

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

BETWEEN:

KURTIS ELLIOT

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Harveen Thauli, Presiding Member

For the Appellant:

Kurtis Elliot

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

February 23, 2023

Location of Hearing:

Teleconference

A. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, RSBC 1996, c. 372 (the **Act**) related to the seizure of four dogs.
2. The Appellant, Kurtis Elliot, appeals the January 25, 2023 review decision (the **Review Decision**) issued under s. 20.2(4)(b) of the *Act* by Marcie Moriarty, Chief Prevention and Enforcement Officer, of the British Columbia Society for the Prevention of Cruelty to Animals (the **Society**).
3. Section 20.6 of the *Act* permits the British Columbia Farm Industry Review Board (**BCFIRB**), on hearing an appeal in respect of animals, to require the Society to return the animals to their owner with or without conditions or to permit the Society, in its discretion, to destroy, sell or otherwise dispose of the animals. The Appellant is seeking the return of the four dogs.
4. On February 23, 2023, a BCFIRB hearing panel (the **Panel**) held a hearing via teleconference. The hearing was recorded.
5. The Appellant was not represented by counsel. He gave evidence and made submissions on his own behalf and called three witnesses.
6. The Society was represented by counsel and called two veterinarians who had examined the dogs, the animal protection officer (**APO**) who had contact with the Appellant before and during the seizure and the special provincial constable (**SPC**) who assisted with the seizure.

B. Decision Summary

7. In brief, the Appellant surrendered two adult dogs (Blue and Cal) on January 9, 2023. Blue was euthanized two weeks later. The following day, on January 10, 2023, six adult dogs and seven puppies were seized from the Appellant's property located in Clearwater, BC (the **Property**). On the same day, the Appellant surrendered two (Sitka and Koda) of the six adult dogs. On January 12, 2023, the Appellant surrendered the seven puppies.
8. The Appellant is seeking the return of four dogs: Auggie, Onyx, Biggie and Bear (the **Seized Dogs**).
9. For the reasons explained in this decision, the Panel has decided not to return the Seized Dogs to the Appellant. Pursuant to section 20.6(b) of the *Act*, the Society is permitted, in its discretion, to destroy, sell or otherwise dispose of the Seized Dogs.
10. The Panel has further decided that the Appellant is liable to the Society for the full amount of costs claimed by the Society for the care of the Seized Dogs, while in custody, of \$7,608.48.

C. Preliminary Matters

11. The Society submitted the necropsy findings prepared by the Ministry of Agriculture and Food's accredited laboratory for the dog, Blue, the morning of the hearing on February 23, 2023. At the start of the hearing, the Panel determined that the necropsy findings were relevant to the hearing of this appeal and marked them as Exhibit 24.
12. The Society indicated that the Appellant had included two Facebook posts, as part of the appeal record at Exhibit 13, advertising a fundraiser for the dogs and puppies surrendered by the Appellant and seized from the Property (the **Facebook Posts**). The Society submitted that this fundraiser was not relevant to the issue of costs because costs were not costs minus donations.
13. The Appellant included the Facebook Posts to illustrate the negative press he has experienced since the surrender and seizure of the dogs and puppies, which has also led to threats from the public. The Panel informed the Appellant that her only role is to determine two issues in this appeal (discussed below) and not to determine whether he has been subject to defamatory remarks. It should be noted, however, that the Appellant chose to contact the media himself to deny the Society's allegations and express his remorse. This media article dated January 12, 2023 was included as part of the appeal record at Exhibit 5.
14. The Panel notes that as a non-profit, it is true that the Society relies on donations but the Facebook Posts did not factor into the Panel's decision to award the full amount of costs claimed by the Society.

D. Material Admitted on this Appeal

15. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record, with the addition of the materials noted at paragraph 11 above, comprises Exhibits 1 to 24 and is attached as Appendix A to this decision.

E. History Leading to Seizure of the Animals and the Day of Seizure

16. On December 27, 2022, the Society received an anonymous call of concern about dogs living inside a trailer at the Property. The caller alleged that there were too many dogs for such a small space and that they were urinating and defecating inside the trailer.
17. On January 6, 2023, the Society received a call of concern from a complainant who identified himself. The complainant alleged that the dogs and puppies at the Property looked underweight and that none were spayed or neutered. He also mentioned that the female dog seemed to be pregnant whenever it was possible.

Events of January 9, 2023

18. On January 9, 2023, APO Jamie Wiltse attended the Property to follow-up on the calls of concern.
19. During this meeting, the Appellant told APO Wiltse that he started breeding the dogs during the COVID pandemic because the puppies sold for “*good money*.” His female dog, Onyx, had litters in August 2021, March 2022 and October 2022. He began having difficulty selling the puppies and still had possession of “*a few*” puppies from the March 2022 litter that were now 8 months old. He also had seven puppies from the October 2022 litter that were ten weeks old.
20. The Appellant admitted feeling overwhelmed by the number of dogs and puppies in his care. None of the dogs were socialized or trained to walk on a lead. He was, however, crate training them.
21. The Appellant told APO Wiltse that he was out of work and meeting his financial needs was challenging. He was having difficulty providing the dogs and puppies with the proper amount of dog food because it was expensive in Clearwater. He tried selling puppies on Facebook, but he was then banned from using its site. A local rescue helped him by giving him dog food but recently, the local rescue could no longer assist him. He had one 14kg bag of dry food for all the dogs.
22. The Appellant had the tip of his finger amputated because one dog bit his finger when he was trying to separate dogs that were fighting with each other. He admitted that it was a challenge to separate the dogs because they would often fight.
23. The Appellant gave APO Wiltse consent to inspect the Property and the dogs. The outside temperature was 0° Celsius. She observed four dogs in the first pen – two were intact males (Auggie and Biggie) and the other two were intact females (Onyx and Cal). The dogs were all very underweight and had protruding ribs and hips. The two females, in particular, were extremely thin and emaciated and had protruding spines, necks, ribs and hip bones. The Appellant indicated that worms may be causing their thinness and Onyx needed to recover after having so many litters of puppies. The pen’s ground was covered in ice and had a build-up of urine and feces. The dogs did not have suitable shelter nor did they have any food or water. The water in the bucket was frozen.
24. APO Wiltse observed a second pen with three dogs, two female (Koda and Bear) and one male (Sitka). The Appellant advised that they were 8 months old and he had been unsuccessful in selling them as puppies. The dogs were extremely underweight and had protruding hips and spines. The pen’s ground was covered in ice, urine, feces and chewed up plastic. The dogs did not have any food or water. The Appellant stated that the dogs in the two pens were kept outdoors during the day and then brought inside at night.

25. As APO Wiltse walked towards the Appellant's trailer, she observed a build up of feces throughout the yard. Before entering the trailer, she informed the Appellant that she was extremely concerned with what she had already observed. She then advised the Appellant of his Charter rights because he could be charged for committing an offence under the *Act* and that whatever he said to her could be used as evidence. The Appellant confirmed he understood.
26. On entering the trailer, APO Wiltse saw one intact female dog in a crate. The Appellant stated that this dog named Blue was in the crate because "*she wasn't feeling well*" and likely had a build-up of worms. Through the crate, APO Wiltse observed that Blue was so extremely emaciated that her bones, including spine, neck, hips, ribs and shoulder blades were clearly visible. She further observed that Blue had pressure sores on her buttock area where skin and flesh were missing. Blue was very lethargic and weak and did not have any food or water. APO Wiltse stated to the Appellant that she had never seen such a thin dog that was still alive and Blue needed immediate veterinarian care. The Appellant confirmed that he had not taken Blue to a veterinarian because he lacked the finances.
27. APO Wiltse heard puppies crying and saw a wire crate in the living room housing seven puppies. She noticed their thin body condition and could see their hip bones.
28. APO Wiltse advised the Appellant that the health of the dogs was critical because their body conditions were extremely poor, they lacked food and water, they required veterinary care, and some dogs had inadequate shelter. She explained to the Appellant that they could suffer a life-threatening medical condition known as refeeding syndrome, which is a potentially fatal shift in fluids and electrolytes that may occur in malnourished animals once they are given food after a period of under-nutrition. When she asked the Appellant why he had allowed the dogs to reach such terrible body conditions, the Appellant advised that a local rescue was no longer giving him dog food, he could not afford a veterinarian, and he thought worms were also a contributing problem.
29. The Appellant agreed to surrender Blue, Cal and two puppies. However, APO Wiltse did not have enough crates, so she could only transport two dogs. Given their critical condition, she decided to take Blue and Cal. She told the Appellant that if the Appellant wanted to surrender the two puppies, she would return the following day to pick them up. She also encouraged the Appellant to surrender more dogs. APO Wiltse advised the Appellant that the investigation would continue despite his surrender of the dogs.
30. APO Wiltse provided the Appellant with the Society Notice B39284 (the **Notice**) requiring the Appellant to provide adequate food, water, shelter, veterinary care, deworming and nail care. Of particular note, the Notice stated Onyx required veterinary care within 24 hours. APO Wiltse offered to give the Appellant dog food but he declined.

