

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 TWO CATS

BETWEEN:

NATALIE LEISMEISTER

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR
THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

David Zirnhelt, Presiding Member

For the Appellant:

self-represented

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

November 10, 2020

Location of Hearing:

Teleconference

I Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*). The Appellant, Natalie Leismeister, is appealing the review decision issued under s. 20.2 (4)(b) of the *PCAA* by Marcie Moriarty, Chief Prevention and Enforcement Officer for the British Columbia Society for the Prevention of Cruelty to Animals (the Society) to not return two cats (the Animals) to her care.
2. Section 20.6 of the *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 animals.
3. The Appellant was assisted in the hearing by Autumn Longtin-Gauthier, Supportive Employment Supervisor, and Eva Botten, Supportive Employment Program Manager with the WISH Program, a women's outreach program. All three testified. Through its counsel, the Society called three witnesses: Animal Protection Officer (APO) Sandra Windover, Special Police Constable (SPC) Jarrett Marleau, and veterinarian, Dr. Karen van Haften. The hearing was recorded.
4. For reasons explained in detail later, the Panel has decided not to return the Animals to the Appellant and pursuant to s. 20.6(b) of the *PCAA*, the Society is permitted, in its discretion, to destroy, sell or otherwise dispose of the Animals. The society is entitled to its reasonable costs in the amount of \$1395.58 for veterinary care, boarding costs and cost associated with the seizure of the Animals.

II Preliminary Matters

5. At the outset of the hearing, the Appellant questioned the relevance of her prior history with the Society and its use in this hearing. She says these past incidents were closed and should not be part of this hearing. She is concerned about false allegations contained in the documents related to these incidents as she has no way to dispute those allegations in this process. While past history is not particularly relevant to the question of whether animals are in distress at the time of the seizure, the Appellant was advised that it is relevant to the question of whether it is in the best interests of the Animals to be returned and whether the Animals would remain in good condition or return to circumstances of distress. That is how I have used the prior history in this case.

6. The Appellant also challenged the circumstances around the Society obtaining the search warrant; she does not understand how the Society was even allowed to take her cats in the first place. BCFIRB, in hearing appeals under section 20(3) of the PCAA, does not have the authority to review the decisions of a provincial court judge or justice of the peace as to whether circumstances justify the issuance of a warrant. A party who believes that a warrant has been improperly issued or executed can challenge that decision through judicial review and have the warrant quashed. Until such time as a warrant has been set aside, BCFIRB is entitled to rely on its validity and I have done so in these circumstances.
7. The appeal was heard by teleconference on November 10, 2020 commencing at 8:30 am and ending at approximately 4:00 pm, after hearing the evidence of the witnesses and closing submissions by both the Appellant and the Society. After the conclusion of the hearing, the Society filed a late submission speaking to an issue of remedy. It takes the position that BCFIRB does not have the jurisdiction to commit the Society to an ongoing obligation to support the Appellant with weekly visits to check on her progress in the event either or both cats were returned. The Appellant was given an opportunity to respond to this submission.
8. On November 20, 2020, the Appellant made a late submission through her representative. Although she touched on these matters in the hearing, the Appellant expressed her difficulties communicating during the hearing; she said she was not able to respond to some evidence. She had other witnesses that, due to a change in hearing date, she was unable to call. She also describes having a traumatic brain injury and difficulty with processing information under pressure. As well, she has “seizures” which cause brief moments of memory loss. Due to her physical disabilities, she is unable to write and is computer illiterate. She describes the hearing process as inaccessible and she felt she was placed at a disadvantage, especially given the impersonal phone platform.
9. In response, I want to acknowledge there are challenges associated with telephone hearings. However, given the time constraints associated with these hearings, BCFIRB has made the policy decision that PCAA appeals will be heard by telephone conference. Having heard the Appellant testify and respond to the questions of the Panel and the Society, I am satisfied that she understood the issues at stake in this hearing and was able to articulate her position and tell her story. She was well supported by her two representatives who assisted her with writing submissions and emails and presenting her case; she called witnesses, and she testified. The teleconference hearing provided the Appellant with a real opportunity to present her evidence and arguments for the return of the cats. Finally, I do not think that this is a case that turns on credibility nor is there even much dispute on the facts. The real issue for me on this appeal is whether the Appellant has satisfied me that, going forward, she can implement her plan to act in the best interests of the cats.

III Material Admitted on this Appeal

10. The documents received by BCFIRB in advance of the hearing were entered as exhibits. The record comprises Exhibits 1-18 and is attached as Appendix "A" to this decision.

IV History Leading to Seizure of Cats and the Day of Seizure

11. The Society disclosed documents which set out its history with the Appellant. This history which is set out in the Information to Obtain a Search Warrant (ITO) identifies the cruelty complaint incidents leading up to the most recent seizure.
12. **Complaint #1**- On November 19, 2018, APO Windover responded to a cruelty complaint of a pregnant cat confined to a crate in the common area of a [REDACTED] [REDACTED] single room occupancy (SRO) building without access to food, water or litter, with no room to move and in cold conditions. On attending, she observed no livable space in Ms. Leismeister's room. The door could not open properly and there were approximately 7' piles of furniture and clothing. A Notice of Distress was issued to provide: access to clean food and water from clean, disinfected containers, located so as to avoid contamination by excreta; necessary veterinary care; shelter that is clean with sufficient space to allow the animal to turn freely and to easily stand, sit, and lie down; and periodic exercise to maintain good health, unfettered from a fixed area and free of injurious objects or other hazards.
13. APO Windover returned on November 20, 22, and 23, 2018, and observed some space had been provided within the unit but, given the large amount of miscellaneous items piled and stacked inside, she felt conditions were unacceptable and unsafe. Because of this, she offered boarding for the cat and her kittens at a BC SPCA shelter. This offer was refused. APO Windover returned on November 28, 2018 to execute a search warrant and remove the cat and kittens, but Ms. Leismeister had fled with the cats. On a return visit on December 17, 2018, APO Windover observed the door to the suite partially blocked by furniture and miscellaneous items but concluded there was an approximately five feet by five feet square of cleared space, adequate food, water and litter, and the three cats appeared to be in adequate condition.
14. **Complaint #2** - A separate cruelty complaint was received on July 31, 2019, from a building manager of a new SRO location on [REDACTED] concerned for the welfare of two cats. Ms. Leismeister had been recently moved from her room as the fire department issued a do not occupy (DNO) order due to "hoarding up to the ceiling" and there was little to no room for the cats or even a litter box. On August 1, 2019, APO Windover met the building manager who confirmed

Ms. Leismeister had been temporarily moved to a room free of clutter and debris while a junk removal company cleaned her suite. APO Windover concluded the cats were not currently in distress and closed her file.

