

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 28 CATS

BETWEEN:

KARIN JENSEN AND KENNETH PEARSON

APPELLANTS

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 Appellants:

Self-represented

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

November 9, 2020

Location of Hearing:

Teleconference

Introduction

1. The Appellants, Kenneth Pearson and Karin Jensen live on a small acreage at [REDACTED] (the "Property"). Kenneth is a pensioner, 70 years of age who continues to be employed on an occasional basis as an ironworker. Karen, also a pensioner, is retired. They have been residing in a recreational vehicle on the Property for the last three years because of outstanding mould issues in their house.
2. On September 16, 2020, the BC Society for the Prevention of Cruelty to Animals (the "Society") executed a warrant on the Property and seized 40 cats. The seizure was precipitated by reports of neglect that were investigated by the Society as set out below.
3. On October 9, 2020, Marcie Moriarty, Chief Prevention and Enforcement Officer for the Society issued a review decision to the Appellants concerning 28 of the cats seized on September 16, 2020. The remaining 12 cats, she explained, having met the definition of "critical distress" as a result of being in very poor condition, had been euthanized.
4. On October 13, 2020, Karin Jensen filed a Notice of Appeal with the BC Farm Industry Review Board ("BCFIRB"), appealing the decision of the Society not to return the remaining 28 cats.
5. The appeal hearing was held by teleconference on November 9, 2020 and was recorded.
6. Pursuant to s.20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the "Act"), this appeal decision relates to the Society's review decision to uphold the seizure and to not return any of the cats to the Appellants.
7. Section 20.6 of the Act permits 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. Under the Act, 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.
8. The Appellants represented themselves and testified, calling one additional witness, Margaret Lewis. The Society called two witnesses; Dr. Kimberly Hunter, a veterinarian, and Dr. Teresa Cook, a veterinarian, both of whom the Panel qualified as expert witnesses for this hearing.
9. The Society's investigating officer, Special Provincial Constable (SPC) Goodine was unavailable to testify in the hearing. As such, this decision has relied to some degree on her sworn Information to Obtain a Search Warrant (the "IPO"), which

she was authorized to execute by J.A. Davenport, Justice of the Peace for the Province of British Columbia, on September 11, 2020.

10. Having heard and considered all of the witness testimony and considered all of the evidence submitted by both the Society and the Appellants, for the reasons outlined below the Panel permits the Society, in its discretion, to destroy, sell, or otherwise dispose of the seized cats that are the subjects of this appeal. As the Society is not seeking costs of care in this matter, none shall be applied by the Panel.

Pre-hearing Matters

11. On November 6 & 7, 2020, the Appellant, Karin Jensen, sought to include photographs as late exhibit items. There being no objection by counsel for the Society, the Panel allowed the inclusion of these photos as exhibits. Similarly, there being no objections by the Appellants, the Panel allowed for a change in the planned order of presentation to accommodate the schedules of witnesses of both the Appellants and the Society.

Materials Submitted on this Appeal

12. All affidavits and witness statements, the IPO, emails, photographs, videos, records and materials submitted were entered into evidence. All documents received by BCFIRB in advance of the hearing were identified as exhibits, the record of which comprises Exhibits 1 - 24 in the proceeding.

Events leading up to the Seizure

13. The Society's records show that it received calls in 2010 and again in 2014 that approximately 30 -100 cats were living in and around a motorhome on the Property. The Property was described as being barricaded with vehicles and debris. The 2010 complaint recorded the cats as appearing sickly. The Society's records do not show whether any follow-up action was taken on these occasions. The Society's records then show that between July and October 2016 a Society officer visited the Property and met with the Appellants, discussed the large numbers of cats, the cats' obvious health issues, and the cats' apparent needs. The cats' health issues included poor body conditions, runny and puss filled eyes, and hair loss around the ears. Within this span of time, the Appellants ultimately surrendered 27 cats (5 on September 30, 2016, 22 on October 10, 2016) to the Society, some of which tested positive for feline immunodeficiency virus (FIV).
14. Having been the attending officer to the Property in 2016, Special Provincial Constable (SPC) Debbie Goodine referenced these events in her Grounds of Belief for the warrant in the current proceeding. Her IPO goes on to describe her observations and interactions with the Appellants when she visited them on

May 29, 2020 in response to a complaint of animal neglect that the Society received at its call centre on May 28, 2020.

