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 ONE DOG

BETWEEN:

GEORGE KRECUL

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry Review Board:	Corey Van't Haaff, Presiding Member
For the Appellant:	George Krecul
For the Respondent:	Christopher Rhone, Counsel
Date of Hearing:	June 12, 2014
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 May 12, 2014 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 May 16, 2014 and heard by a one-person panel in a telephone hearing on Thursday, June 12, 2014. For tribunal orientation purposes, the hearing was observed by BCFIRB's Chair John Les, who did not participate in this decision. BCFIRB called veterinarian Dr. Cindy Chow to testify at the hearing. The appellant, George Krecul, was self-represented on the call and did not call any witnesses. The Society was represented by counsel with Ms. Moriarty on the call solely as an observer and it called Special Provincial Constable (SPC) Stephanie McKay as its only witness. The telephone hearing was recorded.

II. Brief Summary of Decision

3. Section 20.6 of the *PCAA* permits BCFIRB, on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society in its discretion to destroy, sell or otherwise dispose of the animal.

4. For reasons that will be explained in detail later, I have decided to return the dog, Kado, to the appellant, without conditions, and to reduce the costs payable by the appellant *prior to the return* of Kado to zero. There remains an outstanding issue with respect to costs as detailed later in this decision and, as the parties did not have an opportunity to speak to this issue at the conclusion of the hearing, I am asking for submissions on this issue. However, regardless of my ultimate determination on the issue of costs, the dog Kado is to be returned to the appellant forthwith.

5. If I decide that the appellant owes costs to the Society, that decision will *not* require the appellant to return the dog to the Society until the costs are paid.

III. The Society's Powers and Duties

6. 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".

7. 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).

8. 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.

9. 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.

IV. The Appeal Provisions

10. I am guided by the approach to appeal set out in detail in *A.B. v British Columbia Society for the Prevention of Cruelty to Animals*, (August 9, 2013), which decision was upheld by the Supreme Court on judicial review[1]. In summary, the right of appeal to BCFIRB 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.

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

12. 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.

13. The clear intent of this reform legislation was to give BCFIRB, as the specialized appeal body, full authority to operate in a way that is flexible and accessible to lay persons, and to use its expertise to ensure that decisions are made in the best interests of animals. The procedure followed by BCFIRB is a flexible approach specifically crafted to accomplish the intent of the legislation in the context of animal welfare and lay participation. This includes taking into account developments occurring since the Society's decision was made. This is entirely in accord with the inevitably fluid nature of the situation, and well within the powers granted by section 20.5 of the *PCAA*.

Preliminary Issues

14. All affidavits and witness statements and materials submitted were entered into evidence. The telephone hearing process does not require that all material be discussed or read into the record and I wish to expressly note that I have carefully reviewed all of the evidence and submissions referred to above, whether or not I refer to all of it in the course of this decision.

15. The appellant argues in his oral testimony that the Information to Obtain a Search Warrant did not provide the Society with permission to take photographs and as such argues that the photographs

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

taken by the attending SPCs are inadmissible. The Society responded that the purpose of taking photographs is to assist the SPC with her memory of the events (although the SPC did take notes of the seizure). Neither party relied on any case law in support of their respective positions.

16. Prior to the amendments to the *PCAA*, a person wishing to challenge the Society's decision to seize an animal or lay a charge was required to file a petition for judicial review. In that context, there has been judicial consideration of search warrants obtained under the *PCAA* pursuant to section 11 and the fine line between taking any action authorized by the *PCAA* to relieve an animal's distress and the gathering of evidence.[2] However, as a result of the recent amendments to the *PCAA*, BCFIRB is the specialized appeal body that now hears appeals from persons whose animals were seized under section 11.

17. Section 40 of the *Administrative Tribunals Act* applies to BCFIRB and states:

> **Information admissible in tribunal proceedings**
> (1) The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.
> (2) Despite subsection (1), the tribunal may exclude anything unduly repetitious.
> (3) Nothing is admissible before the tribunal that is inadmissible in a court because of a privilege under the law of evidence.
> (4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence.
> (5) Notes or records kept by a person appointed by the tribunal to conduct a dispute resolution process in relation to an application are inadmissible in tribunal proceedings. [emphasis added]

18. In the absence of considered legal argument on the issue and in light of section 40 of the *ATA*, I am prepared to admit the photographs taken by SPC McKay as I find them relevant, necessary and appropriate to my determination of what is in the best interest of the dog, Kado.

Decision Being Appealed

19. In the Society's May 12, 2014 Reasons, Ms. Moriarty said:

> … I am not prepared to return Kado to you as I do not believe it is in his best interest. Section 9.1 of the Act requires that an owner must care for the animal and protect them from circumstances that are likely to cause the animal to be in distress in the future. While I appreciate that you feel Kado was not in distress, the legal definition in the Act clearly includes this particular circumstance and also I fear that the level of distress would increase in the future if Kado was returned. Pursuant to section 20 of the Act, you are responsible for the costs of care associated with Kado whether he was returned or not. I will forward these costs shortly in a separate letter.

