

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Chatwin v. SPCA***,
2008 BCSC 796

Date: 20080304
Docket: S078798
Registry: Vancouver

Between:

Monica Chatwin

Petitioner

And:

The Society for the Prevention of Cruelty to Animals

Respondent

Before: The Honourable Mr. Justice Cullen

Oral Reasons for Judgment

In Chambers
March 4, 2008

Counsel for Petitioner

D. Magnus, Q.C.

Counsel for Respondent

D. Montrichard

Place of Trial/Hearing:

Vancouver, B.C.

[1] **THE COURT:** This petition arises from the December 9, 2007 seizure of twenty-five dogs and puppies from the premises of the petitioner, Monica Chatwin, located at 20051 – 53B Avenue in Langley by the respondent Society for the Prevention of Cruelty to Animals (“SPCA”), under the provisions of the **Prevention of Cruelty to Animals Act**, R.S.B.C. 1996, c. 372 (“**PCA**”).

[2] The petition is brought pursuant to the **Judicial Review Procedure Act**, the relevant provisions of which read as follows

2(1) An application for judicial review is an originating application and must be brought by petition.

(2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:

- (a) relief in the nature of mandamus, prohibition or certiorari;
- (b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

...

5(1) On an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision, the court may direct the tribunal whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of a specified matter, the whole or any part of a matter to which the application relates.

(2) In giving a direction under subsection (1), the court must

- (a) advise the tribunal of its reasons, and
- (b) give it any directions that the court thinks appropriate for the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

...

7 If an applicant is entitled to a declaration that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may set aside the decision instead of making a declaration.

8(1) If, in a proceeding referred to in section 2, the court had, before February 1, 1977, a discretion to refuse to grant relief on any ground, the court has the same discretion to refuse to grant relief on the same ground.

(2) Despite subsection (1), the court may not refuse to grant relief in a proceeding referred to in section 2 on the ground that the relief should have been sought in another proceeding referred to in section 2.

[3] The relevant provisions of the ***Prevention of Cruelty to Animals Act*** read as follows:

10(1) The society may appoint an officer or employee of the society or any other person as an authorized agent for the purposes of this Act.

(2) An authorized agent may exercise the powers of an authorized agent under this Act or any other law relating to the prevention of cruelty to animals only if he or she has been appointed as a special provincial constable under the Police Act.

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 and veterinary treatment for it.

...

13(1) An authorized agent who believes, on reasonable grounds,

- (a) that there is an animal in distress in any premises, vehicle, aircraft or vessel, or
- (b) that an offence under section 24 has been committed and that there is in any premises, vehicle, aircraft or vessel, any thing that will afford evidence of that offence,

may enter the premises, vehicle, aircraft or vessel with a warrant issued under subsection (2) for the purpose of

- (c) determining whether any action authorized by this Act should be taken to relieve the animal's distress, or
- (d) searching for any thing that will afford evidence of an offence under section 24.

...

18 If an animal is removed from the custody of its owner under section 11 and taken into the custody of the society, the society may destroy, sell or otherwise dispose of the animal 14 days after the society has given notice to the owner in accordance with section 19.

19 The notice referred to in sections 17 (b) and 18 must be in writing and

- (a) mailed to or served personally on the owner, or
- (b) if it cannot be mailed to or served personally on the owner, published at least 3 times at 2 day intervals in a newspaper circulating in the area in which the animal was taken into custody.

20(1) The owner of an animal taken into custody under section 11 is liable to the society for the costs incurred by the society under this Act with respect to the animal.

(2) The society may require the owner to pay the costs 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.

[4] The seizure of the dogs came about as a result of a complaint lodged with the SPCA on December 8, 2007 by an employee of the petitioner's housecleaning business who was at the premises to clean at the house and went into the area where the puppies and dogs were to pick up supplies. She observed the dogs kept in conditions which she considered justifying a report to the SPCA.

[5] At the time and since November 30, 2007, the petitioner was away on holiday with her daughter Laura and was scheduled to return on December 9 or 10, 2007. She had left the dogs in the care of her son-in-law, Wesley May, who was separated from her daughter Laura but agreed to tend to the needs of the dogs.

[6] Before the petitioner returned home SPC Jocelyn Morgan, who is appointed under the ***Police Act*** and as an authorized agent of the SPCA, went to the premises on December 8, 2007 and spoke with Mr. May who was present.

[7] SPC Morgan left the premises and subsequently spoke with the complainant who informed her that as part of her job with the plaintiff's cleaning business she cleaned the house and that December 6, 2007, while looking for cleaning supplies, she went into the kennel which is a room built under the sundeck attached to the house, and saw about fourteen small breed dogs being held within small cages in the kennel which had no windows or light and that there was an overwhelming and nauseating smell of feces and ammonia in the kennel. The complainant told SPC Morgan the cages were small and there were at least two dogs in each cage. The complainant indicated the petitioner would be returning on December 9, 2007.

[8] As a result, and in light of conflicting information that she had from Mr. May concerning the number of dogs on the premise and the return date of the petitioner, SPC Morgan swore an information to obtain a warrant and obtained a warrant permitting her to enter and search the premises on December 9, 2007, between 3:30 p.m. and 8:59 p.m. and to take any required action to relieve distress in any animals found.

[9] Accordingly, on December 9th, 2007, SPC Morgan returned to the premises with the warrant to search along with SPC Crowder and Peters and RCMP Cst. Rebecca Woll. Cst. Morgan entered the kennel observing ten small kennels, nine of which contained dogs. What she attested to seeing in an affidavit sworn February 11, 2008 on her inspection of the kennel is summarized in paragraphs 43 to 52 of the respondent's written submissions which read as follows.

