

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 17 CATS, 1 DOG AND 8 CHICKENS

**BETWEEN:**

E.M.

**APPELLANT**

**AND:**

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY  
TO ANIMALS

**RESPONDENT**

**DECISION**

**APPEARANCES:**

For the British Columbia Farm Industry:  
Review Board

Peter Donkers, Chair  
Dennis Lapierre, Member  
Harveen Thauli, Member

For the Appellant:

Self-represented

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

September 22, 2020

Location of Hearing:

Teleconference

## Introduction

1. E.M., the Appellant, is a 70-year-old retired lawyer who resides on an acreage in Duncan, British Columbia (the property).<sup>1</sup> She is now a pensioner and is currently employed on part-time basis. She has a life estate interest in the property on which she resides.
2. On July 21, 2020, the BC Society for the Prevention of Cruelty to Animals (the Society) executed a warrant on the property and seized three cats, one dog, and eight chickens. On July 29, 2020, the Society executed a second warrant and seized five cats. On August 12, 2020 the Society executed a third warrant and seized five more cats. On August 23, 2020, one of the cats taken into custody gave birth to 4 kittens and these kittens form part of the seizure. These cats, dog, and chickens are collectively referred to in this decision as “the animals”.
3. While throughout this decision there are occasional references to horses owned and kept by the Appellant on her property, none were seized and thus form only incidental aspects of the decision.
4. The Society issued its review decision on August 18, 2020 which addressed the animals taken into custody in the first two seizures.
5. E.M. filed an appeal of the Society’s review decision with the British Columbia Farm Industry Review Board (BCFIRB) on August 20, 2020; the filing fee was received August 24, 2020. On August 24, 2020, E.M. notified the Society that she was disputing the August 18, 2020 review decision and on August 25, 2020, she notified the Society that she would be disputing the August 12, 2020 seizures as well.
6. By e-mail dated August 27, 2020, the Society acknowledged receipt of the third dispute, and asked BCFIRB to include all three seizures in one appeal hearing.
7. Accordingly, and pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (*PCAA*), this decision relates to E.M.’s appeal of the Society’s review decision upholding all three seizures and not returning any of the animals.
8. The appeal hearing was held by teleconference September 22, 2020 and was recorded.
9. Section 20.6 of the *PCAA* permits the 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 *PCAA*, appeals to BCFIRB are broad in nature,

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<sup>1</sup> There is a prior history of appeal decisions relating to this appellant in which she was referred to by her initials for the protection of her privacy. The Panel has adopted that practice in this decision.

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.

10. The Appellant represented herself and testified, calling no additional witnesses. The Society called two witnesses; Special Provincial Constable (SPC) Toni Morrison and Dr. Ken Langelier, a veterinarian, whom the Panel qualified as an expert witness in the proceeding.
11. For the reasons outlined below, the Panel permits the Society, in its discretion, to destroy, sell, or otherwise dispose of the animals (16 cats (of the initial 17, one had been euthanized), one dog and eight chickens) that are the subjects of this appeal. The Panel further finds the Appellant liable to the Society for costs of care of the animals in the amount of \$21,939.93, this being the total of the veterinary costs incurred by the Society (\$9,571.93), the seizure costs (\$1,095.60), and the animal housing, care, and feeding costs (\$11,272.35).

### **Pre-Hearing Matters**

12. On September 14, 2020, the Appellant filed a notice of application in the Supreme Court of British Columbia seeking various relief including an order setting aside the Society's search warrants alleging a breach of the *Canadian Charter of Rights and Freedoms* and the *Privacy Act*, and in the alternative, an order for the return of her animals. She sought an injunction preventing the Society from obtaining further warrants and from selling, disposing or euthanizing her animals until the matter is concluded, including any appeals and a declaration that the *PCAA* does not apply to dwelling houses and is *ultra vires* the Province of British Columbia as it contravenes the *Canadian Charter of Rights and Freedoms*. She asked for an order that BCFIRB postpone the hearing until there is a ruling on the Charter issues, and an order that the notice provision of the *Constitutional Question Act* be reduced from 14 days to 7.
13. On September 16, 2020, the Appellant applied to BCFIRB for an adjournment of the September 22, 2020 hearing which application was opposed by the Society.
14. In his written decision of September 18, 2020, the Presiding Member dismissed the Appellant's application for an adjournment stating as follows:

The Appellant's primary reason for seeking an adjournment is her desire to seek judicial review. I observe that if the Appellant wanted to challenge the search warrant, those proceedings could have been initiated soon after the seizure of animals on July 21, 2020, July 29, 2020 and August 12, 2020. The Appellant did not have to wait for the results of the Society's review decision, nor did she have to wait until her appeal to BCFIRB was perfected.

On August 26, 2020, BCFIRB issued its process letter setting the submission schedule and hearing dates. The letter set out section 39 of the ATA and the process to follow.