20. Material Admitted Into Evidence :

a) Dr. Chow's Records; **(Exhibit 1)**

b) May 16, 2014 notice of appeal; (**Exhibit 2**)

c) June 3, 2014 submission; (**Exhibit 3**)

d) Affidavit #1 of M. Moriarty, sworn May 23, 2014 with its attachments ; (**Exhibit 4**)

e) Affidavit #1 of SPC Stephanie McKay, sworn May 26, 2014; (**Exhibit 5**)

[2] See for example, *R. v. Jan and Craig Huisman*, 2007 BCPC 0132

f) Photo of Dog Dish **(Exhibit 6)**;

g) BCSPCA Submission dated June 9, 2014 **(Exhibit 7)**

h) Affidavit #1 of Angela Mead, sworn May 29, 2014; (**Exhibit 8**)

i) Medical Note Template from Dr. Chow for an examination dated June 10, 2014 **(Exhibit 9)**

The Society's Case

Marcie Moriarty Affidavit

21. Ms. Moriarty says the dog was housed in an extremely unsanitary apartment with feces and urine allowed to accumulate in the home which lacked adequate ventilation. The dog was kept in the apartment all day except for one walk. She finds that the dog lacked adequate shelter, ventilation, space, exercise and was kept in unsanitary conditions. There were also veterinary issues that may in isolation have been remedied by the appellant. She does not accept that the housing situation will be rectified immediately or for any sustained period in the future, thus, if the dog was returned, it will be returned to a situation of distress as defined by the *PCAA*. She says the appellant had ample opportunity to ensure there was an appropriate living environment but he failed to do so, whether due to his lack of money or to his health issues, both of which, she says, are immaterial to the dog's best interests.

22. She says for the dog to be emotionally content it must not be in a state of distress and the Society's plan is to adopt the dog to a compassionate person or family.

23. She sets the cost of care at $420 for boarding costs incurred from seizure until May 23, 2014 for the ease of the panels' decision-making. She does not request veterinary costs or staff time, but does not waive the Society's right to additional veterinary expense or to section 20(2) rights to receive payment prior to any possible order of return of the dog to the appellant.

24. In her Reasons, Ms. Moriarty explains that the Society was previously called to this residence back in March 2010 regarding a concern with respect to Kado being underweight, never walked and always kept indoors. A constable attended and determined that Kado was in adequate condition and while the living conditions were small and cluttered, the file was closed as a determination of distress pursuant to the *PCAA* was not conclusive3. A second complaint in April of this year was received regarding concerns that Kado was underweight and not being walked.

25. SPC McKay met the appellant on April 3, 2014 and had multiple concerns regarding the environment and the amount of exercise that Kado received on a daily basis (one walk a day and the dog urinated and defecated in the suite otherwise). A recheck was rescheduled a number of times and SPC McKay attended on April 15, 2014 and noted that little had changed with respect to the living environment, and the odour had gotten worse.

26. On April 22, 2014, SPC McKay returned for another inspection as the appellant indicated he had complied with the order and cleaned up the suite, but the suite was not at an acceptable level and a warrant was obtained, and the dog seized.

[3] The panel observes that at the time of this visit, ss. (a.1) and (a.2) were not part of the definition of distress under the *PCAA*.

27. In her Reasons, Ms. Moriarty goes on to state:

> The major concern in this case is of course the living environment for Kado. The photographs taken of the Property depict living conditions that are of great concern and while Kado does not currently have significant health problems, the level of ammonia, potentially toxic substances, and inadequate space and ventilation could most certainly result in a problem in the future. While I appreciate that you have offered to clean up the place, your attempts in the past have not been successful and I have concerns with respect to whether you are able to recognize what is considered acceptable. I have reviewed your heartfelt submissions and it is obvious that you love Kado and feel that you are looking after Kado properly and that he is free from distress as defined by the Act. You also have set out your plan for Kado should he be returned and indicated that you are continuing to clean up the environment for Kado. All of these submissions, if taken in isolation and without the benefit of the history of this file would suggest that it would be in the best interest of Kado to be returned pursuant to an agreement of care. Unfortunately, I cannot ignore the history of this file, nor the fact that you do not seem to be able to recognize the significant concerns with respect to the living conditions being provided for Kado. While you note that Kado was not underweight and was not in "distress", it is important to recognize that "distress" in the Act is defined to also include kept in conditions that are unsanitary and without adequate ventilation.

28. Appended to her affidavit are documents relied on by Ms. Moriarty, including the April 24, 2014 letter from veterinarian, Dr. Chow. Dr. Chow describes the dog Kado as a 9-year old male neutered German Shepherd X Labrador Retriever that was bright, alert, active, friendly and slightly nervous. His vitals were normal and his ears inflamed with mild to moderate amounts of dark brown debris; eardrums were intact and normal. Teeth had minimal tartar except for two upper molars which had moderate dental tartar with mild gum recession, more so on the right tooth. Heart and lungs were normal and clear and no abnormalities with abdominal palpitation. Peripheral lymph nodes palpated normal in size and shape. Skin was quite inflamed along the back especially near the tail and many live fleas and flea dirt were noted. The dog was quite itchy when touched in those areas. His anal area appeared normal. His nails were quite overgrown. Dr. Chow noted 3 soft tissue masses on the dog; all soft and non-painful when touched.

29. Dr. Chow's assessment and plan were that the ear infection was of immediate concern, so the ear was cleaned and she would like the dog started on topical ear medication such as Surolan. His dental disease should be addressed within six months and he will need a cleaning but his dental disease does not appear to cause the dog undue distress at this time. The soft masses should be investigated to ensure they are only fat deposits but she is concerned about the third mass as it does not appear to be a simple fat deposit but regardless, the masses are not painful or infected and can be investigated at a later date. The dog should get a nail trim as they may cause some discomfort when walking.

30. The Information to Obtain a Search Warrant (ITO), affirmed by SPC McKay and dated April 23, 2014, states that the SPC had grounds to believe there was an animal in distress pursuant to section 11 of the PCAA. An individual on April 2, 2014 contacted the Society and complained that a dog was being neglected, expressing concerns the dog was underweight and not being walked. SPC McKay attended the property on April 3, 2014 and viewed Kado in the hallway in adequate physical condition, where she says the appellant roughly scruffed the dog by the neck several times. She smelled a foul odour and requested and received the appellant's permission to view his apartment, noting large amount of debris from waist to ceiling height, a small one-to-two foot pathway to the appellant's sleeping area, one open window, foul odour that smelled of garbage and a combination of human and canine urine, unsecured debris that appeared to have a high risk of falling over, small area of visible floor that was dirty and stained, and she remarked that the appellant and dog were barely able to turn in the pathway. SPC McKay issued an order to ensure

adequate ventilation is provided, there is enough space, the area is cleaned and sanitized, is free from injurious objects and cease harsh and inhumane disciplinary techniques.