15. **Complaint #3** - On October 15, 2019, a cruelty complaint was received from the building manager who was concerned that a cat was pregnant from her offspring. Ms. Leismeister's unit was "hoarded up again" and she had been issued two DNO orders from the fire department. The cats were not being fed or provided litter. APO Windover attended on October 16, 2019 and spoke with the building manager who described that the female cat had recently given birth to two kittens that both died. APO Windover spoke with Ms. Leismeister in her suite and observed large amounts of clothing and furniture stacked in the room. The door was blocked and could not open fully. The female cat acted fearful when the fire alarm went off (body posture low to the ground with ears pinned down and tail tucked). The male cat was intact and approximately 7 months old. APO Windover requested that Ms. Leismeister clear space so that the cats could feel safe inside the unit when the alarm went off.
16. On October 17, 2019, APO Windover returned with SPC Rhonda Ott. Both cats were observed roaming the hallway. A large space had been cleared in the room and food, water and litter were available to the cats. Large furniture was stacked around the room and SPC Ott explained the hazards of furniture potentially falling on the cats and of leaving the cats in the hallway exposed to other animals. A Notice of Distress was issued requiring Ms. Leismeister to provide access to clean potable drinking water at all times and sufficient quantity of suitable food, and to ensure the area is kept free of injurious objects. Comments addressed keeping both cats safe, including in the hallway where dogs may grab them, having food, water and litter available, and ensuring the room is cleaned and made safe for the cats.
17. **Complaint #4**- On January 2, 2020, another cruelty complaint was made by the building manager as he was concerned for the cats and five kittens. This was the third litter of kittens and the living conditions were extremely unsanitary and cluttered. On attending, APO Windover and SPC Jay found Ms. Leismeister's door ajar. They spoke with her and she stated she was "in the middle of organizing" and that her place was "not that bad." They observed furniture stacked approximately six to seven feet high and approximately six feet deep from the walls. There was no water accessible for the cats and only one litter box. The female cat was observed with approximately four kittens on a blanket, surrounded by clutter. A sink in a communal bathroom down the hall was the source for water. Ms. Leismeister was advised that it was unacceptable for the cats not to have access to water and that the mother cat should not need to leave neonatal kittens to access water while nursing. The stacks of furniture posed a hazard to the cats and kittens, and the room needed to be thoroughly

cleaned to be an acceptable place to keep cats. They offered to assist by finding boarding for the cats at an BC SPCA shelter while she cleaned her suite, which was refused. A Notice of Distress was issued requiring Ms. Leismeister, within twenty-four hours, to provide access to clean potable drinking water at all times and ensure the shelter is cleaned and sanitized regularly and kept free of injurious objects. Additional comments included the need to clean the hazards of the room, as items were stacked too high and were dangerous, and the need to clear the floor space.

18. On January 4, 2020, SPC Jay attended and observed that an adequate amount of floor space was cleared for the mother cat and kittens to nurse safely and that there was food, water and litter available. SPC Jay was informed by building staff that Ms. Leismeister would be moving to a new location. On February 7, 2020, SPC Jay returned and assisted Ms. Leismeister in moving the two cats and four kittens to a temporary room in a new building while waiting for a permanent room. Ms. Leismeister indicated she was interested in surrendering the kittens to the BC SPCA when they were weaned.
19. On March 12, 2020, the Society instructed staff that, due to the COVID-19 pandemic, unless animals needed immediate veterinary care, they should not be taken into custody until further notice.
20. On March 15, 2020, APO Windover attended Ms. Leismeister's new residence in response to her voicemail that the kittens could be rehomed. Ms. Leismeister advised that she had found homes for the kittens but needed another two weeks before she was ready to "let them go." The suite was stacked with items and furniture (approximately five feet high). Ms. Leismeister indicated the two cats and four kittens were currently with another resident named "Pam." APO Windover observed that the conditions in "Pam's" suite were adequate, but "Pam" indicated the cats could no longer stay with her and she would be returning them. APO Windover informed Ms. Leismeister that the conditions in her suite were not acceptable to house the cats and kittens and offered her the option to surrender any of the cats to the BC SPCA. The offer was declined.
21. On March 17, 2020, APO Windover returned and observed the door to Ms. Leismeister's suite was propped open with a broom. There was a blanket on the floor outside of the suite where the mother cat and four kittens were sleeping. One cooking pan with water and a dirty serving dish with kibble were available outside the suite. No clear floor space was observed in the suite; items piled within the unit and outside the door had approximately doubled in two days. APO Windover provided fresh kibble in the serving dish and the four kittens and mother cat immediately rushed to the dish and began eating; the male exited the suite and also began eating. The cats all appeared timid and the mother was growling while eating. APO Windover took four photographs of the conditions

outside of the suite and spoke to the building manager, advising that the Society could not intake the cats at that time and suggested looking for other ways to assist in rehoming the kittens.