On the issue of adjournment to have the issuance of the warrant judicially reviewed before a BCFIRB hearing, it appears that the Appellant believes that a successful challenge to the search warrant will result in none of the evidence collected at the time of seizure being admissible before BCFIRB on an appeal. As Madame Justice Ker pointed out in *Christman*, the validity of a search warrant in the context of criminal proceedings under the PCAA is of no assistance to a proceeding where the question is whether it is in the best interests of the animals to be returned to their owner.

In my view, and applying the test in section 39 of the *ATA*, to adjourn the appeal hearing to some future indeterminate date to determine an issue which has little to no bearing on our statutory appellate role would be an abuse of process and not in the public interest: s 39(e). It would unnecessarily increase costs to the society and would delay a determination of the central issue, which is whether the Appellant can demonstrate that her animals were not in distress at the time of seizure and that they should be returned to her care and custody: s. 39(d). To proceed with the hearing as scheduled will give the parties and potentially a reviewing court the benefit of BCFIRB's views on the central issues to this appeal namely whether the animals were in distress and whether it is in their best interests to be returned: s. 39(c).

In my view, it is in the best interests of all concerned especially the seized animals, that this matter be adjudicated upon in a timely fashion. To adjourn this matter indefinitely for the Appellant to pursue judicial review would in my view result in unreasonable delay; s. 39(b). By refusing the adjournment, this matter can proceed expeditiously and minimize costs to all concerned.

## **Materials Submitted on this Appeal**

15. All affidavits and witness statements, emails, photographs, records, and materials submitted were entered into evidence. All documents received by BCFIRB in advance of the hearing were identified as exhibits; the record is comprised of Exhibits 1 – 27.

## **Events leading up to the Seizures**

### **Past events**

16. This matter has a significant history going back to 2010, according to submitted SPCA records. They show in the range of 18 separate times the SPCA attended to complaints about animals and facilities at the property and the Appellant's residence related to horses or dogs or cats, their apparent health and their living conditions.
17. According to BCFIRB's decision in *E.M. v BCSPCA*, (August 15, 2015), the Appellant's animals (11 cats and one dog) were the subject of a seizure in June 2015. Of the eleven cats, seven were surrendered by the Appellant and four were contested in the appeal. The evidence in that appeal satisfied the Panel that all of the seized cats as well as the dog were in distress. There was evidence of mite infestations, the cats were suffering from upper respiratory infections, were underweight, and were living in an unsanitary, cluttered home so smelling of

ammonia, the air quality so inadequate, that the SPCA attendees found their respirators inadequate. There was mould attributed to water leeching, showing in the walls and the ceiling tiles and there was fecal contamination on the floors and behind furniture throughout the living environment. The Panel decided that none of the seized animals would be returned.

18. BCFIRB heard another appeal in 2016, E.M. vs BCSPCA, (September 2, 2016) where three cats were seized by the Society in June 2016 from the same property. The Appellant had surrendered nine kittens in the days prior to the seizure, one of which one died soon afterwards from toxoplasmosis. Evidence of the attending veterinarian, Dr. Langelier, who also testified in this present appeal, described all three cats as exhibiting respiratory illnesses, possibly from being in a high ammonia environment, thin body conditions and signs of flea infestations, along with scratches and oozing wounds consistent with fighting. The dog had a flea infestation and ear mites as well as an untreated stomatitis (creating a possible risk of being a precursor to other health issues).
19. The Panel made the following findings about the living conditions of the seized animals:
  92. The Panel finds a marked similarity between the findings of the previous Panel and the photographic evidence from the Society tendered in these proceedings which demonstrate so much animal feces and urine staining in the house that the proper descriptor of the living conditions in which the Appellant and her pets live is difficult to articulate. Over and above the feces and urine in the house, the general living conditions with respect to the clutter, debris and the existence of items like open buckets of oil and paint cans are such that if the living conditions in this instance were not deemed to be 'unsanitary' then the word would have no legal meaning. While the Panel accepts that standards of cleanliness can differ between households and that in the case of the care of animals, there may be a reasonable argument to be made that the living conditions that are expected with respect to the housing of humans could be lessened even further when considering the living conditions of animals, there remains an objective point at which any reasonable assessment of the circumstances would accord with the terms 'unsanitary' or 'filthy' or 'squalid'
  93. In this case, based on the photographs provided by the Society and the consistent and compelling testimony of the Society's witnesses in terms of what they experienced in the Appellant's home, I find it unlikely that the word 'squalid' fully captures the conditions of the home for the reader of these reasons.
20. The Panel decided it was not in the best interests of the seized animals to be returned.

### **Current events**

21. As outlined in her Information to Obtain a Search Warrant (ITO) dated July 20, 2020, SPC Morrison reported that the Society received a call July 7, 2020 concerning the Appellant's animals (three horses, 12 cats, several chickens and a

dog). The complainant described the cats as being semi-feral and several had open sores on their bodies. Two appeared pregnant. The horses were underweight, had overgrown hooves and appeared to be lacking food and access to water.