31. After the visit she received a call from the appellant admitting he only walked the dog once a day, in the evening and that the dog urinated and defecated in the suite, and dog urine in the heater caused the odour.

32. On April 7, 12, 13 and 14, the SPC tried to arrange for a re-check but was delayed by the appellant due to illness and harassment by other residents, which drew his attention and energy away from the task of cleaning his apartment.

33. On April 15, SPC McKay attended the property and observed the dog at an open window, barking and advised the appellant to bring his dog inside as it was unsafe. When the appellant opened the door to his suite, the SPC smelled a strong odour causing her to gag multiple times, noting the odour was worse than the last time she was there and was similar to a mixture of garbage, rotting meat, urine and feces. She noted a small amount of debris had been moved but most areas were still dirty with some staining on a small portion of a wall.

34. The SPC contacted several agencies to gain assistance for the appellant but learned that help was based on severity of the situation and no help was available at this time. The SPC received a call from the Vancouver Police Department (VPD) advising that the appellant had mental health issues but were unable to intervene unless he was a threat to himself or others. The VPD stated the fire department would also not intervene as long as there was a clear pathway from the door to inside his suite.

35. On April 22, 2014 the SPC attended the property and from the alley, saw the appellant's window half open and partially obstructed by some debris. Once in the hallway, she found the odour so intense she gagged a number of times near the unopened apartment door. Later that day the appellant called the SPC to invite her to do a recheck. She attended and noted the unobstructed window was wide open, the appellant's skin was inflamed with red patches, and the intensifying foul odour was putrid and she gagged "immensely" and said the odour was still worse and smelled like a mixture of garbage, vomit, rotting meat, urine and feces. She noted swarming flies in some areas, an unusable bathtub due to piled debris, a toilet that was full and covered with caked feces, a dried yellow substance on the bathroom floor, large amounts of debris piled from waist to ceiling height, a small pathway one-to-two feet wide from the door to the sleeping area, one open window, unsecured debris at risk of falling over and a small area of visible floor stained and dirty. The appellant and his dog were barely able to turn around and bedding smelled of urine. The unsanitary conditions and putrid intense odour caused the SPC to vomit in her mouth. She confirmed a small amount of debris had been moved but the ventilation had worsened. She confirmed there was "minimal adequate space," the living conditions were unsanitary and the area was not free of injurious objects. The SPC refused any further extensions for additional cleaning.

36. During the execution of the search warrant on April 23, 2014, according to the Cruelty Investigation Information Form, SPC McKay was accompanied by SPC Mead (who had attended in 2010) and the Vancouver Police Department. SPC McKay advised the appellant that per the order, he had failed to provide adequate space, ventilation and sanitary living conditions. She or SPC Mead photographed the apartment while themselves wearing booties, gloves and masks, and tested the kitchen and living areas with ammonia strips. She advised the appellant that the dog's condition was fine but the living conditions were not adequate and she seized the dog.

Stephanie McKay Affidavit and Testimony

37. SPC McKay's affidavit confirms that she told the appellant the dog's condition was fine and while the appellant had attempted to move some debris (a small amount), he had failed to provide the dog with adequate space, ventilation and sanitary living conditions. She says she tested the air using Hydron ammonia strips following the manufacturer's instructions and the colour chart indicated the ammonia was in the range of 10 parts per million, describing the ammonia levels as elevated but not at a dangerously high level. She says the strips cannot measure stench and she was concerned about debris that could fall upon and potentially injure the dog. She took a video of the premises which was appended to her affidavit and formed part of Exhibit 5. She concludes that the insufficient space and ventilation and unsanitary suite constituted a distressing environment for the dog and given the appellant's failure to create a stress-free environment she felt it necessary to take custody of the dog to alleviate its distress. She did not believe the appellant would be able or willing to relieve the dog's distress.

38. SPC McKay says in her oral testimony that on the day of seizure, she entered the building and noted a smell which got worse as she approached the suite door and worsened still when the door opened. When asked about the smell, she said it was hard to determine, but smelled like garbage, urine, feces, and possibly vomit. She said the window was open which usually provides adequate ventilation but with her own gagging and coughing she concluded there was not adequate ventilation. She said the stacks of items were not secured.

39. The panel asked how she was able to precisely describe the combination of ever increasing odours in the ITO, and how she could determine a smell was a combination of human and animal urine, when her testimony was that the smell was hard to determine. She explained that the odour was changing and she was noting what she felt the odour smelled like, not where it came from. She said the smell was "slightly" different each time she smelled the odour. She said she detected the odour of human urine and possibly canine urine. She said she was able to differentiate between human and canine urine, depending on the person and the dog.

40. She said the photographs she took showed the suite in the same condition as she described in the ITO, that she didn't observe any feces on the floor and noted some feces on the inside of the toilet and didn't know if the dog drank from the toilet. She noted there appeared to be urine in the dog's water bowl and noted some dry stained area on the wall nearby. She said she photographed the bathroom sink and she didn't know if the dog drank from there. She said she photographed the front of the fridge to show sediment building up on documents attached with magnets to the fridge. She photographed the floor tiles to show some sediment on a white pail and she was concerned it was urine.

41. When asked if she saw any urine or feces on the floor, she said there were no obvious signs of feces and it appeared there was urine on the dog's water bowl. She said there was a yellow stain that was dry near the bowl, where the tiles met. She did not see any wet urine spots.

