

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 ONE DOG

BETWEEN:

DAVE BICKERDIKE AND BEVERLY BICKERDIKE

APPELLANTS

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 by Dave Bickerdike

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

September 26, 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 August 30, 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 September 3, 2013 and heard by a one-person panel in a telephone hearing on Monday, September 26, 2013. Dave Bickerdike was on the call and presented the Appellants’ case. The Society was represented by counsel and Ms. Moriarty was on the call solely as an observer although the Society did rely on her affidavit sworn September 17, 2013 as evidence in the proceedings. The Society also called Philip Stacey, B.Sc., DVM as an expert witness. The call was recorded.
3. Although four animals were seized, one dog was euthanized and one dog and one cat were surrendered by the Appellants. The only animal at issue in this appeal is Chomper, a male Cock-A-Poo dog.
4. This is the second substantive appeal decided since the amendments to the *PCAA* came into force on March 20, 2013. The first decision, *A.B. v British Columbia Society for the Prevention of Cruelty to Animals*, (August 9, 2013) is currently the subject of an application for judicial review where one of the issues is the appropriate standard of review of SPCA decisions by BCFIRB.
5. Given the foregoing, and after hearing from the parties on the issue, the panel made the following preliminary ruling regarding the conduct of this hearing:

I have not been persuaded that I should depart from the approach to those issues set out in BCFIRB’s reasons for decision in *A.B. v. BCSPCA* (August 9, 2013), at paras. 80-94. I draw the parties’ attention in particular to paragraphs 83 and 93 of that decision:

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 BCFIRB is required to defer to decisions of the Society.

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 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 hearing will proceed accordingly.

II. Brief Summary of Decision

6. Section 20.6 of the *PCAA* permits me, 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 animal. For reasons that will be explained in detail later, I have dismissed the appeal and order that the dog Chomper remain in the custody of the Society, to exercise its authority under s.20.6(b) of the *PCAA*. In my opinion, based on the evidence heard in this appeal, it is not in Chomper's best interests to be returned to the Appellants. If the dog Chomper was returned to the Appellant, with or without conditions, I am satisfied that the dog would not maintain good health and it would be likely that the dog would again be found in distress. Based on the evidence heard, I have concluded that the Appellants would not properly care for the dog and would not protect it from circumstances likely to cause distress. As a result, I direct that the Society, in its discretion, may destroy, sell or otherwise dispose of the dog Chomper.

III. The Society's Powers and Duties

7. 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".
8. 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. 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 and it is her August 30, 2013 Reasons that are the subject of this appeal.

IV. The Appeal Provisions

12. The right of appeal to BCFIRB is a result of recent legislative reforms to the *PCAA* which gives lay people an alternative to a more formal judicial review or judicial appeal. These reforms give BCFIRB broad evidentiary hearing, investigation and inquiry powers and broad remedial powers upon hearing an appeal: ss. 20.5 and 20.6.

V. Decision Being Appealed

13. In the Society's August 30, 2013 Reasons, Ms. Moriarty summarized the following documents she relied on in coming to her decision: the Notice of Disposition, Information to Obtain and Warrant, Shelter Buddy dispatches for file # 154842, notes of Special Provincial Constable (SPC) Bailey, Saanichton Village Veterinary Hospital notes, multiple other Shelter Buddy summaries, photographs taken during the warrant, veterinary reports for "Mr. Tibbs" (the dog that was euthanized), the Appellant's email dated August 23 and various invoices associated with the cost of care. She concluded that Dave and Beverly Bickerdike are the owners and persons responsible for the animals removed from their custody August 18, 2013.
14. In the Society's Reasons, Ms. Moriarty states in part:

...you have been given ample opportunity to address the health and environmental needs of Chomper. In contemplating a return of animals I also turn my mind to the question of whether or not the animal owner will maintain the animal in good condition and how compliant they will be in adhering to the terms of return. Unfortunately your history combined with the most recent attempts to contact you before we had to obtain a warrant do not lead me to believe that things would change for Chomper in the future if returned. Having regard to all of the above, I must conclude that Chomper was in distress at the time of seizure and that if he was returned to you he would again deteriorate. Your history with the BCSPCA and your apparent inability to maintain meeting the needs of the animals in your care leads me to doubt whether you would be able or willing to comply with the terms and conditions that would be included in any agreement of care to return Chomper. I am not convinced that it is in the best interest of Chomper to be returned to you.
[emphasis added]

