

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 18 DOGS

BETWEEN:

AARON POINT

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:

Donna Liberson, Representative

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

March 30, 2016 with further submissions –
written closing statements on March 31, 2016

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 appellant appeals the February 23, 2016 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society).

II. Brief Summary of the Current Decision under Appeal

3. This appeal is about 18 dogs that were taken into the custody of the Society in February 2016.
4. As set out in my March 15, 2016 preliminary decision, while the parties agree that the Society came into the custody of 18 dogs, they do not agree about how many of the dogs are properly included in this appeal as having been seized by the Society.
5. The Society says that the only dogs properly considered on this appeal are six dogs the Society identifies as having been seized on February 3 and 10, 2016 – Ursa, Belle, Opie, Tonto, Max and Zola – the dogs whose seizure was the subject of the Society’s February 23, 2016 review decision. With regard to the 12 remaining dogs, the parties are at odds. The Appellant says all of the dogs were seized and are properly subject to this appeal. The Society argues that the 12 remaining dogs were surrendered. This issue will be discussed in more detail below.
6. My March 15, 2016 preliminary decision declined to rule on that issue on the basis that the matter was not suitable for determination on a preliminary basis. As a result, I ordered that the Society not destroy, sell or otherwise dispose of any of the 18 dogs until the BC Farm Industry Review Board (BCFIRB) made a final determination on the appeal.
7. For reasons that will be explained in detail later, I have decided:
 - (a) That all 18 dogs are properly included in this appeal;
 - (b) That the Society be required to return two of the dogs, Max and Zola, to the Appellant;
 - (c) That the Society be permitted to retain and dispose of the remaining 16 dogs, and
 - (d) That the Appellant will be responsible for reasonable costs as detailed below.

III. The Society’s Powers and Duties

8. 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”.
9. 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 sections s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: *PCAA*, s. 20.2(1), (2). 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*, ss. 20.2(3).

10. 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.
11. Sections 20.2(4) and (5) of the *PCAA* set 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

12. 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 persons adversely affected by certain decisions of the Society an alternative to a more formal judicial review or judicial appeal. The reforms give BCFIRB broad evidentiary, investigation, inquiry and remedial powers upon hearing an appeal: ss. 20.5 and 20.6. The *A.B.* decision 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*.

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

V. Preliminary Matters

Evidence

13. All affidavits and witness statements, emails, photographs, and materials submitted were entered into evidence. Parties were sworn before giving oral testimony.

Preliminary rulings

14. As noted above, a preliminary application was brought by the Society for a ruling regarding the number of dogs properly part of this appeal, as well as for an order seeking interim costs pending appeal. On March 15, 2016, both applications were dismissed.
15. A second preliminary application was made at the Appellant's request, received on March 29, 2016, the day before the hearing, to require the Society to provide the exact location of the 18 dogs as well as provide unsupervised access for the Appellant prior to the hearing as well as unsupervised access of the Appellant's veterinarian to the dogs, and all veterinary records. My decision on this request was issued on March 29, 2016, denying the request with reasons.

Additional evidence

16. At the hearing, the Appellant wished to include videos not previously available to me or to the Society and the Society wished to include photographs not previously available to me or the Appellant. I allowed all to be submitted as the information could assist me in acting in the dogs' best interests, and ultimately neither party opposed this decision.

Length of hearing

17. Also at the start of the hearing, the Appellant's representative expressed surprise at the fact that only one day had been set aside for this hearing, stating she thought it was a three day hearing, though she could not say for sure how she thought it was three days. She said she was not prepared to present the case and final reply in one day and would need time for the final reply. This was opposed by the Society. It was clear from BCFIRB's March 1, 2016 letter permitting an extension of the submission schedule that the hearing would be on March 30, 2016 beginning at 9 am. There was no mention of more than one day. In any event, the hearing went long and necessitated the submissions of written closing arguments on March 31, 2016. I am satisfied that both parties before me were provided with sufficient time to give testimony on the issues under appeal, including whether the dogs that had been seized were in distress (or had been abandoned) and whether or not they should be returned to the Appellant.

