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# Veterinarian Duty to Report

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BC SPCA Position on Section 22.1 of the  
*Prevention of Cruelty to Animals Act*

**BCSPCA**  
SPEAKING FOR ANIMALS

THE BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

## Background:

On October 30, 2017 the College of Veterinarians of British Columbia (CVBC) issued a clarification of its position statement titled "Duty to Report Animal Abuse or Neglect" (the "CVBC Position".) The clarification cites as legislative authority the Veterinarians Act; the Protection ("sic") of Cruelty to Animals Act; the Criminal Code of Canada; Protection of Personal Information Act; and the CVBC Bylaws.

The purpose of this document is to clarify the position of The British Columbia Society for the Prevention of Cruelty to Animals (BC SPCA) on the "duty to report" as found in Section 22.1 of the Prevention of Cruelty to Animals Act (PCA Act), an Act of the Provincial Legislature administered by the Ministry of Agriculture and enforced by the BC SPCA.

In 2011 the PCA Act was amended by the Government of British Columbia to include a positive duty on the part of veterinarians to report instances where they believe an animal is in distress and is not receiving relief from that distress. Specifically, section 22.1 of the PCA Act states:

*A registered veterinarian who believes on reasonable grounds that a person responsible for an animal is, or is likely, causing or permitting the animal to be in distress in contravention of this Act must promptly report, to the best of the registered veterinarian's knowledge and belief, all of the following information to an authorized agent:*

- a) the reason for believing that an animal is in distress;*
- b) sufficient information to contact the person responsible for the animal, including the person's name and address;*
- c) sufficient information to identify the animal.*

## *Definition of Distress*

Distress is defined in the PCA Act as follows: *An animal is in 'distress' if it is:*

*(a) Deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,*

*(a.1) Kept in conditions that are unsanitary,*

*(a.2) Not protected from excessive heat or cold,*

*(b) Injured, sick, in pain or suffering, or*

*(c) Abused or neglected.*

Accordingly, only one of the elements identified in (a) through (c) need be present to meet the definition of distress.

Prior to this amendment, BC veterinarians were permitted to report instances of suspected animal cruelty to an enforcement agency pursuant to the *Veterinarians Act* and s.91 of the CVBC Code of Ethics, however, such reporting was not mandatory. The introduction of section 22.1 in the PCA Act means that a veterinarian is now required to report instances where they have reasonable belief that an animal is, or is likely, in distress in contravention of the PCA Act.

Section 25.2 of the *PCA Act* provides immunity from legal proceedings or damages in regards to any registered veterinarian reporting in good faith under this new reporting requirement.

Reporting pursuant to s.22.1 can result in animal lives being saved and provides the veterinarian with a powerful tool to support the welfare of animals that meet the definition of distress either as a result of action or inaction on the part of a person responsible for the animal.

### Interpreting the Duty to Report:

A clear reading of section 22.1 supports the legislative intent of the PCA Act in general, and that is to prevent or address situations where animals meet the definition of distress. Specifically, the intent of the PCA Act as a whole was commented on in *Brown v. BCSPCA*, [1999] B.C.J. No. 1464 where Master Nitikman states:

[22] The goal and purpose of the Act is explicit in its title...

[27] I conclude that the mandate of the Act is such that protection of animals in and from distress will generally, if not always, outweigh whatever prejudice might accrue to the animals' owner as a result of being temporarily deprived of the use of animals.

While these comments pertain to prejudice that might accrue to an animal owner as a result of acting on powers under the PCA Act, it is not unreasonable to extend this interpretation to possible prejudices the veterinarian may incur as a result of acting on the duty to report pursuant to s.22.1. The BC SPCA recognizes the challenges that this duty might present for a veterinarian, however, ultimately the law must be adhered to. Reporting can save animal lives and prevent suffering.

Section 22.1 sets out a positive duty on the part of veterinarians to report instances where they have "*reasonable grounds that a person responsible for an animal is, or is likely, causing an animal to be in distress.*" The clear use of the word "*must*" in this section dictates that there is no discretion on the part of a veterinarian to not report when the other elements of the section are present. The section is also broadly worded to not only include situations where the person responsible for an animal "*is*" causing the distress, but where it "*is likely*" that the person is causing the distress.

The BC SPCA recognizes that the words that are open to interpretation in this section include "*reasonable grounds*" and some of the qualifying words used in the definition of "*distress*" (eg. "*adequate*") but there are a number of excellent resources available to a veterinarian to guide them in this area, including the website of the Canadian Veterinary Medical Association. In interpreting what constitutes "*reasonable grounds*" to make a report, the CVBC Position makes reference to a number of factors that a veterinarian may consider. The BC SPCA's position is that

these factors, and others, are elements that a veterinarian may consider to determine “reasonable grounds” however, the bottom line is that none of the factors listed would be considered a defence to causing “distress” pursuant to s.24.02 of the PCA Act. Therefore, they do not provide a legal excuse for the animal owner if the animal does meet the definition of distress. Veterinarians must report cases where an animal is in distress, or is likely in distress, and it is not being relieved regardless of whether some or all of these factors are present.

The common law and various codes of practice provide guidance in determining whether an animal is in *distress* pursuant to the PCA Act. It is important to note that the law has found that an inability to pay for treatment is not an excuse at law for permitting an animal to remain in *distress*. In addition, a client does not have to intend to cause *distress* (or be “abusive” or “neglectful”) for an animal to meet the definition of distress. If a client presents an animal for examination and the veterinarian determines that some action is necessary to alleviate the animal from one of the conditions above and the animal owner refuses to take that action or to seek a second opinion, the duty to report is engaged. The BC SPCA is always available to provide assistance to veterinarians in determining whether a case is reportable pursuant to s.22.1.

### **What Happens When a Report is Made**

Upon receiving a report from a veterinarian, a Special Provincial Constable appointed under the Police Act will investigate the report by contacting the animal owner and proceeding with an investigation as per the PCA Act. This could include education on adequate care, working with the owner to relieve the distress, issuing notices of distress requiring the animal owner to take some action to alleviate the distress or it might require obtaining a warrant to search and seizing animals that are in distress. If an offence has occurred pursuant to the PCA Act, the BC SPCA will recommend charges to Crown Counsel and the animal owner may be charged with animal cruelty if the Crown believes the case meets charge approval standards. If it is found that the animal does not meet the definition of distress the file will be closed.