[43] The interior of this room reeked of the strong odours of ammonia and dog feces. The floors and walls within this room were dirty. A single frosted window was completely covered by a garbage bag that had been attached in some unknown fashion to the exterior of the window.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 31
[Chambers Record, TAB 15]

[44] "Cage #1" held three Yorkshire Terrier-type dogs. This cage had a wire mesh floor, and measured 36 inches long by 24 inches wide and was 24 inches high. There was water and food available within this cage. There were approximately five separate piles of feces in a tray located under this cage, and which was lined with urine- and feces-soaked newspapers. The dogs being held within this cage were circling repeatedly.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 32
[Chambers Record, TAB 15]

[45] "Cage #2" had the same dimensions as "Cage #1", and was located directly underneath "Cage #1". This cage contained two Yorkshire Terrier-type dogs. The dogs being held within this cage were literally bouncing off of the walls of the cage. The interior of "Cage #2" contained a wire mesh floor, along with approximately ten separate piles of feces in a tray located under this cage, which was lined with urine-soaked newspapers. There was no food present within this cage. There was approximately one inch of murky water in a container located within this cage.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 33
[Chambers Record, TAB 15]

[46] "Cage #3" had the same dimensions as "Cage #1". This cage contained three Yorkshire Terrier-type dogs. There was food available within this cage, along with murky, debris-filled water in a container. The floor within this cage consisted of wire mesh. There were approximately five separate piles of feces in a tray located under this cage, which was lined with urine-soaked newspapers.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 34
[Chambers Record, TAB 15]

[47] "Cage #4" had the same dimensions as "Cage #1". This cage was located directly underneath "Cage #3" and contained two Yorkshire Terrier-type dogs. The dogs being held within this cage were circling repeatedly and jumping at the walls of the cage. The floor within this cage consisted of wire mesh. There were approximately five or six separate piles of feces in a tray located under this cage, which was lined with urine-soaked newspapers. There was food and water available within this cage.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 35
[Chambers Record, TAB 15]

[48] "Cage #8" measured 23 inches long by 18 inches wide, and was 16 inches high. It contained two Yorkshire Terrier-type dogs. There was no food or water available within this cage. The floor within this cage consisted of wire mesh. There were two or three separate piles of feces in a tray located under this cage, which was lined with urine-soaked newspapers.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 36
[Chambers Record, TAB 15]

[49] “Cage #9” was located beside “Cage #8”. This cage measured 29 inches long by 16 inches wide, and was 21 inches high. It contained two Yorkshire Terrier-type dogs. There was no food available within this cage. There was some water available within a rabbit-style water container. The floor within this cage consisted of wire mesh. There were feces caught within the wire mesh, and there were three separate piles of feces in a tray located under this cage, which was lined with urine-soaked newspapers.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 37
[Chambers Record, TAB 15]

[50] “Cage #5” held two tan-coloured Boxer-type dogs. This cage measured 38 inches long by 38 inches wide, and was 43 inches high. A plywood platform located within this cage measured two feet by two feet, and reduced the amount of space that was available to the dogs being held within. Both of the dogs were sitting on this platform. It appeared that it would have been impossible for both of these dogs to lie down within “Cage #5” at the same time. There was no food or water available within this cage.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 38
[Chambers Record, TAB 15]

[51] “Cage #6” held two Lhasa Apso-type dogs, and had the same dimensions as “Cage #5”, although it had a concrete floor and did not contain a plywood platform. Instead it contained a ramp covered with a rubber-like material. A water bowl within this cage contained some very dirty water. This cage contained approximately four or five separate piles of feces, which were ground into the floor of the cage. The walls of this cage were filthy with feces.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 39
[Chambers Record, TAB 15]

[52] “Cage #7” held one Yorkshire Terrier-type dog, as well as two puppies being kept within a cardboard box inside of the cage. This cage had the same dimensions as “Cage #1”, although this was constructed from plywood and had a mesh front. The plywood floor of this cage was covered with newspapers. The puppies appeared to be younger than two weeks in age, as they were not yet mobile. There was food and water available within this cage. There were approximately three separate piles of feces in a mesh-covered litterbox within this cage.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 40
[Chambers Record, TAB 15]

[10] Cst. Morgan attested that Mr. May, who was present, told her he was unaware of the dogs in the kennel. He denied the presence of any other dogs being kept in the premises. Cst. Morgan subsequently found more dogs being kept in an upper floor bedroom. She deposed Mr. May told her he had not previously been on the upper floor or in the kennel and he only stopped by to check on the dwelling house. He said someone else, unknown to him, was attending to care for the two boxer dogs.

[11] Cst. Morgan's description of what she saw on the upper floor of the house was summarized in the respondent's written submissions at paragraphs 59 to 62 as follows.

[59] SPC Morgan returned to the upper floor of the Dwelling House went upstairs into the Dwelling House. In a crowded spare room, she found one Yorkshire Terrier-type dog being held within a penned-off corner of the room, along with three puppies that appeared to be a few days old.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 44
[Chambers Record, TAB 15]

[60] There were approximately ten separate piles of feces within this area, along with several puddles of urine. Some of the feces were located within a mesh-covered litterbox, but others were located on the floor. There was water available to these dogs, but no food. The adult dog has stitches on its belly, and its ribs, hips and spine were protruding. The tails of these puppies had been docked. The eyes of these puppies had not yet opened.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at paras. 44 & 45 [Chambers Record, TAB 15]

[61] On an outside balcony that was attached to the master bedroom within the Dwelling House, SPC found a rabbit that was being held within a cage that was constructed from wood and wire-mesh, and which was suspended from the outer railing of the balcony. The dimensions of this cage were three feet by four feet. The floor was also made from wire-mesh. In one corner of this cage there was a pile of moldy feces, approximately one half foot high and one foot wide.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 46
[Chambers Record, TAB 15]

[62] The rabbit was trying to drink from a water container; however, the water within this container was frozen solid. The only food that was available within this cage was some dry pellets that had mostly turned to dust. This cage did not provide any shelter from the elements.