22. **Complaint #5** - The most recent cruelty complaint, and the one leading to the ITO, was received on September 1, 2020 from Ms. Leismeister's building manager. The complaint described Ms Leismeister as a "severe hoarder" whose suite had received a DNO order from the fire department; she does not clean up after her cats and the female is regularly impregnated by the male cat. The most recent litter of kittens died due to poor nutrition, high stress, and lack of veterinary care and the female cat was pregnant again.
23. On September 6, 2020, APO Windover spoke with a staff member at the building who described both cats freely roaming the hallway, urinating and defecating in common shower/bathroom and entering other tenants' rooms. Tenants were frustrated and threatening to hurt the cats. Ms. Leismeister's suite had no floor space for either her or the cats. The female cat had a litter of kittens in June 2020 and all kittens died within 36 hours. No vet care was sought.
24. On attending, two cats were observed outside of the suite with large amounts of furniture and items in the hallway. There were approximately seven tall piles of furniture, clothes and boxes inside the suite. APO Windover explained the health concerns for having multiple litters of inbred kittens, and the hazards posed to the cats by living in an unsafe, crowded environment and allowing them to freely roam the hallways. Ms. Leismeister felt the cats should be allowed to freely roam the building and denied that having a mother cat and son mating was a concern. She did not seek veterinary care when kittens began dying. She did not believe the other tenants would harm her cats. During the conversation, APO Windover observed the cats were exhibiting anxious and stressed behaviour. She emphasized the need for a space where the cats can feel safe and exhibit normal behaviour. Given the current state of her suite, the cats were unable to rest or relax. APO Windover offered to get the cats spayed and neutered, which was declined. APO Windover also suggested that one of the cats be surrendered to stop the breeding but that was also declined. A Notice of Distress was issued for Ms. Leismeister to, within seven days, provide necessary veterinary care when animals exhibit signs of injury, pain, illness or suffering that require medical attention, to provide shelter with sufficient space to allow the animal to turn freely and to easily stand, sit, and lie down, and to ensure the area is kept free of injurious objects or other hazards. Comments addressed the need for providing a safe space in the suite for both cats and for seeking veterinary care at the first signs of illness.

25. On September 9, 2020, APO Windover confirmed that, while Ms. Leismeister had worked with a junk removal team and a women's outreach program, she did not have a clear space in her suite to sleep and was sleeping in the common area. Both cats continued to roam the hallways and common spaces, urinating and defecating in showers and bathrooms. SPC Windover followed up on September 15, 20 and 22 and confirmed that little progress had been made to improve the living conditions in the suite.
26. On September 9, 2020, APO Windover provided a summary of the cat's litters to veterinarian, Dr. van Haaften. Dr. van Haaften, in an email of September 11, 2020, concluded that allowing these two cats to breed was predictably producing unhealthy offspring and any kittens produced would certainly have been in distress while they slowly died. If these cats were not prevented from breeding, the predictable outcome was that more kittens would be born and die in distress. To prevent ongoing suffering of unhealthy kittens, she recommended that one or both cats be desexed (ideally both) or separated into different homes. Failing to take these steps would result in more unhealthy kittens that would likely suffer and die as the previous litters had done.
27. On September 22, 2020, SPC Marleau obtained and executed a search warrant with the assistance of APO Windover. Ms. Leismeister was not present initially and building staff opened the door to the suite. There were items, crates and furniture stacked outside in the hallway and in the suite and the door was partially blocked. Ms. Leismeister arrived and SPC Marleau advised that he was taking the animals into custody due to hazardous living conditions, issues with the cats interbreeding and not being able to express normal behaviour, and the difficulty in dealing with Ms. Leismeister.

V The Review Decision

28. On October 9, 2020, Ms. Moriarty issued her Review Decision outlining her reasons for not returning the Appellant's cats seized on September 22, 2020. She reviewed the ITO and the redacted Cruelty Complaint Summary, various photos, and submissions from the Appellant. Ms. Moriarty was satisfied, based on the evidence, that SPC Marleau reasonably formed the opinion the cats were in distress, as defined in section 1(2) of the *PCAA*, and his action to take custody of the cats to relieve them of distress was appropriate. Ms. Moriarty next considered the Appellant's detailed and articulate plan for how she would look after the Animals should they be returned. On the face of it, she acknowledged that plan appeared reasonable. She also acknowledged the need to preserve the bond between animals and their owners where distress can be remedied. However, Ms. Moriarty pointed out that while the living conditions and daily care for the cats was an issue, there were other concerning facts related to Blondie's

repeated litters (likely impregnated by her son) and the number of kittens that were either still born or died shortly after birth after a time of suffering.

29. After summarizing the history of five litters since November 2018 and the number of kittens that did not survive, Ms Moriarty concluded:

The bottom line is that while your plan on paper is admirable, based on your history and pattern of behaviour, I am not convinced that you will be able to adhere to this plan. Despite multiple moves to address your living conditions, multiple offers to assist you with preventing future litters of kittens or taking in kittens you could not care for, and hours of constable time working with you to try to relieve these cats of distress permanently, the situation again has deteriorated. In good faith, I cannot return the cats to you as I believe that they would again in a short period of time, be in the same situation that resulted in their removal.

30. The Appellant filed her appeal with BCFIRB on October 13, 2020.

VI. Grounds of Appeal

31. In her Notice of Appeal, the Appellant denies the cats were in distress at the time of seizure and says they are healthy. Complaints of cats not having enough room to sleep were unfounded, the room has been re-arranged to provide adequate living space for both cats, and arrangements have been made with the building manager to ensure and support a healthy living environment for them. She seeks the return of both cats.

VII Appellant's Evidence

32. Ms. Leismeister testified on her own behalf. She said she has not had much time to prepare for this hearing as she has been in a dispute with BC Housing. She said her cats are healthy, well behaved and well looked after. They were not in distress, abused or unhealthy at the time of seizure. She said any allegation that her cats were not fed is untrue and her cats have never been underweight.
33. Despite disputing that her cats were in distress, the Appellant's plan for return of her cats was submitted to the Society and includes:
- Comprehensive cleaning and sanitizing of the space, water bowls, food bowls, and litter.
 - Feeding twice a day and wet food will be distributed one can per day split between both cats and a constant supply of dry food to ensure healthy growth and nourishment. Cats will be fed at the same time as to ensure that they both eat their own meal.
 - Cleaning water dishes and litter box daily.

