

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
47 CATS and 12 KITTENS

BETWEEN:

SAMUEL MOLLER

APPELLANT

AND

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia

Corey Van't Haaff, Vice Chair
and Presiding Member

Farm Industry Review Board:

For the Appellant:

Self-represented

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

July 4, 2017

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 June 2, 2017 review decision issued under s. 20.2 of the *PCAA* by Marcie Moriarty, Chief Prevention and Enforcement Officer for the British Columbia Society for the Prevention of Cruelty to Animals (“the Society”). The review decision arose from the Society’s seizure of numerous cats from the Appellant on May 11, 2017.
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 in this decision, I have decided that I will not require the Society to return any of the seized cats or kittens nor any of the kittens born of these cats while in Society custody, nor any kittens still to be born of these seized cats as of the date of this decision.
5. The Society did not request costs including costs of care associated with newly born or about to be born kittens. Accordingly, costs do not form part of this appeal, as I advised parties in my letter dated June 30, 2017.

II. Brief history leading up to the removal of the cats and kittens

6. Since August 2016, the Society attended at the Appellant’s property on 10 different occasions. It has issued notices of distress relating to cleanliness, adequate space, ventilation and care, which notices have been met with only minimal and temporary compliance. The most recent notices of distress were issued in February 2017. All this, according to the Society, demonstrates that the Appellant has been given more than ample opportunity to ensure cats in his care are free from distress. Ms. Moriarty’s written reasons note that the Appellant has been given instructions on how to properly care for cats in his care, and has been provided an opportunity to reduce the numbers of cats in his care.

III. The review decision

7. The March 20, 2013 legislative reforms, set out in Part 3.1 of the *PCAA*, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: *PCAA*, s. 20.2(1), (2). If a review is requested, the Society must review the decision and must not destroy, sell or dispose of the animal during the review period unless it is returning the animal: *PCAA*, ss. 20.2(3).
8. The *PCAA* does not set out any specific process for the review. Administratively, the Society’s current process where a review is requested is to prepare a disclosure package

and then to invite submissions from the owner concerning the return of the animals and to consider these submissions in light of the investigation results to determine whether it is in the animals' best interests to be returned to their owners.

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

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

- (a) return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
 - (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
 - (ii) any matter that the society considers necessary to maintain the well-being of that animal, or
- (b) affirm the notice that the animal will be destroyed, sold or otherwise disposed of.

(5) The society must provide to the person who requested the review (a) written reasons for an action taken under subsection (4), and (b) notice that an appeal may be made under section 20.3.

10. Ms. Moriarty issued written reasons dated June 2, 2017 after her review of this matter. After concluding that the animals seized had validly been taken into custody to relieve their distress, the written reasons stated, in part:

The ITO goes into great detail regarding what led up to the seizure of your Cats and I do not intend to repeat all of the content in my decision, however, I do rely on its entirety in making my decision. In reviewing the circumstance that led to the seizure, it is clear that you had far too many cats to adequately care for given your particular living situation.

This was made clear to you by SPC Kokoska during the inspection on February 27th, 2017 where you were put on notice that there were four major areas of concern that you needed to address. These included 1) providing adequate ventilation in the camper and trailer where you were keeping the Cats, 2) provide sufficient space for the cats as per the Canadian Standards of Care in animals shelters ("CSC") minimal requirements for group housing, 3) provide the Cats the opportunity to withdraw from the group, and 4) regularly clean and sanitize the environment where the Cats were being held.

It is clear from the follow up and the conditions at the time of the seizure that these areas had not improved. In addition, it is troubling that in the interim there is evidence that you would leave the Cats unattended for long periods (days) at a time without making arrangements for their care.

Seizure

The conditions at the time of the seizure are described both in the constable notes and the veterinary report. It is not surprising to me given the number of cats involved and the housing options available to them that the Cats were found to be in distress. I note that there was some difficulty in you accessing the photographs taken during the warrant despite multiple attempts on our end to provide access. However, I do not feel the need

to rely on these photographs to make my decision given the other evidence available to me. In addition, I do not think it is unreasonable for me to conclude that you, as the owner, should have been aware of what the physical condition of the Property was in which your Cats were living at the time of the seizure.

What I do rely on is the observations of the constables during the execution of the warrant and in particular the observations and conclusions of the attending veterinarian. Dr. Royston provided the following conclusion:

The cats living conditions were disgusting as there were feces everywhere, the ammonia smell was so strong and there was no food or water present. When I tossed some treats onto the floor the cats just swarmed suggesting they hadn't eaten recently and didn't have regular, dependable access to food. Several cat fights broke out indicating there was a lot of tension within the colony. Having various kittens of different ages in one group was also concerning as the youngest kittens would not have been able to get proper nutrition from the moms as the older kittens would have bullied them away. The effect of this was seen in their emaciated body conditions (BCS 1/5) and severe dehydration. They would not have lasted much longer and likely would have died in the next 24 hours.

The cats were in distress as defined by the Prevention of Cruelty to Animals Act as they were deprived of food and water and kept in conditions that were unsanitary. The youngest kittens were neglected and likely would have died from dehydration and malnutrition within 24 hours. The kittens needed to be removed from the property to receive veterinary care and the adult cats needed to be removed from the property to alleviate the distress of the living conditions and to have access to food and water.

It is clear to me from this report that these Cats were clearly in distress and the situation was completely out of control and virtually impossible for one person to correct. To that end, I find it very compelling evidence for me to consider the fact that post seizure, in order for the BC SPCA to adequately address the needs of 59 cats (and counting as they keep giving birth), we have had to utilize the resources of veterinary clinics, multiple foster families, multiple BC SPCA shelters and countless staff and volunteer time. Which begs the question, how do you, as one individual, plan on meeting the needs of all of the Cats and their progeny, if returned?

Your Submission

While you have suggested in various email communications that you had trouble contacting the BC SPCA and receiving a response, I do not feel that the evidence supports that assertion. You were provided with the Notice of Disposition that clearly sets out your avenue to dispute and that it must be in writing. In any event, I do not feel that you have been prejudiced in any way from providing a full submission for me to consider. From the very beginning you were told that you would need to address the living conditions for the Cats and any plan for the future housing and care of these Cats and the multiple kittens that have now been born.

On May 31st, you did provide lengthy submissions that included multiple video links.

While I have considered these videos, I do not find them particularly persuasive nor some even relevant to my consideration regarding the return of your Cats. You have also made submissions that you have plans to renovate the camper units and indicate that “diagrams and projections of these projects can be provided upon request.” While these plans and goals are lofty, the bottom line is that they are just that – plans and goals. The reality is that right now, you do not have a place to house the Cats if they were returned to you. It is my understanding that you do not own the trailer or camper and that the owner has now taken back custody of those vehicles and you are in fact without a permanent place to live yourself, let alone a place for way over 59 cats.

Given all of the above, I do not feel that it is necessary to go much further in reviewing this file. I am saddened by this situation and the fact that despite being offered assistance to reduce the number of Cats in your care or even post seizure offers to assist you with population control, you have refused such help and instead clung to an unrealistic vision of caring for these Cats. As the saying goes, sometimes love is not enough. You may love these Cats but you are not able to provide them with the care that they need nor do I feel that you would be able to ensure that they remained free from distress pursuant to your duty in section 9.1 of the Act. Based on all of the above, I do not feel it would be in the best interest of the Cats to be returned to you. It is my hope that you take this time to find adequate housing for yourself and that you do not simply go back to accumulating cats that are unfixed and multiplying at a rate that you are unable to care for. The BC SPCA takes in thousands of unwanted cats each year due to situations where people do not do the responsible thing and spay and neuter their animals. This is extremely taxing not only on our organization but results in unnecessary suffering for the cats and kittens that we do not reach in time.

IV. The appeal provisions

11. I am guided by the approach to appeals under the *PCAA* which is set out in detail in BCFIRB’s decision *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

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

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. Pre-hearing matters

12. The Appellant sought to advance several issues prior to the hearing, including some received the morning of the hearing (sent in over the long weekend).
13. The first concerned the Appellant's request for 17 summonses to be issued. A decision was released by me on this request in a letter dated June 28, 2017.
14. The second concerned the Appellant's request for a facilitated settlement. A decision was released by me in a letter dated June 30, 2017.
15. The Appellant made a third request seeking to tender new documents at the hearing, delivered by email over the weekend when the hearing started on July 4, 2017, a Tuesday, after a holiday Monday. This email was not considered by the Society nor read fully by me prior to the hearing. The Society objected, as the documents related to a new property where the Appellant was living and the Society did not have time to test the veracity of the documents over the long weekend. The Appellant thought that as he was permitted to submit his final reply submission on Friday he could include additional matters beyond his final reply submission; he said he then experienced a power failure which pushed his ability to respond into the weekend.
16. As some of his submissions relate to the current/proposed cat housing, I will consider his late submission.
17. In a pre-hearing conference call held on June 26, 2017 to discuss the Appellant's request for 17 summonses, I advised both parties that the hearing was scheduled for one day with many witnesses, and I would limit testimony and submissions to the matters I was authorized to decide. I also advised parties that given the emotional state of the Appellant in the pre-hearing conference call, outbursts would not assist me in coming to a decision about his cats and would not be tolerated. I further cautioned the Appellant that he would be limited to matters that could assist me in making a decision about his cats, and that I would curtail any questioning or submissions that strayed from these matters.

18. I want to say that I fully understand the Appellant's love and devotion to his cats, I am aware of his very emotional state, and I am aware of his position that he is willing to do anything and agree to any conditions, as he often said, to get his cats back. I am also concerned about his statement that he cannot see a future for himself without his cats; yet I cannot be deterred from focusing on the animals and making my decision based on the requirements of the *PCAA*.
19. The Appellant testified that since the seizure of his cats, he has spent the entire time researching and preparing his case. Judging by the volume and reach of the material submitted, I believe him.