22. The following day, the complainant provided a written statement which was an exhibit in these proceedings describing the dilapidated nature of the property, a dog usually locked in the house, chickens running loose and 3 remaining horses. The biggest concern was the number of cats (adults and kittens) heard screaming and fighting and observed to be wounded and underfed.
23. SPC Morrison's ITO sets out her attempts at visual inspection on July 9, 2020 from outside the property, attempts to arrange a personal inspection with E.M. on July 16<sup>th</sup> or 17<sup>th</sup> to validate her voice mail responses, and E.M.'s reluctance to permit the Society to go onto the property to inspect the animals. As of July 20, 2020, having received no further responses from E.M., SPC Morrison sought and obtained a search warrant, which she executed July 21, 2020.
24. Within the above noted time frame, (on July 14, 2020), the SPCA received a complaint from E.M. about her neighbor setting traps for cats, noting specifically cats which were caught on July 13 and 14, 2020, which E.M. released. The traps had been set outside her property.
25. As outlined in her ITO of July 28, 2020, SPC Morrison along with others, which included Dr. Langelier and SPC Jacklyn Orza, were able to catch three cats, one dog, and nine chickens. She then issued E.M. two SPCA distress notices giving one week to have a veterinarian assess all the remaining uncaught cats and follow the veterinarian's recommendations and veterinary treatment, to clean unsanitary living conditions, to provide adequate ventilation, food and potable water, to treat all animals for fleas, and to have the horse's feet trimmed. While e-mail correspondence between E.M. and the Society between July 21, 2020 and July 28, 2020 indicated E.M. had made some compliance plans, none had actually been fulfilled. This was SPC Morrison's rationale for obtaining the second warrant.
26. The Society seized five cats from E.M. on July 29, 2020.
27. As outlined in the ITO of SPC Morrison dated August 11, 2020, having seen no visible improvement or changes to the inside of the dwelling, noting the cats that had been seized so far were in distress and noting there were still 12 cats remaining on the property, one of which was limping, wounded, and missing fur, SPC Morrison once again issued E.M. a distress notice. E.M. was given one week to seek veterinary treatment for the cats and advised that the July 21, 2020 notice still applied including the direction to address the horses' hoof needs.
28. While, according to the ITO, E.M. made some effort on August 10, 2020 to have a visiting veterinarian address the needs of the horses, only one could be examined.

Neither of the other two were able to be safely handled. It was similarly the case with a farrier who visited. The visiting veterinarian was not asked to and did not examine any of the cats as was demanded in the distress notice issued during the course of the seizure on July 29, 2020.

29. The Society seized six cats from E.M. on August 12, 2020, but one cat, prematurely born, died.
30. On September 3, 2020, SPC Morrison sought a fourth warrant, this time to obtain the treatment records of three cats still in E.M.'s possession from the Eagle Rise Animal Hospital. This warrant was a product of the Society's uncertainty about how many more cats E.M. had and her refusal to allow the hospital to release information. In fact, the records show that the hospital had examined and treated three cats.

### **Review Decision**

31. On August 18, 2020, the Society issued its review decision with respect to the seizures of July 21, 2020 and July 29, 2020 to E.M. via e-mail. In a subsequent e-mail dated August 27, 2020, noting E.M.'s dispute intentions with respect to the third warrant, the Society indicated it would address all three appeals in one hearing.
32. In her review decision, Aliz Horvath, Seized Animal Liaison Administrator for the Society, confirmed that the purpose of the review was to determine whether returning the animals would be in their best interest and the test for this consideration as outlined in *Brown v. BCSPCA*, [1999] B.C.J. No. 1464 (S.C.).
33. Ms. Horvath reviewed various statements, notes, notices of disposition, warrants and ITOs from both seizures and various veterinary documents, photos, and a video as well as E.M.'s submission. Ms. Horvath confirmed that SPC Morrison was a duly authorized agent of the BCSPCA and was duly appointed as a Special Provincial Constable as per section 9 of the Police Act; E.M. was the person responsible for the seized animals. She found that the animals were in distress and the appropriate course of action was taken to relieve that distress, notices of disposition were properly served, and the seizures were made in accordance with the Act.
34. In considering whether to return the animals, Ms. Horvath referenced E.M.'s past 14 years of history with the Society and two separate appeal decisions of BCFIRB which supported the Society decision to not return the animals in both instances. It references the squalid living conditions found prevalent in the 2015 decision and again in the 2016 decision and which she found had continued in 2020. The review decision details the veterinary findings related to the numerous health issues of all animals seized which underscored the unsafe, unhealthy and hazardous

conditions of the home including the lack of adequate ventilation, high ammonia levels, and the presence of feces and urine.