15. The IPO includes a description of the property similar to that described in the 2010 and 2014 complaints. SPC Goodine noted debris and garbage bags piled throughout the Property, and several recreational vehicles, including a motorhome, a camper van and a camper, none of which seemed operational. She also reported seeing approximately 20 cats in and around a feeding station at the end of the driveway, many of which had discharges from their eyes and noses and some of which had eye deformities. She further noted that many of the cats were wheezing and expelled mucous as they sneezed.
16. Included in the IPO was SPC Goodine's description of her interactions with Mr. Pearson, who stated that the cats' health was fine and that they were being treated well. Mr. Pearson further stated that he takes one cat into the clinic at a time and is provided medication (clorapalm and doxicillian) for that cat which he then spreads around to the rest of the cats.
17. The IPO noted that SPC Goodine offered Mr. Pearson the assistance of the Society to care for the cats and to downsize the cat population if he would agree to not obtain any more cats. She subsequently spoke with Mrs. Jensen, who SPC Goodine noted was walking with the assistance of two canes, as she had been recently released from the hospital.
18. SPC Goodine advised the Appellants that they had too many cats that required extensive resources and that the level of care would be too difficult for the Appellants to provide. Mr. Pearson agreed, but expressed worry about the cats getting a home and not being euthanized. He stated that he had approximately 35 cats which he would try to rehome. SPC Goodine advised that if he were to do that, he would need to let the people receiving the cats know that the cats were diseased. She then issued a Notice and explained again the surrender agreement option. The Notice gave the appellants 10 days to address the cats environmental and medical needs and for any cats exhibiting symptoms of sickness to be seen by a veterinarian.
19. Telephone interactions between Mr. Pearson and SPC Goodine occurring June 5, 2020 and June 8, 2020 indicate that Mr. Pearson had made inquiries with his veterinarian, and had discussed reducing the population of cats on the Property to a reasonable number, which resulted, on June 8, 2020, with the Appellants surrendering 19 cats to the Society. Mr. Pearson listed 14 cats they wanted to keep.
20. The surrendered cats were transported to the Prince George Spay and Neuter Clinic for examination. Seventeen of the 19 cats tested positive for FIV. Twelve of the 19 had to be euthanized as a result of being in extremely compromised health and having a poor prognosis for recovery.

21. On June 10, 2020, SPC Goodine contacted the Appellants to arrange a discussion with them regarding the test results. On June 15, 2020 SPC Goodine met with the Appellants and she informed them that 17 of the 19 cats had tested positive for FIV and that the cats had a severe respiratory virus (calicivirus). She further informed the Appellants that the diseases were contagious to other cats and that the examining veterinarian suspected the cats may have been infected with toxoplasmosis, which can be passed on to humans. SPC Goodine asked to assess the remaining cats at the Property.
22. SPC Goodine's inspection revealed that there remained 21 cats on the Property, most of which showed symptoms of sickness, including dental and respiratory issues.
23. While SPC Goodine noted a willingness on the part of Mr. Pearson to seek veterinary help, she also noted his hesitancy based on his worry that the cats might not be returned to him.
24. The IPO notes that SPC Goodine spoke with Dr. Doug Ebbott of the Vanderhoof Vet Clinic on June 15, 2020. Dr. Ebbott confirmed the Appellants were his clients and that, in his view, many of the cats were unadoptable and very unhealthy.
25. SPC Goodine further noted that she made an agreement with Dr. Ebbott for an arrangement whereby the Society would help with the costs of care for the cats and Dr. Ebbott would encourage the Appellants to reduce their cat numbers and seek treatment for the cats that they retained.
26. Communications continued between all of the parties and on June 23, 2020, Dr. Ebbott reported to SPC Goodine that he had neutered 6 cats who were ill but survived the surgeries. However, he advised that two of the cats were not well enough for surgery.
27. At that time Mr. Pearson indicated to Dr. Ebbott that he was not interested in financial assistance from the Society, but he was unable to pay the bill of \$1400.00 for Dr. Ebbott's services.
28. On August 19, 2020 SPC Goodine contacted Mr. Pearson for an update and learned there was a breakdown in the relationship between Mr. Pearson and Dr. Ebbott. She further learned that the Appellants were having issues with their neighbors, that other veterinary clinics required up-front exam fees, that Mrs. Jensen was not well and that they had decided to stay socially distanced until the Covid 19 pandemic was over. This was the last communication between SPC Goodine and Mr. Pearson prior the execution of the warrant.

