

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 FIVE DOGS AND ONE CAT

BETWEEN:

DIANA ANDRUSEK

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry Review Board: Corey Van't Haaff, Presiding Member

For the Appellant: Diana Andrusek

For the Respondent: Christopher Rhone, Counsel

Date of Hearing: September 29, 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 August 28, 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 September 2, 2014 and perfected on September 5, 2014 following a finding under s. 22(4) of the *Administrative Tribunals Act* (ATA) “that exceptional circumstances exist here with respect to the receipt of the filing fee and therefore have determined that the appeal was received in time”. The appeal was heard by a one-person panel in a telephone hearing on Monday, September 29, 2014. For tribunal orientation purposes, the hearing was observed by BCFIRB member Diane Fillmore, who did not participate in this decision. BCFIRB called veterinarian Dr. Mark Steinebach and Marcie Moriarty to testify at the hearing. Diana Andrusek (the Appellant), was self-represented on the call and called Tania Long and veterinarian Dr. Vishesh Jalan as her witnesses. The Society was represented by counsel and called Heather MacMillan, Larry MacMillan, and Special Provincial Constable (SPC) Christine Carey as its witnesses. 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 permit the Society to retain the four dogs and one cat (the Animals) and at its discretion, to destroy, sell or otherwise dispose of the animals. I note in the Moriarty affidavit that the Society says it plans to adopt the animals to a compassionate person or family capable of providing the animals with necessary veterinary care and appropriate accommodations. I also note that one of the five dogs seized was euthanized due to a medical emergency while in the Society’s custody.
5. I will deal with the issue of costs below.

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 appeals under the *PCAA* which is set out in detail in *A.B. v British Columbia Society for the Prevention of Cruelty to Animals*, (August 9, 2013), which decision was upheld by the Supreme Court on judicial review¹. In summary, the right of appeal to BCFIRB gives 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. It reads in part:

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

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

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

11. Five dogs and two cats were the intended subject of the seizure. One cat could not be caught and the Society says it is not currently in its possession. Five dogs were seized. One dog, in the days it was in the custody of the Society, suffered a medical emergency, was seen by Dr. Steinebach and was transferred to an animal emergency clinic where the Society made the decision that the animal required critical intervention and was therefore euthanized. This appeal concerns the four remaining dogs and one cat.

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

12. All affidavits and witness statements and materials submitted were entered into evidence. Subject to the Appellant's objection regarding the photographs (discussed below), none were opposed although the Society did oppose the testimony of Dr. Jalan being taken as expert evidence as no expert witness form was submitted. 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.
13. As noted, the Appellant has argued that the photographs of her suite, upon which the Society relies, should not be considered. She said that the Society entered her suite illegally and without a search warrant. Beyond what I will say in paragraph 78 below, I do not find it necessary or constructive to enter into an assessment as to whether the Society had the right to enter the premises, including when the tenancy agreement expired and the legal rights arising on the expiry of such an agreement or the filing of an appeal under the *Residential Tenancy Act*: see paragraph 15 below. Clearly, the photographs were taken following a report to the Society and following action taken by the Society in good faith to attend to the apartment based on that report and the information the Society was given. The photographs are relevant to the decision I have to make. While my decision does not depend on them, I am of the view that they are helpful and I am entitled to take them into account given my administrative law mandate to ensure that my decisions are based on the best evidence and the best interests of the animals. In this regard, I note that this appeal is a specialized administrative tribunal process. I am not bound by the rules of evidence that apply in a court of law, as made clear by s. 40 of the *Administrative Tribunals Act* and which ensures that BCFIRB can make decisions under the *PCAA* efficiently and based on reliable evidence rather than having to engage in legal discussions that may have little to do with the reliability of evidence or the best interests of animals:

Information admissible in tribunal proceedings

40 (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]

14. I would reserve the right to exclude evidence that was obtained in a fashion that was so prejudicial to a person that it would be an abuse of this process to include it. However, I do not find that to be the case here with regard to photographic evidence. In light of section 40 of the *ATA*, I am prepared to admit the photographs taken by SPC Carey or her partner, SPC Hall, as I find them relevant, necessary, and appropriate to my determination of what is in the best interest of the Animals.

Decision BeingAppealed

15. The Society received the Animals pursuant to s. 10.1(1)(c) of the *PCAA* on the basis that they were abandoned, in this case because they were found in a rental unit after expiry of the tenancy agreement. The Society was provided a copy of the Order from the Residential Tenancy Branch (RTB) ordering the Appellant to vacate the Property no later than July 31, 2014 by the landlord or his daughter or her ex-husband. The landlord was taking possession of the unit and moved much of

the Appellant's belongings to the yard. The landlord's ex-son-in-law requested the Society attend to get the Animals.

16. In Ms. Moriarty's review decision, she declined to return the Animals to the Appellant, citing SPC Hall's assessment that the Animals were found again to be living in unacceptable conditions. Specifically, Ms Moriarty says:

It is apparent from reviewing the notes of SPC Hall it is evident that the Animals were found again to be living in unacceptable conditions. Specifically, SPC Hall notes "On stairway outside suite Hall noticed a very strong smell of ammonia, feces and garbage. Upon entering doorway Hall was standing on garbage. Doorway entered into kitchen the floor was covered with bags of garbage and belongings. The stove was piled with belongings and the clear areas seen were covered with a thick layer of brown substance that had dripped down the front of the oven... While you have claimed that the mess was made by your landlord at the time, I also have to take into consideration that there have been other instances in your past where animals were found living in similar conditions. The reality is that this places your animals in a position of danger contrary to your duties pursuant to section 9.1(1.)

Dr. Steinebach's report notes some concerns with respect to the dogs and concluded "for both the Labradoodle and the Mastiff, presence of untreated, gross abnormal findings represents dogs that are suffering chronic painful states. Given that the caretaker should have been providing appropriate care or seeking resolution of these pathologies to remedy pain and suffering, and given that these dogs were noted to be continuing to be suffering upon examination, I am compelled to conclude that the caregiver appeared unconcerned with the pain and suffering of these dogs. Conversely, this caregiver was entirely ignorant of the basic care needs of dogs.