35. In considering E.M.'s submission, the review decision states:

I now turn to your submission letter dated July 24, 2020 which addresses the initial seizure. To date you have not provided any submissions pertaining to the second seizure. You address some of the concerns related to the unsanitary and unsafe conditions of the home but only go so far as to say that the amount of "garbage" at your home it is none of the complainant's "business". You acknowledge that your home needs "some repair" but that due to COVID-19 it has been difficult to secure professional help. You advise that the broken window of the outbuilding that contained the hen and chicks is "for ventilation" but at the same time "The plan was to have the window fixed before winter". You are of the belief that "Ms. Morrison was acting in concert with Candice to trap my cats" and that "Ms. Morrison took Marja because [you] had challenged her on not investigating [your] cruelty complaint. It was a power play..." Regarding Marja you state that she is up to date on her shots and that you had provided her with flea treatment recently. Indeed, parasites were a pervasive problem for nearly all of the animals seized, but you would have seen in the preliminary assessment as documented in the veterinary draft that health needs go far, far beyond routine flea control. I'd like to reiterate that Marja the dog was found to be in poor body condition and with a 180-degree curled overgrown dewclaw; that most cats were malnourished, that one cat required ocular surgery, another required an amputation due to infection, and another extensive dental surgery. You ultimately find greater fault in the actions of others, whether it be neighbours or the RCMP, but have not provided absolutely any notion of how you plan on addressing the serious medical needs of these animals or how you will bring about livable and sanitary conditions within the home. You are aware the home needs repair but fail to acknowledge how the conditions of the home affect the physical well-being of the animals. This has formed a long-standing pattern of neglect and poor husbandry. Due to this lack of insight and inability to maintain acceptable living conditions for yourself and your animals, I do not believe that if returned to you they would remain distress free or in good condition.

### **Evidence and Key Findings of Fact**

36. E.M. testified in the hearing followed by the testimony of SPC Morrison and Dr. Langelier.
37. Before outlining her history, she clarified her constitutional questions, questioned whether the definition of "distress" includes the condition of a dwelling, and whether her past history would play a role in the decision of the Panel. She explained that she wanted the Panel to know her perspective on animals as a matter of background; she has taken in rescue animals for years. In doing so, she referred to various SPCA reports dating back to 2010, the horses involved, and the dogs involved. She spoke particularly about an old horse named Spirit, which died on the property.



38. Moving to the present circumstances, E.M. explained that she had acquired the dog, Marja at 4 months of age and was fearful that someone would take the dog away. The cats, she said, were semi-feral. Some were strays, some had bred her cats. She lets them hang around. She doesn't kill anything.
39. She explained that she has also had rescue chickens. At the time of the seizure she had two roosters and one hen. When she saw that the hen had hatched a clutch of chicks, she put them in a rabbit cage to protect them from predation. She had previously found hidden nests on the property containing only broken eggs.
40. She stated that she did see the SPCA notice posted July 9, 2020 and that she tried to contact the SPCA. She also was noticing fewer cats around. Then, when she took her dog for a walk, she found a trap with her cat in it. She released it. This same activity occurred the next day and again the day after that. The neighbor was trapping her cats. She testified that she was worried the neighbor was trapping and shooting her cats.
41. On July 21, 2020 when the SPCA arrived, they advised her that they were there to trap cats.
42. E.M. testified that it was her priority to get the cats back and clean up her yard, referring to a fridge and stove and fencing she had help removing, but she had been too busy to look at the (SPCA) compliance notice.
43. She testified that she had wanted to get her cats neutered, referring to an estimate she had on file, but that the prices had gone up. This, she explained, all occurred prior to the first seizure.
44. She testified that she was unhappy with the second warrant and was concerned that officers stayed past the time allowed on the warrant.
45. In speaking about the cats, she referred to the cat "Bobby", the cat with the bad eye. She said it was very feral, that she wanted to take her remaining cats to the veterinarian but was unable to arrange it. She stated she sought SPCA assistance to help pay for the veterinarian, but the SPCA said no. She stated she took cats Chloe, Suzy, and Tyler to a veterinarian in Langford September 17, 2020 where they were treated. She was billed over \$600.00.<sup>2</sup> Willy, another male cat she named, is one that adopted her.
46. In cross examination, E.M. explained the water stain in the ceiling is 10 years old and she has had the roof replaced since. She also painted it once, but the stain soaked through the paint. She explained an electrician put new light fixtures in the kitchen ceiling. The hutch, behind which were photos taken of a volume of feces,

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<sup>2</sup> Exhibit 13, Tab 58 is a patient chart from Eagle Rise Animal Hospital printed September 3, 2020 showing cats Chloe (intact female), Suzie (intact female), and Tyler (male) all having been examined and treated August 20, 2020.

weighed 500 lbs. She couldn't move it. With respect to what she has done to clean her house, she stated she has washed floors and windows and has new flooring, tiles and grout for the bathroom. But she hasn't done any inside repairs since the August 12, 2020 hearing because she was too busy preparing for the hearing.<sup>3</sup>