The puppies that were euthanized

18. Finally there was evidence and testimony about the puppies with Parvovirus (Parvo) which were euthanized. The Appellant testified that he only surrendered those puppies as he thought they would receive the veterinary treatment they needed to live. His witness, Dr. Bhullar, testified that the records showed the puppies waited some seven hours for veterinary treatment which was a very long time, and that they should have been seen sooner and may have had a better prognosis. The Society explained that it was challenging to find a veterinary clinic capable of taking these highly contagious

puppies, which were very sick. In the final analysis, these puppies were euthanized and their seizure and return do not form part of this appeal. As a result, I will not be summarizing or making findings regarding that evidence and testimony in this decision, which is about the 18 living dogs. I will, however, make a decision about the Society's costs of care for these puppies (cost of euthanasia) as the Society has requested the costs and the Appellant has appealed the costs.

Material Admitted Into Evidence

Appellant:

- a) Notice of Appeal and 10 page document (perfected on February 29th) (**Exhibit 1**)
- b) Submission including photos, (via email March 21st) (**Exhibit 2**)
- c) Atlas Animal Hospital Invoices (via email March 21st) (**Exhibit 2a**)
- d) Sources of Evidence to be Introduced and Key Points of Submissions of the Appellant (via email March 21st) (**Exhibit 2b**)
- e) Goal: Comfort, Safety and Happiness of the Great Pyrenees Dogs (young and old) and Zola (via email March 21st) (**Exhibit 2c**)
- f) March 18, 2016, Proposal from Tap Roots Plumbing & Heating Ltd (via email March 21st) (**Exhibit 2d**)
- g) Expert Witness Contact form (Dr. Bhullar) (via email March 25th) (**Exhibit 3**)
- h) Witness Contact Form (Aaron and Lonny Point, Ron Wallace, Howard Grant) (via email March 25th) (**Exhibit 4**)
- i) Appellant confirming change of representative (via email March 25th) (**Exhibit 5**)

Respondent:

- j) BC SPCA initial document disclosure – Tabs 1-27 (via email March 3rd) (**Exhibit 6**)
- k) BC SPCA initial document disclosure – Tabs 27-37 (via email March 7th and courier March 8th) (**Exhibit 7**)
- l) BC SPCA initial document disclosure – Tabs 37 (via email March 8th and courier March 8th) (**Exhibit 8**)
- m) BC SPCA further document disclosure – Tab 38 (via email and courier on March 22nd) (**Exhibit 9**)
- n) M. Moriarty signed draft Affidavit #1, (via email and courier March 22nd) (**Exhibit 10**)
- o) Expert Witness Contact Form Drs. Fazeli, Wilson, and Chow (via email and courier March 22nd) (**Exhibit 11**)
- p) Witness Contact Form SPC McKay (via email & courier March 22nd) (**Exhibit 12**)
- q) M. Moriarty signed Final Affidavit #1, (via email March 24th and courier March 29th) (**Exhibit 13**)

Exhibit List Preliminary Matters:

- r) BCSPCA Preliminary Application (includes Affidavit of SPC McKay, Tabs A-C, and BCSPCA submission) (via email March 3rd and courier March 4th) (**Exhibit 14**)
- s) Liberson email (via email March 8th) Point response submission (includes signed Affidavits from Aaron Point and Grace Point) (**Exhibit 15**)
- t) BC SPCA final reply submission (via email March 9th) (**Exhibit 16**)
- u) BCFIRB Preliminary decision issued March 15, 2016 (**Exhibit 17**)
- v) Urgent submission from appellant (March 25, 2016) (**Exhibit 18**)
- w) BCFIRB preliminary decision issued March 29, 2016, (**Exhibit 19**)