Affidavit #1 of Jocelyn Morgan, sworn February 11, 2008, at para. 46
[Chambers Record, TAB 15]

[12] According to SPC Morgan, Mr. May denied any responsibility for care of the animals or knowing who was or how to reach the petitioner. At that time Cst. Morgan concluded she had the requisite grounds under the SPCA to seize the animals, excluding a cat which appeared to be healthy and she seized the following:

- (a) sixteen Yorkshire Terrier-type dogs;
- (b) two Boxer-type dogs;
- (c) two Lhasa Apso-type dogs;
- (d) five Yorkshire Terrier-type puppies; and,
- (e) one rabbit

[13] In her February 11, 2008 affidavit Cst. Morgan outlined the basis for her conclusion that the animals seized were "In distress within the meaning of the Act." in paragraphs 61 to 62 as follows:

[61] On December 9, 2007, I was particularly concerned by my observations of a number of indicia of distress with respect to the Animals, including without limitation:

- (a) an observable lack of an adequate living space being provided to most of the Animals;
- (b) an observable lack of adequate water being provided for many of the Animals;
- (c) an observable lack of regular maintenance and care being provided to the Animals and their environment;
- (d) an observable lack of clean living space being provided to many of the Animals; and,
- (e) an observable lack of grooming and other care being provided to many of the Animals.

[62] On December 9, 2007, I was also concerned by my observations of the environmental conditions on the Premises, including, without limitation, accumulations of urine and fecal matter within the cages that were being used to house many of the Animals.

[14] Cst. Morgan served a copy of the notice of disposition dated December 9th on Mr. May, along with a copy of the search warrant. The notice of disposition reads as follows:

This notice is to advise that the animal(s) taken into custody on December 9, 2007 pursuant to Section 11 of the **Prevention of Cruelty to Animals Act**, RS Chap. 372 ("the Act") will be disposed of as provided for in the Act. Section 18 of the Act authorizes the Society to destroy, sell or otherwise dispose of the/these animal(s) 14 days after notifying the owner. As prescribed in the Act, the society intends to exercise these disposal provisions 14 days after mailing or personally serving this Notice on the owner. If you wish to dispute the disposal you must do so in writing before the time limit specified has expired and deliver your notice of dispute to the address listed below, attention Marcie Moriarty. Section 20 of the Act further provides that costs incurred by the Society with respect to the/these animal(s) must be paid prior to returning the animal(s).

Description of animal(s):

<u>Species</u>	<u>Sex</u>	<u>Breed</u>	<u>Colour</u>
Rabbit	Unknown	Unknown	Brown
Canine	Various	Yorkshire terriers	[unreadable]
Canine	Various	Lhasa Apso	[unreadable]
Canine	Various	Boxers	Tan
Canine	Various	[unreadable]	[unreadable]

[15] The animals, except for the two missing female dogs and their puppies which went to the Langley Animal Emergency Clinic, were taken to various shelter facilities operated by or associated with the SPCA. Following the seizure 18 of the dogs and the rabbit were examined and assessed by Dr. Mark Steinebach a doctor of veterinary medicine on December 10, 2007 at the SPCA, Chilliwack shelter facility, and subsequently for a follow-up on January 2, 2008. For the purpose of the reporting each animal is assigned a unique number. Dr. Steinebach's assessments were recorded in two reports; the first is December 10, 2007 and the second dated January 3, 2008. The reports set forth his findings with respect to each dog he examined and the rabbit.

[16] In his affidavit sworn February 8, 2008, Dr. Steinebach deposed as follows:

[7] I examined a group of eighteen canines, as well as one rabbit, at the Chilliwack Shelter on December 10, 2007. At the time of these examinations, I was unaware of where these animals had been obtained from, other than the apparent fact that they were from Langley, B.C., and I did not know the name of the owner or owners of these animals. I did not request this information from the Society, nor did the Society provide same to me.

[8] During my examinations of the aforementioned canines, I rated their body conditions according to the Canine Body Condition Score (the "BCS"). The BCS ranges from 1 to 9, with a score of "1" indicating

an extremely emaciated canine, and a score of “9” indicating an extremely obese canine. On the BCS, a score of 4.5 is considered ideal, and any score of 3 or lower, or 6 or higher, is considered unacceptable.

[17] He detailed his observation and findings in relation to each animal that he examined in the affidavit, and following that he deposed as follows in paragraphs 12, 13, 15, 16, 17 and 19:

[12] In my examinations of the aforementioned animals on December 10, 2007, it appeared to me that there were some obvious and significant problems with respect to the standards of animal husbandry that had been applied to these animals. Out of all of the canines that I examined, nine of them had a BCS of 3, or lower, and several were emaciated. In my opinion, having observed all of these canines personally, many of these canines were not being provided with an even minimally acceptable level of nutrition. At the time of my examinations, these nutritional deficiencies were readily apparent, even to a non-veterinary professional.