42. SPC McKay talked about what she described as unsanitary conditions. She said she was unsure if the sink was a water source for the dog and it was unsanitary. She referred to page 44 of Exhibit 4, the two photographs showing tiles of the floor, and she determined that the sediment on the white bucket was "concerning" and she was not sure if it was old urine but was definitely unsanitary sediment. She confirmed for the panel that there was no difference between the apartment conditions she described in the ITO on April 22, and the apartment's conditions she photographed on April 23, the day of seizure.

43. She said in some areas the walkway was narrow and in some areas you could turn around. When asked if she took any precautions to prevent debris falling on her, she said only that she was cautious of her own movements and tried not to touch stacked stuff.

Angela Mead Affidavit

44. SPC Angela Mead's affidavit confirms the foul smell and unsanitary conditions as described by SPC McKay. SPC Mead adds that when she attended the 2010 complaint, she found Kado was not underweight, and the apartment was small and cluttered with no smells or signs of feces or urine. She issued a verbal order for the appellant to provide Kado with daily exercise and socialization. She describes the apartment's condition on April 23, 2014 as having drastically declined since her attendance in 2010 and said it appeared the appellant as exhibiting indicia of being a hoarder. She agreed with SPC McKay's conclusions regarding Kado and she noted an overpowering smell of rotting garbage, urine and ammonia that in her opinion meant the property lacked adequate ventilation for the dog. She noticed fruit flies, stacks of paper, piles of hardware and metal objects, and multiple filled garbage and grocery bags littering the interior. She saw dust, grime and dirt. She attached a photograph of the dog's food and water bowl showing the yellow liquid. In her opinion, the property was unsanitary and failed to provide sufficient space and ventilation for the dog and the environment, she agreed with SPC McKay, fell within the category of distress as defined by the *PCAA* and she felt it necessary to take the dog to relieve its distress.

The Appellant's Case

George Krecul Statement and Testimony

45. The appellant in his written submissions expressed his love for his dog Kado. Kado is a family pet, is not abused or hit, has dry shelter and is fed. He says he showed the SPC two lumps on his dog's leg. He wants his dog back. He says the Society did not describe exactly what constituted adequate ventilation and feels that is not a reasonable claim as he has a window open at all times. He says his unit has been cleared of all but bare essentials. He has had Kado for eight years and says he often takes his dog through a back entrance at the building to avoid bothering other tenants. He disputes the presence of some smell and says there was no urine or feces on the floor. He walks his dog and says the dog was seized wrongfully.

46. In his oral testimony, he says the dog is healthy and there is nothing wrong with him and he is not underweight as the original complaint stated. He has lots of food. His dog got fleas from an upstairs neighbour (the appellant says he is the caretaker of the building and his dog Kado follows him to other suites). He does not understand why pictures of his bathroom were being taken and he has never had any problem with anything falling on the dog in 8 years.

47. He says he does clean when he can and was sick around the time of the seizure, and couldn't clean properly. He works for a living and is able to do whatever he needs to do for the dog. He disagrees he was rough with his dog but was only trying to show the SPC the lumps on the dog. The dog has fresh water and eats dry and canned food and is supplemented by what the appellant himself eats.

48. He admitted under cross examination that he couldn't clean much and the stacks were messy and there was a bit of a bad smell, though he disagrees with the description of the smell and disagrees that SPC McKay gagged in his apartment. He cleaned the floor with a mop whenever the dog messed but didn't do it as much while he (the appellant) was sick. He took the dog outside out back two-to-three times a day when he felt good. He cleaned up after the dog when it peed and pooped

inside the house. He was using flea powder and flea collar and would have taken the dog to his veterinarian Dr. Bhullar or a flea bath at a pet place.

49. He said he felt his electronic equipment has value and he inherited some of the items after his mother's death that he does not want to part with.

50. He said his dog always stood at the open window and in 8 years had never jumped. When asked if his dog might become unsteady in old age, he agreed it was possible that an old dog might have a problem.

51. He said he may have forgotten to throw out some food.

52. He said his high-rise toilet seat had a bit of mess at the back but usually the bathroom door was closed.

53. He puts out fresh water for the dog every day. He said he sometimes adds orange juice in the water as his dog likes it and that accounts for the colour. He washes the water bowl every 2-3 days and said it was not urine in it.

54. He agreed that the fire department said as long as he could get out of his apartment in a fire, it was okay. He said he doesn't have fleas and doesn't get bit by fleas, that the dog sleeps on his bed and the window is always open at least a few inches. He said he can turn around in his apartment and the photographs depict exactly what his place looks like.

55. He disputes that there are urine stains on the wall and says it is some dirt on the back of a steel cabinet.

BCFIRB's Witness

56. BCFIRB issued a summons for veterinarian Dr. Chow to speak to her findings in the April 24, 2014 report and provide her professional opinion on Kado's living conditions and their effects long-term on Kado's health and well-being, and what conditions would need to be in place to ensure his health and wellbeing. Prior to her appearance, Dr. Chow also submitted an additional report on Kado regarding her June 10, 2014 examination of Kado. The letter from BCFIRB accompanying the summons said:

> In addition, the presiding member has identified two further areas which she has asked for your opinion:
> 1. Assuming Kado's living conditions do not change, what, if any, long term effects would you expect on Kado's health and well-being?
> 2. If Kado was to be returned to his owner, what, if any, conditions would need to be put in place to ensure his health and well-being?

57. Dr. Chow testified she is a veterinarian and is registered with the College of Veterinarians of British Columbia.

58. In her oral testimony, Dr. Chow described Kado on his first visit as happy, wagging tail, bright, a little nervous (most are, she says), quite friendly, overweight but not obese, greasy and flaky skin, long nails. Some discharge in ear and she could look in it without discomfort to the dog and a bit of dental that was common in an older dog. She describes Kado's mouth as "not horrible dental disease." Dr. Chow had run out of ear medication which is why it was prescribed the next day

(April 24) and she forgot to trim the nails (the Society did this) and the Society had applied a flea treatment prior to her original exam.

