

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Haughton v. BC SPCA*,  
2010 BCSC 406

Date: 20100326  
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

**BC SPCA**

Respondent

Before: The Honourable Madam Justice Hyslop

Corrected Judgment: The text of the judgment was corrected at paragraph [43] on  
March 30, 2010

## Reasons for Judgment

Counsel for the Petitioner:

P. Jensen

Counsel for the Respondent:

C. Rhone

Place and Date of Hearing:

Kamloops, B.C.  
March 17 & 18, 2010

Place and Date of Judgment:

Kamloops, B.C.  
March 26, 2010

[1] The respondent, the British Columbia Society for the Prevention of Cruelty to Animals (the "Society") seeks a declaration as to the costs it incurred for the care of the petitioner's cats and dogs while in the Society's care as a result of their seizure by the Society on July 13, 2009. In the event that the costs are not paid, the Society seeks an order permitting them to dispose of the animals seven days from the date of the release of these reasons.

[2] The issues are:

- the length of time that the Society is entitled to remuneration;
- the daily cost sought by the Society for the cats and the dogs;
- veterinarian costs sought by the Society; and
- the loss of profit to the Society for the sale of the cats and dogs.

## **POSITIONS**

[3] The Society alleges that their costs are reasonable and ought to be paid. The Society was initially claiming \$46,561.95. However, after receiving a recent payment of \$285.00 from the petitioner, the amount sought was \$46,276.95. This amount also credits the petitioner with \$3,600.00 she paid to the Society in August of 2009. As this hearing proceeded and as a result of correcting various errors, particularly veterinarian costs, and crediting those amounts, the amount sought by the Society from the petitioner is \$35,815.00, plus veterinary and staff expenses for the seizure of the animals.

[4] The petitioner's position is that the cost of care is unreasonable based on what it would cost the petitioner to care for her animals if they had been in her care. The petitioner argues that the Society relies on charitable donations made up of cash donations and volunteer labour which should benefit the petitioner. The petitioner argues that she should be charged only for three days of care for her cats and dogs.

**BACKGROUND**

[5] The petitioner brought a judicial review of the Society's decision of July 21, 2009, for which I gave reasons cited at 2009 BCSC 1773. I concluded that the cats and dogs were in distress and that the Society was entitled to seize them. I concluded that the petitioner had not been afforded natural justice and procedural fairness, remitting the matter back to the Society for its reconsideration as to the disposition of the petitioner's cats and dogs. I ordered that the cats be returned subject to the Society approving the premises in which the cats would live.

[6] The petitioner is charged with cruelty to animals, both under the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the "Act") and the *Criminal Code* as it relates to the cats and dogs. As a result of the petitioner's bail conditions, the petitioner was not to have cats and dogs in her care.

[7] The bail conditions, as it relates to cats and dogs, were varied on January 25, 2010 by me. This permitted the petitioner to have in her care dogs and cats subject to the following conditions:

- she will permit the SPCA or any agent on their behalf to inspect any premises in which she has dogs and cats and which shall occur during daylight hours;
- she will sell or transfer the now about 9-month-old dogs, which were the puppies at the time of the seizure, for which she had sales for or which she would have sold during the ordinary course of her kennel business; and
- she will not breed any dogs on the premises which will result in litters of puppies born on her premises until after the disposal of these charges. This does not prevent Ms. Haughton breeding her male breeding stock to breed females not owned by her or in which she has no interest.

[8] At the time of the bail review, the petitioner had renovated her facility for the care of her cats and dogs, described by her expert witness, veterinarian, Dr. Mann, as "the Taj Mahal" of dog and cat kennels.

[9] As a result of the material received by the Society, they were prepared to return the cats to the petitioner upon payment of their account. The petitioner

contested the payment of this account. The parties appeared before me on January 21, 2010. I ordered that if there was no agreement as to the amount owing, the full amount be paid into court or into a lawyer's trust account until the costs were determined. On January 22, 2010, the petitioner's counsel received from the Society an account for the care of the cats in the amount of \$13,380.00. This would have permitted the release of the cats to the petitioner. This did not occur.

[10] On March 1, 2010, Ms. Moriarty, writing for the Society, reconsidered its decision pursuant to my order. Based on Dr. Mann's report of January 6, 2010 and Special Police Constable ("SPC") Kokoska's report dated February 22, 2010, the Society were prepared to release the adult dogs. I should add that SPC Kokoska's report left out some of the space to accommodate dogs. Ms. Moriarty, in her decision, concludes:

In reading both reports, it is clear that you have now made improvements to the Property, such that you could accommodate the return of 8 of your dogs. I would emphasise that it will still remain to be shown whether you will be able to ensure that the Property remains in good condition and provides an adequate environment for the animals. I also note that the improvements to the Property were not complete until at the very earliest, January 6, 2010, and were not inspected until February 22, 2010.

