

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Simans v. Burnaby (City)*,
2014 BCSC 2442

Date: 20141224
Docket: 147695
Registry: New Westminster

Between:

**Sandra Simans and
Sandra Simans Per 1atatime Rescue Society**

Plaintiffs

And

**City of Burnaby and The British Columbia Society for the
Prevention of Cruelty to Animals**

Defendants

Before: The Honourable Mr. Justice Steeves

Corrected Judgment: Names of Counsel for the Defendants were added on the front page of the judgment on December 31, 2014;

Reasons for Judgment

Self-represented Litigant: Sandra Simans

Counsel for Defendants: B. Yep
V. Knutson
J. Antifaev (Articled student)

Place and Date of Trial/Hearing: New Westminster, B.C.
September 15-19, 22,23, 2014

Place and Date of Judgment: New Westminster, B.C.
December 24, 2014

A. Introduction

[1] The plaintiffs operated an animal shelter in Burnaby, British Columbia. On June 13, 2012 they were being evicted from their shelter (also their residence) for non-payment of rent. At the same time, the defendants seized 52 dogs and 19 cats from the plaintiffs. The defendants also seized the body of a dead cat which the plaintiffs had put in a freezer while they arranged for its cremation.

[2] The plaintiffs attempted to reclaim the animals but without success because the defendants said they could not be assured about the adequacy of new premises rented by the plaintiffs.

[3] On June 27, 2012 the defendants returned 39 dogs and 19 cats to the plaintiffs for transport to a new location in Surrey. Thirteen dogs were not returned; one was euthanized and the rest were put out for adoption by the defendants. The body of the dead cat was not returned and the defendants are unable to locate it. The plaintiffs claim they were harassed by the defendants, the SPCA, while they transported the animals to the new shelter in Surrey.

[4] The plaintiffs claim that the seizure of their animals was unlawful, it constituted a tort of conversion and the *Community Charter Act*, SBC 2003, c. 26, does not authorize the defendant city of Burnaby to make bylaws for the seizure of cats. They seek a number of remedies including return of the dead cat's body, the return of a dog euthanized by the defendant BCSPCA, medical records and other matters. They also seek damages and a permanent injunction for defamation as a result of statements made by the defendants in the media about the seizure of the animals.

[5] The defendants submit that the animals were lawfully seized on June 13, 2012 from the residence of the plaintiffs under the authority of a bylaw of the defendant City of Burnaby and the *Prevention of Cruelty to Animals Act*, RSBC 1996, c. 372 (the "PCAA"). Further, these seizures were done without malice or bad faith and the plaintiffs have not proven the tort of conversion. The defendants deny that any statements made in the media were defamatory because they were either true or reasonably held views on matters of public interest. The defendants

also say they incurred significant medical expenses for care of the seized animals while they were in the care of the defendants.

B. Background

[6] The plaintiffs have operated an animal shelter for dogs and cats since 2005. The plaintiff Sandra Simans is a director of the plaintiff 1atatime Rescue Society. Generally, the plaintiffs take animals that other people do not wish to care for, often as a result of age, injury and disease. Some of the animals are victims of abuse by previous owners. In documents related to the charitable status of the plaintiff 1atatime Rescue Society, the charitable objectives of the Society are placement (adoption) of animals (60%), public education (25%) and spay/neuter advocacy (15%).

[7] The plaintiffs import rescue animals from the United States and from Asia. In 2009 the plaintiffs had about 25 dogs and they had 40 dogs in 2011. As will be seen there were 52 dogs and 19 cats in June 2012, when they were seized. In 2010 the plaintiffs adopted seven dogs to new owners, 5 in 2011 and 5 in the first half of 2012.

[8] The first location of the plaintiffs' shelter was at Pearl Avenue and the second location was at Maitland Street, both in Burnaby, British Columbia. They rented houses at both locations.

[9] The defendant City of Burnaby is a municipality in British Columbia. Among many other things, it passes bylaws to regulate the keeping of animals within Burnaby. Bylaw 9609 is such a bylaw. It restricts the number of dogs to 2 and the number of cats to 4 in a dwelling unit.

[10] The defendant British Columbia Society for the Prevention of Cruelty to Animals ("BCSPCA") is a society created by s. 3 of the PCAA. Under the PCAA the BCSPCA is responsible for ensuring that persons care for animals, including protection from circumstances that are likely to cause an animal to be in distress. An animal is in distress if it is deprived of "adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment or kept in conditions that are unsanitary" (ss. 1(2), 9.1).

[11] Section 7(d) of the PCAA permits the BCSPCA to enter into agreements with government and any municipality “to act as a pound keeper in a defined area in British Columbia.” The BCSPCA has such an agreement with the City of Burnaby and is the pound keeper for Burnaby.

[12] At both the Pearl Avenue and Maitland Street locations of the plaintiffs there were complaints from neighbors about the animals kept by the plaintiffs. Bylaw violations were issued by the City of Burnaby, including ones for keeping more than two dogs at the Maitland Street location, on April 15, 2011, January 27, and March 23, 2012. In July 2011 and March 2012 the City of Burnaby issued bylaw infraction letters to the owner of the Maitland Street property, the landlord of the plaintiffs, with regards to too many animals on the property and operating an unlicensed kennel. A copy of these notices was posted on the front door of the Maitland Street property. The plaintiffs deny ever seeing these notices.

[13] On June 13, 2012 the defendants seized 52 dogs and 19 cats from the Maitland Street residence of the plaintiffs. The plaintiffs demanded the return of the dogs, claiming the seizure was unlawful. They also said that they had an alternate place for the animals in Surrey B.C. and the defendants knew that on June 13, 2012. The defendants accept they knew about the new location in Surrey but they say it was not until June 22, 2012 that they had confirmation that the landlord at that location was willing to take the numbers of animals involved. While the animals were in the custody of the BCSPCA some were adopted to new owners and one was euthanized. The body of a dead cat was also seized by the defendants and they do not know where the body is. It was probably cremated. These issues are discussed below.

[14] On June 27, 2012 the plaintiffs picked up the remaining animals from the defendants and transported them to the plaintiffs’ new location in Surrey. While transporting them the BCSPCA and RCMP intervened. An altercation took place and subsequently a RCMP constable was found to have misused her authority. This is discussed below.

[15] The seizure of the plaintiffs' animals became an issue in the media and the BCSPCA issued press releases and representatives were interviewed. The plaintiffs claim they were defamed by the defendants. This is discussed below.

[16] As of the date of trial, the animals picked up by the plaintiffs on June 27, 2012 remained with the plaintiffs.

C. Analysis

[17] As above there are two broad issues to be considered:

- (a) Did the defendants lawfully seize the 52 dogs and 19 cats at the premises of the plaintiffs on June 13, 2012?
- (b) Did the defendants defame the plaintiffs in their statements to the media?

(a) Seizure of the animals

(i) The evidence

[18] The plaintiffs submit that the defendants unlawfully seized the 52 dogs and 19 cats from their Maitland Street residence on June 13, 2012.

[19] Prior to the seizure of the animals on June 13, 2012 there were the bylaw violations issued to the plaintiffs on April 15, 2011, January 27, and March 23, 2012 for having too many animals at Maitland Street. None of these were disputed and, as demonstrated by the large number of animals on the plaintiffs' premises on June 13, 2012, none of them resulted in compliance by the plaintiffs. Bylaw infraction letters were also sent to the owner of the property, the landlord of the plaintiffs and copies of the letters were posted on the front door of the house. The plaintiffs deny seeing those letters but I find that is unlikely.

[20] Next, Ryan Voutilainen, the manager of the Burnaby branch of the BCSPCA, telephoned the plaintiff Sandra Simans on June 12, 2012 to advise her that she needed to be in compliance with the bylaws and enforcement of them was imminent. It is clear that Ms. Simans knew at that time that she was about to be evicted from the Maitland residence for non-payment of rent. For example, she testified that she told Mr. Voutilainen that she had another location in Surrey.

The evidence is that Ms. Simans did not give Mr. Voutilainen the address of the new location during the June 12, 2012 phone call.

[21] Ms. Simans testified that she was having difficulties with her landlady and she was intending to move in any event. Douglas Hunter, a director with the plaintiff 1atatime Society, testified that he had spent considerable time trying to find an alternate location and he had found one in Surrey that was “perfect” because it was large and away from neighbours. The new landlord was also agreeable to the keeping of animals on the property.

[22] As Ms. Simans explained in her evidence, she awoke the next day, June 13, 2012, to find the bailiff at her door and she was directed to leave forthwith. She did so, having had previous experience with an eviction. She knew that the legal effect of the Writ of Possession executed by the bailiff was that the bailiff took possession of the contents of the house. At or about the same time representatives of the defendants were in attendance, including Mr. Voutilainen.

