

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Haughton v. BCSPCA*,
2009 BCSC 1773

Date: 20091223
Docket: 43068
Registry: Kamloops

In the Matter of the *Judicial Review Procedure Act*,
R.S.B.C. 1996, c. 241

Between:

Carol Haughton

Petitioner

And

**The British Columbia Society for the
Prevention of Cruelty to Animals (BC SPCA)**

Respondent

Before: The Honourable Madam Justice Hyslop

On judicial review from: The British Columbia Society for the
Prevention of Cruelty to Animals, July 21, 2009

Reasons for Judgment

Counsel for the Petitioner: P.L. Jensen

Counsel for the Respondent: C.A. Rhone

Place and Date of Hearing: Kamloops, B.C.
September 4, 2009

Place and Date of Judgment: Kamloops, B.C.
December 23, 2009

[1] Carol Haughton seeks judicial review of decisions made by Jamie Wiltse and Shawn Eccles of the British Columbia Society for the Prevention of Cruelty to Animals (“BCSPCA”).

[2] In her petition, Ms. Haughton applies for an order that the search warrant be declared illegal and unjustified. At the hearing of this petition that claim was abandoned.

[3] To support her petition for judicial review, Ms. Haughton has filed her affidavit sworn August 24, 2009, her son Jason Haughton’s affidavit sworn August 25, 2009 and Ms. Haughton’s counsel’s legal assistant Jeremy Knight’s affidavit sworn August 18, 2009.

[4] The BCSPCA has filed an affidavit sworn by Shawn Eccles on July 29, 2009.

FACTS

[5] Ms. Haughton breeds Great Dane dogs and has done so for the last 35 years. She is a member of the Canadian Kennel Club and has been a member since 1972. In addition she breeds exotic cats that are rare and quite valuable.

[6] Ms. Haughton resides with these animals on a ranch located in the Knutsford area near Kamloops, British Columbia. The residence in which she, the cats and dogs reside is located on Separation Road which I gather is part of the ranch. On the ranch, Ms. Haughton breeds cattle and sheep commercially.

[7] Ms. Haughton owns and operates a ranch in Alberta. Ms. Haughton travels to Alberta for three or four days every few months to attend to the business of her Alberta ranch. In the winter, she goes more frequently to pick up hay. For the last few years her son, Jason Haughton, cares for the Great Danes and the cats in her absence.

[8] On June 5, 2009, Ms. Haughton travelled to Alberta. She returned to her home in Kamloops on June 14, 2009. During this period, her son was to care for the dogs and cats. Ms. Haughton was away for a little longer than anticipated.

[9] While Ms. Haughton was away, Jason Haughton attended daily at the Separation Road residence to water and feed the dogs and cats. During the time that Ms. Haughton was away, she and Jason Haughton communicated with each other by telephone. During one of these conversations, Jason Haughton inquired of one of the cats who was carrying its head on a tilt. Ms. Haughton stated that the cats had an infection which affected its equilibrium and she would attend to it as soon as she got home.

[10] On June 13, 2009, Jason Haughton arrived at the Separation Road residence to find that the dogs and cats were not there. Attached to the front door of the residence were papers; some of which were scattered by the wind. He immediately telephoned his mother who stated that she would return the next day.

[11] On June 9, 2009, Special Provincial Constable (“SPC”) Wiltse received a complaint from Dennis Copeland who advised SPC Wiltse that he was concerned that cats and dogs located on Separation Road were in distress and that he had photographs of what he observed.

[12] SPC Wiltse met with Mr. Copeland, reviewed the photographs and took a written statement from Mr. Copeland of what he observed on June 7, 2009. Mr. Copeland knew that Ms. Haughton was in Alberta and believed no one was taking care of the animals.

[13] As a result of Mr. Copeland’s complaint, on June 9, 2009, at approximately 2:35 p.m., SPC Wiltse and Ms. Risa Leake, the assistant manager of the Kamloops SPCA attended the Separation Road residence and made the following observations:

- The front door to the residence was open but nobody appeared to be home. A strong ammonia/rotting smell was coming from the

residence, feces and garbage could be seen on the floor inside the residence. One adult dog was observed in the residence. LEAKE did not enter the residence and posted the front door with a BCSPCA posting notice indicating to the animal owner to contact the SPCA immediately and if a voicemail was reached to please leave a message indicating a contact phone number.

- Approximately nine adult Great Dane dogs and sixteen puppies (5-6 weeks old) were loose in the yard.
- One adult male dog (Merlequin color) was limping on his right rear leg and the leg appeared swollen at the knee.
- One adult male dog, (Harlequin color) appeared to have great difficulty walking due to weakness in his hind end; sores were visible on his hind legs.
- All dogs appeared in thin to adequate body condition, most had dull, dirty hair coats.
- Broken glass, wire garbage, animal bones and feces contaminated the entire living space of the dogs.
- Water in buckets was available to the dogs.
- Although there were two kennel areas, the dogs were not contained in the kennels or yard and appeared to have access both inside the residence and outdoors.

[14] On June 9, 2009, Ms. Leake posted the notice that Mr. Jason Haughton found on June 13, 2009.

[15] On June 11, 2009, as SPC Wiltse had not heard from the owner of the dogs and cats, she applied and received warrant to search between June 11, 2009 and June 13, 2009 the dwelling house, premises, kennels and yards of Ms. Haughton on Separation Road.

[16] On June 13, 2009, SPCs Wiltse, Woodward, Price Walker and Dr. Greenwood, a veterinarian, executed the warrant to search. SPCs Wiltse and Woodward were at the Separation Road residence at 12:10 p.m. It was a hot day; the skies were overcast.

The following observations were made as reported by SPC Wiltse in her report dated June 17, 2009:

On June 13, 2009 SPC WILTSE, SPC WOODWARD, SPC PRICE, SPC WALKER, Veterinarian Dr. S. GREENWOOD and two animal haulers

executed a warrant to search at 1.6km (travelling east) Separation Rd, Knutsford, BC. SPC WILTSE observed the following during the warrant:

*Prior to entering the property (and prior to leaving the property) a Virkon foot bath was provided to all staff attending.

SPC WILTSE and SAPO WOODWARD on site at approximately 12:10pm, temperature was 32degrees Celsius, overcast skies.

The front yard was unfenced and two adult dogs and all pups had access to the yard area. Pieces of garbage and animal bones were scattered about the yard.

