

IN THE MATTER OF THE *PREVENTION OF CRUELTY TO ANIMALS ACT*,
R.S.B.C. 1996, c. 372
ON APPEAL FROM A REVIEW DECISION OF THE BC SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS CONCERNING THE SEIZURE OF
29 DOGS

BETWEEN:

NEDDY TSIN

APPELLANT

AND

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry Review Board:	Corey Van't Haaff, Presiding Member Diane Pastoor, Member
For the Appellant:	Douglas B. Chiasson, Counsel
For the Respondent:	Christopher Rhone, Counsel
Date of Hearing:	January 19, 2017
Location of Hearing:	Teleconference

I. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*).
2. The Appellant appeals the December 16, 2016 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Prevention and Enforcement Officer for the British Columbia Society for the Prevention of Cruelty to Animals (BC SPCA).
3. Section 20.6 of the *PCAA* permits the BC Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society in its discretion to destroy, sell or otherwise dispose of the animals.
4. For reasons that will be explained in detail later, we the Panel have decided that some of the dogs along with the puppies born to those dogs only will be returned to the Appellant without conditions, and some of the dogs will not be returned to the Appellant.
5. We will deal with the issue of costs below.

II. Brief Summary of the Decision under Appeal

6. The Appellant breeds dogs, mostly Coton de Tulear and Coton-type dogs, and at the time of seizure, she was living with 29 dogs, including young dogs and puppies. Some of the adult dogs were pregnant. There is a history between the Society and the Appellant. According to the Society, in September 2015, two sheepdog-type dogs belonging to the Appellant were removed by a veterinarian as they had been confined to a room in a fifth wheel without access to food, water or ventilation, and the room had become submerged in water due to a flood in the area. Those dogs were underweight, aggressive, matted, and had feces compacted into their coats. When the Appellant picked up her two dogs, she was issued a notice of distress by the Society regarding keeping the dogs' coats free from matting and debris, providing veterinary care, and providing nail care, amongst other things.
7. On September 8, 2016, two sheepdogs were impounded for running at large, and were found to be matted. The Appellant's husband picked up the dogs and was issued a notice of distress for grooming.
8. On November 1, 2016, the Society received a call from Animal Control Officer (ACO) Sheri Newman that two dogs were found locked inside a trailer belonging to the Appellant. RCMP attended the trailer and noted a foul odour of mold and ammonia. The Appellant retrieved her dogs from the trailer and moved the trailer.

9. On November 24, 2016, the Society, along with ACO Newman, attended the Appellant's property and upon knocking, heard many (approximately 10) dogs barking. The Appellant answered the door, and stepped outside. The Society's Special Provincial Constable (SPC) Leanne Thomson smelled a very strong odour of urine and feces. SPC Thomson said she was following up on the two dogs previously locked in the trailer and the Appellant advised they were now at home.
10. SPC Thomson swore in her ITO (Information to Obtain a Search Warrant) that she could smell a strong smell of urine and feces and believed the dogs to be in distress and so she asked to view all the dogs and their living conditions, which request was refused. ACO Newman advised SPC Thomson that she herself had never been permitted inside the home, and when dogs had been impounded for being at large, they were found in "poor condition and matted." On November 29, 2016, SPC Thomson received a call from the Appellant's neighbour who advised that she had seen sheepdogs and small Bichon type dogs daily, that the sheepdogs had been matted the last few weeks, that dogs were often tethered at the back of the property and kept in the garage, and that the dogs were being yelled at and swatted at.
11. On November 29, 2016, the Society swore the ITO. On November 30, 2016, 29 dogs were seized by the Society for being in distress. During the time of seizure, the Appellant was arrested and taken away, but was released later the same day and returned home.

III. The Society's Powers and Duties

12. The Society under the *PCAA* is mandated to prevent and relieve animals from situations of cruelty, neglect and distress. The Society can seize animals from the care and custody of their owners or take custody of abandoned animals, as authorized by the *PCAA*. The Society's investigation and seizure powers are set out in Part 3 of the *PCAA*, entitled "Relieving Distress in Animals".
13. The March 20, 2013 legislative reforms, set out in Part 3.1 of the *PCAA*, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: *PCAA*, s. 20.2(1), (2). If a review is requested, the Society must review the decision and must not destroy, sell or dispose of the animal during the review period unless it is returning the animal: *PCAA*, ss. 20.2(3).
14. The *PCAA* does not set out any specific process for the review. Administratively, the Society's current process where a review is requested is to prepare a disclosure package and then to invite submissions from the owner concerning the return of the animals and to consider these submissions in light of the investigation results to determine whether it is in the animals' best interests to be returned to their owners.

15. Sections 20.2(4) and (5) of the *PCAA* set out the Society's options following a review:

20.2 (4) The society, following a review, must

(a) return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting

(i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and

(ii) any matter that the society considers necessary to maintain the well-being of that animal, or

(b) affirm the notice that the animal will be destroyed, sold or otherwise disposed of.

(5) The society must provide to the person who requested the review (a) written reasons for an action taken under subsection (4), and (b) notice that an appeal may be made under section 20.3.

IV. The Appeal Provisions

16. We are guided by the approach to appeals under the *PCAA* which is set out in detail in *A.B. v British Columbia Society for the Prevention of Cruelty to Animals* (August 9, 2013), which decision was upheld by the Supreme Court on judicial review¹. In summary, the right of appeal to BCFIRB gives persons adversely affected by certain decisions of the Society an alternative to a more formal judicial review or judicial appeal. The reforms give BCFIRB broad evidentiary, investigation, inquiry and remedial powers upon hearing an appeal: ss. 20.5 and 20.6. The *A.B.* decision reads in part:

Appeals under Part 3.1 of the *PCAA* are not required to be conducted as true appeals, and BCFIRB is not required to defer to decisions of the Society. In my view, the appellant has the onus to show that, based on the Society's decision or based on new circumstances, the decision under appeal should be changed so as to justify a remedy. Where, as here, the Society has made a reasoned review decision, BCFIRB will consider and give respectful regard to those reasons.

However, that consideration and respect does not mean the Society has a "right to be wrong" where BCFIRB believes the decision should be changed because of a material error of fact, law or policy, or where circumstances have materially changed during the appeal period. BCFIRB can give respect to Society decisions without abdicating its statutory responsibility to provide effective appeals.

The clear intent of this reform legislation was to give BCFIRB, as the specialized appeal body, full authority to operate in a way that is flexible and accessible to lay persons, and to use its expertise to ensure that decisions are made in the best interests

¹ *BC Society for Prevention to Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331

of animals. The procedure followed by BCFIRB is a flexible approach specifically crafted to accomplish the intent of the legislation in the context of animal welfare and lay participation. This includes taking into account developments occurring since the Society's decision was made. This is entirely in accord with the inevitably fluid nature of the situation, and well within the powers granted by section 20.5 of the PCAA.

V. Preliminary matters

17. Before proceeding further, we will address three matters that arose in the course of our hearing that we consider appropriate to address at the outset.
18. First, we note that the Society called as one of its witnesses the Animal Control Officer from the District of Squamish whose evidence included a statement that the relevant local government bylaw permits only three dogs per parcel of land. The Panel wishes to make clear that the administration of local government bylaws is for the local government. Our jurisdiction is focused on the issues of removal and return of the animals under *PCAA*.
19. Second, the Appellant took issue with the process used by the Society in the wake of the seizure, particularly with regard to her right to challenge the seizure. The Appellant had been removed by the RCMP and upon returning home, the Appellant found the Society's "Procedure for Disputing" (s.11) which gave a timeline for the dispute [prior to an appeal, there is an internal dispute procedure requested by the owner of an animal and the review conducted by the Society]. Counsel for the Appellant appears to allege bad faith on the part of the Society as the original copy of the warrant left at the Appellant's property contained inadequate information to begin a comprehensive dispute until after December 8 (when the Appellant received complete information). Counsel for the Appellant said that the Society did not follow its own timelines and did not provide adequate time and did not request from the Appellant a substantive response, and did not allow the Appellant adequate time to conduct a review of the December 8 material, amongst other things. Appellant's counsel suggested that the costs of care were negatively impacted by the Society's failure to provide timely disclosure as additional time passed before the Appellant could mount an argument against the material in its entirety, causing the time for the Society to care for the dogs to be extended.
20. In response, the Society, through Ms. Moriarty's affidavit, asserts that the timelines in the Society's instruction document set out the *maximum* times for each step and that the Society's December 8, 2016 letter clearly set out the exact deadlines for the Appellant's submissions. Despite the December 8, 2016 letter, no submissions were received prior to the Society releasing its written reasons. The Society further states that the Appellant could have requested an extension, and none was received.
21. The Panel finds that, while the reference to the maximum timelines may have given rise to misunderstanding, the Appellant knew her dogs had been removed and it was open to her, an experienced breeder, with access to legal counsel, to contact the Society for

clarification. She did not do that. By December 8, 2016, the Appellant and her counsel knew the precise deadline the Society was imposing. No request for an extension of time was received by the Society. The Society issued its review decision on December 16, 2016, the day after the deadline. In our view, the Society's review process was adequate and certainly does not alter our decision with regard to the issues of seizure and return.

22. On December 19, 2016, one business day after the Society's review decision, the Appellant filed this appeal. This appeal is broad in scope. There is no issue that there has on this appeal been full disclosure of material and a full opportunity to make submissions. The Panel will deal with the issue of the alleged delay and any impact on liability for care costs in the costs section.
23. Finally, the Panel notes that 11 puppies were born after the seizure and were footnoted in the Society's review decision thusly: "29 dogs were seized but one of the dogs has since given birth to 11 puppies so this decision will also include any puppies that have been born or may be born in the interim." In the period between the review decision and the hearing date, an additional 4 puppies were born and one died. The Panel agrees that seizures and this decision necessarily apply to the unborn puppies which were born alive after the seizure. This appeal is therefore about the 29 dogs plus 14 newly born puppies for a total of 43 dogs.