59. She held the aspirated samples of the dog lumps, which were not painful. She was not worried about two of them, the third had different bumps to it but still not painful. When asked why no analysis was done on the samples, Dr. Chow said they were not causing any distress, there was no pain, no firmness. A lump is a lump, she said, and we don't know what it is unless analyzed. It could be fat or it could be more serious. The lumps were soft and not hot. She said doing the analysis was not a major concern currently but they should be investigated further at some point. As long as they didn't cause distress, change in movement of the dog, become larger or painful they were not of immediate concern.

60. Dr. Chow testified that she saw Kado again when the Society was concerned that the mass on Kado's leg may have gotten bigger. Dr. Chow's report on the second examination of the dog indicated a nice dog, with a bit of weight loss, normal vitals, ear situation resolved, skin greatly improved with no fleas or flea dirt present, still slightly greasy but improved, and she found the mass unchanged though she did again aspirate a sample and hold it. She recommends continuing with Advantage flea treatment, a dental in the near future. She reports that given the masses are not causing any pain the Society advised her to hold off sending the samples to the lab.

61. Dr. Chow said her initial impression of Kado was that the dog had not been abused or neglected and was very well-behaved. Mentally she saw nothing to concern her and physically she felt the flea and ear situation could be quite uncomfortable, especially the ear, and the fleas and skin would provide a level of discomfort or distress and this could be treated easily and readily. She explained the life cycle of a flea and how fleas are transported by carriers (people or animals) and usually don't travel through cracks in walls, and the visibility of fleas indicated to her that the dog was infested. She always tells clients they need to treat the whole home when they have infestations.

62. She was asked about the ammonia level of 10 ppm and said it was not at a toxic level and over constant exposure could irritate the respiratory tract and could predispose the dog to certain medical conditions though she was not saying Kado would get these. She said large stacks of material could fall as dogs can be agile and clumsy and falling objects could harm or entrap an animal or prevent them from accessing water so it does pose a concern.

63. The panel asked specifically about how bad smells could affect Kado. Dr. Chow said it varies as some are more sensitive to smells than others, and it was very individualistic. Negative symptoms of chronic exposure could take weeks or a year or longer to appear, it varies greatly and she did not see signs of any respiratory illness either time she examined Kado. She said that if a smell was bad enough to cause a person to gag there is a risk that the cause of that smell could carry bacteria and the big worry was if that was ingested as a change in the gut could cause illness. She said dogs should be taken for bathroom breaks a minimum of twice a day but three walks is nicer for the dog.

Analysis and Decision

64. The *PCAA*, sets out the following definition of distress in section 1(2):

> 1 (2) For the purposes of this Act, an animal is in distress if it is
> (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
> (a.1) kept in conditions that are unsanitary,

(a.2) not protected from excessive heat or cold,
(b) injured, sick, in pain or suffering, or
(c) abused or neglected.

65. I reviewed the photographs and video carefully and I saw an extremely cluttered and unclean apartment with stacks of boxes and electronics and stuff, but I did not come to the same conclusions as the Society did.

66. I agree there was what appears to be fecal matter inside the toilet at one spot at the back but it hardly constituted a full toilet caked with feces, as SPC described in her ITO (and confirmed in her testimony that the conditions she photographed were the same as seen the previous day, although I do appreciate the toilet could have been flushed in the interim), and there was no evidence that the dog did drink water from this source, especially given the raised (evelated and high-rise) toilet seat.

67. I did not conclude that the area around the bathroom sink, filled with jars and bottles and canisters, constituted any risk to the dog. There was no evidence that the dog ever drank from this spot, or that this sink was the water source for the dog.

68. I did not conclude that a photograph of papers on the front of the fridge that may have been dusty or grimy constituted evidence of unsanitary conditions for the dog.

69. I did not see, nor was there any evidence, that there were feces on the floor of the apartment. While the SPC did note staining on the floors and walls and bathroom floor that she thought was urine, I am not satisfied this was accurate. The appellant explained the dirt up the back of the cabinet was just dirt not urine. I saw no evidence of pooling on the floor, as one might expect when a male dog urinates against a vertical object. Further, SPC McKay did say that there were no obvious signs of feces and none was noted in the photographs or video (other than in the toilet) and she did say there were no wet spots of urine on the floors, and that her concern about urine present was the staining near the food bowl and the sediment on the white pail, which she said she was not sure was urine.

70. The SPC felt that the location of the dog's water bowl close to this cabinet and the colour of the water indicated urine. The appellant explained he added juice to the dog's water. He has testified that he always fed the dog what he ate. I am not convinced that this discoloured water was either urine or orange juice.

71. SPC McKay provides a colourful description of the odours she smelled each time she entered the appellant's suite, and each time she was able in her description, to discern a new odour combined with previously described odours. While I appreciate that she was trying to explain that the odour had become worse, I found her affirmed and detailed language in the ITO inconsistent with her oral testimony where she said the smell was hard to determine and that there was a "slight" difference each time she smelled the odour. I am also satisfied that reaction to odour and describing odour is very subjective.

72. Ms. Moriarty's decision is that it is not in Kado's best interests to be returned to the appellant because the dog lives in a situation that meets the legal definition of distress found in sections 1(2) (a) and (a.1) in the *PCAA* in that the dog lacked adequate shelter, ventilation, space, exercise and was kept in unsanitary conditions, and if returned, would be returned to a situation of distress.

73. In contrast, the veterinarian describes Kado as a healthy happy dog. The immediate concerns over fleas and ear infection have now been rectified. There are recommendations for future dental work

and future investigation of one lump, but none of this caused the veterinarian any immediate concern and she described the dental disease as typical in older dogs (Kado is 9 years) and the lumps all as not painful or distressing to Kado.

