

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 THREE
DOGS

BETWEEN:

LESLIE IVENS

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Neil Turner, Vice Chair &
Presiding Member

For the Appellant:

Leslie Ivens

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

December 9, 2024

Location of Hearing:

Teleconference

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 three dogs (the Animals) from the Appellant Leslie Ivens at her residence located in Victoria, BC (the Property).
2. The Appellant is appealing the November 8, 2024, review decision issued under s. 20.2(4)(b) of the PCAA by Marcie Moriarty, Chief of Protection and Outreach Services, of the British Columbia Society for the Prevention of Cruelty to Animals (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 Animals.
4. On December 9, 2024, a BCFIRB hearing panel (the Panel) held a hearing via tele-conference. The hearing was recorded.
5. The Appellant was not represented by counsel and gave evidence on her own behalf.
6. The Society was represented by counsel and called two witnesses, Special Provincial Constable (SPC) Jacklyn Orza and N.V.

B. Decision Summary

7. This decision concerns the outcome of investigations conducted by the Society in response to multiple complaints from the public concerning the care of and distress experienced by the Animals between February 2020 and October 11, 2024.
8. The decision focuses on the unsanitary living conditions, the lack of adequate grooming and the lack of medical attention experienced by the Animals which led to the seizure of the Animals on October 11, 2024.
9. The Panel is satisfied that the Animals were in distress at the time of seizure due to a severe lack of grooming and timely medical care as defined by Section 1(2) of the PCAA. This finding is explained further in the decision below.
10. The Panel further finds that the Appellant has failed to provide any convincing evidence to establish that her circumstances have materially changed during the BCFIRB appeal period. The Appellant's plans for cleaning and maintaining a sanitary living environment for the Animals, and for getting the Animals' to

veterinarian or grooming appointments, is not supported by the evidence. As such, the Panel cannot support a return of the Animals to the Appellant.

11. As set out further below, the Panel orders pursuant to Section 20.6 of the PCAA that the Society is permitted in its discretion to destroy, sell or otherwise dispose of the Animals, with the obvious hope that they will be adopted unless circumstances somehow preclude that possibility.

C. Preliminary Matters

12. Counsel for the Society informed the Panel that due to postal delays, hard copies of Exhibits #07 and #08 from the Society's binder of submitted documents were not delivered to the Appellant and were instead sent as electronic documents by email to the Appellant. The Appellant confirmed receipt of the electronic versions of Exhibits #07 and #08 and agreed that the documents could be included as exhibits for the purposes of the hearing.

D. Material Admitted on this Appeal

13. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1-14.

E. History Leading to Seizure of the Animals and the Day of Seizure

14. Prior to the seizure, the Society received several complaints concerning the Appellant's care for one of the Animals, Kensi, dating from 2020 to 2024.
15. On February 22, 2020, the Society received a complaint from a food delivery driver after viewing the inside of the Property. The driver reported that there was considerable buildup of feces on the hallway floor and that the smell of feces and urine was sickening.
16. On February 24, 2020, Animal Protection Officer, Taylor Marsh ("APO Marsh"), went to the Property and left a notice requesting that the Appellant contact the Society.
17. On February 27, 2020, the Appellant called APO Marsh and stated that she was now taking care of her mother's dogs, as her mother had passed recently. Those 4 dogs included Kensi. After receipt of requested records and photographs, APO Marsh closed the Society's file.
18. On December 21, 2021, the Society received a second complaint from a contractor working at the Property. The complainant described the inside of the home as filthy and having more than an inch of fecal matter on the floors. The complainant also advised that other contractors refused to step into the home, due to its condition.