VI. The Appellant's arguments regarding social media reports and Society disclosure

20. The Appellant alleged that the Society wrongfully relied on social media reports regarding his care of the cats in determining whether to seize his cats or to investigate his care of his cats. Regardless of the Society's reliance or not on social media reports, I did not rely or give any weight to any social media reports and I advised the Appellant of this when he attempted to discuss social media. With regard to the removal, my focus is on whether, based on the evidence the Society observed and relied upon when it decided to remove the animals, it validly determined that the cats and kittens were in distress at the time of their seizure.
21. The Appellant also said that he was not provided with a full disclosure of documents from the Society in a timely fashion. The Society disputes this and says it provided all documents in its possession, and provided copies of emails regarding the disclosure, as well as a courier confirmation number for a delivery of material. It appears that some of the disclosure the Appellant says he did not receive was material prior to Ms. Moriarty's review decision. Since this appeal is a full hearing, the issue before me is whether the Appellant now has full disclosure. I asked the Society if it had provided full disclosure of all material in its possession to both BCFIRB and the Appellant and it confirmed it had. I went through the list of exhibits of all material in my possession and the Appellant did not deny receipt of any of it. I am satisfied in the circumstances of this case that the Appellant received all material regarding the seizure since the receipt of the Society's written reasons.

VII. The Appellant's approach to the hearing

22. During the hearing, I found the Appellant to be argumentative, loud, willing to talk over top of anyone he did not agree with, unable to prevent himself from talking over top of me or from arguing with me, and on several occasions directing me what to do or what to write down. The Appellant, in making his submissions, included lengthy arguments that frequently strayed from the matters I have the authority to decide, namely were his cats in distress when they were seized, and would they be in a state of distress if they were returned.

23. The Appellant often objected when he did not like the answer a witness was giving. He once objected to something I said. This made for a challenging hearing. Challenging as it was, I want to make clear that none of these distractions or frustrations prevented me from focusing on the issues under appeal, nor did any of these outbursts colour my decision-making about whether the removal was valid or whether the cats ought to be returned. My decision was based on the material and testimony before me as it related to the cats and their health and welfare, and I decided the case in the best interests of the cats not to be in a state of distress.
24. When the Appellant questioned his witnesses, or cross-examined the Society's witnesses, he frequently focused on lines of questions where the answers would not be helpful to me in coming to a decision on his cats. He would ask and re-ask questions, then repeat answers in his next question. When I directed him to avoid straying into matters that would not assist me, he frequently went back to those areas.
25. The Appellant submitted multiple images and videos and tape recordings and pages of documents in support of his appeal. I assured the Appellant I would review the materials and I did so.
26. The Appellant advised me at a few points in the hearing that he wanted the hearing to exceed one day; in fact, he said he would be fine with a ten-day hearing if that was what was needed to properly address the issue of his cats. The Appellant expressed concern that we all just wanted to go home and have dinner when he was fighting for the future of his cats. The Appellant said that he was not afforded the time he required to fully question his witnesses. I understood why he felt this way but I disagree with his conclusion, as I will detail below.
27. The Appellant expressed shock that he would not be given the time to go through and discuss each piece of evidence and each photo, one by one. He said that the time constraints during the hearing were not appropriate for his cats. He said his cats were not a commodity but his family. He said he was not afforded the opportunity to get through the evidence "at all." He said he thought he would spend the time he needed to go through each piece of evidence and that I only need to look at any of his videos dated October 2016 to May 2017 to see how well his cats were treated (he submitted 22 videos in one submission). He said there was obviously no way he could speak about each of his cats and their individual personalities in just one day.
28. The Society objected to the hearing taking more than one day as BCFIRB had previously dealt with issues regarding the seizure of more than this number of animals in only one day, and that this matter and the evidence only justified one day. The Society said a longer hearing could negatively impact it or impact the cats. The Society said timelines were made available from the start and were outlined by BCFIRB, and parties were reminded of this at the prehearing conference call and in the Society's view, one day was sufficient to deal with a case of this nature.

29. The Appellant responded that the hearing was less than one day to determine his entire life. He said if he gets the cats back, it won't matter, but if he does not get his cats back, then my limiting the hearing to one day will "impact the outcome" including impacting him from getting a fair proceeding. He said it is unfair to rush him through a stack of paper and he would agree to the cats being in distress if the conditions were like they were at the seizure all the time but the conditions were not ongoing. The cats were his driving force in life. He cannot foresee a future that doesn't include his cats.
30. While hearing management was difficult, I concluded that the hearing could and should fairly complete in one day. It was and is my view that the hearing should be limited to relevant matters, and I did not need to hear information unrelated to the matters under appeal. In an effort to manage the hearing and to reign in the Appellant's emotions, I warned the Appellant when he was continually going off-track until I finally limited the number of questions he could continue to ask certain witnesses. For example, in questioning his sister, I did not permit the Appellant to enquire about her mental health. When I finally limited him to three more questions, he asked her if his cats peed and pooped on her floor (she had already testified yes, in detail), whether she saw 2 litters of kittens (she already testified yes), and the exact date when his sister did some specific thing (she didn't know).
31. I have presided over all but a very few hearings regarding animal seizures since the *PCAA* was amended in 2012 to authorize BCFIRB to conduct these hearings. Except on very rare occasions, hearings were conducted in one day, and many of those included more witnesses than in this hearing. This reflects the underlying policy that while *PCAA* appeals must be fair, they must also be disciplined. A *PCAA* appeal is not a civil trial. As reflected in the legislative scheme, including the unusually short time lines even to file an appeal, BCFIRB's management of the appeal process does not countenance the delays that are so endemic in other contexts. All participants are made aware of the tight timelines involved in the appeal process, and are required to focus on the relevant issues and govern themselves accordingly. All this reflects the ongoing care costs involved in holding animals while appeal proceedings are underway (which costs, depending on the outcome, may be visited on either the Society or the owner), and the imperative for finality in determining whether the best interests of the animals require a return to their owner or retention by the Society to hopefully find other homes. In accordance with all this, hearings are scheduled and proactively managed so that enough time is allowed to hear all relevant evidence. However, the parties are not given additional time to pursue issues that are not relevant to the issues before BCFIRB on appeal.
32. In the circumstances of this case, I fully heard the Appellant. He was given every opportunity to focus on the matters before me, but regrettably, in most cases, he was unable to do so. Despite this, I had more than adequate information to make a decision. Given the veterinary evidence, Special Provincial Constable (SPC) evidence, the Appellant's own testimony and evidence, and other witness testimony, I had an abundance of information upon which to make a decision, and a dearth of hard evidence to contradict the veterinary or SPC testimony.

VIII. The number of cats at issue

33. There was dispute about the number of cats seized on May 11, 2017 as well as some question about the number of kittens born while the cats were in the Society's custody.
34. The Society submitted lists of cats by ID number and basic description whereas the Appellant knows the cats by name and appearance, which is totally understandable, and he could not always match a specific cat with one of the Society's general descriptions.
35. The Appellant said that this failure to properly document the cats is proof of the Society's failure to be able to care for the cats.
36. The Appellant advised that the white cat is missing and not accounted for by the Society based on the Society's descriptions.
37. The Appellant further blamed the Society for his discovery, more than a day after the seizure, of two dead kittens left in his trailer. It was unclear whether they died due to some occurrence prior the seizure or because of the seizure, but I am satisfied the two dead kittens, about which I am very sad, do not form part of this hearing as they were not removed by the Society.
38. The Appellant did ultimately agree that all of his cats which were seized do form part of this appeal, and he agreed that the kittens which were born prior to the hearing were part of this appeal and he was requesting their return.
39. One cat which escaped the seizure was found by the Appellant's sister who hid that cat from the Society and gave it to another person to care for at this time. That cat also does not form part of this hearing.
40. Finally, after the hearing, it was discovered that two additional cats were pregnant with one giving birth and one about to, despite the Society's submission at the hearing that no more cats were pregnant.
41. The Society appears to be prepared to include these kittens in this hearing, though they did not say this and only advised about the kittens' existence, and confirmed that the Society will not seek costs for the kittens' care.
42. The Appellant, when asked for his position on this, took the opportunity to continue to argue his case as well as submit photographs, which I did not view as I determined that photographs were not necessary for the Appellant to advise me on whether or not the new or soon to be born kittens would be included in this appeal. In the Appellant's response, he took the position that he could care for these new kittens and had upgraded his facilities and ability to handle up to 150 cats, and would make arrangements for vet care for some of the kittens.

43. I take from his position that he wants the kittens back thus I am prepared to include the kittens as part of this appeal.
44. I find that when the cats were initially seized, every kitten born from the mother cats which were seized - whether the kittens were born after seizure and before the hearing, or after the hearing and before the issuance of this decision, or even after the issuance of this decision - will be covered under this appeal and will be included in the final disposition of cats. I note that the numbers are estimated at 59 cats seized plus 21 kittens born and still living, plus 6 kittens born after the hearing for a total of 86 cats, and counting.

IX. The warrant, and pending charges

45. The Appellant did dispute the warrant. Without going in to details, I will simply state, as has been found in other appeals (see *Viitre v. BCSPCA* (January 10, 2017), at paras. 154-155), that the appeal role under section 20.3 of the *PCAA* does not authorize BCFIRB to review the decisions of a provincial court judge or justice of the peace as to whether circumstances justify the issuance of a warrant. Until such time as a warrant has been set aside, I am entitled to rely on its validity and I choose to do so in these circumstances where, as here, the warrant has been issued by a court of competent jurisdiction. That said, I am obviously not bound by the information contained in the Information to Obtain the Warrant. I make my decision taking into account all of the evidence tendered at this appeal hearing.
46. Finally, the Society advised that an unendorsed warrant had been issued and criminal charges approved for the Appellant and part of the warrant will include a ban on owning animals. The Society wanted me to consider this ban as a reason not to return the cats and kittens to the Appellant.
47. It is my view that the existence of a criminal court order prohibiting an Appellant from possessing animals is not a bar to my issuing an Order I consider necessary and appropriate under s. 20.6 of the *PCAA*: *Havelock v BCSPCA* (March 20, 2015) at paras. 130 – 131.
48. While the reasons that follow are lengthy, the volume of information below does not come close to properly documenting the volume of information at the 10-hour telephone hearing. The reasons seek to focus on the relevant issues before me.