[23] Mr. Voutilainen advised Ms. Simans to immediately get a truck to take away the animals. She did that and she telephoned Mr. Voutilainen on the way back to say she was on her way. She also told him about the new location in Surrey and she gave him the address during the phone call or at the site immediately afterwards. Ms. Simans arrived at the Maitland Street property expecting to load the animals but they were being loaded by the defendants into a number of vehicles. She was told she could not take the animals and that they were being seized. She was given the opportunity to keep four cats and two dogs, the minimum number of animals under Bylaw 9609 but she declined. In her evidence she explained that she was concerned acceptance of the four animals would be taken to mean she agreed with the seizure of all the animals.

[24] Mr. Voutilainen testified that he conducted an inspection of the house and he was surprised at the number of animals. The place was “generally clean” and the animals had water available. His supervisor, Craig Collis (also the Chief License Inspector for the City of Burnaby at the time) was also at the scene and he testified that his first impression was of a “horrid smell.” Mr. Collis did not know

that Mr. Voutilainen had advised Ms. Simans to get a truck to remove the animals and he did not know that she was not on site but she was returning.

[25] Mr. Collis directed Mr. Voutilainen and other staff to seize the animals. He testified this was for three reasons: there were violations of the bylaw with respect to numbers of animals, the premises appeared to be operating as a kennel and that was a violation of another bylaw and he did not know where the animals were going. On this latter point he did not want the “deplorable conditions” he saw to be moved to some other place and he did not want to pass the problem onto another municipality. He only saw Ms. Simans as he was leaving.

[26] 52 dogs and 19 cats were seized, the operation took all day and it involved a number of people and vehicles. The animals were taken to different locations of the BCSPCA because there was not enough room at the Burnaby location. The defendants provided veterinary care, totaling about \$10,000, for problems such as dental and eye issues. Some animals were ultimately adopted by new owners and one was euthanized.

[27] Mr. Voutilainen also said that the bailiff identified what appeared to be a dead animal in a refrigerator in the house. Mr. Voutilainen found what appeared to be a cat wrapped in a blue cloth in a fridge and there were what appeared to be body fluids on the shelf below, including blood. He decided to remove the object because of concerns it would decompose. He was also concerned that it might be part of a cruelty offence or perhaps a stray cat that belonged to someone other than the plaintiffs. Ms. Simans testified that the animal was her pet cat. It had died after protracted health problems and expensive medical treatment and she was keeping the body until she could afford a cremation.

(ii) Was the seizure authorized?

[28] As above, the defendant BCSPCA is a pound keeper for the City of Burnaby, as authorized under s. 7(d) of the PCAA.

[29] The plaintiffs challenge the presence of the defendants at the Maitland Street residence on June 13, 2012. However, s. 12(g) of Bylaw 9609 authorizes

the defendants, at all reasonable times, to “enter upon any property” in the City of Burnaby “to ascertain whether the number of animals on the property exceeds the number permitted under” Bylaw 9609. Where “excess is found, the pound keeper shall give notice to comply with the Bylaw.” This notice was given by telephone by Mr. Voutilainen to Ms. Simans on June 12, 2012. Ms. Simans also had received previous bylaw violations for keeping too many animals.

[30] I can only conclude that the defendants were authorized to be on the premises at Maitland Street on June 13, 2012.

[31] The plaintiffs also submit that the defendants did not have any legal authority to make the seizures of the animals. This authority is found in two places.

[32] First, as above, on June 13, 2012 the defendants gave the plaintiffs the opportunity to keep 2 dogs and 4 cats (over the age of four months) as permitted under s. 6(2) of Bylaw 9609. The plaintiffs declined that opportunity. In that circumstance the defendants seized the six animals under s. 10.1 of the PCAA as being “found in a rental unit after the expiry of a tenancy agreement in respect to the rental unit.”

[33] Second, the remaining animals were seized under Bylaw 9609. Section 6 sets limits of four cats and two dogs (over the age of four months) at a dwelling unit and s. 9(1)(e) states the defendants “may seize and impound … any dog, cat or other animal harboured or kept or allowed to be kept contrary to section 6.”

[34] In both cases, I conclude that the defendants acted consistent with the PCAA and Bylaw 9609. In the first case, the plaintiffs declined to take the six animals they were entitled to keep and they could not be left at the Maitland Street residence after the plaintiffs had been evicted. In the second case, there is no question the number of animals at Maitland Street was in violation of Bylaw 9609.

[35] The plaintiffs also object to the seizures because Mr. Voutilainen told Ms. Simans to get a truck to move the animals and that is what she did. While returning with the truck Ms. Simans telephoned Mr. Voutilainen to tell him she

was returning. She testified that she told him the address of her new location in Surrey. In his evidence Mr. Voutilainen said he remembered the call from Ms. Simans but he could not recall if he was told the new address.

[36] It is clear that things were frantic with the bailiff on site as well as the defendants and then Ms. Simans rushed off to get a truck. I accept that Ms. Simans told Mr. Voutilainen that she had another location for the animals (as she had in the telephone conversation the day before). I also accept that she gave Mr. Voutilainen the address.

[37] Upon arrival back at the Maitland Street house with the truck, Ms. Simans expected to load the animals and leave. However, when she returned things had progressed to the point where the defendants were loading all of the animals. She asked about taking them and she was told the defendants were taking them. She was offered four cats and two dogs to keep, those numbers being permitted under s. 6 of Bylaw 9609. Ms. Simans declined for fear that she would be taken to have agreed to the seizure of all of the animals.

[38] The reason for the defendants' decision on site to seize the animals was that they did not expect the numbers of animals they found or the medical condition of some of the animals. With respect to the numbers, again, 52 dogs and 19 cats were seized. However, these numbers were not known until the defendants attended on June 13, 2012 and they could see all the animals. Prior to then the animals had apparently been kept inside most of the time so the numbers were not obvious.

[39] There can be no question that, on June 13, 2012, the plaintiffs were in breach of s. 6(1) and s. 6(2) of Bylaw 9609 which limits the number of cats in a dwelling unit to four and the number of dogs to two, respectively. And it was a major operation to load all the animals and then distribute them to different shelters because the Burnaby shelter could not hold them all. The plaintiffs expected to remove the animals when Ms. Simans returned with a truck but events beyond the control of the defendants meant that could not happen.

[40] As to the medical condition of the animals, according to the defendants, they were required to spend about \$10,000 to treat some of the animals. The

plaintiffs dispute and object to this evidence but I find it is one way to measure the condition of the animals when they were seized. Ultimately, one animal had to be euthanized and the plaintiffs strongly object to this decision.

[41] However, the plaintiffs have a strong opinion against euthanasia. In her evidence Ms. Simans did not rule it out in some extreme cases but it is clear that she takes some considerable pride in caring for animals that other agencies would consider as candidates for euthanasia. Indeed, Ms. Simans presents her position as something of a noble undertaking. I accept the evidence, including veterinary evidence, of the BCSPCA that euthanasia was justified in the case of the one animal for medical reasons and also because it exhibited aggression over a period of time. It is true that an earlier posting for the dog said he would be a good pet. But that was with the condition of “the right home”, the posting was done at an early stage and it was done before a full assessment.

[42] Overall, the suggestion by Mr. Voutilainen that Ms. Simans get a truck to remove the animals was well intentioned but, unfortunately, it was overtaken by events on the ground when the defendants fully understood the situation at Maitland Street. It was not the actions of the defendants that caused this situation but the large numbers of animals that required the defendants to act in the way they did. The numbers were well in excess of the permitted number and unknown by the defendants until they arrived on the scene. The plaintiffs claim that the defendants were estopped from seizing any animals because of the statements of Mr. Voutilainen. However, as a general rule, municipal rights, duties and powers, including the duty to carry out the provisions of a statute, are of such a public nature that they are not waived by mere acquiescence, laches or estoppel (*Langley (Township) v. Wood*, 1999 BCCA 260 at para. 12).

[43] The plaintiffs raise other issues related to the defendants’ authority to seize animals.

[44] The plaintiffs claim that the *Community Charter Act* does not authorize the defendant City of Burnaby to make bylaws with respect to the seizure of cats except in narrow circumstances. A first problem with this claim is that s. 262 of the *Local Government Act*, RSBC 1996, c. 323, requires an application to court under s. 262 to set aside a bylaw, or a portion of a bylaw, for illegality. Further, s.

262(3) requires notice to be given to a municipality “at least 10 days before any hearing and not more than one month after the adoption of the bylaw.” Assuming the claim of the plaintiffs is an application under s. 262 there remains a problem that the notice required has not been given. Further, Bylaw 9609 was enacted in 1991 with an amendment relating to animals in 1996. Therefore, the one month period in which to challenge Bylaw 9606 is well past.

