. In terms of other animals, the Society said that the Appellant failed to prove ownership vested with others, and that the Society knows that several people presented themselves to the Society to claim ownership of animals (see Exhibit 8, TAB 8, p. 92 – 94). The Appellant herself only identified the owners of 8 animals in her list [Exhibit 8, TAB 15, pp. 115 to 117]. Again, *Sudweeks* is on point. As the person with custody the Appellant was the putative owner. The onus rests with her to prove otherwise. She failed to do so with any degree of confidence.

20. The Society relied on the B.C. Supreme Court's decision on *Fentiman v. BCSPCA*, 2009 BCSC 1141 at para. 66: "*Possession of property is prima facie evidence of ownership*".
21. The Society said that the Appellant never definitively stated which or how many animals were in dispute in these proceedings. See for example her Notice of Appeal. The onus was upon the Appellant to prove non-ownership. The Appellant failed to discharge that duty in a meaningful way. Saying this, some of the seized animals did belong to others, and the Society has returned animals to their supposed-owners.
22. The Society said that this case has been exceedingly difficult for it, owing in no small part to the Appellant's failure to properly document animals in her care. This problem should not, in fairness, rest with the BCSPCA.
23. As the Society has already made significant discounts to s. 20 costs, as the Appellant has failed to prove the ownership with any degree of certainty and has thus not rebutted the presumption of ownership (per *Fentiman* para. 55), and as this Tribunal has previously found it unreasonable for the Society to engage in an audit exercise to determine costs (*Parkinson v BCSPCA* – costs (December 10, 2013) at para. 19), the Society respectfully submitted that it is entitled to all of the costs that it has sought in this matter, as outlined in Ms. Moriarty's Affidavit at paras. 28 to 39.

The Appellant's submissions

24. The Appellant rejected the Society's claim for costs, saying the Appellant has been consistent in her statements that she did not own all of the animals, and section 20 is clear that the owners of the animals are liable for the reasonable costs incurred by the Society under the PCAA. The Appellant has consistently stated she did not own all of the animals beginning with the submissions for her dispute of the seizure and request for reconsideration prior to the Appeal. This statement is consistent with the Appellant's submissions and the Society's findings the Appellant operated a business housing/boarding animals she did not own.
25. The Appellant further argued that the plain meaning of section 20 of the PCAA is that the owner of the animal is liable for the costs. The legislature defined "person responsible" and could have used "person responsible" in section 20, but it did not; therefore it must be understood the legislative intent was to have the owner responsible for the costs not the "person responsible" as defined in the PCAA. The Appellant is not the owner of the Third Party animals.
26. The Appellant asserted that she had supplied a schedule of the animals which she owns which was included in the submissions. This was the same schedule which was submitted and agreed to by the counsel for the Society during the Appeal. The Society itself has consistently supported and agreed with the Appellant's statement that it did not own all of the animals. The Society in making its reconsideration decision prior to the appeal did so on the basis of the Appellant owning a limited number of the animals seized.

27. The Appellant said that in Ms. Moriarty's affidavit, the Society based its requests for costs for the number of animals consistent with the Appellant's schedule of the animals she owned. For example, page 10 of Exhibit 12 seeks costs on the basis of 30 cats and 11 dogs, which are numbers consistent with the number of animals owned by the Appellant and agreed upon by all parties during the Appeal. At each instance, the Society has agreed with, supported, and relied on the schedule submitted by the Appellant which showed her owning a limited number of the animals. The Society's claim for costs was limited to the animals which the Appellant said she owned; therefore the Society cannot be granted costs for the Third Party animals in this appeal.
28. Regarding the relatives' animals, the Appellant said the Society made the determination that the daughter's and parents' animals would be deemed as owned by the Appellant and the Appellant agreed to such designation for these animals, but never accepted ownership for the remaining Third Party animals.
29. The Appellant said that BC law of statutory interpretation limits the Appellant's liability to those animals it owns. Statutory interpretation requires an examination of the words of the provision under consideration according to their grammatical and ordinary sense, in their entire context, and in harmony with the scheme and object of the [Act]. *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 (CanLII) at para. 33; McLean at paras. 38-4 (sic).
30. The Appellant said that the plain meaning of section 20 of the *PCAA* is that the owner of the animal is liable for the costs. The legislature defined "person responsible" and could have used "person responsible" in section 20, but it did not; therefore it must be understood the legislative intent was to have the owner responsible for the costs not the "person responsible" as defined in the *PCAA*. The Appellant is not the owner of the Third Party animals.
31. The Appellant argued that the *Sudweeks* case is distinguishable from the instant case in that *Sudweeks* admitted ownership of the animals in question prior to transferring them by agreement to their daughters. It is further distinguished in that the *Sudweeks* case doesn't involve a boarding business in which Third Party animals would necessarily be present. To the extent *Sudweeks* is applicable it would only be applicable for the daughter's and parent's animals. The Appellant has already agreed to being deemed as owner of these animals. However, the Appellant has never stated it owned the Third Party Animals in the first instance.
32. The Appellant said that the Society mischaracterizes *Fentiman v. BCSPCA*, 2009 BCSC 1141. The Society argues *Fentiman* stands for the proposition that possession is the prima facie evidence of ownership. This is an incorrect or incomplete understanding of *Fentiman*. This case involves the transfer of the animals from an owner to the Society in which the Society alleges the owner signed over the rights to the animals. *Fentiman* involves a dispute in which the SPCA and *Fentiman* were asserting ownership over animals which were transferred to the SPCA. In the instant case, the Appellant is not asserting ownership