47. She testified that she didn't think the matter of unsanitary conditions (for animals) should apply to her home. Pens, yes. Facilities, yes. But, not her home.
48. When asked, she did not dispute Dr. Langelier's findings. She said she wasn't sure about them because she had no control over several of the animals that were seized.
49. She testified that the dog has had annual shots, rabies shots, and had its dewclaws clipped as of November 2019.
50. In her closing arguments, E.M. expressed her belief that the cats should be returned to her because they are semi-feral. Further, there is evidence of care. She pointed to photographs of chicken feed and bags of pet food<sup>4</sup>. Referencing her 97-page affidavit filed in the Supreme Court of BC in support of her application, she pointed to a receipt dated July 3, 2020 (page 53) for a canine topical flea treatment, and on the following 4 pages, veterinary examination and treatment records for the dog Marja.
51. In her view, the search warrants were excessive and unnecessary and the orders unreasonable because of the COVID-19 shut-downs. She has contacted veterinarians regarding neutering and spaying. She has a life estate in the house she resides in and has had to spend money on the walls, electrical work, porch repairs and flooring. She has done some cleaning up.
52. In her view, the costs sought by the SPCA are excessively high given the operating surplus the SPCA shows in its annual report and she is especially worried about the dog as she had been taking it on walks twice daily. She said the hen was happy, and she wants the dog, the hen, her chicks and the cats back. She could give up the newborn kittens.
53. **SPC Morrison** testified and her evidence is consistent with the information she outlined in the ITO's for the three warrants (Exhibit 7, Tabs 5,14,33) executed on July 21, July 29, and August 12, 2020. While she had been to the property on previous occasions, her involvement as it relates to this hearing began after she contacted the complainant who provided July 9, 2020 statement noted above at paragraph 22. As a matter of follow-up, that day SPC Morrison visited the property and observed some animals from the outside of the property. Seeing injured cats,

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<sup>3</sup> Exhibit 27, appellant photos show repairs to the lean-to adjacent to the house, and new hinges on the chicken house door.

<sup>4</sup> Exhibit 9, appellant affidavit, p.91

a dog and cats inside the house, and underweight horses in need of hoof care, and after getting no response when she honked her vehicle horn, she left a notice.

54. With other Society members having no success in the ensuing days to arrange to inspect the animals, she applied for the first warrant (executed July 21, 2020).
55. SPC Morrison reviewed photographs in support of her evidence. They included photographs she took of the yard around the premises, both the inside and outside of the dwelling, and of some animals: a dog, a hen with chicks, and of five cats. The photographs of the yard included a bag of feces in an area where the dog had been tethered, a photo of an apparently weakened, somewhat collapsed lean-to adjacent to the house, and a deeply stained, slimy-appearing water bucket situated below a water tap, apparently there for the dog. Other photos included the bottom of a bathtub situated in the yard for horse watering, which was coated in algae and stain from all appearances and was empty. A second bathtub in a horse paddock was also empty, the bottom of it being covered in litter. Outside animal feeding dishes also appeared empty.
56. Photos of the inside of the dwelling include those of a bathroom where the floor had lifted, missing, and extremely soiled tiles aside a similarly soiled floor, an exceptionally stained bathtub, and mouldy walls. All of the rooms were extremely cluttered and soiled. Of note was a significant and aged accumulation of feces found behind and under floor appliances and furniture.
57. The photos included those of a hen with some eight-day-old chicks inside a metal pet cage with no food or water.
58. SPC Morrison testified that she was able to seize some, but not all, of the cats that day. Some were in immediate need of treatment. She estimated that she saw 12-20 cats overall that day.
59. Photographs of the inside and outside of the dwelling taken during the course of the second warrant, executed July 29, 2020, show little or no significant change to the inside or outside of the premises. A photo of an ammonia test strip depicted a level of ammonia in the air inside the dwelling consistent with the strong ammonia smell, essentially the product of an accumulation of intact male cat urine spray. Other photos showed significant accumulations of animal feces behind appliances and under furniture, particularly in the living room. In and among the clutter, the feces and the debris, photos showed wires and electrical extension cords on the floor.
60. SPC Morrison testified that it looked like some of the floor had been mopped and E.M. was continuing to mop while the SPC was there.
61. With still some cats remaining: 12, according to her ITO, and with one cat missing fur and showing a discharge from the nose, SPC Morrison issued yet another

distress notice to E.M. giving her one week to obtain veterinary treatment to treat all her cats for fleas and lice.