[13] I concluded that many of the canines that I observed on December 10, 2007, were suffering from long-standing painful disease processes. Thirteen of those canines had dramatic and painful dental diseases that required tooth extractions, antibiotics and pain medications.

...

[15] The observable chronic nature of these disease processes indicated to me that there was a complete absence of veterinary care being provided to these canines, or, at the very least, that appropriate veterinary treatment was not being provided to these canines.

[16] Thirteen of the canines that I examined on December 10, 2007, displayed dramatic hair matting and markedly filthy coats. The observable and marked nature of these conditions indicated to me that there was a complete absence of grooming being provided to these dogs, or, at the very least, that a minimally appropriate level of grooming was not being provided to these dogs.

[17] In my experience, the presence of a severe infestation of intestinal round worms amongst all of the canines that I examined on December 10, 2007, is consistent with poor hygienic practices. In any event, in my view, a regular and appropriate deworming practice, even

in the presence of poor hygiene, would have been sufficient to eliminate or suppress these parasites. The presence of this intestinal parasitism was significant and would have exacerbated the poor BCS in the canines.

[19] In my professional opinion, the animals that I observed on December 10, 2007, were not receiving a minimally acceptable level of care, particularly with respect to their diet, dental and veterinary care. Furthermore, my observations suggested a blatant disregard for the basic principles of pet dog care, particularly with respect to practices appropriate for small, long-coated canines such as the Yorkshire Terrier dogs. The advanced state of dental decay and periodontal disease in many of the dogs would have been painful and undoubtedly lead to other diseases. The presence of umbilical hernia and luxating patellae also suggests disregard for the principles of responsible breeding practices.

[18] Dr. Steinebach's follow-up examination on January 2 involved thirteen of the eighteen dogs and reported improvement in their respective condition.

[19] Following the seizure on December 10, 2007 Marcie Moriarty, the general manager of cruelty investigations for the Society, received both a voice mail and handwritten letter from the petitioner indicating that she disputed the notice of disposition served on Mr. May on December 9, 2007. The letter read as follows:

Please be advised that I wish to dispute the disposal of my animals. Notice was received December 9th, 2007. I would also like to obtain the information to obtain a search warrant or attachments to the ITO. I have today contacted and left a message with the above request. Thank you.

[20] On December 11, Ms. Moriarty told the petitioner by telephone that the SPCA could not act with respect to the animals until December 24 and that she had until that date to deliver any written objection to the intended disposition. She also sent her an e-mail informing her that she could not send a copy of the ITO as it would

disclose the complainant's identity. She informed her of "some of the concerns" that gave rise to the seizure and the notice of disposition were as follows:

1. Living environment. Dark, no access to sunlight, feces accumulation, inadequate water/food, inappropriate housing.
2. Condition of the animals. Matting, untreated dental issues including rotting teeth, ear mites, parasites, untreatment ailments including hernia and luxating patella. Some dogs displaying maladaptive behaviour consistent with emotional suffering.

[21] Ms. Moriarty indicated that she would send the veterinary report when she received it.

[22] On December 13 the petitioner in response to a request for information regarding the dogs' care e-mailed Ms. Moriarty with details related to the dogs' feeding schedule and nutrition needs and informed her that the two Shih Tzus belonged to her daughter and three of the Yorkshire terriers were previously sold and paid for by owners.

[23] In reply Ms. Moriarty asked for the petitioner's daughter to confirm ownership indicating that the SPCA would be:

Expanding the investigation with respect to criminal and animal cruelty charges to include her as an owner.

[24] On December 15, 2007 the petitioner e-mailed Ms. Moriarty asking for information about her pets. She wrote:

I am very worried that this seizure has caused or will cause problems for my dogs with health and emotional issues. I would like to know

where my dogs are being held and I would like to see them to make sure they are okay.

[25] She also said she left the dogs in the capable hands of her daughter Leanna. She acknowledged that she was “in the wrong for having too many dogs and I did break the bylaw this way”.

[26] She said she was moving and this was only temporary housing for her dogs.

[27] On December 17 Ms. Moriarty wrote back to tell the petitioner that she could not see the dogs but that she would forward her a vet report the next day. She subsequently sent a preliminary version of Dr. Steinebach's first report.

[28] On December 19, 2007, the petitioner wrote a letter to Ms. Moriarty "Re 17 adult dogs, 10 puppies and 1 rabbit seized by SPCA from my premises on December 9, 2007." In the letter she detailed the seized dogs as follows: “the two Shih Tsu are owned by my daughter but were in my custody”.

[29] She formally on behalf of her daughter and herself disputed the proposed notice. She indicated that she would provide a copy of Dr. Steinebach's report to her veterinarian "when he examined the dogs and puppies." She contested the condition of the dogs, indicated that they were not in the condition described ten days before seizure, that she said she would provide information from her groomer, had photos of each dog taken ten days before the seizure and of the kennel immediately after seizure. She also indicated her willingness to follow through in addressing any health issues identified (including teeth cleaning) if the dogs were

returned. She questioned whether the condition of the dogs at the time of seizure justified the seizure and again asked for a copy of the ITO.

[30] On December 20, 2007, Ms. Moriarty e-mailed the petition as follows:

Thank you for your dispute letter. Is this all the evidence that you will be submitting. You suggest that there are pictures and statements from groomers etc. If you wish to have those considered please have them to me by the 14 day deadline (December 24th) or they will not be considered. As previously mentioned, the BC SPCA is not obligated to provide you with a copy of the Information to Obtain, rather, we are obligated to provide you with the reasons as to why the dogs were seized – which is often set out in the Information to Obtain. In this particular case, you have been provided with detailed reasons as to why the animals were seized independent of the Information to Obtain in order to protect the identity of the informant.