15. Ms. Moriarty's review of the original seizure decision acknowledges that while the review only pertains to Chomper, she looked at the Appellants' history with the Society as well as the condition of the other animals seized in determining if it is in the best interests of the dog Chomper to be returned to the Appellants.
16. Ms. Moriarty says she relies on the totality of the evidence before her but specifically notes that the history dates back to 2007 with a case involving a dog with a broken back which was ultimately euthanized. Over the years, multiple Society orders were issued to provide flea care, matting and veterinary treatment. She notes some compliance but that it often took multiple attempts to obtain that compliance.
17. With respect to the most recent seizure, the Reasons set out the following history. On August 9, the Society received a complaint about "Mr. Tibbs", the dog that was euthanized after seizure. On August 12, Society constables investigated, attempting contact and leaving a note on the door requesting contact within 24 hours. After no response, they returned on August 16 and left another note requesting 24 hour contact. The warrant was issued after receiving no response and the animals, including Chomper, were seized as they were determined to be in distress.
18. The Reasons summarize Dr. Stacey's August 18, 2013 examination of the animals seized (3 dogs and 1 cat). While Ms. Moriarty relies on the entire veterinary report, she notes Dr. Stacey's following observations:

"Chomper was in the worst condition of all the dogs. He was underweight with significant hair loss over the back, trunk and down the hind legs. He had a severe bacterial and yeast pyoderma and a bilateral yeast infection of the ears. He also had severe dental disease and had fractured upper and lower canines. The upper canines were fractured close to the gum line and had exposed pulp cavities and therefore exposed nerves. This mouth will be extremely painful and he does need a significant dental with several extractions. In conclusion I would say that all of the animals demonstrated some degree of poor grooming and flea control and that both Chomper and Shiva [another dog] are in a considerable amount of pain and discomfort as there was no evidence that the owner was providing any level of treatment for these animals.
19. The Reasons also summarize the Appellants' August 23 email explaining that they provided some kind of flea treatment and skin care for Chomper but it wasn't working. They offered some information regarding the status of the other dogs and the condition of the house but did not provide any veterinary information or reason why they had not sought veterinary advice, nor did they respond to comments on their history with the Society.
20. In her Reasons, Ms. Moriarty concluded that the Appellants had been given ample opportunity to address the health and environmental needs of Chomper and that their history with the Society combined with the most recent attempts at contact prior to obtaining a warrant made her believe things would not improve for Chomper if he was returned. She believed Chomper was in distress at the time of seizure and that Chomper would deteriorate if returned to the Appellants and that, combined with their history with

the Society and their apparent inability to meet the needs of the animals in their care led her to doubt they would be able or willing to comply with any terms and conditions of a return order. She felt it was not in Chomper's best interests to be returned.

21. In addition, the Reasons advised the Appellants that they were responsible for the cost of care associated with the animals up to the time of surrender and, in the case of Mr. Tibbs, up until his euthanasia, and the cost of care including veterinary costs for Chomper totaling \$1773.60. She said she was prepared to waive the boarding fees in this case and advised the Appellants to consider her decision a demand for payment by October 31, 2013.
22. Ms. Moriarty then stated that she understood the Appellants still had one cat and two puppies in their care and that the Society had tried to remove the cat at the time of seizure of the other animals but was unable to catch it. The Appellants were issued an order to provide treatment for that cat described as crawling with fleas. Ms. Moriarty said she was "hoping that you have complied with the order..." and she reiterated her condolences for the dog that was euthanized.