Review Decision

29. On October 9, 2020, Marcie Moriarty, Chief Prevention and Enforcement for the Society issued her review decision via e-mail to the Appellants. In it, she identified her role on behalf of the Society, which is to review the evidence with respect to the seizure and make a decision as to whether it would be in the cats' best interests for them to be returned. The test for this consideration, she explained, is set out in *Brown v 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.

30. The review decision indicates Ms. Moriarty reviewed the filed information, which had been provided to the Appellants, and which included:

- The redacted IPO and Telewarrant,
- Various redacted veterinary documents,
- Invoices,
- Various photos, and
- The Appellant's submissions.

31. Ms. Moriarty confirmed the authority of SPC Goodine and that the Appellants were the people responsible for the cats that were seized on September 16, 2020. She further confirmed that SPC Goodine formed the reasonable opinion that the cats were in distress as defined by section 1(2) of the Act and that the appropriate course of action was to take custody of the cats in order to relieve their distress. She noted that a Notice of Disposition with respect to the cats was served in accordance with sections 18 and 19 of the Act.

32. Ms. Moriarty concluded that the seizure took place in accordance with the Act and that SPC Goodine acted in good faith at the time of the warrant.

33. In considering whether to return any of the cats, she expressed the view that while there is no doubt in her mind that the Appellants love the cats and desire to care for them, the situation the Appellants are in is overwhelming and not conducive to maintaining cats free from distress. She noted the Appellant's history with the Society since 2010 during which time the Society has repeatedly responded to concerns about cats in the Appellants care. She further noted that in that time the Society had taken 50 cats into its care, which the Appellants had surrendered. She noted the amount of time that SPC constables had spent seeking to help the Appellants manage their cat population had not resolved the Appellants' inability to care for their cats.

34. Ms. Moriarty considered that there was an apparent disconnect between what the Appellants perceived and the reality of their circumstances. Many of the cats in the Appellants care exhibited severe respiratory problems, eye and nasal discharge, infections, dental problems, ulcers, and more. Based on the substantial amount of effort the Society had to put to addressing the cats' needs, she concluded that it was irrational for her to accept that the Appellants alone could meet the needs of the cats if they were returned.
35. Ms. Moriarty's decision was to return none of the cats.

