

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

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 REMOVAL OF THREE DOGS

**BETWEEN:**

A.B.

**APPELLANT**

**AND:**

BRITISH COLUMBIA SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS

**RESPONDENT**

**DECISION**

**APPEARANCES:**

For the British Columbia  
Farm Industry Review Board:

Corey Van't Haaff, Presiding Member

For the Appellant:

Self-represented

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

July 29, 2013

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 appeal is from the July 2, 2013 Reasons for Decision (“Reasons”) issued by Marcie Moriarty, the Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society). The appeal was filed on July 3, 2013. The appeal was heard by a one-person panel. The hearing took place on Monday July 29, 2013 by telephone. Christopher Rhone, Counsel for the Society, was on the call. The Appellant was on the call with a social worker at his side for support. The Appellant’s son was also on the call as his representative, and as a witness.
3. The animals at issue on this appeal are three dogs – [REDACTED] (collectively, “the dogs”). The Appellant has owned and cared for [REDACTED] since 2001. [REDACTED] are younger dogs. [REDACTED] originally belonged to the Appellant’s son. The Appellant has successfully cared for him for four of the past six years. The Appellant acquired [REDACTED] this past winter as a companion for [REDACTED] as “[REDACTED] was getting older and did not have as much energy as [REDACTED]”.
4. This is the first substantive appeal decided under *PCAA* reforms that came into force on March 20, 2013. Because this is the first case that has gone to hearing, and because of the legal issues raised by the Society, this decision contains more legal discussion than would ordinarily be the case.

## **II. Brief Summary of Decision**

5. For reasons that will be explained in detail later, I have decided to grant the appeal and order that the dogs be returned to the Appellant with conditions. In my opinion, there is no evidence that any of the dogs’ health conditions were caused by the Appellant’s actions or inactions, and I do not think it was reasonable or correct for the Society to conclude that, from an animal welfare perspective, the circumstances associated with his most recent mental health hospitalization justified permanently taking the dogs away from the Appellant. While the Appellant has had recent mental health difficulties, I have no hesitation in concluding that it is my view that the dogs should be properly returned to the Appellant’s care on the conditions outlined below.
6. Before returning to the more detailed discussion, I want to point out that this appeal is unique also because the animal welfare issues being considered are connected to mental health difficulties experienced by the Appellant. As these reasons will be made public, and because the Appellant is entitled to privacy with regard to his mental health, his identity has been protected in these reasons.

### **III. The Society's Powers and Duties**

7. The Society, which is created and continued pursuant to 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".
8. The March 20, 2013 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. 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*, s. 20.2(3).
9. 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.
10. Sections 20.2(4) and (5) of the *PCAA* sets 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.
11. Ms. Moriarty, as the Chief Prevention and Enforcement Officer with the Society, makes the Society's review determinations. The Society filed an affidavit, sworn July 19, 2013, from Ms. Moriarty as its evidence on this appeal.

### **IV. The Appeal Provisions**

12. The appeal provisions are a key part of the March 2013 reforms. Before they existed, the only recourse for a party dissatisfied with a Society decision to take custody of an animal

was to apply to BC Supreme Court in a procedure called “judicial review”. Today, where the Society has taken custody of an animal under ss. 10.1 or 11 of the *PCAA*, there are two ways an appeal can come to the British Columbia Farm Industry Review Board (BCFIRB) to seek return of the animals.

13. One is where a person requests a review and the Society has taken no action on the request within 28 days after the request for review was made: *PCAA*, s. 20.3(1)(a).
14. The other, which arose here, is where the Society has undertaken a review in response to a request for review, and has “affirmed the notice that the animal will be destroyed, sold or otherwise disposed of”: *PCAA*, s. 20.3(1)(b).
15. The new appeal provisions (which also allow for appeals regarding the amount of costs owners should have to pay the Society even if the return of the animals is not in issue) read as follows:

20.3 (1) A person who owns, or is an operator in relation to, an animal, or a person from whom custody of an animal was taken under section 10.1 or 11, may appeal to the board one or more of the following:

- (a) if no action has been taken under section 20.2 (4) within 28 days after a request for a review is made, the decision to take custody of the animal under section 10.1 or 11;
- (b) if action has been taken under section 20.2 (4) (b), the decision to affirm a notice under section 19 that the animal will be destroyed, sold or otherwise disposed of;
- (c) the amount of costs for which an owner is liable under section 20 (1);
- (d) the amount of costs that an owner must pay under section 20 (2) before the animal is returned to the owner.

16. The legal language in s. 20.3(1)(b) – “destroyed, sold or otherwise disposed of” – is legally correct, but its use can be traumatic for an animal owner, and that was the case here, as will become apparent later in these reasons.<sup>1</sup>
17. BCFIRB has broad remedial powers after hearing an appeal, as set out in s. 20.6 of the *PCAA*:

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;

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<sup>1</sup> I should note for completeness that while the Society retains the right to destroy an animal if an appeal is dismissed, the Society’s stated intention in this case, as set in Ms. Moriarty’s affidavit, was to find an adoptive home for the 3 animals in question.

(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).

18. BCFIRB also has very broad powers during the appeal process itself. Consistent with the legislative purpose of ensuring that decisions reflect the best interests of animals, and to ensure appeals can proceed in a flexible fashion that is accessible to lay people as a true alternative to a more formal judicial review or judicial appeal, the reforms give BCFIRB broad evidentiary hearing, investigation and inquiry powers, as set out in s. 20.5:

20.5 (1) For the purposes of an appeal under this Act,

(a) sections 11 to 20, 22, 26, 31, 32, 34 (3) and (4), 35 to 42, 47, 49 to 56 and 60 of the Administrative Tribunals Act apply to the board, and

(b) despite section 3.1 of the Natural Products Marketing (BC) Act,

(i) section 46.2 of the Administrative Tribunals Act does not apply to the board, and

(ii) section 46.3 of the Administrative Tribunals Act applies to the board.

(2) For the purposes of making a determination in an appeal, the board may, with consent of the owner or occupier,

(a) enter any premises

(i) from which the animal that is the subject of the appeal has been taken into custody, or

(ii) on which a person intends to keep the animal that is the subject of the appeal if the person regains custody of that animal, and

(b) inspect the premises and any equipment or other thing on the premises that are relevant to the determination of the appeal.

(3) If the owner or occupier does not consent to one or more of the matters referred to in subsection (2), the board may draw an adverse inference from the refusal to consent.

(4) The board, at any time before making a determination in an appeal, may

(a) inquire into matters relevant to the appeal, and, as part of that inquiry, obtain the advice of persons who are knowledgeable about those matters, and

(b) determine, subject to any regulations made under section 26 (2) (o), the remuneration of the persons referred to in paragraph (a) of this subsection.

