

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 16 CATS

BETWEEN:



APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry:
Review Board

Dennis Lapierre, Presiding Member

For the Appellant:

Self-represented

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

July 31, 2020

Location of Hearing:

Teleconference

Introduction

1. The Appellant, [REDACTED] (also known as [REDACTED]) lives in Burnaby, British Columbia and rents a building situated at [REDACTED], Maple Ridge, British Columbia (the Property). The Appellant does not live at the Property and where she resides was never ascertained. She is employed in the movie industry.
2. On June 17, 2020, the British Columbia Society for the Prevention of Cruelty to Animals (the "Society") seized 16 cats from the Property. On June 30, 2020, Marcie Moriarty, Chief Prevention and Enforcement Officer for the Society e-mailed a decision to the Appellant at [REDACTED] outlining the circumstances surrounding the seizure, acknowledging the submissions of the Appellant from the time of the seizure, and offering to rehome the cats once they were brought back to good health. This offer was declined by the Appellant.
3. Section 20.6 of the *Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372 (PCAA)* permits the British Columbia 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 animal. Under the PCAA, appeals to BCFIRB are broad in nature, as set out in detail in *BC Society for the Prevention of Cruelty to Animals v. British Columbia Farm Industry Review Board, 2013 BCSC 2331*, at paragraph (24):

"Courts of law are focused on the law and legal principles. BCFIRB appeals are broader than that. There are no limits on the grounds of appeal. BCFIRB has been given broad evidentiary and remedial powers on appeal. While the legislature could have created an appeal or review "on the record", it has not done so here. Instead, the legislature has gone the other way in these reforms. It has given BCFIRB extensive evidence-gathering powers, some of them to be used proactively. It has made the Society "party" to appeals, and it requires the Society to provide BCFIRB "every bylaw and document in relation to the matter under-appeal" (s. 20.3(4)), which will in many cases be much broader than the record relied on by the reviewing officer. Included in BCFIRB's powers is s. 40 of the *Administrative Tribunals Act*. "The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law."
4. The Appellant represented herself and called no witnesses.
5. The Society was represented by counsel, with sworn testimony provided by SPC Christine Carey and three witnesses, which the Panel accepted as expert witnesses: Dr. Adrian Walton, Dr. Karen Harvey, and Dr. Emilia Gordon (DMV).
6. For the reasons outline below, the Panel permits the Society, in its discretion to destroy, sell, or otherwise dispose of all 16 cats, the subjects of this Appeal. The Panel further finds the Appellant liable to the Society for costs in the amount of

\$26,842.22, this being the total of the veterinary costs incurred by the Society (\$14,172.62), the seizure costs (\$547.80), and the animal care costs (\$12,121.80).

Pre-hearing matters

7. On July 30, 2020, the Appellant notified BCFIRB via e-mail that her legal name is [REDACTED], but that she has been known for several years as [REDACTED]. This matter was clarified at the outset of the hearing.

8. Under the *Rules for Practices and Procedures for Appeals* established by BCFIRB, acting under the authority of the *Administrative Tribunals Act*, the Society was given until July 27, 2020 to provide the Appellant and BCFIRB its final hearing submissions, all requirements of which were outlined in a letter issued on July 7, 2020 to both the Appellant and the Society. The Society requested the addition of two late submissions which were reviewed by the Panel with the parties prior to the hearing. The Appellant objected to the inclusion of some additional evidence from the Society but agreed to the inclusion of Dr. Emilia Gordon (DMV) as a potential expert witness on cat disease. The Panel accepted the Appellant’s position on both matters and ruled accordingly.

Post-hearing matters

9. Several days after the hearing the Appellant contacted staff at BCFIRB to make further submissions. The Panel did not review those submissions as the hearing had completed and the Appellant was advised accordingly.

