

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 9
DOGS AND 2 CATS

BETWEEN:

APRIL IRVING

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Pawan Joshi, Presiding Member
Neil Turner, Panel Member
Jane Pritchard, Panel Member

For the Appellant:

April Irving

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

December 6, 2023

Location of Hearing:

Zoom

A. 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*) related to the seizure of nine dogs and two cats (the Animals), from the Appellant, April Irving, from Crown land located in Cranbrook, BC (the Property). Nine puppies were born after the seized Animals were taken into the care of the British Columbia Society for the Prevention of Cruelty to Animals (the Society) and as such are also included in this Appeal (collectively with the Animals referred to as the Augmented Animals in this Decision).
2. The Appellant is appealing the November 2, 2023, review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief of Protection and Outreach Services of the Society.
3. Section 20.6 of the *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal with respect to animals, to require the Society to return the animals to their owner with or without conditions or to permit the Society, in its discretion to destroy, sell or otherwise dispose of the animals. The Appellant in this case is seeking the return of the Augmented Animals.
4. On December 6, 2023, a BCFIRB hearing panel (the Panel) held a hearing via Zoom. The hearing was recorded.
5. The Appellant was self-represented and testified on her own behalf. The Appellant advised the Panel that she intended to call two further witnesses A.V. and J.W., however those witnesses were not available when called and as a result did not give evidence at the hearing.
6. The Society was represented by counsel and called two witnesses, Animal Protection Officer Adriana Snashall (APO Snashall) and expert witness, Dr. Jasmine Hardy, Doctor of Veterinary Medicine. The Panel accepted Dr. Hardy as an expert witness in veterinarian medicine.

B. Decision Summary

7. Upon a comprehensive review of the evidence and submissions, the Panel has determined that the Animals were in distress at the time of the seizure due to unsanitary living conditions, inadequate veterinary care, improper nutrition, and the lack of proper shelter. The Panel has further decided not to return the Augmented Animals to the Appellant due to the Appellant's failure to acknowledge or address the circumstances that led to the seizure. As a result, the Panel has ordered that the Augmented Animals are to remain with the Society.

8. The Panel has also determined that the costs incurred by the Society are reasonable in the circumstances and has ordered that the Appellant pay those costs in the amount of \$26,021.20.

C. Preliminary Matters

9. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. In response to a request from Respondent's counsel, the Panel directed the Appellant to confirm her witnesses. The Appellant identified two witnesses, A.V. and J.W.

D. History Leading to Seizure of the Animals

10. For approximately the last year, the Appellant has resided with the Animals at a self-made campsite at the Property. The Appellant does not own the Property and does not have any authorization or permission to reside there.
11. On September 9, 2023, the Society's Animal Helpline received a complaint from the Cranbrook RCMP concerning several dogs and cats being kept on Crown land under the Appellant's care and control. The complainant noted that the dogs were tethered on short leashes and that one dog was tangled in its tether.
12. On September 19, 2023, APO Snashall spoke with the reporting RCMP officer. At that time, the officer advised that the large breed dogs were observed tethered to trees with no access to shelter or water and that the dogs had obviously matted and dirty hair and fur.
13. On September 20, 2023, APO Snashall made arrangements with Cranbrook RCMP officers to attend at the Property. During that attendance APO Snashall advised the Appellant that she had multiple concerns regarding the welfare of the Animals including lack of shelter, lack of water, and the matting of their hair and fur. APO Snashall subsequently engaged Special Provincial Constable (SPC) Wiltse to obtain a warrant to investigate and potentially seize the Animals.
14. The warrant was executed on September 22, 2023, with multiple Society officers and RCMP officers present. Upon entering the Property, the officers observed all of the dogs tethered without access to adequate shelter. They also observed piles of housing insulation being used as bedding and noted that no food bowls were present.
15. All of the Animals but one cat had water contained in cooking pots located near them, however many of the Animals could not access the water as their tethers were tangled. One of the cats was so tangled it could only move a few inches. Further, the water contained green algae, dirt, and other debris. All of the dogs were laying in bare dirt and the Property contained piles of animal bones and rotting flesh which were accessible to the Animals.