[45] The plaintiffs also say the tort of conversion applies to the seizure of the animals. However, that tort involves the wrongful interference with goods of another who had the legal possession of the goods (*373409 Alberta Ltd. (Receiver of) v. Bank of Montreal*, 2002 SCC 81 at para. 8). In this case the plaintiffs did not have lawful possession of the animals because of the operation of the PCAA and Bylaw 9609, as discussed above, and probably as a result of the Writ of Possession as well. Similarly, the plaintiffs’ claim that the defendants’ actions were an abuse of power must fail because the defendants acted within valid legislation and bylaws. And the claim that the *Community Charter Act*, SBC 2003, c 26 prevents the seizure of cats by the defendants is to ignore the PCAA and Bylaw 9609. Finally, the claim that the defendants violated s. 8 of the *Canadian Charter of Rights and Freedoms*, 1982 must also fail since it is a reasonable search and seizure to enforce the valid provisions of the PCAA and Bylaw 9609. I might add that the issues in this paragraph were described in the plaintiffs’ Notice of Claim in the very briefest terms and they were not mentioned in argument.

[46] For the above reasons, I conclude that the plaintiffs’ claim that the defendants’ seizure of the plaintiffs’ animals on June 13, 2012 was an unauthorized seizure of the animals must be rejected.

(ii) *Events following June 13, 2012*

[47] There are then the events following the June 13, 2012 seizure. These include the notices given by the defendants to the plaintiffs, the new location of the plaintiffs and the attempts by the plaintiffs to get the animals returned to them (which were ultimately successful). The plaintiffs claim that the animals should not have been seized at all and I have discussed that above. They also claim that

the animals should have been returned much sooner than the date they were returned, June 27, 2012.

[48] With respect to notice, the PCAA and Bylaw 9609 each require certain procedures, including notices, to be carried out following the seizure of animals. These notices also trigger certain rights of, in this case, the plaintiffs, including the opportunity to reclaim the seized animals.

[49] As above, the animals seized on June 13, 2012 fall into two categories. First, there are the four cats and two dogs (over the age of four months) that the plaintiffs were entitled to keep. However, the plaintiffs declined to do so and they were then seized under the PCAA as being found in a rental unit after the expiry of the tenancy agreement for the unit. Second, the remainder of the animals were seized under Bylaw 9609 because they numbered more than the permitted number under the Bylaw.

[50] Different notices apply to each of these categories.

[51] Under the PCAA (for the four cats and two dogs seized), s. 17 requires notice to the known owner and a four day time period must pass before the BCSPCA can destroy, sell or otherwise dispose of an animal:

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
 - (i) must give to the owner notice, in accordance with section 19, that the society may destroy, sell or otherwise dispose of the animal and that a review of the decision may be requested under section 20.2, and
 - (ii) may, no earlier than 4 days after giving notice, destroy, sell or otherwise dispose of the animal.

[52] In this case the owner was known and a letter was sent to the plaintiffs on June 14, 2012:

NOTICE OF DISPOSITION

Pursuant to Section 17(b) of the Prevention of Cruelty to Animals Act

Date: June 14, 2012
Notice to: Sandra Simans
Address: 5505 Maitland Street
Burnaby, B.C. V5H 1N6
Telephone: [deleted for privacy reasons]

This notice is to advise that the animals(s) taken into custody on (June 13, 2012) pursuant to Section 10.1 of the *Prevention of Cruelty to Animals Act*, RS CHAP, 372 (the "Act") will be disposed of as provided for in the Act, Section 17(b) of the Act authorizes the Society to destroy, sell or otherwise dispose of the/these animal(s) 4 days after notifying the owner. As prescribed in the Act, the Society intends to exercise these disposal provisions 4 days after mailing, posting at last known address of owner 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 Special Provincial Constable Dean Edmonds.

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),

IMPORTANT

Please note that pursuant to section 19.1 of the Act that if an animal has been sold or otherwise disposed of under section 17 or 18, all rights and interests in the animal

- (a) **vest in the person to whom it has been sold or otherwise disposed of, and**
- (b) **the former owner ceases to have any of those rights and interests.**

Description of animal(s):

Species	Sex	Breed Colour
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2 Dogs		
4 Cats		

[Reproduced as written]

[53] As can be seen, the plaintiffs were given notice that the BCSPCA was invoking s. 17(b) and this meant that the BCSPCA could destroy, sell or otherwise dispose of the six seized animals. However, Ms. Simans was given the opportunity to dispute this notice within the four day time period in s. 17(b)(ii). She was also advised that s. 20 of the PCAA requires the payment of the costs incurred by the BCSPCA prior to the return of seized animals. No dispute was filed by the plaintiffs within that time period; it therefore expired on June 19, 2012. No fees were paid.

[54] The PCAA does not specifically say that the BCSPCA owned the six animals after the expiry of the four day notice period but it is clear that the PCAA authorizes the BCSPCA to dispose of the animals after four days (s. 17(b)(ii)). It is also clear that the plaintiffs knew from the notice of June 14, 2012 that the animals could be destroyed, sold or otherwise disposed of. It was in the control of the plaintiffs to dispute the notice and pay the costs incurred by the defendants. The plaintiffs did not take this opportunity and they were entitled to make that decision. However, they cannot now object that the defendants have done what they said they would do and what they were authorized to do.

[55] I note that, as described in the June 14, 2012 Notice of Disposition, after end of the notice period in Bylaw 9609, the six animals that would have been available to the plaintiffs came under the PCAA. That is, after the expiry of the notice period in Bylaw 9609, all of the animals came under the PCAA.

[56] The remaining animals were seized and disposed of under Bylaw 9609 because they numbered more than the two cats and four dogs (over the age of four months) permitted under Bylaw 9609.

[57] With regards to these animals, s. 9(3) of Bylaw 9609 states that "The pound keeper shall keep every impounded animal or poultry in the pound for at least 72 hours after seizure, unless sooner reclaimed as herein provided." In order to reclaim an animal ss. 9(5), (6), (7) and (8) apply:

9(5) The owner of an impounded animal or poultry other than a vicious dog may reclaim the animal or poultry by providing personal identification, identifying the animal being claimed and

- (a) applying to the pound keeper at the pound when the same is open for business and before the expiration of 72 hours after seizure;
- (b) providing proof of ownership of the dog or other animal or poultry
- (c) paying an impoundment fee as specified in Schedule "B" at the time of applying for the release of the animal;
- (d) paying the current licence fee, if any, and if not already paid; and
- (e) paying a maintenance fee as specified in Schedule "C" for each day or part of a day that the dog, horse, mule, ass, cattle, sheep, goat, swine, rabbit, monkey, guinea pig, gerbil, hamster, mouse, rodent or other animal or poultry is impounded.

(6) If the owner does not reclaim a dog or other animal or poultry within the time provided in subsection (5), the pound keeper may forthwith sell or otherwise dispose of the dog or other animal or poultry; but an owner may reclaim a dog or other animal or poultry after the expiry of the time

provided in subsection (5) if the animal has not been disposed of by the pound keeper.

(7) Notwithstanding subsection (6), the pound keeper shall not release any dog or other animal or poultry to any person or institution for use in scientific or medical research.

(8) Before releasing any animal that was impounded because of a contravention of section 6 restricting the number of animals that may be harboured or kept in a dwelling unit, the pound keeper shall be satisfied that the number of animals that may be kept at that dwelling unit will not be exceeded.

[58] Returning to the evidence, on June 14, 2012 Mr. Voutilainen had a telephone conversation with Ms. Simans. It is referenced and summarized in his letter of June 15, 2012 which also set out the procedures for the return of the animals:

Dear Ms. Simans,

I am following up in writing on what has already been explained to you verbally at the time of removal of the animals and during subsequent conversations.

On Wednesday 13 June 2012, the BC SPCA, contracted as Poundkeeper for the City of Burnaby, entered 5005 Maitland St, Burnaby, BC as the home owner had a Writ of Possession for the property. This Writ was being enforced and the BC SPCA was invited on the property by the bailiffs.

As you were a resident in the time, you were permitted 2 dogs and 4 cats as stated in City of Burnaby Bylaw No. 9609, (Burnaby Animal Control Bylaw 1991), Section 6 (2), No owner or occupier of a dwelling unit shall harbour or keep or allow to be kept in the dwelling unit

- a) more than two dogs over the age of four months, or
- b) more than four cats over the age of four months.

And according to Section 9(1)(e), the pound keeper may seize and impound any dog, cat or other animal harboured or kept or allowed to be kept contrary to section 6; (BYLAW #10387)

As a result, 47 dogs and 13 cats were seized and impounded from 5005 Maitland St, Burnaby pursuant to the bylaw with the BC SPCA departing the property just prior to 5pm on Wednesday 13 June 2012.

Upon seizure, Section 9(3) states, the pound keeper shall keep every impounded animal or poultry in the pound for at least 72 hours after seizure, unless sooner reclaimed as herein provided.