Materials Submitted on this Appeal

10. The following documents were accepted as Exhibits:

Exhibit #	Date	Received from	Document
Exhibit 01	June 30, 2020	BCSPCA	BCSPCA Decision
Exhibit 02	July 6, 2020	Appellant	Notice of Appeal (NOA)
Exhibit 03	July 6, 2020	CSNR	Filing fee Receipt
Exhibit 04	July 7, 2020	BCFIRB	NOA Process Letter
Exhibit 05	July 14, 2020	BCSPCA	SPCA initial Doc disclosure Tabs 1 - 34
Exhibit 06	July 14, 2020	BCSPCA	Tab 24 – Video footage
Exhibit 07	July 23, 2020	Appellant	Appellant submission
Exhibit 08	July 27, 2020	BCSPCA	Copy LT all encl submissions
Exhibit 09	July 27, 2020	BCSPCA	Submissions of BCSPCA
Exhibit 10	July 27, 2020	BCSPCA	Affidavit of Marcie Moriarty
Exhibit 11	July 27, 2020	BCSPCA	BCSPCA Expert Witness Form
Exhibit 12	July 27, 2020	BCSPCA	Witness Contact Form
Exhibit 13	July 27, 2020	BCSPCA	BCSPCA Doc disclosure – Updated Index
Exhibit 14	July 27, 2020	BCSPCA	BCSPCA Tab 34-38
Exhibit 15	July 27, 2020	BCSPCA	Cost Calculations
Exhibit 16	July 29, 2020	BCSPCA	Appellant reply submission

Events leading up to the seizure

11. The Information to Obtain a Search Warrant prepared by SPC Christine Carey outlines the Society's involvement with the Appellant, beginning on June 9, 2020, with a telephone complaint received by the Society's Provincial Cruelty Call Centre of upwards of 100 cats being confined at the Property. SPC Carey responded to the call, spoke to a tenant on the Property, and understood that the owner of the cats last delivered a large bag of cat food on June 8, 2020 and left with what was believed to be dead cats. SPC Carey was led to understand by the tenant that the owner of the cats did not return to check on the cats for weeks at a time.
12. SPC Carey returned to the Property the following day, June 10, 2020, and learned that the cat owner's name was [REDACTED], that she had been using the Property for at least 5 years, that she did not attend regularly, but that she brought stockpiles of food and also provided water for the cats.
13. SPC Carey examined the building on June 10, 2020 and noted its condition. The building appeared to have no electricity or running water, but there was a hose running through an opening. The door was secured with a bicycle lock. There was a stack of empty cat food bags and clear bags containing wet and soiled hay, and a number of full black garbage bags containing unknown contents beside the building. She could smell ammonia, which she associated with the smell of cat urine, but did not see or hear any cats. She posted a BCSPCA Notice on the lock that day.
14. For each of the following 6 days, the Property was visited by either SPC Carey or a fellow Society employee, APO (Animal Protection Officer) Myers. The Notice remained undisturbed. Further inquiries made by both officers throughout that period suggested the cat owner was the Appellant and that she kept up to 20 cats in the building, that she was secretive, and that she left the building unattended for extended periods of time. On June 15, 2020 SPC Carey posted a second notice, warning of a possible legal action if the owner did not respond by the next day, June 16, 2020.
15. Having received no response to the posted notices, SPC Carey sought and obtained a warrant on June 16, 2020 at 16:30, which she executed the following day, June 17, 2020 in the company of APO Myers, SPC Jarett Marleau, Society staff member Kim Monteith, Dr. Adrian Walton, and a member of the RCMP. SPC Marleau captured parts of the events on video, photographed ammonia readings recorded on a hand-held instrument, took photographs of various parts of the inside of the building, and made hand-written notes. APO Myers and SPC Carey also took hand-written notes. Dr. Walton wrote a statement the next day reporting his observations and the seizure recommendations he made while onsite.

Review Decision

16. On June 30, 2020 (erroneously dated July 7, 2020) Marcie Moriarty e-mailed her decision to the Appellant (the “Decision”). In it, she outlined her authority and role with respect to reviewing the seizure evidence, and the reasons for her determination as to the return of the Appellant’s cats. In doing so, she referenced the test set out in *Brown vs BCSPCA, [1999] B.C.J. No. 1464 (S.C.)*, where at paragraph 22, the judge states:

The goal and purpose of the Act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as plaintiff’s counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain in the good condition in which it was released into its owner’s care.

17. She noted all of the information upon which she made her Decision including:

- The authority of SPC Carey as per Section 9 of the Police Act to seize the cats;
- The Appellant’s responsibility for the cats;
- That SPC Carey had reasonably formed the opinion that the cats were in distress and that she took the appropriate actions;
- And that the onsite observations of others assisting with the execution of the warrant supported the views of SPC Carey.

18. The Decision further noted the reported observations and onsite cursory examinations of the cats by Dr. Adrian Walton that, in his opinion at that time the cats met the definition of being in distress.

19. The Decision further reported on the more comprehensive examination conducted June 18, 2020 by Dr. Karen Harvey, which concluded that the cats were suffering from a number of ailments, not the least of which was severe dental and oral distress.