16. Overall, the conditions at the campsite were very unsanitary and the Animals appeared dirty, matted, and in poor condition. Many of the dogs had open wounds on their bodies. All of the Animals were determined to be in distress and were removed from the Property by the Society.
17. The Society did not have any historical files with the Appellant. However, upon investigation, the Society determined that in 2013 the Appellant was convicted in Saskatchewan of animal cruelty and received a 10-year ban on owning more than two animals in that province. This conviction involved 83 dogs and puppies that were found in unsanitary and inadequate living conditions.
18. Despite having a 10-year ban in place in Saskatchewan, the Appellant was charged again in February and March 2015 in Alberta with 13 counts of animal cruelty pursuant to the *Alberta Animal Protection Act*. A total of 201 emaciated, starving, dehydrated, and severely matted dogs were removed from a property in Milk River, Alberta. The dogs were again found in unsanitary and inadequate living conditions, and many had untreated medical issues. The Appellant was also charged under the *Criminal Code of Canada* with abandoning and neglecting animals after an RCMP officer found five dead dogs on the Milk River property. In 2019, the Appellant was convicted of four offences under the *Alberta Animal Protection Act* and on December 4, 2019, the Appellant was fined \$15,000 and given a lifetime ban on owning dogs in that province.

E. Review Decision

19. On November 2, 2023, Ms. Moriarty issued her review decision in which she outlined her reasons for not returning the Augmented Animals to the Appellant (the Review Decision). Ms. Moriarty was satisfied, upon her review of the evidence and documents, that the Animals were in distress due to the unsanitary living conditions and related neglect and that the Society's officers took appropriate action in seizing them.
20. Ms. Moriarty then considered whether to return the Augmented Animals to the Appellant. Ms. Moriarty reviewed the Appellant's extensive history of animal abuse and neglect and the Appellant's submissions. Ms. Moriarty further noted that the Appellant was apparently incapable of recognizing the distress that she had caused the Animals, and that the Appellant's inability to acknowledge the circumstances that led to the seizure meant that she would not take the steps to rectify those circumstances. Ms. Moriarty concluded that the Augmented Animals would, without a doubt, be returned to a state of distress should they be returned to the Appellant's care and as a result declined to return the Augmented Animals to the Appellant.

F. Key Facts and Evidence

21. Below is a summary of the relevant and material facts and evidence based on the parties' written submissions and evidence presented during the hearing. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

Appellant Testimony

22. The Appellant is 65 years old and at the time of the hearing was living at the campsite on the Property. The Appellant acknowledged that the Property is Crown land and noted that she has been asked to clean up the campsite and vacate the Property which she expects to do by the end of December, 2023. The Appellant stated that she would lease a property if the Panel returned the Augmented Animals to her care but that she otherwise didn't want to incur the cost of a lease. The Appellant did not otherwise have a location or a plan for the return of the Augmented Animals to her care at the time of the hearing.
23. The Appellant stated that the Animals were not in distress at the time of seizure and that the Society seized the Animals due to her name and her past history. She noted that she had previously operated a kennel in Fort McMurray, Alberta approximately 20 years ago.
24. The Appellant stated that she took care of the Animals very well. She noted that they were spayed, neutered and vaccinated and that she cleaned the dogs regularly. She ensured that the Animals had access to water and used clean stainless-steel pots. She noted that the Property was very close to a river and that she would take the Animals to the river daily during the summer months. She noted that the Animals had beautiful trees overhead that provided them with shelter.
25. The Appellant questioned the veterinarian findings with respect to the Animals noting that both cats were identified by the vets as females, but in fact, according to the Appellant, one cat was a male and one cat was a female. The Appellant noted that the Society did not bother to ask her questions regarding the care that she provided to the Animals (i.e., deworming) which she suggested was an indication that the Society had already decided to seize the Animals before they came to the Property.
26. The Appellant produced a number of pictures and videos of the Animals, which were taken at unknown times. The Appellant identified some of the pictures as having been taken a couple of years ago and some of the pictures having been taken in 2010, when the Appellant was living in Saskatchewan. The Appellant provided pictures which included empty food bags as evidence of the fact that the Animals had access to an abundance of food.

27. The Appellant testified that she tied the Animals with steel cables that were approximately 50 feet long and that she would change their tether location everyday. She stated that she supervised the Animals so that they would never tangle. She noted that she used harnesses and collars made of night reflective material to tie the Animals. The Appellant stated that the Animals were scared and had become entangled as a result when the Society's officers attended at the Property on the day of the seizure.
28. The Appellant testified that the Animals were fine, but that they had become infested with fleas and started scratching their bodies after the Society's officer had attended at the Property on September 9, 2023. On the day of the seizure, the Appellant stated that she was treating the Animals with betadine for fleas.