[31] On December 21, 2007 the petitioner sent a second letter with enclosures to Ms. Moriarty addressing the dogs' condition and attaching pictures. On December 24 this petition was filed along with Ms. Chatwin's Affidavit No. 1, also dated December 24, 2007.

[32] On January 3, 2008, the SPCA received a copy of Dr. Steinebach's follow-up report and on January 14, 2008 he received a copy of a report on the welfare of the animals titled "BC SPCA Behaviour and Welfare Department Report on the Welfare of dogs from 20051 53B Avenue, Langley, BC December 9th, 2007." Ms. Moriarty also received additional reports on the animals seized from the Chilliwack shelter.

[33] Of particular note are two examination forms on the letterhead of the BC SPCA Animal Hospital relating to two mixed Yorkshire terrier dogs, each of which Dr. Steinebach in his December 10, 2007 report concluded had a BCS (body

condition score) of 2.5 out of 9. According to the respective examination forms of the BC SPCA Animal Hospital dated December 11, 2007, the first dog, 111238, had a BCS which was "good" at 5 out of 9; and the second, 111239, had a BCS that was "slim-okay" at 4 out of 9 to 5 out of 9. Those documents were attached to Ms. Moriarty's affidavit sworn January 25, 2008. They also indicated both dogs had bleeding paws from bouncing against the cage doors.

[34] In the meantime Ms. Moriarty requested that Craig Daniell, the chief executive officer of the BC SPCA, review the petitioner's objections to the notice of disposition with respect to the animals and to determine whether it was appropriate for any of the animals to be returned to the petitioner.

[35] On January 21, Mr. Daniell sent a letter to the petitioner providing her with the BC SPCA's response to her objections declining to return the animals to her. In his affidavit sworn January 24, Mr. Daniell set forth the evidence and information he considered in writing his decision, which consisted of the following:

- (a) information to Obtain a Search Warrant, sworn on December 9, 2007;
- (b) warrant to Search, dated December 9, 2007;
- (c) written report of Dr. M.A. Steinebach, D.V.M. ("Dr. Steinebach"), dated December 10, 2007;
- (d) written report of Dr. Steinebach, dated January 3, 2008;
- (e) report on the welfare of the Animals, entitled "BC SPCA Behaviour & Welfare Department – Report on the welfare of dogs seized from 20051 – 53b Avenue, Langley, BC, December 9, 2007", which was prepared by Barrie McKnight;
- (f) photographs taken by employees of the Society at the Premises on December 9, 2007;

- (g) video footage taken by employees of the Society at the Premises on December 9, 2007;
- (h) “Shelter Buddy” kennel cards related to the canines amongst the Animals;
- (i) notes with respect to the canines amongst the Animals produced by the Society’s hospital;
- (j) the written submissions of the Petitioner, dated December 19, 2007, including the enclosed copies of letters from Charleen Foulds and L. Powar;
- (k) the within Petition, filed December 24, 2007, along with the Affidavit #1 of Monica Chatwin, sworn December 21, 2007; and,
- (l) various correspondence between the Petitioner and Ms. Moriarty, exchanged between December 10, 2007, and December 21, 2007.

[36] He summarized his reasons in paragraph 18 of his affidavit as follows:

- (a) the written reports of Dr. Steinebach indicated that the canines amongst the Animals were suffering from a number of very serious health conditions, all of which were indicia of long term and ongoing neglect and distress;
- (b) there was an apparent ongoing history of absent or inadequate veterinary care being provided to the Animals;
- (c) the conditions on the Premises on December 9, 2007, did not even meet the minimally acceptable standards of care required of a commercial kennel operation;
- (d) the photographic and video evidence of the conditions of the Animals on December 9, 2007, and the conditions on the Premises on December 9, 2007, clearly demonstrates a failure to meet the most basic standards of care and animal husbandry; and,
- (e) it appears to me that the Petitioner is not even aware of the actual number of canines that were removed from the Premises pursuant to the execution of the Search Warrant on December 9, 2007.

[37] In addition, in his letter Mr. Daniell questioned the petitioner's assertion that she was in the process of building a kennel on property she owned in Mission noting that he had information she had only applied for a permit some weeks after the seizure. He also noted that the petitioner was barred by a bylaw from having more than two dogs on her property in Langley and she had no plan in place for the dogs to avoid infringing the bylaws.

[38] Mr. Daniell concluded in his letter as follows:

Considering all the above I conclude that all the dogs were in various stages of distress as a result of a lack of the most basic care and attention on the part of Ms. Chatwin and/or her appointed caregiver and that this lack of care developed over a long period of time. In addition, the environment in which the dogs were being housed was a contributing factor causing to distress the dogs.

Furthermore, after a careful review of the affidavit of Ms. Chatwin I can find no acknowledgment of wrongdoing on her part or even an acknowledgment that the situation got out of control.

Accordingly, I cannot consider returning the dogs to the custody of Ms. Chatwin as to do so would jeopardize their welfare.

[39] The petitioner after filing this petition, on January 9, 2008, sought permission to have a veterinarian retained by her view and examine the animals. On January 21 Dr. Ken Linde, a duly qualified veterinarian, attended the Chilliwack animal shelter where he was able to examine twelve of the dogs. He swore an affidavit dated February 8, 2008, to which he attached a report on the twelve dogs. He found two to have "a slightly thin body condition," the rest were good. Of those two he found "severe periodontal disease." He concluded the remaining dogs did not have unusual dental findings.