X. Material admitted on this appeal

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

Exhibits

- a) Appellant June 6, 2017 Email (**Exhibit 1**)
- b) BCSPCA June 2, 2017 decision (**Exhibit 2**)
- c) BCSPCA June 12, 2017 request to spay and neuter (**Exhibit 3**)

- d) BCFIRB June 13, 2017 decision re request to spay and neuter (**Exhibit 4**)
- e) BCSPCA June 12, 2017 request to reschedule hearing date (**Exhibit 5**)
- f) Appellant's June 16, 2017 response to reschedule hearing date (**Exhibit 6**)
- g) BCFIRB's June 16, 2017 email confirming hearing date rescheduled (**Exhibit 7**)
- h) BCSPCA's June 16, 2017 email confirming fedex # for appellant's courier (**Exhibit 8**)
- i) BCSPCA Binder (Tabs 1-21) (June 14, 2017 by email, June 15 by courier) (**Exhibit 9**)
- j) Email exchange (June 21, 2017) with parties re request for documents (**Exhibit 10**)
- k) Dr. Royston's signed report (**Exhibit 11**)
- a) BCSPCA disclosure (Tabs 23-24) (June 21, 2017 by email) (**Exhibit 12**)
- b) BCSPCA disclosure (Tabs 25-29) (June 28, 2017 by email and courier) (**Exhibit 13**)
- c) Witness contact form for SPC Ross Taylor and K.L. (**Exhibit 14**)
- d) Expert witness contact form for Dr. Stephanie Royston (**Exhibit 15**)
- e) Affidavit of Marcie Moriarty (June 28, 2017 by email and courier) (**Exhibit 16**)
- f) BCSPCA written submission (June 28, 2017 by email and courier) (**Exhibit 17**)
- l) Appellant June 20, 2017 email requesting to disclose witnesses (**Exhibit 18**)
- m) Appellant request for 17 witnesses to be summonsed and June 22, 2017 email setting up pre-hearing conference call (**Exhibit 19**)
- n) Appellant Witness contact forms and attachments (**Exhibit 23**)
- o) Appellant expert witness handout (**Exhibit 24**)
- p) Appellant cat roster (**Exhibit 25**)
- q) Appellant Key Points and Summary (**Exhibit 26**)
- r) Appellant June 29, 2017 request for facilitated settlement (**Exhibit 27**)
- s) BCSPCA email June 28, 2017 confirming Ms. K.L. as witness (**Exhibit 28**)
- t) Appellant's email June 29, 2017 request for disclosure bylaw and files without redaction (**Exhibit 29**)
- u) Appellant – Appellant June 30th email Omitted in their file? (**Exhibit 30**)
- v) Email from Ms. Greenwood regarding previous seizure and redaction (**Exhibit 31**)
- w) Written decision and direction from BCFIRB dated June 30, 2017 (**Exhibit 32**)

XI. The Society's witnesses

Dr. Stephanie Royston

50. Dr. Stephanie Royston is a Doctor of Veterinary Medicine with four years experience, now working doing house calls as well as being associated with a veterinary hospital, and working exclusively with dogs and cats. As a visiting veterinarian, she has gone into hundreds of animal owners' homes and once worked as a helper (pre-veterinarian) in South Africa with a person who had more than 100 cats that got along fine in a spotless environment. Dr. Royston said it was possible to have multiple cats if their needs were cared for properly.
51. Dr. Royston attended the removal. Her May 11, 2017 report is presented here, without its introductory opening:

Purpose of Report.

This report outlines my observations and opinions of the conditions of the cats seized by the SPCA on May 11, 2017 in Chase, B.C.

Facts and Assumptions.

The cats were living in 2 trailers outside the owner's home, designated Trailer A and Trailer B.

Trailer A had 12 kittens of 4 different ages that were all together in a dirty basket. The youngest kittens were only a few days old and were emaciated and badly dehydrated. There were other kittens that were 1-2 weeks old, some that were 3-4 weeks old and 2 that were approximately 6 weeks old (1 that went with the little kittens to Kamloops and 1 that went with the adult cats to Penticton as it hid under the counter for awhile). The older kittens were in better shape than the younger ones.

Trailer A also had 27 adult cats (mostly males) living in it and these were in reasonable physical condition although they were very difficult to properly examine as they were not used to being handled and were very stressed. There was no food in the Trailer and the only water present was the rain coming thru the open vents in the roof. There were 3 litter boxes full of urine and feces. There was also feces in the cupboards and the smell of urine was so strong that it was difficult to breathe (Ammonia reading 20ppm). The cats also had several cat fights while I was in the trailer and Cat 1Z's left eye did have blepharospasm so needs to be monitored in case he has an ulcer from a cat scratch or other trauma.

Trailer B had no food or water either. There were 2 very full litterboxes and again the smell of urine was very strong. Trailer B had 20 mostly female cats with several that appeared to be pregnant. The cats were very difficult to examine (1 bit me twice) so sexing them was not always possible. Cat 2L and 2P were matted but otherwise the cats were in reasonable physical condition.

Opinion

The cats living conditions were disgusting as there were feces everywhere, the ammonia smell was so strong and there was no food or water present. When I tossed some treats onto the floor the cats just swarmed suggesting they hadn't eaten recently and don't have regular, dependable access to food. Several cat fights broke out indicating there was a lot of tension within the colony. Having various kittens of different ages in one group was also concerning as the youngest kittens would not have been able to get proper nutrition from the moms as the older kittens would have bullied them away. The effect of this was seen in their emaciated body conditions (BCS 1/5) and severe dehydration. They would not have lasted much longer and likely would have died in the next 24 hours.

The cats were in distress as defined by the Prevention of Cruelty to Animals Act as they were deprived of food and water and kept in conditions that were unsanitary. The youngest kittens were neglected and likely would have died from dehydration and malnutrition within 24 hours. The kittens needed to be removed from the property to receive veterinary care and the adult cats needed to be removed from the property alleviate the distress of the living conditions and to have access to food and water.

I recommend that this owner not have any intact cats or kittens in the future to prevent this situation from recurring.

Appendices

I was able to see 3 of the youngest kittens 3 days later (May 14, 2017). The foster weighed them once she brought them home (85g, 93g, 99g), below normal birth weights. They had very concentrated urine for 2 days but are now adequately hydrated. They are now suckling formula well and have gained weight (105g, 118g, 119g) and their body condition scores have normalized. Their eyes are still closed. They will need continued foster care from an experienced caregiver for the next several weeks.

The adult cats will need socialization but will hopefully adjust well to no longer living in such high density in unsanitary conditions.

52. Dr. Royston testified that her May 11, 2017 report accurately reflected her opinions and views of the seizure she attended on May 11, 2017 in Chase. She testified that when she went into the trailer the smell couldn't be described in words - she has five cats of her own and the smell in the Appellant's trailer was so strong that it was difficult for her to breathe or function. There were cats everywhere, she said. She brought cat treats and when she scattered them on the floor, the cats swarmed to them, indicating they had "not seen food in a bit." She said the cats were so aggressive over the treats, they made her nervous.
53. There were 12 kittens in a basket and some were not doing well. The kittens were various ages and sizes and the littlest kittens were thin, weak and dehydrated and need immediate care, and the Society did take care of that. The smell was so bad, cats were put into carriers quickly. The first few cats went into carriers easily and others not so easy and she concluded those cats were averse to being handled. A few tried to bite her. The second trailer was in a similar condition.

54. Neither the camper nor the trailer had any food or water present for the cats. The litter was overflowing with urine and feces. Urine and feces were everywhere. There was no ventilation in the trailers. When she was in the second trailer, one cat bit her. She collected the cats as quickly as possible and did not fully examine each cat, instead she looked for obvious injuries or problems but did not do a full exam.
55. The smallest kitten in the basket could not compete for nutrition from its mother and was in such poor condition it would not have survived another day. It was, she testified, sad. The proper way to house kittens is to separate them with their mother from other cats. These kittens are now doing well in foster care. Dr. Royston testified she did not see the kittens kept separate from all other cats. She did see evidence of food competition in the body condition score (BCS) of the kittens at 1 out of 5. The kittens' urine was concentrated and she was not even sure they would make the drive to Kamloops. They were 1-3 days old.
56. Dr. Royston continued to smell urine and feces on her clothing on her one-hour drive home. She showered and had to air out her car. She testified that recommended values for ammonia parts per million (ppm) were below 10 for cows and below 2 for cats in a shelter. She was told the reading at the trailer was 20 ppm.
57. For the number of cats that the Appellant housed, she would expect one litter box per cat plus one extra, although this was not always possible. Trailer A (the RV) had 3 litter boxes for 27 adult cats and Trailer B (the camper) had 2 litter boxes for 20 adult cats.
58. Dr. Royston understood that the Appellant was away for several days, and he was not present at the seizure. She did not understand why more was not done for these cats in his absence. There was no food or water and the only moisture was some rain dripping through the roof of Trailer A. The number of empty food dishes was still minimal for the number of cats there.
59. In Trailer A, the rooftop vent was open and had a little bit of air coming in but the smell was still "stunning." Trailer B had no air or venting at all.
60. She said of the urine and feces that was everywhere - "it was gross." She caught the cats so she could get out of there and she felt bad for the cats.
61. She stated that it was unacceptable she said that food be on the ground due to the amount of fecal matter there. Cats could pick up a bacterial infection and get sick.
62. She did not see any fan or air conditioning or heater to regulate temperatures.
63. Dr. Royston testified that her exam, due to the smell and fractious cats, was limited and she did not do any dental checks. The veterinary conditions she saw were minor: hair mats, eye ulcer in one cat. All the cats were quite young and she was concerned at how stressful the

living conditions were for the cats. The cats would fight and it was only a matter of time before one or more were injured. The kittens were in rough shape and she would expect some to die. There were too many cats of a proper social structure and the fighting would jeopardize the kittens' lives.

64. The cats in Trailer A were mostly male plus kittens and the cats in Trailer B were mostly female but she couldn't sex all the cats.
65. Dr. Royston said, in addressing the five freedoms the Society requires, that the environment was "disgusting," it was very stressful (for the cats) to have too many cats, and if the cats were moved to a larger space she would still be concerned about the Appellant's care for them as he was not taking good care of them. The place was disgusting and that did not happen overnight. There was no spay and neutering so the cats could multiply. There was no food and water. The cats were aggressive. This was made worse by being in a small contained area. RVs and trailers are not acceptable places for cats to live and she testified that she knows that these cats were stressed by the seizure. The cats' care, she said, showed a clear pattern of no care based on her attendance at the seizure and reading the ITO.
66. In response to the Appellant's questions, Dr. Royston testified that while she does consult with more experienced veterinarians on difficult cases, this was not a difficult case. The cats were clearly in distress, the situation was disgusting as there was no food or water and the smell was so bad.
67. The cats, she said, were in distress because of the environment, and there were way too many cats in this small space. Dr. Royston said there was no "medical" distress but there are different types of distress and these cats were in distress.
68. She confirmed her familiarity with feral and domestic cat diseases and infections and contagions.
69. She agreed that in an ideal situation she would discuss a plan for care with the owner but in this case, the Society was her client, not the Appellant. She would, in an ideal circumstance, develop individual treatment plans for each cat with the owner.
70. She explained what she keeps in her mobile (car) clinic, and testified that she did not administer sub cutaneous fluids to the kittens as she was separating cats that needed care from those which did not and the kittens needed clinical care so were sent to a clinic.
71. Dr. Royston was concerned with contagions; the dead kitten was later determined to have coccidia, which is a parasite spread by fecal matter. She was not aware off the top of her head of the incubation period for coccidia.
72. Dr. Royston said that although the cats were upset at being handled, this is not the source of their distress. She said the kittens may have been separated from their mothers but she did not determine which cats were their mothers.