20. The Decision also noted that the Society had offered the Appellant the option of simply having the Society rehome the cats once they were healthy, but that the Appellant had declined. The Decision quoted the Appellant as stating that, “several will be harmed by affluent and people in this region”.

Key Findings of Fact and Evidence

21. Much of the written evidence and submissions presented by the Appellant (Exhibit #07) closely parallels that which she provided in her testimony at the hearing. She provided a detailed history of her involvement with cats, beginning with the discovery of a homeless kitten behind a movie studio in 2011. That year it escaped or was let out and came back pregnant. Soon after, a male cat, apparently abandoned, also became part of her cat family.

22. Most of the cats, according to her evidence, are the progeny of this first mating and perhaps a subsequent mating from another male cat. Following this, she had her male cats neutered. As her kitten family grew, she began to think about ways to protect and eventually adopt them.
23. She explored adoption ideas but was averse to using the Society because she had heard it had a high euthanization rate. She instead sought, and apparently found, a shelter facility with a “no kill” policy in [REDACTED] and began planning to move there. This plan was nullified on June 17th when the cats were seized by the Society.
24. The Appellant stated that in 2014-2015 she moved her family of cats to what she described as a barn, a 30’x40’ building situated on the Property. She stated that she initially had arranged for persons to feed and look after the cats while she was away, but somehow more cats became pregnant.
25. Her evidence was that between 2014-2019, she spent \$44,327.00 on veterinary services, and on feeding, housing, and caring for these cats, not including additional expenses such as worming medications and garbage disposal.
26. Referring to her own health and Covid-19 related issues, she provided evidence to suggest her employment had been stalled, that she had become ill and was suffering a high fever and heart palpitations. These health issues, by June 6, 2020 resulted in her choosing to slow down, last visiting the barn June 9, 2020.
27. Evidence outlined in her written submission suggests that she kept some of the cats with her some of the time but had to put those cats with the rest at the Property when she went to the hospital on June 5-6, 2020.
28. The evidence of Dr. Adrian Walton, presented orally at the hearing is consistent with the video, recorded by SPC Marleau. Dr. Walton described the strong smell of ammonia in the building and observing several cats, many of whom had their tongues sticking out. He testified that he saw a lot of mummified cat feces on the edges of the floor, which indicated that the floor area had not been cleaned for a long time, though the litter box contents appeared to have been changed recently. He stated that some cats appeared to be diseased and that some were hypersalivating, while others wouldn’t let him touch them. While there was food present, some was spoiled, and it looked like the feeders hadn’t been filled for 5-10 days. He also reported seeing hazards in the building; stacked boxes, cat food bags, ripped cat toys and, being an old building, lots of nails and chicken wire with sharp ends. He stated that it was the oral pain and low body condition scores of the cats that he examined, as well as their environment, that led him to agree with SPC Carey that the cats needed to be removed immediately.

29. The videos and photographs entered as exhibits depicted what Dr. Walton described, and showed ammonia readings of 15-20 ppm on a hand-held testing instrument.
30. The testimony of SPC Carey was consistent with her hand-written notes, and the notes of APO Myers, and SPC Marleau and the testimony of Dr. Walton. SPC Carey noted that she saw a dangerous overall environment for the cats, bloody drool, cats with tongues sticking out, dirty coats, and an odour of ammonia strong enough that it caused a burning sensation in her eyes.
31. Dr. Karen Harvey testified that she examined 16 cats on June 18, 2020 at the Vancouver SPCA barn at the request of SPC Carey. In her testimony she grouped the cats from the least to most severe states of illness. She described a range of maladies: some exhibited decent body condition, some were clearly in pain and were exhibiting a low level of tolerance to being handled. The mouth lesions she noted, correlated with poor body conditions. Some were missing teeth. Some were hungry and wanted to eat but found it too painful to eat with food falling out of their mouths. Most of the cats looked young, to the extent that they should have been able to groom themselves, but their coats looked thick and ungroomed. None were able to groom themselves properly. Some showed urine scalds on their feet. All had foul-smelling breath. Some were discharging pus (purulent discharge) from their mouths. Some had ulcerated membranes surrounding their teeth.
32. Dr. Harvey stated that the group overall exhibited a high degree of dental disease, to a degree she had never seen before. She testified that the dental issues and other related issues are easily observed conditions, for example, by noting tongues hanging out.
33. Dr. Harvey testified that only a small handful of cats did not exhibit severe oral lesions and for some of them, their dental condition would have taken months to develop. Two cats had to be euthanized because of their dental pain.
34. Dr. Harvey testifies that where health issues like those in this case occur in large cat colonies, it is indicative of cats that are not being properly looked after. To her, it was obvious these cats weren't being cared for properly. She expressed a concern in her evidence that if the cats were returned to their owner they would continue to suffer.
35. Noting the tongues sticking out, Dr. Harvey also stated that the colony could be suffering from a feline calicivirus, which is a potentially fast-spreading respiratory virus in cats.
36. Dr. Emilia Gordon testified that following her review of photos of the cats and Dr. Harvey's reports, she ordered some infectious disease tests as well as a necropsy on the two euthanized cats. The necropsy tests were positive for feline calicivirus and showed that both cats had oral infections and pneumonia. The