If claimed within the 72hours, pursuant to Section 9(5), the owner of an impounded animal or poultry other than a vicious dog may reclaim the animal or poultry by providing personal identification, identifying the animal being claimed and

- a) applying to the pound keeper at the pound when the same is open for business and before the expiration of 72 hours after seizure;

- b) providing proof of ownership of the dog or other animal or poultry;
- c) paying an impoundment fee as specified in Schedule "B" at the time of applying for the release of the animal;
- d) paying the current licence fee, if any, and if not already paid: and
- e) paying a maintenance fee as specified in Schedule "C" for each day or part of a day that the dog, horse, mule, ass, cattle, sheep, goat, swine, rabbit, monkey, guinea pig, gerbil, hamster, mouse, rodent or other animal or poultry is impounded.

(6) If the owner does not reclaim a dog or other animal or poultry within the time provided in subsection (5), the pound keeper may forthwith sell or otherwise dispose of the dog or other animal or poultry; but an owner may reclaim a dog or other animal or poultry after the expiry of the time provided in subsection (5) if the animal has not been disposed of by the pound keeper.

Based on the above, effective Saturday 16 June 2012 at 5pm, it is the intention of the BC SPCA, as Poundkeeper for the City of Burnaby, to begin rehoming those animals, unless you can provide us with the information of a location where your animals can be properly housing, while being compliant with all applicable bylaws in the municipality in which that new property is located.

The above noted information was relayed to you on 14 June 2012 at 10:46am, during a telephone conversation between you and myself. I will add that although I said none of the animals would be released until examined by a vet, the 72hours to find a new location before we begin rehoming remained the same.

The remaining 2 dogs and 4 cats were subsequently removed pursuant to Sec 10.1 of the Prevention of Cruelty to Animals Act.

On 15 June 2012, SPC [special provincial constable] Mead met with you and during that time you were issued a Notice of Disposition issued pursuant to Sec of the Prevention of Cruelty to Animals Act (the "PCA Act") for the remaining 2 dogs and 4 cats which were removed. At the time you were issued the letter, you were provided the opportunity to determine which 2 dogs and 4 cats you wanted to reclaim. As you did not provide which 2 dogs or 4 cats you wanted back, the BC SPCA will make that determination. You have until Tuesday, June 19th at 5 pm to make application in writing to Marcie Moriarty as per instructions on the bottom of the Notice of Disposition. Submissions can also be made via email at mmoriarty@spca.bc.ca. Please note you are responsible for the costs of caring for the animals as set out in the PCA Act and/or the bylaw.

[Reproduced as written]

[59] The evidence also includes correspondence between the plaintiffs and the defendants. For example, Ms. Simans wrote a letter to the BCSPCA on June 19, 2012 in reply to the latter's letter of June 15, 2012. It set out the plaintiffs' concerns about having to rent a truck on June 13, 2012 to remove the animals

(as suggested by Mr. Voutilainen) but then to be told all the animals were going to be seized. It also set out the conversation Ms. Simans had with Mr. Voutilainen about the plaintiffs' new location.

[60] A second letter was sent by the plaintiffs to the BCSPCA on June 24, after the expiry of the notice period under s. 17 of the PCAA. This letter questioned the lawfulness of the seizure of the animals. Ms. Simans also wrote a letter of complaint to the mayor of the City of Burnaby on June 25, 2012.

[61] The plaintiffs plainly wanted the return of the animals but, significantly, they did not make application for their return as described in Mr. Voutilainen's letter of June 15, 2012. As described above, that application would have required payment of fees, among other things. I can only conclude that the defendants acted within their authority with respect to giving the plaintiffs the opportunity to reclaim the seized animals.

[62] In the absence of a response from the plaintiffs, the defendants could only do what the PCAA describes and what they advised the plaintiffs they would do. That is, under s. 17(b)(ii), the animals could be destroyed, sold or otherwise disposed of. It follows that the plaintiffs' objection to 12 dogs being adopted out by the BCSPCA must be rejected.

[63] The plaintiffs also point to the fact that most of the adoptions took place on June 25 and 26, 2012. They suggest that there was a rush to adopt the animals just before they were returned to the plaintiffs on June 27, 2012. An email to BCSPCA staff from Mr. Voutilainen dated June 26, 2012 directed that no other dogs were to be adopted and the ones in foster care were to be returned that day, June 26, 2012. From this I take it that the BCSPCA made efforts to stop the adoptions prior to the release of the animals back to the plaintiffs. Further, other than the plaintiffs' suspicion, there is no evidence that the adoptions were done to reduce the number of animals that would be returned to them.

[64] As a final point on the animals that were adopted out by the BCSPCA, I note s. 19.1 of the PCAA. It states that, once an animal has been sold or disposed of under s. 17, all rights and interests in the animal vest in the new owner and the former owner ceases to have any of those rights and interests.

[65] There is then the dead cat that was seized by the defendants on June 13, 2012. As represented by photographs in evidence this animal was wrapped in a towel or blanket and found in a fridge at the Maitland Street residence on that day. On the shelf below the body were blood and other stains. According to Ms. Simans, she was keeping the body until she could afford a cremation. Mr. Voutilainen testified that he was told about the cat by the bailiff and he seized the dead animal after getting advice from his supervisor. It was seized so it would not decompose and, at the time, there was a question as to whether it might be evidence in an investigation into a cruelty charge. As well, it might have been a stray cat belonging to someone other than the plaintiffs. I conclude that the dead cat was seized for valid reasons.

[66] In any event, the dead cat was a chattel in the Maitland Street house and it was lawfully seized by the bailiff, as were all chattels. As Ms. Simans testified she is aware of this because of her previous experience with evictions. It was then given to the defendants for the reasons described above. I can only conclude that the lawful seizure of the dead cat by means of a Writ of Possession ended any rights the plaintiffs had over the dead cat. The result is that, having not paid the rent on the Maitland Street property, the plaintiffs left themselves vulnerable to the lawful seizure of all chattels, including the dead cat.

[67] It is quite unfortunate that the BCSPCA has lost the body of the cat but at that point it was not the property of the plaintiffs. I also conclude that the tort of conversion does not assist the plaintiff because they did not have lawful possession of the dead cat when it was seized (*373409 Alberta Ltd. (Receiver of)* at para. 8). Nor does a duty of care arise under the tort of negligence for essentially the same reasons. I add that these two arguments were not raised by the plaintiffs and I have briefly considered them out of completeness in the case of an unrepresented litigant.

(iv) *Return of the animals*

[68] On June 27, 2012 the plaintiffs retrieved their animals from the BCSPCA and took them to their new location in Surrey. As described above the plaintiffs had been pressing for this since June 13, 2012 but they had not taken the

opportunities available to them under the PCAA and Bylaw 9609 to reclaim the animals.

[69] The plaintiffs were advised they could retrieve the animals by a letter dated June 25, 2012 from the BCSPCA. It described the “informed consent” of the landlord of the new location in Surrey being received on June 22, 2012. The full letter is as follows:

Dear Ms. Simans,

Re: Removal of 50 dogs and 12 cats pursuant to s. 9(1)(e) of City of Burnaby Bylaw No. 9609 (the "Bylaw") and removal of 6 animals pursuant to Section 10.1 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c.372 (the "PCA Act") from 5005 Maitland Avenue, Burnaby, BC on June 13, 2012 ("Maitland Property").

I am writing to acknowledge your request for return of all of the animals that were removed from the Maitland Property after you had been evicted. As was previously explained to you, the BC SPCA was prepared to return animals to your custody after we received confirmation that you had a property on which to house the animals, and if you were not the owner of that property, the informed consent of a landlord to keep a specific number of animals. We received confirmation after the close of business on Friday, June 22, 2012, from [name deleted], owner of the property located at [address deleted], Surrey, BC (the "Surrey Property"), that you had permission to house up to 20 animals on the Surrey Property.

As such, we are providing you with notice that you may redeem the following:

- a) 2 dogs and 4 cats removed from the Maitland Property pursuant to the PCA Act after paying the costs of care owed pursuant to section 20 of the PCA Act. Those costs include a \$15 per day boarding fee for the dogs and \$10 per day boarding cost for the cats, plus any medical costs that the Society has incurred in caring for those animals; and
- b) 14 other animals (cat or dog) that were removed from the Maitland Property pursuant to the Bylaw after paying the costs owed as set out in the Bylaw.

Please contact Ryan Voutilainen to provide him with a list of the animals that you seek to have returned. The Society will continue to care for and seek homes where appropriate for the animals that currently remain in our custody. Your choice of animals will be confined to the animals that remain in our custody at the time when you provide your list to Mr. Voutilainen, thus there is some urgency to your decision.