of the Third Party animals. Further, para 64 of *Fentiman* states the ownership can be transferred by physical transfer coexistent with an intent to pass ownership.

33. The Appellant said that she operated a business boarding animals. Boarding an animal does not demonstrate an intent to pass ownership. The ownership cannot be passed unilaterally, meaning the party boarding the animal cannot pass ownership without the agreement of the recipient. The Appellant has stated she did not own the Third Party animals.

III. ANALYSIS AND DECISION

Analysis of the reasonableness of costs

34. The Appellant submitted that she did not receive all of the Society's documents regarding costs until April 5, 2016. The Appellant asked, since she was still reviewing them, for an opportunity to supplement these submissions with an additional response regarding costs at the time she submitted her reply. The Appellant was free to do so and the Panel heard all submissions made to it on the issue of costs. The Panel also provided additional opportunity by way of written submissions for both parties to deal with the issue of who bears the costs for the animals the Appellant claims are not hers.
35. In considering the issue of costs, the Panel does not find that the Appellant was prejudiced by the late filing of the Society's costs. The appeal process occurs under very tight timelines for both parties. This was a two day hearing. The Panel is satisfied that the Appellant had ample opportunity to review the Society's costs and ask questions of the Society and, in fact, the Panel is of the view that a generous amount of time during the hearing was devoted to costs, including much of the Appellant's opening and closing statements.
36. The Panel's analysis of costs is done in two parts. The first part is on the reasonableness of the costs for all the animals. The second part of the analysis is on the reasonableness of attributing costs for all animals to the Appellant.
37. The Panel is of the view that, in keeping with previous decisions, the cost of care for a dog of \$15 per day and of a cat of \$10 per day is reasonable. The Panel finds that each animals seized in this case had to be fed, housed, medicated in most instances, and have a place to stay that was suitable for each animals' needs. It is not necessary that the Society, in the circumstances of this case, account for the overhead charges at each of its facilities, and in any event, there was no evidence brought forward by the Appellant to prove that the Society's overhead charges did not geographically average these overhead charges or that the charges were not reasonable. In any event, the Panel accepts the above costs of care charges as reasonable. The Panel is not persuaded by the Appellant's submission that she thinks 15% - 20% of overhead should be for feeding as it was not supported by any evidence.
38. The Panel accepts as reasonable the costs for specialized housing and care for the cats while at the specialized facility. There was no persuasive evidence to indicate this amount

was not reasonable and in fact, had the Appellant taken care of these specialized medical needs of the cats, she would not now be responsible for paying someone else to do it.

39. The Panel finds the veterinary bills to be reasonable, save for the costs of boarding at Dr. Walton's clinic which he did say was not mandatory and that the cat could have been returned to the Society's care. The cost of boarding at Dr. Walton's (\$59.09, \$160.80 and \$187.60) will be deducted from the total.
40. The Panel finds the cost of staff to attend the seizure to be reasonable and the Appellant did not take issue with this amount.
41. The Panel does find two areas of costs to be of concern. The document disclosure included receipts from Tim Horton's. No evidence was offered linking these receipts to the care of the seized animals, so we are deducting that amount from the total claimed (\$41.52). The Panel also agrees with the Appellant's submission that a number of Tyvek suits appear to have been bought at the end of the period when they would have been necessary. Further there was no evidence from either party as to how many Tyvek suits were needed per day or how many suits remain, so the Panel will deduct the costs of Tyvek suits purchased after March 12, 2016, the date of the transfer of the last animals from the Society's specialized shelter as it finds the particular cost incurred on March 14, 2016 of \$474.17 to be unreasonable.
42. The Panel does not accept the Appellant's argument that some medical supplies should be deducted as overhead.
43. The Panel therefore finds that the total amount of reasonable costs to be the sum submitted by the Society of \$72,166.08 less the cost of boarding at Dr. Walton's (\$407.49), less the cost of Tyvek suits purchased after March 12, 2016 (\$474.17), and less the cost of Tim Horton's food (\$41.52), for a total costs of \$71,242.90. This cost reasonably related to 80 animals as, of the 82 animals seized, two were euthanized almost immediately.