positive necropsy tests did not definitively prove the cats had the feline calicivirus at the time that they were euthanized but instead showed that at some point they would have been carriers of the virus. As a highly infectious disease, the likelihood was that all of the cats at the Property were carriers, and while this disease can be partially treated with vaccinations to reduce its severity, cats can't get rid of it. Cats with this disease should be considered a risk to other nearby cats. With respect to their return to the owner, Dr. Gordon advised that return was possible if they were paired or in a group no larger than 3, but that as special needs cats, they would be in need of careful daily care. She stated that an owner simply can't provide for the needs of 14 cats in these circumstances.

37. Dr. Gordon further opined that feline calicivirus is environmentally durable and that susceptibility in cats can increase if the cats are genetically related. Further, the presence of ammonia can increase susceptibility to the illness. She noted that while the incubation period for this disease is only a few days and can be the cause of oral lesions, what she saw was not the cause of the cats' teeth issues. The teeth issues were much longer in developing and she noted that 13 out of the 16 cats exhibit oral pain.
38. In reviewing the lab data, Dr. Gordon noted that 13 of the cats had roundworms, but that no other parasites were identified. Roundworms are a common issue with cats and are treatable, but they are also transmissible to humans.
39. In response to questions by the Appellant, Dr. Gordon confirmed that the cats' noted health conditions caused their pain, that such conditions usually take months to develop, and that, in her view, it indicated the capacity for care exceeded the owner's abilities.
40. The Appellant testified regarding her self-identified mission to provide protection and sanctuary for her cats. She noted that while she had wanted to find foster homes or adopt out her cats, she also felt a compelling need to protect them as she described them as her small family. She stated that the Society didn't have the means to handle the situation with her cats. She spent a considerable amount of time explaining her families' history including political issues and other unrelated events that had left her suspicious of authorities including Ms. Moriarty and the Society. She indicated that subtle messages were being sent to her in minor events and that she was concerned that she was being stalked.
41. The Appellant spoke at length about her health. She feared Covid-19, and, as was outlined in more detail in her written submission, had experienced a fever and heart palpitations which caused her to visit a hospital in Langley, BC for examination. She noted that as a result of this visit to the hospital she had decided to forego cleaning the cat facility past June 9, 2020 until her heart got better.
42. The Appellant stated that she needed to be empowered to do the right thing, with her plan being, once the cats were returned, to house them again in the barn (the

building from which they were seized), but only temporarily for a few months. She stated that she had cleaned the building, that she would hire help to assist her in caring for the cats, and that she would follow up with having a veterinarian visit the Property. Her plan was then to match foster homes for most of the cats such that she would be able to monitor their care but would keep 4 cats for her own emotional needs. She did not specify which of the 4 cats she would keep.

Analysis and Decision

Distress

43. The definition of “distress” is set out in s. 1(2) of the PCAA which must be read together with s. 11:

- s. 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.

s. 11- If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal (a) does not promptly take steps that will relieve its distress, or (b) cannot be found immediately and informed of the animal's distress, the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

44. The Panel was provided evidence in this hearing that all 16 of the cats seized from the Property were in distress. The building in which they were found, which confined the animals, was found to be in an unsanitary condition. There was a substantial accumulation of aged feces on the floor and on and around objects in the building, the lighting was described as dim, and the space was described explicitly by one witness as being environmentally hazardous. There was also evidence that up to some point some attention had been paid to the facility. There were many plastic bags of straw and other materials cleaned from the building that were accumulated on the outside of the building, and the contents of the litter boxes inside the building had somewhat recently had been changed.