73. In response to my questions, Dr. Royston said that the “Canadian Standard of Care” required 18 square feet per cat in group housing but in groups of no larger than 10-12 cats, and the housing had to be properly maintained with sufficient food and water, litter trays, toys, and the ability to retreat. In the trailers, these cats were trapped with others with which they did not get along, and there was no place to retreat from another cat.
74. Dr. Royston testified that the litter boxes with 60 cats should be changed at least a few times a day, and should not go without food or water for more than a few hours. Each cat, in theory, should have its own food dish.
75. Dr. Royston explained that the kittens which had concentrated urine had that because they were dehydrated. Animals, she said, are tougher than people and can “soldier on” and keep going until they just can’t go on anymore.
76. The kittens and some cats were underweight and dehydrated. The matted cats would be quite uncomfortable with the mats which could get infected or mats themselves could indicate illness as they usually mean a cat is not grooming itself. She did see a few matted cats.
77. Under further questioning from the Appellant, Dr. Royston testified that she did not see any infections on the cats and their reaction at being handled told her they weren’t regularly handled.
78. Dr. Royston testified, when asked if the Appellant could have simply cleaned the premises if he had been home at the time of the seizure, said the conditions did not happen overnight and so she did not think anything would change. It took time, she said, to get to that level of disgusting. She confirmed the kittens were emaciated.

K.L.

79. K.L. is the Appellant’s sister. The Appellant’s RV and camper were parked at her rental property where she also lived. She testified that the Appellant had been there since December 2016. He lived in her house and kept his “20 cats or so” in the camper on the driveway. He got more cats in February 2017 and she said he did not tell her that he was bringing more cats.
80. K.L. testified that her understanding was there were cats in the trailer (RV) at the side of the road and in the camper. Generally, she said, the Appellant would go into the trailers every two-to-three days to clean them and would then slack off and she would complain about the smell.
81. The Appellant, he said, would go to Kamloops and come back a few days later and would put food in the trailers.
82. She heard cats fighting in the trailers and some cats got out a few times.

83. She always knew when the Appellant cleaned the trailers as he would use her broom, cleaner, mop. Once he had all the cats with him after February, he started slacking off more, only going in the trailers once a week, not every few days like before. She could smell the trailers from outside, testifying that they stunk really bad of urine.
84. Neighbours complained about the camper as did the Village, and she needed resolution. She had a number of complaints about the cats.
85. K.L. testified the smell was bad as there were too many cats in the camper and neighbours would complain about the smell when cats escaped. She would tell the Appellant when cats escaped and he would either try to catch them or leave them outside.
86. K.L. said she did not go into the trailer often as the cats would try to run away. However, when the Society was there looking in the trailer windows and saw no food and water, she went in and saw no food and water so she gave the cats food and water. The Appellant had been gone, at the time of the Society's visit, for 3-4 days. He never asked her to care for the cats. No one else came either to care for the cats.
87. K.L. said the Appellant snuck some cats into the house and in his bedroom in her house. He kept a litter of kittens in there and some cats were pregnant. They smelled bad and she told him to remove them from the house.
88. K.L. testified that her son was once left watching a kitten that was nearly dead on the kitchen table; it was a few weeks old. It was dying. The Appellant told her son not to touch the kitten as it had a broken back. She told the Appellant that the kitten needed to see a veterinarian. K.L. testified that the Appellant then called a veterinarian but the kitten died within about five minutes of that call.
89. K.L. testified that she called the Society in May of 2017. She reported the living situation as too many cats in a small confined space and that the Appellant would take off and leave the cats for 3-4 days at a time. K.L. said she stressed to the Appellant his need to move but it didn't seem like that was going to happen. She was worried about the cats as the weather was getting warmer and inside would be like in a car.
90. On May 4, 2017, SPC Taylor had attended and looked into the windows of the RV as there is a big window and he saw food and water dishes, both empty, and an overflowing litter box filled with feces on the floor. She went inside the RV as there was no food or water and filled them up. She saw the Society place a note on each trailer. K.L. testified that the smell was really strong outside of the trailer "like one big litterbox, dirty, dirty litterbox" and a smell like urine and ammonia. She testified that she told the SPC there were so many cats she could not do a head count and the smell was horrendous when she opened the door. The Appellant had left for Kamloops Sunday or Monday and the Society visited on Thursday and he was gone five days in total. She was certain he did not come back during that time as she continued to feed and water the cats.

91. She no longer knows where the RV is as the Village had it towed away sometime after the seizure on May 11, 2017.
92. On May 11, 2017, the Appellant was again in Kamloops and had been gone already for a couple of days and did not ask her to care for the cats and no one else came to do so. The day of the seizure she did not go in the camper or RV and some cats did escape.
93. In response to the Appellant's questions, she agreed his original number of cats might be 19 not 20. She agreed she let the Appellant use the RV and said he could tow it to his new place when he found one. She said he could have the RV but it was not supposed to be used for cats on her property. She never gave him permission to have the cats at her property.
94. She testified that he did spend the night in the trailer on occasion and she would always know when he did as the smell was horrendous coming from his clothes afterward.
95. She testified that she knew when he was home or away but could not qualify how she knew but she did know when he was home as there would be dirty dishes, food eaten, clothes lying around, his shoes by the door and she could see him. She has three kids living with her. In response to Appellant's questions, she testified that her kids do not wear the Appellant's clothes or shoes and the two youngest do not cook.
96. K.L. testified she heard cats fighting inside the trailer and it was not cats playing. She even heard him screaming at the cats to stop fighting in the trailer. Cats did escape sometimes through the roof vent or when people opened the door to let them out. She had to tell the Appellant when cats escaped and he remedied the escape routes by rolling up wire fencing and placing it on the roof.
97. K.L. testified she did take Rollie the cat. K.L. testified in response to the Appellant's question that yes, his cats peed and pooped on his floor in his downstairs room as she had cleaned it up before, and there was dirty kitty litter, feces on the floor, feces on his clothes, feces all over. A few cats were locked up in the room and ruined the rug it smelled so bad. She testified that the Appellant's stay was only supposed to be temporary and he was not supposed to stay that long.

SPC Ross Taylor

98. SPC Taylor is appointed under the *Police Act* and was sworn in as a constable in October 2016. He previously retired early from the Edmonton Police Force.
99. SPC Taylor attended the seizure and his first interaction with the Appellant was with SPC Kokoska at the end of April to follow-up on the initial investigation and do a compliance check on a previous order.
100. On April 27, 2016, SPC Taylor communicated with the Appellant's sister as he was unable to communicate directly with the Appellant. SPC Taylor attended with SPC Chapman on

May 4, 2017 to conduct a compliance check and follow-up and the Appellant was not there. He generally observed the trailers and advised the Appellant's sister he could not do an interior check without a warrant. He viewed through an unobscured window (the rest had been spray painted) and saw numerous cats and litter boxes overflowing with feces. He saw empty food and water bowls. The Appellant's sister had voiced concern to him about the welfare of the cats. The sister then entered the trailer on her own and became very concerned about the condition of the cats. Her account of the inside of the trailer corroborated what he had seen through the window: no food or water, poor sanitation, 25 cats by her estimate. He understood from the Appellant's sister that she was concerned about inadequate space for the cats, the standard of care, ventilation, a lack of temperature control, and inadequate sterilization and cleanliness.

101. SPC Taylor testified that the Appellant's sister said to SPC Taylor that nothing had changed since February 2017 and that the Appellant had left on May 4, 2017 for a few days and left the animals unattended.
102. SPC Taylor testified that although another constable had given a 21-day period to permit the Appellant to attend to deficiencies listed in the earlier Notice of Distress, SPC Taylor did not attend for a compliance check on that earlier Notice until May 2017, due to the realities of the jurisdictional area being vast and he was unable to get to the property any quicker.
103. After SPC Taylor attended on May 4, 2017, had a discussion with the sister, observed what he saw through the window, smelled the intense smell from outside, and heard intense fighting, he issued a 24-hour request for contact. The sister said she would also alert the Appellant to this request.
104. SPC Taylor did not hear back from the Appellant. He had to talk to the Society's management regarding the logistics of taking 50 plus cats. It took several days to coordinate and find locations for the cats and staff to assist at the seizure and other resources.
105. SPC Taylor executed the warrant on May 11, 2017 at 11:21 am with Dr. Royston and other Society staff. The sister exited her home and advised that the Appellant was not home so she accepted the warrant and notice. The Society started with the RV and noted no food or water, an overflowing litter box, an accumulation of feces and urine on the floor including one cat licking urine off the floor.
106. SPC Taylor observed 27 cats and 12 kittens in the RV. The kittens were in a crate on the floor and appeared to be of varying ages, with adult cats jumping in and out of the crate which directed the SPC's attention to the kittens for the kittens' own safety. He observed the kittens to be emaciated. Older kittens were roughhousing with newborn kittens. The Society called the shelter and made arrangements for the immediate transport of the kittens to a clinic due to urgency, according to Dr. Royston's instructions. SPC Taylor observed that the space was inadequate for the cats. He saw more than the 18 or so cats that SPC Kokoska had originally noted.