- Maintaining room cleanliness to ensure that safety by creating an area where cats can play and sleep away from dangerous objects and separate from their litter.
 - Ensuring appropriate temperature year-round.
 - Room will be kept clean and habitable for both cats at all times to ensure that they reside primarily in suite and hallway.
 - Obtaining veterinary support when needed.
 - Neutering Lucifer with preference for a cat vasectomy.
 - Payment plan for accruing vet bills where a payment plan is confirmed through employers.
 - Allowing Society inspection prior to any return.
34. She described having large kennels (or crates) that she leaves open. She has done the best she can and is working on getting better accommodation through BC Housing. She has had to spend money on furniture. The furniture is in the hallway as she needed to work inside her place. She believes that a lot of her issues have been created by BC Housing and she is currently looking for another space. She loves her cats and will do anything to get them back.
35. The Appellant expressed concern that Ms. Moriarty of the Society is in a position of conflict of interest. Ms. Moriarty was working on her case as a supportive agent and now she is working against her through this process. She feels she has been harassed by the Society. The continued harassment makes it difficult for her to correct the situation and get support for her issues.
36. On cross examination, Ms. Leismeister acknowledged that she has been living in SRO buildings on [REDACTED]. She is looking to move somewhere more permanent but can renew her lease if she follows the rules. She wants to be settled and have somewhere where her cats can go outside. She acknowledged ongoing disputes with BC Housing and being asked to leave her last two places. She conceded the fire department told her she had to get rid of things in order to make it safe. She also believes they wanted to do repair work and would not let her back in the building. She said the living conditions were not great and she has been terrified living there. She described things as different in her new unit and she does not have to worry about things as much. She said there are lot of dangerous situations and people that live in these buildings.
37. She has been in the [REDACTED] building since February 2020. The fire department inspects buildings quite regularly, at least three or four times a year. Before the seizures, inspectors came in September and in the spring. She said the fire department came after the seizure in September and told her that she was doing a good job.

38. In addition to Society employees, she acknowledged the building manager was concerned about the ability to open the door and the number of items in her room before the cats were seized.
39. She denied ever being told by a professional that she has a hoarding problem. She has not sought treatment but would if that would get her cats back. The Appellant did not appear to acknowledge the evidence that the room was filled with large furniture, metal shelves and bags of items. She stated, as a designer, she needed lots of different stuff. With respect to the items in the hallway, she stated she intentionally made access difficult as people break into her room, but she now has a security gate for the cats and kittens. She also conceded that she let her cats wander in the hallway, but she is always home and does not feel this is a problem. Residents in the other buildings threatened her cats and some tenants in the current building don't like her cats. There is a pitbull on the same floor that has attacked other animals, but she has an agreement with the owner and lets her know when her cats are out. Her cats generally are not in the hallway when she is not at home, but it has happened, and she promised it will never happen again. She denied sleeping in common areas of the building but acknowledged having done so once in a while. The building manager has advised her not to sleep in common areas.
40. Ms. Leismeister said she got the female cat, Blondie, from a friend in March 2016 as a kitten. Blondie has had four or five litters but not more. The first litter was on [REDACTED]. She said that she let Blondie have kittens for health reasons as someone advised that the cat could get an infection and need to be spayed. She does not like the idea of cats being spayed and neutered. The male cat, Lucifer, was born in a November 2018 litter of five kittens. One kitten was eaten by Blondie when someone broke into her room screaming. The kittens were not seen by a vet. In 2019, there were a few litters (July and October) and, in 2020, there were litters in January and September. The Appellant said she tried to stop the cats from mating but it usually happened when they were left with other people. She did want Blondie to have one last litter but says she will have her spayed if she has to.
41. The Appellant was cross examined on how she cared for the kittens. She described checking to make sure Blondie is lactating but she does not weigh the kittens. She makes sure the kittens are getting fed, cleans their nest and makes sure the room is at a comfortable temperature. She denied leaving Blondie in the hallway with her kittens. She was shown a picture of the kittens in the hallway and said they were almost 12 weeks old at that point.
42. The Appellant reviewed Blondie's litters. Only two kittens survived the first litter. She does not know why some kittens died; there were no signs they were sick. Of five litters, Blondie had 18 kittens and 12 died without warning. She did not

take the cat or kittens to a vet. She acknowledged APO Windover's offers to have her cats spayed or neutered for free, offers of care for kittens, and offers to rehome them for free. When asked why she refused the offers of help, she stated she did not want to give the cats away.

43. With respect to incident in November 2018 when the Society came with a warrant to seize her cats and she fled, the Appellant denied knowing that the Society planned to seize her cats and said that Blondie had hidden her kittens.
44. The Appellant was cross examined on her plan for the return of the cats. She did not see a discrepancy in saying allegations about room were unfounded but then agreeing to rearrange her room. The Appellant was referred to her photographs (Exhibit 18) that show a cleaned-up room and space for both her and the cats to sleep. She indicated she is prepared to have weekly check-ins and the building manager had offered to come and take a look.

Autumn Longtin-Gauthier

45. Ms. Longtin-Gauthier is employed as a Supportive Employment Supervisor with WISH (a women's outreach program) and is the Appellant's supervisor. She says Ms. Leismeister is employed and can provide for her cats. She met the Appellant in May 2020 and described her demonstrating care, love and protection for her cats. She has been working with the Appellant and her precarious living environment to make changes for the cats. She has worked with the fire department, pest control and city inspectors. She is aware that the Appellant has had to move to several places in the past two years and described the new building as one where there are people with mental health issues who may create problems for other tenants.
46. On cross examination, Ms. Longtin-Gauthier stated she became aware of the seizure of cats in September but was not aware of the ongoing issues with the Society until the cats were taken. She explained that the city and fire department were involved as the Appellant's room was deemed unsafe (due to fire hazard both in the suite and hallway). The order required the Appellant to clear enough space to allow for a bed and for the door to freely open, and to clear the hallway. She did not see the room following the clean-up and is unsure of its current state. Her role with the Appellant is to supervise her employment and provide advocacy and support to maintain employment. She is not that aware of the cats and their living conditions.