You provided me with a partial address on August 23, 2014 where you intend to reside and claimed that you would provide a good environment for the Animals if returned. If this was the first instance where we have had to be involved with concerns about animals, or even the second time, I would be more inclined to give you the benefit of the doubt and return the Animals pursuant to an agreement of care. Unfortunately, this is the more than the 16th time that we have been involved with your animals and you have given me no reason to believe that somehow this time things would be different. You have demonstrated an inability to self-limit the number of animals in your care to a manageable number and thus, I do not have any faith that you would adhere to any agreement to return one or two animals to your care. Furthermore, while your new place of living may currently be adequate, your pattern of behavior leads me to have serious concerns that the conditions would remain adequate. Finally, your history of evading the BC SPCA in the past leaves me with concerns regarding any follow up to ensure any animals that may be returned would be maintained in good condition. Having regard to all the above, I am not prepared to return the Animals to you as I do not believe it is in their best interest.

17. Material Admitted Into Evidence:

Appellant:

- a) Appellant Notice of Appeal (perfected Sept 4, 2014); (**Exhibit 1**)
- b) Appellant Submission (via email Sept 17); (**Exhibit 2**)
- c) Appellant Supporting Documents (via fax Sept 17); (**Exhibit 3**)
- d) Ending a Tenancy Handout (via email Sept 23); (**Exhibit 4**)
- e) Emails between Andrusek and Moriarty (via email Sept 24); (**Exhibit 5**)
- f) Witness Contact Form (Tania Long, Clearbrook Animal Hospital, Melitta Mosdell-Knapp); (**Exhibit 5a**)
- g) Clearbrook Hospital invoices and letter from Dr. Jalan (via fax Sept 29); (**Exhibit 5b**)

Respondent:

- a) BCSPCA initial document disclosure (via email Sept 9); (**Exhibit 6**)
- b) BCSPCA further document disclosure (via email Sept 10; (**Exhibit 7**)
- c) Affidavit of Marcie Moriarty, sworn Sept 23, 2014; (**Exhibit 8**)
- d) BCSPCA submission dated Sept 24, 2014; (**Exhibit 9**)
- e) Witness Contact Form (Wilf Hardcastle, SPC Carey); (**Exhibit 10**)

- f) Cruelty Investigation Information Form (via email Sept 24); (**Exhibit 11**)
- g) Lab Report – Cheam View Vet Hospital (via email Sept 24); (**Exhibit 12**)
- h) Package of Cruelty Reports (via email Sept 24); (**Exhibit 13**)
- i) Witness Contact Form (Heather MacMillan, Larry MacMillan, Maritza) (via email Sept 24); (**Exhibit 14**)
- j) Package of Photographs from Hardcastle (via email Sept 24); (**Exhibit 15**)
- k) Rental property statement (via email Sept 24); (**Exhibit 16**)
- l) Affidavit of M. Moriarty (via courier Sept 25) (Tabs A-HH); (**Exhibit 17**)
- m) Affidavit of M. Moriarty (via courier Sept 26) (tabs A-C); (**Exhibit 18**)

The Society's Case

Marcie Moriarty Affidavit

18. In her affidavit, Ms. Moriarty noted that the Society has been in contact with the Appellant since 2005, received 15 complaints concerning her treatment of Animals in her care, and taken custody of more than 70 Animals either from voluntary surrender or seizure.
19. Ms. Moriarty details the July 2011 seizure and submitted the Draft Information To Obtain a Search Warrant (ITO) but could not locate the attachments that would have been enclosed with the final ITO. She also details other interactions between Ms. Andrusek and the Society.
20. Ms. Moriarty summarizes her decision by saying that in the best interests of the Animals -- which were found abandoned and were in distress due to unacceptable living conditions and medical issues noted by Dr. Steinebach (about 3 dogs) and the statements of SPC Hall in her statement submitted into evidence about the strong smell of feces, urine and garbage, with a floor covered with garbage and belongings and a thick layer of brown substance that had dripped down the stove and a layer of filth on other items, along with the Appellant's history -- that she (Ms. Moriarty) had no confidence in the Appellant's ability to maintain the Animals in an environment that would keep them free of distress, or cooperate with the Society.
21. In Ms. Moriarty's second affidavit, she clarifies that she is sympathetic to the Appellant but her pattern "does not appear to be resolving over time."
22. Ms. Moriarty stated that information about the Appellant eluding the Society is described in the Draft ITO as follows: "...ANDRUSEK is known to elude SPCA officers and often move house to an unknown location. The BC SPCA would only become aware of her location when another animal welfare concern was reported."
23. Ms. Moriarty stated that the other Animals (2 dogs and 1 cat) were not seen by a veterinarian as they were not in need of veterinary treatment and she refers to their conditions as outlined in her affidavit number 1 exhibit Q.

Heather MacMillan Testimony

24. Heather MacMillan is the daughter of Wilf Hardcastle, the Appellant's landlord at the time of the seizures. Ms. MacMillan testified that the Appellant had falsified information on the rental agreement about the number and size of her pets. Ms. MacMillan said the odour from the basement was sickening and got worse over time and was noticed when she would visit her father. It would irritate her throat and eyes so they would often go out for dinner on these visits. The Appellant had

used bleach to clean but was asked to cease using bleach due to the strong smell. Ms. MacMillan could smell rotting material that smelled like feces, rotting food, urine – like a garbage dump. Her father ultimately made an application to the rental board to evict the Appellant due to smell.

25. On August 1st, Ms. MacMillan did go inside the Appellant's rental unit (basement suite) and saw the odd rat, flies, human excrement, and feces on the wall. She said the Appellant stored her human excrement in bags and the bathroom was inaccessible as it was used for storage. She saw spoiled food all over counters and washer and dryer and everywhere and that the dogs were tall enough to reach the food. She saw moldy pet waste, furniture chewed apart and springs protruding. On further questioning, Ms. MacMillan said she concluded the Appellant saved her human excrement as there was no way to get to the toilet, and that she could smell but not see feces. The smell was horrific, she said.

Larry MacMillan Testimony

26. Larry MacMillan is the ex-husband of Heather MacMillan. He attended the rental basement suite on August 1st and ‘freaked out’ at the unbelievable way the Appellant was perfuming the suite to absorb the stink. He called both the SPCA and the police after he saw the unit and he wished he had taken pictures. Photos were not taken until a few hours later. When he stepped into the Appellant's unit, it had been unlocked and he stepped on bags that probably had dog feces and garbage in them. He said there had been a mistake made about human waste and there was a second bathroom that the Appellant could have used. He said there was “dog crap” everywhere with everything scooped into it. He said the cats in her bedroom “shit and peed” on everything. He said three weeks after cleaning out the unit it still had a smell strong enough to make him gag. He said the dogs were in a tight situation chewing drywall and corner bead and barking and screaming for “mercy”. Mr. MacMillan shared his views on the Appellant's mental health and the ways she expressed herself. He said he had called the SPCA as it did not look like she was leaving and his ex-father-in-law had an order for possession.