74. I turn now to consider the definition of "distress" under the *PCAA* which is met when an animal 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.

75. Ms. Moriarty is concerned about the dog having inadequate shelter and space. The legislation is clear that an animal cannot be deprived of adequate shelter, ventilation, space and exercise, amongst other things. When one reviews the Society's own form used when making an order (Exhibit 4 page 15 – part of the ITO), the Society checked off the box about space and ventilation. It says "ensure the animal is not confined to an enclosed space (shed, dog house, vehicle or other structure) without adequate ventilation".

76. Kado was kept in an apartment where he could walk from the front door through the unit to the bed he slept on (SPC McKay also walked this pathway). Both the appellant and SPC McKay said the window was open. It is my view that to run afoul of this subsection and deprive an animal of adequate space entails something more akin to confinement in a smaller structure or cage, not a much cluttered apartment such as the one in this appeal.

77. I am not satisfied that Kado was deprived of adequate shelter or ventilation or space. By the Society's own testimony, the apartment had sufficient space for human habitation and met the required space for the fire department, and conditions were not severe enough for police or other agency involvement. It is my view that in this case, an apartment sufficiently acceptable for human habitation is also acceptable for an animal, barring any other signs of distress in the animal. Further, the small amount of ammonia detected by the strips was not at dangerous levels and there was no indication of any respiratory effect on Kado and Dr. Chow stated that the future risk was uncertain and dependent on the individual animal. The windows were always kept open according to the appellant and the windows were noted as open during attendance by the Society.

78. The Society says the dog was deprived of adequate exercise. The dog, again happy and healthy, was overweight but not obese. The appellant said he took the dog for a walk once a day and when he (the appellant) was not sick, twice a day. The Society did not argue this. The fact that the dog went to the bathroom in the house does not mean the dog did not get enough exercise. There was no veterinary testimony regarding Kado suffering from a lack of exercise. Testimony was that the dog followed the appellant to other suites, and went out the back door for his walk. I accept this evidence and do not find that the dog was denied adequate exercise.

79. Perhaps the Society's strongest argument is that the dog was kept in unsanitary conditions. I accept the evidence of the two SPCs that the conditions in the appellant's apartment are tremendously unappealing and dirty; there was much testimony about overpowering odour, sufficient to cause a gag response, but there was little evidence of actual feces or urine other than a few spots on the floor where there may have been dried urine and a small amount of fecal matter in the toilet.

80. SPC Mead says in her affidavit that in her opinion, the property was unsanitary and failed to provide sufficient space and ventilation for the dog and the environment, and that she agreed with SPC McKay that this fell within the category of distress as defined by the *PCAA*.

81. SPC McKay testified that she did not know if the bathroom sink was a water source and it was in an unsanitary condition, and noted in the two photographs of the tiles that it was unsanitary and the "concerning" sediment on the bucket was unsanitary though she did not know if it was urine.

82. The question for me though is whether the conditions of the appellant's home at the time of seizure were actually unsanitary as that term is understood in the *PCAA*.

83. I have reflected on the meaning of the phrase "kept in conditions that are unsanitary" and the application of that language to the facts here. The term "unsanitary" is not further defined.

84. As the meaning of "unsanitary" is not defined, I have applied the principle that language is to be read in its entire context, in its grammatical and ordinary sense, harmoniously with the scheme and object of the Act. See also *Interpretation Act*, R.S.B.C. 1996, c. 238, section 8: "Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."

85. The first point I would note about this part of the definition was that it was added to the PCAA in 2011: Prevention of Cruelty to Animals Act, 2011, S.B.C. 2011, c. 7. The amendment clearly broadened the definition of "distress".

86. Following the amendments, the Society did not have to establish an actual deprivation or harm to animal. The legislature has now deemed that "distress" will also be present where the animal is kept in conditions that are unsanitary, or is not protected from excessive heat or cold (whether or not actual injury or disease is shown). These amendments are significant. They are protective. They do not require proof of actual harm at that moment. Instead, they reflect the circumstances that create a significant risk of harm to an animal. The amendments make clear that animals can be protected if the conditions are sufficiently risky to warrant protective action.

87. Take excessive heat and cold. While excessive heat may not cause harm to an animal at that moment, it will surely cause harm once an animal's internal temperature reaches a certain level. The animal isn't immune to that effect. Animals will overheat or suffer hypothermia at certain temperatures over time, even over a short time, so the risk of some significant health consequence is real.

88. The question as to when circumstances are sufficiently problematic as to be "unsanitary" for the purposes of the *Act* raises other considerations. We heard at length from the veterinarian that exposure to smells and to the low levels of ammonia present may cause harm but that is dependent on each individual animal, and over as long as five years there may not be signs of exposure.

89. It is clear to me that the word "unsanitary" must have some boundaries. It cannot be trivialized; it cannot, for example, be interpreted as merely "really dirty". The word cannot be interpreted to invite mere speculation as to what might possibly happen. The 2011 amendments must be interpreted in accordance with the larger protective purposes of the *PCAA*. In this regard, while they broaden the definition of distress, they also reflect the flavour of the other definitions of "distress".

90. To accept the definition of unsanitary as merely "dirty" or "really dirty" would mean that animals could be seized for no other reason than a subjective assessment regarding the level of dirt in one's home. Surely this was not the intent of the legislators – to make it possible to seize otherwise healthy animals from merely dirty homes.

91. All this leads me to conclude that these new terms were intended to invite and require a fact-based judgment connected with a *significant risk* to the animal's health and well-being. In this context, a condition will be "unsanitary" when it is so filthy as to carry a significant risk to the animal's health and well-being.