31. The Appellant assisted APO Wiltse to load Blue and Cal into the Society's vehicle. APO Wiltse then transported Blue and Cal directly to Valleyview Veterinarian Clinic in Kamloops, BC. During their examination, both dogs were constantly searching for food and at one point, Blue started trying to eat a mop and dirt/debris on the ground. The veterinarian technician noted stool stuck to Blue's rectum and removed it. The stool was mostly fabric. The veterinarians, Dr. Heather Fraser and Dr. Carolyn Walsh, examined the dogs and determined that they were critically underweight and would need to stay in the clinic overnight. Blue also required intravenous fluids because she was extremely dehydrated.
32. APO Wiltse advised Dr. Walsh that the Appellant's other dogs had similar poor body conditions. Dr. Walsh stated the dogs would be at risk for refeeding syndrome and required a refeeding plan from a veterinarian or they could die. Dr. Walsh further remarked that Blue was the most emaciated dog she had ever seen in her 22 years as a veterinarian and the body condition of both dogs was the result of starvation.

Events of January 10, 2023

33. On January 10, 2023, APO Wiltse received a voicemail from the Appellant inquiring about Blue and Cal and stating he still wanted to surrender two puppies. APO Wiltse phoned the Appellant and stated the following:
 - Blue and Cal were suffering from starvation and risked dying. Blue required intravenous fluids.
 - After learning about the body condition of the Appellant's other dogs, the veterinarian advised that they should be examined immediately and placed on a refeeding and deworming plan otherwise they risked dying.
34. During this same call, the Appellant confirmed that he had not yet booked an appointment for Onyx as required by the Notice. He claimed someone may buy a puppy at which time he would have the money to take Onyx to a veterinarian. He admitted that all the dogs at the Property were malnourished and underweight but he believed that only Sitka and Onyx were "*really thin*" and required immediate veterinary care.
35. APO Wiltse relayed the foregoing information to SPC Brenna Waldorf. SPC Waldorf submitted the Information to Obtain a Search Warrant (the **ITO**), which she affirmed on January 10, 2023, on APO Wiltse's behalf.¹ SPC Waldorf applied for and was granted a search warrant (the **Warrant**) on the basis of the ITO.

¹ An Information to Obtain a Search Warrant requires a SPC to swear/affirm its contents. APO Wiltse was previously an SPC but was awaiting her reappointment on January 10, 2023.

² SPC Waldorf indicated the time of arrival in her handwritten notes of January 10, 2023

36. APO Wiltse and SPC Waldorf then attended the Property to execute the Warrant. They were assisted by the RCMP. APO Wiltse provided a copy of the Warrant to the Appellant when they arrived at his property at 4:00 pm.²
37. When they entered the Appellant's trailer, they smelled a foul odour of cigarettes and saw several empty beer cans and liquor bottles on the trailer's floor and kitchen counter as well as in bags on the porch. The Appellant was chain smoking inside his trailer. It was also very dark and difficult to see in the trailer.
38. All the dogs were confined to wire crates. The Appellant confirmed he had just brought them in for the night. The dogs did not have any food or water nor did they have proper ventilation or light.
39. Sitka was eating his blanket and other dogs were eating the bedding in their crates. When APO Wiltse notified the Appellant of this, he responded, "*Well, all the dogs do that and I can't stop them.*"
40. The puppies were contained within plywood walls in a small bedroom. One wall was taped with tarp to the trailer's wall. APO Wiltse and SPC Waldorf observed the following:
 - The puppies had chewed the plywood.
 - Their bedding was mixed wood shavings. The feces sitting in the corner of the plywood enclosure had splinters of wood.
 - The puppies had ripped out foam from their bedding and eaten it.
 - The puppies had water but no food.
 - One puppy had its head stuck between the plywood wall and a 2X4 piece of lumber laying across the enclosure.
 - Empty plastic pop bottles and plastic coffee containers were the puppies' toys and had chew marks.
 - The puppies all had overgrown nails and one had a swollen eye.
41. The Appellant was aware that the puppies were eating the foam, plastic and plywood but claimed there was nothing he could do to stop them.
42. APO Wiltse and the other officers looked at the outside dog pens where the adult dogs and 8-month-old dogs were kept during the day. Nothing had changed from the previous day. APO Wiltse noted the following in her "Inspection Follow-up Details" (the **IFD**):
 - The ground of the two pens had solid ice and compact snow.
 - There was no shelter for the dogs or any dry area for the dogs to stand.
 - The water in the buckets was frozen.
 - The chain link and plywood fencing were in poor repair.
 - The pens had piles of formed feces and chewed plastic buckets.

² SPC Waldorf indicated the time of arrival in her handwritten notes of January 10, 2023.

- The enclosed yard had piles of feces.
43. APO Wiltse discussed her concerns with the Appellant. He agreed to surrender only Sitka and Koda. APO Wiltse asked the Appellant why he would not accept the Society's help and surrender more dogs if he could not afford veterinary care and provide them with sufficient food. He responded, "*I have a lot into these dogs and I want to sell some of them.*" APO Wiltse then advised the Appellant that all the dogs and puppies would be seized because they were all in distress.
 44. After the seizure, APO Wiltse immediately took all the dogs and puppies to two different clinics, Valleyview Veterinarian Clinic and Central Animal Hospital, in Kamloops for emergency care.

January 12, 2023

45. In email correspondence between the Society and the Appellant, the Appellant surrendered the seized puppies on January 12, 2023 because he determined that he could not care for them.

F. Review Decision

46. On January 25, 2023, Ms. Moriarty emailed her Review Decision to the Appellant. In the Review Decision, she identified that her role was to review the evidence and decide whether it would be in the best interests of the Seized Dogs to be returned to the Appellant.
47. Ms. Moriarty reviewed the following evidence:
 - the ITO and Notice of Disposition, both dated January 10, 2023;
 - the IDF;
 - photos and videos of January 10, 2023 when the Warrant was executed;
 - veterinary records and photographs of the dogs, including the Seized Dogs;
 - various email submissions, photographs and videos from the Appellant; and
 - letters of reference submitted by the Appellant.
48. Ms. Moriarty confirmed that SPC Waldorf was acting as the Society's authorized agent as a duly appointed SPC and confirmed the Appellant was the owner and person responsible for the Seized Dogs. She was satisfied that SPC Waldorf reasonably formed her opinion that the Seized Dogs were in distress, as defined in the *Act*, and that the Notice of Disposition for the Seized Dogs was properly served in accordance with the *Act*.
49. Ms. Moriarty commented on the Appellant's submissions about Onyx's "unplanned" litters as follows:

[...] Ultimately, your submissions aim to make light of an extremely disturbing and 100% avoidable situation. In this regard, I note you refer to Onyx's litters as "unplanned", yet the evidence shows she had three litters in the span of approximately one year and you took no steps, or no adequate steps, to

prevent this from happening. You also continued to house intact males and females together. This supports a finding you are not willing or able to take even basic precautions to prevent your animal population from growing, despite knowing you are not equipped to adequately provide for the animals already in your care. Unfortunately, it was the dogs in your care who suffered as a result of your mismanagement. [...]

50. Ms. Moriarty stated that the Appellant's submissions made "*light of the significant physical findings*" on the body condition of the dogs and puppies when he wrote:

[...] I feel that Auggie, Biggie and Bear are and were in better shape also conditions varied between all dogs. I feel the 7 puppies were in good condition also. Onyx needed a vet check, though was in ok shape considering 3rd litter in these few years.

51. Ms. Moriarty then discussed the news article where the Appellant was interviewed about the Society's seizure of the dogs, as follows:

Not only do your submissions make light of the egregious facts of this case, I also found a news article where you were interviewed regarding the dogs and their seizure. While I am aware that news reports don't always accurately represent the finer details, I am nonetheless concerned with the particulars of this published article. Specifically, the article advises you were feeding the dogs two cups of kibble a day and that you were trying to treat [the dogs] for parasites but in the last six weeks, the dogs began losing a lot of weight. Unfortunately, the evidence in this file indicates none of these statements are accurate. Further, the article also states you acknowledge you should have taken the dogs to the veterinarian, but did not do so because there isn't one in Clearwater. However, you have submitted records from Aberdeen Veterinary Hospital in Kamloops - indicating you were capable of seeking out and obtaining veterinary treatment. You then go on to say you ended up with too many dogs and blame your community for not giving you enough support. The truth is you ended up with too many dogs as a result of your own negligence - shifting blame to your small community for a lack of resources only amplifies the fact you do not understand the gravity of the situation and what the evidence in this file says with respect to your continued and prolonged neglect.