VI. Material Admitted on this Appeal

24. All affidavits and witness statements, emails, photographs, and materials submitted were entered into evidence. Parties were sworn before giving oral testimony. The Society in presenting its case decided not to call Lori Scott, the groomer, as a witness, and the Appellant did not contest this, but her handwritten notes were presented in the case as evidence.

Appellant:

- a) Appellant's December 19, 2016 Notice of Appeal and supporting documents and second copy on NOA December 20, 2017 (totalling 57 pages) (**Exhibit 1**)
- b) Appellant's January 9, 2017 Submission (Tabs 1-7) (**Exhibit 2**)
- c) Appellant reissue of Tab 3 (11 pages of color photos) (**Exhibit 3**)
- d) Expert Witness Contact Form (Dr. Grewal) (January 16, 2017 via email) (**Exhibit 10**)
- e) Witness Contact Form (Neddy Tsin) (January 16, 2017 via email) (**Exhibit 11**)
- f) Appellant's final reply submission (January 17, 2017 via email) (**Exhibit 12**)

Respondent:

- a) BCSPCA Binder (Tabs 1-23) (January 3, 2017 via email & courier) (**Exhibit 4**)

- b) BCSPCA further document disclosure including Tab 3 10.1 & Tab 24 (January 5, 2017 via email & courier) (**Exhibit 5**)
- c) Affidavit #1 of Marcie Moriarty (January 13, 2017 via email) (**Exhibit 6**)
- d) Expert Witness Contact Form (Dr. Adrian Walton and Lori Scott) (January 13, 2017 via email) (**Exhibit 7**)
- e) Witness Contact Form (SPC Leanne Thomson and ACO Sheri Newman) (January 13, 2017 via email) (**Exhibit 8**)
- f) BCSPCA Written Submission (January 13, 2017 via email) (**Exhibit 9**)
- g) BCSPCA Email (January 18, 2017) re: late Appellant submission and reliance on *Brock Estate, 1991 CanLII 418 (BC SC)* (**Exhibit 13**)

VII. The Appeal

Grouping of Dogs

- 25. The Appellant runs a dog breeding business from her home. At the time of the seizure she had 29 dogs on her property. There was some confusion and dispute over dog breeds, but for simplicity, we will use the description provided by the Society and veterinarian Dr. Adrian Walton. Eleven of the dogs were juveniles, 7 were young adults and 11 were mature adults. They were listed in the December 4, 2016 report as Old English Sheepdogs, Bearded Collies, Coton du Tulears, and a Tibetan Spaniel. Dr. Walton mis-numbered one of the dogs by calling dog #29 as dog #30, but there were only 29 dogs seized by the Society and examined by Dr. Walton.
- 26. According to the Society, and not disputed by the Appellant, the seized dogs were found in three distinct areas of the property. They were photographed and numbered by the Society.
- 27. Nineteen dogs were found in the Appellant's home, and will be referred to by the Panel as Group 1. These are a female (multi) sheepdog (later changed to Coton du Tulear) #3 and puppies #4, #5, #6, #7, female Coton du Tulear #8, female sheepdog (nursing) #9, puppies from second bedroom #10, #11, #12, #13, puppies from first bedroom #14, #15, #16, white male Coton from master bedroom #17, white female Coton from master bedroom #18, white female Coton in master bedroom #19, white female Coton in master bedroom #20, and white female Coton in master bedroom #22.
- 28. Two dogs were found in the car parked outside in the yard, and will be referred to by the Panel as Group 2. These dogs are a female sheepdog #1, a male sheepdog #2, also referred to as Abigail, a Sheep dog and Zoey, a Lowland Sheepdog.

29. Eight dogs were in another car parked in the appellant's garage, and will be referred to by the Panel as Group 3. These are 2 bearded Collies, 2 Tibetan Terriers, 1 Havanese, 2 Coton de Tulear and 1 Shitzu.

VIII. The Society's Review Decision

30. Marcie Moriarty, the Society's Chief Prevention and Enforcement Officer, issued written reasons dated December 16, 2016 on her review of this matter. After concluding that the animals seized had been taken into custody to relieve their distress, the written reasons stated, in part:

In reviewing the file and especially Dr. Walton's report, it is evident that some dogs were suffering from more serious medical conditions than others, and in fact on some of the dogs there were no medical conditions that required treatment identified at the time of the exam. I am guided by the decisions of the BC Farm Industry Review Board ("FIRB") in *Keeping v. BC SPCA* and *Zhou v. BC SPCA* where in both cases the adjudicator found that in certain cases, the animals can be considered collectively in determining that distress is present. Specifically, in *Keeping* at paragraph 151, Ms. Van't Haaff states:

151. I therefore find that the animals, collectively, were in distress and that the correct and reasonable decision was to seize all the animals that the Society seized.

152. I will add finally that insofar as any of the seized animals were pregnant at the time of the seizure, the finding of distress would be properly applied to the unborn animal which was, at the time of the seizure, part of the seized animal and subject to all of the same risks. Further and in any event, no further seizure would be necessary of an animal already validly in the Society's custody when that animal has given birth.

This statement also provides me with guidance for this particular case as pregnant dogs were seized and one of them has since given birth.

I turn now to the question of whether or not it would be in the best interest of the Animals to be returned to you. In making any determination regarding the best interest of the Animals, I consider whether you would be able to ensure the Animals remained distress-free if they were returned. This is a duty owed by an owner pursuant to section 9.1 of the Act. I also consider any history leading up to the seizure of the Animals and the circumstances at the time of the warrant, including the environment and medical conditions.

My decision is going to be rather brief in this case because I have not been provided with any submissions from you that might a) provide some explanation as to the condition of some of the animals, b) any medical evidence that animals were being treated, or c) a plan for rectifying any environmental concerns that were present at the time of the seizure. As such, I am working on the basis that the situation was be (sic) the same for the Animals at the time of the seizure if they were returned.

From the medical notes and report of Dr. Walton, it appears that there might have been a different standard of care provided for different animals. Either that, or some of these

animals were not in your care for any length of time prior to seizure as these animals did not seem to suffer from the same array of concerns as others. As I do not have any submissions on this point, I am not able to make any conclusions other than to consider the fact that there seemed to be a different set of standards applied for different dogs. Overall, Dr. Walton observes that "*the animals had a multitude of mild maladies including ear infections, eye discharge and heavy matting. Several of the animals had heavy matting and associated burrs stuck in their coat.*" Dental disease which required veterinary treatment was also identified in some of the dogs. All of the concerns that were identified should have been obvious to an animal owner and should have been addressed through proactive care. I do not have any submissions to consider from you on this issue.

From the notes of the constables and the photographs, it is clear that there were a number of environmental concerns identified at the time of the seizure. Of particular concern was the fact that some of the dogs were being kept in vehicles that were in disrepair and posed potential health concerns and hazards to the dogs. Again, I do not have any submissions on this point and am left to draw my own conclusions from the evidence. It appears that this was not the first time that you have used these vehicles to contain the dogs (as is evident by the condition of the interior) and that it is probable that the dogs were confined in these vehicles as a way to manage the number of dogs you had in your care. I do not have any submissions on what help, if any, you had to manage 29 (and soon to be 40 dogs), but it is clear from the evidence gathered at the time of the warrant that you were not adequately providing for all of these dogs and as a result they were in distress.

As an animal owner, you have a positive duty to ensure your animals remain distress free and this duty was not being met in this case. After reviewing all of the evidence before me, I have no reason to believe that if the Animals were returned to you that they would remain distress free. As such, I am not prepared to return the Disputed Animals to your custody.

IX. The Society's Evidence

Dr. Adrian Walton

31. A report written by Dr. Walton was submitted in the material. It said, in part (all misspellings original):

Summary finding: At the request of the BCSPCA I examined 29 dogs, assorted Old English Sheepdogs, Bearded collies, Coton de Tulear and Tibetan spaniel. 11 were juveniles, 7 were young adults, and 11 were mature adults. The animals were generally in good body condition score with some a little heavier and some a little lighter. Two animals in particular, **420681** (Tibetan Spaniel) and **420679** were significantly or even severely underweight, and in both these cases I have recommend they see a veterinarian immediately for blood work +/- urinalysis to rule out systemic disease. The animals had a multitude of mild maladies including ear infections, eye discharge and heavy matting. Several of the animals had heavy matting and associated burrs stuck in their coat. One **420690** (Fig. 1) had a burr stuck to the fur over the left eye, causing pain and discomfort when this area was touched. Removing the burrs removed the discomfort and was done during the examination. 7/11 of the mature adults were in need of dentals, within the near future (Fig. 2). I am recommending closely monitoring for pain and discomfort and provide pain relief. Finally **420657**, a young dog that had been recently neutered, had also

recently had a surgery to correct fluid accumulating between the cartilage and the skin of the right ear (aural hematoma). This swelling usually occurs secondary to ear infections from the animal chronically shaking its head. The surgery was done well, but the suture sites were all infected and oozing pus. Closer examination showed that the neuter site still contained sutures, and have concerns that the sutures are still present underneath the scabs and will need to be removed (usually these are removed after 10-14 days) but the ear surgery appears to be several weeks old.

420656 Female geriatric adult Old English Sheepdog. Moderately obese, gingivitis present and possible extraction needed of 106. Significant wear of the lower incisors and one of the incisors fractured to the gum line. Moderate dental tartar. Mild otitis in the right ear. Bilateral nuclear sclerosis (cataracts) Minor matting of lower legs and thighs. Strong odour and feces stuck around the rectum. Small non-reducible hernia. Dental requires. Prescribed clindamycin 300 mg twice a day for 14 days, and meloxicam 7.5 mg 1 tablet once a day for 14 days.