[11] The Society stated that they would release the remaining dogs into the petitioner's custody upon the payment of the cost of their care.

## LAW

[12] Section 20 of the *Act* states:

### **Costs of taking action and proceeds of disposition**

20 (1) The owner of an animal taken into custody or destroyed under this Act 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.

[My emphasis]

[13] Donations to the Society cannot be used to reduce the liability of the owner of the animals pursuant to s. 20 of the *Act* (*Cunningham v. Wheeler*, [1994] 1 S.C.R. 359).

[14] The Society must show that it has incurred costs and that the costs must be reasonable (s. 20 of the *Act* and *Ontario Society for the Prevention of Cruelty to Animals v. Straub*, 2009 CanLII 25138 (On. S.C.)). The costs are the Society's costs not the costs the owner would have incurred (s. 20(1) of the *Act*).

## ANALYSIS

[15] The Society has made a number of concessions to the petitioner in advance of billing the petitioner. The Society has not charged the petitioner the daily cost of care of the cats and the dogs for the first month that they were in the care of the Society. The Society agreed to a deduction for boarding costs in relation to the petitioner's puppies after September 23, 2010. This does not include veterinarian costs for these periods.

[16] The petitioner did not have a facility ready for her cats until January of 2010. This was the conclusion of her expert, Dr. Mann. Based on this event and other factors, the Society concluded that the petitioner could have her dogs and cats returned to her upon her paying their cost of care.

### Veterinarian Costs

[17] The petitioner was able to identify costs that the Society had charged her for veterinary expenses that were not related to her dogs. Those amounts were identified and an adjustment is made. In addition, the Society charged \$20.00 for each vaccination given to the petitioner's animals. The petitioner argued that the cost of three-way, four-way or five-way vaccination is different. Further, there were

no accounts showing the payment of \$20.00 for each vaccination or how it was calculated. As a result, the Society has reduced each vaccination to the lowest cost at \$5.95 per vaccination. The vaccination and veterinarian costs are reduced from \$13,063.91 to \$4,450.05 ( $\$13,063.91 - \$8,613.86 = \$4,450.05$ ). The petitioner accepted these calculations.

[18] I am satisfied that the amount of \$4,450.05 is a proper and reasonable expense incurred by the Society pursuant to s. 20 of the *Act*.

[19] By a letter dated February 4, 2010, from the Society, the petitioner was informed of certain injuries that occurred in 2009 to two of her dogs. The dogs needed veterinary care. The amount of \$4,450.05 does not include any veterinary charges for the treatment of those two dogs.

#### Daily Cost of Care of Cats and Dogs

[20] The Society seeks the cost of care for the cats at \$10.00 per day per cat and \$15.00 per day for each dog, subject to the concessions described above. The boarding for dogs is \$17,310.00 (This amount takes into consideration the sum of \$3,600.00 received); for cats \$14,340.00. This takes into consideration an error made when the petitioner is charged for a dog instead of a cat; a difference of \$180.00.

[21] The petitioner argues that the cost of caring for her dogs is \$2.58 per day and \$1.86 per day for the cats. The petitioner bases this on a website of the Society which estimates the cost of maintaining a cat and a dog. The purpose of the website is to inform the public of an estimate of the cost of a variety of animals in their home which includes cats and dogs. The petitioner edits some of those costs by ignoring them or indicating that she would perform those tasks at no cost. The petitioner estimates the cost of a cat in her care, based on the cost of cat food and cat litter, concluding that the cost is .3735 ¢ per day per cat. The petitioner estimates the daily cost of feeding a dog in her care, based on the cost of dog food, at \$1.45 per day.

[22] Based on her allegations that the cats and dogs should only have been in the care of the Society for three days, the amount for which the petitioner states she is liable is \$234.72 for the care of the cats and dogs. I do not accept this argument based on my finding that the earliest the petitioner could have had the cats returned was January 2010, and the dogs March 2010.

### The Cats

[23] The Society has determined its cost to care for each of the petitioner's cats is \$10.00 per day. Broken down this cost is as follows:

- Food (specific brand used in all the Society's shelters) \$1.00 per day;\
- Staff time at a rate of \$12.00 per hour: \$6.00/day
  - 10 minutes kennel and cat cleaning: \$2.00
  - 10 minutes morning feeding: \$2.00
  - 10 minutes evening feeding: \$2.00
- Loss of Revenues: \$1.56/day
- Operating Expenses: \$1.00/day

[24] The total amount for cats, excluding the loss of revenue, is \$8.00 per day. I will deal with loss of revenue after I deal with the daily costs of the dogs. An adjustment has been made to the number of days for the care of the cats, and it has been reduced from 269 days to 239 days ( $\$8.00 \times 6 \text{ cats} = \$48.00 \text{ per day} \times 239 \text{ days} = \$11,472.00$ ). With the claim for loss of revenue, the Society is seeking \$14,340.00. Included in that amount is \$2.00 per day for loss of revenue.