Evidence and key findings of fact

36. Witnesses testified at the hearing of this appeal under oath in the following order: Dr. Kimberly Hunter, Margaret Lewis, Dr. Teresa Cook, Karin Jensen and Ken Pearson.
37. At the request of the Society and after outlining her qualifications as a long-standing experienced veterinarian who has worked on several animal cruelty cases under the Act, the Panel qualified **Dr. Kimberly Hunter** as an expert witness.
38. Dr. Hunter testified that she attended the Property on September 16, 2020 to assist SPC Goodine with the seizure. Her evidence is consistent with a report that she provided, which is contained in Exhibit 6 of the Society's document disclosure binder.
39. She described the Property as being muddy and containing narrow pathways. Of the recreational vehicles and campers she looked in, only one camper was dry. She estimated seeing 40 cats; some were on the pathways and some were inside one of the campers at feeding dishes. There were litter boxes near to where the cats were eating, and wet newspapers on the floor.
40. Dr. Hunter expressed concerns about sanitation. She noted that there was lots of garbage and metal around the Property and that there were no shelters for the cats.
41. She examined several of the cats onsite at the time of removal. She examined their eyes and ears and body condition and testified that all but one had crusty ears, indicative of mites and long-standing ear infections. She stated that cats with pus in their eyes indicated a herpes infection, and that she suspected that the cats were suffering from FIV.
42. Dr. Hunter noted that most of the cats were underweight and their coats were matted. She stated that cats normally like to groom themselves and keep clean. It was her opinion that the physical condition of the cats was linked to their dental issues which likely made it too painful for them to groom themselves.

43. In response to a question from counsel for the Society, Dr. Hunter stated that she was not surprised that some of the cats had to be euthanized. She noted that the health conditions exhibited by many of the cats were not treatable.
44. In explaining the term “critical distress”, which is the condition under which the Society decides to euthanize rather than attempt to treat a seized animal, Dr. Hunter stated that in this case, on her own as a veterinarian, she would have made that determination much sooner and for more of the cats seized than did the Society. In her view, the Society defines the term according to a higher standard than is hers and as a result it goes to greater effort than she would to care for and cure such sick cats.
45. Concerning FIV, the feline immunodeficiency virus, Dr. Hunter stated that while it is treatable, there is no cure for the disease and the virus resides in the environment. Cats need to be stressed to get FIV, and it was Dr. Hunter’s opinion that all of the cats in this case were in distress based on the prevalence of the virus among the large cat population on the Property.
46. **Margaret Lewis**, a 74 year old friend and former neighbor of the Appellants testified on the Appellants behalf. She described having problems with the neighbors when she lived nearby the Appellants, which is why she sold her property and moved elsewhere. She often visited with the Appellants and never had problems with the Appellants’ cats or dogs. She felt that the animals were well fed however she did remember seeing cats with pus filled eyes on one occasion. She noted that the cats had a habit of visiting the neighbors. Ms. Lewis thought that she had last visited the Appellants in February or March 2020.
47. At the request of the Society and following an outline of her qualifications as a veterinarian and epidemiologist as well as a Society Regional Manager often overseeing animal cruelty investigations, the Panel qualified **Dr. Teresa Cook** as an expert witness.
48. **Dr. Cook’s** testimony is consistent with the report that she provided which was included as Exhibit 6 in the appeal record.
49. Dr. Cook testified that she was in attendance at the Property at the time of the seizure for oversight purposes. She did not go onto the Property but was involved in the care of the cats following the seizure. She was also involved in triaging and examining the cats that were surrendered by the Appellants on June 8, 2020.
50. Concerning the cats surrendered on June 8, she testified that most had FIV, with a few having respiratory issues. Most of the cats also had ear mite infections and she noted that among the younger cats some had pus filled eyes and some were missing eyes. Twelve of the cats from those surrendered on June 8 were euthanized. Exhibit 6 contains photographs and examination records of the cats surrendered on June 8.