Respondent Witnesses:

Dr. Hardy

29. Dr. Hardy is a graduate of Western College of Veterinary Medicine in Saskatoon and is licensed to practice veterinary medicine in the province of British Columbia. She has been practicing since 2014 and works as a practicing partner at Tanglefoot Veterinary Services in Cranbrook, BC. Dr. Hardy was qualified by the Panel as an expert in veterinary medicine.
30. Dr. Hardy examined four of the dogs seized from the Property on September 22, 2023. She also reviewed the videos of the Property, recorded by the Society at the time of seizure as well as the blood work reports of the Animals that were taken at their initial intake after the seizure.
31. Dr. Hardy prepared a report, dated October 12, 2023. In the opinion section of the report Dr. Hardy assessed the 'five freedoms' considered necessary to ensure that an animal will not end up in distress as follows:
 1. Freedom from hunger and thirst by ready access to fresh water and a diet to maintain full health and vigor was not met. Either no access to water or access to dirty water was only present. These animals were being fed a diet of raw meat, which is not a balanced diet and can have long term detrimental health effects.
 2. Freedom from discomfort by providing an environment, including shelter and a comfortable resting area was not met. Majority of these animals had no shelter, with no appropriate bedding and the conditions were unsanitary. In additional, these animals could not seek out their own comfort as they were tethered to trees and objects.
 3. Freedom from pain, injury or disease by prevention or rapid diagnosis and treatment was not met. These animals had ailments that were not being treated, and there was no indication that these animals had received any routine veterinary care.

4. Freedom to express normal behavior by providing sufficient space, proper facilities and company of the animal's own kind was not being met. These animals had restricted movement by being tethered to trees, were unable to socialize or play and were unable to express natural movement.
 5. Freedom from fear and distress by ensuring conditions and treatment which avoid mental suffering was not met. The inability to socialize, be comfortable, have access to proper food, water or clean water would have created mental suffering. All dogs exhibited anxious and fearful behavior as a result.
32. With respect to the blood work reports, Dr. Hardy noted that many of the Animals had several electrolyte abnormalities. A few of the Animals had elevated urea, but there was no evidence of other kidney disease. Dr. Hardy stated that the elevated urea level in the Animals was likely due to very high protein levels arising from a diet of predominantly raw meat.
 33. Dr. Hardy testified that the Animals were not in good health and that further testing and veterinary treatment was required. She further noted that when the Animals were transported to her clinic, some of the dogs vomited. When she examined the vomit, she found that it was comprised of almost exclusively raw meat.
 34. Dr. Hardy noted that some of the Animals had skin, eye and ear infections. One of the dogs in particular had significant lesions on her skin, including an open wound, and her skin was generally red and inflamed. One of the cats had a very weepy eye, which was very obvious.
 35. Dr. Hardy stated that the manner in which the Animals were tethered was not acceptable. She noted that there were lots of trees and bushes around the Animals and that they were tangled and could not reach or access water. She noted that there was a risk of strangulation and that the Animals could have suffered orthopaedic injuries. Finally, she noted that the Animals would have no ability to avoid predators.

APO Snashall

36. APO Snashall testified that on September 9, 2023, the Society's Animal Helpline received a complaint from the Cranbrook RCMP concerning several dogs and cats being kept by the Appellant at the Property. The complainant advised that the dogs were tethered on short leashes and that one of the dogs looked skinny.
37. After receiving the complaint, APO Snashall testified that she investigated the Appellant's involvement in animal protection matters in Alberta and Saskatchewan.
38. On September 20, 2023, APO Snashall attended at the Property along with the RCMP officers to investigate the complaint. She noted that they walked the entire

Property and observed all of the Animals but were not able to interact directly with the Animals as the Appellant would not allow them close contact.