19. I will have more to say about these provisions later when I consider the Society's submissions that an "appeal" under the reforms must be conducted as a "true appeal" where the Society's decisions must be given deference.

V. **History**

20. Ms. Moriarty's affidavit explains that the dogs first came into the custody of the Society on May 6, 2013 when the Appellant was arrested pursuant to the *Mental Health Act*, R.S.B.C. 1996, c. 288 and admitted to the [REDACTED] General Hospital psychiatric ward.
21. The Appellant states his admission arose from symptoms associated with bi-polar disorder.
22. The Society assumed care of the animals at that time pursuant to a form it has created called a "Compassionate Board Form". The Form, signed by the Appellant on May 7, 2013, included the following paragraph:

I, the owner of the animal described above, hereby request that the BC SPCA provide compassionate board for a maximum two week period. I agree to pay as much of the boarding costs as I am financially able. I further agree that if I have not reclaimed this animal within two weeks and have not provided the BC SPCA with a written explanation for this failure to reclaim, I thereby unconditionally surrender this animal to the BC SPCA...

I agree that I will be responsible for any veterinary costs incurred in the maintenance of this animal's health before I am able to reclaim the animal.

23. The dogs were examined by veterinarian Dr. [REDACTED] on May 8, 2013. Ms. Moriarty's affidavit attaches an unsigned letter from Dr. [REDACTED], dated June 4, 2013, "to whom it may concern", reporting on her May 8, 2013 examination:

[REDACTED] was found to have bilateral cherry eye (prolapsed third eyelid gland) and is not yet neutered. Otherwise he appears to be in good health. It is recommended that while being neutered he also has his eyes surgically corrected to help prevent the potential for chronic irritation if left untreated.

[REDACTED] has chronic bilateral otitis externa (an ear infection in both ears that has been present for weeks to months). While left untreated this would have caused some degree of discomfort and pain. He also has grade 1 out of 4 medial patella luxation of his left knee. In many dogs grade 1 luxations are subclinical, but they can cause some pain intermittently when the patella pops out of place. If this is occurring regularly I recommend surgical correction. [REDACTED] appeared hypersensitive to palpation around his hind quarters, but not other potential source of pain was detected.

[REDACTED] was found to have multiple serious health issues. He was in fair to poor body condition with pronounced muscle wastage over his hips and hindlimbs. Flexion and extension of his hips were painful for him. I suspect chronic osteoarthritis and possible underlying hip dysplasia as the source of this pain. Without analgesia and appropriate management this would have been contributing to ongoing suffering. On cardiac auscultation [REDACTED] was found that have an arrhythmia of varying intensity, which suggests that there is a serious cardiac disease present such as dilated cardiomyopathy. Left undiagnosed and unmanaged there is an increased risk of sudden death. [REDACTED] also had/has bilateral otitis externa and dental disease, both of moderate severity.

24. The Appellant had a longer-than anticipated stay in hospital. On June 3, 2013, almost one month after it had assumed care of the animals under the agreement, the Society issued a "Notice of Disposition" addressed to the Appellant at the hospital and advising him that the animals had been removed pursuant to s. 10.1 of the *PCAA*:

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.

25. The Notice advised the Appellant that “you have 4 days after you receive this notice to dispute the removal of your animals”. [emphasis in original]

26. The Appellant did dispute the removal. The Appellant advised the Society that he was soon to be released from hospital and that he had found a pet-friendly motel where he could live with the dogs while he looked for a more suitable place to rent. He was successful in convincing the Society to return the animals to his custody, with conditions. In the decision being appealed, Ms. Moriarty made reference to this period of time:

After speaking with your social worker and reading your submissions, I was persuaded to provide you with an opportunity to provide proper care for your Dogs and agreed to return them to you based on an Agreement of Care that sets out a number of conditions. While initially it was thought that you would be released from the hospital within two weeks of being admitted, it turned out that you were not released until June 12<sup>th</sup>, 2013 and the BCSPCA maintained care of your Dogs during that five week period. You signed the Agreement on June 12, 2013 and have yet to pay the costs owed for the compassionate boarding of the Dogs and the medical treatment. I will admit that at the time I agreed to this return, I had not looked into detail as to the medical conditions of the Dogs and I was under the impression that you were healthy and able to take the responsibility of fulfilling all of the conditions of the Agreement. Unfortunately, it appears that this decision might have been premature.

27. The Agreement of Care, dated June 12, 2013, outlined the Society’s agreement to return custody of the animals to the Appellant. There were 14 conditions attached, including a requirement that an appropriate caretaker be appointed for the dogs in the event that the animal owner, for whatever reason, becomes unable to do so. Other conditions included:

- Attend the Dogs on a daily basis, for the purposes of ensuring their health and wellbeing;
- Ensure the Dogs are kept free from distress, as defined in the Act;
- Adhere to all current veterinary recommendations regarding the treatment required for [REDACTED];
- Ensure that any caretaker appointed to care for the Dogs while the Appellant is away for prolonged periods complies with the Care Agreement;
- Pay for the costs of care in the amount of \$1,095.

28. The dogs were seen by Dr. [REDACTED] on June 12, 2013, prior to their return to the Appellant, and prescriptions were given for [REDACTED].

29. On June 14, 2013, two days after the return of the dogs, the Society received a call that the Appellant had been returned to hospital, and had signed a handwritten letter giving a nurse permission to go his motel room and turn over the dogs to the Society. On the same day, the nurse contacted the Society requesting that they meet her at the motel to retrieve the dogs.
30. The Decision under appeal states as follows with regard to the circumstances of June 14, 2013:

... When we attended at the motel where you were staying, the Dogs were found in the middle of the room with all three of them on leashes that had been tied together in a knot. The food that the SPCA had provided to you for the Dogs was not being used, and instead, a bowl was found filled with cat food and bits of bread. In addition, the medication that had been dispensed for [REDACTED] appeared to have been inappropriately administered. Namely, the eye gel that was to have lasted for seven days was squeezed empty after one and half days and the tramadol for [REDACTED] appeared to have been used but the pill count verses [sic] the dosage over time was incorrect.
31. A second Notice of Disposition was issued on June 14, 2013. Like the first Notice of Disposition, it advised the Appellant that the animals had been removed pursuant to s. 10.1 of the *PCAA*, gave the Appellant four days to dispute the removal and outlined the procedure for disputing.
32. The Appellant's son disputed the removal on his father's behalf on Sunday June 16, 2013. His letter advised the Society that his father had been re-hospitalized.
33. It is this June 16, 2013 letter of dispute of the Society's June 14, 2013 removal of the dogs that led to this appeal.
34. On June 20, 2013, the Society provided the Appellant with a letter and disclosure package enclosing all documents to be considered by Ms. Moriarty when determining the dispute.
35. On June 26, 2013, Ms. Moriarty received an email from a psychiatric social worker at the Psychiatric Inpatient Unit of the [REDACTED] General Hospital, attaching a letter from the Appellant. The Appellant's Submissions included the following information:
  - (a) He was made an involuntary patient in May 2013 and was, therefore, unable to make arrangements for the care of the Dogs.
  - (b) Approximately two years prior, the Appellant was unable to care for his Dogs but arranged for care for the Dogs at a kennel.
  - (c) He was unable to make arrangements for the care for his Dogs prior to his second hospitalization in June 2013 because he was given no notice that he was going to be returned to the hospital with an RCMP escort.
  - (d) If given the opportunity to have the Dogs, the Appellant would secure better accommodation outside the city on an acreage; hire private help to assist his with the Dogs' daily care, medications, feeding and grooming; ensure [REDACTED] received surgery for his eye; and ensure proper accommodation and care for the Dogs should he be unable to care for the Dogs himself.

## **VI. Decision Being Appealed**

36. On July 2, 2013, the Society issued its Reasons for Decision not to return the dogs to the Appellant, and the decision was delivered to him. In all material respects, all deadlines for the Society sending notices and making decisions, and all deadlines for response by the Appellant, were met.
37. In her July 2, 2013 Reasons, Ms. Moriarty cited significant concerns regarding both the conditions in which the dogs were found and their physical health. She noted the condition of the premises the first time the dogs came into Society custody and stated that although that could be explained by a temporary lapse in health, the condition of the dogs demonstrated a more lengthy period of neglect. The reasons stated their reliance on the entire veterinary report of Dr. [REDACTED] and noted the diagnoses of each dog: [REDACTED] has bilateral cherry eye; [REDACTED] had chronic bilateral otitis externa; and [REDACTED] had multiple health concerns including fair to poor body condition, suspected chronic osteoarthritis contributing to ongoing suffering, bilateral otitis externa, dental disease, and a possibly serious heart condition.
38. The July 2, 2013 Reasons concluded as follows:

I appreciate that submissions both by yourself and on your behalf have been made that you might have been released too soon and without enough oversight. Your son provided submissions regarding how much you care for the Dogs and has indicated that there may be more support available for you once you are released from the hospital this time. Unfortunately, as he is not living in this province, I cannot look to him as a co-signor of any agreement for future care. It is my understanding that you have also found a new place to live once you are released that will accept the Dogs. In your email dated June 26, 2013, you indicate that you are willing to provide the care required for your Dogs and to hire people to assist in the daily care if required. I believe that your submissions are sincere and that at this time you believe that you can look after the Dogs. However, your history and the health of the Dogs suggests otherwise.

This is not the first time that your health has failed you and due to health reasons, the welfare of your dogs has suffered. You note in your email that two years ago you were also hospitalized, but in that instance you were able to first secure boarding for them. While I appreciate that you only had two days to “prove” that you could look after the Dogs and adhere to the conditions of the Agreement before once again you were hospitalized, I have to consider this relapse in the total context of any decision I make. In addition, I have now taken a closer look at the file and it is very apparent that some of the welfare concerns relating to the Dogs were not short term in nature and were the result of a prolonged period of neglect.

I do not make this decision lightly and I am moved by your obviously heartfelt submissions. You clearly have people who care for you and are advocating on your behalf and I hope that you will be able to turn to them for the [sic] emotional support and that you will have a more permanent return to good health. My role is to advocate for the animals and given all of the above, I cannot in good conscience conclude that it would be in the best interests of the Dogs to be returned to you.

39. As noted above, this appeal was filed on July 3, 2013. With regard to the outcome requested, the Appellant seeks the following:

- To be provided with the opportunity to have my dogs returned to my custody.

- To be provided with the opportunity to demonstrate that I can follow through with the requirements outlined by the BCSPCA to keep the dogs under my care.

## **VII. Preliminary Issues Raised by the Society**

40. Counsel for the Society submits that the following issues and determinations should be considered in this matter:
- (a) What is the appropriate procedure: a true appeal or a hearing *de novo*?
  - (b) If this is a true appeal, what standard of review should BCFIRB apply in reviewing the Decision (reasonableness or correctness)?
  - (c) If BCFIRB finds the Decision reasonable or correct (depending upon the standard of review), further inquiry ends and the Society is entitled to dispose of the Dogs pursuant to the Act.
  - (d) If BCFIRB finds the Decision unreasonable or incorrect (depending upon the standard of review), then does the evidence enable BCFIRB to decide to return the Dogs (potentially on conditions) (pursuant to s. 20.6(a) and (b))? In the Society's submission, a further hearing would be necessary to consider these issues, with evidence adduced by the Society concerning these issues.
41. Counsel for the Society made a lengthy presentation about the standard of review the Panel should follow and what evidence it should consider, and made legal arguments with reference to its book of authorities.
42. After some time, when the Panel consulted with the Appellant about his understanding of what was transpiring, the Appellant said he could not stay on the call any longer; that he did not understand at all what Counsel was talking about; that is was all very legal; and that could not listen to Counsel discuss disposing of the dogs any longer. He was upset by the manner in which Counsel was talking about the dogs he loved and that the discussion was causing his anxiety level to rise to the point where he had to remove himself from the conversation. The Appellant agreed to let his son stay and represent him and speak for him. The Society had no objection.
43. The Appellant's son also stated that he is not a lawyer and did not know there would be legal arguments and he did not understand them. He also did not know the panel call would go into several hours and he had to get to work shortly. He was able to notify his employer that he would be late, but did not know how much longer he could stay on the call.
44. I do not fault the Society for raising these issues. As noted, this is the first substantive appeal and they speak to the role of BCFIRB under the reforms creating the new rights of appeal. At the same time, in the circumstances I have described, and as a matter of proper hearing management, the panel suggested that arguments about standards of review be left until the arguments about the dogs were concluded to allow the Appellant's son to hear the Society's position and ask for clarifications. The Society had no objection.