SPC Christine Carey Testimony

27. SPC Carey attended the Appellant's basement suite on August 1, 2014 and was advised that the landlord was evicting the tenant and moving her out and there was concern about several Animals inside. She was provided with an Eviction Notice, a copy of which was submitted into evidence. She contacted her supervisor who authorized her to enter the premises. She donned protective clothing and awaited SPC Hall then entered the basement suite.
28. She was met with an overwhelming odour. Inside the kitchen, garbage was everywhere; dogs were barricaded behind furniture though the small dog could get past that. There was plastic garbage, empty food containers, toilet paper; it looked like a garbage dump. The majority of garbage was food waste and there was food waste on counters and splashes and spills, bread, veggies, caked on food everywhere. She accidentally bumped against a mirror and it broke. There were flies and spoiled food smeared on things. She took photographs as they entered, submitted into evidence.
29. She noted there was some room for the Mastiff to turn around and more room in the living room. She smelled a lot of rotting food and saw animal waste, urine staining and scum with a lot of cat feces in the other bedroom. She saw a lot of smeared waste and solid cat fecal matter and was confident that what she saw smeared on the lower parts of walls was feces. The kitchen floor had hair and torn food bags. There was feces smeared on the hallway walls and she was confident it was smeared feces. The floor was filthy and there was no food or water in the bowls. In the living

room there was hair, cat feces, garbage and torn up particles of foam, and couch stuffing that could be hazardous if swallowed. There was urine up the walls. Her eyes burned from the smell.

30. SPC Carey determined the Animals would be taken into Society custody as there was an eviction notice, the landlord was in possession of the unit, the owner was nowhere to be found, and the animals were in distress due to lack of clean living area, being abandoned, and no water available. After a quick check (“for bleeding or if an eye popped out”), she provided water. The dogs were well-behaved though the Mastiff clearly had issues and smelled bad.
31. SPC Carey recalled a prior occurrence with the Appellant, when SPC Carey assisted a coworker in February 2011 investigating animal hoarding and observed a small house where she could smell a bad smell of rotting food including moldy bread and vegetables, with multiple bird cages, feces dripping out of the cages, flies in the windows, fly feces on the windows, heavy odour, very large dogs with little room to walk, lots of garbage, and cats popping out of furniture there were so many. The combination of animals waste and rotting food smelled strongly. In that case, thirteen cats were surrendered and the remaining animals continued to live with the Appellant with Society orders issued. When SPC Carey re-attended in July 2011, the conditions were more extreme and 7 dogs and 4-5 cockatiels and some cats were removed as there had been no improvement.
32. SPC Carey noted the condition of the Mastiff’s legs on August 1, 2014. When asked why three dogs were taken to Dr. Steinebach after a delay, she said that August 5, 2014 was the soonest she could get one dog in was to Cheam View Veterinary Hospital and when she later went to Dr. Steinebach, on August 8, 2014, that date was the soonest she could get the three dogs in to see that veterinarian. There is a medical intake form completed which is normally not disclosed to other Society staff, but page 72 of Ms Moriarty’s affidavit does include a summary of the medical intake form in the Cruelty Investigation Form.
33. SPC Carey recalled two interactions with the Mastiff prior to August 1, 2014. In April 2012, there was a complaint from a dog walker that the dog was in a lot of pain with its legs with no medical treatment and poor living conditions but when SPC Carey attended, she got no response from the Appellant. In April 2013, there was another complaint about a Mastiff, a Labradoodle, and a St Bernard but the complainant backed out of the complaint so the Society left an order on the Appellant’s door ordering her to provide necessary veterinary care. SPC Carey never saw the dog to see if it was in distress. She closed the incidents due to a lack of cooperation from the Appellant and insufficient evidence to proceed any further.
34. SPC Carey on August 1, 2014 did not see the dogs as being in critical distress or immediate need of veterinary care, though the Mastiff needed veterinary care. The Mastiff had difficulty walking on August 1 but it was not deemed critical enough for emergency care. The dog saw Cheam View Veterinary on August 5 (the lab reports confirm August 5 but the veterinary files mistakenly say August 7) and there was a plan for an x-ray but this was not done as that veterinary hospital did not have those resources there.
35. A decision was made to take the three dogs to Dr. Steinebach as he is familiar to the Society and is familiar in preparing the expert reports. Part of the reason for seeing the second veterinarian is that in her view, a dog can’t be on Metacam for prolonged periods of time and she wanted the dog to be pain-free. (Dr. Steinebach notes in his written report that he received a verbal report from the Society that when the Mastiff was seen at Cheam View, it got a shot of Metacam and Deramaxx pills. There is no mention of Metacam in the Cheam View invoice, however in Cheam View’s

therapeutic plan, Cheam View mentions Metacam.) The other dogs and the cat did not require veterinary care at all.

The Appellant's Case

Tania Long Testimony

36. Ms. Long, who at the time was staying at a shelter where the Appellant was also staying, testified that she took a phone call from Ms. Moriarty intended for the Appellant and while taking a message for the Appellant, Ms. Moriarty advised her of details of the animal seizure and at the end of the call, Ms. Long understood that if the Appellant wanted her pets back, she had to jump through hoops.