19. On December 22 and 28, 2021 Animal Protection Officer, Rachel Sheret (“APO Sheret”) attended the Property and left notices on both occasions.
20. On December 29, 2021, APO Sheret called the Appellant and advised the Appellant of the most recent complaint. The Appellant informed APO Sheret that the Property had been flooded 2 to 3 weeks prior and that she had moved to a condo and that the four dogs were being boarded at a local kennel facility (“Puppy Love”). The Appellant also advised APO Sheret that the restoration of the Property would not be completed until February or March of 2022. Based on this information APO Sheret closed the file.
21. On April 11, 2022, the Society received a third complaint related to the Property from staff at the Victoria BC Society for the Prevention of Cruelty to Animals (BCSPCA) shelter. Staff filed the complaint after receiving an adoption inquiry from the Appellant and photographs of the Appellant’s home. Those photographs were included as exhibits at the hearing and depict the conditions of the home at that time including piles of feces and pools of urine.
22. On April 17, 2022, APO Marsh attended the Property and after determining that the Appellant was not home, left a notice for the Appellant to contact the Society.
23. On April 23, 2022, APO Marsh spoke to the Appellant via telephone and the Appellant claimed the condition of her home was due to the flooding incident of December 2021 and that she would send updated photos of her home. APO Marsh subsequently left his employment with the Society and Special Provincial Constable, Jacklyn Orza (“SPC Orza”) was assigned to the file.
24. On May 2, 2022, SPC Orza determined it was necessary to close the file, as she was unable to confirm the status of the complaint file.
25. On April 3, 2023, the Society received a complaint from a social worker at the Victoria General Hospital, where the Appellant had been admitted. The social worker called the Society, as the person appointed under the Appellant’s Power of Attorney (the “POA”) was too afraid to enter the Appellant’s home due to its “horrible condition”. The POA advised the Society that a cleaner (Service Master) was hired to view the Property and stated it was a “level 10 out of 10” for poor cleanliness, hoarding, and condition. The social worker also requested emergency boarding for the Appellant’s birds, as the Appellant was being admitted to the hospital for an unknown period of time. The Society’s Victoria shelter agreed to board the birds for up to two weeks at no cost. The Society’s Animal Protection Services department was engaged and SPC Orza was assigned to the file.
26. On April 3, 2023, SPC Orza reached out to the POA and Service Master to obtain more information regarding the Property and the birds. During these conversations, SPC Orza learned the Appellant had attended the Property on March 29, 2023, on a day pass from the hospital, and gave the birds “lots” of food

but no one had attended since then. Service Master advised they quoted \$25,000 to clean the Property and that no one should be entering the home without proper protective gear. Service Master also sent SPC Orza a video of part of the Property and the birds and stated they were unable to capture any of them, due to safety concerns. SPC Orza additionally learned that the Appellant boarded some of her dogs at Puppy Love.

27. On April 4, 2023, SPC Orza attended the Property and caught as many birds as she could locate and left food and water out for any birds that remained.
28. On April 5, 2023, SPC Orza attended Puppy Love and spoke with the owner, N.V., who brought SPC Orza into the kennel to view the Appellant's three dogs (Maddy, Kensi, and Bella). The Appellant remained in hospital for an extended period and required assistance with cleaning the home. The Society agreed to extend the emergency boarding for the birds, until May 10, 2023. When the birds were returned on May 5, 2023, a Society staff member noted the home was still very unsanitary and reported this to SPC Orza. SPC Orza then attempted to schedule a recheck of the Property with the Appellant. However, the Appellant rescheduled this appointment several times due to health issues and having to reattend the hospital.
29. On June 15, 2023, SPC Orza received a call from N.V. from Puppy Love, who stated she attended the Property on June 8, 2023, to collect the Appellant's dogs and birds for her. N.V. advised that upon entry, she felt the home was "uninhabitable" with feces and urine throughout.
30. On June 20, 2023, SPC Orza was able to attend the Property, as the Appellant had returned from the hospital. At that time, the dining room was covered in feces but the entry, main hall to the kitchen, the kitchen, and main living area (all accessible to the dogs) were clear of feces and urine. During the inspection, SPC Orza observed three dogs. According to the Society, the Appellant confirmed she was able to adequately care for all her animals and would open a window for ventilation. SPC Orza issued the Appellant a Notice to ensure the living conditions of the animals remained sanitary and were clear of feces and urine.
31. On December 29, 2023, the Society received an anonymous complaint from someone who had recently been inside of the Property. The complainant advised that the conditions in the home were unsanitary with feces, urine, and garbage throughout. SPC Orza called the Appellant to advise of the complaint and to arrange a time to view the Property and her dogs.