## **VIII. The Appellant's Case**

### **A. Written Evidence**

45. As part of his appeal, the Appellant wrote two letters dated July 15, 2013. In the one-page letter, the Appellant repeated what he said in the June 26, 2013 letter quoted at paragraph 35.
46. In the two-page letter, the Appellant explains the dogs first went to the Society on May 6, 2013 as he had been involuntarily admitted to ██████ General Hospital psychiatric ward. For that reason, he did not have the time, support, or resources to make arrangements for the dogs as he was alone in a new city and had suffered an illness that led to the removal of the dogs. The Appellant states he was unaware his mental health was declining leading up to his admittance to hospital in May 2013. Since then, he has worked with a support group and professionals ensuring that his mental health and stability was back on track, so that he could again care properly for himself and also the dogs, whom he considers to be his best friends.
47. He explains he was diagnosed as bipolar in 2001 shortly after his mother's death and at this time, got ██████, the ██████ dog, which he loved unconditionally and considered his true friend and companion, helping him through the most difficult of times in his life. The dog ██████ originally belonged to his son but when his son pursued studies abroad, ██████ ultimately went to live with the Appellant. The Appellant believed ██████ should have a companion of similar energy level so got ██████. He says all three dogs have grown dear to his heart and he considers them as his children, and they have all helped him in different ways, mentally and physically, and he is lost and lonely without them.
48. He thought he would be released within two weeks the first time he went to hospital while the dogs were cared for at the Society, but his stay was longer as he was not sufficiently well enough to be discharged, and the dogs were with the Society until June 12, 2013. He appreciated that the Society's staff were kind, helpful, and supportive during this whole process. His letter goes on to state as follows:

I do understand that it does not look good, that when the dogs were initially released to me on June 12<sup>th</sup>, 2013, they were taken back into custody of the BC SPCA just two days after I had redeemed them. I was once again admitted involuntarily to the ██████ General Hospital when a routine checkup was performed by support staff and it was found that I am not taking my medication as directed. I feel that my plan for discharge was not fully set up and lacked organization and because of that I was, at that time, still not mentally well and as a result was forced back to be re-examined by my doctor and the hospital staff. This was very upsetting for me because my support group at the hospital worked very hard with myself and my son to arrange for temporary accommodation for myself and my dogs at a motel, while I still searched for a more stable home that would allow my animals. When the SPCA came to take back the dogs, after I had been taken back into the hospital, it was documented that the dogs were tangled in their 3 leashes and technically left abandoned. However, before I was taken back to the hospital, the dogs were not tied together. They were all on leashes before I was picked up because we were all about to go for a walk. As I was taken away, I was not given the chance to take the dogs off their leashes before I was forced to leave the motel and later on someone from the SPCA came to

collect the dogs. I do understand that I did not fulfill the conditions of the compassionate agreement, but I can admit that and at that time I was still unhealthy and without the support I needed.

As I am writing you this letter, I can honestly say that I am once again healthy and have several supports in place to ensure that my mental illness is controlled and a healthy lifestyle for my dogs and I is possible. Thanks to the amazing support of the Seniors Outreach Team and also the staff at the hospital, I was able to secure a great home on an acreage where [REDACTED] and [REDACTED] can live. ...[My] support worker ... has offered to help me in every way which she can, to make sure these dogs are cared for. I do have the finances to available to make sure all outstanding fees to the vet or the SPCA will be taken care of and I will promise to follow any instructions related to the health of my dogs. An application has also been sent out for a Public Guardian to take over my finances, which will guarantee that all my bills and the care need costs for the dogs will be taken care of in situation a situation I have done in the past. I plan to make these arrangements as soon as I get the dogs back, so that if there ever comes a time when I am detained under the mental health act without notice, the dogs will not be abandoned, and will be in good hands. However, with the continuous help, supervision, and support I am still receiving and will continue to receive from professionals and care givers, I do not see this happening again.

49. The Appellant says he now has the support and finances and mental stability needed to care for the dogs and can provide the dogs with everything they need and that being reunited with the dogs will be beneficial to his own health and to the health of the dogs. His dogs are everything to him.
50. The Appellant says he understands the reasoning behind the July 2, 2013 decision, but in support of his position that there has been no long term neglect, he submits several items.
51. One is an unsigned letter dated July 15, 2013 from a previous veterinarian, Dr. Janet Jones, stating that the Appellant was a client for several years [REDACTED] [REDACTED] [REDACTED] and that the Appellant was always attentive to the medical and daily care of his dogs, and that she understands he has some health challenges now. She said she was comfortable in recommending the return of the dogs as long as there was some kind of supervision that the dogs got all they needed.
52. A letter from the Appellant's son was also submitted, which he testified in support of, and an unsigned letter from the Appellant's daughter (unsigned and undated) stating that her dad loved the dogs, could care for them financially and with the support from the hospital care team could look after the dogs. There is also an unsigned letter from the manager of the [REDACTED] Motel [REDACTED] where the Appellant and his dogs once resided that says the Appellant cared for his dogs like children.
53. There is also an unsigned letter from the Appellant's case manager, a registered nurse, on letterhead of the [REDACTED] Health Authority, headed "Seniors Health, Seniors Outreach Team". That letter, which was sent to BCFIRB by the nurse herself together with the Appellant's other appeal documents, states as follows:

I am writing this letter on behalf of [the Appellant] in his appeal for his dogs. I am a Registered Nurse and the case manager that will be supporting [the Appellant] in the community. As you know [the Appellant] was alone [REDACTED] when he suffered an illness that led to the removal of his pets. In am unsure exactly how long [the Appellant] was unwell but this definitely could be

the contributing factor to the poor condition of his pets that you described over time. I believe that he is in a place now where he could provide the care necessary to his pets and feel that he has the supports in place to allow that happen [sic]. I also know that the dogs are an essential part of his life and feel he would do whatever was necessary to get back them back. It has been a difficult time for [the Appellant] and he has communicated to me how upset and worried he has been about his pets.

[The Appellant] has secured accommodations that will allow his pets and is also located on acreage. I can help him to arrange any care that the dogs may need and will make sure that the dogs are cared for (regular dental care, grooming etc), as I will be checking in regularly. I know that financially he will be able to afford the care of the dogs and I believe he has already agreed to pay for any care they need. I will also be monitoring the condition of his home and will ensure that the accommodation remains in an acceptable state. [The Appellant] has been nothing but cooperative with the conditions of his discharge from hospital and has showed me that he will do what is asked of him in regards to his care. Finally, if I have any control over future hospitalizations, I can ensure that the dogs have appropriate accommodations in place.