[40] In his report Dr. Linde noted that it was difficult to know the state of the animals on the date of the seizure some six weeks previously. He indicated Ms. Chatwin told him she was blocked from allowing him to see the dogs when they were seized. In fact the first request for a veterinarian to see the dogs was not made until January 9, 2008. Dr. Linde observed as follows in his report:

Body condition scoring is an attempt to make an objective evaluation of body fat. The scale of 1 to 9 is used with the ideal condition lying between 4.5 and 5. A commonly used chart has been attached to my report to illustrate this. Much as with humans there are a variety of reasons an animal doesn't meet the ideal body fat score. These most commonly include underlying disease, parasitism, and inadequate nutrition. I suspect the reason the two dogs –

And he identified them by number:

-- are slightly thin is a result of dental disease and the pain associated with eating.

Some 25 to 30 percent of small breed dogs show up in our practice with moderately severe to severe periodontal disease. Periodontal disease is the most common dental problem of dogs and cats. It is caused by plaque, a mixture of bacteria to a degree and mucous that coats the teeth. As plaque gets under the gumline bacteria eats away at the bone and connective tissue that holds the teeth. The result is that the gums are inflamed and infected. Over time the teeth become loose and in some cases decay. In advanced cases the animal will be reluctant to chew food due to pain and will lose body condition. There is also a possibility of the bacteria entering the blood stream and infecting other organs (such as the heart valve).

[41] It does not appear that Dr. Linde inspected the premises or cages in which the dogs were kept or saw pictures taken contemporaneously with their seizure or shortly thereafter by the petitioner. There is no indication in Dr. Linde's report that he read the contents of Dr. Steinebach's two reports following his examination of the animals.

[42] In her second affidavit sworn February 8, 2008, Ms. Chatwin said that there were twenty-seven dogs in the kennel at the house when she went on holidays and there ought to be twenty-seven that were removed by the SPCA. In her affidavit and notes Cst. Morgan identified twenty-five dogs seized, one of which had to be returned to the person who had earlier purchased it from Ms. Chatwin in November 2007.

[43] Ms. Chatwin asserted that the size of the cages were appropriate and the amount of feces in the cages was not inappropriate and would have been part of a regular daily cleaning. She indicated there was a window and lights in this room. The dogs had use of the outside to run, which was evidenced by mud in the house. She took steps to avoid teeth problems by having the dogs' cleaned by the vet and providing some chewing toys and having them groomed. She deposed as to the quality of the dog food she provided them with and indicated the dogs were dewormed regularly. She exhibited copies of some invoices from the Langley Animal Medical Clinic some of which appeared to relate to other dogs than those seized. She also exhibited a letter from Dr. Zwamborn of Albatross Veterinary Services Ltd. who also swore an affidavit that the plaintiff "brought her dogs in to the Albatross Animal Medical Clinic for regular health check-ups, vaccinations and any health problems".

[44] In his affidavit Dr. Zwamborn estimated that Ms. Chatwin attended the clinic about six times per year. There were no associated records related to those visits attached to his affidavit.

[45] Ms. Chatwin also exhibited photographs of the premises, cages and play areas for the dogs and of the cages taken after the dogs were seized, but before the cages were cleaned.

[46] There was also an affidavit from Charlene Foulds who was employed to care for the dogs who attested she groomed them three to four times a week and for the past few years she exhibited the dogs "have always been in good condition" and that she groomed the dogs "a couple of times during the first week of December, 2007, the dogs were healthy and happy." She wrote a letter to the same effect which was relied on by the petitioner in disputing the notice of discipline by her letter of December 19, 2007.

[47] Mr. May swore an affidavit in which he acknowledged he did not tell the truth to Cst. Morgan and that he asserted that he told her the petitioner was returning on the 10th of December, not the 12th. He also attested that he had been caring for the animals, feeding them twice daily, and getting them out for exercise. He attested that he lied to SPC Morgan "because he believed there was a city bylaw which allows for only two dogs on the piece of property." He further attested that he was informed by the petitioner that she was not in contravention of any such bylaw. In fact it appears clear that she was. In his affidavit Mr. May described the dogs as fed, healthy and happy and that he was unaware of them ever being in distress.

[48] There was also an affidavit from Leanna Chatwin, the petitioner's daughter, deposing she owned the two Shih Tzu dogs and left them in the kennel while she was caring for her sick niece. She said she was asked to check on the dogs while

Mr. May was supposed to take care of them. She attested to her opinion of their quality of care.

[49] There was an affidavit from Shawna Studley who testified that she bought two of the Yorkshire terriers from the plaintiff in August 2007 for \$1,600 but had been "boarding them" at the kennel because she couldn't keep them where she lived. She attested to seeing other dogs being there and not "seeing anything that raised her suspicion about the care of the animals or their well-being."

[50] She wrote a letter to a similar effect to the SPCA on December 12, 2007 in support of the plaintiff's resistance to the notice of disposition. In that letter she said she would take her dogs with her by the spring.

[51] There is also an affidavit by Mark Wheeler who bought the Yorkshire terrier puppy from the petitioner for \$800 on November 23, 2007. He attested to his opinion that the animals in the care of the petitioner appeared to be healthy, well cared for and with adequate space in their kennels, including water and food.

[52] The petitioner also filed an affidavit from Susan Adams Stewart, a veterinarian's assistant who attested she visited the petitioner's premises in the fall of 2007 and saw the dogs in the kennel and regarded the dogs as being healthy and well cared for and the kennel being appropriately equipped and maintained.