52. Ms. Moriarty determined it would not be in the Seized Dogs' best interests to be returned to the Appellant. Her decision in the Review Decision is reproduced as follows:

As I consider your request, I must also consider the documents and information we have on file as a whole. This includes graphic photographs of starving dogs, many of whom have not recovered and continue to require ongoing medical treatment. Sadly, some of these dogs may never fully recover and, as was the case for Blue, may pay the ultimate price due to your neglect. While you attempt to explain away this evidence, a picture really is worth a thousand words in this case. I share the sentiment of our officer and veterinarian when I say, in my almost 20 years with the BC SPCA, I have only seen one other living dog as emaciated as Blue was when she came into our care. Unfortunately, the majority of your adult dogs were

only in slightly better condition (which isn't saying much). In your submissions, you explain that it was after the October 2022 litter when you began to struggle with the dogs' care. However, the bodily conditions of all of the adult dogs are not due to 6-8 weeks of hardship, but rather an extended period of neglect. Of note, these starving dogs were also being kept outside in freezing temperatures for extended periods, forcing them to use what little energy they had to keep warm. For Onyx, her fate was even worse, being forced to breed and provide nourishment to her three litters of puppies while her condition worsened with each passing day. Further, on each of our attendances none of the dogs were provided with either food or water and, on intake, many of them were dehydrated. I fail to see how your financial situation can explain these specific findings.

To be frank, I am not convinced you were simply overwhelmed and down on your luck. The fact is, your actions and inactions directly resulted in your growing animal population, and you did not take the necessary steps to relieve the serious and obvious distress in these animals. While you have attempted to paint yourself as an animal lover, I fail to understand how you could allow dogs in your care to become so malnourished they deteriorated to the point they had bones protruding beneath their skin and pressure sores on their body. This did not happen overnight or in a matter of weeks, as you have stated. This was the result of continued and ongoing neglect. Further, the reality is you did have options available (i.e. surrender to the BC SPCA or a local rescue, low cost spay/neuter, food bank, etc.). However, you chose not to avail yourself of these options and now hope to seek forgiveness for this poor decision. While you have indicated remorse for the situation your dogs were subjected to, I am left with the feeling you are mostly sorry you got caught. In this regard, I note you attempt to question the validity of the BC SPCA's investigation in your "concluding statement" by pointing to minor discrepancies and typos. This, combined with the fact you have provided false or misleading statements throughout the investigation and dispute process, does not leave me with any confidence you fully appreciate the gravity of this disturbing case. I also do not see any evidence or documents which support a finding that anything of substance has changed, including your financial situation or your ability to recognize distress and provide the necessities of life for your dogs. In fact, your submissions have only acted to solidify my concerns, as you attempt to make light of the circumstances of this case. Given the above, and the totality of the evidence, I simply cannot find that it would be in the best interests of the 4 Dogs, or any of them, to be returned to your care. As a result, I will not be ordering their return. [...]

G. Key Facts and Evidence

53. In an appeal under the Act, the Panel must determine whether the Seized Dogs were in distress when seized and if they should be returned to the Appellant. What follows below is a summary of the relevant and material facts and evidence based on the parties' written submissions and evidence presented during the hearing. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

The Appellant's Evidence

54. The Appellant began his testimony by discussing the validity of the Notice and alleging that the seizure of the dogs and puppies was unlawful. He claimed that the copy of the Notice he received differed from the Society's Notice. He stated that his Notice did not have a date and time and had a different number of items checked on it. He also stated that the Society's Notice included extra information on it. He believed the Society used the deficient Notice to obtain the Warrant and alleged that the seizure of the dogs and puppies was thereby unlawful. During his closing submissions, he again raised the validity of the Notice and the Warrant.
55. The Appellant further testified as follows:
- The dogs were not neglected for hours at a time.
 - He would only leave them outside for a few hours during cold snaps, so they were mainly inside his trailer.
 - He is remorseful and feels heartbroken. However, he became extremely overwhelmed with the number of dogs he had and did not know how to handle the situation. He acknowledged that Blue suffered the most.
56. After giving the foregoing testimony, the Appellant returned to discussing the Notice, alleging it was "*illegally filled out*" to obtain the Warrant. The Society objected and argued that the validity of the Warrant was not a matter for the Panel to determine on this appeal. The Panel agreed with the Society and directed the Appellant to discuss what has changed in his circumstances that would convince the Panel to return the Seized Dogs to him. The Appellant stated:
- The dogs were in distress because he had too many in his care. Therefore, reducing the number of dogs in his care from 15 to the four Seized Dogs would allow him to give them proper care given his income is "*straightened out*".
 - He modified one pen by adding a raised platform with new bedding and a heat lamp. This modification is also covered with a sheet of plywood so that the area stays dry.
 - He plans to convert a chicken coop into a fully enclosed and heated space.
 - He plans to have Onyx spayed and then Bear.
 - He believes the Society's treatment of him was "*heavy handed and harsh not knowing anything about the situation.*"
57. During cross-examination by the Society, the Appellant responded as follows:
- The first two dogs he obtained were Auggie and Onyx, who were approximately seven months and 12 weeks, respectively. He did not spay or neuter them because he intended on breeding them.
 - He did not seek any advice about breeding from a veterinarian but sought advice from different online dog groups.
 - He agreed that Onyx had litters of puppies in August 2021 (the **first litter**), March 2022 (the **second litter**) and October 2022 (the **third litter**). The first litter of puppies received two vaccinations and the second litter, one

vaccination. The third litter did not receive any vaccinations because he did not have the money to pay for them. He was not aware that puppies need three vaccinations and believed they only required two.

- Onyx's first litter was not intentional. He stated, "*It just happened.*" He agreed, however, that he had control over the breeding of the dogs.
- He took Onyx to see a veterinarian in September 2021 after the first litter because she had a calcium deficiency. Onyx was not subsequently examined and Auggie was never examined by a veterinarian.
- He did not have Onyx spayed during the September 2021 visit to the veterinarian because he wanted to wait until she was older. He then acknowledged that the second litter was again unintentional.
- He kept Biggie, Blue and Cal from the first litter because he could not find anyone to adopt them. He acknowledged that it was his responsibility to find homes for these dogs. He kept Sitka and Koda from the second litter.
- He gave deworming medication to the dogs in October 2022 and then in January 2023. He did not talk to a veterinarian about how often dogs required deworming medication.
- He noticed the spines and ribs on Blue, Cal, Sitka and Kody. He saw a noticeable difference in the other dogs. He initially stated that the Seized Dogs were "*in decent shape*" but agreed that the veterinary records indicated the spines and ribs were visible on all the dogs. He then conceded that he could see the spines and ribs of the Seized Dogs.
- He stated that the body conditions of the dogs began to deteriorate "*rather drastically past October [2022].*" Before October, he could see they were losing weight. He noticed Blue was becoming lethargic, so he decided to keep her inside the trailer and away from the other dogs.
- He did not put their feed in bowls but straight on the ground. He fed two dogs at a time.
- He noticed the dogs were eating their bedding and other foreign material such as pieces of blankets. He further agreed that they would try to eat their feces and he could also see foreign materials in their feces. He was aware that eating foreign materials could potentially cause intestinal blockages. He did not think it was necessary to have them examined by a veterinarian when he saw pieces of blanket and other foreign materials in their feces.
- He did not agree that the dogs had frostbite because he did not leave the dogs outside in freezing conditions. He acknowledged that he would keep the dogs outside in the winter for at most a couple of hours.
- He claimed he tried to find homes for the third litter as well as the other dogs from the second litter with the assistance of dog breeders but he was unsuccessful. He did not want to give them away because he believed that "*even getting any money would have been good to go back into the dogs.*" He agreed, however, that he was overwhelmed with the number of dogs he had in his care.
- He sold one puppy on January 7, 2023 for \$800. His original asking price was \$1600.
- He did not surrender any of the dogs before the Society became involved.

