



June 28, 2017

File: PCAA/File #17-10

DELIVERED BY EMAIL

Sam Moller
[REDACTED]
[REDACTED]

Andrea Greenwood
Branch MacMaster LLP
1410 - 777 Hornby Street
Vancouver BC V6Z 1S4

**MOLLER VS BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS (BC SPCA)**

On or about June 22, 2017, the Appellant sent BCFIRB a blank witness contact form and a document he entitled "an addendum to the Witness Contact Form." In that document, the Appellant advised that he formally requests a summons for the following witnesses to be called:

ALL parties present on behalf of the SPCA and/or in cooperation with them in the investigation, and execution of the Warrant executed on May 11/2017 against Sam Moller, including, but not limited to:

1. Dr. Stephanie Royston BSc. D.V.M., of "The Visiting Vet"
Telephone: 250-558-6700 Website: www.thevisitingvet.ca
2. SPC Jaimie Wiltse, BCSPCA
Telephone: 604-681-7271 (BCSPCA Provincial Office)
3. SPC Ross Taylor, BCSPCA
Telephone: 604-681-7271 (BCSPCA Provincial Office)
4. SPC McLennan, BCSPCA
Telephone: 604-681-7271 (BCSPCA Provincial Office)
5. SPC Chapman, BCSPCA
Telephone: 604-681-7271 (BCSPCA Provincial Office)
6. SPC Woodward, BCSPCA
Telephone: 604-681-7271 (BCSPCA Provincial Office)
7. SPC Kent Kokoska, BCSPCA
Telephone: 604-681-7271 (BCSPCA Provincial Office) Cell: 250-318-2571

**British Columbia
Farm Industry Review Board**

Mailing Address:
PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5
Telephone: 250 356-8945
Facsimile: 250 356-5131

Location:
780 Blanshard St
Victoria BC V8W 2H1
Email: firb@gov.bc.ca
Website: www.gov.bc.ca/BCFarmIndustryReviewBoard

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8. BCSPCA Branch Manager Carolyn Hawkins
Telephone: 604-681-7271 (BCSPCA Provincial Office)

9. Shelter staff "Holly", (BCSPCA?)
Telephone: 604-681-7271 (BCSPCA Provincial Office)

10. Krystal Aston
Telephone: 250-320-2285

11. John Spaks
Telephone: 250-852-2892

12. Joni Mitchell
Telephone: 250-320-8419

13. Marielle Bengert
Cell: 250-819-8193

14. M. Moriarty, BCSPCA
Cell: 604-258-8642

15. Robert Thompson
Cell: 250-319-0780

16. Brad J. Smith
Cell: 250-682-6320

17. Alyssa Kylo, Kamloops BCSPCA
Phone: 250-376-7722

In the interest of expediency and the need to gather information to enable me to make a decision regarding these 17 summonses, I convened a pre-hearing conference call on June 26, 2017, which was not recorded. In attendance was the Appellant, the solicitor for the Society and its Chief Prevention and Cruelty Officer as an observer.

The Legal Test for a Summons

Where a witness will not voluntarily attend the hearing, and/or voluntarily provide documents, a party may request BCFIRB issue a summons under section 34(3) of the *Administrative Tribunals Act (ATA)*. In deciding whether to issue the summons, BCFIRB considers whether the person for whom the order is requested can provide evidence that is relevant and important to the issues on appeal. In this case, the issues on appeal before BCFIRB are (a) whether the animals were in distress when seized and (b) whether, if returned to the Appellant, they would be properly cared for by the Appellant (i.e., would not be kept in a situation of distress).

The Appellant gave broad submissions on a number of issues unrelated to the request for a summons. I have focussed on whether the evidence of the persons for whom the summonses are sought is relevant and important to the ultimate issues on appeal.

The Appellant's written submission

The teleconference began at 2 pm Monday June 26, 2017. Just prior to the teleconference (1:59pm), the Appellant emailed a submission to BCFIRB which was immediately transmitted to the Society and to me at the start of the hearing. It was entitled "submission preliminary" and in the email, the Appellant expressed his concern with BCFIRB's process as he is a layperson not a lawyer. He said it was difficult for him to find the necessary information to prepare his application and he expressed confusion about the interaction between the *Prevention of Cruelty to Animals Act (PCAA)* and the *Natural Products Marketing (BC) Act (NPMA)*, the statute which establishes BCFIRB as a tribunal. I attempted to clarify the interrelationship of the various applicable statutes to assist the Appellant in his application.