32. On January 5, 2024, SPC Orza attended the Property wearing Personal Protective Equipment, including an N95 mask, to safely enter the Property. The Appellant's three dogs, Maddy, Kensi, and Bella were present at the time and no potable drinking water was available to them. Two of the Animals, Bella and Kensi, were scooting on their rear ends, likely because of having hair matted by feces preventing normal defecation. The third dog Maddy was observed to have backend weakness, and was struggling to stand, and was panting heavily. Maddy also had an open wound on the right side of her body with evidence of licking. SPC Orza reminded the Appellant of her duties under the PCAA and that it was her responsibility to ensure animals in her care remained in a state free from distress. SPC Orza issued a Notice for grooming and veterinary care for all three dogs and to immediately clean up the Property.
33. On January 9, 2024, SPC Orza followed-up with the Appellant by telephone to determine her compliance with the Notice. The Appellant claimed to have run into issues securing veterinary appointments, but stated all three dogs were eventually examined and that she had scheduled grooming appointments for the dogs for January 10, 2024.
34. On January 11, 2024, the Appellant telephoned SPC Orza and advised that Bella passed away and the groomer (Mucky Mutt Pet Salon or "Mucky Mutt") also rescheduled the January 10, 2024 appointments to January 13, 2024.
35. On January 15, 2024, the Appellant called SPC Orza and advised that Mucky Mutt refused to proceed with the grooming appointments and, instead, suggested the Animals should be rehomed and helped. The Appellant eventually had Maddy and Kensi groomed at a different facility ("Ruffin 'It").
36. On January 18, 2024, a complaint was received from a person working at Mucky Mutt. The Appellant had been taking her dogs for grooming at Mucky Mutt since 2014. The complainant noted that, the Appellant brought in her dogs once or twice a year and the dogs were consistently covered in urine with feces matted into their fur as well as skin/eye/ear infections and overgrown nails. The complainant also expressed concerns regarding the number of dogs in the Appellant's care and for how many had passed away, including the recent passing of Bella. As SPC Orza had an ongoing investigation at the time, this complaint was added to the existing file. As the Appellant had complied with the Notice issued on January 5, 2024, and also committed to having a cleaner regularly attend her home, SPC Orza closed both of these files.
37. On October 9, 2024, the Society received a complaint from the manager of Puppy Love. This complaint was regarding Kensi and two puppies (Scout and Jasper). The manager of Puppy Love claimed the Animals were brought to her facility in "terrible condition". According to the complainant, the Animals were so matted with urine and feces they had to be immediately shaved and bathed. The Animals also

required nail trims for their very overgrown nails. All three of the Animals required medical attention.

38. On October 11, 2024, SPC Orza applied for and was granted a warrant. SPC Orza seized the Animals from Puppy Love on October 11, 2024. The Animals were examined by a veterinarian following seizure and intake by the Society. Kensi had significant hair matting requiring grooming, periodontal disease requiring extractions, a mass in her eye and significant eye damage, pot-belly appearance, and a body condition score of 7/9. After intake Kensi's eye condition worsened and required surgery and her eye had to be removed. It was determined that Kensi will also require significant dental surgery and care. The puppies Scout and Jasper were also examined. Scout was found to have a retained right testicle, and left eye prolapse of the third eyelid, which will require surgery. Jasper had a congenital defect in his front limb resulting in a limp/ altered gait, which will require rehabilitation.

F. Review Decision

39. On November 8, 2024, Ms. Moriarty issued her review decision in which she outlined her reasons for not returning the Animals to the Appellant (the "Review Decision"). She reviewed:
- Photos of the Dogs – October 9-11, 2024;
 - Information to Obtain Warrant (ITO) & Signed Order – October 10, 2024;
 - File #384812 Inspection Follow-up Details (IFD) – October 11, 2024;
 - Notice of Disposition – October 11, 2024;
 - Veterinarian Records for Kensi – October 11, 2024;
 - Veterinary Invoice – October 11, 2024;
 - Current Status List of the Dogs; and
 - Various email submissions from the Appellant.
40. Ms. Moriarty was satisfied, based on the evidence, that the SPC reasonably formed the opinion that the Animals were in distress, in accordance with the PCAA, and that her action to take custody of the Animals to relieve the Animals of distress was appropriate.
41. With respect to the return of the Animals to the Appellant's care, Ms. Moriarty noted as follows:
- "...You have been provided with ample warnings and directions and are either unwilling or unable to provide timely veterinary care, necessary grooming, and sanitary living conditions to your animals. The Society cannot continue to issue Notices and expend resources on following-up with you to gain compliance, as doing so will only serve to prolong the distress of the Dogs. Having reviewed all of the documents and information in the Society's file, I am of the view it is simply not in the Dogs' best interests to be returned to you..."