51. In discussing the term “critical distress”, she explained that this determination is rarely made by veterinarians, so to see this number of cats determined to be in critical distress by three different treating veterinarians was, in her view “remarkable”.
52. FIV, or feline immunodeficiency virus, she explained, like aids in humans, makes the animal vulnerable to other diseases by weakening its immune system. Infected cats, in other words, become unable to fight off other diseases. Such other diseases can include toxoplasmosis, which can be transmitted to humans and cause brain lesions. She advised the Appellants to speak with their personal doctors about these potential health threats.
53. She testified that from the September 16, 2020 seizure, 95% of the cats that were seized had FIV. Nine of the cats were euthanized immediately and an additional cat was euthanized the following day.
54. Speaking to the relative frequency of this disease occurring in cats, Dr. Cook testified that normally 2% of cats in Canada have FIV, and that it more often occurs in intact male cats.
55. In surmising as to why the occurrence was so high in the seized cats, she explained it was likely due to them being in close contact. The disease is transmitted through saliva and also as a result of fighting.
56. In explaining how a site could be prepared to avoid this problem, she stated that all surfaces would need to be bleached, a solution that would be nearly impossible to achieve on the Property from which the cats were seized. The FIV virus can live for a period of time in the environment and the disease cannot be cured, but it can be managed. Keeping cats infected with FIV requires close monitoring and consistent care, which most people cannot provide.
57. In speaking to the necropsy reports for the cats that were euthanized (Tab #25, Exhibit 6), Dr. Cook explained that the cats that were missing teeth and that it would have taken months for their teeth to have broken down, which meant that the cats would have been in pain for some time. Such problems with their teeth would have also affected their sense of smell and therefore their interest in food.
58. Concerning the cats’ upper respiratory problems, she explained that it was a complex issue which, at base, stemmed from FIV. In her view, if a person has one cat that has FIV, then that person should have no other cats.
59. Responding to a question as to whether the Property contributed to the infections, Dr. Cook explained that in such unsanitary conditions, the infection would be impossible for the cats to avoid. She noted that a 33% infection rate among feral cats is common.

60. She concluded by stating that cats brought onto the Property are essentially condemned to a life of suffering and that, in her opinion, the Appellants exhibited a complete lack of awareness of the conditions that the cats were living in.
61. In estimating the costs of care relating to this seizure Dr. Cook stated that, for the Society, it would likely be in the range of \$50,000.00. The Society will only be able to adopt out a FIV infected cat with the understanding that it will need to be closely monitored with ongoing care and be treated with antibiotics on an ongoing basis. She expected that more of the seized cats would have to be euthanized.
62. Mr. Pearson referred to a letter from Dr. Amelia Gordon (Tab #19, Exhibit 6) who had provided a report on 12 of the Appellants' cats that she had examined following the seizure. Dr. Gordon's report suggested a range of FIV infection severity among the cats. In response, Dr. Cook expressed the view that she saw little discrepancy between her statements and Dr. Gordon's opinion, noting that not all cats will exhibit the same conditions to the same degree.
63. **Ms. Karin Jensen** began her testimony by reading part of an e-mail (Exhibit #23) in which she described having had a bad year and noting that over 100 mm of rain had fallen. She then went on to refer to a series of photographs (Exhibit #21) showing recently cleaned and tidied cat facilities, bags of cat food, heated water bowls, bought water and cat food at water stations. She explained that their well pump had been broken down for some time and they had to replace it. In the meantime, they had purchased bottled water both for themselves and the cats.
64. She further explained that she had undergone hip surgeries which became infected, and so had been unable to maintain the Property. She advised that she was currently was walking with two canes.
65. With respect to the cats that she surrendered in June, and in referring to one cat that had been injured, she stated that she had panicked. The kitten had lost its eye and the eye was eaten by its mother.
66. She denied hoarding cats and she stated that she was not generally a hoarder. She gave away kittens because she could not put them away (euthanize them). She stated that has taken care of animals her whole life and can't turn one away if it is hungry.
67. In response to Society questions about her history with the Society going back to 2010, Ms. Jensen stated that she has probably surrendered 100 or more cats to the Society. She also stated that she knew she had diseased cats in both 2016 and in 2020 and she knew that they were getting diseased while they were on the Property.
68. She stated there are still 6 cats currently on the Property.