Analysis of the issue of ownership and reasonableness of attributing costs for all seized animals to the Appellant

44. 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.

45. The Panel accepts the Appellant's argument that the legislature purposefully did not use the term "owner" in section 20. The legislature defined "person responsible" elsewhere in the *PCAA* and could have used "person responsible" in section 20 as well, but it did not; it used the term "owner". Therefore it must be understood the legislative intent was to have the owner responsible for the costs not the "person responsible" as defined in the *PCAA*.
46. From the beginning, it seemed clear to the Panel that both the Appellant and the Society were aware that the Appellant was not the owner of all the animals, especially in light of the fact that some animals were returned to their rightful owners (which were not the Appellant) by the Society.
47. The Panel is not persuaded that ownership transferred to the Appellant with animals she boarded, despite not being able to prove the ownership of those animals. The Panel found it clear and consistent that the Appellant always claimed she was running some type of boarding and breeding facility and had always claimed that not all of the animals were hers.
48. In her March 21, 2016 Notice of Appeal, the Appellant does not specify the number of animals she is appealing regarding the seizure but does state that she was not given adequate time to contact the "owners of boarded animals". Her Notice of Appeal states that the Appellant owned animals and operated a breeding and/or boarding facility. Her appeal itself only appealed the seizure of 42 of the animals.
49. The Panel does not find *Sudweeks* to be instructive. In this case, the Appellant ran a boarding facility as a business so it is not reasonable to accept that as the person with custody, the Appellant was the putative owner. Although it would be preferable for the Appellant to have kept good business records, all evidence indicated she kept atrocious records and it does not surprise the Panel at all that she was unable to document the animals and their owners. That alone does not transfer ownership to her.
50. *Sudweeks* was also not instructive regarding ownership, especially between the Appellant and her daughter. This Panel included the daughter's dogs in its consideration of which dogs are owned by the Appellant, as the Appellant included these dogs in her appeal. There was no effort to have those dogs excluded from this appeal and possibly appear in another appeal with the daughter. *Sudweeks* involved the transfer of ownership of animals between parents and their children, not, as in this case, between other owners, many overseas and long-term boarders, and this Appellant.
51. In Ms. Moriarty's February 19, 2016 letter to the Appellant's legal counsel, Ms. Moriarty stated that "*Unless she is able to prove that legal ownership of any of the animals either a*)

didn't belong to her in the first place as was the case on the boarders information she provided above or b) a contract of sale was entered into and completed prior to the warrant on specifically identified animals, I will consider all other animals belonging to Ms. Zhou and they will be considered as part of any dispute."

52. Also on February 19, 2016 Ms. Moriarty emailed someone named "Dear Fan" saying "*If she surrenders the animals to the SPCA, the costs will end immediately.*"
53. Then on February 29, 2016, Ms. Moriarty emails Fan Zhou and says "*if I have not received a confirmed dispute by March 2nd, the animals will become the property of the BC SPCA as I did not receive a dispute within the 14 days.*"
54. And on February 29, 2016, Ms Moriarty emails someone named Mr. Zou and says, "*Ms. Zhou will have until March 2nd (14 days post seizure) to identify the specific animals she claims ownership of. It is absolutely not acceptable to simply state "the cats that have kittens" belong to her. If she is unable to identify which animals she owns, I am not able to consider any dispute.*" This last Moriarty email was in response to one from Fan Zou on behalf of the Appellant that said "*I just got confirmed by Ivy that she has made up her mind to seek return of her animals through appeal. She will hire a lawyer to draft documents for her. She only claims ownership of 30 cats and 6 dogs...*"
55. It appears to the Panel in the circumstances of this case that the Society's Ms. Moriarty was of the view that she could not proceed to consider a dispute unless the Appellant could identify which animals she owned. Identification is different than proof, in the Panel's view. Ms. Moriarty asked for identification, and in fact, the Appellant did identify 42 animals she claimed as belonging to her.
56. The Appellant's March 2, 2016 list of animals that she claimed she owned listed 32 cats, yet the list had only 25 entries, the descriptions of which total 34 cats, and 6 dogs, of which only 4 were named and described, and four dogs belonging to her daughter, unnamed.
57. The Panel appreciates that the Appellant-caused confusion, lack of clarity, and poor record keeping, created a near-impossible task to determine exactly which animals belonged to the Appellant. However, the Panel is of the opinion that the Appellant clearly intended to appeal the seizure of only some of the animals which she claimed to be her own animals, and at the hearing, the Appellant's counsel provided a submission, acceptable by the Panel and not objected to by the Society, that the Appellant claimed only 32 cats and 10 dogs (6 of her own and 4 from her family). The Appellant continually referred to other animals as belonging to boarders throughout the submissions in this appeal.
58. The Panel finds that despite Ms. Moriarty's email saying if the Appellant cannot identify her animals, Ms. Moriarty will not consider any dispute; the Society did indeed consider a dispute and the Appellant did indeed identify the 42 animals she included in her appeal.
59. The Panel, thankfully, is not tasked with determining ownership of any animals not included in this appeal. The remaining animals not under appeal become abandoned or