G. Key Facts and Evidence

42. In an appeal under the PCAA, the Panel must determine whether the Animals were in distress when seized and if they should be returned to the Appellant.
43. Below is a summary of the relevant and materials 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

44. The Appellant stated that prior to the seizure she was ill and needed to go to hospital, so she had called the kennel (Puppy Love) to schedule to drop off the Animals for care, while she was in the hospital. The Appellant stated that it was her friend Sue who dropped off the Animals to the kennel and took food and treats for the Animals with her at that time.
45. The Appellant stated that she was released from hospital a day and half later and was contacted by Puppy Love staff who advised that the Animals could stay a day longer.
46. The Appellant stated that she was in contact with Puppy Love staff by telephone and was informed that the Animals had been seized by the Society.
47. The Appellant described the veterinary appointment that she attended on August 21, 2024, seeking care for Kensi's eye. The vet provided her with eye drops for Kensi and required her to come in for a follow up appointment on November 20, 2024.
48. The Appellant then described how she was unable to make the veterinary appointment set for November 20, 2024, due to conflicts with her personal medical appointments. The Appellant also stated that grooming appointments set for Scout and Jasper had to be rescheduled as well.
49. The Appellant stated that she had a dental appointment arranged for Kensi and grooming appointments for Scout and Jasper pending the hearing decision.
50. The Appellant acknowledged that the seizure of the Animals by the Society was justified due to the need for grooming.
51. In cross examination by the Society, it was confirmed that the Appellant took ownership of Kensi when her mother passed.

52. In further cross examination by the Society the Appellant agreed that the floor of her property was covered in feces at the time of the seizure. The Appellant also acknowledged that she had a compromised immune system and potentially a lot of medical appointments to attend to currently and in the future.

Respondent Witnesses:

N.V.

53. N.V. provided testimony that she was the owner of Puppy Love and was aware that the Appellant was a customer since 2015. She confirmed that the Animals had boarded with Puppy Love in the past and needed grooming.
54. N.V. stated that the Animals were groomed every time they were boarded at Puppy Love due to them being typically covered with feces and smelling of urine.
55. N.V. testified that the Animals, were dropped off to Puppy Love in October 2024 in very poor condition. All the Animals had fur matted with feces, smelled of urine, and had overgrown nails. Jasper and Scout were under socialized, terrified, and shied away from people. Jasper also showed food aggression.
56. During cross examination the Appellant asked questions relating to the frequency of grooming of the animals while in the care of Puppy Love.

SPC Orza

57. SPC Orza described the history of the six cases of complaints related to the Appellant as set out at paragraphs (14) to (38) above and confirmed the narrative details in the written submissions provided by the Society.
58. SPC Orza further confirmed the veterinarian's findings after the Society's intake and examination and the related documents included in the materials submitted by the Society. The following was found during the Veterinarian's examination. Kensi had significant hair matting requiring grooming, periodontal disease requiring extractions, eye lens damage resulting in the leakage of lens protein, and a mass in her eyelid. Scout had a retained right testicle, and left eye prolapse of the third eyelid, requiring surgery. Jasper had a congenital defect in his front limb resulting in a limp and altered gait.
59. During cross examination the Appellant asked questions related to the identification of the complainants in the Society's submissions and the definition of the description by SPC Orza of "collecting items" in reference to the condition of the Property.

The Hearing of this Appeal

H. Analysis and Decision

60. 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.

61. 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.