[53] Ms. Chatwin filed a third affidavit, dated February 15, 2008, responding to the CD which attached to the affidavit of SPC Morgan sworn February 11, 2008 which contained the photos and videos of the seizure of the dogs. Ms. Chatwin attached a

spreadsheet of what she actually saw in the pictures at the time of her review of them.

[54] She further indicated in response to the letter of Mr. Daniell that she had not received the ITO, an unedited copy of Dr. Steinebach's report, the BC SPCA behaviour and welfare report, photographs and video taken of the kennel at the time of seizure, the shelter buddy card, or the BC SPCA animal hospital notes, until after she commenced the petition. She deposed that at the time of seizure she had more dogs than usual and had placed an ad in the newspapers to sell some to reduce the numbers.

[55] The issues raised by this petition are three-fold: first, was the seizure of animals under s. 11 of the **PCA** justified? Second, was the petitioner afforded a meaningful opportunity to respond to the notice of disposition that met the standards required by the principles of natural justice? And third, was the decision of the respondent not to return the animals reasonable based on principles of natural justice?

[56] On the first issue of whether the seizure was justified, it is common ground between the parties that the standard of review is reasonable and I accept that to be the case. In my view the seizure of the animals was justified by the circumstances that confronted Cst. Morgan on December 8 and December 9, 2007. At the time of the seizure she had information from the petitioner's employee that on December 6 when she went in to the kennel she observed the conditions of the kennel and the apparent condition of the dogs that justified her in bringing a complaint. When

Cst. Morgan went to the premises on December 8, spoke with Mr. May, she received no satisfactory answers as to who was responsible for the dogs, the property, or what or how many dogs were in fact on the property. She was told the owners would not be back for three or four days and I accept her affidavit evidence on this point, as it is confirmed by her contemporaneous notes. Mr. May's evidence to the contrary must be viewed in light of his acknowledgment that he was deliberately trying to mislead Cst. Morgan.

[57] Thereafter Cst. Morgan took steps to speak directly with the complainant and on December 9 obtained a search warrant based on that information received. She entered the premises in accordance with the warrant to find conditions essentially as described by the complainant and clearly conducive to distress or development of distress in the animals. Their living conditions were makeshift, inadequate, dirty and smelling of urine, feces and ammonia.

[58] In my view, given those conditions, particularly in light of Mr. May's unsatisfactory and untruthful explanation of who was caring for them, Cst. Morgan was entitled to seize the animals pursuant to s. 11 of the **PCA**.

[59] The petitioner submitted that the respondent ought to have applied to the Supreme Court for an order pursuant to s. 25 of the **PCA**. However, I conclude that on its terms s. 25 applies only to circumstances where a charge has been laid under s. 24 and it is therefore inapplicable to the circumstances at bar.

[60] So far as the issue of whether the respondent acted in accordance with the principles of natural justice is concerned, counsel for the petitioner contended that

the respondent did not adequately inform her of the case to be met or the right to make adequate responsive representations by not providing her with a copy of the ITO, by not providing her with copies of photos and videos of the premises at the time of seizure, and the other materials relating to the Society's examination of the dogs, including the unedited copy of Dr. Steinebach's December 10 report, the BC SPCA report on the welfare of the animals, the shelter buddy reports, the BC SPCA animal hospital notes, by not giving her veterinarian an opportunity to see the dogs, and by discounting her evidence of a new and adequate kennel being built to house the dogs.

[61] The issue of acting in accordance with natural justice was addressed in **Pieper v. BC SPCA** [2004] B.C.J. No. 2524. In that case, which involved the seizure of thirty dogs and five cats Mr. Justice Powers held as follows with respect to the right to be heard:

[23] Both counsel agree that in circumstances where a statute authorizes the taking of a person's property, in this case animals, and there is no provision for a form of hearing, that a person is entitled to be heard. (**Painter v. Liverpool Gas Company** (1836), 3 AD. & E. 433. **Cooper v. The Wandsworth Board of Works** (1963), 14 C.B. (N.S.) 180, 143 E.R. 414).

[24] Counsel agree that where the process has not been determined by the statute, that the Society then should determine its own procedure, but there is still a requirement of procedural fairness. The extent of the procedural obligations may be determined by the nature of the decision, the relationship between the decision maker and the person asserting a claim to procedural fairness and the affect of the decision on that person's rights. **Knight v. Indian Head School Division No. 19**, [1990] 1 S.C.R. 653. The obligation may also be affected by the finality of the decision. In this case there is no right of appeal from a decision of the Society. The petitioner also argues that where, as in this case, the Society is involved in the investigation, as well as the decision making role, that the requirements for procedural

fairness are even greater (*Irvine v. Canada (Restrictive Practices Commission)* 1987 1 S.C.R. 181).

[25] Counsel both agree that the “hearing” may take different forms. The form of hearing could range from a simple exchange of correspondence, to a right to make submissions, and to a complete oral hearing with the ability to call witnesses and to examine or cross-examine. The type of hearing that meets the requirements of natural justice varies from case to case.

[26] Some of the factors that might be considered in determining the nature of the hearing under this Act would include the following:

1. Prior dealings between the Society and the person from whom the animals are seized;
2. Communications between the Society and the person from whom the animals are seized;
3. Responses to seizures and communications, and the ability or willingness of the individual to respond or remedy the concerns;
4. The circumstances leading to the seizure itself;
5. The number and value of the animal seized;
6. The type of animals, whether they are livestock or commercial property, or whether they are personal pets;
7. The cost of retaining the animals, and the need to dispose of them quickly;
8. The ability to dispose of them in a reasonable time.