VI. The Appellant's Case

23. The Appellants' case consisted of the sworn testimony of Mr. Bickerdike and several unsworn emails written by Beverly Bickerdike which are summarized below. The emails and photos and other submitted material were collectively entered as EXHIBIT #1.
24. In her September 2, 2013 email requesting the appeal, Ms. Bickerdike stated that she wanted the Society's decision to be overruled. The Society said it removed their animals as they were being cruel to them but she disputes this, stating Chomper would be the second dog to eat and would eat his fill. Her son brought home puppies so she moved the dry food for Chomper into the bedroom where it was always available. She said the dogs did not go hungry and always had clean water available. She acknowledged a flea problem and said she treats them with Advantage but it does not work. She has tried various home remedies in the past. She did not know he had an infection and said the family was struggling with money issues and couldn't have taken Chomper to the veterinarian. She explains why she agreed to surrender some of the animals. She says none of the cats including apparent strays go hungry at her home and she even unwillingly feeds the raccoons. She is upset that she could not visit, comfort and attempt to feed Mr. Tibbs. He was euthanized without notice to her and that his body was returned to her in a garbage bag inside a box. She wants Chomper home and promises to take him to the veterinarian regularly.
25. In her September 15, 2013 email, Ms. Bickerdike states she is overwhelmed by the submissions from the Society and again explains the flea situation and her efforts to mitigate it. She thinks the Society is trying to make the case look worse than it was to justify the seizure and she questions how the Society knew the cat had loads of fleas if they couldn't get close enough to catch it. She also states Chomper was bathed the most as he scratched the most and indicates that she will email photos to demonstrate the

condition of her dogs and the house, noting Chomper had a nice coat at Christmas. These photos were received September 16, 2013.

26. She referred to some veterinary care the dogs had received in the past, and some historical reasoning for why the dogs don't go to professional groomers. She says that Chomper's teeth were bad as he wore them down chewing himself, and they are guilty of not having the funds to take him to the veterinarian to get his teeth fixed due to her husband's unemployment and a second-mortgage foreclosure. She says she has no idea how his teeth suffered trauma, and surmises it could be while chewing or playing tug of war with her daughter.
27. She says if Chomper's teeth are now fixed and skin beginning to improve and they keep him on whatever care regime is being done, everything should be fine. She says her husband agrees to take Chomper to the vet at whatever periodic time frames are required and that he will do anything to get his dog back. She says they are straightening out their finances, applying for a loan with extra money for pet bills, and her husband is back at work.
28. Ms. Bickerdike's September 16 brief email attached 11 photos which she says show how her house normally looks. She says the photos at seizure were taken after she had been away and her boys let the puppies run wild.
29. In her email of September 24, 2013, Ms. Bickerdike says again that the submissions from the Society are overwhelming and that the Society's veterinarian makes it sound like they never cared for their pets. She disagrees with his assertion that Advantage works on fleas. She agrees they had a dog that had to be euthanized due to a broken back likely sustained while falling backwards when trying to jump on their porch. She says losing Chomper is like losing a child and she does not understand why the Society won't give him back with conditions. He did not always look as rough as he did at the time of seizure and she says they were not ignoring his issues but were just doing what they could afford.
30. Mr. Bickerdike testified briefly. He wants Chomper back; he had been his friend for the past six years. Chomper has never been hit that he knew of and Chomper's teeth wore out from biting himself since he was a pup. If Chomper was given back to him, Mr. Bickerdike says he would get the dog's teeth fixed and take him to the veterinarian once a month.
31. On cross examination, Mr. Bickerdike confirmed that Chomper walked on the beach every day and he does not know the individual who made the original complaint about the dog's condition to the Society. Mr. Bickerdike he did not read the search warrant as he isn't good at reading. He spoke to his wife about it a few days later.
32. He believes the Society is mad his dogs run loose on the beach and he acknowledges not liking being told what to do.
33. Mr. Bickerdike was cross examined on his previous history with the Society. He acknowledged he had a dog with a broken back and that he took it to a veterinarian to be

euthanized. When challenged that he only did this upon the Society's involvement, he said he already knew about the dog's back and had an appointment the next day. In response to Panel questions, Mr. Bickerdike said the dog did drag itself while still on the chain but it did not seem like it was in pain. When he picked the dog up and moved it, it did not yelp so that was indicative of no pain. He thought it was okay to leave the dog for a day.