- He earns approximately \$1280/month on income assistance. When asked how he would repay the \$7600 the Society was seeking in costs, he claimed he had \$2200 from selling a vehicle and that he would sell everything he had if the Seized Dogs were returned to him. He stated, *“If I had to, I would come up with the money.”*
 - When asked about Blue’s condition, he acknowledged: *“I made the mistake of not trying to get help sooner”; “That happened because I had too many dogs in my care and I couldn’t look after the number of dogs and feeding”; and “I was trying the best I could and didn’t succeed at all with trying to look after the dogs.”*
58. The Panel asked the Appellant questions to gain a better understanding of his monthly expenses and financial circumstances. The Appellant responded as follows:
- He receives approximately \$1280/month on income assistance. He could earn approximately \$500/month on odd jobs but this depends on the season. For example, he snow blows driveways in the winter for extra cash. He earns approximately \$800 in a *“good year”* for his lapidary business, or \$67/month.
 - He has a rental purchase agreement for the property he occupies. He pays \$700/month for the mortgage payment. He does not want to leave Clearwater but he could apparently terminate his rental purchase agreement without being in breach of contract and recover the \$40,000 he has paid in equity.
 - If the Seized Dogs are returned to him, he estimates they would cost him \$300/month and possibly more if they required veterinary care. A bottle of dewormer medication has 24 tablets and costs approximately \$17.
 - He spends approximately \$150 on groceries but he has some friends who provide him with meat from time to time so that decreases his grocery costs.
 - His Hydro bill is approximately \$150 every two months or \$75/month. His cell phone bill is approximately \$65/month. His car insurance is \$60/month. He spends approximately \$150/month on cigarettes and alcohol.
59. The Appellant informed the Panel that he was removed from Facebook because he breached its policy on community standards.

The Appellant’s Witnesses

EE

60. The Appellant’s witness, EE is a family member. EE testified as follows:
- EE is 18 years old and no longer lives in Clearwater.
 - EE was not present at the Property on January 9 and 10, 2023.
 - After the seizure, the Appellant built a raised bed in one pen and added lots of straw as well as a heat lamp. He also cleaned up the inside of his trailer.
 - Since the Appellant would have fewer dogs (if only the Seized Dogs were returned to his care), it would be easier for him to take care of them financially. EE was also aware that he had a freezer full of food and several backup bags of dog food.

- EE lived with the Appellant and the dogs for approximately 2½ years. They fed the dogs two cups of dog food in the morning. They would take the dogs outside for bathroom breaks during the day. When there were more dogs, taking them outside for bathroom breaks became harder to manage because they had to do so six to seven times each day. They then started leaving them outside in the morning for about a half hour and then again at 1:00 pm for two to three hours. When the weather was cold such as -10° Celsius, the dogs did not like being outside, so they were kept inside.
- The last time EE saw the dogs before the seizure was on Christmas or Boxing Day of 2022, she noticed Blue was “*not looking very well*” and “*very sickly*” but the Appellant did not have the money to take Blue to see a veterinarian. EE saw dog food in the freezer at that time.

61. During cross-examination by the Society, EE responded as follows:

- EE confirmed she saw eight dogs and eight puppies on Christmas/Boxing Day.
- During her visit in December 2022, EE confirmed that Blue, Sitka and Koda were skinny and their bones were visible and acknowledged that the other dogs seemed skinnier than usual. When EE patted Sitka and Koda, she could feel their bones.
- EE saw the dogs once or twice in September 2022 and once in November 2022. At that time, EE was living with her grandmother. The dogs looked better in September than December. Blue was skinny in September and the other dogs had “*a little bit more weight on them, like, not like a lot, but just like a little bit.*”
- In November 2022, the dogs looked “*a tiny bit skinny*” and Blue was “*getting a little bit bad.*” The dogs were skinnier in November than September but EE noticed a “*more dramatic*” change from September to December.
- She talked to the Appellant in December 2022 about taking Blue to see a veterinarian but the Appellant stated he would not be able to afford dog food for the other dogs if he had to pay a veterinarian to examine Blue. EE sent the Appellant enough money for one bag of dog food. EE hoped the Appellant would give Blue more dog food.
- EE admitted, while crying, that she thought about contacting the Society but EE “*couldn’t do that*” to the Appellant. EE then stated being “*glad that somebody else was able to do it, but I’m just really upset that I wasn’t strong enough to do it myself because I knew something had to be done.*” EE advised that the dogs were fine when she lived with the Appellant.
- EE confirmed the freezer was square shaped and was ¾ full of dog food. EE estimated that four or five big bags of dog food would fill the freezer.
- EE tried to help the Appellant sell dogs on Facebook and by talking to family members but nobody was willing to pay \$1000 for a dog. The Appellant then lowered the price to a rehoming fee of \$300.

62. The Panel asked EE questions about her written statement, which was included as part of the appeal record at Exhibit 10. EE responded as follows:
- EE wrote that the Appellant should be given another chance. She then wrote: *"It should be on certain conditions."* When asked what she meant by this statement, she thought the Society could check up on the Appellant to ensure he is taking proper care of the Seized Dogs.
 - EE moved out of the Appellant's trailer in May 2022 because they were arguing all the time and caring for the dogs was stressful. She stated: *"I didn't really want that responsibility"* and *"It was really hard looking after all them."*

LM

63. The Appellant's witness, LM has known him for five years but they have been closer friends for the past two years and get together often. LM testified as follows:
- LM was not present at the Property on January 9 and 10, 2023.
 - After the seizure, the Appellant improved an outdoor pen but the dogs are indoors approximately 95% of the time.
 - Having fewer dogs *"would definitely make things easier"* on the Appellant.
 - The dogs were fed twice daily and they were *"usually well maintained and well fed."*
 - The Appellant had financial difficulty in the past few months, so the Appellant would ask LM to purchase personal possessions to *"make ends meet"* and *"care for the extra number of dogs."*
 - LM saw the dogs three days before their seizure. LM stated that they were underweight and *"definitely"* needed extra care and attention.
 - The dogs were not outside for long periods of time and they were the Appellant's *"glorified lap dogs."*
64. During cross-examination by the Society, LM responded as follows:
- The Appellant could not afford to take care of all the dogs and puppies.
 - The Appellant would show up at LM's residence two days before his income assistance payment and sell personal possessions to LM. The Appellant needed the money to buy dog food. LM would take the Appellant to the store to ensure he purchased dog food. LM stated: *"I have known [the Appellant] to be a drinker. He's the type of person who will drink a six pack a day."* The Appellant, however, started drinking less, particularly when Blue became sick but LM wanted to ensure the Appellant *"was not falling into old habits."*
 - The Appellant's children moved out of his trailer, which resulted in extra work for the Appellant in taking care of the dogs.
 - The Appellant sought help from LM when Blue became sick. The Appellant and LM could not afford the veterinary cost. When LM saw Blue at the end of July or early August 2022, she was not eating or drinking and refused to go outside. In early November 2022, LM told the Appellant that Blue had not gained any weight and she should be examined by a veterinarian and possibly, euthanized. LM believed the Appellant could not afford the gas to drive to a veterinary clinic or pay for the veterinary cost. He needed the money

he had to feed the other dogs. LM further believed that whatever illness Blue had, she would not recover from it.

- LM acknowledged that Blue was very sick in August 2022 but questioned the validity of the necropsy findings stating that Blue died of starvation.
- LM saw the dogs several times before the seizure and watched them “*get a little bit skinnier*” and knew they had worms. Before the seizure, LM stated: “*I knew they were skinny. I knew they were underfed.*”
- LM told the Appellant that the dogs were at risk for refeeding syndrome and it would be best to feed them smaller portions throughout the day to prevent them from vomiting their food.
- The Appellant was a “*f***ing idiot*” for not thinking about having Onyx spade.
- LM concluded by stating the Appellant was “*an idiot that got in over his head and didn’t know what to do.*” However, the Appellant would be “*absolutely fine*” with four dogs and he “*deserves a second chance.*”

65. The Panel did not have any questions for LM.

66. Before the Panel adjourned the hearing, LM insisted on making a few additional statements. LM advised that the Appellant thought the Society was helping to relieve him of the situation he found himself in and the Appellant did the best he could do given his financial situation. No further questions arose from the Society or the Panel as a result of LM’s statements.

BJ

67. The Appellant’s witness, BJ has known the Appellant for three years and became closer friends during the summer of 2022. BJ testified as follows:

- The dogs were mainly in the Appellant’s trailer when BJ visited the Appellant. The dogs were not outside for very long.
- BJ helped the Appellant and the Society on January 10, 2023 by putting dogs into the kennels.
- After the seizure, the Appellant had improved an outdoor pen and added a heat lamp. The Appellant would be able to care for four dogs.

68. The Society and the Panel did not have any further questions for BJ.

The Society’s Evidence

APO Jamie Wiltse

69. APO Wiltse was previously employed by the Society as a SPC from March 2007 to July 2018. She left the Society and then returned in May 2022. At the time of the hearing, APO Wiltse was awaiting reinstatement of her status as a SPC.