## **B. Oral Testimony**

54. The Appellant's son was on the telephone hearing as representative for the Appellant, sometimes speaking for the Appellant and also as a witness and support. The Society had no objection to this.
55. The Appellant explained that the first time the dogs were taken into custody of the Society, the trailer at the campsite was dirty. This was because the campsite owner filled it with trash causing the mess but he and the dogs only used it to travel [REDACTED] and were not going to live in it.
56. The Appellant stated that the second time the dogs were taken, they were not tied up together but were on leashes preparing to be walked. He does not know how cat food got in the food as he got the food directly from the Society and thinks the Society may have mistakenly given him cat food. He simply fed the dogs the food from the Society and asked "why else would I have cat food?"
57. The Appellant says the discrepancy in the number of pills was because [REDACTED] spit them out sometimes. The Appellant stepped on the tube of eye ointment so he put the ointment that came out in the dog's eyes.
58. The Appellant confirmed he has rented acreage with lots of space for the dogs and himself and has much support from the hospital and it all looks good.
59. Under cross-examination, the Appellant explained the property was at the south end of [REDACTED] and he rents a basement suite and the lady who owns the house lives upstairs. He is allowed to have the dogs there (he says that is why he moved there). The land is one acre with a fence on one side between neighbours and all the time the dogs are out, they are on leashes.
60. He also gave evidence that he has support from the hospital coming out twice a day at first to administer medications and now once a day. He stated that he has been out of the

hospital for three weeks and that his case manager will continue with ongoing support that will end when he is stable. The home care nurse can touch base when she wishes and follows up by phone or visits to see how he and the dogs are doing.

61. He wants to set up a payment plan to repay the Society and thinks he owes about \$1,100.
62. The Appellant went on to say that he got [REDACTED] as a puppy, [REDACTED] as a two year old from his son who had him as a puppy, and got [REDACTED] as a puppy eight months ago.
63. He says the motel after his first discharge was temporary as it allowed him to live with the dogs until he could find something more permanent. His son was helping him look for something more suitable.
64. The Appellant said when he was first discharged there was no support system or checks for him, which is why it lasted only two days.
65. The Society said the amount owing was up to \$3,400 and the Appellant was not aware of this but said he would need a payment plan if he got the dogs back.
66. The Appellant's son testified that unpaid costs were listed at \$1095 at that point but agreed the dogs were still in care with boarding fees and he was unaware of the amount. He also explained that he disputes the term "relapse" used in the SPCA decision as his dad was unhealthy when discharged the first time and the hospital should have been more attentive but this time everything is on the right track with more support. His dad takes medications as directed and there is a good support system for his dad.
67. The Appellant's son is moving [REDACTED] from [REDACTED] to go to school in a few weeks but is still not geographically close to his dad. He says his dad will always have access to the health care supports on request even after they taper off as his dad is stable.
68. Under cross examination, the appellant's son admits there is no way to predict if his dad will suffer a decline in his mental health but says there will be more support in place and an alternative care plan for the dogs. There is not yet a plan as the case manager is on vacation and will assist the Appellant upon her return with developing a plan. As a last resort if no one was able to care for the dogs, they could call the Society to help.

## **IX. The Society's Case**

69. The Society did not call any witnesses. It relied on the sworn affidavit of Ms. Moriarty.
70. Counsel for the Society acknowledged this case was difficult and emotional and noted the importance of the dogs to the Appellant. Counsel for the Society also stated that the Society has the statutory and legal obligation to look after the best interests of the dogs. Counsel suggested that BCFIRB had the same mandate and that the Panel must make a decision that is in the best interests of the dogs.

71. Counsel for the Society took the Panel through his written submission and Ms. Moriarty's affidavit.
72. Counsel says Ms. Moriarty relies on the entire veterinary report of Dr. [REDACTED], which I have quoted above.
73. Dr. [REDACTED]'s medical records were included. [REDACTED] medical records report that on May 8, 2013 the doctor cleaned his ears and prescribed a medication for the ears and recommended a recheck in two weeks, and monitor the dog for pain and limping as he was reactive to touch in the perineal area. On May 28, 2013 Dr. [REDACTED] rechecked the ears and noted they were greatly improved. On June 12, 2013 she rechecked the ears and recommended weekly cleaning with an otiscrub ear cleaner, a recheck on July 12, 2013 and continued monitoring for hind limb pain and limping. She noted mild wax inflammation still present in the ears.
74. [REDACTED] medical records report that on May 8, 2013 the doctor noted a papilloma on the right eye, ears moderately waxy and inflamed with some yeast present, teeth showing significant wear, heart arrhythmia of varying intensity on each beat, muscle wastage especially over hips and painful hips on flexion and extension. She notes a poor prognosis after "Heart – DCM?" She notes that the ear infection needed treatment, rads of the heart and hips, dental recommended, medical management of cardiac disease, and noted chronic hip pain for life. There were other rechecks and ultimately one medication was discontinued, and another prescribed. On June 12, 2013 Dr. [REDACTED] noted, on recheck, an eye discharge and mild inflammation with an ulcerated mass present, ears with a moderate build up of wax and inflammation, smeared for yeast, significant wear on teeth, irregular arrhythmia, muscle wasting and reduced range of motion. She recommended regular ear cleaning and treating of the current infection, using a prescribed eye gel, a lumpectomy of eye mass as it will cause chronic irritation to the eye and when the mass is open and ulcerated is likely quite painful, dental is recommended with the caveat the dog would need a full cardiac workup pre anesthetic, and recommended a full cardiac workup for the heart condition. She recommended pain control for the hips.
75. There are no medical records, other than Dr. [REDACTED]'s note, [REDACTED].
76. As noted above, Ms. Moriarty says in her Reasons that she believes that the Appellant's submissions are sincere but that his history and the health of the dogs suggests otherwise. The Reasons state that the Appellant's health has failed him and as a result the welfare of his dogs has suffered. She appreciates that the Appellant only had two days to look after the dogs and adhere to conditions before he was returned to hospital, but she had to consider the relapse in context. Upon closer look at the file, she says it is very apparent that some of the welfare concerns were not short term in nature and were the result of a more prolonged period of neglect.
77. Ms. Moriarty's affidavit states that the Society now wishes to act upon the notice of disposition as soon as possible, so that costs may be limited and the dogs can be permanently settled with responsible adoptive owners.

78. Ms. Moriarty's affidavit makes a point of confirming her view – based on the materials that were before her – that it would not be in the dogs' best interests to be returned to the Appellant.
79. Ms. Moriarty does not offer any opinion concerning whether her opinion would differ based on the current circumstances, including the Appellant's evidence and the letter from the Appellant's case worker, which was dated July 9, 2013. However, in its written submission, the Society has taken the position that this documentary evidence is all "irrelevant and inadmissible", as it does not meet the "limited" opportunities to adduce new evidence on a true appeal and has not been "authenticated". With regard to the case manager's letter, the Society's submission states: "While well-meaning, the information provided would not have impacted Ms. Moriarty's decision because it lacks the specificity necessary to determine whether the Dogs will be properly cared for in the future".