One adult female, black and white was very thin; ribs and hips were easily discernable. The adult black and white male appeared lame on his hind right leg, the leg was weight bearing.

SPC WILTSE posted the warrant on the front door of the residence, which was ajar. Veterinarian Dr. GREENWOOD was invited on site. Several puppies came through the front door of the residence.

A kennel was located to the left of the front door of the residence and contained two female Great Danes; both dogs were fearful. The kennel area was enclosed by page wire and had a dirt floor. The kennel smelled very foul and contained feces and an old cow leg. The two dogs had access to a shed area through a dog door, inside the shed was full of chewed up garbage and feces. A small bucket was half full of dirty water. Both dogs appeared in adequate body condition.

Three kennels were observed to the side and rear of the residence. The fences were approximately nine feet high and made of page wire. The adults had access to two of the kennels; one adult male was secluded in the third kennel. The pups were able to access all kennels and the yard area through holes in the kennel fencing. The kennels contained dirt floors which were covered with feces, chewed up garbage and animal bones. In one corner of the kennel the feces was pile almost six inches high. One dog house, which was open on both ends and contained a chewed up pillow, was available however it was not large enough for the adult dogs to access. Shade was available to the dogs under the balcony area and by a few trees. The dogs appeared to have access inside the residence through an open sliding glass door. Two adult dogs were observed defecating diarrhea. One adult male, black in color had extreme difficulty walking and appeared un-coordinated in the hind end. Pressure sores were observed on his hocks.

Water was available to the dogs but it was very dirty. One large bowl of dry dog food was observed in a black feed tub in the center of the kennel. Several females appeared to be lactating but it was unclear which pups belonged to which female. One adult black and white female was in thin body condition, hips and ribs discernable. One black, male pup was emaciated.

The black and white male in the third kennel was in adequate body condition. The dog's eyes appeared very red and irritated, and he appeared lame on the hind left leg. Feces and garbage contaminated his living space and no food or water was observed. This dog had access inside the residence through a dog door on the balcony.

To the side of the residence was a small shed which contained pink colored insulation, several pups were observed playing in the insulation and chewing on it.

Inside the residence a strong foul odor of feces and garbage was noted. Masks were worn during the exam of the home but SPC WILTSE found it necessary to leave the residence several times for fresh air as the smell was inducing nausea. Garbage, feces and old food covered the entire floor of the residence. The ventilation appeared poor.

A bird was observed flying around the living room. A metal divider created a separate area for the black and white intact male. The roaming pups and adults had access to the rest of the home (upstairs only).

The kitchen area was full of filthy dishes and old rotten food. Buckets of old food matter were on the floor.

A loft area contained paperwork and books on animal husbandry and Veterinary care. A dry cat food feeder was observed and one litter pan with clean litter.

Several puppies and adults were roaming inside the home and pups were observed eating from a container of dry dog food. Empty bags of Mainstay and 01 Roy brand dog food were on the floor.

In the stairwell to the basement was a litter pan overflowing with feces, the area surrounding the litter pan and the stairs were covered in feces. Two holes were in the wall and appeared to have been made by an animal chewing and clawing at the drywall. SPC WILTSE entered a closed door to a living room area in the basement and observed feces and vomit on the floor and on a dresser. Two gold colored cats with black spots were present. One cat had a head tilt as though it had no range of motion. The cats were in adequate body condition but no food or water was observed. A male cat, gold and black spotted, was contained in a large cage at the back of the room. The floor of the kennel appeared to be vinyl and was covered in feces and urine. The litter box was overflowing with feces which had mold on it. A container with less than 1/4 inch of water was available but was very dirty. A stuffed bed was available but was covered in waste.

SPC WILTSE opened a door to a bathroom area and turned on the light, growling and yowling could be hear from the ceiling (which was open and partially covered with plywood) but no animal was observed. A scratch post and 3 containers with dry cat food and one water dish were available. A litter pan, in the corner by the toilet, was overflowing with feces, which also covered most of the floor area. Mold was observed on the feces. The smell of feces and mold, in the basement area, was overpowering.

It was determined that all animals observed at the property were in distress as defined under the Prevention of Cruelty to Animals Act and were taken into SPCA custody.

As the dogs were loaded, individual exams were performed by Veterinarian Dr. GREENWOOD. Due to time constraints the cats were not examined. Please review the report of Dr. GREENWOOD for specific medical concerns

of each dog. Exams and treatments will be performed by a follow up Veterinarian while the animals are in the care of the SPCA.

[17] Individual dogs and puppies were examined by Dr. Greenwood. As each dog was taken into the care of the BCSPCA, that animal was photographed. A photograph of each dog was filed as evidence for this judicial review. A report authored by Dr. Greenwood is filed in which she gives her opinion and observations on June 13, 2009. In that report she identifies each dog and puppy by photograph, commenting on each dog or puppy. In addition, Dr. Greenwood described what she found both inside and outside the home and the location of the four dog pens all of which backed onto the house. Dr. Greenwood describes what was described by SPC Wiltse, however, in more detail.

[18] Dr. Greenwood examined 16 puppies and 10 adults. There were 4 cats; one remained up in the ceiling of the basement and could not be caught. It appears that the cats, or some of the cats, may have been caught sometime later. There were time restraints as a result there is limited information relating to the cats.

[19] Dr. Greenwood gave each dog or puppy a body condition score ("BCS") based on a scale from 1-5, 1 being emaciated, 3 being ideal and 5 being obese. In reviewing the photographs of each puppy or dog, it was not obvious or clear as to the difference between a 1 or 1.5 BCS and a 3 BCS.

[20] Ten puppies had BCS ratings from 1.5- 2.5. Of those puppies, 3 had BSC ratings of 2.5. Four puppies had BSC ratings of 3.

[21] Of the adult dogs seven had BCSs of 3, of those seven one exceeded 3. The balance of the dogs were 2 - 2.5 BCS.

[22] Almost all puppies were described as having dull coats. No cause was attributed to this condition. Most of the puppies had ear discharge. Some of the dogs had eye discharge. Dr. Greenwood expressed particular concern that the puppies may be infested with parasites.

[23] There was one adult male dog who Dr. Greenwood suspected had Wobblers Syndrome. She believed that this dog should be euthanized if treatment was not possible. She expressed some concern of the need for screening of this dog's progeny for orthopaedic disease. There was some lameness in some of the dogs that she advised needed further evaluation. There was one puppy that Dr. Greenwood stated needed prompt veterinary care.