420657 Neutered Male young adult Old English Sheepdog Animal Recently neutered, with sutures still present at suture site. This animal also had marked thickening of the right pinnae secondary to an aural hematoma. Multiple scabs present over pinnae, likely secondary to the surgical repair done to fix the aural hematoma. Unable to ascertain if sutures are still present as the animal is quite painful when the area is examined. Purulent material is present underneath the scabs. Right ear appeared to have an active infection, likely malassessia (yeast). Gums were ulcerated. Elongated nails. This animal requires a closer veterinary examination of the pinnae and corresponding ear canal. Since aural hematoma's occur secondary to ear infections it will be necessary to determine if the otitis is still active. This animal will also need to have antibiotics prescribed to deal with the infection at the surgical sites. It will also need suture removal of the neuter site. The ear was quite painful and the animal resisted closer examination. Pain medication may also be needed.

420658 Adult female cotton de tulear. Recently had pups, mammary tissue present with active lactation. Marked halitosis present, with moderate dental disease. Elongated nails. Recommend feeding development food for increased calcium and caloric intake while lactating. Monitor for mastitis.

420659 Juvenile male Testicles not descended. Otherwise healthy. Monitor for weight gain, recommend deworming.

420660 Juvenile male Appears healthy Monitor for weight gain, recommend deworming.

420661 Juvenile female Mild serous discharge from the right nostril. Monitor for weight gain, recommend deworming. Monitor for signs of upper respiratory symptoms.

420662 Juvenile female Appears healthy Monitor for weight gain, recommend deworming.

420663 Adult female cotton de tulear. Dog has moderate dental tartar and a mild dermatitis around vulva. Animal was lactating, abdomen tense but no palpable fetuses. Nails had recently been clipped, but are still elongated. Likely has recently given birth, but lactation can start several days before labour. Please monitor carefully.

420664 Adult female old English sheepdog Minor dental calculi. Matting of the feathers of the feet and matting around the perirectum. Abdominal distension present and possible fetuses palpable. Animal likely pregnant, consider radiographs to determine number of fetuses and possible time frame. Please monitor carefully.

420665 Juvenile female Appears healthy Monitor for weight gain, recommend deworming in 2 weeks

420667 Juvenile female Appears healthy Monitor for weight gain, recommend deworming in 2 weeks

420668 Juvenile female Appears healthy Monitor for weight gain, recommend deworming in 2 weeks

420669 Juvenile female Appears healthy Monitor for weight gain, recommend deworming in 2 weeks

420670 Juvenile female Appears healthy Monitor for weight gain, recommend deworming in 2 weeks

420671 Juvenile female Appears healthy. A green fluorescence on the ventral belly from the umbilicus to the vagina. Associated with the skin and not the hair. Suspect is urine staining not dermatophytosis. Monitor for weight gain, recommend deworming in 2 weeks. Wash affected area and recheck woods lamp. Fungal culture pending.

420672 Juvenile Appears healthy. A green fluorescence on the ventral belly from the umbilicus to the vagina. Associated with the skin and not the hair. Suspect is urine staining not dermatophytosis. Monitor for weight gain, recommend deworming in 2 weeks. Wash affected area and recheck woods lamp. Fungal culture pending.

420673 Adult Intact Male Coton de tulear Bilateral mucoid ocular discharge from the eyes. Overgrown nails on all four feet with deviated toes. Matting with feces present on feathers of the legs. Feces stuck to hair around the rectum.

420674 Adult female cotton de tulear. Saliva staining around the mouth and throat. Bilateral watery discharge of eyes, likely secondary to plugged tear ducts. Elongated nails on all four feet with matting on the back of the leg feathers. Feces stuck to the hair around the rectum. One of the mammary glands mildly swollen, possibly secondary to recently completed lactation, possible hyperplastic mammary tissue, or even early mammary neoplasia (cancer) Wash and trim feathers. Monitor mammary tissue for change in size and consistency. Basic grooming.

420675 Adult female cotton de tulear. Overweight, with a body score of 7/9. Mild tartar buildup. With gingivitis on tooth #102. Nails moderately elongated, but had recently been clipped. Sinus rhythm noted (normal finding). Clip nails.

420676 Young Adult female cotton de tulear. Animal has duffy nose (colour loss on nose, not clinically relevant). Right eye has an ocular discharge and the left ear canal inflamed. Minor matting under the neck and fecal staining around the rectum. Right knee has locating patella, assessed at low grade. Recommend ears be cleaned and assessed for infection. Monitor right knee for lameness, may require assessment.

420677 Young Adult female cotton de tulear. Mildly underweight, but otherwise appears healthy.

420678 Young Adult female cotton de tulear. Mildly underweight. Right ear has brown waxy discharge and the left ear has a purulent discharge. The animals coat had some fecal staining on the sternum, and burrs on the right shoulder. This animal also had a minor right luxating patella. This animal will need to see a veterinarian in the next 48 hours to asses the otitis external (ear infection). Medications are warranted and ear bacterial culture may be required.

420679 Adult Intact Male Coton de tulear Body score 2/9, significantly underweight. Mild mucoid discharge from the left eye, heavy matting between pads and feathers of feet and strong odour. Feces stuck to fur around the rectum. Moderate dental disease. This dog stood out from the rest due the level of emaciation, I debated calling this a body score 1/9, the lowest available, but there wasn't there was still some fat pads palpable along the spine. This animal is far thinner then the rest of the population, and I feel this warrants a full workup to rule out any systemic disease. I recommend bloodwork and urinalysis, considering radiographs if normal. Closely monitor this animals weight, if the animal gains significant weight without any corresponding disease, insufficient caloric intake has to be consider.

420680 Young Adult Intact Male Coton de tulear Mildly underweight. Moderately elongated nails and burrs adhered to the fur of the front legs. Burr also present over left eye, with heavy matting around the face and tail. Mild dental tartar This animal was very sensitive to being touched around the eye, With minimal restraint we were able to shave out the matt and burr covering the eye. The animals behaviour improved considerably. Close attention was made to ensure that there was no damage to the cornea of the eye, but the back of the matt/burr, did have spikes that would have caused irritation if the animal rubbed his face.

420681 Female adult Tibetan spaniel Moderately underweight with a body score of 3/9. Moderate underbite, with mucoid discharge from left eye. Elongated nails and matting between the pads. Animal had unusual respiration pattern, auscultation narrowed the abnormal breathing sounds to the upper respiratory pathways. Possible brachycephalic syndrome (a collection of genetic defects that include; elongated soft palate, inverting saccule and hypo plastic trachea) Monitor respiration closely. If no improvement have assessed by a veterinarian, including radiographs of the chest and upper airways.

420682 Young Adult Male Bearded Collie Mild dental disease. Right ear infected and will require medication. Excessive hair in ear with a large plug preventing view of the ear canal. Significant matting was also present between pads and neck (included burrs) Aural examine needed ASAP, with removal of the occluding ear mats. Monitor closely the left popliteal as inenlarged.

420683 Young Adult Female Bearded Collie Excessive hair in ear canal, and matted to the skin on legs and rectum. Burrs throughout the matts. Mild sinus arrhythmia (normal condition) Grooming needed.

420684 Adult female cotton de tulear. Mildly obese, nails mildly elongated and burrs on coat. Mild dental tartar.

420685 Adult Neutered Male Coton de tulear Severe dental disease with extraction of 105 possible. Heavy matting and burrs in all four feet. Strong odor present This animal will need dental assessment and possible dental extractions, pain control and antibiotics necessary until dental can be arranged.

32. Dr. Walton testified that he is a veterinarian licensed to practice in BC since 2005, and he works at a small animal practice. He confirmed that his written report is accurate.
33. Dr. Walton confirmed that the individual exam sheets were consistent with what he noted when he examined the dogs on November 30, 2016.
34. He said that for the most part, the dogs were relatively healthy and several required dentals or dental assessments and possible extractions, and some had low to moderate ear infections requiring treatment. Two dogs were underweight with no explanation for that level of emaciation. One dog 420690 had a burr stuck over its eye that was incredibly sensitive and at risk of poking the eye; when he removed the burr, the pain went away and there was a distinct change in the dog's behaviour. Dog 420657 had been neutered and had surgery for an aural hematoma (which was well-done) and now had a skin infection, noted by Dr. Walton, which would have been picked up at recheck. He would have preferred if the dog had been seen sooner but it was reasonable to wait for recheck.
35. Dr. Walton testified that to house 8 dogs in a car was not advised. The main issue was an inability to control temperature even on cool days as dogs could overheat. If space is limited, it can cause aggression as dogs fight for space, food and water.
36. With regard to the two other dogs housed in a car, Dr. Walton testified that vehicles are not designed to hold dogs, again due to heat and size. Even in winter it can get hot. A vehicle can provide protection from the elements.
37. Under cross-examination, Dr. Walton agreed the juvenile dogs were all healthy. He was very concerned that dog 420679 was underweight and if he saw a dog like that which needed a workup and the client refused, he would reach out to the Society.
38. When asked about what length of time was permissible for a dog to spend in a car, he said that the status of his clinic and his public statements are that dogs should never be left alone in a car as you cannot control the environment. He does not recommend it for any length of time. He said if asked if one hour was okay parked in a garage with the windows half down, he could think of reasons to answer both yes and no but it was hard for him to think of a situation where the only possibility was to keep a dog in the car. He said that if it is temporary and the owner knows that it is a stable environment, he wouldn't "make a stink about it" but he recommends you do not keep dogs in cars.
39. Dr. Walton confirmed that he could not say there was systemic abuse or neglect.