47. She acknowledged having spoken to the Appellant about issues related to multiple litters and the need to get the cats fixed as a safety precaution. She described the Appellant as having conflicted feelings but believes she now understands the severity of the situation. She helped the Appellant put together a plan to agree to neuter Lucifer first and spay Blondie “later.” It is unclear when “later” is as she knows the Appellant wants more kittens.

Eva Botten

48. Ms. Botten is employed as a Supportive Employment manager with WISH. She has known the Appellant for several years and, for the last six months, the Appellant has been an employee of the program. She has been to the Appellant’s residence several times and was at her place a couple of months ago. The cat was in the hallway but there was space in the room. She described the Appellant as very caring to her cats. She has no concerns about the Appellant’s ability to care for her cats; she would never intentionally harm them and would be thoughtful in seeking care.
49. On cross examination, Ms. Botten confirmed being in the Appellant’s residence in September before the cats were seized. There was a cleared space with about 1/3 of the floor space empty and the door could open fully as per the fire department’s request. She acknowledged seeing possessions, furniture and crates with paperwork stacked about four and half feet high. There was no bed and she does not know if the Appellant sleeps on the floor of the unit, on a couch in the common area or at a friend’s place. She noted some belongings spilled out into the hallway.
50. When asked by the panel about the Appellant’s plan for return, Ms. Botten said the Appellant has more support now. She thought things might be better than in previous attempts as this is the first time the Appellant has had support to manage her possessions in the unit. She described the Appellant as being more transparent and open and willing to ask for help. With respect to Blondie being spayed, Ms. Botten explained that she and Autumn reviewed the realistic options with the Appellant as to what would be in Blondie’s best interests. The Appellant realized Blondie needed a rest from her multiple litters. Ms. Botten also agreed that the Appellant had the ability to pay for vet services.

VIII Respondent's Evidence

APO Sandra Windover

51. APO Windover has been employed with the Society as an animal protection officer since August 2018. She responds to animal welfare concerns in the Lower Mainland, determines if animals are in distress and intervenes as necessary to educate animal owners. She is not a special constable.
52. She met the Appellant in November 2018 when she responded to a cruelty complaint about the cat, Blondie, being confined to a crate in a common area without food and water, with no access to litter or room to move, in cold conditions. APO Windover observed there was no livable space in the unit, the door would not open properly as there was stacks of furniture and piles of clothing. She talked to the Appellant about the need to clean up the living space and deal with hazardous items overflowing from the unit into the hallway. She also spoke to concerns about appropriate nutrition for nursing cats and the need for a safe and clean space free from hazards. She issued a Notice of Distress and stressed the urgency in addressing the concerns.
53. APO Windover described the November 2018 incident which led her to obtain a warrant to remove the cat and kittens as, in her view, the living conditions were unsafe for neonatal conditions. Upon executing the warrant, APO Windover found Blondie, her kittens and their carrier gone. The Appellant was still hoarding; there were crates and clothes stacked everywhere and there was only room for one person in the unit. Other residents reported the Appellant had fled with the cats. APO Windover returned in mid-December and confirmed the Appellant was moving into alternate housing that could support the cats and she would not be bringing her belongings.
54. APO Windover's next contact was in July 2019 after the Appellant moved to a SRO on [REDACTED]. She received a cruelty complaint about the Appellant's hoarding, living conditions and two cats roaming the hallway. At this time, the Appellant had two suites at [REDACTED], one of which was subject to a "do not occupy" order. Given the cats were housed in the room free of clutter, no further action was taken. By October 2019, when APO Windover next attended, she described the living conditions as out of control hoarding. She was unable to fully open the front door of the unit and there was no space to lie down. APO Windover described the suites on [REDACTED] as looking similar; she was unable to see the window or two of the walls inside unit. A fire alarm was also going off, causing panic and stress to the cats. The Appellant appeared sad, angry and defensive.

55. On her attendance the next day, she observed both cats in the hallway. She spent an hour and forty-five minutes going over the issues with the Appellant. There were hoards of items, industrial furniture and suitcases outside the suite. There was cat food but no food or water was put out. The Appellant indicated the cats knew how to open the food bag themselves and got water from a common area. The Appellant was aware more kittens had died and confirmed she had not attended the vet clinic. APO Windover offered spay/neuter and microchipping but these offers were declined. She discussed the risk of infection in the uterus which could be addressed by spaying. By the next visit in November 2019, the cats were not roaming the halls and the Appellant had provided minimal space for the cats in her unit.
56. By January 2020, Blondie had given birth in December, but the hoarding was worse and there was stuff out in the hallway. Initially, APO Windover was unable to see the kittens. After clearing away two feet of materials, she observed the kittens under a barstool on a blanket. Once again compassionate boarding was offered and refused. The appellant was ordered to clear space for the kittens.
57. APO Windover was aware that Constable Jay assisted the Appellant's move to [REDACTED] in February 2020. She received a complaint for the new location in March 2020 as the unit was 90% filled with hoarded items and there was no room for the Appellant. The cats were urinating, defecating and mating in common shower areas. APO Windover described the unit on March 15, 2020 as full of large industrial shelving and furniture, suitcases, bags of items and clothing, dressers in the hallways and shopping baskets. She observed a water bowl (cooking pan) and bags of open cat food. The cats could not physically fit into the suite. She explained that the living conditions were unsafe and offered to help rehome the cats but the Appellant insisted they were homed. The kittens and Blondie were in the hallway and there was an aggressive dog down the hall. She reattended on March 17, 2020 and conditions were much the same. As the Society did not have space to bring the cats in, she asked the building manager to assist in finding homes.
58. APO Windover next returned in September 2020 in response to the building manager's concerns of unsafe living conditions, cats roaming in the hallway and urinating in common bathrooms, and a request by the fire department that the Appellant remove 70 to 80% of the items from the suite. APO Windover met with the Appellant who confirmed that in June Blondie had more kittens which all died. She did not seek veterinary care but thought Blondie had eaten something which caused vomiting and induced labour. APO Windover offered free spaying and neutering but this was declined. The Appellant offered to dress Blondie in a "onesie" or to watch them and pull the cats apart to avoid more litters. Another Notice was issued for the Appellant to obtain vet care and address the hazardous

living space within 7 days. A follow up check on September 15, 2020 confirmed little action had been taken.