92. This is consistent with the dictionary meaning of the word. The *Canadian Oxford English Dictionary* (2004) defines "sanitary" as "of or pertaining to the conditions affecting health, the promotion of good health, or protection against infection", hygienic; free from or designed to kill or prevent germs, infection, etc..." To read "unsanitary" consistent with this definition and the associated terms in the definition of "distress" (ss. (a), (a.2), (b), and (c)) is entirely consistent with looking for a threshold of cleanliness that carries a significant risk to the animal's health and well-being, as the animal's best interests are paramount.

93. When considering this definition and whether or not the appellant's apartment was unsanitary, I am guided by the evidence and testimony of Dr. Chow. When asked if Kado was in distress, she said Kado was very friendly, happy, tail wagging, seemed very well adjusted, nice temperament, initially no signs of abuse, or neglect. Kado was a very well-behaved dog. There was no concern mentally. Physically, Dr. Chow said the fleas and the ear could be quite uncomfortable, especially the ear that could be painful and irritated, and the skin with scabbing causing discomfort or distress – a certain level of distress.

94. About the home environment, Dr. Chow said she was concerned about the fleas as the environment needs to be treated. She tells clients they must vacuum daily, wash bedding, and clean as much as possible and use premise sprays and Advantage to prevent fleas from coming back.

95. Dr. Chow was asked about the ammonia level and said it was not at the toxic level and that constant day to day exposure can irritate the respiratory tract causing inflammation such as bronchitis or COPD if the dog is predisposed to that, although she was not saying that Kado was so predisposed. Over a long time, there might be irritation but it varies as some animals are more sensitive to smell than others. She said the definition of long time depends on the animal, for some it might be a couple of weeks, for some it might be a year and that she can't say what would happen in five years as one animal might not be as affected as another, but risk does increase with exposure. Dr. Chow says she did not see any indication of respiratory illness either time she examined Kado.

96. When asked if smell of a sufficient strength to make a person gag was a risk, Dr. Chow said that assuming that was true, there was an absolute risk because if the smell was truly coming from rotting garbage, in addition to respiratory risk, garbage and feces could be a source of bacteria. The big worry was if the dog intentionally ingested or picked up the bacteria by contact and then licked its paws, for instance. Ingestion was the main concern, Dr. Chow said as a change in the gut could cause illness.

97. I am mindful that in her Reasons, Ms. Moriarty says the dog was housed in an extremely unsanitary apartment with feces and urine allowed to accumulate in the home which lacked adequate ventilation. I disagree with her conclusions about the accumulations of feces and urine, the ventilation, and ultimately, the unsanitary conditions.

98. There was no evidence about the source of smell. There was no evidence that there were visible feces on the floor of the apartment let alone accumulations of feces and in fact SPC McKay testified there were no obvious signs of feces. There was no evidence of urine on the floor or that

urine was allowed to accumulate, no wet spots, and of the two dried spots, SPC McKay testified she did not know if they were urine. There was no testimony about open bags of garbage or visible exposed rotting foods, such as the kind that could be available for a dog to eat that would cause illness.

99. SPC McKay's conclusions of unsanitary conditions, in my view, were conclusions of very dirty conditions (the unknown sediment on the white pail, the dirty bathroom sink ringed with cans and bottles, a dirty toilet). In my view, it was her subjective conclusion that these things, combined with the odours and what she deemed lack of ventilation and space, collectively lead her to conclude that the apartment met the definition of unsanitary.

100. I disagree. In accordance with my analysis above I think there must be some significant health risk to make the leap from very dirty to unsanitary. There must be some sanitation component – some protection of health or significant health risk – to declare the apartment unsanitary. Again, I am cognizant that some of the organizations responsible for protecting human health (fire department, police department, mental health group) did not find the apartment constituted a sufficient risk to the appellant to require their intervention.

101. While I am mindful of the evidence of the SPCs, when I consider the totality of the evidence including the expert evidence of Dr. Chow that Kado is a happy, healthy dog, I cannot conclude that Kado's living conditions carry a significant risk of harm to his health and well-being in either the short- or long-term. Kado has lived with the appellant for 8 years and at the time of examination by the veterinarian, the dog showed no evidence that it smelled of urine or feces, was caked with urine or feces, suffered from respiratory illness or other commonly found symptoms of chronic exposure to poor air quality or ammonia such as eye irritation, skin conditions (other than fleas), or some other health issue.

102. I make the latter point well aware of the point I made above - that one must not equate "unsanitary" with actual harm. My point is simply that where, as here, conditions have subsisted for some time, there must come a point where the actual condition of the animal is relevant to how "significant" the risk of harm actually is in the circumstances; it must be relevant to whether the threshold for "unsanitary" has been crossed for the purposes of this statute. I have already noted that this apartment is fit for human habitation; I do not agree that keeping Kado in this apartment is keeping Kado in conditions that are "unsanitary" as that term is used in the *PCAA*.

103. I appreciate that the line between when a risk is "significant" as opposed to being "speculative" can, at times, be a fine one. However, in this case, I am satisfied that while the Society's concerns were genuine, they erred in concluding that the required threshold had been met. This is a 9 year old dog who has lived with the appellant for 8 years, and whose living conditions have deteriorated somewhat between 2010 and April 2014. I find that despite this deterioration, the dog is healthy and in no immediate harm or discomfort. I find that the risk of future harm is speculative at best.

104. I should add that in her Reasons, Ms. Moriarty does not mention that Kado is deprived of veterinary care, though in its submissions on the appeal, the Society made that argument. I find that there was no evidence the dog was deprived of veterinary care. The dog was happy and healthy, the masses and dental disease – described as common for a dog that age – were not causing any discomfort to Kado. The masses were not even a high enough concern for the samples to be analyzed while in the Society's care. The ear condition was such that the veterinarian could examine it without discomfort to the dog. The fleas were being treated, perhaps not successfully at

that point, by the appellant but he said he would have taken the dog either to his own veterinarians or for a flea bath.