In the submission, the Appellant makes a further argument relating to his summons request in 19 numbered points which relate to document disclosure. I take the unusual step of reproducing those 19 points below as the information the Appellant presents is pertinent to my decision. The Society did not object to this late emailed submission as it related solely to the issue of the 17 summonses and as such, I have read and considered the emailed submission in its entirety as it relates to the issuance of summonses. I further note that the Appellant did not provide specific information set out in the *ATA* s. 34(3), specifically the name, address, telephone number and email of the person for whom the order is requested. The Appellant said he could not get such information from the Society and I sought the Society's consent to decide the matter of the summons application without the Appellant providing such information. The Society agreed.

I pause to note that at one point in the call, the Appellant asked permission to speak to me privately and I declined. At various points, the Appellant attempted to discuss matters other than the request for summonses and I advised that such issues could be brought up through written submissions as he wished, or at the hearing, and that if he wished for me to make pre-hearing decisions on issues other than about the request for summonses, he was free to make those requests, copied to the Society.

I further note that at some points in the call, the Appellant referred to himself in the third person, as he did often in his written submissions, but he confirmed for me that he was the Appellant.

Costs

The Appellant raised the issue of costs as part of his request for summonses. The Society, during the call, advised it would not be seeking its costs associated with the seizure of the animals in this hearing, on a without prejudice basis, as it may pursue a criminal proceeding (or may not, it said) and such criminal proceeding may include restitution. The Appellant objected to the withdrawal of costs from the hearing and cited the *PCAA*, the *ATA*, and the *NPMA*. I did not understand the exact basis for his objection but I do not need to rule on this issue given the Society's position that it is no longer making a claim for its costs and as such, this is no longer an appealable issue. The issue of costs does not form part of my reasons for my decisions regarding the issuance of summonses.

Number of animals

Finally, there was dispute as to the number of animals (cats and kittens) seized. The Appellant said the materials submitted claimed different numbers of cats. I put both parties on notice that at the beginning of the hearing, each would be required to provide information on the number of cats seized and if needed, I would make a determination at that time on the number of cats seized. The Appellant also wanted a determination on the number of cats left at the property but I declined to do so at this time

The Appellant's summons argument

The Appellant's submission in support of his request for summonses references several individuals, identifies documents, and sets out the kind of evidence he would expect to adduce from these individuals and documents, as well as the areas of evidence he anticipates are in dispute:

1. The document related to animal shelter standards of care associated literature "A Code of Practice for Canadian Cattery Operations", which the BCSPCA should have available to them, specifically SPC Kent Kokoska, as without the document in question, all evidence submitted to the point of establishing "inadequate care" or other such claims made against the appellant in regards to the standards of care not being met by Mr. Moller, including any orders issued in those regards to him by the SPCA cannot be established as fact, rather it would simply be hearsay without the document in question. As the BCSPCA cites these documents and/or the contents therein in several areas of their submissions, they are pertinent.
2. As the BCSPCA has included in their evidence claims that Mr. Moller did not comply with the aforementioned "standards of care" in relation to an order issued by them regarding temperature regulation, the appellant requests that the BCSPCA provide evidence of such an order. Specifically, SPC Taylor or Kokoska may be able to provide such, as it is SPC Taylor who makes the claim, and cites the order as having originated from Kokoska.
3. Evidence that the shelter in Chase, BC that Mr. Moller is said to have refused to "surrender" some of his animals to, which SPC Taylor included in his submission would have provided "adequate conditions" would have done so, as opposed to Mr. Moller's own care.
4. Evidence that Mr. Moller provided that he has No Fixed Address. Specifically it is included in SPC Taylor's reports, as well as in M. Moriarty's decision not to return the cats to Sam. It is pertinent, as it was partially the basis for SPC Taylor's intervention, as well as the outcome of M. Moriarty's decision.
5. Evidence of a pending eviction, as was stated to be the case by SPC Taylor. Was partially the basis for SPC Taylor's intervention.
6. Evidence to suggest why a prior investigation of animal cruelty in Kamloops by SPC Kokoska was sufficient to the point that it was used partially as the basis by SPC Taylor to take action to intervene, and evidence that this prior investigation either yielded a conclusion of animal cruelty, or was otherwise not favorable to the support of Mr. Moller's submission regarding the BCFIRB review pending. These claims partially formed the basis of the BCSPCA's actions pertaining to this matter.
7. Reliable evidence to the point that Mr. Moller is without regular employment and/or the sources of these claims as made by SPC Taylor in his reports, and by M. Moriarty in her decision