69. At this point in her oral evidence Mr. Pearson interjected, stating that Ms. Jensen had become very stressed. Ms. Jensen did not continue testifying.
70. **Mr. Ken Pearson** gave evidence as to the origins of the cats at the Property. He stated that people have brought cats to the Property, that some cats in the area come and go from the Property, and that the female cats at the Property have kittens. He noted that some of the cats likely belong to the Appellants' neighbors. He stated that he currently has 4 adult cats, one of which is male and needs to be fixed, one of which is female and is not fixed, and 4 kittens which are still too young to be fixed. He testified that he has had 53 cats spayed or neutered since 2010-2012.
71. When he was questioned by the Society, he acknowledged knowing that the cats were sick but stated that he was in fact treating the cats for their illnesses. He further stated that he cleaned up after the cats by providing them with an outside toilet area. He also noted that whenever the cats showed respiratory problems he would take one of them to a veterinarian and that he would track any health issues that appeared in the cats and treat them collectively with the medication that he received for the cat that he took in for treatment.
72. With respect to the Notice issued by the Society to the Appellants on May 29, 2020, he claimed that the veterinarian engaged by the Society saw only 8 of the estimated 60 cats that they had on the Property.
73. Concerning the overall health of the cats, Mr. Pearson stated that "When a cat is running around and having fun, to me it is not euthanizable."
74. Mr. Pearson further stated that he wanted 15 of the seized cats back from the Society and that they would deal with the cats' health issues as soon as the Covid 19 epidemic is over.
75. With respect to sanitizing the property, Mr. Pearson stated that he planned to vacuum and pressure wash the Property prior to the cats being returned.

Analysis of the evidence

82. Materials submitted for this hearing outline a history of concerns dating from 2010 regarding the number and apparent ill health of cats living on the Property. The Property has been consistently described as being unsanitary, littered with garbage bags, scrap metal and inoperable vehicles. Reportedly, between 30 and 100 cats have lived on the Property at any given time along with the Appellants who live in a recreational vehicle on the Property.
83. Between June and October 2016, SPC Goodine, an officer of the Society, visited the Appellants to address the cats' health. That visit resulted in the Appellants

surrendering 27 cats, several of which were diagnosed as carrying the FIV disease.

84. In May 2020, SPC Goodine responded to a complaint of animal neglect on the Property, and described the Property as being in the same condition as it was described in the 2010 and 2014 complaints. She noted seeing approximately 20 cats, several of which were exhibiting obvious respiratory illnesses. The affected cats were wheezing, discharging pus from their eyes and expelling mucous as they sneezed.
85. On June 8, 2020, the Appellants surrendered 19 cats to the Society, 17 of which tested positive for FIV and 12 of which had to be euthanized. There were still 21 cats on the Property, most of which were showing symptoms of sickness.
86. From June 8, 2020 until August 19, 2020, a series of unresolved negotiations occurred between SPC Goodine, the Appellants and a veterinarian known to the Appellants in an attempt to both reduce the number of cats on the Property and to provide proper treatment for them. Unfortunately, that process did not achieve its goals.
87. As noted above, the execution of the warrant on September 16, 2020 resulted in the seizure of 40 cats, 12 of which, having met the Society standard of “critical distress”, were euthanized.
88. In their testimony, both expert witnesses for the Society spoke about the term “critical distress”. Dr Hunter, who attended the September 16, 2020 seizure and conducted onsite examinations of the cats stated that, as a private veterinarian, she would have made a critical distress call on many of the cats she examined sooner than did the SPCA. She stated that this is because the Society operates on a higher standard, meaning it goes to greater effort to save and cure ill cats, than would most veterinarians.
89. Included in Exhibit #6 is a series of individual cat photographs and a detailed record of Dr. Hunter’s onsite examination of 41 cats. Her related report, also included in Exhibit #6 describes a range of frequently noted conditions such as severe upper respiratory disease including mucous and discharge from ears, eyes and nose, some of it malodorous, moderate to severe dental disease, apparent neurological disorders, conjunctivitis (inflammation of the eyes), paralysis, dehydration, and gastroenteritis. She noted that the severity of the illnesses in the cats in many cases also corresponded with a lengthy period of illness and suffering.