[25] The operating costs are calculated by determining how much space is designated in the Penticton Shelter for Cats. The Penticton Shelter is where the petitioner's cats were housed. One-eighth of the square footage of the Penticton Shelter houses cats. The operating costs of the Penticton Shelter are \$244,224.00 per year. Deleted from this amount are expenses for medical, spay and neuter and youth camp expenses. The calculation is as follows:

- (a) \$244,224 shelter operating costs *per year* x 1/8 for portion of facility used to house cats = \$30,528.50
- (b) \$30,528.50 operating costs re. Cats ÷ 365 days = \$83.64/day
- (c) \$83.64 ÷ 85 cats (carrying capacity) = \$1/day/cat

### The Dogs

[26] The Society is seeking \$15.00 per day for the care of each dog. The Society is seeking payment for the care of 16 dogs. The balance of the dogs were in foster homes. The cost of care for the dogs is determined as follows:

- Food (specific brand used in all the Society's shelters): \$2.00/day
- Staff time at a rate of \$12.00 per hour: \$6.00/day
  - 10 minutes kennel and dog cleaning: \$2.00
  - 10 minutes morning feeding: \$2.00
  - 10 minutes evening feeding: \$2.00
- Loss of Revenues: \$1.48/day
- Operating Expenses: \$13.41/day

[27] In determining the operating expenses for the dogs, the Society took the average operating costs of Kelowna, Penticton and Vernon shelters. These figures are based on the Society's operation statements for each of these shelters for the year 2008.

[28] The Vernon shelter is devoted to approximately 50 percent to housing dogs. It is able to care for 31 dogs. The cost of sheltering a dog in the Vernon shelter is determined as follows:

- (a) \$181,920 shelter operating costs *per year* x 50% for portion of facility used to house dogs = \$90,960.
- (b) \$90,960 operating costs re. Dogs ÷ 365 days = \$249.20/day
- (c) \$249.20 ÷ 31 dogs (carrying capacity) = \$8.04/day/dog



[29] The Kelowna shelter devotes approximately 33 percent of its space for the shelter of dogs. It is able to care for 16 dogs. The cost of housing dogs in the Kelowna shelter is as follows:

- (a) \$451,327 shelter operating costs *per year* x 33% for portion of facility used to house dogs = \$148,937.91
- (b) \$148,937.91 operating costs re. Dogs ÷ 365 days = \$408.05/day
- (c) \$408.05 ÷ 16 dogs (carrying capacity) = \$25.50/day/dog

[30] The Penticton shelter devotes 25 percent of its space to housing dogs. It has the capacity to house 24 dogs. The cost of housing dogs in the Penticton shelter is determined as follows:

- (d) \$244,224 shelter operating costs *per year* x 25% for portion of facility used to house dogs = \$61,056
- (e) \$61,056 operating costs re. Dogs ÷ 365 days = \$167.28/day
- (f) \$167.28 ÷ 25 dogs (carrying capacity) = \$6.69/day/dog

[31] The Society averaged the daily cost of the three shelters to come to a daily rate of \$13.41 per day. To this amount is added the loss of revenue of \$1.48 per day and \$8.00 per day for each animal. The total cost is \$22.89. The Society acknowledges that as a matter of public policy they are seeking \$15.00 per day for each dog. Taking out the Kelowna operating costs and the loss of revenue, the daily cost still exceeds \$15.00 per day.

[32] The schedule attached as exhibit "N" to Ms. Moriarty's affidavit discloses that the dogs were housed by the Society in their shelters in Penticton, Kelowna, Chilliwack and Vernon.

[33] The Society, in determining the daily rate for cats and dogs, includes amounts incurred for wages and benefits for its employees. Ms. Moriarty, in a footnote of her affidavit #1, explained why this is included. In summary, she states that the staff of the Society performs other duties, not just cleaning and feeding the dogs and cats. In the footnote, Ms. Moriarty lists some of those duties which are for the benefit of the animals in the Society's care, including the petitioner's cats and dogs.

[34] In support of their rates, the Society presents evidence in the form of by-laws of the daily cost of care of various animals charged by some municipal pounds in British Columbia. Those municipalities are Vancouver, Williams Lake, Langley, Pitt Meadows and Kamloops. The daily cost for dogs ranges from \$12.00 to \$25.00 per day. As for cats, Pitt Meadows charges \$10.00 per day.