Dr. Jalan (Clearbrook Animal Hospital) Testimony

37. Dr. Jalan is a veterinarian at Clearbrook Animal Hospital and confirmed that he had seen and treated the appellant's dogs, providing a letter dated September 27, 2014 that stated the Appellant "is a client of good understanding" since 2011 and he has been taking care of her animal's veterinary needs, including neutering two dogs (Lucky and Charlie). Hospital records, he said, showed that the Appellant vaccinates and deworms her pets as and when required. Copies of veterinary records (patient history from 9/1/2013-9/29/2014) for Athena, a shepherd mix (described elsewhere in this appeal as the German Shepherd), received rabies and other vaccines on September 2, 2014, interceptor (yellow, 2) and advantage (a medication) (100, blue, ext 1 dog 4 s). For the same time period, Chester's (golden doodle, which is described elsewhere in this appeal as the Labradoodle) history showed Atravet being prescribed 8/1/2013. For the period 9/1/2011 – 9/29/2014, Lucky's (Bull Mastiff, which is described elsewhere in this appeal as the Mastiff) record showed surgery (neutering) on 12/19/2012 along with a Metacam injection and a tattoo.
38. In his oral testimony, Dr. Jalan said that the Appellant had brought her dog Daisy in for treatment for poisoning in February 2011 and he had treated that dog, and Georgie Girl, a white dog, had been brought in after being hit by a car, but that dog died in surgery from complications even though Dr. Jalan said it was brought in "in time." Lucky, Chester, Waffles, and a cat had boarded there in December 2013.
39. On cross-examination, Dr. Jalan said he did not see any issues with bones or joints when he saw the Mastiff, Lucky, in December 2012. When he saw Athena in June 2014, he provided flea medication that four large dogs could use. Although he recommends using it every month, some owners just do it once. Chester was prescribed Atrovet, a tranquilizer, without seeing him to help calm the dog while the Appellant moved.
40. Upon further questioning by the Panel, Dr. Jalan said there was nothing in his record about Lucky's legs and if a deformity was obvious, he would have noted it. He saw Lucky two years previously. He described Lucky as healthy and has never seen Chester. Athena is also described as healthy. He also noted that Lucky and Chester's shots were due. He said when dogs are boarded, they are not examined. When asked about Lucky's legs, Dr. Jalan said if something needed comment he would have commented in his records and if it was a minor deformity needing attention, he would have recommended that so it could not have been obvious at that time.

Diana Andrusek Statement and Testimony

41. The appellant in her written submissions expressed her love for her dogs and everything she has done has been with the focus and purpose of looking after her pets, especially housing. They are her ‘fur children’ and she takes her ‘caretakership’ seriously.
42. Ms. Andrusek said that on August 1, 2014, her landlord Wilf Hardcastle unlawfully entered her basement suite and removed some belongings to curbside, and had the SPCA remove five dogs and two cats. She said this was done illegally as the SPCA had no search warrant or court order and she had filed an appeal on the eviction.
43. Ms. Andrusek provided *Residential Tenancy Act/Guidelines*, and explained that she understood the guidelines to say the ‘rentor’ and/or ‘landlord’ then has to go through a ‘legal’ procedure of getting a court order, hiring a bailiff, and then the bailiff removing the tenant and their possessions from a premise.
44. After her Animals were seized, until Tuesday, August 5, 2014, she was not ‘officially’ made aware of who had taken her pets or where they were at, as there was no ‘official’ notice until after she went to the Abbotsford property at approximately 5:00 p.m. and saw and took the ‘Notice of Abandonment’.
45. Ms. Andrusek feels that Ms. Moriarty did as she implied she would do and has refused to return her pets even though she is aware that they were not abandoned and even though Ms. Andrusek repeatedly asked to have her pets returned. She says she is open to any/all suggestions / directions/etc. from the SPCA i.e., inspections, etc. should her pets be returned.
46. Ms. Andrusek notes that Ms. Moriarty does not say what, why, when, where and/or the dates, situations and/or scenarios of any of these previous “15” incidents and she wants details of each and every one of those “15” incidents/scenarios. Ms. Andrusek says it is easy to say ‘this is the 16th situation’ which does seem like a lot of ‘incidents’ and/or ‘occasions’, but there is/nor has been any ‘details’ of any of these presented in the submissions to date by Ms. Moriarty. She feels those “15” are very pertinent, because of the ‘context’, etc.
47. Ms. Andrusek details some past interactions with the Society, including her belief that the Society failed to investigate a possible poisoning of her Kuvasz (by a neighbour) for which she did not seek veterinary advice, believing, instead, that the dog was a bit sluggish due to its age and the heat. In fact, her dog appeared to have been poisoned and it died at home.
48. Ms. Andrusek admits to her residence being in a ‘questionable’ state at that time and agreed with Society officer Crowder in 2011 that she would clean things up. She did clean things up as suggested by the Crowder, contrary to what Crowder reported.
49. Ms. Andrusek notes that in an ITO submitted by the Society as evidence, it stated that Ms. Andrusek had been inconsistent and the same issues continued to arise but she says she had attempted and endeavored to always do her best, however she does acknowledge that this is/has not been always consistent, as the paper suggests. After various contacts with SPCA persons, she has endeavored to make changes, sometimes but not always with success, but she has tried.
50. Ms. Andrusek denies that she has eluded SPCA officers and she has not moved house to elude them.

51. Ms. Andrusek states that, "After the July 2011 taking of my pets and the resultant situation that occurred, I became 'mistrustful' of the SPCA" and was advised by legal counsel that in any future situations I should request that they put everything in writing."
52. Ms. Andrusek denies the mess and/or unsanitary conditions noted by the attending SPCA personnel as it was made by Mr. Hardcastle and others. She says she was house training two puppies and would leave the place clean, sanitized, disinfected, etc., prior to her leaving each and every time. She stated that when she would return and there would be a 'mess' of feces, urine, destroyed property, "etc.", she would clean it up, sanitize, disinfect, "etc." She stated that some of the mess may have been attributable to her getting ready to move, and that other messes as shown in the photographs were made by the landlord when he entered the premises.
53. Nails were clipped to the best of her ability, as some of her pets were 'gun shy' of this process. They were walked, exercised, cared for, etc. and were not malnourished, etc.
54. She says that while she may have many shortcomings, etc., she has tried to follow through on any requests, needs, requirements, suggestions, "etc.", by anyone and especially the SPCA, and she notes the fact that she has fewer animals than in the past as evidence of taking the Society's comments "to heart."
55. In her oral testimony, the Appellant said she found the seizure confusing, frustrating, and upsetting and she missed her pets. She says her pets are healthy and when she is aware of issues, she takes them to the veterinarian. She says her animals had free-run of her 3-bedroom basement suite and were never barricaded into or out of rooms.
56. She has an issue with the Society's credibility as it has made blanket statements and she has never been charged with anything and in 2011 she asked them for help many times and nothing was done. She is particularly concerned as she believes SPC Carey knew she would never abandon her dogs. This situation is confusing and has made her angry. Since the Society's seizure, Chester was euthanized by the Society and one cat went missing during the seizure. Ms. Andrusek made the point that these issues did not happen when animals were in her care.
57. Ms. Andrusek says she never got a chance to fix anything and yes, things happen in terms of urine and feces, but she cleaned and sanitized 2-3 times a day and put pet waste in the dumpster and recycled her food waste into compost. She said if someone would point things out to her, she would do the best she could. She claims the Society sees her name and bullies her and conspires to get her Animals and phenomenal veterinary bills. She believes that Ms. Moriarty was "fully entrenched" in not returning her Animals to her.
58. On cross-examination, Ms. Andrusek admitted she was living in a safe house from August 1 until around August 23 when she paid rent beginning September 1, 2014 at the address she currently lives at. She says she would have kennelled her animals during that time or found alternate arrangements if they had not been seized.
59. When reviewing the photographs, Ms. Andrusek said that dog waste was not kept in the house nor was compost, and the brown stuff on the floor was stuffing from an antique couch, which must have been under furniture where she did not notice it. She said the photographs were taken illegally. There was no urine or feces when she left that morning and her dogs were walked twice a day. She did not recognize photographs of bags of what appeared to be feces and garbage and she

said that spillage on the kitchen floor was not there that morning though there was food waste on the stove and the fridge was messy as she was preparing to move.