107. SPC Taylor testified there was no forced air movement or air movement machinery and the open ceiling flap was the only source of ventilation. The ceiling was wet. The cabinetry appeared to have mould or mildew. Black fuzzy matter was growing on the feces, which told him the feces had been there a long time.
108. Three shallow trays were on the floor. Dry cat food dust was in two of them. None of the shallow trays could hold 8 litres of water collectively or individually. SPC Taylor testified that wetness on the floor appeared to be urine and he said that the cats had been in this environment for quite some time without cleaning. He testified that there were no enrichments² for the cats, no space for retreat, and insufficient opportunities for the cats to withdraw from each other.
109. He determined the cats were in distress because of the absent food and water, accumulation of feces and urine, overwhelming urine and ammonia smell. According to the test strip, the ammonia concentration was 20 ppm. He observed the strip himself. The smell affected his ability to breathe. His eyes watered and the air burned his nose and throat.
110. After the RV, he proceeded to the camper and found identical environment with empty food and water trays, feces and overflowing litter boxes. Dr. Royston placed the cats in carriers and removed them. SPC Taylor confirmed that an ammonia test measured 20 ppm in the camper. He testified that the shallow trays could not hold 8 litres of water collectively or individually.
111. The general demeanour of the cats was aggressive and he observed several fights break out. Dr. Royston was bitten. He confirmed the escape tunnel was bungeed shut but testified that it appeared cats were trying to escape as they were reaching out. One cat from the RV did escape from its carrier.
112. SPC Taylor testified the feces had fuzzy material growing on them. While there were fewer feces in the camper than RV, there was a consistently bad smell. He determined the cats were in distress due to no food or water, poor sanitation, and overpopulation.
113. When asked if the situation as he found it could be rectified, he said the distress had been permitted to continue from May 4, 2017 and that there was ample time between February 27 until the May 11 warrant to rectify the situation. As of the day of the warrant execution, there was no ability to rectify and the RV was beyond repair. SPC Taylor testified that based on the Appellant's past behaviour and lack of communication, he thought the cats if returned to the Appellant would be returned to the same circumstances from which they were seized.

² "Enrichments" are defined in the *Guidelines for Standards of Care in Animal Shelters*. Enrichments are a process for improving the environment of confined animals within the context of their behavioural needs, such as chewing for dogs or scratching for cats, which allow an animal more control over their environment.

114. In response to the Appellant's questions, SPC Taylor accepted SPC Kokoska's calculations regarding minimum space per cat. SPC Taylor repeated the factors accounting for the cats' distress and said the hope was that the Appellant would have addressed the issue of population reduction and increase cleanliness and ventilation and temperature regulation from February 2017.
115. SPC Taylor testified that on May 4, 2017 when he was 30 feet from the trailer, he was overwhelmed by the smell from that distance. It proved to him there was no adequate ventilation in the trailer. In his opinion, the RV was not cleanable. SPC Taylor said he understood from the Appellant's sister that the intent of spray painting the windows was to stop neighbours from prying, not to regulate temperature.
116. When the Appellant asked SPC Taylor who spray painted the window, I stopped his questions (I had provided plenty of warning) and gave the Appellant only three more questions. Those questions were - did SPC Taylor call the Appellant at the time of seizure, (SPC Taylor had already testified he could not get a hold of the Appellant), did SPC Taylor recall the colour of the ammonia strip (response: no he did not), and could the fuzzy material on the feces be wood shavings (response: no the fuzzy material was not consistent with wood shavings but in any event the feces in the cupboard were absent of kitty litter).

XII. The Appellant's witnesses

SPC Ken Kokoska

117. SPC Kokoska is referred to as the Appellant's witness, because he was summonsed at the Appellant's request, which summons request I granted in my June 28, 2017 ruling. SPC Kokoska did not attend the May 11, 2017 removal, but did have previous interactions with the Appellant.
118. SPC Kokoska testified he had met the Appellant several times in the past, beginning with a call on December 8, 2016 at Oak Street in Kamloops, where the Appellant had been evicted. The Society ended up receiving some cats and posted a notice on the Appellant's camper. The Appellant met with SPC Kokoska at the Kamloops SPCA on December 12, 2016 and explained that he would be transitioning his home. The SPC testified that he expressed concern over the number of cats in the Appellant's care and gave the Appellant a copy of the Code of Practice about space, ventilation and confinement. The cats the Society received at that time were removed from the Appellant's care and placed with the Society as a third-party surrender.
119. SPC Kokoska said the Society issued notices on December 12, 2016 and February 27, 2017 (at the Chase location) noting issues of concern. SPC Kokoska explained he would check off items on a notice, if he had observed them himself, that related to the complaint he was investigating. The check mark was to draw the Appellant's attention to actual issues of current or potential concern.

120. SPC Kokoska testified that he attended the Appellant's camper on February 23, 2017 and measured the camper and the trailer. He noted that cat health and disease was always a concern with large populations of cats.
121. At this point, the Appellant objected to the condition of the Society's own facilities, which SPC Kokoska said were part of a plan to upgrade. I reminded the Appellant that it was conditions at his own property that were of interest to me, not the conditions at the Society's facility.
122. SPC Kokoska testified that he had had a conversation with the Appellant about availability of clean water being important and issues of dehydration and potential toxicity of algae infested water. SPC Kokoska said he had not seen inside the Appellant's trailers at this point as he was not authorized to enter the dwelling house and he had no concerns of cats being in critical distress. SPC Kokoska stated that entering a vehicle used as a dwelling house would require a warrant.
123. SPC Kokoska posted a notice in December 2016 regarding a lack of sufficient space, shelter, protection from heat and cold, ventilation, and necessary vet care, as well as suitable food and clean water, and maintaining adequate body weights. In February 2017, SPC Kokoska testified that his concerns regarding sufficient space caused him to perform outside measurements of the campers and using the guidelines in the Code, he calculated one cat per 1.5 square meters was equal to one cat per 16.14 square feet, although another guideline would work out to one cat per 11 square feet, which is the number he used (as it was more beneficial to the Appellant). SPC Kokoska testified that he calculated the camper at 120 square feet which could hold 11 cats, and the RV at 208 square feet which could hold 18.9 cats. These numbers were the guidelines for the well-being of cats if their other care needs were met and if the housing included improvements and enrichments and had a temperature holding ability. SPC Kokoska said the guidelines and his intent were to move toward positive welfare for the cats.
124. He acknowledged that group housing could include vertical enrichment or levels but it was a combination of space and quality of space, and that cat colonies required additional space of 1.7 square meters per cat. He still used the smaller number for the benefit of the Appellant.
125. SPC Kokoska said the Appellant was cooperative in the investigation. After much debate about the SPC's calculations, SPC Kokoska testified that he double checked his math at the time but did not have his numbers in front of him. The Appellant asked if the calculation of 1.5 square meters could be 4.92 square feet per cat but SPC Kokoska did not know.
126. SPC Kokoska testified there were different components of distress including space available, ventilation, ammonia build-up, temperature and the availability of additional ventilation. As an example, he said, if the Society enters a space and their eyes burn due to the smell of ammonia, it would be worse for the cats as their noses are more sensitive.

127. SPC Kokoska testified that 1 ppm of ammonia would impact an animal and 300 ppm is lethal. SPC Kokoska agreed he did not see rotting garbage in the trailer but did see mould on the roof in February, but could not say for sure that it was mould.
128. SPC Kokoska testified he did see photographs from the Appellant showing lots of food in a chest and full bags of food, but SPC Kokoska's concerns was the Appellant's own resources. SPC Kokoska testified his concerns were for the Appellant's ability to get ongoing care such as vaccines for the cats, and getting the cats neutered so they didn't continue to multiply. SPC Kokoska said he relied on information provided by the Appellant and the Appellant's sister. He was concerned it was the Appellant's intent to breed cats since only 5 were neutered. There was a potential for a litter at any opportunity.
129. SPC Kokoska confirmed that in February 2017 his concerns were that the cats were confined without proper ventilation and proper space, that the conditions were not clean and sanitary and that there was no opportunity for the cats to withdraw.
130. On February 27, 2017, SPC Kokoska gave the Appellant 21 days for compliance. SPC Kokoska testified the Appellant may have had the best intentions but became overwhelmed with the numbers of cats and if 50 cats were returned to him, the care would not be adequate. He offered to neuter some cats for free but the Appellant declined.
131. In response to the Society's questions, SPC Kokoska testified that while the cats were in compassionate care beginning in December 2016, the Society has no legal right to refuse their return. When he attended the Appellant's property on February 23, 2017, he measured the trailers and discussed his concerns with a veterinarian. He personally delivered the notice on February 27, 2017 and has not attended since.
132. In response to my questions, SPC Kokoska confirmed that he measured the trailers from the outside at 25.2 feet by 7 feet 9 inches, and 14.5 feet by 8 feet.

M.B.

133. M.B. is a cat owner, called by the Appellant. She testified that she reviewed some of the videos from the Appellant and from the Society.
134. She testified that the cats were playful, cuddly, sweet, and well-loved, and not deprived of food within a 24-hour period. Every time she and the Appellant were there, both of them would feed the cats. The Appellant had large bulk bags of food which could be observed in the Society's photographs.
135. The photographs during the seizure showed scared cats which concerned her. She said the cats were restrained. In the Appellant's videos, the cats look like they are having a good time. And she observed their feeding habits and concluded the cats liked food.
136. She testified that the Appellant did clean his premises once every 24 hours and she watched him occasionally.

137. She observed that the males and females were separated and were only together temporarily. She testified the cats had escaped in the past as the Appellant's roommate had let them out.
138. She believes the Appellant is extremely caring and it is not his intent to do anything to the animals. He checked for medical issues and had ear and dewormer available. He is a wonderful person. Last summer he transported one of his cats to the veterinarian for a c-section and all the kittens survived but all would have died if he did not take the cat to the veterinarian for the c-section.
139. In response to my questions, M.B. testified she had never been in the RV or camper with the cats although she did go there since the seizure as the Appellant's sister had thrown all his stuff into the trailer. The litterbox still there smelled of cat urine but not too bad. Only the camper was there but she did not go inside and has never been inside the RV as she has difficulty walking.

R.T.

140. R.T. has known the Appellant for 3.5 years and worked with him.
141. The camper rests on a truck owned by R.T. and the Appellant uses it under contract.
142. R.T. testified that the Appellant took a cat to the vet as R.T. paid the bill and the Appellant paid him back. R.T. testified he would help with future vet bills.
143. R.T. testified that the Appellant buys cat food twice a month or more and gets heavy bags of food and litter to make sure the cats are fine.
144. R.T. testified that the Appellant would occasionally stay overnight (one-night maximum) at R.T.'s house because he needs to get back to the cats. The Appellant is never gone more than 24 hours as RT drives him back and is proud of the Appellant for taking on all these cats – strays -- he feeds out of pocket.
145. R.T. testified he has observed the trailer and has no concerns as the cats are well taken care of and he saw the top hatch open on one trailer about 6-8 months ago.
146. In response to my questions, R.T. testified that he had never stepped inside the Appellant's trailer as he is unable to physically; he only looked in and all the cats looked happy to him.