40. In response to Panel questions, Dr. Walton confirmed that the dog that scored 2/9 was emaciated due to muscle wasting. He could feel the dog's ribs and hip pins. The dog's muscles were being used as a food source. Causes could include decreased activity, diabetes, kidney disease, heat, cancer, muscular disease. The dog required a further workup.
41. Regarding the dog with the infected tooth, the gums were swollen and bright red and the tooth will likely need to be pulled.
42. Dr. Walton testified that he saw a lot of fecal staining as well as poop stuck in the fur around the rectum of a few dogs. Dirty dog bums and long curly dog hair could lead to poop being stuck in the hair and could ultimately form an entire fecal ball and block defecation. The area needed to be cleaned. Cleaning is a grooming issue but if grooming is ignored for a long enough time, it could lead to fecal blocking which is a medical issue. Fecal blocking was not seen in these dogs.
43. Dr. Walton said there were no medical issues caused by the environment the dogs were in.
44. Dr. Walton said anyone could remove the burr over the eye of the one dog but when it's closer to the eye, a veterinarian should remove it. The dog had had the burr stuck there for days, he was certain, based on the level of matting and the depth of the burr. He said it did not happen that morning.
45. Regarding the tooth, he said most owners don't look in a dog's mouth so he frequently sees these types of issues. Owners can check a dog's appetite as an indication. Dr. Walton said a breeder and owners of multiple dogs should be examining their dogs' mouths and brushing their teeth. Several of the seized dogs had bad breath.
46. On re-direct, Dr. Walton said that in this seizure, the amount of poop on dogs' bottoms was not at a critical stage but told him the owner was not keeping a close eye on grooming. It is not a critical health issue but is something owners must be cognizant of as it can lead to a medical issue.

Special Provincial Constable (SPC) Leanne Thomson

47. SPC Thomson was appointed under the *Police Act* and is an employee of the Society.
48. On November 24, 2016 SPC Thomson attended the Appellant's property and heard numerous dogs barking. She attempted to count and believes there were about ten dogs barking.
49. On November 30, 2016, SPC Thomson was at the property at the execution of the warrant. The Appellant denied owning any of the dogs, saying none were hers and they were supposed to have been gone off the property.

50. SPC Thomson testified there was no water found in the vehicle in the garage and that there were trampled, flattened feces in the car in the garage which smelled of urine and feces. She inspected the dogs herself except those which were fearful or aggressive.
51. The decision to seize the dogs was hers alone. They were taken to the West Vancouver SPCA Shelter. She deemed the seizure necessary because the Appellant had been arrested, said she was not the owner of the dogs and some of the dogs had some dental issues and possible ear issues and some needed grooming.
52. Fifteen puppies have been born while in Society custody but one died so there are 14 puppies.
53. Under cross examination, SPC Thomson was questioned about the limited amount of material left for the Appellant to mount a defence. She said she does not normally leave the ITO as it has personal information in it. If there is no owner, there is no one to receive it.
54. SPC Thomson testified that on November 29, 2016 the Society received an anonymous phone call and that she spoke to the informant and then obtained the warrant. Her own notes, her source documents, were not provided to the Judicial Justice of the Peace. She said she understood she was to produce all documents but the only reason she did not produce her notes is that the name and address and telephone number of the informant was in them and she wanted to keep them confidential. She did not know she had to produce her notes for this Board as this is only her second hearing.
55. SPC Thomson stated that she formulated the intention to obtain the ITO on November 24, 2016. She decided to remove the dogs on November 30 because the Appellant was being taken away and said that she was not the owner of the dogs. She said it would be dependent on each individual case if she would ask an owner about the health of their dogs.
56. In response to Panel questions, SPC Thomson stated that the first time she saw the dogs was on November 30, 2016 although she had seen a dog through the window on November 24, 2016.
57. SPC Thomson testified that the living conditions of the Appellant that would cause distress to the dogs was the smell of urine and feces and the fact the dogs were matted and the RCMP noted the trailer dogs from earlier had a foul odour.
58. When asked if she believed the Appellant's assertion at the time of the seizure that she was not the owner of the dogs, SPC Thomson said she had assumed the Appellant owned at least some of the dogs and so no, she had not believed her. When asked why she seized the dogs, SPC Thomson said she had no idea how long the Appellant would be in jail or if anyone else was coming home, and she understood the Appellant's husband was a truck driver and so it was unknown if he would be coming home soon. SPC Thompson said

some dogs needed dentals at the time of their seizure. SPC Thomson said she seized the healthy dogs as she did not know when anyone would be home. But it was also due to the dogs living in the vehicle which was not adequate living conditions. They were living in poor conditions with matting, being fearful, and having overgrown nails according to ACO Newman's conversation with her pre-seizure. SPC Thomson said she took notes in real time as each dog was being brought out.

Animal Control Officer Sheri Newman

59. Ms. Newman is an Animal Control Officer with the District of Squamish since 2008.
60. She confirmed she prepared a report found in Exhibit 4 page 22.
61. ACO Newman reviewed her history with the Appellant's dogs including excess number of dogs, noise, and dogs roaming.
62. ACO Newman was at the "raid" November 30, 2016 and said only the RCMP had guns.
63. ACO Newman testified that there were two large sheepdogs and 6 small dogs in the high-door garage in a vehicle. There was a strong odour of ammonia and dirty dog musty slightly fecal smell. As the dogs were being removed, one terrier dragged her to a puddle and started to drink - he was "that thirsty" when he saw water. Outside the vehicle was a very strong urine ammonia smell and fecal musty dirty smell.
64. ACO Newman confirmed the camera printed the wrong date on photos and the dates should be November 30, 2016.
65. In the photo on page 138 the digital laser thermometer registered 270, which was 27 degrees Celsius. A heater on top of clothing was a fire hazard. She would guess it was over 30 degrees in there and a dog with puppies was in there. There was a heating pad in another room and the cord could be hazardous.
66. ACO Newman went through the photos of the dogs, offering her impressions. She says she did not overhear the RCMP threaten to "take out" the dogs which nipped. In general, ACO Newman said all the dogs in the vehicle had matting. Dog #23 had fecal build up on the underside of its tail. Many were matted with ear infections. In the car in the garage, there were no feces in the car but there were feces in the car in the field with the two dogs.
67. When the Appellant was arrested, she said to ACO Newman that she did not own any of the dogs at the home, referring to all 29.
68. Under cross-examination, ACO Newman said all outstanding issues were not resolved as the Appellant had not paid a municipal ticket and she had excess dogs on her property.

X. The Appellant's Evidence

Neddy Tsin (also referred to as Neddy Tsin-Minions)

69. The Appellant and her husband have lived in Squamish B.C since 2007. She previously worked outside the home but in the past half year, she had decided to stay home and devote herself to breeding and caring for her dogs.
70. The Appellant said the 8 dogs in the car in the garage did not belong to her but instead belonged to J.Y., her friend who had left the country the day before to care for an ailing parent. J.Y. had asked the Appellant to pick up her 8 dogs from J.Y.'s home (the dogs were there with J.Y.'s husband and son) and groom them. The Appellant said the dogs were picked up around 6:00 the morning of the seizure and were being kept in the car while she attended to her own dogs, after which she would have brought the J.Y. dogs in one by one to groom them. She had intended to return these dogs to their home that day.
71. The Appellant also remarked that it was impossible for her dogs to get a burr stuck in their coats as they are never out. She said the J.Y. dogs had been out in the rain and had burrs in their hair which is why she was to groom them. The garage has a 15-foot high ceiling. She did not want the J.Y. dogs to contaminate her puppies. The car that the 8 dogs were in was the same car used to transport those dogs to her home. They were on towels to stay warm and dry, the windows were down for ventilation, and they wouldn't be there long.
72. The Appellant's sheepdog Abigail comes in at night and is out in the yard in the morning; she doesn't trust the dog not to roam so her husband puts the dog into the car and she either monitors the dog or brings it into the home. Zoey the Polish lowland dog had just been neutered and needed to be kept calm and quiet and clean so he was put into the car with Abigail to keep her company. The dog "just loves car rides" so hopped right in.
73. The Appellant said her husband would check on the dogs before leaving for work at 8:30 am and if the dogs were sick he would have taken them right to Dr. Grewal.
74. The garage vehicle was a Grand Vitara 4-door SUV hatchback and the 8 dogs inside were small or medium dogs.
75. Abigail and Zoey had the windows of their outside car rolled down 3 inches as her husband was "very, very concerned" about their well being and there was only a short time between when he left for work and when she would finish attending to her puppies. The Society arrived around 10:00 am so the dogs had only been in the garage for 1.5 hours.
76. The Appellant testified that when the Society arrived on November 24, 2016 she had been attending to the puppies and the door knocking caused a commotion so she came

downstairs and quickly closed the door behind her. The officer wanted to inspect the premises and she felt they did not produce proper “credentials” - they could have been anyone and she doesn’t know where they’ve been and she needs to protect her puppies from the outside. She asked them to come back with a warrant.

77. The Appellant said the officers did not say why they were there, just to inspect the premises, asking how many dogs she had, so she refused to answer. The Society said she smelled like urine and feces and she was insulted and emphasized the warrant.
78. On November 30, 2016, the Appellant was upstairs with Mona Lisa and was very concerned about her due to her pancreatitis and was constantly monitoring her and trying to keep her in a calm environment. She heard pounding on the door around 10 am so she locked up upstairs so every dog would be okay and went downstairs. There were 6-7 officers in the foyer as her door was unlocked. Every one of them carried a gun.
79. She read the one page warrant and the RCMP asked where the dogs were and one officer threatened to “take out” two dogs who nipped at him so she picked the dogs up and put them upstairs to keep them calm.
80. When she came downstairs, an animal control person was playing with her puppies in the laundry room. As those dogs had not yet had their first vaccines, the Appellant was “devastated” as they were contaminating her living environment. When the Appellant could not answer a police question about where other dogs were, she was called a liar and handcuffed and read her rights. No one ever asked about the health or condition of her dogs. A 5-ton truck pulled up and the police took her away.
81. Upon her return home that evening, there were two sheets of paper: a notice and the procedures for disputing the seizure.
82. The Appellant explained the photographs at Exhibit 3 showing, variously, how the dogs were kept separated by litters; papers for housetraining; food and water; boxes and towels; heaters and a heating pad.
83. Abigail and Zoey were inside-outside dogs. Abigail would often go to work with her husband or they would go to the Appellant’s Upper Squamish property to exercise. Zoey was about to go and live with a friend of hers in Stanley Park as that friend was looking for a dog. As soon as she ever noticed anything wrong, the dogs would go to the veterinarian’s.
84. Grooming is her passion and she loves puppies, they are her passion. She researched breeding and consulted her veterinarian. She only feeds the puppies the best food. Since the seizure, she has worried about the dogs. When Dr. Grewal advised her that the West Vancouver SPCA branch wanted their health records, she sent food and vitamins and a list of each dog’s food and medicine so there would be no change in diet.