[24] Dr. Greenwood stated:

Implicit in the recommendations is the immediate removal of the animals from the property (given the state of their environment) and further veterinary examination upon arrival at the SPCA shelters, including deworming & vaccinating.

[25] On June 13, 2009, the BCSPCA served a notice of disposition by posting it at the property on Separation Road.

[26] By letters delivered by email to the BCSPCA, Ms. Haughton sought to dispute the removal of the animals and the notice of disposition of her animals. Ms. Haughton delivered letters to the BCSPCA dated June 16, 23, 29, and her final one on July 8; all of 2009.

[27] In a letter dated June 30, 2009, Mr. Eccles invited Ms. Haughton to make submissions as to whether the animals should be returned to her or retained by the BCSPCA. Included in this letter the following were enclosed:

- (a) Cruelty Complaint Summary Job #80887,
- (b) Inspection/Followup Details Job #80887,
- (c) Cruelty Investigations Information Form dated June 13, 2009,
- (d) Occurrence report of Special Provincial Constable Jamie Wiltse dated June 17, 2009, with redactions to preserve informant privileges,
- (e) Veterinary Report of Sarah Greenwood, DVM,
- (f) A Code of Practice for Canadian Kennel Operations second edition May 2007,
- (g) CD with Picture.

This letter was delivered by mail and received by Ms. Haughton.

[28] Ms. Haughton responded in her letter dated July 8, 2009. In the BCSPCA's letter dated July 21, 2009, Mr. Eccles informed Ms. Haughton that:

As a result, I am not convinced that you will insure the health of the Animals in the future if they are returned to you. Based on all of the above, you have failed to persuade me that should you regain custody of the Animals they will not be returned to a similar situation. Given the foregoing, by the end of business on July 28, 2009, the SPCA will proceed with disposition of the Animals pursuant to the BC SPCA's statutory mandate (Act,s.18.).

POSITIONS

Ms. Haughton

1. The BCSPCA treated her very unfairly and their actions were hasty;
2. After the seizure and disposition notice, unfair and unreasonable treatment continued, resulting in overall process that offends principles of natural justice and procedural fairness;
3. The conclusions of Wiltse and Greenwood that animals were in distress is incorrect or unreasonable. The animals were not in distress as defined by s. 1 of the PCA;
4. The procedure given to the petitioner to dispute the disposition notice is blatant!), offensive to the principles of natural justice and procedural fairness;
5. The standard of review the court should follow must be "correctness." The decisions of both SPC Wiltse and of Mr. Eccles should be granted no deference. The decisions must be disregarded and the Court must substitute its own decision based on the evidence available to SPC Wiltse at the time she decided to dispose of the animals.
6. The petitioner should not be held responsible for costs of care and housing. (paras. 88-90 written argument and Carol Haughton's affidavit and Jeremy Knight's affidavit).

Society for the Prevention of Cruelty to Animals

1. The BCSPCA's decision to take custody of the 26 dogs 8 adults and 18 puppies and 6 cats (collectively "the animals") was a reasonable decision pursuant to s. 11 of the PCA. The conditions of the animals, as observed by SPC Wiltse on June 13, 2009, as being in distress pursuant to s. 2 of the PCA. As a result it was necessary to take custody of the animals to relieve their distress pursuant to s. 13 of the PCA as described in the Prevention of Cruelty to Animals Regulation, B.C. Reg. 231/95 ("PCA Regulation").
2. The BCSPCA decision to dispose of the animals pursuant to s. 18 of the PCA was a reasonable decision in all of the circumstances. Ms.

Haughton was afforded an opportunity to dispute the Society's preliminary notice of disposition of the animals and upon it stating that it intended to do so, the BCSPCA provided Ms. Haughton with all of the materials upon which it would rely. The BCSPCA's employee had clear statutory authority to make a discretionary decision set out s. 18 of the PCA. Mr. Eccles exercised that discretion in a reasonable manner.

3. Section 18 of the Act provides the Society with an express grant of discretionary authority to dispose of Animals taken into its custody; "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". (Emphasis added).
4. The issue of costs of care is not properly part of this Petition as the issue is premature. The Society has a right to sue for costs of care pursuant to s. 20 of the Act. The Society has not yet presented the Petitioner with an invoice for costs of care. Should the Society ultimately seek to recover such costs from the Petitioner, the Petitioner may dispute that claim. At that stage, the Society may have cause to commence an Action to recover costs from the Petitioner.
5. Costs of this petition to the respondent.

THE LEGISLATION

[29] The relevant sections of the *PCA* are as follows:

- 1.(2) For the purposes of this Act, an animal is in distress if it is
 - (a) deprived of adequate food, water, shelter, ventilation, space, care or veterinary treatment,
 - (b) injured, sick, in pain or suffering, or
 - (c) abused or neglected.

...

Relieving distress in animals

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.

...

Authority to enter with a warrant

- 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, and seizing, any thing that will afford evidence of an offence under section 24.
- (2) A justice who is satisfied by information on oath in the prescribed form that there are reasonable grounds
- (a) under paragraph (1) (a), may issue a warrant in the prescribed form authorizing an authorized agent to enter the premises, vehicle, aircraft or vessel for the purpose of taking any action authorized by this Act to relieve the animal's distress, and
 - (b) under paragraph (1) (b), may issue a warrant in the prescribed form authorizing an authorized agent to enter the premises, vehicle, aircraft or vessel for the purpose of searching for, and seizing, a thing that will afford evidence of an offence under section 24.

...

Disposition of abandoned animals taken into custody

- 17** If an animal is taken into custody under section 10.1 and
- (a) the owner is unknown, the society may destroy, sell or otherwise dispose of the animal after the society has held the animal for a period of at least 4 days, or
 - (b) the owner is known, the society may destroy, sell or otherwise dispose of the animal 4 days after the society has given notice to the owner in accordance with section 19.

Disposition of animals removed from custody of owner

- 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.

Form of notice

- 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,

- (i) published at least 3 times at 2 day intervals in a newspaper circulating in the area in which the animal was taken into custody, or
- (ii) posted in a conspicuous place at either the owner's last known address or the location at which the animal was taken into custody.