I. Distress

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

63. The Appellant in her testimony acknowledged that the seizure by the Society was justified due to the need for grooming of the Animals. She explained that the lack of grooming was a direct result of her life circumstances over the last few years including the death of her mother, her house flooding, and several serious medical emergencies. Those difficult circumstances forced her to postpone veterinary and grooming appointments for the Animals.

64. The Appellant stated that she is ashamed of the condition of her home and that there have been times where the floors are covered in feces, due to flooding and difficulties in scheduling of cleaners.
65. The Society submits that the Appellant has an extensive history of not being able to provide care or sanitary conditions for the Animals due to serious medical issues between 2021 and 2023. As such the Animals were clearly in distress at the time of seizure and required significant grooming intervention combined with medical care. That medical care also now includes surgery and rehabilitation. While the Appellant may have eventually addressed requirements set out in the Society's past Notices, the Appellant's medical challenges and conditions are significant and have undermined the Appellant's ability to keep a sanitary living space for the Animals and to arrange for regular grooming and veterinary care.
66. Based on all the evidence presented in this hearing and the documents submitted prior to the hearing, the Panel finds that the Animals were deprived of the necessary sanitary conditions and veterinary care (specifically eye and dental treatment) and were in a state of physical distress that resulted in pain and sickness. As such, the Panel is satisfied that the Animals were in distress at the time of seizure on October 11, 2024, as defined by s.1(2) of the PCAA.

J. Return of the Animals

67. Having determined that the seizure of the Animals was justified, the Panel must now turn to the question of whether it would be in the best interest of the Animals to be returned to the Appellant.
68. In doing so, the Panel is guided by the courts, which considered this question in *Eliason v BCSPCA*, 2004 BCSC 1773. In that case, the court 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.”
69. In *Brown v BCSPCA*, [1999] B.C.J. No. 1464 (S.C.) the court stated:

“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.”
70. The question at this stage is whether the Appellant is capable of providing adequate care for the Animals. The onus is on the Appellant to prove the return of the Animals is in their best interests and to explain what, if any, changes have been made or will be made to prevent them from again ending up in a state of distress.

71. Given the Appellant’s testimony, the Panel is not convinced that if the Animals are returned to the Appellant that she would ensure that they receive the proper veterinary attention when required.
72. The Panel also finds the Appellant has failed to provide any convincing evidence to establish that her circumstances have materially changed during the BCFIRB appeal period. The Appellant’s plans for cleaning and maintaining a sanitary living environment for the Animals, as well as plans for help if she has medical appointments that conflict with veterinarian or grooming appointments, is not supported with any evidence and lacks in detail.
73. In consideration of this, the Panel finds that it would not be in the best interests of the Animals to be returned to the Appellant, as doing so would most likely see them returned back into circumstances that would lead to their distress.

K. Costs

74. 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.

75. 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)”.

76. The Society is seeking costs as follows:

(a) Veterinary costs:	\$3,575.77
(b) SPCA time attending to seizure:	\$68.48
(c) <u>Housing, feeding and caring for the Dogs:</u>	<u>\$3,851.70</u>
(d) Total:	\$7,495.95

77. On the matter of costs, 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 Animals. The calculation of these estimates has been reviewed and supported in previous appeals.
78. The Appellant did not provide any specific submissions on costs, other than she was prepared to pay any costs related to care for her Animals, The Appellant did not dispute the costs submitted by the Society.

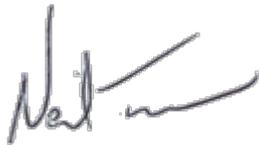
L. Order

79. The Panel finds that the Animals were in distress at the time of seizure, that their removal was appropriate and that it is likely and foreseeable that they would return to situations of distress if returned to the Appellant.
80. The Panel orders pursuant to s. 20.6(b) of the PCAA that the Society is permitted in its discretion to destroy, sell, or otherwise dispose of the Animals, with the obvious hope that they will be adopted unless circumstances somehow preclude that possibility.
81. The Panel further orders, pursuant to s. 20.6(c) of the PCAA, that the Appellant is to pay the Society for its costs in the amount of **\$7,495.95**.

Dated at Victoria, British Columbia this 23 day of December 2024.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Neil Turner, Vice Chair & Presiding Member