VI. The Appeal

Brief History

19. The Appellant breeds and trains Great Pyrenees dogs to be guardians of both people and property, and provides these dogs at no charge to farmers and others once the dogs reach the age of maturity at around two years. His puppies have been featured in commercials and advertising. The Appellant says Great Pyrenees dogs are calm, well-mannered and serious dogs when not provoked, are devoted to family but wary of strangers, and are especially courageous. The Appellant is a Registered Indian (Status Indian) and lives on the Musqueam Reserve in Vancouver with his wife Grace Point who is not a Registered Indian and who has left the property and the marriage since the seizure of the dogs.
20. The Appellant has been in an ongoing property dispute with the Musqueam housing authority regarding conditions of the Appellant's home and property related to drainage and other issues. As a result of the condition of the yard, the Appellant sent six dogs to a kennel in Kamloops on April 27, 2015 and kept, ultimately, 12 dogs at his Musqueam home. There has been some history of dog-related complaints, including dog-at-large complaints. The Society and the municipal dog catcher have attended the property previously.
21. Around the end of January 2016, after apparently not receiving adequate payment from the Appellant for kenneling the six dogs and the Appellant being unreachable by telephone after November 24, 2015, the kennel owner (according to SPC McKay's affidavit) "delivered these dogs to the Society due to the Appellant's failure to collect them." The Society, on January 31, 2016, issued notice of abandonment under s. 10.1 of the *PCAA* which was disputed by the Appellant on February 3, 2016 (within the time required), and reiterated that dispute on February 11, 2016, after which date the Society (starting February 12, 2016) took the position that the s. 10.1 notice had been issued in error on the ground that ownership of the dogs had already been transferred to the Society by the kennel owner.
22. On February 3, 2016, the Society executed a warrant to enter the Appellant's property, understanding several dogs to be in distress. The Society seized ten dogs and seven puppies, and found an additional two dead puppies. The Society learned that two additional dogs were off-site with the Appellant. There is dispute over whether some of the seized dogs were surrendered on the spot, over the telephone, by the Appellant or by the Appellant's wife, in writing, but for certainty four were not. At the time of the wife signing over the dogs, she also apparently signed over four of the six dogs from the Kamloops kennel. On February 10, 2016, the two remaining dogs were seized from the Appellant's residence. The Appellant appealed all seizures/abandonments and wants all 18 dogs back.

Society's Review Decision

23. In her February 23, 2016 written reasons, Ms. Moriarty of the Society found upon review that the dogs she considered had been seized by the Society were in distress when they were seized. Regarding the return of the dogs, Ms. Moriarty wrote:

I turn now to the question of whether or not it would be in the best interest of the Dogs to be returned to you. In making any determination regarding the best interest of the Dogs, I consider whether you would be able to ensure the Dogs remained distress-free if they were returned. This is a duty owed by an owner

pursuant to section 9.1 of the Act. I also consider the history leading up to the seizure of the Dogs and the health of all of the dogs which you previously owned that have come into the custody of the BC SPCA on February 3rd and 10th, 2016.

Before I go into my reasons why I do not feel it is in the best interest of the Dogs to be returned to you, I want to address your submissions. While you were given ample opportunity to address the concerns raised in the disclosure package surround the care of the animals, I have only been provided with one short email from Ms. McLean. In this email, there is suggestion that you are looking to relocate to a new property and are applying for a mortgage on “350 acres with home near Williams Lake” and that you have a food supplier lined up. These are really the only submissions I have to consider, none of which addresses the medical condition in which the dogs were found, nor a plan for what you would do currently to properly care for the Dogs if they were returned. When considered along with all of the veterinary evidence and the reports of the constable as set out in the First and Second Warrant, I believe there is ample evidence to support a decision not to return the Dogs.

In making my decision, I found the history as set out in both the First and the Second Warrant extremely helpful and have relied on the entire documents in making my decision. It is clear that you have been given ample opportunity to relieve animals in your custody of distress but ultimately have failed to do so. The conditions in which the Dogs were found were absolutely unacceptable and included abundance of feces and urine, dirty water, injurious objects, and inadequate shelter. The medical conditions in which the Dogs were found were even worse, with some deceased puppies found on the premises. The observations of the constable on site included the fact that many of the dogs and puppies were underweight, dehydrated, matted, limping, long nails and fearful.