34. He also acknowledged that in 2008 he had three small dogs and the Society said the dogs were matted with sores so they went to a groomer but it upset the dogs; now his wife grooms the dogs. Libby, Chomper's mother, was also the object of some Society attention but he can't recall why. Mr. Bickerdike says that his dogs have and do wander and thus people complain about them, and that he has bailed out his dogs before.
35. Mr. Bickerdike was also cross examined about the appearance and health of Chomper at the time of seizure. He says Chomper is thin, his mother was thin too. Chomper ate a can or half can of dog food just about every day; he knew Chomper's teeth were bad and he didn't like eating hard food so he was given soft. The dog ate separately from the others.
36. He recalled the last veterinary visit was at Juan de Fuca but he couldn't recall when, maybe years ago, though it could have been a veterinarian in Sooke. His wife looks after the veterinary records and he agrees no records were submitted in regards to this appeal.
37. Mr. Bickerdike says he now has six animals on the property: four cats and two dogs (the puppies). He says Chomper was his dog not his wife's and that there is no fence so the dog wanders. He recalls the time Chomper was fighting with wild raccoons that got into the cat food outside and Chomper's grandmother Suzie took on the raccoons.
38. He denies that Chomper was in pain at and around the time of seizure, but that "if you banged his jaw, you could tell he didn't like it". He says he should have taken Chomper to the veterinarian as he needed dental work but it cost \$1900. He says he will pay the veterinary bill if he gets his dog back. He argues that the Society is trying to make the case look worse than it is. He works with his own logging truck and re-started work in May. When questioned why his wife says he "just" got back to work in her appeal documents, his response is that his wife may have been mistaken. He goes back to work from time to time, is facing foreclosure on one mortgage, owes \$300,000 but earns \$200,000 and is having an argument with income tax. Sometimes he is broke, he says, and sometimes he has money.
39. In response to panel questions about his ability to pay for veterinary care, Mr. Bickerdike acknowledged that a veterinarian had told him some years ago that Chomper's teeth were gone and needed attention. He knows he should have done something about the teeth years ago but he did not want a big bill. There are a lot of times over the course of a year where he can afford veterinary care but also says he spends \$20,000 on license plates and \$60,000 on fuel and money goes away pretty fast.

40. Mr. Bickerdike acknowledges that he has said he would do what he needs to do to get Chomper back. He denies saying he would “B&E” but agrees he did say he would go in and grab the dog back and he still intends to do that.

The Society’s Case

41. The Society relies on the evidence of its expert witness, Dr. Stacey, a veterinarian practicing in British Columbia for 18 years, who is who has acted as both consultant and expert witness for the Society in cruelty and neglect cases over the last 18 years.
42. Before the panel was Dr. Stacey’s August 22, 2013 report about all the seized animals, a portion of which was excerpted in the Reasons of Ms. Moriarty; a series of emails dated September 3, 2013 between SPC Bailey and Dr. Stacey regarding additional details about Chomper’s health especially of his teeth; home care instructions dated August 30 regarding Chomper’s dental surgery; veterinary anesthesia and dental records dated August 29; SPCA take home instructions dated August 18; blood test results dated August 19; handwritten clinical records detailing an August 18 and an August 29 visit; and a report dated September 11 responding to specific questions from Society’s counsel.
43. Dr Stacey testified regarding his physical exam of Chomper on August 18 and dental surgery August 29. His written reports were collectively entered as EXHIBIT #2.
44. Chomper as considerably underweight; on a scale of 1-5 with 1 being emaciated; Chomper was a 1-1.5. Chomper was far too thin in Dr Stacey’s opinion.
45. He noted significant hair loss and bad skin that reacted to touch. The dog was scratching, smelled bad and had both bacterial and yeast infections on his skin.
46. In response to the panel’s questions, Dr. Stacey confirmed he could visibly see the difference between a bacterial and yeast skin infection and saw both on Chomper. One is treated with an antibiotic and the other is treated with an anti-fungal so it’s important to know what the infections are.
47. Chomper had yeast infections in both ears and was missing teeth. His front teeth were fractured at the gum line, and all four canines were fractured so you could see pulp cavity with nerve exposed which in his opinion would cause pain. The loss of teeth was caused by trauma due to the angle and extent of breakage. It would have taken some force to accomplish this and could have been as a result of being hit by a car. Dr. Stacey couldn’t rule out that the dog was kicked but nothing suggests it was willfully done.
48. He did not see fleas but did see a lot of flea dirt which he explained he tested to determine it was flea dirt. He assumed there were no fleas as the dog was recently treated. He suspects the skin allergy is caused by fleas. The dog was unneutered with only one descended testicle.