[30] The BCSPCA under the *PCA* has a statutory mandate to take custody of animals in distress.

[31] These puppies, dogs and cats owned by Ms. Haughton “the distress” which caused the society to step in and take custody of the animals was the environment in which they were living. The environment that these animals were living in is described by the complainant Mr. Copeland, that of SPC Wiltse and that of Dr. Greenwood. Dr. Greenwood in her report described the premises in which the animals were residing as follows:

The dogs were housed in 4 pens, surrounding the home, each with its back wall contacting a wall of the house. These 4 pens had been divided such that they created 3 separate areas. The first area consisted of a pen which housed 2 female dogs and was located immediately to the left (when facing the front of the house) of the front stairs. This pen was formed using two panels of page-wire-type fencing, held together by carabineers. The area was dry and dusty, had one small pot of dirty water and what appeared to be the remains of a cattle’s hind leg, lay on the ground. The dogs in this pen had access via a ‘dog door’ into what appeared to be a garage. Inside the garage the floor was heavily littered with garbage, a torn up dog bed and much feces. The smell within the garage required that a face mask be worn. The garage itself was quite dark and heavily littered; a bowl with dry dog food lay on the floor. The behaviour of the dogs in this pen was one of both curiosity and fear.

...

The largest of the penned areas was that which appeared to have been meant to house the remaining adult dogs (including lactating bitches and intact males) and puppies. However, the puppies appeared to have found deficits in the fencing such that they could access the single pen housing the largest of the intact males and from there, escape the generalized penned system. This last penned area consisted of a smaller pen, containing 3-4 metal water containers (less than 5 L. each) which contained water. A hose had been left hanging through the fencing beside the water buckets but was not running. A small dog house (of adequate size for a few puppies but too small to for any of the adults) was present with a roof and two walls. A dirty, chewed up dog pillow lay inside the dog house. This area had the potential to be closed off to the remaining penned area by

a gate, which was open. This pen was also heavily littered with garbage and feces. A well-chewed square plastic dog bowl was noted, multiple small metallic bowls were present, turned upside down around the pen and some care tires were also present. Partial shade was noted under the porch at the back of the house. The dogs in this pen had access to the inside of the house via the porch and a sliding door into a section of what appeared to be the living room. As noted before, the stairs and porch were unstable and planks had fallen through. I am unsure as to exactly where in the house the dogs had access to via this porch.

Upon entering the front of the house, an intensely vile smell was noted and the decision to wear face masks was made, both for health reasons and to overcome the nausea that the smell triggered. I believe this smell is the result of the vast amount of animal feces, urine and garbage present throughout the house, intense heat and lack of adequate ventilation. None of the windows were open; some had been covered with fabric or some kind of reflective/insulation material. A sliding door to the porch was partially open. A bird was found flying around the living room upon arrival and left via the front door which was ajar upon arrival.

On the main-floor of the house, in what appeared to be a living room, an area had been cordoned off using metal fencing. This area contained what appeared to be a broken down whelping box (made of wood and lined with some kind of cushioning, covered in tarp material which had been chewed apart). Nearby, lay a bowl of dry dog food and some dirty water in a container. The floor of this area was heavily covered in feces (both formed and diarrheic) and garbage.

A small fan was running upstairs in a loft-style area that appeared to be suited as an office. The office contained a desk, a small library which included animal magazines, a book on veterinary care for owners and other binders. This area, as with the rest of the house, was heavily littered with garbage and animal feces. A kitty litter box was noted on the floor, which was full to the rim with feces. A bowl of water was present on the stairs to the loft and in the office, a 'self-feeding' bowl of cat food was found.

The kitchen was overflowing with garbage and old dirty dishes. A puppy was found eating out of a bucket on the floor that contained rotting vegetable matter, egg shells, fruit rinds and insects. A bag of rotting onions was found on the floor (onion is toxic to dogs). A partially full bag of milk replacer powder, labelled for use in large animals, lay on the floor of the kitchen. An empty bag of Purina Puppy Chow® was on the floor. Two fridges were noted; both were very dirty and contained some human food products as well as some veterinary medications. Between the two fridges, the veterinary medications included a mixture of expired and non-expired drugs, including antibiotics (injectable forms such as procaine penicillin and oral forms such as clavulinic acid/amoxicillin, amoxicillin, chloramphenicol), injectable thiamine (a type of Vitamin B), oxytocin (used to induce uterine contractions and milk let down in small and large animals) and dexamethasone (a glucocortico-steroid), oral meloxicam (Metacam®) as well as vaccines (feline and cattle types). A bottle of Lysine was noted on the counter. Lysine is an amino acid and is often used in veterinary medicine to treat herpes infections in cats – please note that I am not assuming its

purpose in this case. Some of the above mentioned medications were labelled as being purchased from Kamloops Veterinary Clinic, one from Surrey Animal Hospital; others lacked any kind of labelling at all.

The living room was perhaps the most appalling of the rooms – animal feces and garbage covered most of the floor, making it difficult to find any clean spots to walk on. A couch was present with the cushions pulled off and the insulation ripped/chewed out, leaving springs exposed.

A stairway down to the basement led off the other end of the living room; there were holes in the walls and feces along the floor of the stairway. At the bottom, a door led into a basement area where a large pen was found, containing a single male cat. Two other cats were found wandering freely around the room in which the male cat's pen was. I am unsure if the cats had the ability to access the rest of the house or not but from what I could see at the time, the windows and doors to the basement were shut, precluding them of this (however, cat food and a kitty litter box were noted earlier in the loft/office area). The floor of the basement was inconsistently covered with material and heavily laden with feces. The smell of urine and feces was overpowering, as with the rest of the house. The male cat's pen contained a kitty litter box overflowing with feces, a soiled sleeping area, a small bowl of water (less than $\frac{1}{4}$ full) and some dry cat kibble. The pen's floor was littered with formed feces and what appeared to be either vomit or diarrhea. One of the two cats which were not caged had a significant head tilt to the left. Head tilts such as this, in animals, are symptomatic of neurological disease and warrant further investigation.

A small bathroom was located off of the basement area; many of the panels in the ceiling were missing and cat-like noises could be heard coming from the space within the ceiling. The cat in this section could not be visualized. The bathroom itself was vile; the toilet blackened and soiled, the floor filthy and covered in cat feces. A cat scratching post and two bowls of water with one container of food was noted in the bathroom.