85. The Appellant does not believe she has any unresolved issues with Animal Control or with the Society. When Abigail roamed, she paid the fine. When the dog got a burr stuck on its coat, the Appellant made sure she got it out.
86. Under cross-examination, the Appellant said she breeds dogs to sell or give away to friends as they are a very rare breed with excellent temperament, and many people use them as therapy dogs. She gets praise from people who buy her dogs.
87. The Appellant testified that she and her husband are the sole caretakers of the dogs and puppies, and are devoted to them. She used to work irregular hours as a hotel housekeeper but left as it was better to be a stay at home mom to her dogs.
88. The Appellant said without reference to a microchip number, it was hard for her to know exactly which dog was being referred to by the description the Society provided. Some of the dogs were not hers, but she doesn't understand why the Society didn't scan the chips as even she has a scanner.
89. The Appellant had pre-sold some of the puppies but these sales are not going to happen now as they were intended to be Christmas gifts.
90. The Appellant said that there were two other dogs not present at the seizure, but they also were not owned by her. She said she had not notified J.Y. that her dogs had been seized but did have a brief conversation with J.Y.'s husband about this. The Appellant does not charge for grooming and sits on the floor to groom as she does not have a grooming table. One by one, she would take the J.Y. dogs into the bathroom downstairs to be groomed, and then they roam around the house.
91. The Appellant testified that typically, when momma dogs wanted to go outside, they would bark. At the time of the seizure, the puppies were locked up but the momma dogs were out in the house as they had wanted to know what was going on.
92. It was put to the Appellant that the J.Y. dogs had not been groomed by the time of the seizure at 10:48 am. The Appellant said her husband picked up the 8 dogs, who had then been in the car for four hours awaiting grooming. The Appellant asked "what do you want me to do? Get each dog one at a time?" The Appellant said she was asked to groom the 8 dogs and does not see why it wasn't acceptable to keep them in the car as people cage their animals for 8 hours to go to work.
93. The Appellant said she did not see a problem with keeping Abigail and Zoey in the car out of the rain as they were together, and she would have let them outside to exercise when she was finished with her inside dog chores. There was no food or water in the outside car. The Appellant said the two dogs tore up the inside of the car and that was normal behaviour for a dog.

94. She said Zoey was in recovery mode so needed to be kept quiet in the car, calm and secure and not roaming, so Abigail was put in there with him. She said Abigail leaked urine constantly but denies there was urine and feces in the car.
95. When asked about her plan if all the dogs were returned, especially given there were now, with the new puppies, 43 dogs, the Appellant said the J.Y. family has a 40-acre farm with a cottage and that she and her husband intend to move in there until their own family property is finished development. She has been planning to move for 3 years but there are always obstructions to their plan. They own 9 acres in Upper Squamish.
96. Polar Bear was one of the dogs in the car in the garage. Polar Bear was registered to the Appellant (as owner) with the municipality but she had given the dog to J.Y. in the summer of 2016. She does not know the J.Y. address. She believes she has licences for 7 of her own dogs.
97. In response to Panel questions, the Appellant confirmed her Telus email address and was then taken to her Exhibit 3 email she had sent to the Society [the part in question read: I am the owners of the 29 dogs that was seized It was signed ‘Owner of these dogs’].
98. The Appellant confirmed she sent the email which said she owned all the animals seized. She explained that she said that she owned the dogs as she felt responsible to ensure the care given to them, like their food and supplements, as they were seized from her property. She confirmed she was supplementing the 8 J.Y. dogs that day while they were at her home for grooming. She said she knows exactly how J.Y. feeds and supplements her dogs as the Appellant used to own those 8 dogs. The Appellant said J.Y.’s dogs are fed her own way and her own way is food and water is available all day. The Appellant confirmed there was no food or water in the vehicle for the dogs. She said she was almost finished caring for the puppies and would have let the 8 dogs out one by one.
99. The Appellant said she gave the dogs to J.Y. two or three dogs at a time as the J.Y. family were dog lovers who wanted to raise dogs, with some to guard sheep and livestock. She had given all 8 dogs to J.Y. in the summer of 2016.
100. Regarding the thin dog in the car, she did not think it was too thin and that she personally knows 9 – 12 pounds in weight was the right weight. She did not see him as being extremely thin so his weight did not cause her any alarm.
101. She supplemented the dogs in the car as dry food loses nutrients and vitamins, so she gives a probiotic supplement for joints and bones and skin and coat.
102. When asked further about the dogs in the car, the Appellant said the dogs, including the thin dog, were all eating and drinking “fine” and getting plenty of exercise and she knows this because before she gave those dogs to J.Y. and afterward, she would visit J.Y. very

often and they were happy on 40 acres. She would visit them every second day for 2-3 hours a day. A sick dog would not eat or drink and would behave lethargically. When she would visit the 8 dogs every second day she would spend about half that time inside where the Coton dogs were. She would go and look to see how she and her husband will set up a place where they can live. She assumed food and water was out all the time and she did not see an emaciated dog plus dogs can be thin from lots of exercise.

103. The Appellant said that J.Y's husband wanted to keep the dogs and fight the seizure but no one advised her that he could come as a witness. She feels it is her responsibility as the 8 dogs were on her premises and she will do everything she can to retrieve those dogs.
104. The Appellant said she grooms her own dogs once a week.

Doctor Jasdeep Grewal

105. Doctor Grewal is a veterinarian in Squamish, licensed to practise in BC since 2009. He said he has observed neglect and abuse in his veterinary career before and has reported such to the Society. He confirmed his affidavit in the Appellant's Exhibit 1.
106. Dr. Grewal testified that he is familiar with the Appellant's pets that come into the clinic and he sees her every month for vaccinations, ear cleaning, buying food – she buys high-quality puppy development food. She is good with her pets and all are well groomed and look well with no signs of abuse or neglect. He stated that the dogs respond to her like a normal dog would to a normal owner and they are not fearful. He testified that the Coton de Tulear puppies and moms have been in, and that Jasper is the dad. He has vaccinated them, treated pancreatitis in one dog and done dentals. The Appellant's level of care is "good, very good." The Appellant has sought his advice regarding breeding and whether or not her dogs are healthy enough to be bred.
107. Mona Lisa the dog has ongoing pancreatitis and can have attacks due to stress. It produces acute abdominal pain and needs veterinary treatment. She's had no issue with whelping. He has treated Abigail and Zoey. Abigail has urinary incontinence and is on medication. She is in good shape and is groomed whenever she comes to the clinic. Zoey had an ear hematoma and was operated on and neutered. On November 30, 2016, these dogs were under his care and a follow-up visit was scheduled for Zoey.
108. Dr. Grewal testified that he had read Dr. Walton's report (Tab 14 Exhibit 4) and noted that it said the Coton dogs appeared healthy and the puppies too, and there were no adverse remarks. The report said that Jasper needed a dental and grooming and one dog was underweight and blood work had been suggested by Dr. Walton.
109. Dr. Grewal said that in his opinion, none of the dogs exhibited systemic abuse; the Coton dogs and the other dogs just needed grooming, which he felt was required every month.

110. Dr. Grewal had viewed the photographs submitted by the Society (Exhibit 3). Dr. Grewal remarked that it was common to keep dogs inside the house. The dogs needed ample space and no interference with their puppies. He saw food and water and nothing injurious, and no other dogs around these dogs. He saw a gate which is common practise for separating dogs. The newspapers on the floor were pretty normal to collect urine and feces. The litters of puppies appeared separated and that was a good practice to reduce the likelihood of puppies getting sick. Puppies get their first vaccinations at six weeks.
111. Dr. Grewal did not review the submissions on costs in their entirety but looked at some of the costs and said that for the exam and bloodwork it looks to be standard but it is an individual thing what a clinic charges. Nothing is laid out anywhere about charges. There was “not much [he] can say.” Regarding boarding, his own clinic doesn’t board but will on exception allow a client’s pet overnight and charges \$20 a night but does not want to comment otherwise and says he does not know the overhead cost for the boarding.
112. On cross examination, Dr. Grewal said over the course of his work with the Appellant, he did not see 29 dogs, only those dogs brought to his clinic. He has been to the Appellant’s home a few times, maybe a year back, to look at Mona Lisa and at that time the dog was boarded off in the living room. He saw one litter in the living room and one Coton at the first-floor stair gate and 3 adult Cotons. He did not see any sheepdogs inside or outside.
113. Dr. Grewal said the Appellant is a breeder who sells Cotons. He said it was important for owners to remove matts and feces and groom fur and nails to reduce infection and improve appearance.
114. Teeth cleaning is not grooming but is instead healthcare. Ear cleaning should only be done when needed as it can change the pH in the ear. A lot of problems in ears are self created due to grooming. He would expect the Appellant to come back before her follow-up appointment for the dog’s ear surgery if the dog was bothered by its ear or it smelled.
115. Dr. Grewal provided his definition of “distress” and said in his observation the dogs were not in distress. When asked if keeping dogs in a car was distress, he said if there was not enough room, it could be distress. Dr. Grewal said burrs and matting needs to be removed when it is noticed.
116. In response to Panel questions, Dr. Grewal listed the dogs he has seen as Mona Lisa, Jasper, Zoey, Lydia, Abigail, Poppy, Maggie, Mocha, Katana. He said he saw the adult Cotons, the English sheepdog, and pregnant Poppy.
117. Regarding dogs in vehicles, he said that he has clients who live in trailer parks and have dogs and cats who live in there with them all their lives. He said a dog can be kept in a car if it isn’t hot. It is a given, he said, that the dogs would have to be exercised as they cannot stay in a car forever. It could cause atrophy of muscles if dogs are not exercised properly.