[Reproduced as written; emphasis in original]

[70] The difference between the number of animals seized and the number of animals referenced in this letter is explained by the adoptions carried out by the

BCSPCA and the one animal that was euthanized. As well, the BCSPCA waived the fees that could have been charged to the plaintiffs.

[71] According to the plaintiffs, the primary difficulty up to this point was the alternate location of the plaintiffs' residence in Surrey. They say that the defendants knew about this location, including the address, on June 13, 2012 at the latest. I have concluded above that is correct and the defendants do not take serious issue with that fact.

[72] The problem, however, was not the address. As described in the above letter of June 25, 2012 the problem was confirming that the landlord in Surrey had given permission to house the number of animals that the plaintiffs wanted to house there.

[73] The evidence on this point is that the plaintiffs say they had a firm rental agreement for the Surrey property before the seizures on June 13, 2012, although they are unable to provide any document to support that agreement. Apparently, the landlord was flexible about when the move could take place and the date was accelerated when the animals were seized. The BCSPCA investigated the Surrey location in order to ensure that the problems in Burnaby of too many animals and complaints from the landlord and neighbours were not going to be repeated in Surrey. The plaintiffs say that the BCSPCA had no jurisdiction in Surrey but that is not the case. As well, while it is true that the plaintiffs continually insisted on the return of the animals after the June 13, 2012 seizure, it is also true that the BCSPCA continually insisted on information about the Surrey location. I conclude that the BCSPCA acted appropriately in this regard.

[74] On June 19, 2012 the landlord of the Surrey location wrote the following: "To whom it may concern":

This is to verify that Sandra Simans has entered into a tenancy agreement at [address deleted]. I am aware that a fluctuating number of rescued animals will be residing on the property while going through the adoption process.

[75] This apparently was received by the BCSPCA on June 22, 2012 and it was the basis of the decision recorded in the above letter of June 25, 2012 to permit the plaintiffs to retrieve the remaining animals.

[76] The plaintiffs object to the lateness of this decision. A major component of that objection is that the plaintiffs say the defendants did not have any authority to seize the animals on June 13, 2012. As described above, I disagree. In addition, in the absence of any application by the plaintiffs under s. 17 of the PCAA for return of the animals within the stated time periods or under s. 9(5) of Bylaw 9609, the defendants had the broad authority to dispose of the animals (including their adoption and destruction). Clearly, the BCSPCA was not prepared to dispose of the animals by returning them to the plaintiffs until the investigation of the Surrey location was complete. I can find no basis for interfering with that decision.

[77] There is then the actual transportation of the animals by the plaintiffs from the BCSPCA location in Vancouver to the plaintiffs' new location in Surrey. According to the plaintiffs, the defendants harassed and interfered with them during this process.

[78] As above the evidence on this point is that the plaintiffs attended at the BCSPCA location in Vancouver with at least one truck and other vehicles. Ms. Simans and some volunteers did the loading and driving. The animals were in crates, they were loaded in the truck and the plaintiffs drove to Surrey, leaving about 9:30 PM on June 27, 2012. They were given an order by the BCSPCA to take one animal immediately to a veterinarian and they did that.

[79] After that, according to the plaintiffs, a vehicle started to follow them and at one point cut them off. A special constable with the BCSPCA was following the plaintiffs but she denied any unsafe interference. Her instructions were to follow and confirm the location of the plaintiffs' place in Surrey. That is a valid reason in light of the difficulty the BCSPCA had confirming the Surrey location and that the landlord was amenable to receiving the animals.

[80] As for the allegation that the constable drove unsafely and even aggressively I do not agree with the plaintiffs that this took place. The whole affair

was clearly fraught with tension among the plaintiffs and volunteers from the time the animals were picked up and I conclude that anything unusual or seen as interference would have been interpreted in an exaggerated manner by the plaintiffs.

[81] At one point, at about 11:00 PM, the plaintiffs pulled over to stop at a location in Burnaby. The constable testified that she was concerned with the condition of the animals in a closed truck on a warm night. She and/or Ms. Simans called the RCMP who attended about 11:15 PM. The plaintiffs were ordered to open the truck and remove a number of animals. According to the evidence of the BCSPCA constable this was because of concerns that the animals were in a closed truck for a long period of time on a warm night and without water. The plaintiffs were ordered to take fewer animals on more trips and all the animals were finally at the Surrey location by 6:30 AM the following day.

[82] During these events a series of unfortunate exchanges took place between the plaintiffs on the one hand and the BCSPCA and the RCMP on the other. Ultimately a complaint was made to the RCMP by the plaintiffs against Constable Fox of the RCMP. An investigation took place and a report was issued on July 29, 2013. The findings included the following, addressed to Ms. Simans:

You attended at the veterinarian's and later to proceed to Surrey. On route the whole time you noticed that you were being followed by two persons in a dark coloured SUV. You did not recognize anyone and as a result, you phoned the police, Burnaby RCMP to report a suspicious occurrence. Sometime later two male RCMP attended along with Constable Fox. When Constable Fox attended, she did not speak to you, and never did address the complaint of the suspicious occurrence. Constable Fox ordered your volunteers to open up the truck having a negative attitude and being rude with them. They complied with her request and opened up the truck. Constable Fox observed the animals in the cages and method of the load securement and took exception to load. Constable Fox ordered the cages be removed and inspected. Constable Fox then ordered, that only a few cages could be taken, leaving the others at the road side. The rest of them where much later loaded in the truck and taken away. You were stopped at 11:00 pm and the last of the animals were taken away at 6:30 am the following morning.

[83] The specific findings of the investigation were that Constable Fox did not use her authority in an appropriate manner and she displayed an improper attitude. An apology was offered on behalf of the RCMP and the matter was

raised with Constable Fox. The plaintiffs say the BCSPCA constable also conducted herself inappropriately and improperly. However the evidence does not support that assertion.

[84] Overall, it was undoubtedly a long and difficult transportation of the animals to Surrey on June 27, 2012. The plaintiffs were plainly upset with what they perceived as more unjust interference with how they managed their animals and this followed what they considered to be the unlawful seizure on June 13, 2012. However, I accept the evidence of the BCSPCA constable that there were reasons for inspecting the animals on route and for ordering changes to the numbers of animals to be transported at one time.

[85] I conclude that the evidence does not support the plaintiffs' claim that they were harassed when they were transporting the animals on June 27, 2012.

(b) Defamation

[86] The plaintiffs' claim in defamation arises from six statements made by the defendants which are discussed in detail below.

[87] For each of the alleged defamatory statements, the plaintiffs are required to prove three elements (*Grant v. Torstar Corp.*, 2009 SCC 61 at para. 28):

- (a) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiffs' reputation in the eyes of a reasonable person;
- (b) that the words in fact referred to the plaintiffs; and
- (c) that the words were published, meaning they were communicated to at least one person other than the plaintiff.

[88] The law of defamation also requires exact words to be plead (*Central Minera Corp. v. Lavarack et al*, 2001 BCSC 349 at paras. 12, 14).

[89] The defendants do not dispute that the impugned words referred to the plaintiffs; therefore, sub-paragraph (b) above is not an issue.

[90] The defendants do raise the defences of justification and fair comment. With respect to justification the following applies:

[172] What is required to be proven is not the truth of each and every word or the literal truth of the statement, but rather the truth of the substance of the allegation or the sting of the charge ...

[173] Where the gist or sting of the charge is proven to be true, minor inaccuracies do not defeat the defence of justification ... Conversely, if the overall impression of the publication is false, the defence fails even if some or even all of the literal words are proven to be true. Half-truths can be just as damaging as outright falsehoods, and their effect may be even more severe because they can be more difficult to explain.

(*Popat v. MacLennan*, 2014 BCSC 1601 at para. 24; citing *Cimolai v. Hall et al*, 2005 BCSC 31, aff'd 2007 BCCA 225 (citations omitted))

[91] The elements of fair comment are as follows (*WIC Radio Ltd. v. Simpson*, 2008 SCC 40 at para. 28):

- (a) the comment must be on a matter of public interest;
- (b) the comment must be based on fact;
- (c) the comment, though it can include inferences of fact, must be recognized as comment;
- (d) the comment must satisfy an objective test: could any person honestly express that opinion on the proved facts? and
- (e) even though the comment satisfies the objective test, the defence can be defeated if the plaintiff proves the defendant was actuated by express malice.

[92] The defendants bear the burden of proving the first four elements. The onus then shifts to the plaintiffs to show express malice to defeat the defence of fair comment (*WIC Radio Ltd.* at para. 52).

[93] Turning to the evidence, the alleged defamation in this case is contained in a number of statements. There is a suggestion by the defendants that the plaintiffs engaged the media and essentially were responsible for the various exchanges. However, that suggestion has not been made out in the evidence.

[94] The following statements are at issue. I include my discussion of the merits of each allegation and a discussion of the defences of justification and fair comment.