59. APO Windover sought an opinion from Dr. van Haaften with respect to the impact of the multiple pregnancies and hazardous living conditions. Based on the veterinarian's opinion, she contacted SPC Marleau about obtaining a warrant. SPC Marleau obtained a warrant and the cats were seized on September 22, 2020. APO Windover described the conditions at the time of seizure as much the same. There was hoarding with racks, industrial shelves, clothing piled 7' high, and a TV and dresser in the hallway. The door was unable to open fully. There was only room for one person in the suite.
60. In summary, APO Windover has attended all three of the Appellant's suites a minimum of 20 times and had ongoing discussions about hazardous living conditions and repeatedly voiced her concerns. Except for when the Appellant received DNO orders and was given a new unit, there has been no significant improvement in living conditions and there has often been no food or water present. In almost every visit, she offered compassionate boarding for the cats in a low stress environment, or to have them spayed or neutered for free but these offers have always been declined. The Appellant does not believe the circumstances are that bad and believes her cats should roam free. APO Windover believes living conditions inside the Appellant's unit do not allow for normal cat behaviour. There was no litter box inside the suite and there remained the potential for harm from tenants and their dogs as well as the hoarding situation. She is concerned that if the cats are returned, the unsafe living conditions will continue. She believes that Blondie does not like Lucifer and acts fearful and angry and retreats. She believes Blondie is doing much better in foster care.

SPC Jarett Marleau

61. SPC Marleau has been employed as a special constable with the Society for three years. He was contacted by APO Windover on September 21, 2020 and prepared the ITO and obtained the warrant to seize the cats on September 22, 2020. The reason for applying for the warrant was because the cats' living conditions were unsafe and unsanitary, did not allow for normal cat behaviour, encouraged interbreeding and were a threat to the health of the kittens. SPC Marleau was shocked at the history of attendances involved in this case. He believes APO Windover tried very hard to work with the Appellant to find alternate measures which could allow her to keep her cats.

62. SPC Marleau attended at the seizure. The Appellant was not present, but he spoke with building staff who opened the suite. He describes seeing items stacked outside the suite, crates and a tv. The door only partly opened as it was blocked by items in the room. The room was about 15' x 10' feet and stacked with five to seven feet with items. There was a small space to stand, but the bulk of the space was taken up by stacked crates and metal racks. Some stacks were sturdy but others were not. When the Appellant arrived, SPC Marleau explained the history of concerns and the reasons for the determination to seize, which included hazardous living conditions, issues with interbreeding, and cats being unable to express normal behaviour. Further concerns included the Appellant's inability to identify when vet care should be sought despite multiple notices and attendances by APO Windover, concerns about the pitbull in the building, hazards related to people moving through the building, cats urinating in public places, and the opinion of Dr. van Haaften. He acknowledged having difficulty communicating with the Appellant and having to keep repeating himself.

Dr. Karen van Haaften

63. Dr. van Haaften was qualified as an expert witness in veterinary medicine and animal behaviour. She has completed a three-year residency in clinical behavior. She has worked with the Society on cruelty cases since 2017. Dr. van Haaften's role in this case was limited to providing an opinion to APO Windover based on her email and chronology of September 2020. Dr. van Haaften reviewed the information and photos provided and offered an opinion on the breeding and poor outcomes of the kittens and the unsafe and insecure living environment that was physiologically hazardous to the cats. She concluded:

Based on this information it seems clear that allowing these 2 cats to breed with each other predictably produces unhealthy offspring. It can be normal for a small portion of a litter to not survive or be stillborn, but the frequency of neonatal deaths seems to be much higher than we would typically expect to see. It is known that inbreeding results in higher chances of genetic and congenital abnormalities, so it's likely this inappropriate pairing is the cause. Although there are currently no kittens alive, the kittens certainly would have been in distress while they slowly died post-queening. And if these cats are not prevented from breeding in the future, the predictable outcome is that more kittens will be born and die in distress in the future.

To prevent ongoing suffering of unhealthy kittens, one or both of these cats need to be desexed (ideally both, or more problems can develop), or they have to be separated into different homes. Failing to do this will result in more unhealthy kittens being born, and those kittens will likely suffer and die as the previous litters have done.

Having the female cat wear a 'onsie' is not appropriate for a lot of reasons. Two of the most obvious and most significant reasons are that she needs to eliminate and groom herself.

From a behavioural/emotional state perspective, living in the hallway with no safe resting space and constant exposure to noises and unfamiliar people is likely to be very stressful for these cats. It is clear from the pictures that the inside of the suite is not safe for the cats due to the hoard. It's possible this is likely a second source of distress for these cats.