60. She said if there was an odour she would have cleaned it up.
61. She does not agree with Dr. Steinebach's assessment that the Mastiff was in pain though that dog did have an issue with bowed legs. She said she had asked Dr. Jalan to try to fix it but he said surgery is not necessarily successful, but he did not note that in his medical records. Lucky walked slower and she was not aware of how severe it was or she would have done something. The dog was not listless but was energetic and sometimes she would put a tensor bandage on the dog for support. She did not ask her veterinarian to re-check the legs when it was neutered as they were always that way and not progressively getting worse and the dog liked to play and jump and was gregarious and friendly.
62. Ms. Andrusek does not agree on the assessment of the Labradoodle's infected eyes and said she would clean the eyes on a regular basis with Kleenex but there was nothing to the degree described by Dr. Steinebach. It was more like sleep in his eyes and she would trim his eye hair to help reduce the sleep build-up. She cleaned the Labradoodle's ears on a regular basis and de-haired its ears with cloth and her fingers. She disagrees that there was even a possibility the ears were that bad. Whenever the Labradoodle scratched his ears, she would check. Again, she takes her Animals to the veterinarian when she is aware of issues.
63. When reviewing the photograph of what had been described as old, possibly moldy dog feces, Ms. Andrusek said she did not recognize the room and that it looked more like cat than dog feces.
64. When the Panel asked her why she said she ran fans in the house, she said she noticed the smell of animal waste gets stronger as the weather gets warmer whereas coolness dampens the smell. The smell, she said, came from the puppies and she never considered the fan might push the air upstairs to her landlord. She acknowledged that she sometimes smelled feces and sometimes not, and yes she could smell ammonia from the urine. She also said she did not notice Lucky the Mastiff was tired after walks and she would clean Chester the Labradoodle's eyes once a week.

BCFIRB's Witnesses

Dr. Steinebach

65. BCFIRB issued a summons for veterinarian Dr. Steinebach to attend the hearing and speak to the findings in his August 8, 2014 report and provide his professional opinion on the condition of the dogs he examined.
66. Dr. Steinebach is a veterinarian at Valley Veterinary Services and is registered with the College of Veterinarians of British Columbia. Dr. Steinebach saw the Mastiff, the Labradoodle and the Great Pyrenees on August 8, 2014 and never saw the German Shepherd, the Shih Tzu or the cat.
67. In Dr. Steinebach's August 8, 2014 written report, he said examination of the above noted dogs indicated some areas of concern. The Mastiff's locomotory and easily noted gross orthopedic abnormalities and lameness and the Labradoodle's ocular discharge were grossly and readily evident to an on-looker. In the case of both these conditions, both dogs would have been affected from puppy-hood.

68. He goes on to say that: "If these conditions were not receiving appropriate treatment as noted above, both of these dogs would (sic) be experiencing over painfulness as a result." Dr. Steinebach adds that the Great Pyrenees' dermatitis and the Labradoodle's ear infection may not have been readily evident to a casual on-looker but may only have been reasonably noted on closer examination.

69. He ends his report with:

These dogs would have been relying upon the provision of care from the owner. It is not unreasonable to expect that any reasonably competent care-giver with intact cognitive function would have been able to recognize the presence of the grossly abnormal findings. For both the Labradoodle and the Mastiff, presence of untreated, gross abnormal findings represents dogs that are suffering chronic painful states. Given that the caretaker should have been providing appropriate care or seeking resolution of these pathologies to remedy pain and suffering, and given that these dogs were noted to be continuing to be suffering upon examination, I am compelled to conclude that the caregiver appeared unconcerned with the pain and suffering of these dogs. Conversely, this caregiver was entirely ignorant of the basic care needs of dogs.

70. In his oral testimony, Dr. Steinebach testified that the Mastiff was depressed and needed to be carried into the examination room and that depression was a response to pain, as the dog did not want to walk. It was difficult for the dog to maintain an upright posture and there was pain upon palpation. The x-ray confirmed the veterinarian's suspicions about the severity of the deformity. He said there would also be significant arthritic pain, consistent with what he was seeing. Dr. Steinebach explained the Mastiff had been started on an anti-inflammatory at Cheam View Veterinary Hospital which also did blood tests. Dr. Steinebach started the dog on three medications: Deramaxx, an anti-inflammatory which would reduce inflammation and pain; Tramadol, a narcotic-like medication that reduced the dog's ability to feel pain; and Cartrophen, a joint support injectable medication. Dr. Steinebach said when he saw the Mastiff a week later, it walked, jumped, trotted and interacted like a normal dog and in his medical opinion, the relief the dog enjoyed was significant. He also said the dog would not be pain-free but would have diminished pain on medication. The dog would need anti-inflammatory medication every day of its life, but the structural problem would never go away and as it was degenerative, it would worsen over time.

71. Dr. Steinebach said the Labradoodle's secondary eye infection was grossly evident when he walked into the room, with eyes encrusted with discharge; eyes sunken back looking like the dog was squinting and that squinting was a response to pain. Dr. Steinebach said the infection would have been there weeks at least. It was a chronic eye problem and did not arise the day before he viewed the dog. Dr. Steinebach asked the question "What was the caretaker doing all those days when the dog's eyes looked like that?" The dog was anesthetized for the ear cleaning as it was painful and one could not manipulate the dog's ear without pain.

72. Dr. Steinebach said the Great Pyrenees had significant secondary dermatitis as it had a more significant reaction to flea bites than the other dogs did (he saw flea dirt on the three dogs). The skin was red, thick, and itchy and the hair had fallen out.