105. Much of the original determination by the Society rests on the fact that although the dog is happy and healthy today, harm could befall this animal at some point in the future (but not necessarily, according to the veterinarian regarding respiratory issues) and that the conditions of the apartment met the definition of distress, despite a lack of harm to the dog

106. The legislative framework was described in in Eliason v SPCA, 2004 BCSC 1773 where Mr. Justice Groberman (as he then was) stated:

> The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of. [emphasis added]

107. The test is not whether anyone else would like to live in the conditions in the apartment. Nor is the test whether it is possible that anything untoward would happen to the dog in the future and if so, would it cause distress or injury to the dog. Having concluded that Kado was not in distress at the time of the seizure, I am satisfied that Kado is not suffering, and if returned to the appellant, would continue to be happy and healthy and not suffer, most especially because it was the appellant who kept the dog happy and healthy in the first place.

108. It is my view, in the circumstances of this appeal that it is in the best interests of the dog Kado to be returned to the care of the appellant. I am not making the order conditional as the flea problem and ear problem are resolved.

Costs

109. Section 20 of the *PCAA* provides:

> **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.

110. Section 20.6(c) provides that on hearing an appeal the board may "confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2)".

111. Both parties were notified by BCFIRB that they were to address the issue of costs to the panel. In a letter from BCFIRB dated May 28, it said:

> In *BC Society for the Prevention of Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331 at paragraphs 60-69, the Supreme Court held that where an appeal is granted under s. 20.6(a), BCFIRB may order animals returned despite the fact that costs are owing (which order does not relieve the owner of the liability to pay costs). However, the Court also

emphasized that the BCSPCA should have an opportunity to be heard on whether any order for return should be subject to s. 20(2) of the *PCAA*:

> 20 (2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.

I wish to emphasize that I have not decided the appeal and I do not intend to make my decision until after all the evidence and submissions are heard. However, in view of the Court's statement that this issue should be dealt with "during the hearing, without having to prolong proceedings" (para. 70), I raise this issue now to ensure that the parties include this issue in their submissions with regard to the remedy the Board should grant if the appeal is allowed.

112. In its submission, the Society advises that it has not waived its rights under section 20.6(c) and asks, should the dog be returned, to first be reimbursed for the costs. Its written submission on costs is as follows:

> The Society seeks its costs from the Appellant pursuant to s. 20 of the Act. In the alternative, if the Society is ordered to return the Dog, it seeks as a term of the order that the Appellant first pay the Society its costs pursuant to s. 20(2) of the Act, and that if such costs are not paid within seven days of the date of this Tribunal's decision, that the Society may dispose of the Dog forthwith.

113. The Society sets the costs at $420 for boarding and waives veterinary and staff costs. This, says the Society, represents a reasonable amount ($15 per day) to cover the administration, shelter, feeding and care of Kado from April 24, 2014 when he was seized to May 23, a date chosen to provide ease to the BCFIRB panel's decision-making.

114. The appellant says he is prepared to make two payments of the amount owing provided he gets his dog back.

115. The first issue to consider is the Society's request that if the dog is returned, BCFIRB should order that the Appellant first pay the Society's costs under s. 20(2) of the *Act*. In this regard, Justice Grauer in *BC Society for the Prevention of Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331 stated as follows at para. 67:

> By section 20.3(1)(d), one of the matters which an owner may appeal to the FIRB is "the amount of costs that an owner must pay under section 20(2) before the animal is returned to the owner". By section 20.6(c), the board may confirm or vary the amount that "the owner must pay under section 20(2)". Clearly, then, the FIRB has jurisdiction to deal with that issue. With respect to the amount that must be paid **before the animals are returned**, that would presumably include varying the number to zero. But equally clearly, no such order was under appeal in this case because the SPCA was not intending to return the dogs, and so the question had not arisen. In these circumstances, it is not surprising that argument on the issue was not fully canvassed. [emphasis added]

116. While the Society did make the request quoted above in response to our letter, the Society did not, despite the invitation to do so, offer any argument or principled basis on which costs would justify delaying return of the animal if it was BCFIRB's view that it was in his best interest to be returned. In the absence of such argument, and based on my view that the animal should be returned forthwith, I decline to grant that request and I vary that amount (i.e., the amount that must be paid before the animals are returned) to zero.

117. This leaves the separate question as to what are the Society's "reasonable costs" in this instance, separate and apart from the return issue. This question requires me to consider the relationship between s. 20(1) and s. 20.6(c) of the *Act*

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

118. In my opinion, this aspect of the appeal raises a question, not previously considered (and separate from the issue on which submissions were requested), as to whether or to what extent costs are "reasonable" when they flow from a seizure that is found on appeal not to have been justified in the first instance. Given that I am raising this issue, the parties have not had an opportunity to address it directly although the appellant did appeal costs. Despite the appellant's acknowledgement that he was prepared to pay the costs as indicated above provided he gets his dog back, it is my view that this is an issue of principle that needs to be considered in this case as it could have implications for the Society and future appeals. As the parties did not have an opportunity to speak to this issue at the conclusion of the hearing, I am asking for written submissions. The BCFIRB Registry will be in contact with the parties to establish a submissions schedule. However, regardless of my ultimate determination on the issue of costs, the dog Kado is to be returned to the appellant forthwith.

ORDER

119. For the reasons outlined above, I order that the society return the dog, Kado, to its owner, the appellant, without conditions, and without a prior requirement that the Appellant pay the Society's costs.

120. The issue of the Society's entitlement to costs is deferred pending the submissions process referenced above.

Dated at Victoria, British Columbia this 26th day of June, 2014

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
Per:

_____
Corey Van't Haaff, Presiding Member