64. Dr. van Haaften's opinion is that 12 of 18 kittens not surviving is not a normal success rate. She believes that the inbreeding may have led to genetic dysfunctions. She does not know any vet that would recommend mother/son mating for welfare of offspring. There is ample evidence from the past four litters that a pairing between Blondie and Lucifer is a bad idea. She says cats will eat unhealthy kittens, and this is often associated with malnutrition or extreme stress. Giving birth and raising kittens is a lot for a cat to go through. A female that is giving birth regularly should be fully vaccinated and have regular consultation with a vet. While they do not need much assistance with the birthing process, leading up to birth there are increased nutritional needs. She does not believe it is possible that there would be no signs that the kittens were declining. There may have been heart conditions, but sudden death is unusual. More often, one sees a slow decline. If the kittens had been brought to a vet, they may have been saved or humanely euthanized.
65. Dr. van Haaften says cats need a place where they feel safe but this is amplified when there are kittens. Kittens need a safe and clean nesting space; they are dependent on their mother for everything. The mother needs to produce enough milk, handle kittens gently each day and make sure there is a predictable and secure environment. A hallway environment with unlimited exposure to things is totally inappropriate.
66. Generally, a cat will need space of approximately 18 square feet to have sufficient separation to feel secure. Cats are very curious and exploratory when feeling relaxed. The Appellant's unit is dangerous, with large piles of unsteady material, and looks like a physically unsafe space. There is no place for cats to act like cats and the constant coming and going of people creates an environment of fear. It is normal behavior for cats to sleep 12-16 hours of day and spend the rest of time engaged in grooming, social behaviour or food seeking. They need room for enrichment through natural predatory behavior. Cats are easily threatened and need to have somewhere familiar and safe.
67. Dr. van Haaften expressed concerns about the cats being returned even if they were spayed or neutered given the history of the unsafe living environment and the rejected offers of assistance.

68. The Appellant questioned Dr. van Haaften as to what she would require for the cats to be returned. Dr. van Haaften provided a lengthy list including: enough space to meet environmental needs of cats, enough food and water, safe and clean areas to eliminate (one area per cat), cat trees to get up high and hide, scratching posts, separation from each other, safety from predators, play and daily social interaction needs met, some predictability, and safe and contained ways to explore. The cats should also be spayed and neutered.

IX Analysis and Decision

69. Part 2.1 of the *PCAA* establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:
- 9.1** (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.
(2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.
- 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.
70. The definition of “distress” is broad and provides:
- 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.

Distress

71. I have first considered whether the cats were in distress at the time of seizure.
72. The Appellant argues that her cats were not in distress. She describes her cats as happy, healthy and well fed. There were no health issues identified following the seizure. She minimizes the concerns about their living space and any associated hazards. She minimizes the amount of time the cats spend outside of her unit in the hallway or in her building’s common space. She does not appear

to have concerns about her cats' safety while in her crowded unit. She acknowledged issues with tenants threatening her cats but then felt these threats were not serious. The Appellant had no issues with the breeding of her cats or the number of kittens from this pairing that have died. She does not believe that spaying and neutering are necessary for the health and well-being of her cats although she does appear to concede that in order for them to be returned, spaying and neutering are necessary.

73. I have reviewed the extensive history provided by APO Windover leading up to the day of seizure on September 22, 2020, the evidence of SPC Marleau, and the opinion and testimony of Dr. van Haaften focusing on the impact of living conditions and indiscriminate breeding on these two cats.
74. In considering the issue of distress, I note that the definition of distress is broad and the Society does not have to establish an actual deprivation or harm to an animal before determining the animal is in distress. A medical finding that an animal is injured, sick or in pain is not required in order to conclude that an animal is in distress. Instead, an animal can be found to be in distress when an animal 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. The definition of distress is intended to be protective and preventative. It describes the circumstances that create a significant risk of harm to animals that should be avoided. When these circumstances are not avoided and conditions place animals at sufficient risk, the *PCAA* offers protection.
75. While I am comforted that these cats were not found to be injured, sick, in pain or suffering, I am satisfied that both cats were in distress at the time of seizure. The source of that distress relates to their living conditions (being deprived of adequate food (at times), water, proper and safe shelter, adequate space and exercise), lack of appropriate care (keeping them safe from predators or aggressive tenants), and lack of veterinary treatment. I also find that lack of veterinary treatment relating to the failure of the Appellant to intervene on behalf of Blondie to limit her breeding in a timely way was a source of distress.
76. Having concluded that the Animals were in distress at the time of seizure, I now consider whether it is in their best interests to be returned to the Appellant.

Return of the cats

77. The courts have considered the legislative framework provided by the *PCAA*. In *Eliason v SPCA*, 2004 BCSC 1773 Mr. Justice Groberman (as he then was) stated:

The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of.

78. In *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.) the court explained:

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

79. The *PCAA* (part 2.1) also establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:

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

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

80. The Appellant seeks the return of her cats. She acknowledges making changes to her living space, renting storage lockers to free up more space and she says there are no more piles of supplies and materials. She has a stable income and has security gates on the door. She has built a loft bed to free up floor space and now has hiding spots for her cats. She has two cat kennels and access to a safe outdoor space. She has plans to find a better living arrangement that is not an SRO. She says she would follow all of Dr. van Haaften's recommendations and would take her cats to the vet. The Appellant tries to explain her past behaviour and says past injuries have affected her ability to clean up her place and she has trust issues with people trying to help her. She is now willing to spay and neuter both cats; she is willing to get counselling. She does not want to do anything to cause stress to her cats; she loves them and wants them back.
81. The Society's position is that despite multiple visits over several years by APO Windover and having been advised of the steps necessary to ensure her cats were free from distress, the Appellant has failed to take any, or any adequate, actions to provide appropriate care and shelter. As a result of her

inaction, the cats were determined to be in distress and seized. The Appellant has refused to spay or neuter her cats up until very recently, when she relented and agreed to neuter Lucifer. It is only in this hearing that she has further relented and agreed to have Blondie spayed. The Society was not persuaded by the Appellant's plan. She has had ample time to remedy the issues related to her property and her care of her cats, but she is either unwilling or unable to relieve such distress.