73. Dr. Steinebach summarized his testimony by stating that on the day he saw the three dogs, he considered all three to be in distress, suffering pain associated with their diseases, unmitigated. If it was mitigated, some pain would have been relieved and that would reduce distress. When questioned about the dogs and sanitation issues, he said dogs should not be allowed to be exposed to feces on the floor of their living environment to prevent exposure to virus and bacteria. He also said dogs like a clean environment. He said dogs should avoid access to rotting food and they are

not immune to pathogenic effects of spoiled foods, and may consume these foods and get sick. It is never appropriate, he said, for a dog to have access to spoiled rotting food.

Marcie Moriarty

74. Ms. Moriarty was called to provide the Panel with explanatory information arising from her review decision. In particular, the Panel wanted information about the 15 times the Society and the Appellant had come into contact, what animals were involved, the nature of the complaint, and the resolution.
75. Ms. Moriarty explained that in the Shelter Buddy sheets provided previously as evidence, each Shelter Buddy job number is initiated when a person calls to make a complaint. She saw at least 15 Shelter Buddy job numbers which, to her, flagged a history. When asked to go through each Shelter Buddy job number and explain what animals were involved, what the complaint was, and how the case was concluded, she explained that “concluded” meant a lot of different things including no further action taken. From the Shelter Buddy, she cannot determine whether an animal was seized or an order issued or no further action taken. Ms. Moriarty testified that it was pivotal for her and almost unprecedented that the Society has taken about 70 animals from the Appellant over time that were abandoned, seized, or surrendered. One of the tests she considers in her review decision is whether the animals, if returned, would remain in good condition and by the Appellant’s history and the number of interactions, she had zero faith the animals would remain in good condition. The Society, she said, is not a babysitting service and that was part of her consideration. It was very telling, to her, the number of different complaints at different addresses in different years regarding repeated issues of living conditions, overcrowding, and hot cars. Whether or not the Appellant’s intentions were there, she was not learning and was consistently increasing the number of animals in her care. Ms. Moriarty said in some complaints received, nothing was done and the summary was a high-level document. Ms. Moriarty said some complaints were concluded by speaking to the Appellant, some circumstances where a constable went out and talked over concerns and where the Appellant should have been given an order, and if a complaint was unfounded it should have been registered as unfounded and that there was one previous seizure and the warrant was submitted into evidence. There have been at least six orders issued. She said at minimum, there have been two warrants and two seizures. It could be more.

Analysis and Decision

76. The Animals were seized on August 1, 2014 on the ground of abandonment. The Society felt it had the authority to seize the Animals as abandoned as there was an eviction notice (order of the Residential Tenancy Branch) and the landlord was moving the Appellant out of her basement suite. The Animals were found in a rental unit after the expiry of the tenancy agreement.
77. The Appellant felt this was an illegal eviction as she had submitted an appeal of the eviction notice. She said she was only out for a few hours, and the Society and landlord ought to have known she did not abandon her Animals. The Appellant submitted information on eviction procedures and said the landlord could not throw her out without following additional procedures.
78. I cannot expect the Society to be intimately familiar with the rules of the Residential Tenancy Branch. The Society had a legitimate and good faith belief that there was an eviction and it was being carried out after the eviction date of July 31, 2014, and believed it was seizing abandoned Animals after the end of a residential tenancy agreement. Whether or not that turned out to be accurate, and whether or not the landlord was correct in his actions, the Animals were about to be

put out of their home while the owner was absent. If the Animals had been let loose, they would have been at risk of injury or loss.

79. While the Animals were seized on the basis of abandonment, and were apparently abandoned when the Society seized them, I note that BCFIRB's ultimate role is to determine whether the Animals should or should not be ordered returned. As such, BCFIRB's assessment is not constrained by the box the Society's officer ticked on the notice when it seized the Animals. Abandoned Animals may also be in distress and may be lawfully seized on that basis as well. Further, I note that distress was the basis on which the Society made its decision not to return the Animals.
80. 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.
81. In considering the evidence, I note that Ms. MacMillan made the outrageous claim that the Appellant stored her own waste, based on Ms. MacMillan's conclusion that the toilet was inaccessible, without noting or being aware that there was a second toilet. On questioning, Ms. MacMillan admitted that she smelled feces but never saw any. I therefore discount the evidence of Ms. MacMillan as being unhelpful.
82. I note that also that Mr. MacMillan made unfounded and irresponsible assertions about the Appellant's mental health which offered no value to my decision.
83. However, I do find SPC Carey's information on the state of the home of the Appellant, along with the photographs, to be ample evidence for me to come to certain conclusions.
84. Based on my assessment of the evidence, I do not find that the Appellant's home condition nor her care of the Animals, based on the veterinary evidence of the Animals' conditions and SPC Carey's testimony, deprived the Animals of adequate food, water, shelter, ventilation, light, space, or exercise. I do, however, find that the condition of the home was unsanitary with clear resultant health risks. It was much, much more than simply grossly untidy or even dirty. In addition to feces smeared on walls and urine scum and staining on floors and walls, there was testimony and photographs of food waste and food spillage and food containers left where the Animals could access them. Dr. Steinebach testified that dogs could get sick from eating rotting and spoiled food, which I conclude was readily available and accessible to the Animals. Under questioning, the Appellant did admit that the odour in her home was growing worse with the warm weather. I believe she did try to clean the feces and urine but the evidence indicates that she was unable to regularly and adequately remove the feces and urine and garbage and rotting food from her home. Therefore, I find that the circumstances satisfied the definition of "distress" quoted above.
85. Further, I find that the Animals were deprived of veterinary care. I do understand that the Appellant has taken her Animals to the veterinarian when she thought they needed care, as a responsible pet owner would do. It is clear to me that the Appellant loves and cares for the health of her Animals and she tries hard to provide that care. Unfortunately, trying is not enough. The Appellant is keen to get veterinary care, according to her own testimony, if someone would tell her that is needed. The problem is the Appellant said she lives alone and does not have any support close by. She has

to be able to rely on her own awareness and initiative to provide her Animals with veterinary care, and she is not capable of doing so, to the detriment of her Animals. As proof, she did take one of her dogs to the veterinarian when it was hit by a car, and another dog when it was poisoned, but she failed to take the large white dog, the Kuvasz cross, to a veterinarian, assuming its sluggishness was heat and old age, when it too was poisoned and it died at home. I do not have confidence that the Appellant in the future would be able to determine when one of her Animals needed veterinary care.