[35] The petitioner relies on *Christman v. S.P.C.A.*, 2009 BCSC 1788. Mr. Justice Rogers permitted the dogs and cats to be released to the owner upon payment of notional amounts of \$7.50 per day for each dog and \$0.50 per day for each cat. These rates were notionally fixed by Mr. Justice Rogers at para.36:

8. ... without prejudice to the BCSPCA's right to pursue the petitioner for any sums that the BCSPCA may claim to be its actual cost of maintaining the animals since they were seized.

[36] In *Christman*, the issue before Mr. Justice Rogers was whether to grant an injunction preventing the disposition of the animals. This case is not helpful to the petitioner.

#### Loss of Revenue

[37] The Society seeks to recover from the petitioner loss of revenue. The amount for dogs is \$1.48 per day and for cats \$1.56 per day. This is the loss of opportunity for the Society to sell the petitioner's dogs and cats. As part of its revenue is the sale of animals that are in its shelters. Animals are given up by owners or seized and available to the public for adoption. The manner in which these daily amounts are calculated are set out in Ms. Moriarty's affidavit #1 at para. 24:

24. To further explain the Loss of Revenues, Dogs are adopted out to members of the public for an average adoption fee of \$270. The Society holds Dogs in its shelters for an average period of 23 days before they are adopted out. The Petitioner's Dogs were held in the Society's facilities for an average period of 54 days, resulting in 2 lost adoptions *per Dog* held by the Society ( $54 \div 23 = 2.3$ ), or a loss of revenue for each Dog held by the Society in the amount of \$540 (2 adoptions x \$270/adoption = \$540) or \$1.48 *per dog* ( $\$540 \div 365 \text{ days} = \$1.48/\text{day}$ ).

...

35. To further explain the Loss of Revenues, cats are adopted out to members of the public for an average adoption fee of \$132.50. The Society holds cats in its shelters for an average period of 63 days before adoption to members of the public for this fee. The Petitioner's Cats were held in the Society's facilities for approximately 269 days, resulting in 4 lost adoptions per Cat ( $269 \div 63 = 4.3$ ) or a loss of revenue for each Cat held by the Society in the amount of \$569.75 ( $4.3 \text{ adoptions} \times \$132.50 \text{ per adoption} = \$569.75$ ) or \$4.72 *per day per cat* ( $\$569.75 \div 365 \text{ days} = \$1.56/\text{day}$ ).

[38] Section 1 of the *Act* states that the purpose of the Society is for the care of animals in distress. The definition of distress is defined in s. 1(2)(a) to (c) of the *Act* inclusive.

[39] Section 20(1) of the *Act* makes an owner of an animal taken into custody by the Society "liable to the society for the costs incurred by the society" for the animal.

[40] Pursuant to ss. 17 and 18 of the *Act*, the Society, under certain circumstances, may sell animals taken into custody.

[41] Section 20(3) of the *Act* permits the Society to retain the proceeds of the sale. Pursuant to s. 20(4) of the *Act*, the owner may claim the proceeds in excess of the costs under s. 20(1) of the *Act*.

[42] The loss of revenue for the sale of the petitioner's cats and dogs is not a cost incurred and not in contemplation of s. 20 of the *Act*.

[43] I conclude that the cost of \$8.00 per cat and \$15.00 per dog is reasonable and reflects the expense the Society incurred.

#### Cost of Seizing the Animals

[44] Section 20(1) of the *Act* is sufficiently broad to permit the Society to seek from the petitioner the cost of seizing the cats and dogs. The petitioner did not seriously dispute this claim. The claims are as follows:

- Dr. Greenwood, a veterinarian, is not an employee of the Society and was required to assess each of the dogs and cats upon the Society taking them

into custody. The Society paid Dr. Greenwood for her services the sum of \$825.00.

- Various employees of the Society seized the animals. This took them away from performing other duties for the Society. This cost of \$303.04 is outlined in para. 44 of Ms. Moriarty's affidavit #1. I find these costs reasonable and necessary for the performance of the Society's duties under the *Act*.

## SUMMARY

[45] I find that the Society has incurred the following sums for the care of the petitioner's cats and dogs pursuant to s. 20 of the *Act*:

Dog boarding (includes a deduction of \$3,600.00 paid by the petitioner in August of 2009):	\$17,310.00
Cat boarding:	\$11,472.00
Veterinarian expenses:	\$4,450.05
Cost of Dr. Greenwood and employees of the Society:	\$1,128.04
<b>Sub-Total:</b>	<b>\$34,360.09</b>
Less amount paid by the petitioner:	<\$285.00>
<b>TOTAL AMOUNT:</b>	<b><u>\$34,075.09</u></b>

[46] Upon the payment of \$34,075.09, the Society will release to the petitioner the balance of the petitioner's dogs and cats in the care of the Society.

[47] If the petitioner does not pay this amount by 4 p.m. on or before April 5, 2010, the Society may dispose of the animals.

[48] The parties may address me as to the issue of costs.

“H.C. Hyslop J.”

HYSLOP J.