[32] This description by Dr. Greenwood is confirmed by SPC Wiltse and Mr. Copeland. The photographs that were filed in evidence by BCSPCA confirm Dr. Greenwood's description.

[33] Mr. Haughton's son Jason stated that during his mother's absence, he was at his mother's residence every day; he fed and watered the animals each day. When he returned the next day the animals had almost eaten all of the food.

[34] Jason Haughton stated that the animals' water was quite dirty the next day "because the Danes have big, saggy jowls that drag on the ground when they sniff at the dirt. The Danes would drink right after they ate and get food in the water. The water was well water so after a few days the minerals from the water would get

crusted on the side of the water bowls/buckets. This made the dishes and the water look dirtier than it was.” He stated further at paragraph 15 of his affidavit:

15. When my mother went to Alberta on June 5, 2009 the house was in decent condition but it got dirty and messy quickly with all the Danes – especially the puppies – wreaking havoc. I did not ever have time to clean up the mess the animals made because I work full time and an hour or two per night feeding and watering the dogs and cats takes up all the energy and time I can spare. However, it’s been my observation over the years that my mom cleans up the messes immediately when she returns home. The mess that was generated from June 5-June 14 was much greater but I knew my mom would take care of it right away.

[35] Ms. Haughton, in her letters to Mr. Eccles, acknowledges that her house is run down and requires a great deal of maintenance. She blames her predicament on Mr. Copeland who she alleges is conspiring with her estranged husband to hurt her during their nasty divorce. She relates in these letters that she has sales for some of her dogs, the proceeds of which she relies.

[36] Mr. Eccles, for the BCSPCA, wrote a letter dated June 30 to Ms. Haughton, which has been referred to earlier in these reasons. Mr. Eccles writes:

In order for the Society to agree to return the Animals to your custody, the Society must be assured that the Animals will not end up in the same, or similar, conditions of distress in which they were found by the Society. Therefore, any submissions by you, or on your behalf, should:

- (a) address the reasons the animals were found to be in distress and any efforts that you made to relieve the Animals’ conditions of distress, and/or to prevent the development of such distress;
- (b) explain how you intend to ensure that, if they were ultimately returned to your custody, the Animals will not later be allowed to deteriorate into conditions of distress; and,
- (c) explain how the Society can be assured of receiving your cooperation in the future with respect to the welfare of the Animals.

[37] Ms. Haughton responded to the letter dated June 30, 2009 by letter dated July 8, 2009, in which she attacks her husband and Mr. Copeland. In addition, she takes issue with the description of the inside of her home where the dogs were a times living. She explains how she feeds her dogs, the veterinary care they receive and explains why bones are available to the dogs.

[38] Mr. Eccles letter dated June 30, 2009 was directed to returning to Ms. Haughton her animals if she could assure the BCSPCA that she had cleaned up the environment in which the animals had been living as found by the BCSPCA in June of 2009. The BCSPCA wanted to be assured that it would not happen again, and some assurance from Ms. Haughton that she would cooperate with the BCSPCA in the future. The response by Ms. Haughton did not directly address the concerns raised in a, b and c outlined in Mr. Eccles' letter of June 30, 2009.

[39] After considering Ms. Haughton's submissions, Mr. Eccles rendered his decision in a letter dated July 21, 2009. It is from this decision that the judicial review is brought.

STANDARD OF REVIEW

[40] The standard of review of Mr. Eccles' decision is that of s. 59 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [ATA]:

Standard of review if tribunal's enabling Act has no privative clause

59 (1) In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

(2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3) A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

- (a) is exercised arbitrarily or in bad faith,
- (b) is exercised for an improper purpose,
- (c) is based entirely or predominantly on irrelevant factors, or
- (d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

[41] In *Marshall v. British Columbia Society for the Prevention of Cruelty to Animals*, [2007] B.C.J. No. 2594, Madam Justice Bennett, as she then was, stated at para. 43:

[43] Thus, the standard of review is correctness for all questions except the exercise of discretion, findings of fact and the application of common law rules of natural justice and procedural fairness. A discretionary decision must be patently unreasonable before this Court can interfere with the decision. A discretionary finding is patently unreasonable when it is arbitrary or in bad faith, made for an improper purpose, based on irrelevant factors or fails to take statutory requirements into account. Further, the tribunal (that is Ms. Moriarty), must act fairly.

[42] The issues raised by this petition are:

- Was the seizure of the animals under s. 11 of the *PCA* justified?
- Was the BCSPCA justified and entitled to issue a notice to dispose of the animals pursuant to S. 18 of the *PCA*?
- Was Ms. Haughton given a meaningful opportunity to respond to the notice of disposition?
- Was the decision by the BCSPCA not to return the animals reasonable based on principles of natural justice and procedural fairness?

[43] The first issue, whether the seizure of the animals was justified, the standard for review is reasonableness when considering the decision made by PSC Wiltse to seize the animals.

[44] Ms. Haughton argues that PSC Wiltse's actions were precipitous and made with undue haste. She argues that the BCSPCA should have made an effort to find her and advise her as to what she could do to improve the conditions in which her animals were living.

[45] The focus of the *PCA* is to relieve animals found in distress. In this case the BCSPCA found that these cats and dogs were living in an environment that caused distress to the animals. The purpose of the *PCA* is relieving distress of the animals

first. When the BCSPCA first received the complaint, they attended the residence of Ms. Haughton and found the conditions as described and photographed by Mr. Copeland. There was no one at the residence. Mr. Copeland stated that Ms. Haughton was in Alberta. A notice was posted by the BCSPCA directed to the owner. Nothing was heard from the owner. Within two days, a search warrant was obtained and the animals were taken into custody.

[46] The conditions that were described by SPC Wiltse and Dr. Greenwood are referred to in these reasons. The environment in which these cats and dogs were in were deplorable. The BCSPCA states that the facts of this case are similar to those in *Chatwin v. Society for the Prevention of Cruelty to Animals*, [2008] B.C.J. No. 1265. In some ways there are similarities. However, the animals in *Chatwin* were penned in feces and urine-filled cages and some found to be underweight and ill. The Haughton animals were free to go in out of Ms. Haughton's home and kennels which were covered in feces, urine and garbage. The smell was repulsive. For the most part, the animals were reasonably nourished and were being fed by Ms. Haughton's son.