## **X. Nature of Appeal and Standard of Review**

80. Counsel for the Society made a full and lengthy argument about what the standard of review for the Panel should be. Despite Counsel's thorough presentation and reference to his book of authorities, there was no debate on the issue. The Appellant and his representative had neither the knowledge nor even the understanding to respond to Counsel's information.
81. As mentioned above, I do understand why the Society has raised these issues. It is important that all parties understand the nature of appeals under the reform legislation. While my decision in this case would be the same whether I applied a reasonableness standard on a true appeal, or a correctness standard under a broader appeal procedure, I think it is necessary and appropriate to express my views on the Society's submissions.
82. The Society submits that appeals to BCFIRB from review decisions of the Society are required to be conducted as "true appeals", which can only be judged based on the evidence that was before the lower decision-maker unless traditional "new evidence" tests are met. The Society refers among other cases to a 1992 decision, *McKenzie v. Mason*, 1992 CanLII 2291 (BCCA), which interpreted the word "appeal" to mean a "true appeal" in a case involving an appeal from a specialized decision-maker to a court of law. The Society further submits that BCFIRB must uphold the Society's decisions unless they are "unreasonable", applying the test in *New Brunswick (Board of Management) v. Dunsmuir* 2008 SCC 9. The Society argues that BCFIRB should give deference to the Society's decision, just as the courts did on judicial review prior to the reform legislation being enacted.
83. I do not think that appeals under Part 3.1 of the *PCAA* are required to be conducted as true appeals, and I do not think that the BCFIRB is required to defer to decisions of the Society.
84. This is not judicial review, and it is not even a right of appeal from a specialized body to a court. It is a broad appeal from one specialized body to another – from the Society in the

first instance to BCFIRB as a specialized administrative tribunal in its own right, and which also has specialized animal welfare knowledge in its membership. In my opinion, the creation of a right of appeal to a specialized administrative tribunal means we cannot automatically or blindly apply principles that were developed to govern the relationship between courts or between courts and specialized tribunals. The important thing is not the word “appeal” by itself. It is what the legislature intended in the larger context.

85. When we look at the reform legislation as a whole, the clear intent 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 of animals. Engaging in arguments about what is “the record” and how to apply the “*Palmer* principles” to every piece of evidence tendered in situations that are necessarily dynamic and unfolding, would make no sense in this context. Requiring BCFIRB to “defer” to findings and judgments that it believes have been overtaken by circumstances or wrong on the merits does little to enhance the interests of transparency and accountability.
86. Courts of law are focused on the law and legal principles. BCFIRB appeals are broader than that. There are no limits on the grounds of appeal. BCFIRB has been given broad evidentiary and remedial powers on appeals. While the legislature could have created an appeal or review “on the record”, it has not done so here. Instead, the legislature has gone the other way in these reforms. It has given BCFIRB extensive evidence-gathering powers, some of them to be used proactively. It has made the Society a “party” to appeals, and it requires the Society to provide BCFIRB “every bylaw and document in relation to the matter under appeal” (s. 20.3(4)), which will in many cases be much broader than the record relied on by the reviewing officer. Included in BCFIRB’s powers is s. 40 of the *Administrative Tribunals Act*: “The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.” Collectively, these statutory provisions are not consistent with a legislative intent to require BCFIRB to merely undertake “mini” judicial review or a traditional judicial appeal.
87. In this case, the Society did not hold an oral hearing. It made a decision after giving reasons and disclosure after a written submissions process. While the Society is to be encouraged and commended for doing so, it is noted that that process is not mandated in the *PCAA*. Cases could well arise where the Society decides to use a more abbreviated process in its reviews. BCFIRB’s appeal mandate cannot depend on the process the Society may choose to adopt and that may vary over time or depending on the case.
88. Related to this is the further point that BCFIRB can hear appeals even where the Society has made no decision within 28 days after the review application was made: *PCAA*, s. 20.3(1)(a). Obviously, in those appeals, there is no review decision, no reasons and usually no prior opportunity for the Appellant to have been heard. It does not make sense that the fundamental nature of BCFIRB’s mandate would differ depending on the type of appeal that comes to us when the legislature has applied one set of statutory powers and procedures to all appeals.

89. The reform legislation did not simply change the place where “judicial review” could be held. It did more than that. Its intent was to increase oversight of Society decision-making. This was made clear by the Minister who introduced the *Prevention of Cruelty to Animals Amendment Act, 2012* on March 6, 2012 in the Legislative Assembly:

Today I am pleased to introduce the amendments to the act that will increase transparency and accountability for decisions related to taking animals into custody, with an independent appeals process that will be led by the B.C. Farm Industry Review Board. The board has a successful history as an administrative tribunal, independent of government, in its general supervision of B.C.-regulated marketing boards and commissions. [emphasis added]

90. At second reading, on April 18, 2012, the Minister said this:

...There are four main parts to this bill. Firstly, to create a statutory appeal mechanism for decisions made by the BCSPCA related to animal seizure and destruction. This appeal function will resolve complaints in a timely manner and reduce costs to the public and to government that are associated with a judicial review, which is currently the only recourse for those wanting to appeal a BCSPCA custody decision....

The body that will be hearing appeals under the PCAA is the British Columbia Farm Industry Review Board, known as BCFIRB. We considered the option of creating an entirely new body dedicated to hearing PCAA appeals; however, the cost of this option is prohibitive and unnecessary, considering the wealth of expert experience we have available to us in the BCFIRB.

BCFIRB reports directly to the Minister of Agriculture in matters of administration but is independent of government in its decision-making. As a quasi-judicial administrative tribunal it must adhere to the principles of administrative law. The courts have recognized BCFIRB as an expert tribunal with decisions worthy of considerable judicial deference.

91. There would be little point in creating the appeal rights reflected in the reform legislation here only to prevent BCFIRB from proceeding flexibly and using its knowledge and expertise based on current circumstances in order to bring some finality to a dispute in the best interests of animal. While cases may arise where the parties to an appeal agree to proceed based on “the record” that was before the Society on the review, that is a case management decision. Appeals are not required to be conducted on that basis.
92. Having rejected the “true appeal” approach, I want to add that I do not think BCFIRB is required to go to the other extreme of “ignoring” the Society’s actions or its reasons where it has made a decision. While the Society argued this issue as requiring one extreme or the other, administrative law is more flexible than that.
93. In my view, the Appellant in a case like this 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 that 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 role to provide effective appeals

## **XI. Opposition to New Evidence**

94. The Society opposes the introduction of new evidence which was not before it when making the July 2, 2013 decision. This evidence consists mostly of letters of support, unsigned, and delivered apparently by way of emailed WORD documents and not protected in PDF format to prevent any changes.
95. While I have accepted the new evidence, I provide almost no weight to the letters from the Appellant's daughter, previous veterinarian and motel manager as they do not speak to the key issues on this appeal.
96. Although it is unsigned, I give more weight to the letter from the Appellant's case manager, which confirms general information such as the Appellant's new living arrangement and her willingness to provide support and some level of supervision of the Appellant. This letter, which I view as being reliable even though unsigned because it was sent to BCFIRB by the case manager herself, and reinforces the evidence of the Appellant that he now has a measure of planning and structure that supports his ability to care for these animals.
97. I note that the letter from Dr. [REDACTED], relied on by the Society and attached to Ms. Moriarty's affidavit, is also unsigned. It is supported by copies of invoices and medical records and other veterinary notes and I accept that the Dr. [REDACTED] letter dated June 4, 2013 is reliable and I do rely on it, along with the entire suite of veterinary records and notes.