The veterinary reports go into detail regarding the health concerns for the dogs and puppies removed from your Property, including the Dogs in dispute. Sadly, all of the seven puppies seized either tested positive for parvo or were exhibiting clinic signs of the disease and all had to be euthanized. This is tragic as Parvo is a preventable disease if the puppies were provided with the required vaccines. In addition, you admit that 4 puppies had died in your care when we executed the First Warrant and yet you had not sought out veterinary treatment. The result was that these puppies suffered needlessly and in the end paid with their life.

Dr. Wilson examined the adult dogs that were seized from the Property, including the Dogs in dispute. I rely on her entire report in making my decision but will highlight some of the more persuasive portions below. Dr. Wilson concludes:

A finding common to all twelve dogs was obvious signs of neglect with respect to their basic grooming and hygiene. It was quite evident that they had been kept in overwhelmingly filthy and unhygienic conditions. They were undersocialized and all showed signs of inadequate housing and basic care such as appropriate food, chewing objects, cleanliness, bedding, socialization, minimal grooming for welfare and health. The infections, parasites, exposure to potentially fatal virus, injuries and fear were all preventable with basic minimal care. The fact that they were universally present in each of these dogs is a clear cut case of neglect.

After reviewing all of the evidence before me, I have absolutely no faith that if these Dogs were returned to you that they would remain distress free. You have demonstrated repeatedly that you are unable to provide even the basic care for the dogs in your custody and have shown callous disregard at times for their health and wellbeing. The BC SPCA has been extremely accommodating in accepting surrender of your animals in the past and has spent thousands of dollars on providing much needed medical care and housing. I have no doubt that if I was to return these Dogs to you, that we would soon see them (or their progeny) back at the BC SPCA. As such, I am not prepared to return the Dogs to your custody.

The Society's Case

24. The Society relied on all its submitted material, submissions and witness testimony, and I reviewed and considered all material, submissions and testimony, whether or not I refer to it here.
25. The Society asserts that this particular matter concerns the Society's February 3 and 10, 2016 removal of six dogs from the Appellant's property despite the Appellant's assertion that this matter also concerns twelve other dogs, including six dogs that were "seized and immediately surrendered on February 3, 2016" at his home, and also six dogs abandoned by the Appellant on the same date at a boarding facility in Kamloops called "Country Pawz Estates".
26. The Society presently holds the following dogs (collectively the "Animals"):
 - A. Seized by the Society:
 - i) **Ursa** – seized February 3, 2016
 - ii) **Belle** – seized February 3, 2016
 - iii) **Opie** – seized February 3, 2016
 - iv) **Tonto** – seized February 3, 2016
 - v) **Max** – seized February 10, 2016
 - vi) **Zola** – seized February 10, 2016 (collectively the "**Seized Dogs**")
 - B. Surrendered to the Society:
 - i) **Alpha** – seized then immediately surrendered February 3, 2016
 - ii) **Sunshine** – seized then immediately surrendered February 3, 2016
 - iii) **Scooter** – seized then immediately surrendered February 3, 2016
 - iv) **Peanut** – seized then immediately surrendered February 3, 2016
 - v) **Bocci** – seized then immediately surrendered February 3, 2016
 - vi) **Breeze** – seized then immediately surrendered February 3, 2016 (collectively the "**Surrendered Dogs**")
 - C. Abandoned by the Appellant (Kamloops)
 - i) **Golden Boy** (Abandoned, also "surrendered" February 3, 2016)
 - ii) **Blue** (Abandoned, also "surrendered" February 3, 2016)
 - iii) **Lady** (Abandoned, also "surrendered" February 3, 2016)
 - iv) **Doc** (Abandoned, also "surrendered" February 3, 2016)
 - v) **Gunner** (Abandoned)
 - vi) **Jasper** (Abandoned) (collectively the "**Abandoned Dogs**")