[47] It was reasonable for SPC Wiltse to seize the dogs and cats as they were in distress as defined by the *PCA*. It is obvious that the biggest concern of SPC Wiltse and Dr. Greenwood was the environment that these animals were residing. Dr. Greenwood makes some comments relating to the health of the animals. She makes some specific recommendations as to treatment and speculates about other health and genetic problems.

[48] After taking the animals into custody, the BCSPCA were entitled to give Ms. Haughton notice pursuant to s. 18 and s. 19 of the *PCA* that they were intending to dispose of the animals within 14 days of their notice to Ms. Haughton.

[49] The third and fourth questions raised by Ms. Haughton relate to whether Mr. Eccles applied the common law rules of natural justice and procedural fairness. Section 59(1) of the *ATA* requires:

...the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

[50] Section 59(5) of the ATA states:

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

[51] In *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. No. 653, Madam Justice L'Heureux-Dubé for the court stated:

[24] The existence of a general duty to act fairly will depend on the consideration of three factors: (i) the nature of the decision to be made by the administrative body; (ii) the relationship existing between that body and the individual; and (iii) the effect of that decision on the individual's rights. This Court has stated in *Cardinal v. Director of Kent Institution*, *supra*, that whenever those three elements are to be found, there is a general duty to act fairly on a public decision-making body (Le Dain J. for the Court at p. 653).

(i) The Nature of the Decision

[25] There is no longer a need, except perhaps where the statute mandates it, to distinguish between judicial, quasi-judicial and administrative decisions. Such a distinction may have been necessary before the decision of this Court in *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311. Prior to this case, the "duty to act judicially" was thought to apply only to tribunals rendering decisions of a judicial or quasi-judicial nature, to the exclusion of those of an administrative nature. Following *Nicholson*, that distinction became less important and was found to be of little utility since both the duty to act fairly and the duty to act judicially have their roots in the same general principles of natural justice (see *Syndicat des employés de production du Québec et de l'Acadie v. Canada (Canadian Human Rights Commission)*, [page670] [1989] 2 S.C.R. 879, at pp. 895-96, per Sopinka J. for the majority).

[26] On the other hand, not all administrative bodies are under a duty to act fairly. Over the years, legislatures have transferred to administrative bodies some of the duties they have traditionally performed. Decisions of a legislative and general nature can be distinguished in this respect from acts of a more administrative and specific nature, which do not entail such a duty (see *Dussault and Borgeat*, *Traité de droit administratif*, t. III, 2nd ed., at p. 370; *Attorney General of Canada v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735, at p. 758, per Estey J. for the Court). The finality of the decision will also be a factor to consider. A decision of a preliminary nature will not in general trigger the duty to act fairly, whereas a decision of a more final nature may have such an effect (*Dussault and Borgeat*, *op. cit.*, at p. 372).

[27] In the case at bar, the decision made by the appellant Board was of a final and specific nature, directed as it was at terminating the employment of the respondent. As such, the decision to dismiss could possibly entail the existence of a duty to act fairly on the part of the appellant Board.

(ii) The Relationship Between the Employer and the Employee

[28] The second element to be considered is the nature of the relationship between the Board and the respondent. In an oft-cited decision of the House of Lords, *Ridge v. Baldwin*, [1963] 2 All E.R. 66, Lord Reid classified the possible employment relationship between an employer and an employee into three categories (at pp. 71-72): (i) the master and servant relationship, where there is no duty to act fairly when deciding to terminate the employment; (ii) the office held at pleasure, where no duty to act fairly exists, since the employer can decide to terminate the employment for no other reason than his displeasure; and (iii) [page671] the office from which one cannot be removed except for cause, where there exists a duty to act fairly on the part of the employer. These categories are creations of the common law. They can of course be altered by the terms of an employment contract or the governing legislation, with the result that the employment relationship may fall within more than one category (see *Nova Scotia Government Employees Association v. Civil Service Commission of Nova Scotia*, [1981] 1 S.C.R. 211, at p. 222, per Laskin C.J. for the majority). Lord Reid did not examine the possible implications of the non-renewal of a fixed-term employment contract, but since it was not alleged in the present appeal that the employment was terminated by non-renewal of the employee's contract, I will not address this question.

...

(iii) The Impact of the Decision on the Employee

[35] This point can be dealt with summarily. There is a right to procedural fairness only if the decision is a significant one and has an important impact on the individual.

[52] The court went on to further state:

[36] On the whole, the nature of the decision, the relationship existing between the respondent and the appellant Board and the impact on the respondent of the impugned decision lead to the conclusion that there was a general duty to act fairly on the part of the appellant Board in the circumstances of this case.

B. Under The Education Act

[37] Having come to the conclusion that there exists a general right to procedural fairness, the statutory framework must be examined in order to see if it modifies this right (*Wiseman v. Borneman*, [1969] 3 All. E.R. 275, at p. 277, per Lord Reid). However, as was pointed out by Dickson J., as he then was, in *Kane v. Board of Governors of the University of British Columbia*, *supra*, at p. 1113: "To abrogate the rules of natural justice, express language or necessary [page678] implication must be found in the statutory instrument." Thus, the provisions of The Education Act must be quite clear to

lead us to the conclusion that the respondent's general right to procedural fairness has been restricted.

[53] There is no appeal from the BCSPCA's decision. As observed by Mr. Justice Powers in *Pieper v. British Columbia Society for the Prevention of Cruelty to Animals*, [2004] B.C.J. No. 2524, there is no provision in either the SPA or its regulations, or other statutes which determine the form of the hearing or its procedures. As a result, procedural fairness is very important. Further, the BCSPCA is involved in both the investigative and decision-making role. This requires the application of common law rules of natural justice and procedural fairness to be greater.

[54] In *Pieper*, Mr. Justice Powers stated:

[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.

[55] Considering the general duties of fairness outlined in *Knight* and some of the specific factors as outlined in *Pieper*, I approach this review with these in mind. In

doing so, I consider the letters written by Ms. Haughton and Mr. Eccles' decision, as well as the period of time from the initial complaint to Mr. Eccles' decision.

1. The nature of the decision.

[56] This was a final decision made by Mr. Eccles on behalf of the BCSPCA in his letter of July 21, 2009, of which there is no appeal. The time from the initial investigation to Mr. Eccles' final decision was approximately 44 days. Ms. Haughton lost approximately 30 animals which consisted of her Great Dane and exotic cat breeding business. Each of these animals were pets to Ms. Haughton.