[62] In that case there had been ongoing contact between the petitioner and a representative of the Society. In those circumstances Mr. Justice Powers held as follows:

[50] It cannot be reasonably said that the petitioner was not aware of the concerns of the Society, or the reasons for the animals being removed from his care. The photographs of the state of the premise at the time of inspections and the apprehension clearly demonstrate that the petitioner was unable to adequately care for the animals.

[63] As to the need for an oral hearing, Mr. Justice Powers held as follows in paragraph 60:

[60] Despite the number and potential value of the animals in this case, I find that an oral hearing was not necessary. However, I do find that the Society should have received the written position of the petitioner and considered it before disposing of the animals. It was not necessary for the Society to spell out its concerns or evidence in any more detail than had already been done, nor was it necessary to give the petitioner more than a brief period of time to provide his position, and his plan to remedy the concerns of the Society. He already had one month to do so before the animals were disposed of.

[64] In this case there was no ongoing contact between the plaintiff and the respondent prior to the seizure and the petitioner was not initially given access to the ITO, to protect the identity of the complainant, although the concerns giving rise to the Society's seizure of the dogs were summarized by Ms. Moriarty. The petitioner, of course, had access to, and the ability to inspect or photograph the state of the premises at issue after the seizure although she was not present before or during the seizure. She was later given copies of Dr. Steinebach's preliminary report concerning the dogs that he inspected.

[65] The respondent provided the petitioner with the opportunity to provide a letter of dispute and once the petition and Ms. Chatwin's affidavit of December 24, 2007 was filed the Society considered the content of those documents, in arriving at its determination.

[66] Although the petitioner submits that the respondent refused to permit her veterinarian to see the dogs on December 17 and he was not given an opportunity to see all the dogs, it appears on the evidence that she did not request that her

veterinarian see the animals until January 9, 2007. Earlier she was refused access to the dogs for information concerning their whereabouts apparently as a matter of SPCA's policy.

[67] What I am confronted with here is the seizure of twenty-five dogs and one rabbit in the circumstances which I have found to be reasonable.

[68] I am further confronted with veterinary evidence that at least 7 (perhaps 9) of the dogs had a BCS of 3 out of 9 or less and that many were suffering from "long-standing, painful disease processes" and that all eighteen of the dogs inspected had varying amounts of tapeworm/groundworm and thirteen had "dramatic and painful dental diseases" and that they lived in "unacceptable" conditions.

[69] It is clear that the petitioner's possession of the various dogs on the premises was in breach of a bylaw. Although she refers to a new kennel being built on property she owns in Mission and her willingness in the meantime to lodge the dogs "in places outside of (her) home" there is no clear indication of either when the petitioner's new kennel will be finished, or even if it has been started, or where the dogs will be kept if returned.

[70] After considering the factors enumerated in *Pieper* by Mr. Justice Powers in that case, I conclude that in the circumstances of this case an oral hearing is not necessary, and it was sufficient for the respondent to limit the petitioner to a written hearing.

[71] As I understand the position of the Society the concerns giving rise to the determination that the animals should not be returned to the petitioner are the condition of the premises on December 9, 2007, the conditions of the animals when they were taken into the custody of the Society, and the chronic nature of the animal's health and behavioural problems. Accordingly, the issue with respect to the procedural fairness of the Society's determination is whether the petitioner was given adequate notice of the respondent's concerns and of the information that those concerns were based on to permit her to address them in as complete and meaningful way as practicable.

[72] Although I am satisfied on the basis of the ITO and the evidence of SPC Morgan that the search and seizure of the animals was reasonable, in my view, to ensure procedural fairness, the Society should have provided the petitioner with those things in its possession which it was relying on to retain the animals and to not return them to the petitioner, including the photographs and the videos taken of the seizure, the unedited report of Dr. Steinebach and the notes from the Society's Animal Hospital, and the shelter buddy cards. In my view the failure to do so impaired the fairness of the procedure in which the petitioner was compelled to make her case to the Society. This is not a case, as many of those relied on by the Society were, where there was a history of dealing between the parties or where the petitioner was present for the search and seizure of the animals, either of which would place her in an advantaged position of knowledge of the precise nature and extent of the Society's legitimate concerns.

[73] On that limited basis, I would quash the decision of Mr. Daniell and pursuant to s. 5 of the **JRPA** remit it to the Society for reconsideration in light of the petitioner's response in these proceedings to those things relied on by him in coming to his original conclusion of January 21, 2008.

[74] I am not satisfied that it would be appropriate to return the animals to the petitioner pending Mr. Daniell's reconsideration. As with Mr. Justice Burnyeat in **Harfman v. BC SPCA**, July 10/06, Penticton Registry, 2006-07-10, given the evidence of the circumstances in which the animals were kept, the evidence of their condition upon examination, and given the uncertainty of where and how they would be sheltered and cared for if returned to the petitioner, I am not satisfied that returning the animals, or any of them, would be in their best interest in the absence of a clear determination on the available evidence by Mr. Daniell that the Society's legitimate concerns with regard to their welfare can be addressed properly.

[75] I will make the order accordingly, and I will also order that each party bear their own costs of this petition.

Cullen J.

March 27, 2008 – **Revised Judgment**

Corrigendum to the Oral Reasons for Judgment issued advising that on page 3, the statue should read “**Prevention**” of **Cruelty to Animals Act**, not “Protection”.

On page 10, paragraph 12 and 13 should read “seize” not cease”.

Throughout the reasons, Craig Daniel’s name should be spelled “Daniell” not “Daniel”.