27. The Society asserts that on February 3, 2016, during SPC McKay's attendance at the Appellant's residence, the Appellant verbally agreed over the phone to surrender six dogs that were present in his home, as well as the four dogs he had boarded in Kamloops (Golden Boy, Blue, Lady and Doc) and further that he authorized his wife Ms. McLean to sign a document in his absence surrendering the dogs. With regard to the two other dog groups, the "Abandoned Dogs" were found in the February 23, 2016 review decision to have been abandoned by virtue of the Appellant failing to pick the dogs up from the Kamloops boarding facility, and that a s. 10.1 abandonment notice regarding these dogs had been issued "in error as these dogs had already transferred custody to the boarding facility". The Society also argues that, separate and apart from the events of February 3, 2016, all of the "Abandoned Dogs" were surrendered to the Society by the boarding facility when it took ownership of them under the boarding contract after the Appellant did not collect them and did not pay his bills. With regard to these dogs, the Society argues that the Appellant had ceased to have any rights over them at the time the facility surrendered them to the Society.
28. The Society asserts that it would have no basis to "invent" the surrender for the "Surrendered Dogs" as those dogs were clearly in distress. Given the Society's policy not to charge s. 20 costs to an owner that voluntarily surrenders animals to the Society (post-surrender), the Society's self-interest would be to claim the animals were seized and not surrendered, as all costs of care would thereby be visited upon the Appellant. The Society says the Appellant did in fact surrender the dogs, either himself or via Ms. McLean (Grace Point) who, the Society says, is also an owner of the subject animals or acted as his agent in signing the surrender forms.
29. The remainder of the dogs (the "Seized Dogs") were seized as they were found to be in distress.
30. At the hearing, I asked the Society to clarify its interpretation of a clause in the kennel agreement (which the Appellant denies signing) between the Kamloops boarding kennel and the Appellant, given that there was no pick-up or contact time. The clause says that "upon agreed pick-up or contact time, if within 72 hours and we have had no contact from said owner and we have exhausted all avenues of contacting the owner Country Pawz Estates will consider the dog/dogs abandoned and will take necessary steps to either find them new homes, or surrender them to a rescue facility or the SPCA." The Society advised me that since there was no pick-up time, the 72 hour clock started when the kennel contacted or attempted to contact the Appellant.

Witnesses for the Society

Dr. Omid Fazeli

31. Dr. Fazeli is a veterinarian in British Columbia and confirmed he authored the report submitted as Exhibit 6 page 168-169. In his report and testimony, Dr. Fazeli confirmed the seven puppies (the puppies with Parvo that were surrendered during the March 3, 2016 seizure and are not part of this appeal) came in shivering, lethargic, smelling like foul bloody diarrhea and covered with bloody diarrhea and vomit. Dr. Fazeli explained Parvo disease in dogs and puppies, and said all these puppies had symptoms of the disease whether or not they tested positive, as a negative test meant that the virus was not being shed in their feces. He believed the tests were likely false negatives. Parvo can be prevented by vaccinating dogs as their puppies can get maternal immunity from a vaccinated mother dog and the vaccine is specifically recommended for dogs that are breeding.

32. When I asked if Parvo can be contagious from a puppy to an adult dog, Dr. Fazeli said it was possible, that's why you vaccinate.