39. APO Snashall observed that the overall condition of the Property was very unsanitary. She saw feces presumably from the dogs. There were decomposing animal carcasses including what looked like elk or deer legs, skin and different organs. The majority of the animals had access to these decomposing carcasses.
40. APO Snashall noted that the Animals were dirty and matted. Some of the animals had skin irritations and redness that could easily be observed. The Animals had patches of hair missing, and rough and dull coats. A number of the Animals had obvious medical concerns, including open wounds and skin rashes. All of the Animals were tethered, most of the tethers were tangled or wrapped around trees, and the Animals couldn't move freely or access their drinking water.
41. APO Snashall observed three wooden dog houses in the main campsite area. The houses didn't have any insulating properties and contained some dirty blankets for bedding. Only one of the dogs had access to one of these shelters.
42. APO Snashall stated that she explained to the Appellant that she had a number of concerns that the Appellant would need to address. She particularly stressed the lack of shelter, the lack of water and the matting of the Animals hair and fur. The Appellant suggested that the tree cover was sufficient shelter. APO Snashall explained that winter was quickly approaching and that the tree cover would not protect the Animals from the elements and freezing temperatures.
43. APO Snashall testified that after her visit to the Property she discussed the situation with Regional Manager Matt Affleck and they agreed to apply for a warrant. A Special Provincial Constable (SPC Wiltse) was appointed to the file to assist with the application.
44. APO Snashall testified that on September 22, 2023, she attended at the Property with other Society staff members and RCMP officers. APO Snashall observed that there was no noticeable improvement or change in the circumstances at the Property. She noted that the piles of bones and rotting meat remained all over the campsite, which was accessible to the Animals. The Animals were clearly deprived of adequate food, water, shelter, exercise, care, and veterinary treatment and were determined to be in distress and seized by the Society.
45. The physical examinations undertaken after the seizure and the resulting veterinary findings confirmed that the Animals had obvious, untreated medical issues that required immediate attention and had obvious, untreated medical issues that required immediate attention. The veterinarian findings further confirmed that the Animals' living conditions and inappropriate diet were causing the Animals significant harm.

G. Analysis and Decision

46. 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.

47. The definition of "distress" 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.

48. We have also proceeded on the basis that the Appellant has an onus to show, that the remedy she seeks (return of the Augmented Animals) is justified. The first issue to consider is whether the Animals were in distress at the time of seizure. Depending on the answer to that question, the next issue is to decide whether to return the Augmented Animals or whether doing so would return the Augmented Animals to a situation of distress.

H. Seizure of the Animals

49. In coming to a decision as to whether the Animals were in distress at the time of the seizure, the Panel is guided by the following passage from *McIntosh v BCSPCA* November 12, 2021, where at paragraph (104) that Panel held:

"...the definition of distress is broad, and the Society does not have to establish an actual deprivation or harm to animals before determining the animals are in distress. A medical finding that animals are injured or in pain is not required to conclude the animals are in distress. The definition of distress is intended to

be protective and preventative. It does not require proof of actual harm; rather, it describes those circumstances that create a significant risk of harm to animals and should be avoided. When these circumstances are not avoided and conditions place animals at sufficient risk, the Act provides they can be protected.”

50. Not every animal need be in distress for a seizure to be valid. The Panel in *Foulds v. BCSPCA*, December 9, 2020 held at paragraph (209),
“It is important to note that it is not necessary to find every animal to be in immediate physical distress to justify. seizure”
51. The Tribunal in *Foulds* quoted from *Simans v BCSPCA* (Dec 2, 2016):
[180] In approaching this question, I note that “distress” in s. 1(2) of the PCAA is a specialized term. It does not require the Society to make a finding of pain and suffering as a precondition to removing an animal. While pain and suffering were present here for many of the animals, that is not necessary for the definition of “distress” to be met. Rather, in accord with the purposes of this protective statute, the definition extends beyond that. The first three criteria listed in s. 1(2) – any one of which is sufficient to satisfy the definition – also constitute “distress”, and make clear that the Society is not required to find “pain” and “suffering” before it may move to protect an animal. Those factors reflect serious risk factors that would foreseeably give rise to suffering and harm if protective action is not taken. While they must not be trivialized in their application, they also do not require the Society to wait until the worst happens.
52. The Society submitted video evidence from September 22, 2023, the day the Animals were seized. It is evident from the videos, and was confirmed by APO Snashall in her oral evidence, that the Animals were tethered without access to adequate bedding or shelter and were laying in the bare dirt. The drinking water provided to the Animals by the Appellant contained dirt and other debris. There were piles of animal bones and rotting flesh, which were accessible to the Animals.
53. The Panel finds that the Appellant failed to properly care for the Animals. The Appellant failed to provide appropriate and sanitary shelter and appropriate sources of food and water for the Animals which resulted in a number of medical issues including infectious diseases and open wounds. These medical issues did not seem to concern the Appellant and she took no steps to alleviate them.
54. The Animals were generally exposed to an environment where there was an ongoing risk of serious harm and injury. In particular, the manner in which the Appellant tethered the Animals deprived them of the ability to properly access food, water, shelter and to avoid any potential predators. The Animals were essentially immobilized in a manner likely to cause them injury in the open forest.
55. Dr. Hardy’s expert evidence, including her report, were not seriously challenged by the Appellant and that evidence is accepted by the Panel in its entirety. Dr. Hardy’s evidence clearly shows that the Animals were in distress at the time of seizure.