49. Dr. Stacey explained Chomper's chronic pain as being caused by several things: chronic itch and unable to get comfortable, pain associated with teeth, pain of injury and despite initial pain subsiding, a secondary infection in the tooth pulp would cause chronic pain in the teeth and jaw and would be constantly irritated, with stabbing pain upon chewing or touch. The dog likely ate with the back of its teeth. He was not sure how long the teeth damage was present but it was likely chronic due to bone loss, teeth discoloration and root blunting; he suspected the teeth had been damaged for one-to-two years. The skin infections were months in the making and likely stayed this way for months. If fleas were treated from time to time, once there was a secondary infection, flea riddance was not a cure. The skin was obviously infected with hair loss and baldness over the tail and back legs, bad smell and scratching. Dr Stacey said this infection would be obvious to a lay person.
50. The pain from teeth was more difficult to see as a dog can accommodate and live with pain. People may not think teeth are bad as long as the dog is still eating but a veterinarian would see this right away. A person should notice thinness and know the dog was not getting enough food and should have noticed the missing teeth.
51. The smell would not be bad from the teeth but would be bad from the ears and skin. The hair loss is not what would be seen if the dog was shaved; some longer hairs were still present and the skin had changed in character which would not occur with shaving.
52. Dr. Stacey explained that providing food doesn't mean the dog was effectively eating and digesting food. Chomper, with missing incisors, would have trouble getting food into his mouth and would likely eat slow and may not get enough calories if there was competition from other dogs. He may be mouth shy as his mouth hurt. He may avoid other dogs. Eating people food may not have met his nutritional requirements. Dr Stacey did not comment on the food quality as it was unknown to him.
53. Dr Stacey says Advantage flea treatment does work and is effective when properly applied but might not last as long due to Chomper's skin condition. The dog needed follow up care on his skin even though there were no fleas and he noted it takes a while to get antibiotics to the edge of the skin.
54. Going forward, Dr. Stacey has concern over bone loss and infection from the teeth, two canines were left and two were removed. Of the two left, one does not have exposed pulp cavity so it is okay but the other tooth is exposed and with so much bone loss, extraction may not be possible. In response to a question from the panel, Dr. Stacey explained that capped teeth in dogs is becoming the norm, more in lower teeth where extraction is avoided due to the strength needed. From a medical point of view, caps and root canals are chosen; for financial reasons, extractions are chosen. Either is acceptable for pain. He recommends the best choice and if a client cannot afford it, he presents the next best option. Any veterinarian, if examining a dog with Chomper's teeth, would advise a client not to leave the dog as is.

55. For Chomper, there may still be some pain on the one lower tooth but Dr. Stacey can't tell until it is reevaluated after the infection clears up. He explains that when going down the list of treatment options, there comes a time when you cannot go any lower as it is unfair to the patient. He says it is also unfair to make recommendations beyond the ability of a client to pay for and if it's too much, surrender to the Society is an option.
56. Dr. Stacey states that Chomper's weight needs to come up, more blood work is needed especially due to thyroid readings and his ears need to be re-checked. Chomper will always be a dog more sensitive to ear problems. While there is no need for professional grooming, the dog does need grooming about every six weeks as he had mats in feet and long nails. Dr Stacey summarized that Chomper had so many problems and none appeared to have been addressed properly. He sees no indication if the dog goes back, that it will be treated appropriately. He noted there are costs associated with keeping dogs and the owners should have noticed the skin condition and thinness.
57. Mr. Bickerdike chose not to question Dr. Stacey saying his mind was already made up and he won't change it.
58. The Society also relied on the sworn affidavit of Ms. Moriarty which was admitted with all its supporting documents as EXHIBIT #3.
59. Ms Moriarty's affidavit sets out her credentials and the mandate of the Society to prevent and relieve animals from situations of cruelty, neglect and distress. On occasion, the Society seizes animals from the care and custody of their owners to relieve the animals from situations of distress, as well as taking abandoned animals into custody and arranging for food water shelter and veterinary treatment. Ms. Moriarty refers to Chomper in her affidavit as a dachshund mix.
60. According to the affidavit, after the initial decision to seize Chomper, the Appellants asked for a review. Ms. Moriarty conducted the review and her August 30, 2013 Reasons confirm the Society's decision to act on the Notice of Disposition and not return Chomper. I have summarized the August 30, 2013 Reasons above in paragraphs 13-22.
61. The Society argues that the test it must meet is set out in *Eliason v SPCA*, 2004 BCSC 1773 where Mr. Justice Groberman 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.
62. The *PCAA* requires that the Society to perform a review of a decision to take an animal into custody following which it can either return the animal or confirm its own decision. The Society is not required to babysit owners who won't comply with the *PCAA* as it is funded by public donations and has finite resources. In this case, the Society argues that its relationship with the Appellants has broken down. The Society is the only body mandated