A veterinarian would notice atrophy or perhaps a person looking from behind. If he had seen that in any of the Appellant's dogs, he would have noted it in his files and discussed issues like pain. He would worry about pain, or kidney issues.

118. He said only a veterinarian can prescribe Surolan for a dog's ears and often, ear problems are genetic and an owner is stuck with it and you cannot fault the owner.
119. Dr. Grewal testified that over the long term, it is not acceptable to keep a dog in a car. If the dog gets exercise and is taken care of, it might be acceptable, but it would not be ideal for the dog.
120. Upon re-direct, Dr. Grewal said it is acceptable to keep a dog in a car for a short period maybe hours as long as it was being let out, but not for days. Maybe 6-8 hours at a stretch would be okay but he said dogs were not meant to be inside a car, they should roam around. He said windows could modulate temperature and exercise was what he was concerned about.
121. Upon final questioning from the Society, Dr. Grewal said keeping a dog outside in a car around October would not be a good thing. If the car was soiled with feces and urine it would make it difficult and would not be a good environment. If the dogs chewed the car, it would not be a good environment.
122. Dr. Grewal did not submit the totality of his records but just what he had pertaining to the dogs seized.

XI. Submissions

The Appellant's Position

123. Counsel for the Appellant made submissions about the lack of information at the time of seizure and the length of time between dispute and production of material. He submitted that this delay extended the time the dogs were away from the Appellant and that is the result of ambiguity in the process. The Society's written reasons were then issued and were not based on any Appellant submissions. The result was that he did not have time to review the material once it was received, nor have his expert review it, and then make a satisfactory response.
124. Dr. Walton saw the animals and found them to be overall healthy and not subject to systemic abuse or neglect. Dr. Grewal reviewed the Walton report and testified that the two dogs seized were under his care and subject to his follow-up so nothing indicated any suffering or injury due to abuse or neglect. There was no remarkable condition other than to monitor health. The Cottontails and puppies were healthy and clean, and Dr. Grewal testified that the Appellant had the ability to raise healthy dogs. He had no issue other than grooming, and surely grooming cannot lead to seizure. Eight of the dogs are not even

owned by the Appellant, and the final two dogs [the outside car dogs] were assessed and healthy. In totality, the Society was premature to seize these dogs. The SPC indicated that her decision was based on the Appellant being arrested and that the seizure was a last-minute decision based on someone being taken away in handcuffs.

125. Regarding the issue of costs, there was complete ambiguity and that extended the timeframe several weeks beyond when this matter should have been concluded. Dr. Grewal had no issue with veterinary invoices but the boarding costs which pushed into January were brought on by the ambiguity of the review procedures. The Panel ought to take that into account. If the dogs are found to not have been in distress and returned to the Appellant, there should be no costs against the Appellant.

The Society's Position

126. The Society's position is there has never been a dispute to this Board mentioning ambiguity in the review process and that the process is simple. There is no desire on the part of the Society to have animals languish at a Society facility at the Society's cost, which costs are often not reimbursed, so that the Society is left to pay for the animals.
127. Dr. Grewal was not critical of the costs for treatment. The cost for boarding might be higher than his but he was not critical of it. If the order of this Board is to return the animals, the Society asks for payment of costs prior to the return of the animals, and the reason is because these animals or the puppies in whole or in part are sold for profit with evidence in the material showing one dog had sold for \$1,800.
128. Dr. Grewal testified it was generally inappropriate to house dogs in cars. Dr. Walton said it was improper to house dogs in cars and the condition of one dog was a BCS (body condition score) of 2/9 indicating someone was not properly caring for the animal.
129. The Society has grave concerns regarding the Appellant's credibility as she claimed she did not own the animals then withheld the name of the owner and only disclosed it during the hearing. She provided no verification and her husband did not testify. By her own evidence of her timeline, some of those 8 dogs would still be in the car in the afternoon. It would bode badly for the dogs to return them to conditions which the Appellant thinks are appropriate. She cannot look after that many animals and her actions indicate no passion for grooming as many were not groomed. If one reviews Dr. Walton's list, almost all animals have grooming issues. As a group the animals were in distress. This was part of the reason SPC Thomson seized the animals: grooming, and the fact that no one was there. It is up to the Panel to determine if the seizure was proper and just for any valid reason. The Appellant's history needs to be taken into consideration. Her dogs run at large.
130. The Society also notes that the Appellant failed to properly care for the animals, depriving some of adequate food, and water. Veterinary care was provided in a casual manner with inquiries to the veterinarian about advice and buying dog food. Additionally, the

Appellant failed to provide appropriate shelter for some of the Animals, having them being in cars for long periods of time as well as the past history of having dogs confined in a flooded fifth wheel trailer.

131. The Society had reasonable grounds to believe the animals would continue in that condition if returned to the owner. When considering a return of the animals, the Society considers whether or not, in the opinion of the authorized agent, the person responsible for the animal will promptly take steps that will relieve its distress.
132. The Society notes that the Appellant's two pregnant dogs that were taken in to custody at the time of the seizure had their litters resulting in another 14 pups. This would bring the Appellant's number of dogs to 43. The Society does not see how the Appellant could possibly house that many animals as she already had 10 in cars without regard to how much distress it is for dogs to be living in such conditions.
133. The Society notes that in the argument of costs it should be noted that the Appellant had admitted to a profit of \$1,800.00 per puppy.

XII. Analysis and Decision

Ownership of the Dogs

134. An issue arose in this appeal as whether the Appellant was the owner of some, all or none of the dogs.
135. Before addressing this issue, it is important to note that when the Society removes an animal under s. 11 of the *PCAA*, the Society is not limited to removing that animal from the dog's owner. Section 11 is broader than that. It states:

11 If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal

- (a) does not promptly take steps that will relieve its distress, or
- (b) cannot be found immediately and informed of the animal's distress,

the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

136. The term "person responsible" for the animal is also defined in the Act. Section 1(1) of the *PCAA* states that a person responsible is broader than an owner:

"person responsible", in relation to an animal, includes a person who

- (a) owns an animal,
 - (b) has custody or control of an animal, or
 - (c) is an operator in relation to an animal;
137. When the Society has removed an animal under s. 11, the right of review extends to any and all of an animal's owner, an operator or a person from whom custody of the animal was taken: *PCAA*, s. 20.2. Any one of those persons may appeal a review decision: s. 20.3(1).
138. In this case, the Appellant was the only person who appealed. The Board (BCFIRB) received no appeal from any other person purporting to be the owner.
139. There is, of course, nothing preventing a dog's owner from being a witness to an appeal brought by the person from whom custody of the animal was taken. In fact, if the distress was related to the care or neglect by a caretaker, the owner's evidence could be relevant in determining the issue of return of the animal to the owner.
140. The Appellant gave conflicting information regarding ownership, advising the SPC that she owned none of the dogs, then writing an email to the Society claiming she owned all 29 dogs, then testifying at the hearing and asserting in other material she did own Group 1 and Group 2 dogs, but did not own Group 3 dogs, although she had owned Group 3 dogs until the summer of 2016.
141. The Panel does not accept as credible the assertions of the Appellant regarding ownership of Group 3 dogs. She testified she did not own them after the summer of 2016, but she wrote an email where she twice said she owned the dogs including Group 3 dogs.
142. When the Panel questioned her about this email, her response was not believable. She said she wrote the email as she felt the dogs were her responsibility and needed to ensure the continuity of their care including food and supplements.
143. The Panel found it difficult to believe the Appellant would not only feed but also supplement another person's dogs when those dogs were only in to be groomed for the day.
144. The Appellant testified that she was extremely careful about introducing germs or disease into her home where the puppies and moms were, yet said after she groomed the Group 3 dogs, her intent was to let them run around in the house. This would only make sense if they were her dogs. We note that she testified that she was not happy with the Society being in the house touching puppies as she did not know where they had been. Surely this would have applied to another person's dogs, even after grooming, if they had belonged to someone else, as she would not know where they had been either.

145. The Panel also found it odd for the Appellant to remark that she was not alarmed by the thin dog. If that dog was not her dog, it is not clear when the Appellant would have had the opportunity to make that assessment. She testified that her husband picked up the dogs at 6:00 a.m., that they were still in the car they were picked up in when they were seized, and she was not going to bring them inside until they were groomed, and they had not been groomed yet as of 10:30 am (and still had no water or food). At the time of seizure, she had not seen the dogs in the car in the garage.
146. This is all further cemented, in the Panel's view, by the fact the Appellant did not call any witness or provide any affidavit, or even a bill of sale or transfer, to show that there had been a change in the ownership of the dogs. That would have been an obvious thing to do. She did call a veterinarian so she did understand the purpose of calling a witness.
147. For all of these reasons, the Panel finds that the Appellant was the owner of all 29 dogs and their puppies, and has not shown that the Society erred in proceeding on that basis.