- whereby there was no documentary evidence provided to Mr. Moller or cited by these parties respectively. These claims partially formed the basis of the BCSPCA's actions.
8. Evidence that while executing a warrant as outlined in s.13(2)(a) of the PCAA under s.13(1)(c) "determining whether any action authorized by this Act should be taken to relieve the animals distress..." That SPC Taylor and/or ANY of the other parties involved in the execution of the aforementioned warrant could not satisfy s.11(b) of the PCAA, and that attempts were made to locate Mr. Moller to inform him of any concerns of animal distress but that he could not be found. I ask for any records of attempts such as emails, and/or telephone/text logs evidencing such, or any other valid evidence or statement as to why the BCSPCA feels that appropriate measures were taken to locate Mr. Moller, as should be made available by the BCSPCA, who can provide such. It is pertinent, as satisfaction of this section is mandatory to the seizure of an animal, as per the PCAA.
 9. Tangible evidence that is reasonable to the extent of providing proof for EACH day, and/or each individual incident whereby the BCSPCA claims any degree of inadequate care was being provided to the cats by Mr. Moller in regards to proper feeding, watering, cleanliness, ventilation, heating regulation, space requirements, and any other concerns as raised by the BCSPCA. It is pertinent to the matter as these "concerns" are present in multitude in the BCSPCA's submission, and were the grounds for many of the actions which the BCSPCA took. Without evidences of such, the appellant's position is that any reports can be said to be simply hearsay, and that any other reports of a similar nature to the contrary would be subject to equal scrutiny before the law, and no more, or less valid than any other article of hearsay (leading to potential conflicts of contradictory evidence held of equal merit before the law, or even the presentation of actually tangible evidence to the negation of potentially unsubstantiated submissions). If the BCSPCA cannot prove these claims, then the appellant challenges that they are not valid articles of evidence in any way that would be substantial to the support of the BCSPCA's claims. The SPCs involved, as well as M. Moriarty should each individually be able to provide documents to the point of satisfying this request (as they were partial to the forming of the basis of their reports and decisions respectively), and if they cannot, the appellant challenges that he has been the victim of unfair treatment, and the circumvention of due process has the potential to deny him a fair, and impartial hearing. There is a possibility that this request may be satisfied in conjunction with 1 or more of the other requests to evidence by the providing of a single document that is inclusive of 1 or more of these requests.
 10. As the BCSPCA claims that they attended a total of 10 times regarding complaints, and issued notices to Mr. Moller, I request that the relevant SPCs and/or M. Moriarty provide documents of these attendances, the notices they claim to have served, and documentary accounts of the reports that they received sufficient to proving their efficacy. As these attendances and notices are presented as pertinent by the BCSPCA in regards to their actions and decisions, please provide evidence of such. Further, as the BCSPCA claims that only "temporary and minimal compliance" was met to these orders, please provide further evidence of such, and a statement as to how this was determined. If this cannot be provided than the appellant's position is that the "evidences" in question are unsubstantiated.
 11. I would like evidence that the notice issued by SPC Kokoska on Feb. 27/17 with "4 areas of concern" was issued in good faith. Please provide a statement as to why these 4 areas in particular needed to be addressed, and any relevant documentation. If evidence cannot be provided to this extent, then the appellant challenges that any tangible evidence to the contrary supercedes these reports.
 12. The appellant would like tangible documentary evidence providing information about the ammonia tests used throughout SPC Kokoska's investigation, and by the SPCs during the