86. The Mastiff was in distress, according to the veterinarian Dr. Steinebach and was in pain. The Appellant seemed unable to determine outward signs of pain and seek veterinary care. I am especially convinced by the veterinarian's account of the Mastiff being carried in on the first visit and walking, jumping, trotting and interacting like a normal dog after receiving pain and other medications for its leg deformity. I am also guided by the fact that the Appellant may have thought she was only wiping sleep from the Labradoodle's eyes and did not notice his ears were infected. That dog later had to be anesthetized to have its ears deep-cleaned, after showing signs of discomfort when his ears were checked, and having severely infected eyes and squinting in pain, yet that went unnoticed and simply swabbed once a week by the Appellant. Although I am also aware that some of her Animals were healthy, I find the risk to those Animals by the Appellant's lack of awareness of when the Animals need veterinary care raises serious doubt about her ability to relieve distress going forward. Despite the Appellant's desire to cooperate with an authority who tells her to get veterinary care for her Animals, this is not practicable and it is not in the best interests of her Animals. I find the Animals were in distress due to a lack of veterinary care.
87. It does not escape me that there was conflicting veterinary advice. On August 5, the Cheam View veterinarian, according to his records, indicated an x-ray was advised and the Mastiff was started on medication for 15 days. Prior to the expiry of these 15 days, the Mastiff (with two other dogs) was taken to Valley Veterinary Services on August 8, where the medication for the Mastiff was changed and augmented, x-rays were done, and ultimately blood work was repeated. There were weekly re-visits for a few weeks, whereas Cheam View sent the dog off with 15 days of medicine. I am also aware that SPC Carey did respond to Panel questions that she does not have veterinary training and did not receive advice when she made her assessment that the Mastiff couldn't remain on Metacam for extended periods of time and she wanted that dog pain-free even though the veterinarian said the dog would not be pain-free and would only get worse due to the degenerative nature of the deformity. Finally, the Appellant's own veterinarian, as recently as 2012 (when the Society already had complaints about the dog's deformity) said there was nothing in his record about Lucky's legs and if a deformity was obvious, he would have noted it. When asked about Lucky's legs, Dr. Jalan said if something needed comment, he would have commented in his records and if it was a minor deformity needing attention, he would have recommended that, so it could not have been obvious at that time.
88. In addition, I am aware that the Society staff, upon seizing the Animals, did not note any urgent issues with the animals, other than the existence of the deformity of the Mastiff. I am concerned that the cruelty investigation intake form in its description of the animals, does not note the ear or eye condition of the Labradoodle, and the Society did not feel it was necessary to take any of the three dogs in to see a veterinarian until August 5 for the Mastiff and August 8 for the other two dogs. I have some difficulty in marrying the fact that Dr. Steinebach said that (with the Mastiff and Labradoodle) "it is not unreasonable to expect that any reasonably competent care-giver with intact cognitive function would have been able to recognize the presence of the grossly abnormal findings" with the fact that the evidence and testimony do not demonstrate that the Society staff noticed anything wrong with the Labradoodle's eyes or ears, according to the incident form, and

SPC Hall only noted, upon seizure, that the dog had "bilateral ectropian of lower lid and a small abrasion on the lower lid" with no comment on any infection present. Both the Society and the Appellant, of course, had noticed the bowed leg deformity of the Mastiff.

89. While I will deal with costs issues associated with conflicting veterinary testimony later on, I do not think it is necessary for me to determine the validity of each veterinarians' advice to determine that the Animals were in distress or how grossly evident any abnormal findings may have been, for either the Appellant or the Society. I find there is enough evidence to conclude the three dogs needed treatment and at least for the Mastiff, improved significantly upon receiving treatment. I do not specifically blame the Appellant for not noticing the eye condition but instead find her general inability to consistently determine the health needs of her Animals to be compelling.
90. The legislative framework was described in *Eliason v SPCA*, 2004 BCSC 1773 where Mr. Justice Groberman (as he then was) stated:

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

91. In determining whether or not the Animals would remain in good health if returned to the Appellant, I am convinced that the Appellant would continue to love her Animals and have a sincere desire to help them but would remain incapable of doing so. I am convinced, based on the testimony of SPC Carey about a previous home visit and the current home visit that led to the August 1 seizure, that the Appellant would allow her home to become unsanitary and, more so, I am convinced that she would not notice how unsanitary her home had become. She believed, I think genuinely, that she cleaned and disinfected daily, yet the photographs of her home and the testimony of SPC Carey indicated this could not have been true.
92. I am also not convinced that the Appellant would provide consistent veterinary care as necessary. She did not notice symptoms of pain in the Mastiff and did not take the Kuvasz to the veterinarian when it was poisoned.
93. I therefore find that the Animals would not remain in good condition if they were returned to the Appellant so I order the Society to retain the four dogs and one cat and at its discretion, to destroy, sell or otherwise dispose of the animals. I should note that I do not find it is necessary to provide the Appellant with an opportunity to improve her situation to allow any return of the Animals. The Appellant has proven to me that she is unable to change the unsanitary condition of her home, as evident with her history, and is unable to recognize when to seek veterinary care, as is evident with her Mastiff and Kuvasz. In this regard, I make reference to comments made by the British Columbia Court of Appeal in *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at paras. 37-38, in responding to the argument that the Society must always give an owner "another chance" before it seizes animals:

In my view, s. 11(a) must be given a broad purposive interpretation. The words "does not promptly takes steps that will relieve ... distress" sometimes will lead to the authorized agent making orders and giving directions, in other circumstances he or she may conclude that the person responsible for the animals is unable to take the necessary steps or it may be apparent that the person is unwilling to take steps to relieve the distress. The cases referred to by the chambers judge illustrate these varied scenarios.

I do not think the cases support the notion, advanced by the appellant, that, as a matter of law, in every case the agent must give the responsible person time in which to relieve the animals' distress. In some cases, as in

the present case, it will be reasonable not to do so. The word "promptly" suggests a consideration whether the person can or will take the necessary action.

Costs

94. 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.

95. 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)".

96. Ms. Moriarty details costs as follows, with costs capped for this appeal:

SPC at seizure \$120 (5 hours x 2 SPC x \$12/hr)

Boarding totaling \$4130 (\$15/day x 4 dogs x 59 days (date of seizure to date of hearing) plus \$10/day per cat x 59 days). Ms. Moriarty provides a breakdown of how she gets the \$15 and \$10 per day figures, including shelter staff time, food, overhead at the shelter, which I find to be a reasonable explanation.