62. According to her ITO dated August 11, 2020, SPC Morrison received an e-mail from E.M. dated August 1, 2020 stating she had made an appointment with Sitka Veterinary Services. When SPC Morrison followed up on August 10, 2020, she learned from the veterinarian that no cats were examined, only horses.
63. **Dr. Langelier** outlined his professional history and qualifications and was accepted as an expert witness qualified to give opinion evidence with respect to veterinary care and treatment of the cats, dog and chickens. He participated in executing the first warrant July 21, 2020 and examined all of the seized animals from that and the two subsequent warrants executed July 29, 2020 and August 12, 2020. He offered a broad opinion about the animal health issues brought about by both the outdoor and indoor environment in which the animals were found, and the diseases at least some of the cats were determined to be carrying, some of which are transmissible to humans. He additionally provided the hearing with video evidence of the extensive mite and flea infestations carried by the cats.
64. He expressed the opinion that, “the whole home was an infectious disease reservoir” and stated that all of the cats he examined were suffering from upper respiratory diseases. Such respiratory diseases, he explained, are viral and transmissible.
65. Referring to some cats that had names: a black cat named “Jet” was suffering from a long-standing fracture to a back foot. “Frosty” had a severe right ear infection, abscessed teeth, some of which needed removing. A Siamese, which was pregnant, was suffering from giardia, roundworms, and was undernourished. Left untreated, he said, she would pass the roundworms to her kittens at birth. “Bobby” exhibited a blinding eye injury to his left eye. Another had a broken tail that had fused. All but one male cat appeared (sexually) intact.
66. With respect to cat behaviour, he testified that cats are territorial and, though they will live together, intact males especially will fight each other.
67. The dog, like the cats, was being housed, while indoors, in a home with high ammonia levels, and in an unsafe and cluttered environment. While outdoors, the dog was tied with a 15’ lead which was around a large volume of feces, with evidence of the ground being dug and the trees debarked; indicators of boredom. It had excessive ear debris, overgrown dewclaws, and evidence of mild periodontal disease.
68. The hen and chicks he saw in a crate in an outbuilding exhibited extreme thirst and hunger when given water and feed.

69. His report, dated July 7, 2020, additionally contained photographs with captions showing non-potable water in a bucket; the water source for the dog, the dog's overgrown dewclaw, the hen and chicks in a metal crate and evidence of bumblefoot in the feet of hen. Other photos were of the split hoof of a horse, of semi-collapsed and damaged horse housing facilities, non-potable water in a tub for the horses, and photos taken inside the dwelling showing clutter, a large accumulation of feces behind a dining room hutch, and ammonia strips showing unacceptable levels of ammonia in the air.
70. Such ammonia levels, he testified, if they are irritating to human eyes, they will be equally as irritating to animal eyes.
71. His combined written and photographic report of the cats seized from the second warrant, included:
- One of a Manx-type cat exhibiting nasal discharge (*Mycoplasma felis*, an infectious cold virus), oral ulcers, roundworms, and a heavy infestation of fleas.
  - A lynx-point cat exhibited malnutrition, was pregnant, was missing teeth, and was suffering from puncture wounds in its cheek from cat bites, ear mites, and ear debris. It also tested positive for giardia, feline corona virus, calicivirus and roundworms.
  - Bobby, the cat noted above in paragraph 45 which was, in addition to being in pain from the eye injury, infested with fleas, carrying roundworms, and suffering from the same upper respiratory disease as the others.
  - An un-named intact male, which was suffering malnutrition, broken teeth, a broken, but healed tail and foot abscess, fleas, lungworm, and *mycoplasma felis*.
  - An un-named male exhibited a low body score, possible liver disease, feline leukemia, roundworms, and *mycoplasma felis*.
72. Dr. Langelier also provided 21 short close-up video clips of individual cats, showing their flea infestations. The infestations were obvious to the Panel.
73. With respect to the clutter, he stated that if it is soiled with feces and urine, it allows diseases to be more easily transmitted. Clutter otherwise offers physical hazards. The amount of clutter was a big concern to him, and the accumulation of feces that he saw behind the couch and elsewhere was "horrifying".
74. Responding to the question about which of the exhibited diseases are potentially threatening to humans, he listed giardia, toxoplasmosis, roundworms, *mycoplasma*, and *campylobacter*, many of which diseases were exhibited by at least some of the cats, one of which died from toxoplasmosis.

75. As a final matter, in a report dated September 2, 2020, Dr. Langelier wrote:

I had examined animals seized on 2015 and 2016 at the same residence at which time the animals were removed by warrant and despite [E.M.] disputing, the animals were released to the SPCA by the Farm Industrial Review Board (FIRB) stating in paragraph 158:

*“158. Based a careful consideration of all the evidence, I conclude that in the circumstances of this case, the Appellant’s home is unsanitary and does carry a significant risk of harm to the dog (and the cats/kittens) and I have no confidence, based on the lack of insight by the Appellant, that this condition would change (a point on which I elaborate below). For this reason, I conclude that the risk of harm to this dog is significant and real (the risk was also described by Dr. Langelier as significant), and that is enough reason for me to order that the dog not be returned in his best interests... “*

One would expect improvements would be made if [E.M.] expected to gather animals again, but that is not the case. Over these years, [E.M.] made no improvement in living conditions in her care.