63. Pointing to the evidence, the Society argues that the Appellants have not offered a proper explanation about the lack of veterinary care. Despite claims that the animals were never hungry or without water, Dr. Stacey testified as to the difficulties Chomper would have eating.
64. The photographs of the Bickerdike residence at the time of seizure show a home that was in disarray, looking unclean with a plant upturned and what appear to be soiled doggy pee pads around the floors. The photos of Chomper taken right after the seizure show missing fur.
65. The Society asks for its costs and revokes the offer made in its Reasons to waive boarding fees. The Society indicates however, that it is not requesting costs for the constables' time and mileage which has been claimed in other situations. The Society argues that if the panel intends to overturn its decision, it is still entitled to reimbursement for *all* costs incurred and does not waive its rights under section 20(2) of the *PCAA*. The Society specifically seeks an order for full payment from the Appellants prior to any return of Chomper that may be ordered.
66. In response to the arguments of the Society, Mr. Bickerdike reiterated his promise that if Chomper was returned there would be no further problems and the dog would receive veterinary care as often as the Society directed.

VII. Decision

67. I start my decision by observing that there was no significant disagreement between the parties as to the condition of Chomper at the time of seizure, only as to the cause. Both sides acknowledged ongoing flea problems, poor grooming, broken and missing teeth and associated teeth problems, and low body weight in Chomper. The Society argues that these were caused by an inability or unwillingness on the part of the Appellants to provide adequate and ongoing veterinary care. The Appellants argue that they either provided care and grooming at home or no care was required. Both parties acknowledge a history of contact between the Society and the Appellants regarding several animals over the past several years.

Chomper's Condition at the Time of Seizure

68. The Appellants agreed that Chomper, at many points in time, had fleas and was partially bald. The Appellants suggested the dog was bald as it had been shaved and it had been treated for fleas and the fact that there were no fleas at the time of seizure was proof of their efforts at treatment. Dr. Stacey observed significant flea dirt which he said was evidence of recent flea infestation and that the condition, appearance and smell of the skin

should have alerted an owner to a problem that needed veterinary examination and treatment. He said the skin condition caused Chomper chronic itch and discomfort.

69. I accept Dr. Stacey's assessment that there was no evidence of the Appellants following veterinary advice in treating Chomper nor did the condition of Chomper's skin indicate there had been appropriate treatment for the skin condition.
70. Further, Mr. Bickerdike admits he received veterinary advice that Chomper's teeth needed to be fixed some time ago and he agreed that there were several times a year when he could afford veterinary care but he did not want a big veterinary bill for teeth. He also said Chomper would show signs of pain when his mouth was bumped. Dr Stacey says in addition to the pain of injury and despite that initial pain subsiding, a secondary infection in the tooth pulp caused chronic pain in the teeth and jaw and constant irritation with stabbing pain upon chewing or touch.
71. I am satisfied that Chomper suffered initial and ongoing pain in his mouth and that the Appellants were aware of this pain and suffering and chose to do nothing to alleviate it or to prevent it from continuing.
72. Dr. Stacey also concluded that Chomper was near-emaciated and this had to be obvious to the owners. The Appellants said that this was possibly because his mother was thin and that in any event they always made food available for the dog. Despite having food available, Dr. Stacey concluded that mouth pain made it difficult and painful for Chomper to eat and he was of the view that an owner should seek veterinary care for a dog that thin.
73. I am satisfied that the Appellants were aware of the dog's emaciated status and they took inadequate steps to prevent the situation from continuing. I am also satisfied that a reasonable owner would have taken measures to prevent their dog from continuing to lose weight or remain at such a low weight.
74. I have also reviewed the photographs at the time of seizure and compared them to the photographs offered from the Appellants showing condition of the home at an earlier period of time, and more hair on the dogs.
75. Based on the evidence of Dr. Stacey, it is evident to me that the hair loss has been ongoing for some time. I accept that the hair loss and its causation had existed for a long enough period of time to cause Chomper discomfort. I am also satisfied that due to a recent flea infestation, skin and ear infections, absent dental care given Chomper's mouth conditions, and significant weight loss, Chomper was in distress at the time of seizure. This conclusion is not impacted by the photographs tendered by the Appellants.