(i) June 22, 2012 Press Release

[95] On June 22, 2012 the BCSPCA issued a press release titled, “City of Burnaby and BC SPCA remove 68 animals from Burnaby home.” The following statement was made:

The Burnaby resident in question is an animal rescuer who *appeared to have been taking in more animals than she could provide care for*. “This is a clear case of a rescue organization that perhaps meant well, but *became overwhelmed by the number of animals*,” says Bob Busch, general manager of operations for the BC SPCA.

[emphasis added]

The plaintiffs’ objection is to the references to “taking in more animals than she could provide care for” and being “overwhelmed by the number of animals.”

[96] There is no dispute that the plaintiffs are an animal rescue organization or that they mean well in their endeavours. In addition, it is clear that the words were published to more than one person. And I accept that the reputation of an animal shelter would be affected if the public perception was that it was overwhelmed by the animals in its care. Therefore, the words would tend to lower the reputation of the plaintiffs in the eyes of a reasonable person.

[97] Are the statements saved by the defences of justification or fair comment?

[98] The evidence about the number of animals begins with the 52 dogs and 19 cats seized on June 13, 2012. Clearly, the defendants were surprised by that number. And it is clear that the defendants were overwhelmed by the work on that day as evidenced by being on site for a long day and having to disperse the animals to different shelters because the Burnaby shelter could not handle the numbers involved. The evidence is also that the plaintiffs were managing about ten times the number of animals that the Burnaby shelter of the BCSPCA would have on site at any one time.

[99] The care provided by the plaintiffs was primarily by Ms. Simans with part-time volunteers. Mr. Voutilainen's evidence was that the animals were calm and had water available. However, his supervisor, Mr. Cullis, testified that the Maitland Street house had a horrid smell when he inspected it on June 13, 2012. And there is the evidence of the dead cat in the fridge because the plaintiffs could not arrange for a cremation.

[100] There is also the evidence about the significant veterinary care provided by the defendants after the seizure, totalling about \$10,000. This was for things like dental care and eye treatments. The BCSPCA decided that one dog had to be euthanized and I have found above that decision was reasonable because of the health of the dog and because it demonstrated aggression (after being given a chance to settle into its new surroundings).

[101] Overall, I conclude that the reference in the media to the plaintiffs being overwhelmed by the numbers they were caring for was substantially true and the plaintiffs' claim of defamation because of this statement is denied.

(ii) *June 25, 2012, News Story (Metro Vancouver)*

[102] There is a news story dated June 25, 2012 with the headline "Fifty-two dogs and 16 cats seized from a Burnaby home earlier this month are being returned to Sandra Simans who rescues special needs animals [the numbers of animals is not correct]." The plaintiffs object to the following statements in that story that were attributed to Bob Busch, the general manager of operations of the BCSPCA:

"This is a very sad case where a *rescue hoarder* took in far more animals than she [Ms. Simans] was capable of properly caring for and was not meeting the financial responsibilities of housing or caring for the animals"

"Many of the animals we took into care from Ms. Simans were extremely sick, injured and emaciated and were not getting the urgent veterinary care they needed."

[emphasis added]

[103] Again, the defendants accept that Mr. Busch made the comments in the story. I have found above that it is substantially true that the plaintiffs were overwhelmed by the numbers of animals in their care. As well, it seems clear that

the plaintiffs had financial difficulties as evidenced by the delay in cremating the dead cat. And, again, the animals required significant veterinary care immediately after being seized.

[104] The plaintiffs take some exception to being described as an “animal hoarder.” Mr. Busch testified that he considered an animal hoarder to be someone who collects animals and is not able to let them go. On this point, the plaintiffs say they are in the business of adopting animals and, according to its charitable objectives, this is 60% of their activities. However, the evidence is that seven dogs were adopted from the plaintiffs in 2010, five in 2011 and five in the first half of 2012. In light of the 71 animals in the care of the plaintiffs on June 13, 2012 it seems clear that adoptions are not a significant activity of the plaintiffs. The evidence is also that the Maitland Street house was essentially fully occupied with the animals with, for example, the living room taken over by animal crates and the kitchen used for their feeding.

[105] As well, it is clear that Ms. Simans is very emotionally attached to the animals, including weeping during her evidence and during her cross-examination of the defendants’ witnesses. She considers agencies such as the BCSPCA as being disrespectful of animals because they, for example, use euthanasia too quickly and too frequently. In her evidence she was hard pressed to contemplate euthanasia as necessary for the animals in her care.

[106] There is an element of obsessiveness in Ms. Simans’ care of her animals and this includes not being able to let go of animals she takes in. I conclude that the reference by the BCSPCA to her being a rescue hoarder was fair comment. The plaintiffs’ claim for defamation for this statement is denied.

(iii) *June 25, 2012: News Story (Vancouver Sun)*

[107] In a news story published June 25, 2012 the *Vancouver Sun* published a story titled, “SPCA seizes special needs animals rescued by woman.”

[108] The story says, among other things, that “some of [Ms. Simans’] rescues had been beaten and tortured” and there is reference to one animal with a distended abdomen “with what the SPCA believes to be a shot gun pellet.”

[109] Ms. Simans wrote an email to the mayor of the City of Burnaby complaining that the press story included “allegations of suffering, cruelty, and neglect” against the plaintiffs. She said the allegations were unwarranted and untrue and she demanded a retraction. There is no evidence of a reply.

[110] I conclude that the plaintiffs misread this story. It does not say that the plaintiffs beat, tortured or otherwise mistreated the animals in their care. On the contrary, the story recognizes the work the plaintiffs do to care for animals that suffer from these injuries. It follows that there can be no defamation in these circumstances.

(iv) June 26, 2012, Press Release

[111] In another press release dated June 26, 2012 the BCSPCA made the following statements:

...

“This is a very sad case where a rescue hoarder took in far more animals than she was capable of properly caring for and was not meeting the financial responsibilities of housing or caring for the animals,” says Bob Busch, general manager of operations for the BC SPCA. “The City of Burnaby gave her more than a year of extensions to find a new situation even though she was in violation of city bylaws and her landlord gave her numerous extensions after she stopped paying rent, but the situation just couldn’t go on any longer.”

He said the BC SPCA has always made it clear to Ms. Simans that she could claim the animals at any time once she had a location where the animals could be properly cared for. “She contacted us to say she has found a landlord in Surrey who will allow her to house some of the animals on his property and *we advised her that she can claim the animals at any time.*” Any animals not claimed by Ms. Simans will be available for adoption into new loving homes through SPCA shelters. “Since the animals are rescue animals, not pets, we assume Ms. Simans will be happy with this outcome for the animals,” says Busch.

While the BC SPCA is returning the animals to Simans, who runs an organization called 1atatime, Busch says the BC SPCA will be closely monitoring the welfare and safety of any animals that are returned.

“Many of the animals we took into care from Ms. Simans were extremely sick, injured and emaciated and were not getting the urgent veterinary care they needed,” he says. “The BC SPCA has spent more than \$10,000 in emergency veterinary costs on these animals so far and there will be significant ongoing medical costs for many of the animals before they are ready for adoption.” *He notes that one of the dogs had emergency surgery this week to remove 130 bladder stones and another emaciated Chihuahua who had been in Ms. Siman’s care since 2010 has gone from*

2.7 pounds to 4.2 pounds in just a week of being properly fed. Of the 68 animals, one had to be euthanized due to extreme distress and suffering.

"We feel badly for Ms. Simans as she clearly had good intentions, but the reality is that it is not in the animals' best interests to take them from one bad situation and allow them to continue suffering in a new situation," says Busch. "The dogs were kept in plastic crates and were clearly not getting the care they required - she was just overwhelmed." He notes that legitimate animal welfare organizations and rescue groups have a standard called 'Capacity to Care' which sets out levels of health and welfare that must be provided for rescued animals and guides organizations in the number of animals they can responsibly care for given their resources. "While we are working with Ms. Simans in the return of the animals, we will be issuing orders for their care and will be following up to ensure the animals are not at risk."

Photo captions (top and bottom): *An emaciated Chihuahua who had been in Ms. Siman's [sic] care since 2010.*

[emphasis added]

[112] I have highlighted the parts of this press release that are claimed by the plaintiffs to be defamatory. Other aspects of the story such as the reference to "animal hoarder", the plaintiffs being overwhelmed by the numbers of animals and the number of animals that required medical care have been addressed above.

[113] With respect to the statement that the plaintiffs could have claimed the animals "at any time", the plaintiffs say that was not true; they could not pick up the animals at "any time" despite their requests to do so, beginning on June 13, 2012.