I overheard [E.M.] stating to the CID officer many times that the animals were “OK” and that “everything was fine.” Considering the major deficiencies pointed out to her in 2015 and 2016, it is obvious that [E.M.] has not learned or cared to improve the lives of the animals in her care. I would advise actions be taken to further remove animals from the property, involvement of a large animal veterinarian, and prohibition of [E.M.] from being in possession of animals.

## **Analysis and Decision**

76. There is little disagreement between the information outlined by SPC Morrison in her ITO’s, her oral testimony, the testimony of Dr. Langelier, E.M. and the evidence and the information contained in her affidavit insofar as the turn of events are concerned. What is different is the perspective, particularly that of E.M. who offered a context starting in 2015 with her interactions with the Society and leading up to events preceding, surrounding and following the execution of the warrants on July 21, 29 and August 12, 2020. The Appellant argues that the environment in which she and the animals live, “her dwelling”, is not a relevant consideration. Further, she says that Dr. Langelier’s reports and conclusions are overly dramatic.

77. Keeping this argument in mind we turn to consider whether some, any, or all of the animals were in distress at the time they were taken into custody, following which, we address whether it is in the best interests of some, any, or all of the animals to be returned.

## **Distress**

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

s. 1 (2) - For the purposes of this Act, an animal is in distress if it is:

- (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
    - (a.1) kept in conditions that are unsanitary,
    - (a.2) not protected from excessive heat or cold,
  - (b) injured, sick, in pain or suffering, or
  - (c) abused or neglected.
- s. 11 If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal (a) does not promptly take steps that will relieve its distress, or (b) cannot be found immediately and informed of the animal's distress, the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.
79. All of the seized cats were individually examined by Dr. Langelier. Exhibits provided to the Panel include a report on each, along with photographs, captions, and brief videos depicting cats infested with fleas. Many, though not all, were suffering from a range of diseases including toxoplasmosis, an infectious cold virus, ulcers, roundworms, tooth issues, giardia, lungworm, a feline corona virus, calicivirus, and a range of physical injuries and ensuing infections likely brought about by fighting. All but one of the male cats was sexually intact. No cat was without several, and in many cases painful, health problems. One died from toxoplasmosis while in custody. The Panel concludes that the extensive nature and variety of untreated issues which, in several cases are obviously exhibited by the cats, are evidence of neglect.
80. We reject in its entirety the Appellant's argument that Dr. Langelier was overly dramatic. The uncontroverted evidence (testimony, pictures and videos) is that all these animals were living in horrific circumstances and were being subject to long standing neglect. There is abundant evidence that the condition of both the inside and outside of the dwelling (but especially the inside) is relevant, especially when those conditions are unsanitary and hazardous to both the animals and the human who occupy it. Photographic evidence shows substantial accumulations of animal feces under and behind furniture, clutter, filthy, stained furniture, floors and walls, mould on the walls and in the ceiling, and an unhealthy presence of ammonia in the air which we accept is the product of male cats urinating.
81. Photographic evidence similarly shows a hazardous and unsafe amount of clutter on the property surrounding the house, including a damaged, cluttered and partially collapsing lean-to adjacent to the house, a slimy water bucket for the dog and dry, slimy tubs for the horses, and assorted empty feed bags, cans, containers in overfilled garbage buckets and other assorted debris scattered about.

82. The Panel accepts that, especially in relation to their being kept in unsanitary conditions, with some exhibiting obvious injury, pain and suffering and neglect, all the animals seized were in distress.

### **Return of the Animals**

83. Having determined that the seizures of the animals were justified, the Panel turns now to consider whether it is in their best interests to be returned to the Appellant. The courts have considered the legislative framework provided by the *PCAA*. In *Eliason v BCSPCA*, 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.

84. 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.

85. The Appellant is seeking the return of all the seized animals with the exception of the kittens born while in custody. She argues that it would be in the best interests of the cats to be returned because they are semi-feral. With respect to the dog, she said the dog was very people-oriented, had received veterinary treatment, is in good health and was licensed. She takes it on walks twice daily. With respect to the property, she testified that she has done some cleaning up, has paint on hand for the ceiling, and tiles and grout for the floor. She has feed for the chickens and points to photographs in her affidavit showing feed in dishes and water in a cleaned tub.
86. In considering whether to return animals, the Panel must decide whether the Appellant has demonstrated that it is in the animals' best interest to be returned. As part of that consideration, we look at whether the Appellant has demonstrated any insight into the problems that led to the findings of distress in the first place. We have also considered whether the Appellant has demonstrated an ability to make changes in the best interests of the animals. An Appellant's past history with the Society may be a relevant consideration to whether an animal should be returned as past behaviour may be a good indicator of future behaviour.
87. The Appellant's history is troubling. Through the course of the past 14 years, the Society has logged and investigated a significant number of complaints by people concerned about the health and condition of the animals on the property.



Significantly, the health and condition of the animals which has led to complaints does not appear to have changed to any appreciable degree, as illustrated below.