Veterinary costs \$2842.63 with invoices as follows:

\$337.36 Cheam View Veterinary Hospital exam and lab work on Aug 7 for Mastiff
\$754.41 Valley Veterinary Services exam of three dogs, medications, sedation, x-rays on Aug 8
\$168.00 Valley Veterinary Services Doctor's letter Aug 9
\$289.95 Valley Veterinary Services Mastiff follow up exam and medications Aug 14
\$358.37 Valley Veterinary Services Labradoodle follow up and anesthesia for ear plucking on Aug 14
\$328.77 Valley Veterinary Services Labradoodle exam and IV for x-ray and medication Aug 16
\$90.34 Valley Veterinary Services Mastiff follow up exam and injection Aug 21
\$97.38 Valley Veterinary Services Mastiff medication only Aug 28
\$218.44 Valley Veterinary Services Mastiff follow up and medication and lab work Sept 4
\$199.61 Valley Veterinary Services Mastiff medications only Sept 8

Total costs claimed are \$7092.63.

97. The Society's counsel, in his submission, notes that the estimated costs as of September 29, 2014 are outlined above and that there are additional costs incurred by the Society but the Society waives them provided the terms sought above are granted.

98. The Appellant claims the veterinary fees are phenomenal. She denies the Animals required veterinary care as they were healthy when they were seized; the Labradoodle's eyes and ears were not bad, the Mastiff was not exhibiting pain, and the dogs were due for a flea treatment. She said if the Animals had been returned when she asked for them and if she had been told to take them to the veterinarian, she would have done so and she would not have incurred bills as high as the Society incurred. Everything was out of her hands so she should not be liable. She could have attended a veterinarian and costs would not have been like that.
99. I find it reasonable that the Appellant shall be responsible for the costs of the two SPCs to attend the seizure and take custody of five dogs and one cat in the amount of \$120 for their best interests.
100. I find it reasonable that the Appellant pay the boarding costs for 59 days at \$15 per day per dog for the 4 surviving dogs (\$3540), and \$10 per day for the one cat (\$590) for a total boarding fee of \$4130. I do not accept the Appellant's argument that if the Animals had been returned to her when she originally asked, she would not have incurred high boarding fees. The Animals were not returned (as they might have been in a straight abandonment situation without prior history) not because of the abandonment but because the Society believes the Animals would be returned to a state of distress if returned to the Appellant.
101. No invoices were submitted for the emergency care Chester received and I find that the Society has abandoned its claim for such fees and costs.
102. I am troubled by the veterinary invoices. The Society, despite a history with this Appellant that involved complaints about a Mastiff in pain and not receiving veterinary care, determined that from August 1 to August 5, the Mastiff did not require emergency care, and once the Mastiff saw a veterinarian, decided not to follow that veterinarian's plan but instead took the dog along with two other dogs to a different veterinarian who is described as familiar to the Society and familiar at completing expert reports, which is, of course, a separate issue from providing veterinary care itself.
103. The Mastiff did benefit from the medications Dr. Steinebach started him on but the dog did also receive different veterinary advice and the Cheam View Veterinarian had also started the Mastiff on pain medication. I am unable to determine why this differing treatment plan occurred. It is reasonable to conclude that, absent any evidence that the first veterinarian did not provide adequate veterinary advice, his plan should be followed.
104. The Society took the Mastiff to Cheam View and it is my decision that since the Society made that decision, it should reasonably have followed that plan. The Society's decision to attend a second veterinarian who is familiar with expert reports should not be visited on the Appellant. As such, for the Mastiff, I find it reasonable that the Appellant is liable for the Cheam View invoice of \$337.36.
105. I do not find it reasonable to hold the Appellant liable for any additional veterinary invoices for the Mastiff as the Society's decision to seek alternate veterinary care altered the original plan (which there is no evidence was not a good plan) except for the costs associated with the x-rays noted in the original plan. Valley Veterinary Services Invoice \$754.41 is amended to subtract the Mastiff exam fee (\$50) and two Mastiff-related medications (\$53.04 and \$41.20).
106. I hold the Appellant liable for the veterinary invoices related to both the Great Pyrenees and the Labradoodle, as submitted (\$358.37 plus \$328.77).

107. I also find it is not reasonable to hold the Appellant liable for the cost of the second veterinarian to prepare his expert report. The report was written to assist Ms. Moriarty in making her determination regarding the Animals. It was not a necessary expense to benefit the health of the Animals. I find it is not a reasonable cost for the Society to incur with respect to the Animals.
108. I therefore adjust the total costs for which the Appellant is responsible to the Society at \$5884.67.
109. I conclude with a final comment, arising from the Society's submission "there are additional costs incurred by the Society, but the Society waives the same provided the terms sought above are granted". I understand this to refer to additional costs prior to September 29, 2014 that the Society has not claimed from the Appellant, but that the Society reserves the right to claim those costs if BCFIRB does not rule entirely in its favour on this issue.
110. While I appreciate that the Society may make its own decisions regarding the costs it asserts as being reasonable, and may negotiate with an Appellant privately, I would respectfully note two concerns I have with the reservation contained in the Society's submission to BCFIRB – that it "waives the same provided the terms sought above are granted". First, given that the purpose of a costs appeal – at which BCFIRB may "confirm or vary the amount of costs for which an owner is liable under s. 20(1)" – is to settle what are "reasonable costs", I think there is a serious question as to whether it is appropriate for the Society to hold back on claiming certain costs with the intention of asserting them later if their bill is varied, thereby putting an appellant to another appeal that could have been dealt with earlier (which could in theory happen over and over if only "partial bills" are asserted). Second, the reservation can inadvertently create the impression that BCFIRB is being warned that if it does not decide in a particular way, the Society may take further action adverse to the Appellant.
111. While I in no way attribute any improper motives to the Society, I do think it is important to ensure that the roles of BCFIRB and the Society are clear on costs appeals. Unless exceptional circumstances arise, it is reasonable for both parties to expect that where the Society sends a bill, that is the bill, and that where a costs appeal has been filed, BCFIRB's decision will finally resolve the issue up to the date in question.

ORDER

112. For the reasons outlined above, I order that the Society be permitted to retain the four dogs and one cat and at its discretion, to destroy, sell or otherwise dispose of the animals.
113. The issue of the Society's entitlement to costs is varied and the amount the Appellant is liable for is \$5884.67 as detailed above.

Dated at Victoria, British Columbia this 14th day of October, 2014

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Presiding Member