Seizure and return

148. In this case, we will address these issues together. We will deal with the Group 1 dogs first, and then deal with the Group 2 and Group 3 dogs together.
149. The *PCAA* sets out the following definition of "distress" in section 1(2):
- 1 (2) For the purposes of this Act, 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.
150. Section 1(2) must be read with s. 11 of the *PCAA*, quoted again below for convenience:

11 If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal

- (a) does not promptly take steps that will relieve its distress, or
- (b) cannot be found immediately and informed of the animal's distress,

the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

151. Given part of the rationale that was offered for the seizure in this case, it is also relevant to refer to section 10.1:

10.1 (1) In this section, "abandoned animal" includes an animal that

- (a) is apparently ownerless,
- (b) is found straying,
- (c) is found in a rental unit after expiry of the tenancy agreement in respect of the rental unit, or
- (d) if a person agreed to care for the animal, is not retrieved from that person within 4 days following the end of that agreement.

(2) If an authorized agent is of the opinion that an animal is an abandoned animal, the authorized agent may take custody of the animal and arrange for food, water, shelter, care and veterinary treatment for it.

152. The Panel assessed the dogs according to the Group they are assigned to, as the place where the dogs were each found gave rise to the conditions in which they were found.

Group 1

153. The Group 1 dogs were found inside the house. They are comprised mostly of mother dogs, young dogs and puppies. Both the SPC and the ACO testified they smelled urine and feces coming from inside the house. Dr. Walton did not note any foul odour coming from the Group 1 dogs. In fact, Dr. Walton described these Group 1 dogs appearing healthy with a few with minor to moderate dental conditions. One had a mild dermatitis around its vulva. One had some matting at its feet and around its peri-rectum. A few had urine staining. There was no evidence about any odour from the home creating any risk for these Group 1 dogs. The conditions of the home were evident in photographs: papers out for dogs to go to the bathroom, boxes and blankets on the floor, no accumulations of object to cause harm, no photographs of feces, photographs of urine did not show excessive urine or soaking. There was food – good quality food, we heard -- and water available to Group 1 dogs. There was no evidence to convince the Panel that conditions were unsanitary. Dogs were healthy and Dr. Grewal testified that the Appellant could breed healthy dogs.

154. While the review decision focused on distress, the Panel finds that the evidence, including the evidence of the SPC, did not support a finding of distress and removal under s. 11. The animals were not in distress. They did not, as the Society found them, require anyone to "relieve" distress.

155. When we assess the SPC's testimony as a whole, it seems that a basis for removing these animals was that they had essentially been abandoned as the Appellant had been arrested,

had disclaimed ownership, and her husband was a trucker so she did not know when he would be home.

156. We appreciate that the SPC took a protective approach to the Group 1 animals. As noted, the Appellant had been arrested and had disclaimed ownership. The SPC also took into account other more serious concerns arising with respect to the condition of the Group 2 and 3 dogs. However, in the circumstances, we do not think a removal based on s. 10.1 would be justified in this case. As noted, she did not believe the Appellant's statement that she did not own these dogs. There is no indication that she attempted to contact the husband to determine when he would be home. The mere fact that he is a trucker should not preclude an effort to phone him. There is no indication that she spoke to the police about the likely duration of the Appellant's custody. In all the circumstances, we do not think the removal of these dogs, which were not in distress, was justified based on any notion of abandonment, which was also not relied on in the review reasons.
157. Even if the Group 1 dogs had been validly removed, the question still arises whether those dogs, which were not in distress, should have should be returned. The only way these Group 1 dogs would not be returned, despite a finding of no distress, is if they would be returned to a situation of distress, and thus, in the best interests of these dogs for the purpose of this appeal, the Panel considered the Appellant's current situation.
158. There was no evidence that anything had changed for the Appellant that would cause her to permit the conditions that are defined in the *PCAA* as distress. There was no evidence or concern on the part of the Panel that the dogs would have their living conditions change while kept in the house (and it is the hope of the Panel that the dogs will be kept in the house).
159. The only substantial change for the Appellant is there will be 14 new puppies potentially going back with the Group 1 dogs. The Society submits that this is too many dogs and the Appellant will be unable to care for these dogs given the sheer number.
160. The Panel disagrees. By all accounts and by the evidence, the Appellant runs a breeding operation to the satisfaction of her veterinarian, and she sells her dogs, according to the Society, for \$1,800 each. There was no evidence that any of her puppies were unhealthy or were ever returned for being unhealthy. Although the Panel agrees with the Society that 14 is a lot of puppies, we find that breeding is the Appellant's business and there is no evidence to suggest she will not continue to run her business in a manner that protects the health of her dogs and puppies.
161. The Panel therefore will order the return of the Group 1 dogs and all 14 puppies born while in the custody of the Society. Should any other puppies be born to a Group 1 dog prior to the issue date of this decision, the Panel also orders those puppies to be returned to the Appellant. There will be no conditions although the Panel hopes that the Appellant will continue to feed her puppies and dogs nutritious developmental food and will continue to work with her veterinarian to protect these dogs' and puppies' health. As

noted below, this order is subject to the Society's right, under s. 20(2), to require the Appellant to pay its reasonable care costs prior to return. I will address this issue in more detail below.

Group 2 and Group 3

162. The Group 2 dogs, Abigail and Zoey, were found in a car, located out on the yard, which car had been torn up on the inside. There was no food or water found in the car. Abigail (dog 420656) had gingivitis with possible extraction required of tooth 106. Dr. Walton agreed that this dog was last seen by Dr. Grewal, but noted that even though Dr. Grewal did not find any dental issues (other than a dental was soon due), this type of issue can crop up quickly. This dog had minor matting and strong odour of feces and feces stuck around its rectum. Zoey (dog 420657) was recently neutered and had an aural hematoma fixed, and some infection was now present. The ear was painful and expressing pus. The other ear had a yeast infection, the dog's gums were ulcerated, and its nails long.
163. As already noted, the inside of the car had been torn up by the Group 2 dogs which, according to the Appellant, was normal behavior. This vehicle was in deplorable condition. The headliner and seats were ripped up, with the smell of urine and feces being evident throughout the vehicle. The SPC reported that the inside of Group 2 dogs' vehicle had urine and feces present.
164. The Group 2 dogs, while not in pristine health, were under the care of a veterinarian and in that respect, were not denied veterinary care for the purposes of the definition of "distress". However, in the Panel's view, their removal by the Society was justified because these two dogs were deprived of adequate water, were deprived of adequate shelter, were kept in conditions that were unsanitary, and were neglected, when one considers the totality of the grooming, minor health care and related issues, which we will discuss more thoroughly later in this decision. The Panel finds the Group 2 dogs were in distress.
165. The Group 3 dogs, the dogs which we have found did belong to the Appellant, consisted of a group of 2 large and 6 small dogs in an SUV car inside a garage, without water and food. One dog was described as pulling the ACO so it could drink from a puddle, it was so thirsty. One dog was described as emaciated with no explanation for that level of emaciation. There was no evidence this dog received any veterinary care. These dogs were dirty and matted with one dog suffering from a burr painfully irritating its eye, which burr Dr. Walton described as having been there for days. There was urine and feces in the car and on some of the dogs. Some dogs in this group were described as mildly to moderately underweight which concerned the Panel given that one dog was already emaciated. Particularly disturbing to the Panel was the Appellant's view that there was nothing about this thin dog that caused her alarm. Several dogs were seriously matted, had ear infections, ear discharge, feces stuck to their fur, and mild to severe dental disease.

166. The Panel had no difficulty in determining that these Group 3 dogs suffered distress and were justifiably removed by the Society. Each dog in this group was found in conditions where it was deprived of water. The underweight dogs were either deprived of adequate food or veterinary care. We find that the Society was justified and acted appropriately in removing the animals in Group 3 as they were in distress. We are satisfied that each animal in Group 3 was properly removed based on at least one or more of the criteria set out in the definition of "distress". The Society is not required to make a finding of "systemic distress" before it acts to protect an animal that is in factual distress in the particular circumstances before it.
167. Having determined that the seizure of the Group 2 and Group 3 dogs was justified, we consider the issue of return of these dogs.
168. We note that the legislative framework was described in *Eliason v SPCA*, 2004 BCSC 1773 where Mr. Justice Groberman (as he then was) stated:
- The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of.
169. We note the following passage from *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.):
- The goal and purpose of the act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as the Plaintiff's counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in the distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain the good condition in which it was released into its owner's care.
170. We also note these comments made by the British Columbia Court of Appeal in *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at paras. 37-38, in responding to the argument that the Society must always give an owner "another chance" before it seizes animals:
- In my view, s. 11(a) must be given a broad purposive interpretation. The words "does not promptly takes steps that will relieve ... distress" sometimes will lead to the authorized agent making orders and giving directions, in other circumstances he or she may conclude that the person responsible for the animals is unable to take the necessary steps or it may be apparent that the person is unwilling to take steps to relieve the distress. The cases referred to by the chambers judge illustrate these varied scenarios.
171. The word "promptly" suggests a consideration as to whether the person can or will take the necessary action.
172. The Appellant has a clear history of leaving dogs in cars, allowing them to run loose and failing to take steps to promptly alleviate distress. According to ACO Newman, whose evidence we accept with regard to the history, the Appellant's dogs were tied to a motorhome on her property in 2011; in 2012, a dog was tethered to the front porch with

frozen water and no food or adequate shelter or protection from the weather, and two large dogs were at large; in 2013, a vehicle had two dogs in it when the temperature inside the car was 28.8 Celsius; in 2014 two dogs were at large, and five dogs were left in a vehicle where the temperature was 29 Celsius, and a complaint was received of a dog locked in a trailer for two days; in 2015, two dogs were removed from a fifth wheel that was submerged in flood water and those dogs were matted and smelled of urine and feces; and in 2016, three dogs were at large, and another complaint was received of two dogs at large, and then, in October 2016, a complaint was received of two dogs housed in a trailer smelling of feces and urine. From the Panel's perspective, one significant fact in this history is that in many of these complaints, the Appellant denied there was any harm to the dogs, just as she testified at this hearing when she said that her emaciated dog was no cause for alarm and that the dogs tearing up the inside of the care where they were kept was normal behaviour.