Likelihood of Chomper Maintaining his Improving Health if Returned

76. Chomper is receiving veterinary care while he remains in custody with the Society. He has had most of his dental work done and is being treated for his skin and ear infections. Presumably, his eating will improve as the dental pain subsides and the infection clears up.
77. The Appellants have a history of some compliance and some non-compliance in past dealings with the Society but the Society has grave concerns that Chomper would maintain his improved health if he was returned to the Appellants.
78. I am also concerned about this and I doubt that Chomper will maintain his improving health if he is returned to the Appellants. The Appellants have acknowledged several times that they have tried to treat Chomper and when they do not get the desired result, they do not seek veterinary advice for assistance. Instead they appear to either give up or try self-help remedies that do not work.
79. The Appellants promise veterinary care for Chomper now if he is returned to them. I doubt the truth of this statement as Mr. Bickerdike admits to not previously getting treatment for Chomper's known painful dental situation, despite veterinary advice to do so. I also have concerns about how he determined that Chomper's mouth is painful "when banged". Chomper is thin to the point of emaciation yet the Appellants chalk it up to genetics when there was no evidence genetics were responsible. The Appellants made food available and did not seem to be aware that a dog must be able to eat adequate quantities of available food to maintain good body weight and good health.
80. The Appellants describe a home situation where the dogs and cats run loose, wander and fight with raccoons, which cannot be deemed a safe or good environment for Chomper to live in. The Appellants do not appear to fully understand the consequences of the symptoms of ill health exhibited in Chomper or in some of their other animals. I am especially guided by Mr. Bickerdike's own evidence that he assessed the pain level of his previous dog with the broken back by lifting and moving it, despite it being unable to walk and dragging its hindquarters. As the dog did not yelp, he determined there was no pain and therefore determined the dog could lie outside and wait until the next day for veterinary care.
81. The only thing the Appellants offer is their promise to provide a different level of care in the future should Chomper be returned. Their promise carries no weight with me. They presented little evidence on why things would be different this time when they had multiple opportunities in the past, after being alerted to health issues with their animals, to get proper care and treatment, and they did not. Especially with Chomper's teeth, Mr. Bickerdike made an active and reasoned decision not to get care, based not on inability to pay but unwillingness to pay.
82. I now consider the emotional impact of a decision not to return Chomper to the Appellants. Dr. Stacey describes Chomper as a dog that had bonded with the Appellants but easily formed a bond with his own staff at his clinic. The Appellants did not make any argument

that Chomper would suffer emotional distress if removed from their custody. While I understand that taking Chomper into custody may have caused him some emotional distress I am not convinced that long-term, there will be emotional harm to Chomper's health and welfare and I am especially not convinced Chomper's emotional distress outweighs the significant physical distress he has suffered and will likely continue to suffer.

83. I agree that the correct decision is to not return Chomper to the Appellants. Chomper was suffering in the care of the Appellants and they did not provide any meaningful level of care or treatment to relieve his pain and suffering and, in fact, decided (with his teeth) to knowingly permit continued suffering. The Appellants have failed to satisfy me that they would provide Chomper with the appropriate level of care if he were returned to them. In coming to this conclusion, I have specifically considered the fact that the Appellants now have three fewer animals in their care but I do not find this to be a material change in circumstances which would warrant a return of Chomper.
84. Pursuant to section 20.6 of the *PCAA*, I direct that the Society, in its discretion, may destroy, sell or otherwise dispose of the dog Chomper.
85. I make no order as to costs other than to observe that the Appellants, pursuant to section 20(1), remain liable to the Society for the reasonable costs incurred with respect to taking an animal into custody.
86. Pursuant to section 20.3, a person receiving a demand for payment of costs from the Society has a right of appeal to BCFIRB.

Dated at Victoria, British Columbia this 10th day of October, 2013

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Presiding Member