Dr. Mike Politis

147. Dr. Politis testified that he received his veterinary degree in 1994 from University of Saskatchewan and has a PhD in neuroscience. He knows the Appellant through working with the Appellant's mother and socially.

148. Dr. Politis has expertise with cat colonies and individually, both feral and domestic. His opinion, based on his visit to the Appellant's cat colony four years ago in Kamloops, was that the cats were well cared for and that their wants, needs and biological needs were looked after. He testified that "everything was done right and nothing was done wrong." He recalled it was a colony of 22 cats or so, and he saw no problems with moms nursing kittens, and sharing nursing tasks was normal behaviour.
149. Dr. Politis testified that coccidia had a 1-week incubation period, that a dehydrated cat needs fluid orally or subcutaneously and that separating a kitten from its mom is stressful. Cats experience stress at a change of location and a stressed cat is prone to disease. A stranger entering a premise could be stressful to a cat. They might hide and appear anxious and that can result in fighting. He testified that cats mimic fighting in play and can be vocal in play.
150. Dr. Politis testified that an important factor in good health in cats is adequate and sufficient nutrition, water, shelter and care. Water and food are necessary for survival. Cats lose up to 7 per cent of their water per day. Dr. Politis testified that the cat food he has seen the Appellant obtain is, in his opinion, the wisest food choice for the cats.
151. Dr. Politis testified that if denied adequate food or water, cats would lose their vitality. Cats could remain BAR (bright alert and responsive) at losing 3 per cent of their water but would be lethargic at 10 per cent. Dehydration would compromise their circulation. Inadequate food could compromise liver function. He testified that cats can be thin and bony with adequate food.
152. Dr. Politis testified that he reviewed the Appellant's photographs on "dropbox" and he saw cats that appear healthy, happy, bright, alert and responsive. Dr. Politis expressed concern about the Society's shelter being too stressful for the cats which could endanger their lives. He was concerned about stress and exposure to disease.
153. Dr. Politis testified that his opinion was that, after viewing the photos and video and speaking with the Appellant, the Appellant provided "more than adequate" care and food and water and shelter and caring. Dr. Politis testified that cats could be underweight for many reasons including cancer that can be picked up in the wild. Cats can weigh between 4 and 25 pounds.
154. Dr. Politis testified that if the cats were returned to the Appellant, he could absolutely provide adequate care as he has the "knowledge and heart" to care for all the cats. He stated his professional judgment was that the cats are well cared for.
155. Dr. Politis testified that cats require a standard of care including having their food and water checked and refilled once every 24-hours and that is sufficient to maintain their care.
156. In response to the Society's questions, Dr. Politis acknowledged that he had not attended the camper or RV, had not attended the new property, and does not live in the community.

While he reviewed the Appellant's photographs and videos, he did not see the Society's photographs or video from May 11, 2017.

157. He said he did not see any photos showing urine and feces on the ground but that sometimes cats don't go to the bathroom where we would like them to go.
158. In response to my questions, Dr. Politis testified that in a 14.5 foot by 8 foot camper a person could keep 10-15 cats, and in a space 25.5 foot by 7 foot, a person could keep 20 – 25 cats. It is acceptable to keep cats in a camper if it had adequate ventilation and temperature controls.
159. In response to further questions from the Appellant, Dr. Politis testified that if cats were familial and of a certain size, you could keep more cats in that space. Depending on the cat and facility, you need 2-10 feet of space for withdrawal.
160. Dr. Politis maintained that "for the sake of the animals", the Appellant was the best caretaker for the cats. Dr. Politis said I could "trust" his medical opinion that the Appellant had the "moral fibre" and "dedication" to these "creatures," in his professional opinion. He said the cats "would be best in [the Appellant's] care."

The Appellant

161. The Appellant testified that he had difficulty accessing information and that he wanted to know the identification of each of his cats and wanted to learn and discuss the individual needs of each of his cats and it was difficult to differentiate between his cats based on the descriptions provided by the Society. He did finally receive the information but he was concerned that his cats in the Society's custody showed signs of distress and fear and concerned that the Society removing the mother cat had an impact on the health of the kittens especially "if they were already sick", he said, adding "if that was the case". The Appellant said the Society was confused about which cats were the moms and separated nursing moms from their babies. The Appellant said he saw no health concerns with his cats except for occasional matting developed when the cats briefly escaped and got burrs in their coats. This escape was caused by vandals.
162. The Appellant said that he had a background in computers and psychology, and that the complaints to the Society about him started on social media. He stated that he wants rural property which would better suit the cats and testified he would run it as a no-kill sanctuary with no fees charged. He said that his friends would run it with him and only cats that were suffering would be euthanized. Friends would pick up food and would financially support him. Dr. Politis, he said, would spay and neuter all the cats free of charge.
163. The Appellant testified that the orange cat escaped, had been the smartest cat in his colony and had been "born between my legs" while the Appellant watched a movie and was unaware a cat was giving birth in his lap. The Appellant testified that his sister located the cat, lied to the Society in an attempt to make things right with the Appellant, and provided that cat to foster care, but that it is still his cat.

164. The Appellant said social media reports advised people to come to his property and take their own cats back but the ITO concluded none of his cats were stolen and this was confirmed by the act of the Society giving the cats back to him.
165. The Appellant directed me to a folder entitled “Amended Folder” containing many videos. In videos, one could see the Appellant, he said, spreading food made semi soft as a treat. He noted the cats showed no aggression.
166. The Appellant testified his intent was not to have kittens. He kept males and females separate except for a few hours when he would play with them and check their claws, teeth and administer de-wormer every few months plus weigh the cats. He testified he used wood pellet cat litter due to low cost and nicer smell.
167. The Appellant testified he never left his cats more than 24 hours without food and water, and he topped up the water once a day or more as it would get dirty with cat fur or toys. Otherwise, the bowl of water was consumed to the bottom. He also said that he would fill the bowl with water and then leave and his schedule for refilling water would depend on the day but he would refill water once or twice a day.
168. The Appellant testified that he would either provide the cats with their entire allotment of food once a day or half their allotment of food twice a day. He would give the cats water after they ate as he did not have any extra bowls. The cats would consume their food voraciously. He would sometimes hydrate the cats by adding water to their food.
169. The Appellant testified that the recommended daily intake of food for a cat 4-12 pounds is one quarter to one cup of food a day so he calculated the higher end of the scale and spread out their food, which he measured out at 50 cups per day, and sometimes there was food left over.
170. The Appellant testified that he followed the recommended daily water intake for each cat and according to his calculations that equalled a minimum of 8 litres of water each time he watered his cats. At each of his two campers, he would fill 2-3 bowls, and he did this twice a day so that equalled 32 litres of water each day for his cats. He used a large bowl and a turkey roaster pan for food and water.
171. On the day of the seizure, the Appellant said he was rushing to get to Kamloops to buy cat food and so did not top up his cats’ food that morning when he left at about 8:30 am. He testified he “tried” to give them water in the morning. He said the cats got food and water at 11 pm the night before and if there was no food and water at the seizure it was because the cats ate and drank it all – all 8 litres of water.
172. The Appellant testified he had now an agreement to rent a rural property from a cat lover who said letting the cats out in his house won’t be a problem. The Appellant testified his cats were inside cats though he had previously had an outside shelter for his cats, and

currently in his trailer there is an outside exit near the floor to allow cats into the box of his truck, but that is bungeed shut.

173. The Appellant testified he has been living at the new place since the end of May 2017 and he signed a rental agreement. He reiterated that he will provide the cats with their daily intake of food and water once every 24 hours. He testified that the Society miscalculated the amount of space needed by his cats, and 1.5 square meters was actually 5.76 feet using simple math like in grade school.
174. He testified that his new property was in a very large house. He had two bedrooms upstairs which had measurements comparable to his trailers - enough room he said to house 60 adult cats. He said he would separate cats by gender and has another 12 x 12 space in the basement and could use this for mother cats and babies and that the 12 x 12 foot space would provide room for 25 cats using the calculation of 5.76 feet per cat.
175. The Appellant said ventilation at the new place was like any house, as was temperature; there is a heat source and air conditioning. Air would be exchanged in accordance with the Standard of Practise. He noted there was a discrepancy in the Code. He also noted each bedroom had a window and that he would install an outside kennel. He testified that the 12 x 12 space was actually an outdoor patio that would need to be renovated to allow for air conditioning. He said he has the ability to add more space with only 1-2 days' work.
176. The Appellant testified that his current landlord does not want the location of the property disclosed though the Appellant would disclose it if it meant getting his cats back.
177. The Appellant testified he is not disinclined to get his cats neutered but he does not want less than a good veterinarian to perform the operations; he wants someone with a good repertoire.
178. When I asked if he could foresee getting some but not all of his cats back, should that be my decision, he said he would be distraught and he would have a hard time differentiating between affectionate and non-affectionate cats.
179. In response to Society's questions, the Appellant confirmed he took the time to review his cats' teeth and claws and weights but has no records of such, and has no veterinary records as nothing has required immediate veterinary care. He did not know when his last vet check was but suggested the Society should know as it was at their facility.
180. The Appellant testified that his plan was to have Dr. Politis do his neuters for population control and he would keep his cats apart, by gender, except for times when the cats were fed or their premises cleaned. He said his cats got pregnant when they were let out during some vandalism. He agreed it was his responsibility as an owner to keep his animals safe from the interference of others and he said he could have installed locks on his trailer doors but did not and there was no point doing it after the seizure. When he was away, he would put weighted chains on the door to deter vandals. The Appellant testified that he has had several offers of places to live but none of those are available since the seizure due to some

fault of the Society. His truck needs new tires to be able to move, and he has never driven with the cats inside.