88. The state of affairs observed in the 2015 appeal decision was summarized a paragraph 158:

Based a careful consideration of all the evidence, I conclude that in the circumstances of this case, the Appellant's home is unsanitary and does carry a significant risk of harm to the dog (and the cats/kittens) and I have no confidence, based on the lack of insight by the Appellant, that this condition would change

89. Similarly, in the 2016 appeal decision, the Panel noted at paragraphs 100-102:

The evidence provided to this Panel with respect to the living conditions of the three cats that are the subject of this appeal in June of 2016 clearly demonstrates that no substantial change has occurred in those living conditions since the previous seizure of animals in June 2015. The house continues to be contaminated by feces and urine from the Appellant's pets as well as from rodents living in and around the property. The house continues to be filled with debris. Despite the Appellant's evidence to the contrary, there does not appear to have been any substantial efforts made to improve the cleanliness of the home. Even if those efforts were in fact made at some point over the last year then, in the interim, the house has returned to a similar level of squalor as observed previously.

101. Dr. Langelier has provided his opinion that the residence will be significantly contaminated with fleas as well as the parasites leading to toxoplasmosis. He has further stated in his direct evidence that he fully believes, based on his assessment of the three cats, that their current health issues have arisen as a result of the Appellant's living conditions, and that a return of the three cats to those conditions would simply amount to returning them to an environment that will inevitably lead them back into distress. He has stated that he regrets not being able to retrieve the two additional cats that remained at the residence and that those animals should be seized as soon as possible.

102. The Appellant has not provided any compelling evidence of any substantive efforts that she has made or that she intends to make in order to deal with the squalid living conditions that were prevalent in 2015 and that continue to be prevalent at this time. She is of the belief that the issues with regards to her living conditions are being overstated, that her efforts to date have been sufficient and that similar efforts will be sufficient in the future. Furthermore, the Appellant made statements to the effect that as part of her Charter rights she is able to 'live as I please' and as such her living conditions should not be properly considered by this Panel. The Panel disagrees with the Appellant's submission in that regard for all of the forgoing reasons, but also note that insofar as she maintains this position it is unlikely that she will ever feel obliged to improve her living conditions. ...

90. The evidence heard in this appeal is that despite notices issued July 9, 2020, prior to the July 21, 2020 warrant, and notices issued July 21, 2020 during the course of the first warrant being executed and the notice issued July 29, 2020, none of the cats received treatment as directed. Nor, as evidenced in past decisions, was

there meaningful change to the environmental problems within the residence although we do acknowledge the evidence of minor repairs done outside the house, to the lean-to, and to the chicken house.

91. On the basis of this extensive history and the fact that, while food and water deprivation was apparent and that many of the animals were suffering injuries, were sick and in pain, the overriding factor in this decision is that all of the animals, the dog Marja included, are again being kept in conditions that are exceptionally unsanitary by any normal measure. We conclude that the conditions that these animals were found in are not fit for animals or humans, and given the extensive nature of the past history, these conditions not likely to change.
92. Based on this finding, we conclude that it is not in the best interest of any of the animals to be returned to the Appellant.

### **Order**

93. Section 20.6 of the *PCAA* reads as follows:

20. 6 On hearing an appeal in respect of an animal, the board may do one or more of the following:

- (a) Require the society to return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
  - (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
  - (ii) any matter that the board considers necessary to maintain the well-being of that animal;
- (b) Permit the society, in the society's discretion, to destroy, sell or otherwise dispose of the animal;
- (c) Confirm or vary the amount of costs for which the owner is liable under section 20(1) or that the owner must pay under section 20(2).

94. The Panel permits the Society, in the Society's discretion, to destroy, sell or otherwise dispose of all the animals that are the subject of this appeal.

### **Costs**

99. Section 20(1) 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.

100. As outlined in Ms Moriarty’s affidavit dated September 16, 2020, the Society is seeking costs in total amount of **\$21,939.23**. These include:

- Veterinary costs: \$9571.98
- Investigation and labour costs: \$1095.60
- Costs of care, housing and feeding \$11462.35

101. The Appellant made minimal submissions on costs. In her view, the costs sought by the Society are excessively high but does not explain why except for the fact that the Society shows an operating surplus in its annual report.

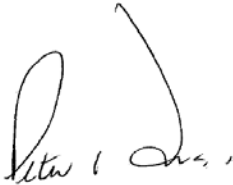
102. The Panel has reviewed the affidavit and the records for expenses which were provided by the Society along with a reference spreadsheet. The Panel accepts the total as presented.

103. The Panel confirms, pursuant to s. 20.6 of the PCAA that the Appellant is liable to the Society in the amount of **\$21,939.23**.

Dated at Victoria, British Columbia this 5<sup>th</sup> day of October, 2020.

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

Per:



\_\_\_\_\_  
Peter Donkers, Chair



\_\_\_\_\_  
Dennis Lapierre, Member



\_\_\_\_\_  
Harveen Thauli, Member