- execution of the warrant, particularly to their proper use and the proper procedure in respect to their use employed to ensure accurate results. The appellant challenges the accuracy of the tests, and whether or not they were deployed properly, if evidence in support or to the contrary cannot be provided. The purported levels of ammonia were pertinent to the SPCA's actions and decisions, as well I believe, to the attending veterinarian's.
13. To the extent that SPCs Taylor and Chapman submit evidences to the point that they attended to Mr. Moller's residence on May 04 in written form, I ask for documentary evidence in satisfaction to the following: A: evidence that the orders issued by SPC were "not met" as was stated by the SPCs. B: Sufficient evidence or statements to the point that "proof of service" was satisfied in regards to the "posting" of notices to have Mr. Moller contact the SPCs within 24 hours. C: evidence to the extent that the SPCs made alternate attempts to contact Mr. Moller, and/or that they did not have any means such as a phone number or email.
These matters would be extremely pertinent to the matters at hand, as they are present in the BCSPCA's submission, and decisions, as well as the basis for actions taken by them.
 14. Documentation from SPC Kent Kokoska providing information as to the identity and detailed findings of the vet, that is included in the BCSPCA reports, that he met with on Feb.23/17 to receive "expert consultation on housing larger groups of cats" and any reasoning as to why he deferred to this vet's findings over the "Standards of Care" that he himself provided to Mr. Moller, and referred to in notices that he issued to Mr. Moller. As this seems to be crucial in Kokoska's determining of what contents to include in the orders that he issued, and formed the basis for some of BCSPCA's actions and decisions, as well as being submitted in support of the respondent, it is pertinent that he and the BCSPCA be held accountable to that extent. Further please have SPC Kokoska provide the measurements and any relevant documents pertaining to the dimensions of the camper and trailer in relation to the adequate housing of the cats' space requirements and/or other cited concerns present at the time. SPC Kokoska took measurements to determine space reportedly on Feb.27/17, and cited the "SOC" requirements in his determination that the units could house 18 and 11 adult cats respectively. These measurements and the criteria that SPC outlined in reports that he "had determined" were crucial to the BCSPCA's actions, and M. Moriarty's decision to not return the cats to Mr. Moller, therefore they are pertinent to the matter before the BCFIRB.
 15. In regards to an attendance by SPC Taylor and SPC Chapman cited May.04/17, there is included in the reports that there were a number of complaints due to warming seasonal weather. Please have the SPCs in question provide evidence of, and documentation of these complaints to the appellant. Additionally, any reasoning by the SPCs as to the validity of the concerns over warming seasonal weather, and to whether or not it could be said to have presented any notable concerns or issues. Further, any relevant evidence to support the claims that neighbors heard cats "fighting", and "crying", and an explanation or evidence that any 2nd hand reports of any smells from open air vents was enough of a factor to reasonably determine poor air quality, as it seems to be elaborated to the extent that this was the case in the reports. The information is pertinent, as it influenced BCSPCA actions, and decisions. Further please provide evidence that when "concerned citizens" released the cats (on multiple occasion) into the open, proper steps were taken by the SPCs to ensure the well being and safety of the cats, whereby there were claims made that the cats were "visibly underweight" and "no food was provided", and that further to these claims that the SPCs took the proper steps to ensure their reliability and accuracy as well as taking steps to lawful recourse to the point of the cats' safety. Please provide documentation of these reports. All of this was pertinent to the BCSPCA's actions and decisions.