45. More significant was the evidence provided by the veterinarian attending the execution of the warrant that many, if not all, of the cats were in poor condition, injured, sick, and in pain. The cats were described as having their tongues sticking out which is a clear and obvious sign of illness or distress, and some were hypersalivating and resisting having their mouths examined.

46. The evidence of distress was further validated by Dr. Harvey in her detailed examination reports which were included as exhibits and her oral testimony as described above.
47. Additionally, the evidence of the attending Society officers on and through the days following receipt of the initial telephoned complaint on June 9, 2020 confirmed that the cats were being frequently left unattended for days at a time. This neglect was further confirmed by the evidence that a first Notice, posted June 10, 2020 on the building remained apparently untouched and was not responded to, as was the case of a second similar Notice posted June 15, 2020.
48. On the basis of all the evidence noted above, particularly as augmented by the evidence of Dr. Karen Harvey and Dr. Emilia Gordon, that the cats were ill, mostly from long-developing issues, this Panel finds that the seizure was warranted.

Return of the Animals

49. The Appellant is seeking the return of all of the remaining cats and in the alternative, she is seeking the return of four of the cats. She described a tentative plan to return the cats to the same building, which she stated she had cleaned and scrubbed. She further suggested that she would keep them at the Property temporarily, for only a few months until she arranged adoption or safe foster homes for them in what she described as a foster project involving film and television talent and professionals, which she would then monitor. The plan would also allow her to keep four cats for emotional support.
50. The Panel cannot accept this plan. If the cats are carrying the feline calicivirus disease, and the likelihood is strong that they are, returning the cats to the same facility from which they were seized, despite her efforts to clean, organize and sanitize it, would be unsuitable. Feline calicivirus is an environmentally durable disease which would not be eliminated from that building. Further, as likely carriers, such cats would require special, daily care in very small groupings. The Panel finds that this would not be likely to occur as required given that the cats would not be living with the Appellant. Furthermore, the Appellant's plan to obtain and monitor foster homes for the cats based on her connections in the film and television industry does not present as reasonably credible option.
51. Further complicating the plan is the Appellant's health. The Appellants' illnesses and fears associated with Covid-19 led directly to the neglect witnessed by the Society's officers when attending at the Property. The Appellant provided no evidence with respect to improvements with her health and the Panel finds this to be problematic. There is no certainty she would be able to continue caring for the cats as required which would inevitably lead them back into a situation of neglect and distress.

52. Finally, and most importantly, there is the matter of the Appellant's likely inability to let go of the cats for rehoming, as evidenced by her unwillingness to trust the Society to provide the very animal care, adoptee screening and rehoming services, that the Society has long demonstrated its ability to provide. Instead, she feels that she would be able to conduct a better, more trustworthy service, which she suggests would entail conducting more carefully screened fostering, followed by ongoing monitoring. As noted above this Panel does not find this plan to be reasonable. While she has outlined a plan, the Appellant hasn't demonstrated that she has the training, or capabilities to achieve this goal. Nor did she produce witnesses who could validate her plans for including volunteer assistance.
53. There is no doubt that the Appellant is well-intended and has a deep desire to continue caring for her cats. However, the purpose of the PCAA and of this hearing process is to first and foremost consider the needs of the cats. The needs of the cats would not be met if they were returned to her.

Order

54. Section 20.6 of the PCAA reads as follows:

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;
- (b) 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).

55. In this case, the Panel permits the Society, in the Society's discretion, to destroy, sell or otherwise dispose of the 14 remaining contested cats.

Costs

56. Section 20(1) of the PCAA states:

The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.

57. The Society is seeking to recover \$26,842.22, which includes all seizure, transport, care, treatment and veterinary costs it has incurred from the time of the seizure of the 16 cats, that are the subjects of this hearing. While not disputing the costs beyond stating that veterinarians are too expensive and charge what they can, the Appellant asked for forgiveness of the costs as she pursued her own adoption and fostering plans. The Panel has reviewed the affidavit of Ms. Moriarty, and the records for expenses which were provided by the Society along with a reference spreadsheet. The Panel accepts the total as presented. As such, the Panel confirms, pursuant to S 20.6 of the PCAA that the Appellant is liable to the Society in the amount of **\$26,842.22**.

Dated at Victoria, British Columbia this 17th day of August 2020.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in cursive script, appearing to read "D Lapierre".

Dennis Lapierre, Presiding Member