90. Dr. Cook, like Dr. Hunter, described FIV as a disease in cats similar to the aids disease in humans in that it weakens the immune system and makes the cat vulnerable to other diseases. FIV is an incurable disease, but with close monitoring and exceptional care, can be a managed. 95% of the cats seized were suffering from FIV, an exceptionally high percentage relative to the normal distribution of cats in Canada (2%), and even relative to the feral cat population in Canada (33%).
91. Speaking to the cat's dental issues, Dr. Cook said it would have taken months for the cats' teeth to break down as they did with several of the cats, meaning that they would have been in significant pain for that whole period of time.

Decision

92. The Appellants acknowledged in their testimony that they had known that the cats were diseased prior to the seizure. Despite having previously demonstrated some ability to care for the cats and some willingness to seek medical attention for the cats, the care provided to the cats by the Appellants prior to the seizure was clearly insufficient. This Panel finds that, in facing the prevalence of disease among their cat population, the Appellants were unwilling to take adequate actions to address those issues.
93. Mr. Pearson testified that, "when a cat is running around and having fun, it is not euthanizable." However, this Panel finds that most of the Appellants' cats were clearly ill and in distress. The Panel is compelled to conclude that the Appellants didn't have the financial or emotional resources to properly take care of their cats. This lack of care overrides the fact that they set out food and water for the cats, felt emotionally tied to them (were "his buddies", as Mr. Pearson called them), and allowed them the freedom to roam. Given the prevalence of the FIV disease among their cats, it's transmissibility and its effects over time, this Panel finds in accordance with the statement offered by Dr. Cook in her testimony that "cats brought onto that property are essentially condemned to a life of suffering."

Duties of persons responsible for animals

94. The Act sets out the following with respect to 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 continue to be in distress.

Distress

95. The PCAA sets out the following definition of "distress" in section 1(2):
 - 1 (2) For the purposes of this Act, an animal is in distress if it is

- (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
 - (a.1) kept in conditions that are unsanitary,
 - (a.2) not protected from excessive heat or cold,
- (b) injured, sick, in pain or suffering, or
- (c) abused or neglected.

Seizure of the animals

96. In addition to the definition of distress as set out at section 1(2) noted above, s. 11 of the Act states as follows:

- 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.

97. Based on the materials provided and the testimony of the witnesses, the Panel finds that the Appellants were responsible for the seized cats and that the cats were in distress at the time of the seizure. The Panel upholds the decision of the Society not to return any of the cats as any such return would inevitably result in the cats returning to a situation of distress.

98. The Panel accepts the view expressed by Ms. Moriarty that while the Appellants undoubtedly love their cats, there is a disconnect between what the Appellants felt and their actions.

99. Similarly, the Panel accepts the concluding statements of the Society that the Appellants were well aware of the prevalence of disease among the cats and did little, if anything, to control it.

Determination of appeal

100. S. 20.6 of the Act states:

On hearing an appeal with 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).

101. It is the considered view of the Panel that, given the lack of sufficient actions taken by the Appellants to address the long-standing needs of their many, obviously sick cats the Society made the correct decision in not returning any of the cats to the Appellants. As such, this Panel permits the Society, in its discretion, to destroy, sell, or otherwise dispose of all of the seized cats.

102. The Panel notes that, according to their evidence, the Appellants remain in possession of 8 cats. The Panel shares the expressed wish of the Society that the Appellants should take it upon themselves to take better care of the cats they still have.

Costs

102. Section 20 of the PCAA states:

- 20 (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.
- (2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.
- (3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.
- (4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.
- (5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.

103. Despite the estimate provided by Dr. Cook in her testimony that the Society has incurred costs in the range of \$50,000.00 in dealing with this matter, the Society is not seeking a cost award in this appeal. As such, no order for costs is made by the Panel.

Dated at Victoria, British Columbia this 23rd day of November 2020.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

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

Dennis Lapierre, Presiding Member