16. Please provide documents of any relevant media disclosure, or reports from the BCSPCA themselves in regards to these matters, for the years 2015/16/17, should they exist, or a summary of the requested information, as should be able to be provided by SPC Woodward and/or M. Moriarty. It is relevant to the assurance of the conduct of the BCSPCA regarding these matters, as well as to the consistency of media reports to the complainants submissions. It could potentially alleviate the prospect of questions pertaining to the "Canadian Charter of Rights and Freedoms", and the "Human Rights Code", thereby negating potential delays in these proceedings that may arise from such, which is in the appellant's opinion, supportive of the well being of the cats in regards to time-sensitivity.
17. Please provide an originating source for the claims made in the BCSPCA's videos that Mr. Moller had "just left for two days", allegedly leaving the cats without adequate sustenance, as this would be highly likely to have influenced the opinions of the parties who were present during the execution of the warrant, that same day, as well as actions and decisions of the BCSPCA. The attending SPCs should have knowledge of the originating source.
18. Please provide evidence that Krystal Luluha was indeed the lawful owner of the camper and trailer, as is reported by the SPCs Taylor and Chapman who enabled Ms. Luluha to access the interior of the units in question, when they directed her to do so under these premises. This is certainly pertinent to the conduct of the SPCs, the details of the investigation, and any questions pertaining to the violations of Mr. Moller's rights and/or privacy. The investigative officers should be able to provide this information, and are compelled by their stations to pursue it. Further please include details as to whether this enabled the constables to view inside the camper where they say they saw "3 litter boxes, overflowing with feces", or whether they allege to have viewed this from the driveway through the window. Details of the extent of the cats they claim to have heard fighting inside, and the circumstances under which this allegedly happened are also requested, as are any reports or elaborations as to Ms. Luluha's claims on May 04/17 of there being "at least 2" new litters of kittens, and just what information was collected in these regards. As the BCSPCA has utilized claims of a pending eviction to the support of their actions and decisions, further provide details and evidence of any such circumstance as what is cited as a "notice to vacate by Sun. May.04/17" and supporting evidences as to why this position is upheld by the BCSPCA. Please provide evidence of "cat hoarding" as it pertains to this matter.
19. **MOST IMPORTANTLY:** as per the appellants repeated requests to be given access to a pictorial roster of ALL of the animals in the custody of the BCSPCA that were disregarded, and in light of the respondents stated commitment to finally produce these documents, to provide such without further delay. Please have M. Moriarty provide evidence as to why this information was not critical to the health and well being of the cats, as she stated. Provide Mr. Moller, further with legible references to all medical care, procedures, and/or treatments administered to the animals complete with picture reference of the animals as pertains to this care. Provide any evidence so as to support proof of informed consent, in regards to any outstanding medical procedures or other actions that would require Mr. Moller's permission to proceed with, or any other acceptable alternative to this point.

Mr. Moller further withholds and/or is engaged in the production of further documentary submissions that may be subject to nondisclosure for the purposes of these proceedings. He wishes to speak to the "reviewer" of these proceedings at the preliminary hearing to further discuss these future submissions, and their potential implications.

Mr. Moller requests an adjournment of the hearing, if it is necessary to the addressing of these concerns, but is also predisposed to a timely proceeding.

Agreed Witnesses

At the outset of the call, the Society confirmed it would call Dr. Stephanie Royston and Special Provincial Constable (SPC) Ross Taylor as witnesses; thus, there was no need for me to issue a summons for each of these two witnesses.

Document Disclosure

I also observe that the Society's deadline for disclosure of documents is today, June 28, 2017. Following that deadline, the Appellant will need to reconsider his request for disclosure of documents.

Decision on the Request for Summonses

I proceeded through the Appellant's list of potential witnesses. The Appellant was asked to identify why the evidence of each individual was relevant to this appeal. The Society responded with its position as to whether the evidence of the individual was relevant and whether a summons ought to be issued. The Appellant was given an opportunity to reply to the position of the Society.

When we got to the 13th name on the list, the Appellant advised that some of the individuals that he sought summonses for had already agreed to voluntarily attend, and he withdrew his request for summonses for Marielle Bengert, John Spacs, Robert Thompson, Brad Smith, and his expert witness Dr. M.J. (Mike) Politis. As the Appellant had not delivered any witness list, I asked him if he intended to give evidence, and he was reluctant to commit, saying he *could* be a witness but didn't know if he *would*. I would observe that it is the Appellant's choice whether he testifies, however, I would caution him that if he intends to dispute the observations of the Society's witnesses, he needs to do so through evidence (either through his own testimony or his witnesses).

The Society said that generally, there were not many SPCs in the area and summoning the number of SPCs requested by the Appellant would have a significant impact on the Society's ability to investigate other calls and would prejudice the Society with regard to working on other files and the cost for attendance.

The Appellant responded that he had a right to a fair proceeding and that if there were such a shortage of SPCs, why did five attend his property at the execution of the warrant? He said the SPCs could call in to the hearing when they were required.

I turn now to consider whether a summons should be issued for each individual for whom the Appellant has sought an order:

SPC Jaimie Wiltse, BCSPCA

The Appellant said SPC Wiltse was present at the warrant and could contradict other information. SPC Wiltse catalogued some cats, performed an ammonia test, and could testify on the distress issue and the Appellant's conduct with his cats.

The Society said that SPC Wiltse was present at the warrant and was with SPC Kokoska when orders were left with the Appellant but SPC Taylor could testify about that including the ammonia strips. The Society said that the history with the Appellant was not relevant to the issue of distress.

I decline to issue a summons for SPC Wiltse as I find that SPC Taylor, the special constable the Society intends to call, can testify about the issue of orders, and details of distress of the animals seized. I address the issue of history below.