70. APO Wiltse’s evidence about the events leading to the seizure of the Seized Dogs is the basis of the history recounted at paragraphs 18 to 44 above and is consistent with both the ITO and the IFD.

71. At the hearing, APO Wiltse provided additional evidence about the dogs' condition as follows:
- The dogs that were outside in the pens were all shivering from the cold weather. They were all thin and lacked adequate shelter. She was concerned about hypothermia.
 - The dogs all appeared worn out and lethargic.
72. APO Wiltse explained that the copy of the Notice that the Appellant received on January 9, 2023 is a carbon copy of the Notice's top sheet, which APO Wiltse filled out and kept. She explained that depending on the pen, the carbon copy does not necessarily capture everything that is written on the top page. She acknowledged that she should have double checked the Appellant's copy to ensure that what was written on the top page appeared on the carbon copy. Although she forgot to indicate the time on the Notice, she completed all the other necessary sections. APO Wiltse also reviewed the Notice with the Appellant in great detail. The top of the Notice indicated that all dogs were underweight and emaciated.
73. On January 10, 2023, when APO Wiltse returned with SPC Waldorf and the RCMP Officers, the Appellant confirmed that he had not made a veterinary appointment for Onyx despite this requirement in the Notice. He stated that someone might buy a puppy, which would give him the money to take Onyx to a veterinarian by the end of January 2023. APO Wiltse reminded the Appellant that the dogs were suffering from starvation, lack of water and shelter as well as not being trained or socialized. Furthermore, the dogs were ingesting non-food items, which put them at risk of dying.
74. When APO Wiltse and SPC Waldorf advised the Appellant that he was not taking appropriate steps to relieve the dogs of distress, the Appellant became very angry. He suggested they return on a different day with the Warrant and take the dogs at that time. APO Wiltse repeated that they were seizing all the dogs at which time the Appellant agreed to surrender Sitka and Koda. The Appellant stated he planned to dispute the seizure and ask for dogs to be returned to him. He then helped load the dogs into the Society vehicles. They were then taken to Valleyview Veterinary Clinic and Central Animal Hospital.
75. APO Wiltse provided additional information and feedback about the Appellant as follows:
- The Appellant sold a puppy on January 7, 2023 for \$800. Therefore, the Appellant's statement that he needed to sell a puppy before he could take Onyx to a veterinarian did not make any sense given he had sold one two days before receiving the Notice requiring him to take Onyx to a veterinarian within 24 hours.
 - She found this Society matter heartbreaking and disappointing because there were steps the Appellant could have taken to avoid certain situations. For example, he could have tried harder to separate Onyx from Auggie to prevent her pregnancies. The Appellant could have given away puppies instead of

trying to sell them for \$1600 and surrendered the dogs for free. He could have ensured, at a minimum, that they had water, which is free.

- This was by far the worst case of animal cruelty that she had ever encountered. Blue was starved to such an extent that she could not recover and had to be euthanized. If the other dogs in care recover, their healing would be a lengthy process.
- She did not think that a raised bed platform and heat lamp provided sufficient shelter for the dogs. In her view, the dogs need individual shelters.
- Her biggest concern was the Appellant's inability to accept full responsibility and acknowledge the dogs were in distress. She believed he made excuses such as being on a fixed income and overwhelmed by the number of dogs he had in his care.

76. The Appellant was given an opportunity to ask APO Wiltse questions under cross-examination. However, he continued to make statements rather than asking questions despite being redirected repeatedly by the Panel. The Appellant focussed his cross-examination on discussing the Notice, including suggesting that his copy was different from the Society's top copy. He then asked whether the dogs were seized because he did not comply with the Notice requirements. APO Wiltse explained that he had not relieved the dogs from distress and he did not plan to do so in a timely manner despite the urgency of the care the dogs, especially Onyx needed. Therefore, the Society's actions were directly related to this urgency.

77. The Panel did not have any questions for APO Wiltse.

SPC Brenna Waldorf

78. SPC Waldorf has worked for the Society for over two years and was appointed a SPC in October 2021. She obtained the Warrant on APO Wiltse's behalf and assisted with the seizure on January 10, 2023. SPC Waldorf testified as follows:

- When she arrived at the Property with APO Wiltse and the RCMP to execute the Warrant, the Appellant was initially reluctant to allow them inside his trailer. He suggested bringing dogs outside one at a time for them to inspect. SPC Waldorf believed the Appellant was either not taking the situation seriously or did not understand the terms of the Warrant.
- When the Appellant allowed them inside the trailer, she smelled a strong odour of cigarettes and saw empty beer cans. The Appellant was chain smoking.
- None of the wire crates that held the older dogs had any water.
- She and APO Wiltse checked the body condition of the puppies. The puppies felt thin around the ribs and hip bone area and wormy, which is similar to a bloated feeling in the stomach.
- The outside dog pens did not have any dry warm area for the dogs to rest, particularly if they were kept outside in sub-zero temperatures.
- The Appellant was cooperative during the inspection but SPC Waldorf noted he was "*very laid back during the inspection,*" which she found troubling given

the distress they were discussing and witnessing in the dogs. The Appellant became argumentative, however, when he was told the dogs would be seized for being in distress. He tried to negotiate the Warrant on his terms and asked them to come back another day. SCP Waldorf believed he was not respecting the process, particularly given multiple officers, including the RCMP were present for a serious seizure. The Appellant, however, conceded and helped with loading the dogs in the Society's trucks.

- The dogs were placed inside crates lined with thick blankets and towels. The crates were covered with a canopy and blankets.
- When the dogs were at the veterinary clinic, she observed some of the dogs consuming their own feces and further saw pieces of towels or blankets in their feces. SPC Waldorf said: "*I've never seen dogs so desperate for food.*"

79. The Appellant and the Panel did not have any further questions for SPC Waldorf.

Dr. Sarah Pihowich

80. Dr. Pihowich was qualified as an expert in veterinary medicine and testified as an expert witness for the Society. She has been a licenced registered veterinarian since 2021. She examined Biggie, Bear, Sitka, Koda and Auggie at Central Animal Hospital on January 10, 2023. Dr. Pihowich submitted a veterinary report dated February 2023 of her findings.

81. Dr. Pihowich described her primary concerns and observations as follows:

- Her most shocking observation was the degree of emaciation of the dogs. Seeing the dogs in person was "*really quite incredible*" because they looked "*almost like living skeletons*" when they were walking around the clinic.
- All the dogs had crusting lesions on the edges of their ears. Given they were kept outdoors without shelter from the cold winter temperatures, frostbite was the cause. The lesions were not consistent with the dogs fighting each other because they were not red and bloody but dried and crusty. Furthermore, the dogs did not have scratches on their bodies, which is consistent with fighting.
- Some of the dogs had foreign material in their feces, which was concerning.³ Furthermore, this showed that the dogs were starved because they were just trying to eat anything they could for nutrition.
- The dogs had long untrimmed nails. Some nails were torn off because they had dried and healed and were beginning to grow again. Torn nails bleed significantly because there is a large blood supply at a nail's quick. It would also be painful because the tear breaches the soft part of the nail bed. Untrimmed nails impact how dogs stand and may cause pain and lead to arthritis.

³ Dr. Pihowich's veterinary report details her concerns. She wrote: *Ingestion of foreign material is dangerous as it can lead to intestinal blockage necessitating hospitalization and even surgery. If one of these dogs was to have an intestinal blockage requiring surgery, it would be a very high risk procedure, possibly resulting in death, due to their state of emaciation and malnutrition.*