56. The Panel has little difficulty in finding that the Animals were in distress at the time that they were seized and as a result the Animals' seizure by the Society was necessary and appropriate in the circumstances.

I. Return of the Animals

57. 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.”

58. In *Brown v BCSPCA, [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.”

59. The Appellant does not take any responsibility for the condition of the Animals and their living conditions at the Property at the time of the seizure and has essentially ignored the veterinary and other documentary evidence that was submitted in this Appeal. The Society clearly made efforts prior to the seizure to inform the Appellant of the steps that she should have taken to alleviate the harm that was being caused to the Animals and the Appellant made no efforts in that regard.
60. The Appellant has submitted that the Society became involved only because of the Appellant's name and past history in animal protection matters in other provinces, otherwise, she submits, there was nothing wrong in the care that she was providing to the Animals. The Appellant's continuing inability to acknowledge, accept and remedy her conduct in creating living conditions that harmed the Animals and caused their distress is extremely concerning to the Panel, because it is clear from the evidence that her conduct fits a pattern that in previous instances has resulted in her receiving long term or lifelong bans from caring for animals in other provinces. Such bans are extraordinary remedies and cannot be ignored by this Panel. Animal protection is a matter regulated by the provinces such that the bans that were imposed in Alberta and Saskatchewan are not in force outside of those jurisdictions, however the Appellant can not expect that by simply relocating within the country she can avoid having those extra-provincial animal protection matters being taken into account.

- 61. The Appellant has not presented any realistic plan for the care of the Augmented Animals. Furthermore, the Appellant was unable or unwilling to admit that there were any issues relating to tethering the Animals their lack of shelter and their living conditions generally. The Appellant has simply reiterated in all of her communications with the Society and at this appeal that the Animals were fine and that there were no issues that needed to be addressed or resolved.
- 62. The Panel finds that the Appellant has failed to show that the Augmented Animals can be safely returned to her care without being put into a situation that will undoubtedly cause them significant and immediate distress. The Panel therefore finds that the Augmented Animals should remain in the custody and care of the Society.

J. Costs

63. Section 20 of the *PCAA* states:

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

(2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.

(3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.

(4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.

(5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.

64. Section 20.6(c) of the *PCAA* provides that on hearing an appeal the board may “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)”.

65. The Society is seeking costs as follows:

(a) Veterinary costs:	\$9,208.63
(b) SPCA time attending to seizure:	\$356.07
(c) Housing, feeding and caring for the Animals:	<u>\$16,456.50</u>
(d) Total:	\$26,021.20

66. The Appellant submits that she does not have the financial resources to pay the costs the Society is seeking and that the costs must be payable in accordance with the Appellant's capacity to pay.
67. The Society's submissions provide detailed cost accounting, including invoices for veterinary care and detailed estimates on the daily operating costs associated with the care of the Augmented Animals. The calculation of these estimates has been reviewed and supported in previous appeals.
68. The Panel finds that the Society's costs are reasonable, and have been incurred in accordance with the Society's mandate under the Act, and finds that the Appellant is liable to pay to the Society these costs in the amount of \$26,021.20.

K. Order

69. Pursuant to section 20.6 (b) of the *PCAA*, the Panel orders that the Society will be at liberty to destroy, sell or otherwise dispose of the Augmented Animals.
70. Pursuant to section 20.6 (c) of the *PCAA*, the Panel further orders that the Appellant will pay costs to the Society in the amount of \$26,021.20.

Dated at Victoria, British Columbia this 20th day of December 2023.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Pawan Joshi, Presiding Member



Neil Turner, Panel Member



Jane Pritchard, Panel Member