[114] The basis for the plaintiffs' position is that there was no authority for the defendants to seize the animals in the first place. However, I have found above that the seizure was authorized under the PCAA and Bylaw 9609. Further, it was open to the plaintiffs to reclaim the six permitted animals on June 13, 2012. The rest of the animals were available on June 14, 2012 when Mr. Voutilainen telephoned Ms. Simans (followed up by a letter the next day, June 15, 2012). The problem was that the defendants would not release animals unconditionally as demanded by the plaintiffs.

[115] The plaintiffs say that the defendants knew about their new location in Surrey on June 13, 2012, including the address. I have found above that was true. However, the defendants refused to release the animals until they had

assurances that the landlord for the new location was agreeable to keeping the large number of animals on the Surrey property. Those assurances were not received by the BCSPCA until June 22, 2012. I have also found above that the defendants acted responsibly in the circumstances they were facing.

[116] Assuming the statement by the BCSPCA that the plaintiffs could claim the seized animals “at any time” was defamatory, I conclude that it was also substantially true and the defence of justification applies. The plaintiffs’ claim of defamation with respect to this statement is dismissed.

[117] Turning to the reference in the June 26, 2012 press release to the medical and physical condition of the animals seized, I accept that statement by itself would tend to lower the reputation of the plaintiffs’ operation of a rescue shelter in the eyes of a reasonable person. The problem for the plaintiffs is that the medical treatment was required, it did take place and there were physical ailments among the animals. Specifically, 130 gall stones were removed from one animal and one animal was emaciated. As well, another animal had to be euthanized and I have found above that the BCSPCA acted reasonably in making that decision (because of the health of the animal and its aggression).

[118] For these reasons I conclude that the defence of justification applies to this statement and the claim for defamation is denied.

[119] With respect to the third issue in the June 26, 2012 press release, it included two photographs of a Chihuahua dog, “Kada.” In one photograph, the back of the animal is shown with the spine showing through the fur. In the second photograph the head of the animal is shown. It shows a gaunt animal with graphic wounds or scarring around the mouth. The written reference in the story is, “Photo captions (top and bottom): An emaciated Chihuahua who has been in Ms. Siman’s [sic] care since 2010.” This is the animal that gained weight after being seized by the defendants. Ms. Simans testified that Kada had been rescued and treated for injuries to her face, including extensive and expensive surgery.

[120] As with the above statements, I accept that the presentation of Kada in this story would tend to lower the reputation of the plaintiffs as operators of a rescue shelter, in the eyes of a reasonable person. With respect to the reference

to the emaciation of Kada (as shown in the photograph of her back) I note the veterinary chart from just after Kada was seized. It is dated June 12, 2012 but that is an error. It refers to “[s]everely underweight – emaciated. Ribs/spine/bones of her body clearly visible. ... [a]ppears to be starving, readily and quickly consumed ...” food. Further, she showed “remarkable recovery” including “an extremely healthy appetite” and she steadily gained weight with the total weight gain being 1.96 pounds. The defence of justification clearly applies here and there is no basis for the plaintiffs’ claim of defamation.

[121] Returning to the second photograph of Kada’s head it shows scarring around the mouth. It is graphic and the animal appears to have suffered or even continues to suffer. The veterinary report referred to in the previous paragraph (prepared just after the animal was seized) described, “degradation or injury to jaw, right side has bone loss (likely due to extreme dental disease) or may have been broken and not healed properly. As a result, her tongue hangs out and her lower jaw is not aligned, it is shifted to the right.” She had only three teeth left but with severe gum recession and other dental problems. Further, there was injury to both ears that was “unusual” and could have been from frostbite.

[122] Ms. Simans testified that Kada was the subject of significant surgery while in her care and this cost about \$6,000. The object was to get the animal to eat and she was starting to improve. Copies of veterinary records from 2008 confirm surgery on her mouth then. Ms. Simans claims that her care of Kada was not explained by the BCSPCA in its story. Instead, Kada was used as a “poster child” by the defendants for how she treated her animals.

[123] The photo caption in the release says the photograph is of an “emaciated Chihuahua who has been in Ms. Simans’ care since 2010” but the graphic aspect of the photograph of the animal’s head is the scarring that was not related to emaciation. The scarring and the other problems demonstrated by the photograph were the result of injuries for which Kada was rescued and for which the plaintiffs provided treatment, including surgery. Significantly, those medical/dental problems were not because the plaintiffs were overwhelmed or neglectful but were caused by someone who owned the animal before the plaintiffs or by that person’s neglect.

[124] I note the photograph in question is beside a written part of the release that quotes Mr. Busch, speaking for the BCSPCA, saying that “[t]his is a very sad case” and that Ms. Simans was not “capable of properly caring for” the animals. It is clear by the positioning of the photograph that Kada was included in this opinion. In his evidence, Mr. Busch, testifying for the BCSPCA, accepted that a reasonable member of the public would take from the photograph that Kada’s problems as depicted in that photograph were the result of how she was treated by the plaintiffs. However, that is not correct.

[125] What was needed in the press release was some information from the BCSPCA that the condition of Kada was not the result of the plaintiffs’ mistreatment of Kada. A useful comparison is the news story below (Global News, June 26, 2012) that discussed the seized animals, including Kada, but included the statement, “Some were sick when she found them, like this Chihuahua with a broken jaw.” This accurately describes to the public the history of Kada’s injuries and recognizes that they were not caused by the plaintiffs.

[126] I conclude that the representation of Kada as shown in the photograph of her head and the accompanying story purported to show to the public that the plaintiffs caused suffering and damage to Kada. It therefore reduced the reputation of the plaintiffs as operators of a rescue shelter. Further, the defence of justification does not apply since the clear meaning of the photograph and story is not true or substantially true. Nor does the defence of fair comment apply because the interpretation of the photograph is not based on fact. As presented, an honest person would reach the conclusion that the plaintiffs were responsible for the scarring and the dental/medical problems of Kada.

[127] It follows that the plaintiffs are entitled to general damages from the defendants for defamation for the photograph of Kada’s scarring and injuries around the mouth and for presenting that scarring as the result of neglect or worse of the plaintiffs.

[128] A number of factors are to be considered when assessing the amount of damages including: the nature and seriousness of the defamation; mode and extent of publication; position and standing of the plaintiff in the community;

importance of reputation for the plaintiff's employment or profession; intangible and subjective elements; stature of the defendant; evidence that the defamation was believed; difficulty of remedying practical consequences of defamation; amount required for vindication of the plaintiff; and importance of context (*Halsbury's Laws of Canada, Defamation (2013 Reissue)*, (LexisNexis: Markham, Ont. 2013) at HDE-193).

[129] In this case, the photograph and statements at issue were part of a news release. There is little evidence as to the extent of circulation but it is not disputed that there was publication. There is no basis in the evidence for a finding of malice against the defendants. However, the defamation in this case is directly related to the business of the plaintiffs, the rescue of animals. If the reputation of the plaintiffs is that they harm animals rather than protect them that is significant to their business. The statements are perhaps more significant coming from the BCSPCA with its long-standing reputation for caring for animals and credibility in the community. There is evidence that the BCSPCA was receiving significant criticism from the public and it concluded it had to say something publicly. They were entitled to do that but, unfortunately, one of the things they said was not accurate and defamatory.

[130] It is also relevant to point out that the reputation of the plaintiffs has been harmed by their actions in this affair, notably by keeping a very large number of animals in violation of a local bylaw and some of the animals were in need of veterinary care. The defamatory statement about Kada is a small part of these unfortunate events and it was one example among other examples in which the BCSPCA was properly making public statements in order to advance the interests of animals.

[131] Another aspect of this is that it is not possible to separate the economic consequences of the one defamatory statement from the consequences of the other, non-defamatory statements of the defendants. Unaudited financial statements of the plaintiff 1atatime Rescue Society indicate that total revenue in 2011 was \$9,362, it was \$4,850 in 2012 and then \$4,540 in 2013. There were net losses on all three years of \$12,596 in 2011, \$12,374 in 2012 and \$768 in 2013. The decrease in revenue from 2011 to 2012 (the animals were seized in June

2012 and returned the same month) is obviously a significant one although there is no information as when in 2012 the reduction occurred. In addition, the plaintiffs do not rely on that decrease as a measure of damages in their submissions and, in fact, the financial information of the society was entered by the defendants. I can only note the information and consider it with the possibility that the decrease may have been for events unrelated to the seizure of the animals in June 2012.

[132] A final matter is that Ms. Simans testified that there are people and organizations who oppose the approach taken by the plaintiffs to the rescue and care of animals and there is apparently considerable online discussion about this topic. That controversy existed before the June 2012 seizure of animals by the defendants and it was likely heightened by the publicity around the seizures. I am not persuaded that the defendants can be held responsible for this controversy but the defamatory photograph and statement about Kada must be considered as a factor in the increase in the controversy. However, again, much of the controversy in this case is as a result of decisions made by the plaintiffs and justifiable statements made by the defendants, rather than defamation by the defendants.