SPC McLennan, BCSPCA

The Appellant said he had interactions in the past regarding the return of his cats and he cannot foresee every SPC providing the same evidence and he needs to call every constable present to testify on the distress and the return of his animals. He said that no one constable could answer about all the issues and all constables needed to be present to ensure a fair proceeding.

The Society said SPC McLennan had no previous interaction with the Appellant and although the SPC was present, it would be SPC Taylor who will present evidence of the distress.

I decline to issue a summons for SPC McLennan as I find that SPC Taylor can testify about the issue of distress and the return of the animals. The Appellant has not demonstrated what further relevant evidence this witness can provide. I am not satisfied that it is necessary or that fairness requires the attendance of every SPC in attendance as to do so would be redundant, inefficient, and unduly lengthen the hearing process.

SPC Chapman

The Appellant said that SPC Chapman was present at the warrant and that the SPC was an individual and as such could hold varying opinions and present varying evidence without specifying the nature of that variance.

The Society said the SPC was present at a compliance check and at the warrant at the same time as SPC Taylor who will provide testimony on the issue of distress.

I decline to issue a summons SPC Chapman on the same basis set out above. I find that SPC Taylor can testify about the issue of distress and the return of the animals.

SPC Woodward, BCSPCA

The Appellant said that SPC Woodward had relevant information regarding the distress and return of his animals and as an individual, SPC Woodward was subject to her own unique expression and opinion and would testify regarding some conflicts in statements between SPCs and they all needed to “clean up” their act. He argued that SPC Woodward’s testimony would negate other SPC testimony and evidence so as to render the evidence not viable (without explaining how). He also said that SPC Woodward was in a unique position as she issued media releases and spoke to the media.

The Society said SPC Woodward was only present at the time of the warrant and had no previous interaction with the Appellant; and that SPC Taylor is the lead on this hearing.

I decline to issue a summons for SPC Woodward on the same basis set out above. I believe that SPC Taylor will be able to provide adequate testimony and evidence regarding the seizures. Further, anything said to the media would not assist me in my determination of the central issues on appeal: whether the animals were in distress, and whether or not the animals should be returned to the Appellant.

SPC Kent Kokoska, BCSPCA

The Appellant said SPC Kokoska was the lead investigator the majority of the time and is his “number one desired witness”. The Appellant said if SPC Kokoska was a book, he would be a voluminous book. SPC Kokoska was there when prior notices were issued and can speak to the Appellant’s history and actions and prior compliance.

The Society said SPC Kokoska attended twice at this property but not at the warrant and had no extensive history with the Appellant.

I will issue a summons for SPC Kokoska. The Appellant has satisfied me that this witness can give relevant evidence that cannot be provided by SPC Taylor which may assist me in understanding the Appellant’s prior compliance with previous Society orders. Prior compliance history with Society’s orders is a relevant consideration as it informs the assessment of whether an owner would promptly take steps to relieve the distress if an animal is returned. Given that I must make a decision on both the issue of distress and the issue of return of the animals, the Appellant has persuaded me to issue a summons for SPC Kokoska.

BCSPCA Branch Manager Carolyn Hawkins

The Appellant said Ms. Hawkins testimony will support his own position and will bring light to conflicting evidence amongst statements.

The Society said Ms. Hawkins was present at the seizure as she brought a van to transport the seized cats and did not enter the house and does not have any history with the Appellant.

The Appellant replied that Ms. Hawkins is in a unique position to give information on the issue of distress.

I decline to issue a summons for Ms. Hawkins as I am not persuaded that it is necessary to hear from her on the issue of distress. I also note that, despite the Appellant’s argument that each person is in a unique position to give testimony that may differ from others’ testimony, that differing evidence does not necessarily assist me in determining the issues of distress or the return of the animals. I am not convinced that the person driving the van and transporting some or all of the animals will provide any further evidence on the relevant issues beyond that provided by the other witnesses and as such will not assist me with my decision-making.

Shelter Staff Person “Holly”

The Appellant said “Holly” has her own unique opinion (without specifying what that might be) and he has no other information about her.

The Society said that SPC Taylor will be in a position to provide evidence on the issue of distress.

I decline to issue a summons for “Holly” as the Appellant has not persuaded me that Holly has relevant information that may assist me in my decision-making.