2. The relationship between Ms. Haughton and the BCSPCA

[57] Until Mr. Copeland made his complaint there was no relationship between the BCSPCA and Ms. Haughton. Ms. Haughton had no previous complaints. Ms. Haughton was a member of the public. The conditions of her animals came to the BCSPCA's attention as a result of a complaint from the public; Mr. Copeland.

[58] Ms. Haughton, unlike the owners of the animals in *Pieper* and *Marshall*, had no opportunity to work on the deficiencies in the environment in which her animals were living prior to their seizure. In *Marshall*, Mr. Marshall and Ms. Walters were given over three months to correct the care for their horses. During that period, they were given 60-day notice in which Mr. Marshall had agreed to address the care of his horses' hooves within that period.

[59] In *Pieper*, Mr. Pieper was initially visited by an employee of the BCSPCA, who received complaints from the public concerning cats and dogs in Mr. Pieper's care. The BCSPCA official told Mr. Pieper that changes had to be made to his kennels. Six months later further complaints were made by the public regarding Mr. Pieper's cats and dogs. The BCSPCA issued an order that veterinary care be obtained for the animals within ten days. That did not occur. Within seven months from the date of the first attendance by the BCSPCA, the BCSPCA obtained a search warrant and seized the animals.

[60] The animals in both *Marshall* and *Pieper* were injured and were in need of veterinary care, some were emaciated. In referring to these cases, it is clear that the BCSPCA wanted to work with the owners of the animals before seizing them.

[61] I am not suggesting that the BCSPCA ought not to have seized the Haughton animals. Based on the facts as presented at the time, these animals appeared to be unsupervised and were living in a deplorable environment.

[62] Although it is speculative, had Ms. Haughton been there, there might have been discussions or notices issued to Ms. Haughton as had been done in *Pieper* and *Marshall*.

[63] Since there had been no previous relationship between Ms. Haughton and the BCSPCA prior to the seizure of the animals, the nature, the kind of hearing and the evidence before Mr. Eccles becomes very important.

3. The Impact of Mr. Eccles' decision on Ms. Haughton

[64] The impact of the decision of the BCSPCA, as set out in their decision dated July 21, 2009, is considerable. Ms. Haughton breeds cats and dogs for sale which are part of her livelihood. In addition, they are also pets. The decision of Mr. Eccles not to return the cats and dogs affects Ms. Haughton's reputation as a breeder of those animals. Ms. Haughton also operates a ranch commercially breeding cattle and sheep. This decision may also affect her reputation in the ranching industry.

[65] The nature of the hearing, as stated earlier, was conducted by letter and delivered by email. There were no personal meetings or telephone conversations, though Ms. Haughton tried to speak to someone at the BCSPCA. Her calls were left unanswered except for one in which Mr. Eccles invited Ms. Haughton to write him a letter. The communication between Ms. Haughton and the BCSPCA was limited. Ms. Haughton wanted to communicate with the BCSPCA; it appears that they did not.

[66] A review of Ms. Haughton's letters are important.

[67] Ms. Haughton, in her letters, provides personal information. She states that she is a rancher involved in the breeding of cattle, sheep and horses, in addition to the breeding of her Great Danes and cats. She states she had a heart attack three years ago and is presently involved in a messy divorce. She alleges that her husband and the complainant, Mr. Copeland, are behind her difficulties with the BCSPCA. She says her home is run down, describing its deficiencies, which she lays at the feet of her husband. She states in her letter of June 16, 2009, that her son, Jason, had fed and watered the dogs and cats daily, and a friend of Jason's can verify this.

[68] She states that she looks after her animals "very well", giving telephone numbers and the name of a vet clinic who can verify this. She states she has been a breeder of Great Danes for 35 years. She states that her animals' hips are x-rayed and that she sells animals with non-breeding agreements. People who purchase her dogs, purchase them again.

[69] Towards the end of this letter of June 16, 2009, she states:

My animals, especially my dogs and cats are my life, my passion, and my reason for getting up in the morning.

[70] She then states a little later in that paragraph:

Please help me to do whatever it [will] take to get my animals back.

[71] In her letter of June 23, 2009, Ms. Haughton states:

The only thing I am guilty of is a messy house, that I am cleaning up now.

[72] Later on in the same letter, she says:

The yards just need cleaning, which I had fully intended to do as soon as I was caught up with the cows calving, sheep lambing, branding, vaccinating and putting out to pasture. I am now able to give the house and yard my full attention.

[73] In that letter, she asks to have a reply to her first letter. On June 29, 2009, another letter goes out to the BCSPCA by Ms. Haughton. She starts by stating:

I need to be able to [speak] to somebody about what is going on with my animals. They have been gone for over 2 wks now with no word.

[74] In that letter she states that some of her puppies have been sold and she did not want to lose the sales, and repeats that she has been a breeder for 35 years. She also states that she is missing eight cats, and she does not know which cats the BCSPCA has. Towards the end of that letter says:

My calls are never returned, nobody will tell me what is going on. And nobody even talked to my son, Jason Haughton, that was looking after them.

[75] In her letter of July 8, 2009, she advises Mr. Eccles that this is her fourth letter. Once again she talks about her former husband making false statements about her. She goes on to say:

What appeared to be insulation in the front yard, was the stuffing of a dog bed that the puppies chewed up. There was NO garbage. I have wood heat, so there is wood and logs for the fire. All kinds of fencing material, as I am building a 2 acre pen for the dogs, as well as other farm materials, none of which is garbage.

[76] She explains that the pens' gate, where the puppies got out, had a big rock holding it, and that somebody obviously had opened it.

[77] She explains she gets scraps from the butcher as treats for the dogs. She explains what she has been doing regarding her house, and that she had engaged a carpenter to do some repairs, but that he was busy at that time so they did not get done.

[78] Ms. Haughton advises the BCSPCA that her cow/calf operation, which included as a high of 1500 cattle, has been reduced. She also states that she has a great deal of experience in treating and providing veterinary care to her cattle. She explains why the cat has a tilt to its head, and explains that her old black dog, Rebel, is old and does not have a neurological disease, and that there is a small pup who is a runt. She disagrees with a number of conclusions that Dr. Greenwood came to.