## **XII. Decision**

98. There is no disagreement at all that the Appellant loves and cares for his dogs and that the dogs mean a lot to him. I accept that he cares deeply for his dogs and has for the entire time he has owned them: [REDACTED] since birth and for almost 13 years, [REDACTED] for about 4 years, and [REDACTED] since birth 8 months ago. The fact that the Appellant has been able raise [REDACTED] from birth, and care for all three animals, shows his ability and willingness to care for the dogs.
99. It is clear that a key factor in the Society's July 2, 2013 decision refusing to return the animals was its assessment that the condition of the dogs and resulting welfare concerns were not short term in nature and were the result of a more prolonged period of neglect. The Society concluded that the Appellant's health has failed him and as a result the welfare of his dogs has suffered and that it would not be in the dogs' best interests to be returned to the Appellant.
100. Animals get sick and injured even when they are receiving the best of care. When the Society is seeking to retain an animal, it must consider not only the animal's condition, but must consider what acts or omissions of the owner caused or contributed to that condition.

101. I begin with the dog [REDACTED]. Despite the fact the Society considered the dogs as one group when looking at their custody, there is no evidence that the youngest dog, [REDACTED], had or has any health concerns. The veterinarian concluded [REDACTED] has bilateral cherry eye and is unneutered, but otherwise appeared in good health. The veterinarian gave no opinion, and the Society did not refer to any other evidence, to suggest that the eye issue was caused by anything done or not done by the Appellant. She did make a recommendation for [REDACTED] to have surgery to avoid irritation, and the Appellant has stated that he is prepared to have the surgery done.
102. The veterinarian concluded that the middle-aged dog [REDACTED] has an ear infection in both ears present for weeks or months which would have caused some degree of discomfort and pain while it went untreated, and a grade 1 out of 4 medial patella luxation of his left knee which in many dogs is subclinical but could cause some pain intermittently when the patella pops out of place. The veterinarian concluded that [REDACTED], the elderly dog, almost 13 years old, has an ear infection and irritated eye which need treatment and which have been receiving treatment while in the custody of the Society and were apparent both at the May 2013 veterinary visit and at the June 2013 follow up visit.
103. With regard to [REDACTED], there is no evidence that the knee issue was caused by anything done or not done by the Appellant. With regard to [REDACTED], an old dog, there is no suggestion by the veterinarian that the muscle wasting, cardiac arrhythmia and dental wear were caused by anything done or not done by the Appellant rather than being age-related or genetic conditions. There was some question as to whether surgery could be medically advised without lab work being performed.
104. To the extent that the Society relied on these conditions as showing long term neglect, I conclude that this was speculation.
105. As to the ear infections, dogs get ear infections. Again, I think it is speculative to conclude that the ear infections are evidence of a long term neglect or lack of care. The ear infections on [REDACTED] and [REDACTED] do need treatment. The evidence suggests that while in the care of the Society, these ear infections have improved but remain so the management of the infections will not be a quick fix.
106. I cannot accept that it is reasonable or correct to retain custody of the Dogs due to untreated or poorly managed ear infections. As I am satisfied that the Appellant is now in a position, and has the supports, to look after these issues as part of his care of the dogs, this can be managed through conditions on returning the Dogs, particularly if the Appellant is shown how to administer the medications, a point on which there was no evidence.
107. Ms. Moriarty also expressed concern about the tangled leashes, the dog food and the medication. I find the Appellant's explanation of how the dog leashes became entangled and how the medication was not matching dosage over time versus amount left to be reasonable and credible. Although there is still some confusion and lack of evidence over whether the food was cat food or dog food, I am satisfied the dogs had food.

108. There are pain management issues for two of the dogs, and this also can be managed through conditions. There is no evidence that pain management will reverse or eliminate any medical condition, only the recognized knowledge that pain management may assist in alleviating pain.
109. There is no evidence the Appellant caused any pain but instead possibly due to his own medical condition, he did not actively pursue veterinary pain management. There was no evidence that this pain created an unbearable situation for any of these dogs, with one dog having no pain, one dog just being monitored for pain and limping and one dog needing pain management for chronic osteoarthritis.
110. The Society's decision did acknowledge how much the Appellant cares for his dogs, but did not specifically address the potential adverse emotional impact on the dogs of not returning them to the Appellant. The emotional health of the dogs is a factor the Society itself emphasizes in its publications, as reflected on its website: "An animal's welfare is synonymous with its quality of life, and that animal's health and emotions both contribute to their welfare."<sup>2</sup> This is in my view a relevant factor in this case which was not expressly referenced in the decision under appeal. It is readily apparent that the dogs would have bonded with the Appellant over the time he has owned them, especially ██████ at 4 years, and ██████ at 13 years, who the Appellant describes as his "best friend". This emotional impact should have been weighed in all the circumstances. I am satisfied that the dogs would be emotionally better off with the Appellant.
111. I do not see any significant physical risk to these dogs. I do not agree that the Society was correct or reasonable in concluding that the dogs should not be returned to the Appellant.
112. The Society relies on 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.

113. To begin with, based on my reasons above, I am not convinced the dogs were in distress as defined by the *PCAA* when they were taken into custody by the Society as the ear and eye issues are able to be managed and continued to occur while in custody as they may be chronic in nature and may reoccur. In fact, the dogs were not taken into custody in this case because they were in distress. Both notices of disposition instead relied on the ground that the dogs had been "abandoned". While abandonment is obviously a cause for concern, the "abandonment" in this case arose in very unusual circumstances, which have now either resolved, or which can be dealt with by way of conditions.