[133] Considering all of these circumstances, I conclude that modest general damages in the amount of \$2,500 are payable by the BCSPCA to the plaintiffs. There is no evidence the defendant City of Burnaby was involved directly or indirectly in the defamation.

[134] The plaintiffs also seek a permanent injunction to restrain future defamation by the BCSPCA. However, the animals are returned to the plaintiffs and there is little if any opportunity for a repeat of the circumstances in this case. The claim for a permanent injunction is denied.

(v) *June 26, 2012, News Story (Global News)*

[135] There was a television news story on Global News that aired on June 26, 2012 in which a reporter (“Randene”) interviewed a person who was speaking for the defendants (“Moriarty”) and a person speaking for the plaintiffs (“Liberson”).

The following is a transcript prepared by the parties and which is agreed to be accurate:

Randene: The SPCA calls it rescue hoarding. Two weeks ago they seized 68 dogs and cats from a rented home in Burnaby after a woman living there was evicted after months of failing to pay the rent. Many of those animals were in bad health, one needed to be euthanized. But now the BCSPCA is being forced to give those animals back. It wasn't what they were expecting. During a call to pick up an overabundance of dogs and cats living in one Burnaby home, the BCSPCA was shocked by what they found.

Moriarty: Originally we thought ok, we're...we're coming to provide temporary assistance, but to...to our shock and horror when we opened up the crates, ah...some of the medical ah...condition that these animals were in, just brought tears to our eyes.

Randene: The animals belonged to Sandra Simans, and a rescue organization 1atatime. Some were sick when she found them, like this Chihuahua with a broken jaw.

Liberson: The 1atatime rescue, which is bigger than just one person, is a very compassionate organization. And they take the downtrodden which no one else would touch. For instance, if that animal ended up in a pound, or an SPCA shelter, it would have been killed - right away. Who is going to sit there with a ... a little Chihuahua whose jaw is broken that has to be spoon fed, that has to be medicated and you have to spend ten thousand dollars on the medical bills. Most people wouldn't do that. That is the kind of organization and the person that Sandra is.

Randene: that doesn't explain why in just two weeks and ten thousand dollars in emergency vet care at the BCSPCA, the dogs are all doing much better.

Moriarty: There is a Chihuahua that, believe it or not, came in at 2.7 pounds. We, in one week have put on 2 pounds, so almost half that...that poor dog's body weight. ah...there were/was another dog which had to have surgery, and removed/we removed one hundred and thirty gall bladder stones. The vet said he's never seen anything like it.

Randene: One dog was too sick and had to be put down but many of the dogs are well on their way to finding new homes, until Sandra called demanding her dogs back. And because there is no law in this province saying otherwise, back they'll go.

Moriarty: we have no legal ah...choice...ah these animals were taken in under a bylaw, and under that bylaw...ah the animal owner has the ability to seek return of the animals. ah....it's with a heavy heart to be honest that we will be returning them, but we hope that...ah she will, as per intention, keep following up with the care of these animals and adopting them out. I mean ironically this rescue is called one at a time, and she had sixty-eight.

[136] The plaintiffs' objections to this new story have been addressed above with, for example, the discussion of "animal hoarder" which can be transposed to

“rescue hoarder.” Assuming the statement here is defamatory, I find the defence of justification applies.

(vi) June 27, 2012, Verbal Statement

[137] Lastly, the plaintiffs claim that, at the side of the road on June 27, 2012, when the plaintiffs were trying to transport the animals to Surrey, Constable McKay taunted Ms. Simans by stating:

She doesn’t adopt out animals, she likes to keep them all

[138] This statement took different forms in the evidence including that Constable McKay said Ms. Simans “does not adopt out anything.” Constable McKay testified and, when she was asked if she made this statement, she answered, “absolutely not.” As discussed above, the entire trip to take the animals to Surrey was fraught with tension and Ms. Simans had certainly lost any patience she had at that point. I conclude that words were exchanged but I am unable to find that the statement alleged by the plaintiffs was said, or that something like it was said.

[139] In any event, this is essentially the allegation that Ms. Simans is a rescue or animal hoarder and it has been considered above. Assuming the statement here is defamatory, I find the defence of justification applies.

(vii) June 29, 2012, Email

[140] In an email dated June 29, 2012 Lorie Choryk, General Manager, Community Relations for the BCSPCA thanked an individual, Antonia Jane Allan, for her email and for her “support for the animals in our care.” It also said,

... We definitely share your deep concern about returning animals to Ms. Simans - she is a rescue hoarder who does not have the financial means or capacity to properly care for the number of animals she is taking in. While we have no legal option but to return the animals, we have written out detailed care requirements for each animal and will be issuing formal “orders” under the Prevention of Cruelty to Animals Act. While we are required under the Act to give an individual the opportunity to remedy the situation, we will be closely monitoring the situation and doing re-checks if the orders are not followed (as we suspect will be the case) we will immediately seek a warrant to get permanent custody of the animals. This is not our first choice as the moving back and forth is stressful for the animals, but it is our only legal option. ...

[Reproduced as written]

[141] The issues raised in this email have also been addressed above. As well, while defamation can be established by publication to at least one person other than the plaintiffs, the evidence is that this statement was sent to only that one person (*Michie v. Guthrie-Waters*, 2012 BCSC 793). In any event, assuming the statement here is defamatory, I find the defence of justification applies for the reasons given above on the same issues.

(viii) August 10, 2012, News Story (Burnaby Now)

[142] In an article in the newspaper *Burnaby Now*, dated August 10, 2012, the headline was “Pet situation monitored” and the sub-headline was “Animals removed from a Burnaby home are back with owner but situation is being watched by animal officials”. Mr. Busch was quoted as saying:

“We have obtained medical records that suggest she [Ms. Simans] is complying with the medical requirements for the animals, so we’re pleased so far, but the investigation is continuing.”

[143] I am unable to find anything defamatory in this statement. It is a fair description of the process at that date.

[144] The article also contained the following paragraphs:

There were also accusations of neglect from the SPCA, which later returned most of the animals with special care instructions for Simans to follow lest she have them seized again.

Monitoring by the SPCA is showing Simans is getting the critters the care they need.

Simans reportedly found a place in Surrey to keep the animals, but Busch isn’t sure where exactly she is or whether she’s violating similar bylaws in Surrey. A call to the Surrey bylaw office was not returned by *NOW* deadlines.

In a previous press release, the SPCA characterized Simans as an animal hoarder. Simans has multiple animals because she runs 1atatime Rescue, but Busch also couldn’t say whether there’s any evidence that Simans has been adopting the animals out.

Simans has not responded to requests for interviews from the *NOW*.

[145] Again, issues as to whether Ms. Simans is an animal hoarder have been addressed above. As well, I have found above that the actual adoptions

completed by the plaintiffs are less than their declared charitable objectives. Assuming the statement here is defamatory, I find the defence of justification applies.

D. Summary

[146] The defendants lawfully seized the 52 dogs and 19 cats from the plaintiffs' residence on June 13, 2012 pursuant to the PCAA and Bylaw 9609. The reasons for the seizures included having more than the permitted number of animals at a residence and, in the case of 4 cats and 2 dogs, abandoning them. There is no basis under the *Community Charter Act* or the *Canadian Charter of Rights and Freedoms* to challenge the seizures. There were demonstrated medical problems with some of the animals including malnutrition.

[147] The defendants lawfully kept the animals until they could be assured that a new location for the animals was suitable for the large number of animals. In the meantime the plaintiffs declined offers from the defendants to reclaim the animals. Some animals were put out for adoption by the BCSPCA and one animal was euthanized. The adoptions were consistent with the PCAA and the euthanasia was justified on the basis of the health of the animal and its demonstrated aggression.

[148] The defendants seized a dead cat when they seized all the animals. The seizure of the dead cat was for valid reasons. However, the defendants lost the body of the cat. However, at the point of seizure the body was a chattel and lawfully in the possession of the bailiff pursuant to a Writ of Possession. It then was in the lawful possession of the defendants. By failing to pay rent the plaintiffs exposed themselves to the lawful seizure of their chattels, as they knew from previous experience.

[149] With respect to defamation, the BCSPCA made a number of statements that were substantially true and protected by the defence of justification. In one case, there was a photograph of a dog with severe injuries to her face. These injuries were the result of actions of someone other than the plaintiffs and, in fact, the plaintiffs rescued this animal and were treating the injuries including expensive surgery. However, the public statement of the BCSPCA was that the

injuries to the animal were the result of the plaintiffs not being capable of managing a large number of animals.

[150] This was a defamatory statement and neither the defence of justification or fair comment apply. General damages payable by the BCSPCA to the plaintiffs of \$2,500 are appropriate.

[151] Neither party is entitled to costs against the other.

“Steeves, J.”