Krystal Aston

The Appellant said Ms. Aston is his sister and she made several claims to the Society and media which are contradictory. Ms. Aston will not speak to the Appellant so he needs to a summons for her. He says that Ms. Aston entered his camper against “the rule of law”.

The Society said it may call Ms. Aston, who the Society knows as Ms. Luluha (the Appellant confirmed that is also his sister’s name) but it had not yet confirmed this as its witness list is not yet due. The Society said Ms. Luluha was present at a compliance check and had access to the camper previously (and did enter it) and was now in possession of both the camper and the trailer and that the Appellant was no longer living in them.

I will issue a summons for Ms. Luluha as I am persuaded that she may have information to assist me in understanding the living conditions of the animals as well as information that may assist me in making a decision on the return of the animals. I note that the Society may call her as a witness and should it do so, the summons would not need to be served.

Joni Mitchell

The Appellant said Ms. Mitchell operates a cat shelter and he intends to call her about information that appears in the file which he says is second hand and hearsay. He wants the opportunity to question her directly regarding an incident where he wouldn’t surrender cats to her and therefore was not relieving their distress.

The Society said this person is unknown to the Society but if she was a Society employee, she was not present at anything related to this hearing, and if she was not staff, the fact that cats may have been given to her in the past due to some bylaw, and then given to the Society, which then returned the cats as it had no legal right to the cats, is irrelevant.

I decline to issue a summons for Ms. Mitchell as I am not persuaded that her evidence is relevant to any issue before me on this appeal.

Marcie Moriarty, BCSPCA

The Appellant said that Ms. Moriarty needs to be brought to answer for her role and recordings of conversations and the appeal process as she has a heavy bias and she should be compelled to testify.

The Society said that Ms. Moriarty's evidence is not relevant nor is any allegation of bias or any evidence regarding document disclosure. The Society said that it is only her decision under appeal.

The Appellant further said that if Ms. Moriarty makes decisions, then he and the public have a right to a fair proceeding without bias and that there are obvious discrepancies and false information in her decision.

I decline to issue a summons for Ms. Moriarty as a fair hearing does not require her attendance. I say this for the following reasons. Her decision and the reasons for it are the subject of this appeal. Any subsequent decisions regarding her decision reviewing the seizure of the Appellant's animals are now mine to make based on a review of the evidence before me in the hearing. I do not require her testimony as I already have her reasons for decision. Cross examination of Ms. Moriarty on her alleged bias or alleged improper motive for the seizure are irrelevant to a determination of whether the animals were in distress at the time of seizure or ought to be returned. Such cross examination would expend time at the hearing that could be better spent addressing relevant issues.

Alyssa Kylo, Kamloops BCSPCA

The Appellant said that Ms. Kylo is responsible for the cats' well-being and can speak to the issue of distress and other facts which may be revealed. The Appellant said he requires her information regarding prior investigations and that he has a right to speak to all evidence presented. He said it is the same with all these witnesses he seeks summonses for; he has the right to a fair proceeding and the right to due process and there are "no ifs, ands or buts about it." He said that all requested witnesses need to be present for a fair hearing and that is "the bottom line".

The Society said Ms. Kylo attended on the day of the warrant to pick up some kittens which were in critical distress and transport them to the veterinarian to receive care. She has no other evidence regarding the animals or prior interactions with the Appellant and that SPC Taylor can give evidence regarding the critical distress.

In reply, the Appellant argued that it was the action of separating the kittens from the mother cat that caused the distress and only Ms. Kylo could answer questions regarding the kitties "bar none". It is "imperative" that she be summonsed as a witness, according to the Appellant.

I decline to issue a summons for Ms. Kylo as a fair hearing does not require her attendance. I say this for the following reasons. I am not persuaded she has relevant information to assist me in making my decision regarding distress or the return of the animals. Any questions the Appellant has regarding the critical distress of the kittens and the cause of that distress can be put to the SPCs or the veterinarian who assessed these kittens upon their arrival at the clinic.

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Summary

I am prepared to issue summonses for SPC Kokoska and Ms. Luluha. I decline to issue any other summons for the reasons I provide above.

The hearing will proceed as scheduled on **July 4, 2017 commencing at 8:30am.**

Yours truly,

A handwritten signature in black ink, appearing to read "Corey Van't Haaff". The signature is written in a cursive, flowing style.

Corey Van't Haaff
Presiding Member