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<sup>2</sup> <http://www.sPCA.bc.ca/welfare/farm-animal-welfare/sPCA-certified/sPCA-certified-standards.html#UgPYHaz9Uzc>

114. I am not convinced at all that the condition of [REDACTED] and [REDACTED] could be described as “good” if the dogs were returned today, but I am satisfied that the condition of the dogs is good enough as to provide the Appellant with the opportunity to continue care to continue to improve or at least maintain the health of the dogs.
115. I am also persuaded that the Appellant did not, upon the second time the dogs went into custody, have a proper opportunity to fulfill earlier conditions on the dogs’ release. The Appellant does not have the same living arrangement and has a new home that permits dogs and provides room for exercise. He says the dogs will be on a leash when outside, which is good. The Appellant also appears to have the supports in place to be able to look after the dogs basic and medical needs, which position is supported by the letter from his case worker, which I am prepared to accept even though it is not signed. While the Society says that case worker’s letter lacks specificity, it is sufficiently specific to give me confidence that the Appellant will have a degree of professional community support for his mental health and for his dogs that justifies a return with conditions.
116. I note that the dogs were in substantially the same condition on July 2, 2013 (the date of the Society’s decision) as they were the first time they were returned to the Appellant on or around June 12, 2013. While Ms. Moriarty stated in her decision that she did not look deeply enough at the veterinary report, the Society did have the completed medical assessments and these were taken into account in the conditions imposed on the return of the dogs. Little changed between then and the July 2, 2013 decision other than the Society’s assessment. As I am not satisfied that the dogs were in distress, and based on the Appellant’s explanations for the leash, food and medication issues, I am not satisfied that those issues were a sufficient reason not to return the dogs to the Appellant’s custody.
117. The Appellant was not able to adhere to conditions due to his mental illness and almost immediate return to the hospital. Since then, all evidence indicates he has cooperated fully with both his own medical team and with the Society. The Appellant is receiving medical care and support and believes he is now well enough to regain custody of his dogs.
118. There is no evidence countering this position although I do note that when asked by Counsel for the Society about the potential for relapse, the Appellant’s son replied that there are no guarantees but there are supports in place and the Appellant or the son can access these supports by request. I am satisfied with that response in all the circumstances. Three times the Appellant has been unable to care for his dogs due to his mental illness. The first time, two years ago, he arranged for the dogs to go into a kennel. The second time, in May 2013, he was unable to arrange for a private kennel due to the nature of his admission into hospital but he did arrange for the dogs to be taken into the Society for compassionate care. He did not leave the dogs unattended for any length of time and he made sure they were not truly abandoned to fend for themselves. The third time he went into hospital, while suffering from his illness and involuntarily readmitted to hospital, he again made arrangements for someone to pick up his dogs and take them to the Society where they would be cared for. There is nothing in any of these instances that alerts me that the mental illness of the Appellant will cause harm to his dogs. Even under the most

urgent mental health needs, the Appellant has always ensured his dogs could go somewhere where they would be cared for.

119. The Appellant says he will develop an alternate care plan for his dogs when his case manager returns from holiday. The Appellant's son says that failing all other alternate plans, the dogs could go back to the Society to ensure they got cared for. This satisfies me that if the dogs are returned to the Appellant, they will remain in good condition and will prevent any reoccurrence of the situation that lead us to this appeal.
120. I am also of the view that on this most recent hospitalization, the returning of the dogs to the Society was an act in the best interests of the dogs and not an effort on the part of the Appellant to permanently relinquish custody of the dogs. Not only did the Appellant not say that he ever intended to relinquish his dogs in his evidence, his actions in immediately disputing the decision by the Society to dispose of the dogs reinforced his intention to regain custody.
121. The Society submitted that if I find the decision to be unreasonable, or if I disagree with its "true appeal" arguments, I should hold a further hearing to allow the Society to adduce further evidence as to remedy or conditions. It seeks a new hearing on the basis that an unreasonable decision does not necessarily mean that the dogs should be returned to the owner, a point on which I agree.
122. Where I disagree is on the question whether a further hearing is necessary to provide me with the information I require to make a proper disposition in this case under s. 20.6 of the *PCAA*. In my view, for the reasons given, I am satisfied that I have sufficient evidence to make a proper decision in the best interest of these animals, which evidence includes the cross examination of the Appellant and his son by the Society's Counsel. There is no need to prolong this dispute.

### **XIII. Order**

123. For the reasons detailed above, my decision is that the dogs be returned to the Appellant forthwith on the following conditions:
  1. That the Appellant administer the medications as recommended for [REDACTED] until such time as a veterinarian recommends otherwise.
  2. That the Appellant, within the 14 days after the dogs are returned to him:
    - (a) See Dr. [REDACTED] or a veterinarian of his choice for the purposes of obtaining an updated health assessment of the dogs, and advice as to ongoing necessary medical treatment and periodic checks.
    - (b) If a different veterinarian is chosen, consent to all prior veterinary records for the dogs being disclosed to the new veterinarian.

- (c) Obtain instruction from a qualified individual (i.e., a veterinarian or animal health technician) confirming how to most effectively administer required medications for the dogs.
  - (d) Instruct the veterinarian to provide his or her recommendations as to what is medically necessary for each dog in writing, and provide a copy of those recommendations once received to his community mental health case worker.
- 3. That the Appellant comply with the medically necessary recommendations obtained pursuant to condition 2, including recommendations for periodic follow up.
- 4. That the Appellant ensure the dogs are groomed regularly, with no longer than four (4) months between grooming. Grooming may be done personally or professionally.
- 5. That within 21 days after the dog are returned to him, the Appellant provide his community mental health case worker a written plan of care outlining the steps he intends to take:
  - (a) To ensure that the dogs are properly cared for, including attending to grooming and medically necessary veterinary recommendations.
  - (b) To ensure that animals are cared for during any planned absence.
  - (c) To ensure that the animals are cared for during any unexpected absence, including a further mental health admission.
  - (d) The name, address and contact information of the person or persons who will be responsible for the dogs' care during a planned or unexpected absence.
- 124. I am not making my Order for return of the dogs conditional on the Appellant's payment of outstanding costs. That is partly because the Appellant appears to have agreed to pay the costs he understood to be owing, partly because further unexpected delay or conflict regarding the amount of costs (of which there was limited discussion at the hearing) will only increase the costs and partly because if a dispute regarding the amount of costs does arise, that issue can be resolved in a further appeal under s. 20.3(1)(c) of the *PCAA*.
- 125. To put it more clearly and directly for the Appellant, the fact that I am ordering the dogs returned to him now does not relieve the Appellant of his liability for costs under s. 20(1) of the *PCAA*. The Appellant will in all likelihood be receiving a final bill from the Society, which he is liable to pay in full subject to any appeal he may file to BCFIRB if there is a dispute as to the amount. If the Appellant chooses to appeal the amount owing it will not put him at risk of losing the dogs for that reason.

Dated at Victoria, British Columbia this 9th day of August, 2013.

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**

A handwritten signature in black ink, appearing to read "Corey Van't Haaff". The signature is written in a cursive, flowing style.

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Corey Van't Haaff, Presiding Member