82. Dr. Pihowich testified about her other observations as follows:
- When the dogs defecated, they would immediately eat their feces, which is unusual and abnormal behaviour for dogs. The staff had to prevent the dogs from doing so.
 - The dogs that were eight months old were “*very skittish*” and were not full of energy and boisterous as puppies normally behave.
83. Dr. Pihowich described each dog’s body condition score (BCS) and the corresponding problems with emaciation and parasites as follows:
- A normal healthy BCS is 4-5/9. A dog’s ribs should not be visible and there should be slight fat covering them. Auggie had a BCS of 3/9, which she stated was still concerning. Biggie, Bear and Koda had BCS of 2/9, and Sitka had a BCS of 1/9. It takes a long time for bodies to deplete their subcutaneous fat stores. The bodies first begin depleting internal fat stores and then all the protein on their bones. Since all the dogs’ bones were visible, there was almost no protein left, which led her to believe that the dogs were not given proper nutrition for many months. She could not state exactly how long because the dogs had to deal with other factors such as being outside in the cold with no body fat and having a high parasite load, both of which depleted energy reserves. Overall, their BCS indicated a very chronic and long-term depletion of nutrition.
 - All the dogs were at risk of refeeding syndrome. She explained that when dogs are given less nutrition than they need for an extended period of time, they shift from digesting carbohydrates as their primary source of energy to more protein and fat. When they have been starved and then food is reintroduced, there may be a dangerous shift in fluids and electrolytes causing fluid retention. This may lead to cardiac arrest as the most serious consequence. The dogs were, therefore, placed on a strict feeding plan to prevent refeeding syndrome.
 - Analysis of feces samples revealed a high load of roundworm eggs, so the dogs were placed on a deworming protocol.
 - For deworming to be effective, the dogs initially needed two doses of dewormer. One dose killed some of the worms but it only impacted a certain life stage, so a second dose was necessary in another ten days to two weeks to ensure the entire infestation was cleared. One dose only may create resistance in the worm population because they are subjected to a drug but they are not completely killed. One bottle of dewormer has 24 tablets and each tablet is 110 milligrams, which the Appellant administered to the dogs in January 2023. When asked whether this was sufficient to treat all the dogs and puppies, she indicated it was not and that the proper dosage is 45 to 65 milligrams/kilogram.
 - Blood samples were taken to determine if the dogs had any electrolyte imbalances. Some dogs had low electrolytes, including low sodium, chloride and low potassium, which in her opinion resulted from insufficient food. Some dogs also had low amounts of protein in their blood, which she stated was the

result of an inadequate intake of protein and a high parasite load. Some also had mild elevations of liver enzymes.

- When asked whether their BCS was the result of six to eight weeks of “*hard times*”, she stated: “*It doesn’t seem to be consistent with what I’m seeing clinically in these dogs.*” She questioned whether Auggie, who was “*in a little bit better condition than the others,*” was eating most of the dog food because the dogs were fed together. She further stated that two cups were “*not sufficient in the slightest to give them any sort of adequate nutrition.*” The dogs needed more food given they had no fat storage to keep themselves warm and the high parasite load. Furthermore, they are not bred to survive in cold winter conditions. She added that it took much longer than several weeks to see dogs with these BCS.
 - She stated that it is recommended that puppies receive three vaccinations, at eight weeks, 12 weeks and again at 16 weeks. If puppies are not vaccinated at these intervals, they may not have enough antibodies to fight off a potentially deadly virus like parvovirus.
84. If any of the Seized Dogs are returned to the Appellant, Dr. Pihowich stated she would be very concerned that they would be “*right back in the same situation that we started with.*”
85. During cross-examination by the Appellant, Dr. Pihowich responded as follows:
- It is possible that a person on a fixed income could properly care for 16 dogs and puppies but it would be costly.
 - The crusting lesions on the dogs’ ears were consistent with frostbite. They were ongoing lesions for weeks and not the result of a drive in a truck for a few hours. She agreed with the Appellant that the lesions were caused by prolonged exposure to cold weather and not having proper shelter.
 - The dogs initially dropped a small amount of weight because they were placed on a calorie restricted diet to prevent them from dying of refeeding syndrome and they were combatting a high parasite load at the same time. The dogs are now gaining weight and are continuing to do so.
 - Biggie was given Gabapentin and Trazadone because he was aggressive and attacked another dog. Dr. Pihowich explained that if a dog is in pain or anxious and scared coming into a clinic, these medications help with anxiety and calms them down so that they do not reach a heightened state of fear. If dogs and puppies are not socialized to various situations, they lack confidence and are scared, which may be expressed as fearful aggression. She prescribed the medication to help Biggie feel comfortable and not afraid. The medications can be weaned off once Biggie is trained and socialized.
86. In response to Panel questions, Dr. Pihowich responded as follows:
- Auggie was 39.7 kilograms on intake. If Auggie had a healthy weight of 45 kilograms, he would require approximately 2200 calories per day as an unneutered dog.

- If one dose of dewormer medication for a 45 kilogram dog is 65 milligrams/kilogram, that dog requires approximately 3000 milligrams.⁴ One bottle of dewormer medication has 24 tablets and each tablet is 110 milligrams for a total of 2640 milligrams. Therefore, one bottle is not sufficient for one dose for a 45 kilogram dog.

Dr. Carolyn Walsh

87. Dr. Walsh was qualified as an expert in veterinary medicine and testified as an expert witness for the Society. She has been a licenced registered veterinarian since 2001. Dr. Walsh examined Blue and Cal on January 9, 2023 and Sitka on January 11, 2023 at Valleyview Veterinary Clinic.⁵ Her colleague, Dr. Heather Fraser examined Onyx and the puppies on January 10, 2023. Dr. Walsh read Dr. Fraser's report and spoke to her about it before the hearing.
88. Dr. Walsh described her concerns and observations of Blue and Cal as follows:
- In her 22 years as a practising veterinarian, she had never seen dogs in such poor body conditions. She stated: "*It was the severe and pronounced emaciation and poor body condition of the dogs.*"
 - She gave Blue a BCS of 1/9. Every bone in her body was visible and all her muscles were emaciated. Blue's bones were protruding to such an extent that she had pressure sores over the back of her pelvis because it had no muscle or fat protecting it. Blue was also incredibly weak and she could hardly stand without falling over and needed support. She gave Cal a BCS of 2/9 and he was similarly severely emaciated. A score below 4/9 is very rare.
 - She kept double checking their ages because as young dogs, they should be healthy and have high energy. Instead, they were extremely lethargic.
 - She was shocked to learn from APO Wiltse that all the dogs and puppies were in poor condition. In her view, this illustrated a serious animal husbandry problem. She had never seen sick hospitalized dogs in such poor condition as Blue and Cal. She believed that to reach such extreme emaciation, it would take at least three to six months. Their bodies were trying to shut down, which she stated takes a long time.
 - Analysis of their blood indicated they were anemic, had low protein values and abnormal electrolyte values. They developed anemia because of the chronic malnutrition and the infestation of roundworms.
 - Blue and Cal defecated foreign materials and her staff was concerned because they kept trying to eat anything that they could find, whether it was a leash on the wall, a blanket or towel. She confirmed that the dogs were at high risk of refeeding syndrome.
 - Blue's jaw was so weak that she was not actually able to hydrate herself. Since she was so dehydrated, she needed to be hospitalized and given intravenous fluids.

⁴ 45 kilograms X 65 milligrams/kilogram = 2925 milligrams

⁵ Sitka was transferred from Central Animal Hospital to Valleyview Veterinary Clinic.

- Blue had generalized muscle weakness that travelled up to her esophagus. As a result, she had developed megaesophagus. When this happens, a dog is unable to swallow food normally because their esophagus lacks the muscular tone. Blue was unable to move food to enter her stomach, which was dilating and becoming non-functional. Since Blue's condition became untreatable, it was decided that she should be euthanized.
 - Bone marrow is the last fat reserve to deplete in the body. Blue's necropsy findings indicate that she had serious atrophy of fat in the bone marrow. A dog with bone marrow fat of under 20% confirms emaciation. Blue's bone marrow fat was only 5.35%. The necropsy findings indicate Blue died of starvation and parasites.
 - The dogs were unable to maintain a normal body temperature while they were in a temperature controlled building because they had no muscle or fat to maintain their own body temperature. Since they were hypothermic, additional heaters were used to keep the dogs warm so that they did not deplete extra calories to stay warm. She stated it was very concerning that these dogs, having no fat or muscle and being chronically starved, were outside in the cold elements. Trying to stay warm "*would have definitely contributed to significant suffering in these dogs.*" She confirmed that Blue and Cal had frostbite along their ear margins.
89. In specific response to questions about the dogs examined by Dr. Fraser, Dr. Walsh testified as follows:
- Onyx's pelvic bones, ribs all the way to her shoulders and her spinous processes cranial to shoulders were all visible and had no fat cover. Dr. Fraser gave Onyx a BCS of 2/9.
 - Onyx was at risk of refeeding syndrome and was placed on a refeeding regime.
 - Onyx had foreign material in her feces and was hypothermic in hospital.
 - Onyx developed a calcium deficiency after her first litter because she was not given enough high-quality food when she was nursing her puppies. Given the milk she was giving to her puppies, she had to draw calcium from her own bones. This does not happen very often. However, having three litters in 14 months put "*an incredible caloric demand*" on Onyx, especially since this breed tend to have big litters. It would have been difficult for Onyx to recover and develop a proper body condition. In general, dogs should only be bred once per year.
 - The puppies were all underconditioned and had BCS of 3 to 3½/9. They defecated foreign material and were insatiably hungry. After eating the food on their plates, the puppies tried to eat the plates.
90. If any of the Seized Dogs are returned to the Appellant, Dr. Walsh stated she would have "*significant concerns*" about their well-being. She questioned whether the Appellant ever properly fed any of the dogs. She added: "*I don't think I would sleep at night knowing those animals, any animal would go back to a situation like that*" and "*It will be something I'll never forget for the rest of my life.*"