181. The Appellant testified his friends drive him to town for work or supplies/cat food or he infrequently hitchhikes, but is never gone more than 24 hours because of the cats. The day of the seizure, he got a phone call about the seizure so he did not return to this camper that evening because he was investigating how to get his animals back. He said he wished he had gone back as when he ultimately went back, he found the dead kittens.
182. The Appellant repeated his calculation of daily food and water requirements for his cats, and said he fed his cats four times a day. He provides all his cats access to food as that ensured each got its minimum one-quarter cup of food.
183. He said he is not required to control the temperature in his trailer until it reaches 27 degrees Celsius and he has a heater in both his campers, as you can see by the extension cords he can plug into the house. He has a generator. The windows, he said, were closed in the RV as the cats could easily shred the wire mesh windows and escape. He testified that the main window was sealed as the cats have torn the mesh and both camper units have a roof vent plus the tunnel in the camper trailer which has a higher degree of fresh air. He recalled that some windows may have been partially opened.
184. The Appellant acknowledged the four areas of concern in the Society's notices and said he complied with the code on heat and temperature.
185. The Appellant testified he was going to change the drainage and roof on the RV and he was preparing to renovate the floor and ceiling and had purchased tile and grout. In response to the Notice's 21 days to improve the space he said he already had sufficient space "thank you very much." When asked why repairs were not done in May, the Appellant said insulation had been removed on the roof but you "don't snap your fingers" and be finished; he was taking his time to finish as he already met the guide.
186. When asked if anything concerned him in his review of Society photos, he said the feces with mould did not concern him as the mould could have been mildew and that he cleans daily so the cat feces inside the cupboards and behind the tote box could have happened when the cats got scared - other than those feces in the corners and in the cupboards, and the feces in the litterbox, no feces were present. He agrees "to a point" that he should have looked in the cupboards but he keeps them closed. The cats did not go in the cupboards on a regular basis.
187. When asked if it was okay to let the cats go without water throughout the day the Appellant testified that it would only be unacceptable if his cats were denied their recommended daily allowance of water within a 24-hour period. It is not an issue for a few hours.
188. The Appellant testified that the new property had running water. He said it was a "loaded question" about what he would do with his cats if they were returned but if there was no ban on him owing cats, he would make suitable accommodations. He had a plan for his 60,

now approximately 80 cats regarding space and food. He had a budget per month for cat food purchased in bulk for “economical pricing” of \$6 per cat per month. He felt his vet bills might increase if done outside regular hours at an emergency clinic but he often gets vet care at no charge. He has not had a veterinarian in to view his new living arrangement but he has consulted the standards of care, and his witness M.B. who used to work at a hospital has looked at his living arrangement.

189. The Appellant testified that yes, he would apply the same standard as he did in the campers as he was meeting the standard of care and the standards had not been subject to his input. He testified that that was a loaded question. When asked if his camper property (from where the cats were seized) was adequate to house 60 cats, he said according to the standards of care, yes, the Society just came on a bad day, “one day in a multitude.”
190. In response to my questions, when asked to detail repairs made between the Society’s February 2017 and May 2017 visits, the Appellant said he removed part of the roof that had minor water damage including wet wood. When asked about the living conditions he testified that he focused more on food, kibble and hydration by soaking the kibble. Looking at the Society’s order, he said the standard of care is met. Regarding the Code of Cattery, he said that Code requires cats not to be kept in an enclosed space without ventilation but that air conditioning is not required until the temperature reaches 27 degrees.
191. The Appellant then added that if the cats were returned they would be in a situation free from distress and that they are currently in distress now while with the Society. In a cat colony, smell is expected so it would be better for him to be in a rural area with his cats so neighbours would not be offended by the smell.
192. The Appellant testified that the ammonia test reading was wrong and the strip was green not blue - “it’s green” he said and he would argue with the person who said otherwise. He said that anyone who testifies that the strips were otherwise is hearsay. He testified that he never detected a measure of distress in his cats that “was overly concerning to me.” He said it was better for the cats’ health to be in a cat colony. Regarding the newly born kittens, the Appellant testified that he and his cats were deeply attached to each other and that he would “love to be the first person the kittens saw.”

XIII. Submissions

The Appellant’s Position

193. The Appellant’s position is that the hearing was conducted in an unfair manner and he was not afforded an opportunity to go through all his evidence. The Appellant said it should be obvious going through his video evidence how well his cats were treated from October 2016 to May 2017. There were no behaviour issues apparent in his videos like aggression and the cats were simply alarmed by strangers. The cats vocalized as part of their play, they are not fighting, and the witness testimony about this was only what they thought they heard. The Appellant said the Society was not interested in receiving veterinary reports and

that the kitten with coccidia was, according to gestation time, highly likely to have acquired that parasite while in the shelter (under the Society's care) as the shelter is not clean. The stillborn death was not abnormal but instead was due to the distress the cats experienced being moved from the camper. The Appellant is the only one the cats see everyday of their lives and they have a better time being with the Appellant. The Appellant said he wants to raise the kittens and would comply with conditions and change quickly or would find a new home for the kittens.

The Society's Position

194. The Society submits that much is made of the available space but that is only for a temporary situation and the standard for regular housing is higher at 18 square feet per cat, as well as a requirement for continuous access to food and water which is free from contamination. The Appellant failed to provide continuous access to food and water. The Society submits that the Appellant's argumentative defense made no attempt to provide a proper explanation of the new property and there were no photos or measurements and no witness and the Society could not test the veracity of the late submission and had no chance to review the tenancy agreement. The Appellant said the property met the standard as he reviewed it and the Society had no doubt the cats would end up in the same situation as they were seized from.

XIV. Analysis and decision

Assessment of witness evidence

195. I will at the outset outline my assessment of the evidence of witnesses.
196. I accept the evidence of both SPC Kokoska's testimony and Taylor's. Their evidence was straightforward, consistent with other documented evidence, and not shaken under cross examination. On the same basis, I accept Dr. Royston's testimony and report.
197. I also accept and place particular emphasis on the testimony of the Appellant's sister, K.L., who, I should add, both sides wanted called as a witness. Although she could not precisely recall all dates, and did not recall every detail (for example, whose shoes appeared by the door, which detail is unimportant), I found credible and persuasive her testimony as it relates to the conditions the cats lived in, the lack of food and water (which she observed more than once), the absence of the Appellant (and length of absence), the smell emanating from the trailer and the escape of the cats. I found it particularly compelling to hear her testimony that the conditions inside the trailers was replicated inside the Appellant's bedroom inside her home with her testimony of feces covering all surfaces including the Appellant's clothes.
198. The testimony of the Appellant's witnesses R.T. and M.B. was accepted, but only of limited assistance given the fact they had not been inside the Appellant's trailers and given their testimony was limited to particular time periods.

199. With regard to the evidence of Dr. Politis, I accept his personal observations from four years ago. However, I am unable to accept his “professional opinion” that the Appellant is the best person to take care of the animals given his admission that he had not seen all the photographs and video from the May 11, 2017 seizure, and had not seen the cats which were seized as a group, nor the place from where they were seized. That he would maintain that unqualified opinion throughout his evidence, despite his admission that he had not seen all the evidence or the cats’ living situation, demonstrated advocacy rather than objectivity. Where, as here, an asserted professional judgment is offered in unqualified terms without even acknowledging its limitations or contrary evidence, that judgment deserves little weight, and I have treated it accordingly.
200. With regard to the Appellant’s testimony, I accept that the Appellant believes everything he told me. While I do not think there was any intent to mislead me, I find that the Appellant’s subjective view of the living situation of his cats had little bearing to objective reality. The Appellant reviewed the code and determined that he met the code based on his own miscalculation of space, yet failed to note that the space was a minimum and there were corollary factors necessary to meet the standard such as the presence of food, water, enrichments, litterbox accessibility, and numbers.

Was the removal justified?

201. My first task is to determine whether the Society justifiably formed the opinion that the farm animals were in distress when they were removed.
202. “Distress” in s. 1(2) of the *PCAA*, a protective statute, is a specialized term. The *PCAA* defines “distress” as follows:
- 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.
203. The criteria listed in s. 1(2) – any one of which is sufficient to satisfy the definition – constitute “distress.” The first three factors reflect serious risk factors that foreseeably give rise to suffering and harm if protective action is not taken. While they must not be trivialized in their application, they also do not require the Society to wait until the worst happens.
204. In my view, the removal of the cats and kittens was justified as the animals were in distress.
205. I reviewed videos taken by both the Appellant and the Society. The Appellant states that his videos depict happy healthy cats eating and playing in a suitable environment. Many of

these videos are short, only seconds long. The Society, on the other hand, produced a video of the seizure, including disturbing images of cat feces, overflowing litter boxes and hunks of cat feces inside the trailer's cupboards, with images of a dark wet-looking substance which the two SPCs testified was mould, and which I conclude was probably mould but in any event, was a substance that did not belong in the cats' environment, much like the abundant feces. I find that the cats were kept in conditions that were unsanitary pursuant to s. 1(2)(a.1) of the *PCAA*.

206. This isn't just about overflowing litter boxes. The feces in cupboards that are host to some sort of growing organism present a real risk to the cats' health, as was evidenced by Dr. Royston who said fecal matter in food (which was on the floor, when it was present at all) could cause illness in the cats.
207. The Appellant's sister described a horrible smell emanating from the trailers, which is confirmed by SPC Taylor, who testified that he could smell the trailer from 30 feet. Dr. Royston testified that the smell was disgusting. Both these witnesses, whose evidence I accept, said it adversely affected their breathing and eyes. SPC Taylor observed the ammonia reading being 20 ppm which I accept. I pause to note that the Appellant argued that the strip was green not blue, which was confirmed by one witness. However, the photograph of the strip in Exhibit 9, Tab 27 shows an orange strip prior to entering the space and a green strip after entering the space, with the green colour denoting the presence of ammonia. In short, the Appellant misunderstands what the colour green means. I find that the living conditions were unsanitary for this reason as well, which also supports a finding that the animals were deprived of adequate ventilation.
208. The air quality was extremely poor and made worse because of a lack of air movement. SPC Taylor saw no mechanical means of forcing air movement, other than a ceiling vent which was inadequate to exchange the air. Dr. Royston agreed there was poor ventilation as did the Appellant's sister. The Appellant himself testified that he could not open windows for fear of his cats escaping. I find that the cats were in distress as they were deprived of adequate ventilation under s. 1(2)(a) of the *PCAA*.
209. I also find that the cats were also not protected from excessive heat and cold, contrary to s. 1(2)(a.2) of the *PCAA*. Although the trailer was plugged in during the winter, there was no evidence that the trailers were air conditioned or that both trailers could be cooled as the heat increased with the approaching summer. The word "protect" in the definition means I do not find that I need to wait until the cats are baking in the heat of the trailer to determine that they are in distress. It is enough for me to know that the Appellant offered no insight into the outside temperatures and their effect on his cats, no insight into the Code when it came to temperatures, and no evidence that should it get too warm, he would be able to cool the cats' environment.
210. The space available for the cats was also woefully inadequate, and contrary to s. 1(2)(a) of the *PCAA*, The Canadian standards of care in animal shelters describes 18 square feet per cat as the minimum space required, and the Appellant fell far from meeting this goal. However, that was not the entire definition of adequate housing in the Standard. Planned

group housing, it states, includes multiple feeding stations, multiple resting areas, adequate space for urination and defecations, and the ability to maintain social distances. It requires perches and hiding places, sufficient resources such as food, water, bedding, toys and litter boxes to prevent competition and resource guarding and to permit access. Further, and importantly, the standards say that random grouping in shelters is an unacceptable practise.