173. Dr. Walton testified that it was never okay to keep a dog in a car and that he could not imagine a situation where no other solution other than a car was possible. Dr. Grewal also testified that dogs were not meant to be kept in cars. The Panel is of the view that, if the Group 2 and 3 dogs are returned to the Appellant, it is likely the Appellant will continue to use her cars as storage solutions for keeping her Group 2 and 3 dogs contained. This practice is unacceptable and causes those dogs to be in distress. The Panel does not believe that the Appellant will change her practise of housing Group 2 and 3 dogs in cars and this will cause those dogs to be in distress.
174. As noted above, the Appellant has deprived her Group 2 and 3 dogs of water. She seems unable to assess the outside temperature and its affect on water or the need for water. The Panel finds that, if the Group 2 and 3 dogs are returned to the Appellant, she will continue to deprive these Group 2 and 3 dogs of water, which will cause those dogs to be in distress.
175. The Panel also finds that Group 3 dogs were deprived of veterinary care, especially the emaciated dog, which is unconscionable and especially so since the Appellant was commended by her veterinarian for purchasing high quality developmental food for her puppies. The Appellant seems to simply deny the existence of any Group 3 dog having a veterinary condition that requires attention by simply denying that condition exists. The Panel finds that it is likely the Appellant would continue to deny her Group 3 dogs veterinary treatment if those dogs are returned to her, causing those dogs to be in distress.
176. The Panel has no confidence that the Appellant will address the shelter, water, food, veterinary and sanitary needs of her Group 2 and 3 dogs. When taking all these factors together, the Panel is of the view that Group 2 and 3 dogs were in distress due to neglect and will continue to be in distress as they will continue to be neglected.

177. The Appellant has already received many warnings and fines regarding her dogs, their unacceptable living conditions, and unacceptable lack of water, and unacceptable grooming which may well lead to additional veterinary conditions, and unacceptable care especially the neglect that permits her dogs to be at large. When considering all the circumstances of this case, the Panel finds that the Appellant is not entitled to yet another opportunity to get another chance, either before Group 2 and 3 dogs were seized, or when the Panel is considering returning these Group 2 and 3 dogs.
178. The Panel therefore finds that there are no conditions we could impose which would give us the confidence we would need to return these Group 2 and 3 dogs. We find that it is in the best interests of these Group 2 and 3 dogs that they not be returned to the Appellant.

XIV. COSTS

179. Section 20 of the *PCAA* states:

- 20 (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.
- (2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.
- (3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.
- (4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.
- (5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.
180. Section 20.6(c) provides that on hearing an appeal the board may “confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2)”.

Position of the Parties

181. The Appellant submits that the veterinary costs are reasonable but the boarding costs are not but in any event, the number boarding days is excessive as the Society failed to provide the Appellant with adequate information to oppose which, if the Appellant had it, the Appellant could have concluded this matter sooner. The Appellant is also of the view that she not be liable for any costs for the returned dogs.

182. The Society submits that it has incurred and continues to incur care expenses with respect to the dogs, including costs associated with providing the dogs with food, shelter and other care.
183. The Society is seeking costs in the total amount of \$23,590.51, broken down as follows: veterinary care including puppy food \$5,554.42, Grooming \$690, Society time to attend seizure \$241.95, and housing, feeding and caring for dogs and puppies \$17,104.14. We note that the dogs were housed for a combined total of 1002 days in the shelter at \$17.07 per day and 883 days in foster care at no cost to the Appellant (the number of dogs in the shelter times the number of days). The Society is also seeking an order requiring that the Appellant pay the Society's costs before the dogs are returned, given that the Appellant runs a dog breeding business and would sell the dogs for profit.
184. With respect to the Group 1 dogs, the Panel finds that those Group 1 dogs should not have been seized and so they should not have been boarded. Thus, the boarding costs are varied to zero. However, by the Appellant's own admission, she fed those dogs high quality developmental food which she would have paid for herself. This cost was borne by the Society. Even though the seizure was not justified, the Appellant is not entitled to be put in a better cost position than she would have been had there been no seizure. The same rationale applies to the veterinary expenses the Society incurred while the Group 1 dogs were in their care. The veterinary care costs (beyond the day-of-seizure vet check) were reasonable and these should have been the responsibility of the Appellant in any event.
185. The food cost for one of the moms and the 11 puppies is noted in the affidavit of Marcie Moriarty and supported by a veterinary invoice for \$118.02. There is a veterinary invoice for Group 1 dogs 420658 in the amount of \$755.54, 420664 for \$197.50 and \$140.77, 420662 for \$93.63, and 420668 for \$238.23 for a total veterinary liability of \$1,543.69. This amount is the responsibility of the Appellant for veterinary care for Group 1 dogs. These are amounts that presumably the Appellant would or should have paid herself to care for her Group 1 dogs at the level she claimed to care for them.
186. The balance of costs for the reasonable veterinary bills is as follows: \$5554.42 minus the above amount of \$1543.69 minus an amount that represents the portion of Dr. Walton's time attributed to the Group 1 dogs ($\$1275.63 / 29 \text{ dogs} \times 19 \text{ Group 1 dogs} = \835.76) for a total reasonable veterinary cost of \$3174.97.
187. The reasonable cost for care for housing, feeding and caring for dogs and puppies was \$17,104.14 but of that, a total of 471 shelter days in care was attributed to the Group 1 dogs which the Appellant will not be liable for. The amount she is liable for then is $\$17,104.14 - (471 \text{ total days in care for all Group 2 and 3 dogs combined, as detailed in the evidence, } \times \$17.07, \text{ the daily rate determined by the Panel to be reasonable for each dog kept at the shelter}) \$8039.97 = \$9064.17$.
188. The cost for reasonable grooming as requested is \$690, to be paid by the Appellant.

189. The reasonable costs of Society's time to attend seizure is \$241.95, to be paid by the Appellant.
190. Finally, the Panel does not accept the Appellant's submission that care costs should be reduced on the basis of a Society delay in getting the Appellant the information she needed at the review stage. Leaving aside the fact that it was the Appellant's responsibility to follow up if she had questions about timelines after initially disavowing ownership of the animals, we are satisfied that an earlier clarification regarding submission deadlines would have made no difference to the outcome of this matter at the Society level. We note that, even after hearing, the Appellant's evidence at this hearing, the Society did not change its position that none of the animals should be returned. In our view, both the review process and the appeal were conducted with all deliberate speed and there should be no cost reductions on account of the Society's process.

XVI. ORDER

191. Section 20.6 of the *PCAA* reads as follows:

20.6 On hearing an appeal in respect of an animal, the board may do one or more of the following:

 - (a) require the society to return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
 - (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
 - (ii) any matter that the board considers necessary to maintain the well-being of that animal;
 - (b) permit the society, in the society's discretion, to destroy, sell or otherwise dispose of the animal;
 - (c) confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2).
192. For the reasons given above, we order the Society, pursuant to s. 20.6(a), to return the Group 1 dogs and their puppies to the Appellant.
193. With respect to the Group 2 and Group 3 dogs, the Society is permitted, in its discretion and pursuant to s. 20.6(b), to destroy, sell or otherwise dispose of those dogs. We note that the Society says it intends to find homes for the Group 2 and 3 animals and we sincerely hope that the Society is successful as these Group 2 and 3 dogs deserve a life where water, food, and adequate shelter is not withheld, and where they are not neglected.
194. The Society has asked that we make a formal order requiring the Appellant to pay her costs as a precondition of return.
195. In *British Columbia Society for the Prevention of Cruelty to Animals v. British Columbia Farm Industry Review Board*, 2013 BCSC 2331, the Court noted that while s. 20(2) of

the PCAA authorizes the Society to the “require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal”, that power is subject to BCFIRB’s “jurisdiction to make an order returning the dogs that was not conditional upon the owner first paying the costs for which he remained liable.” (para. 68).

196. While the Court has confirmed that BCFIRB has the power to specify that the return of an animal is not conditional on the payment of the Society’s costs (an order we have made in the past in the best interest of an animal), we would be reticent to go further and decide, without further argument, that BCFIRB can specifically order the Appellant, in the Society’s financial interest, to pay costs within a particular time as a condition of getting an animal back. Subject to hearing argument in a further case, our present view is that if and to the extent that we decline to specifically state that an Appellant does not have to pay costs as a condition of return, the issue of return and payment is for the Society to address with the Appellant under s. 20(2):

20 (2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.
197. In this case, we have concluded that the return of the Group 1 dogs should not be conditional on the payment of the Society’s costs for the Group 2 and Group 3 dogs, but that the Society should retain the right under s. 20(2) to require the Appellant to pay its costs of care related to the Group 1 animals.
198. So, to be clear, we are not prepared to interfere with the Society’s right under s. 20(2) to claim some or all of its reasonable costs of \$1,543.69 (which costs we have determined the owner is liable to pay under s. 20.6(c)) before returning the Group 1 animals to the Appellant under our Order. These animals are essentially business assets, and there are no circumstances in this case that would warrant an order stating that our order is not conditional on the payment of care costs.
199. However, with respect to the remaining costs (\$13,171.09), we are prepared to order that the return of the Group 1 animals is not conditional on paying these costs. The Society must return the Group 1 dogs on payment by the Appellant of the \$1543.69.

200. Finally, the Panel wishes to state that the fact we returned the Group 1 dogs to the Appellant was not an indication of our approval of how she views her dogs and treats the various groups of dogs in totally different ways. There is nothing preventing individuals from breeding and selling dogs but this Panel would hope that, should any of the Group 1 dogs no longer be suitable for her business activities, she not turn them out into a vehicle or to roam free or to warehouse them in a trailer.

Dated at Victoria, British Columbia this 2nd day of February, 2017.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Vice Chair,
Presiding Member



Diane Pastoor, Member