91. During cross-examination by the Appellant, Dr. Walsh responded as follows:
- She agreed that Blue’s necropsy findings did not indicate a cause of death other than starvation. The findings indicate that Blue developed pneumonia on January 14, 2023. She disagreed with the Appellant’s suggestion that Blue was euthanized for pneumonia after she was seized and in care.
 - She confirmed that Blue did not develop refeeding syndrome because she was managed with intravenous fluids to prevent it from happening.
 - She confirmed that she examined Sitka who was one of the skinniest animals she had ever seen. Sitka was extremely underconditioned and emaciated. He was very dull and lethargic instead of having high energy as a young dog. He was anemic and hypothermic.
 - She disagreed with the Appellant’s suggestion that a two hour truck ride from the Property to the clinic may have caused the hypothermia and added that the dogs were kept very warm in the Society’s truck.
92. At this point, the Society objected to the Appellant’s continuing cross-examination because Dr. Walsh had already testified in response to questions that the Appellant was repeating. The Appellant became angry because he believed that the Society’s questioning had only focussed on Blue. The Panel assured the Appellant that she had heard evidence about all the dogs during the course of the hearing.
93. In response to the Panel’s question about socialization, Dr. Walsh responded that dogs should be socialized as soon as they are weaned from their mother. Socialization is very important for their mental development between eight and 12 weeks but it carries on past six months. As part of the socialization process, they should be around different people and dogs.

The Hearing of this Appeal

H. Analysis and Decision

94. Part 2.1 of the *Act* establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:
- 9.1** (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.
- (2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.
- 11** If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal
- (a) does not promptly take steps that will relieve its distress, or
- (b) cannot be found immediately and informed of the animal’s distress,
- the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal’s distress, including,

without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

95. The definition of “distress” provides:

1 (2) For the purposes of this Act, an animal is in distress if it is

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

(a.1) kept in conditions that are unsanitary,

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

(b) injured, sick, in pain or suffering, or

(c) abused or neglected.

96. In considering the issue of distress, the Panel starts with the proposition that the definition of distress is broad, and the Society does not have to establish an actual deprivation or harm to animals before determining the animals are in distress. A medical finding that animals are injured or in pain is not required to conclude the animals are in distress. The definition of distress is intended to be protective and preventative. It does not require proof of actual harm; rather, it describes those circumstances that create a significant risk of harm to animals and should be avoided. When these circumstances are not avoided and conditions place animals at sufficient risk, the *Act* provides they can be protected.⁶

97. Once the hearing panel determines whether the animals were in distress at the time of seizure, the panel must then decide whether it is in the best interests of any or all the animals to be returned to the owner’s care.

The Seized Dogs

98. The Panel finds that the Society’s witnesses were all very credible when they testified at the hearing. Their testimony together with the veterinary reports and photographs paint a clear picture that all the dogs and puppies, including the Seized Dogs suffered from starvation and a high load of worms, among other medical issues such as frostbite, hypothermia, anemia, untrimmed nails and low electrolyte values. They were so hungry that they immediately tried to eat their own feces on defecation, which is very unusual and abnormal dog behaviour according to Dr. Pihowich. Their feces also had foreign material such as pieces of blankets and bedding, further indicating that they were so starved they tried to eat anything they could for nutrition. They were extremely emaciated to the extent that their bones and ribs were clearly visible. Dr. Pihowich described them as “*almost like living skeletons.*” Dr. Walsh stated that in her 22 years as a practising veterinarian, she had never seen dogs in such poor body conditions and stated “*It will be something I’ll never forget for the rest of my life.*” She queried whether they ever received the proper amount of food. APO Wiltse testified that this was the

⁶ See *Bagga v. BCSPCA*, February 5, 2019 at paragraph 104.

worst cases of animal cruelty she had ever encountered. SPC Waldorf said: “I’ve never seen dogs so desperate for food.”

99. The Seized Dogs had the following BCS on intake: Auggie (3/9), Biggie (2/9), Bear (2/9) and Onyx (2/9). Dr. Pihowich and Dr. Walsh provided detailed information and thorough explanations about their graphic findings, which the Panel will find difficult to forget. In brief, the Appellant starved his dogs and in Blue’s case, starved her to death. Bone marrow fat of under 20% confirms emaciation; Blue’s was only 5.35%. If the Society had not received calls of concern, other dogs may have also died.
100. The Appellant testified that the body conditions of the dogs began to deteriorate “rather drastically past October [2022]” and he could see that they were losing weight before October. He conceded in cross-examination that he could see the spines and ribs of the Seized Dogs. On January 9 and 10, 2023, APO Wiltse and SPC Waldorf observed that neither the outside pens nor indoor crates had any food or water for the dogs even though the Appellant’s freezer had dog food and he could easily access water.
101. The Appellant challenged the validity of the Notice and the Warrant. The Panel finds it difficult to reconcile the Appellant’s testimony that he is remorseful with his accusation that the Society falsified documents to obtain the Warrant, during the opening and closing of his case. APO Wiltse explained the carbon copy, which the owner receives, does not always capture everything that is written on the top page, which the Society keeps. The Panel compared the Appellant’s carbon copy of the Notice with the Society’s Notice and finds APO Wiltse’s explanation very credible. In the Panel’s view, they are virtually the same. Furthermore, the Society’s notice is not a legal document used to obtain a search warrant. Its purpose is to inform an owner of problems the owner must address if he wishes to keep his animals. SPC Waldorf obtained the Warrant on the basis of the ITO. In any event, the *Act* does not give the Panel authority to review the decisions of a provincial court judge or justice of the peace about whether the circumstances justified the issuance of a warrant.⁷ A party who believes that a warrant was improperly issued must challenge that decision through a judicial review and ask by way of remedy that the warrant be quashed.⁸ As a final note, what would be the Society’s motivation to falsify documents? There is none. The Society is not in the business of seizing animals willy-nilly. The Society prefers that owners like the Appellant take proper care of their animals so that they do not fall into distress.
102. The Appellant’s witness, EE provided compelling testimony. The Society stated that EE’s testimony was heartbreaking. The Panel agrees. It was perhaps selfish of the Appellant to expect such a young person to testify about the dogs’ condition. There is no doubt EE felt compelled to assist the Appellant by minimizing the dogs’ condition until EE finally broke down and testified that she did not have the

⁷ *Binnarsley v. BCSPCA*, March 27, 2013 at paragraph 25.

⁸ *Ibid.*

courage to call the Society on her own and was relieved that someone else did because she knew something had to be done.

103. The reckless disregard and horrific neglect shown by the Appellant in this case is extraordinary and beyond any previous experiences of this Panel. It is frankly unfathomable how anyone could starve a defenceless animal. The definition of distress is broad. For the Seized Dogs to meet each criterion of distress in the definition, that is 1(2)(a), (a.1), (a.2), (b) and (c), is beyond shocking. The Panel finds the Seized Dogs were in very serious distress at the time of seizure.

Return of the Seized Dogs

104. Having determined the Seized Dogs were in distress at the time of seizure, the Panel must now decide whether it is in the best interests of any or all the Seized Dogs to be returned to the Appellant's care.
105. The Appellant did not give the Panel any confidence that he would properly care for the Seized Dogs. Indicating that it would be easier to care for fewer dogs is not convincing nor is it a plan. Building a raised platform in one pen for the dogs to use as a bed and adding a heat lamp is not sufficient, particularly given the Seized Dogs have short hair and are not bred for cold winter temperatures.
106. During the hearing, the Panel learned that the Appellant sold a puppy for \$800 on January 7, 2023, yet he claimed on January 9 and 10 that he needed to sell a puppy so that he would have the funds to pay for a veterinarian to examine Onyx. It is unknown what he did with the \$800. He refused to accept dog food on January 9 when APO Wiltse offered it to him despite telling her he was having financial difficulty and that dog food was expensive in Clearwater. He did not want to surrender the puppies on January 10 because he wanted to sell and profit from them. These are not the signs of an owner who is concerned about the well-being of his animals.
107. Listening to EE's emotional testimony and hearing LM call the Appellant an "*idiot*" further contributed to the Panel's lack of confidence in the Appellant's ability to care for the Seized Dogs. It is apparent from the Appellant's written statement and EE's testimony that he relied heavily on EE to take care of the dogs before EE moved out of his trailer. EE testified that she did not want this responsibility and that it was stressful. EE also suggested that if the Seized Dogs are returned to the Appellant, the Society could check up on him to ensure he is taking proper care of them. This, however, is not the Society's responsibility.
108. The Appellant failed to address how he would provide the basic necessities that the Seized Dogs would require. At the end of the hearing, the Panel was left with the following unanswered questions:
 - What concrete steps would the Appellant take to ensure the Seized Dogs receive proper nutrition and the proper amount of food? Would he consult a veterinarian for recommendations on what and how much to feed the Seized

Dogs so that they have a balanced, healthy diet?