82. Instead of taking responsibility for her actions or lack thereof, the Appellant denied that the cats were in distress and disputed that they did not have enough space. The Society submits that the Appellant's pattern of hoarding requiring her to be moved to three separate properties in the last two years is evidence that she is unable to control her hoarding, and her unit has again been filled with various objects and debris. The hoarding is so significant that the Appellant was not sleeping in her own room at the time of seizure and the cats were displaced as a result. The cats have found refuge in common areas and with other tenants. There was evidence of attacks by other animals and threats by tenants. Dr. Van Haaften was critical of the cats' living environment and its impact on normal cat behaviour. Unfortunately, the Appellant has been unable to provide a safe space for any significant period resulting in increased stress for the cats and likely contributing to the deaths of the kittens.
83. The Society also points to the Appellant permitting Blondie and Lucifer to mate indiscriminately, resulting in five litters in two years. The majority of the kittens did not survive, and they did not receive veterinary treatment. They were left to die slow, painful deaths while the appellant continued to refuse any assistance, including compassionate care for Blondie and her kittens with the promise of Blondie's return.
84. This is a challenging decision. I have no doubt that the Appellant loves her cats. She appears to genuinely care for them and has tried to provide a good home. However, the reality is that since 2018, these cats have lived in a very difficult situation. It appears that the Appellant regularly gets overwhelmed by her hoarding and various agencies have had to step in to protect her from her hazardous living arrangements. She has been moved to new rooms and new buildings only to very quickly return to the same unsafe living situation. Her rooms have been repeatedly declared unfit for human occupation and a safety hazard to those who live in the building.
85. I appreciate that the Appellant now has the assistance of the WISH program workers. They appear to be supportive and have assisted her in finding and keeping employment. However, even with these supports in place, I cannot ignore the evidence that the Appellant again found herself in an untenable position in September 2020 when her hoarding made her room unfit to live in.

86. Contrary to the Appellant's view that the Society has harassed her, in my view APO Windover has tirelessly tried to assist the Appellant and her two cats. Further, I find it is not inconsistent of a conflict of interest for the Society, after exhausting its supportive efforts, to take action in the best interests of the Animals.
87. Based on APO Windover's observations, I find that not much has changed in the Appellant's living conditions since 2018. While the rooms are different, the extreme hoarding behaviour persists. There are still piles of crates, clothing and furniture, blocked doors and little, if any, room to stand. The Appellant is often displaced from her unit and so are the cats. The cats are found in common areas without access to food, water or a litter box; they are defecating and urinating in the bathrooms and hallways; they are exposed and unsafe.
88. While the Appellant has now created a plan to improve her living conditions, I have no confidence that she will be able to implement that plan even with the assistance and supports she now has in place. Given the past history, at best the likelihood is that any cleanup will be short lived, and the cats will again be crammed into a crowded hazardous room at risk of being displaced to the hallway and common areas with the next DNO order.
89. I have independently considered the issue of spaying and neutering, as the Appellant is now agreeable to her cats being fixed if that is what it takes to have them returned. While spaying Blondie would no doubt improve her living conditions, I do not think it is enough. She would be free from indiscriminate breeding and the related stress associated with protecting her litters in unsafe living conditions but both cats would still be subjected to the same unsafe living conditions and hazardous surroundings. A future finding of distress is inevitable.

X Order

90. I have concluded that the Animals (cats) at issue on this appeal were in distress and, as such, properly taken into custody. I am satisfied that it is likely and foreseeable that should the Animals be returned, the Appellant's living conditions would not improve, and they would inevitably return to a situation of distress. Consequently, and pursuant to s. 20.6(b) of the *PCAA*, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the cats.

XI. Costs

91. The Society is seeking costs of care totaling \$1,395.58 for veterinary care, boarding costs and costs associated with the removal of the cats. The Appellant says that she does not have the money to pay any of the fees associated with the seizure, boarding or food. In her submission addressing the return of the

cats, she did acknowledge having the ability to pay for veterinary bills “one visit at a time.”

92. The obligation on an owner to pay costs is found in section 20 of the *PCAA* which states:

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

93. I have reviewed the costs claimed by the Society as set out in the affidavit of Ms. Moriarty and confirm, pursuant to s. 20.6(c) of the *PCAA*, that the Appellant is liable to the Society for the amount of **\$1,395.58** as the reasonable costs incurred by the Society with respect to the two cats.

Dated at Victoria, British Columbia this 25th day of November, 2020.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



David Zirnhelt, Presiding Member

SCHEDULE "A" - Exhibits

Exhibit #	Date (Received)	Received from	Document
Exhibit 01	Oct 7, 2020	BCSPCA	BCSPCA Decision
Exhibit 02	Oct 13, 2020	Appellant	Notice of Appeal (NOA)
Exhibit 03	Oct 15, 2020	BCFIRB	Filing fee Receipt
Exhibit 04	Oct 16, 2020	BCFIRB	NOA Process Letter
Exhibit 05	Oct 16, 2020	BCFIRB	Email confirming amended hearing date and schedule
Exhibit 06	Oct 26, 2020	BCSPCA	BCSPCA Initial Document Disclosure Tabs 1-19
Exhibit 07	Oct 26, 2020	BCSPCA	BCSPCA Letter enclosing initial submissions
Exhibit 08	Nov 2, 2020	Appellant	Appellant document disclosure
Exhibit 09	Nov 4, 2020	BCSPCA	BCSPCA Written Submissions
Exhibit 10	Nov 4, 2020	BCSPCA	BCSPCA Affidavit of Marcie Moriarty
Exhibit 11	Nov 4, 2020	BCSPCA	BCSPCA Expert Witness Form
Exhibit 12	Nov 4, 2020	BCSPCA	BCSPCA Witness Contact Form
Exhibit 13	Nov 4, 2020	BCSPCA	BCSPCA Disclosure Tabs 20-24
Exhibit 14	Nov 4, 2020	BCSPCA	BCSPCA Updated Document Disclosure Index
Exhibit 15	Nov 4, 2020	BCSPCA	BCSPCA Letter enclosing rely submissions
Exhibit 16	Nov 5, 2020	BCFIRB	BCFIRB Email – Order of Presentation
Exhibit 17	Nov 6, 2020	Appellant	Appellant – Witnesses
Exhibit 18	Nov 6, 2020	Appellant	Email with photos