surrendered or some other disposition, all to be determined by the Society and potential owners, without this Panel's contribution. It is enough that in the circumstances of this case, the Panel has found that the Appellant is the owner of only the 42 animals under appeal in this matter, and is not the owner, by her own assertion and supported by the evidence, of the other animals seized on February 16, 2016.

60. The Panel is not tasked with determining exact costs for every specific animal but instead those reasonable costs requested by the Society. In the facts of this case, considering the number of animals, lack of identity of animals and owners, and the Appellant's poor record-keeping, the Panel is of the view that 42 animals were included in this appeal and that only costs for those 42 animals appealed and owned by the Appellant will be considered.
61. The Panel is influenced by the excerpts from Ms. Moriarty's written communications, quoted above. Ms. Moriarty does acknowledge the fact that the Appellant is not claiming ownership of all animals and in fact, the Society did return some animals to their rightful owners. Ms. Moriarty introduces some additional confusion by saying that if the Appellant cannot prove she does not own animals, they will all be considered as part of the dispute; and then says that the animals surrendered will have their costs stopped immediately upon surrender; and then says that the Society is not able to consider any dispute of animals not owned by the Appellant. The fact that the Appellant did not dispute or appeal the seizure of any animals other than the 42 under appeal indicates to the Panel that there was only the intent to try to retrieve 42 animals.
62. Given that section 20 requires this Panel to determine the reasonable costs of the Society with respect to those animals which are subject to an appeal under section 20.3, the Panel has concluded that to the extent that Society seeks to recover its costs associated with the seizure of animals not part of this appeal, it is appropriate and reasonable to reduce these costs on a pro rata basis. On this point and in an effort to be as fair as possible to both parties, and given the immense costs in this seizure and the lack of clarity around ownership and identity, the Panel has determined that the Appellant is only responsible for the costs of 42 animals. Therefore, given that the Panel has already concluded above that \$71,242.90 is the total reasonable cost for 80 animals, we have calculated a 'cost per animal' of \$890.54. We find that this amount when applied to each of the 42 animals that are the subject of this appeal to be a reasonable assessment of the costs in all the circumstances. The Panel is aware that this calculation averages the veterinary costs as well as other costs including different boarding costs for cats and dogs, but the Panel also finds an exercise to determine exact applicable costs for each and every animal would be time-consuming, difficult and, likely in the end, not very fruitful.

IV. COST OF CARE ORDER

63. The Panel orders that the Appellant pay the amount of **\$37,402.51** to the Society as the reasonable costs incurred by the Society with respect to 42 animals.

64. Finally, although it is not within the authority of the Panel to make any orders on this subject, the Panel would also like to note that in reviewing all the material in this case, it is apparent that the Appellant has failed to demonstrate that she has the minimum understanding needed to provide adequate care for animals in their best interests. Given how many times the Appellant has been privy to orders of the Society and recommendations of veterinarians (and given her totally unacceptable position that a veterinarian's recommendation is not a veterinarian's mandatory order so she need not follow it), it seems unlikely to this Panel that the best interests of animals will be served by the Appellant's continued activities in the breeding and boarding of dogs and cats.

Dated at Victoria, British Columbia this 6th day of June, 2016

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

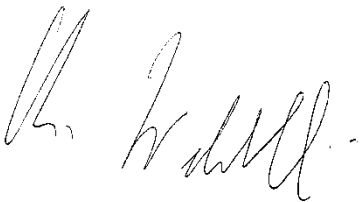
Per:



Corey Van't Haaff, Presiding Member



Brenda Locke, Member



Chris Wendell, Member