- How would he ensure the Seized Dogs have access to fresh, clean water?
- How often would he exercise the Seized Dogs?
- How would he ensure the Seized Dogs are properly socialized? Would he consult a veterinarian for recommendations?
- Would he take the Seized Dogs to the veterinarian for regular check-ups or emergency visits?
- Who would take care of the other Seized Dogs if one becomes sick and requires immediate veterinary care?
- How often would he groom the Seized Dogs, including ensuring their nails are properly trimmed? Would he groom them himself or seek assistance from a dog groomer?
- What other improvements would he carry out to ensure the Seized Dogs had proper living conditions, including an environment free of debris and feces?
- What would he do to ensure the Seized Dogs are living in an enriched environment? Would he buy them proper dog toys, free of hazardous plastics?
- Would he purchase the proper basic supplies such as dishware, collars and leashes?

109. The Panel also has concerns about whether the Appellant's current income could support caring for the Seized Dogs. The Appellant talked about selling his property but he also indicated that he is reluctant to move. He claimed that he has \$2200 from selling a vehicle but he will also owe the Society for costs (discussed below). And, there are only so many personal possessions that he can sell to LM. The following table shows his best-case scenario monthly income and expenses based on his testimony:

Income Assistance	1,280.00
Odd jobs	500.00
Lapidary business	67.00
Total Income	1,847.00
Expenses	
Rental Purchase Agreement	700.00
Cost to Care for Seized Dogs	300.00
Groceries	150.00
Hydro	75.00
Cell phone	65.00
Car insurance	60.00
Cigarettes and Alcohol	150.00
Total Expenses	1,500.00
Net Income	\$347.00

The above expenses do not consider any additional veterinary care that the Seized Dogs may need or the cost of dewormer medication. It is also possible that some expenses are missing such as the Internet, gas and tenant insurance. His net income is at most \$347/month, which is most likely insufficient should anything

unexpected arise. For example, the Appellant submitted an invoice showing that the cost to spay Onyx is \$545. His net monthly income does not cover this cost.

110. The Panel wishes to state that it is an owner's responsibility to take proper care of his animals. This means sacrificing non-essential purchases such as cigarettes and alcohol so that paying for dog food or veterinary care is not an issue. This means taking your dogs to be examined by a veterinarian as soon as they show signs of sickness. This means ensuring your dogs receive all required vaccinations and the proper dose of deworming medication. This means having them spayed or neutered. This means ensuring they are properly groomed and have access to food and clean water. This means not keeping them outside in frigid temperatures for extended periods. This means contacting rescue organizations like the Society if you feel overwhelmed and surrendering them so that they can be adopted into loving, caring homes, before it is too late. Blue's unnecessary death and the suffering of all the dogs, both before the seizure and along their long road to recovery, inevitably weigh heavily against finding in favour of the Appellant's ability to provide proper care for the Seized Dogs in the future.
111. Second chances are available to those who are truly remorseful and show the necessary insight not to repeat their past failures. The Appellant claims to have gained this appreciation of his mistakes but the evidence and his conduct during the hearing demonstrates that he has not. A remorseful and insightful person would not accuse the Society of falsifying documents, suggest that a dog was euthanized because of the veterinary treatment she received while in care, or suggest the dogs became hypothermic and obtained frostbite from the two-hour drive in the Society's truck from the Property to the clinics. A remorseful and insightful person accepts responsibility as a first step towards making real change.
112. The Panel finds that it is not in the best interests of the Seized Dogs to be returned to the Appellant and in the Panel's view, they would be at a very real risk of falling back into distress if they were.

I. Costs

113. Section 20 of the *Act* states:

20 (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.

(2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.

(3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.

(4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.

(5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.

114. Section 20.6 of the *Act* states:

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

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

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

(ii) any matter that the board considers necessary to maintain the well-being of that animal;

(b) permit the society, in the society's discretion, to destroy, sell or otherwise dispose of the animal;

(c) confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2).

115. On the matter of costs, the Appellant stated that he is on a fixed income but he agreed that the Seized Dogs received veterinary care. The Society's submissions provide detailed cost accounting, including invoices for veterinary care and detailed estimates on the daily operating costs associated with the care of the Seized Dogs. The calculation of these estimates has been reviewed and supported in previous appeals.

J. Order

116. The Panel orders that pursuant to section 20.6(b) of the *Act*, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of Seized Dogs, with the obvious hope and expectation that the Seized Dogs will be adopted.
117. The Panel finds that the Appellant is liable to the Society for costs of \$7,608.48 pursuant to section 20.6(c) of the *Act*.

Dated at Victoria, British Columbia this 9th day of March 2023.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Harveen Thauli, Presiding Member

Appendix "A"

Exhibit #	Date (Received)	Received from	Document
Exhibit #1	Jan 25, 2023	BCSPCA	Elliot Decision Letter – January 25, 2023
Exhibit #2	Jan 26, 2023	Appellant	NOA – Elliot
Exhibit #3	Jan 26, 2023	BCFIRB	26 Jan 2023 Elliot v BCSPCA P2303 - NOA Process letter
Exhibit #4	Feb 3, 2023	BCSPCA	LT FIRB and Elliot encl. Document Disclosure
Exhibit #5	Feb 3, 2023	BCSPCA	BC SPCA Document Disclosure - Tabs 1-38 Redacted
Exhibit #6	Feb 8, 2023	Appellant	Feb 3 new evidence
Exhibit #7	Feb 8, 2023	Appellant	Food receipts and treatment evidence
Exhibit #8	Feb 8, 2023	Appellant	Indoor House pictures and Crates
Exhibit #9	Feb 8, 2023	Appellant	Kennel Pics Outdoors
Exhibit #10	Feb 8, 2023	Appellant	Appellant - Statements and Witness Forms 1) Bryan Jensen statement 2023 2) Concluding statement Kurtis Elliot 3) Document 1 4) Ella Elliot Statement 5) Opening statement BCFIRB 17 6) Statement HannahLee 7) Submission Statement of Kurtis Elliot 8) Witness Form Witness Form2
Exhibit #11	Feb 8, 2023	Appellant	Appellant Feb 5 2023 Review Evidence
Exhibit #12	Feb 8, 2023	Appellant	Vet Records 1-13 1) Bear vet certification records 2) Bear vet certification records 2 3) Biggie & Bear puppy passports

Exhibit #	Date (Received)	Received from	Document
			4) Biggie vet doc 1st shots 5) Onyx emergency visit lab1 6) Onyx emergency visit lab2 7) Onyx emergency visit 8) 1st litter vet check & 2nd shots 9) 1st litter vet check & shots 10) 2nd litter vet check & 1st shots 11) Biggie vet doc 1st shots2 12) Biggie vet doc 2nd shots 2 Biggie vet doc 2nd shots
Exhibit #13	Feb 8, 2023	Appellant	Email containing 5 attachments
Exhibit #14	Feb 8, 2023	Appellant	Cost of Spaying – email string with Aberdeen Hospital and Appellant
Exhibit #15	Feb 8, 2023	Appellant	Estimate Cost for Spay – Onyx
Exhibit #16	Feb 14, 2023	BCSPCA	Document Disclosure Index – Tabs 1-44
Exhibit #17	Feb 14, 2023	BCSPCA	BCSPCA updated Document Disclosure Index
Exhibit #18	Feb 16, 2023	BCSPCA	BCSPCA Submissions – Elliot
Exhibit #19	Feb 16, 2023	BCSPCA	Affidavit of Marcie Moriarty
Exhibit #20	Feb 16, 2023	BCSPCA	BCSPCA Expert Witness Handout and Form
Exhibit #21	Feb 16, 2023	BCSPCA	BCSPCA Witness Contact Form
Exhibit #22	Feb 13, 2023	Appellant	Email re Dog Food
Exhibit #23	Feb 13, 2023	Appellant	Pictures of Dog Food
Exhibit #24	Feb 23, 2023	Society	Blue Necropsy Findings