211. The Appellant did not provide adequate space for his cats. Even if the issue of inadequate food and water was removed (I deal with food and water next) and even if the issue of the presence of urine and feces everywhere was eliminated (it wasn't), I would still be tasked with determining if the cats had adequate space under s. 1(2)(a) of the *PCAA*.
212. I find that the cats did not have adequate space in that there was no evidence the cats could retreat from each other, and the only hiding space appears to be filled with mouldy feces.
213. There was no adequate space for urination and defecation, no toys present, no enrichment, no multiple resting areas that were not already covered with cats, only three feeding stations (which I do not find meet the definition of "multiple" for 25 or more cats), no "multiple" water stations given that the food stations double as water stations, no ability for these cats to maintain any social distance, no ability to avoid fights, and a total lack of adequate bedding. I find these cats were in distress due to a lack of adequate living space.
214. There was also inadequate food for these cats, contrary to s. 1(2)(a). In addition to the kittens found being emaciated and dehydrated, there were periods of time when no food was present. I do not accept the Appellant's evidence that the cats received the recommended daily requirement once in each 24-hour period. The Appellant has absolutely no way of knowing which cat ate what when he puts down one very large amount of food and then leaves. Worse, when that food ran out and the Appellant was away, the cats did not get fed. In fact, the Appellant's own testimony, despite showing photographs of large bags of food, was that the day of the seizure, he was out of food and was rushing to get food and did not feed the cats before he left. I do not find it necessary that the cats be starving to find these cats, in the particular circumstances of this case, were nevertheless denied food.
215. I find that there was inadequate water for the cats, also contrary to s. 1(2)(a). I heard the Appellant's evidence that the cats got 8 litres of water twice a day, though sometimes delivered once a day, per each trailer, for a total payload of 32 litres of water daily for the cats combined, as per what he quoted as the recommended daily standards. I do not believe the Appellant in his calculation about the water. The evidence before me is that the cats only got watered after they ate as the same bowls were used, that the cats did not always finish their food, that the water trays combined could not hold 8 litres, that there was no water present at all on several occasions (per the sister and SPC Taylor and Dr. Royston), that one cat was licking urine from the floor, and that the kittens had concentrated urine due to dehydration according to Dr. Royston.
216. I find that the cats were denied veterinary treatment, also contrary to s. 1(2)(a). There was no evidence that most of the cats received regular care. One kitten was described as dying

of a broken back on a kitchen table before the Appellant even called a veterinarian which was too late. The new born kittens were denied veterinary care as they were dehydrated and emaciated and according to Dr. Royston would not likely live another day without intervention. I do not accept the Appellant's accusation that the veterinarian should not have transported the kittens but should instead have given fluids. I am also mindful that a c-section was made available by the Appellant to one cat, but the totality of the other evidence leads me to accept that veterinary care would be a rare thing for these cats to receive.

217. As noted in the definition, an animal deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment, being kept in conditions that are unsanitary, or not being protected from excessive heat or cold is in "distress" – this protective definition does not require the Society to wait for injury, suffering and medical conditions and to develop as a result. Not surprisingly, however, the presence of more than one of the definitions of distress in this case also reflect the cats' neglect, contrary to s. 1(2)(c) of the *PCAA* - they were neglected by the Appellant's absences without arranging for their care along with all the factors listed above. It is not difficult to conclude that, in the circumstances in which the Society found them, all of the cats were suffering even if observable medical conditions had not yet materialized en masse.
218. I accept the Appellant's sister's testimony over the Appellant's own testimony regarding the length of his absences. I find the sister's accounts of knowing when her brother was home, of feeding and watering the cats herself, and of being aware of the duration of his absences, to be believable and I accept them, especially as her evidence was supported by the conditions (no food, no water, excessive urine and feces present) found when the Society executed the warrant.
219. I find that the Society not only acted appropriately in seizing these animals, but to have done otherwise would have been irresponsible, causing the cats continued distress. It was frankly haunting to witness the images of these cats scrambling to try to find places to sit and stare out the windows, knowing how hungry and thirsty they were. The Appellant kept these cats in an untenable situation of continuing distress.
220. As made clear in *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at paras. 37-38, section 11 of the *PCAA* allows the Society to consider the circumstances as a whole. It does not require the Society always to give a person a "second chance" or numerous "second chances".
221. In this case, the Society was right to remove the cats when it did. The Appellant had been given many chances and a recent 21-day period to improve his cats' living conditions. He did not make improvements.
222. I am persuaded by the testimony of both the sister and SPC Taylor that the conditions were extremely bad with one trailer not being salvageable; and especially by SPC Taylor's testimony that there was nothing that could have been done in that moment to relieve the distress these cats were suffering from.

Return of the cats and kittens

223. Having determined that the seizure of the cats and kittens was justified, I now consider the return of these animals.

224. The *PCAA* describes the duties of persons responsible for animals:

9.1 (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.

(2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.

225. 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.

226. 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.

227. I recognize that the Appellant loves his cats and kittens. He considers them family. While I am moved by his love for his cats that love, unfortunately, is not supported by an understanding of their needs and requirements. nor is it supported by an ability to provide those needs. Despite even the greatest amount of love a person could have for their animals, as I suspect this Appellant has for his cats, such love cannot negate the need for care and for meeting a minimum set of requirements when it comes to food, water, shelter and care.

228. I did not hear testimony about any substantial changes made by the Appellant to his premises although he acknowledged he needed to make renovations. He testified that one doesn't snap your fingers to get renovations done. I note, too, that when he described his new premises he said they needed some renovations of the additional area and it would only take a few days (but has not yet been done).

229. I also recognize that by his own estimation, the Appellant provided the best care for his cats and met the minimum standards required of the shelter guidelines. I also understand that in his mind, the Appellant fed and watered his cats to meet their minimum daily requirements and that he never left his cats alone for more than 24 hours.

230. However, I find that the Appellant is incorrect in all those details. I am persuaded that the Appellant did not provide adequate food in each 24-hour period, and had no way of monitoring which cat ate what and certainly had no way of monitoring the kittens which were starving to the point of being near death. He failed to provide a continual source of clean drinking water stating that as long as he delivered the minimum required in any 24-hour period, he had met some minimum standard. The standard says that fresh clean water must be accessible at all times. This did not happen and I have no confidence it would happen in the future.
231. Rather than accepting his limitations and his complete failure to meet his cats' basic needs, the Appellant has his own vision of some utopia where he and his animals co-exist in a colony where he provides all their basic needs, and one in which he himself becomes the parent, wanting to be the first person his newborn kittens see.
232. I do not have any confidence that the Appellant would be able to grasp the reality of his situation and the reality of the cats' needs and then be able to provide them. I do not have any confidence that the Appellant understands where his many shortcomings lie when it comes to the care of his cats. The fact that he testified that he was currently meeting the standards when I find he had failed to meet almost every aspect of the standard convince me that this Appellant with these cats would be unable to change.
233. I did hear the Appellant say he would accept any condition I impose should he get his cats back but he does not even have the most basic understanding of their needs nor does he have an intent, as I see it, to limit his colony.
234. In all the circumstances of this case, there is no possibility of returning any or all of the animals.
235. The Appellant provided information that his new place will be like a "no kill" sanctuary and in response to my request for information about the inclusion of the newly borne kittens, he provided information that his new home can house 150 cats. I have no confidence that the Appellant will take any steps to decrease his colony's numbers and I find a very real and likely probability that he will increase those numbers with the same dismal level of care resulting in those cats living in distress. I am especially convinced of an increase in population as the Appellant testified he keeps his cats separated by gender except for when he is feeding or cleaning, and does not seem to grasp that a cat can become pregnant during feeding and cleaning times.
236. The Appellant has yet to take advantage of any offer to have his animals neutered and declined the Society's offer of no cost neutering due to his belief that the care would be substandard.
237. I do not find that the Appellant has a grasp on the reality of the unsanitary situation the cats lived in and thus would not recognize when he again puts his cats in that situation. The Appellant seems to think that the problem with the smell, described as "gross" by Dr. Royston, was a problem because neighbours smelled it and complained, and that if he

moved his colony to a rural area, the problem would disappear. I find the Appellant is mistaken about this, and moving his colony would only move the situation of distress to a new address.

238. And although the Appellant claims that the living condition for the cats will be better once he moves them into a house in a rural community, I am not convinced he will improve the living conditions inside a house versus a trailer, as his sister describes feces all over the floor, the Appellant's clothes, and everywhere in his bedroom which was located inside of her house.
239. I do not find that the Appellant understands the minimum requirements as described in the Standards which were discussed at the hearing. Instead he testified several times about how he met those Standards, which leads me to believe he will continue to put his cats in harm's way, believing that he is doing otherwise.
240. I do not find that the Appellant will adequately feed or water or provide shelter for his cats and I am convinced those cats and kittens would be again in a situation of distress and will suffer due to his neglect.
241. The Appellant had been given many opportunities to address the cats' distress due to overcrowding and poor living conditions, yet he failed to make any meaningful change. I have no confidence he is able to make these changes as it is clear to me that he does not believe he actually needs to change.

XI. ORDER

242. 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).

243. It is my order, pursuant to section 20.6(b) of the *PCAA*, that the Society be permitted in the Society's discretion, to destroy, sell or otherwise dispose of all of the cats and kittens including those born before or after the seizure or any kittens born of the seized cats which are currently pregnant. For clarity, I will not require the Society to return any of the cats or kittens at issue on this appeal.

Dated at Victoria, British Columbia this 18th day of July, 2017.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read 'C. Van't Haaff', written in a cursive style.

Corey Van't Haaff, Vice Chair
Presiding Member