[79] She repeats that some of her pups had been sold and that she wishes to complete those sales. Throughout this entire period; that is from June 14, 2009,

when Ms. Haughton returned from Alberta, to July 21, 2009, Ms. Haughton knows nothing about the fate of her animals..

[80] On June 30, 2009, Mr. Eccles of the BCSPCA wrote to Ms. Haughton. In that letter he sent to Ms. Haughton all of the documents that had been generated as a result of the investigation and upon which he eventually relied on in his decision.

[81] Mr. Eccles advises Ms. Haughton that she should address the following:

In order for the Society to agree to return the Animals to your custody, the Society must be assured that the Animals will not end up in the same, or similar, conditions of distress in which they were found by the Society. Therefore, any submissions by you, or on your behalf, should:

- (a) address the reasons the animals were found to be in distress and any efforts that you made to relieve the Animals' conditions of distress, and/or to prevent the development of such distress;
- (b) explain how you intend to ensure that, if they were ultimately returned to you custody, the Animals will not later be allowed to deteriorate into conditions of distress; and,
- (c) explain how the Society can be assured of receiving your cooperation in the future with respect to the welfare of the Animals.

[82] These questions put to Ms. Haughton by the BCSPCA, require not only information within Ms. Haughton's knowledge, but may also require expert evidence from a veterinarian. Ms. Haughton, in order to answer these questions, would also have to have information from her veterinarians who have treated her animals and are familiar with the care for which she provides her dogs, cats, sheep and cattle.

[83] Ms. Haughton, in her letters, states that she has a good reputation as a breeder, which may require evidence from those individuals to whom she has sold dogs and cats, and those who may be familiar with her breeding practises and the success of her animals.

[84] In Ms. Haughton's letter of July 8, 2009, she reviews her long history with animals, repeats many of the facts and allegations previously stated in her prior letters.

[85] She provides information about the cat with the tilted head, her old dog, who she says does not have Wobbler's Syndrome, her vaccination program for her puppies and her dog show successes with her Great Danes.

[86] In Mr. Eccles' letter of July 21, 2009, which is the subject matter of this review, he refers to all of the material and evidence gathered by the BCSPCA, including the observations of SPC Wiltse and the report of Dr. Greenwood.

[87] Mr. Eccles makes reference to Ms. Haughton's criticism of Dr. Greenwood and states:

4. ... Her description of the environment and Animals is substantiated by the occurrence report of SPC Wiltse, dated June 17, 2009. I therefore accept Dr. Greenwood's entire report, including the following opinion:

'It is my opinion that all of the animals present on June 13, 2009 at 1.6 km Separation Rd., Knutsford, BC, were clearly in distress as defined by the Prevention of Cruelty to Animals Act due to a lack of general care as evidenced by an unacceptable environment/housing, feeding practices and ventilation in the house. Some of the animals examined by myself required veterinary intervention (see appendix for details) as they were sick or appeared to be in pain.'

5. Dr. Greenwood also provided the following recommendation in her report:

Should the SPCA wish to return the animals to the owner's care in the future, I would strongly recommend that proper housing facilities be built, which include an impervious flooring surface and drainage to facilitate cleaning of pens & a proper ventilation system to ensure ambient temperatures remain acceptable – the guidelines should be those as set by the CVMA's Code of Practice for Canadian Kennel Operations, 2nd Ed., May 2007, including the information pertaining to the Appendices on Vaccination, Deworming, Veterinary Care. In addition, improved nutrition and evidence of regular veterinary care would be recommended.

[88] Mr. Eccles comes to the conclusion that Ms. Haughton does not have sufficient time and funds to properly care for the animals. I have difficulty with this conclusion. Mr. Eccles has no knowledge of Ms. Haughton's financial circumstances unless he concludes it from the many personal complaints Ms. Haughton's makes about her husband and Ms. Haughton's statement that money is being held up in a law office as a result of her divorce proceeding.

[89] Mr. Eccles concludes that Ms. Haughton is unable to care for the animals and has not accepted the fact that her cats and dogs were in distress, and advises her that by the end of business on July 23, 2009, the BCSPCA will proceed with the disposition of the animals.

[90] This decision by the BCSPCA is rendered 43 days from the time of seizing the dogs and cats. Throughout that period, Ms. Haughton states that she has evidence to present to Mr. Eccles; that is from veterinarians who have been treating her cats and dogs in the past, and evidence from her son, Jason. Mr. Eccles makes no reference to these statements.

[91] There is evidence from Ms. Haughton in her various letters that she will do anything that the BCSPCA says to get her animals back, she has been cleaning up her place and is building a two-acre pen for the use of her dogs.

[92] In the Chambers binder there are affidavits and pictures showing that Ms. Haughton is cleaning up her house and the place for her animals. These, of course, cannot be taken into consideration as this material and the existence of these facts were not before Mr. Eccles when he gave his decision dated July 21, 2009.

DECISION

[93] I have concluded that the petitioner was not accorded natural justice and procedural fairness, and I remit this matter back to the BCSPCA for a further reconsideration. This is not to dispute whether the animals were in distress or not, or whether the seizure should have taken place or not. I have already found that the animals were in distress and that it was proper to seize the animals and take them into care.

[94] It may be that this hearing for reconsideration could be an oral hearing, or a combination of written and oral hearing, so that Ms. Haughton can present the evidence that she refers to in her letters to the BCSPCA, and to provide further evidence as to what she has done to her premises on Separation Road.

[95] Before conducting the reconsideration of Mr. Eccles' decision, it might very well be in everyone's best interests, with the permission of Ms. Haughton, that the BCSPCA attend the premises at Separation Road to view any improvements that have been made, and her plans for the housing of her animals. This would assist the BCSPCA in determining whether they will return the animals to Ms. Haughton and under what conditions.

[96] Other than the deplorable conditions in which the cats lived, there is no evidence of health concern for the cats, so subject to the BCSPCA approving the premises in which the cats will live, I order that the cats be returned to Ms. Haughton.

[97] Upon inspecting Ms. Haughton's premises, the BCSPCA may wish to consider whether some or all of the dogs ought to be returned and upon what conditions.

COST OF CARE

[98] I agree with the submission of the BCSPCA that the matter of cost of care is premature for the reasons as stated in para. 93 of their outline.

COSTS

[99] I allow the parties to address me as to costs.

"H.C. Hyslop J."

HYSLOP J.