Dr. Jodie Wilson

33. Dr. Wilson is a veterinarian in BC and works at the Society's animal hospital. She authored the report in Exhibit 6 pages 159-165. She examined all ten dogs brought in on February 3, 2016 and then examined two more dogs on February 11, 2016 as well as re-examining a couple of dogs from the first group.
34. Regarding the ten dogs (Alpha, Sunshine, Scooter, Ursa, Belle, Peanut, Bocci, Breeze, Opie, Tonto) examined February 3, 2016, Dr. Wilson's report said one of the first things she noticed when walking into the room that the dogs were housed in was the smell. Although there were no feces or urine in any of the cages, there was a powerful odor of feces, foul diarrhea, infection and to a lesser extent urine. Although these dogs did not have signs of having diarrhea themselves, they had been in the same home as a group of puppies who were suffering from a severe, often fatal and highly contagious diarrheal disease called Parvovirus. The fact that she could smell the distinctive smell of Parvovirus diarrhea on these unaffected dogs, she said, means that they were in heavy contact with the virus laden feces of the puppies. This level of hygiene is not normal for a dog, as they will try to avoid lying in or on a contaminated or dirty surface. Even if an animal's coat becomes dirty, she said she has only ever encountered this level of odor when an animal is subject to prolonged confinement in unsanitary conditions where the air is permeated with this smell.
35. Dr. Wilson's report said the dogs tested positive for whipworm. This is a gastrointestinal parasite contagious to other dogs. It is seen occasionally in healthy puppies and dogs who pick it up from an environment contaminated by dog feces, but is more commonly associated with groups of dogs housed in unsanitary conditions. All of the dogs were filthy and showing a lack of a basic maintenance level of grooming. Their coats were heavily matted and discoloured with feces, urine and dirt. All of them had long overgrown nails, particularly the hind dewclaws that are characteristic of this breed. They all had discharge in their ear canals and many had chronic ear and skin infections. A number of dogs had infections of the outer ear flap which were more severe than the infections within the ear canal, indicating that either the ear infections were present for so long that they hurt themselves by scratching at their ears, or that prolonged contact with external filth and bacteria caused the outer ear flap infections. Despite the fact that this breed of dog has a very thick and voluminous coat, it was readily apparent from a distance that this whole group of dogs was underweight.
36. Dr. Wilson's report said that one of the most striking things about this group of dogs was how unsocialized, fearful and withdrawn they were. When left alone and unstimulated, they all just lay there subdued and inactive. When stimulated they behaved in a markedly fearful manner or appeared to emotionally withdraw and submitted to contact when she examined them. A single dog wagged her tail, one single time. Eight of them were cowering at the back of their enclosures with fearful and submissive body postures and showing a marked lack of basic socialization (panting, head down, growling, hunched back, tail down and between the legs, avoiding eye contact, indirect eye contact from an angle, ears held down and back, licking lips, drooling, trembling, refusing food or treats, hypersensitivity to sounds and movement, barking and retreating at the sight of people). None of them would walk on a leash whether from fear or from unfamiliarity with leashes. The other two (Opie and Tonto) showed signs of both fear and aggression and a profound lack of

socialization, much more severe in Tonto's case (growling, barking, advancing at the sight of people, panting, ears forward, refusing food).

37. Dr. Wilson's report went on to provide individual assessments of each dog, including these two:

Belle: Intact female adult. Fearful, shy and withdrawn. Thin at BCS 3/9. Lactating. Mild mucoid discharge in eyes possibly from unsanitary environment. Leaking urine during exam, urine scalding around vulva. Urine has large chunks of pus and debris in it. It is unusual to be able to see chunks of infected material in urine and this indicates a very severe long-standing bladder infection (weeks to months).

Peanut: Intact female approximately 8-10 months. History as per the owners of being hit by a car an unknown time ago. Scared, growling, withdrawn. Thin at BCS 3/9. Severe chronic skin infection of right ear flap, disproportionate to the severity of the ear canal infection. Mild infection in left ear canal. Very itchy painful ears. Severe lameness (limp) of left hind leg, leg splays out when walking. Prescribed a painkiller, topical ear medication, antibiotics, radiographs and orthopedic exam under sedation, parvoviral testing, fecal testing, bathing and dematting, nail trim, ear cleaning and follow-up exam. Radiographs performed Feb 5 by another veterinarian and reviewed Feb 16 by a board certified radiologist showed an old (weeks) fracture of the left ischium (pelvis) and an older healing trauma to the left tibia (shin bone). These injuries would have occurred from two separate traumatic events. The pelvic fracture would require a significant amount of force to break the pelvis of a dog this size.

38. Dr. Wilson's February 11, 2016 report regarding the final two dogs seized on February 10, 2016 (Max and Zola) stated that while fearful, they were better socialized than the dogs in group 1. The other most notable difference was that while the dogs in group 1 were all alarmingly thin, these dogs in group 2 were a touch overweight. Similar to group 1 these dogs were also filthy, had long nails and showed a lack of basic nutrition, grooming and hygiene. They showed signs of inadequate bedding and oral trauma from chewing hard objects.
39. Dr. Wilson's report said that Max was missing a lower left incisor tooth and an enamel chip on the lower left canine tooth, had long nails, discoloured filthy matted coat, dirty skin on his belly where it contacts the ground when lying down and mild to moderate discharge in ear canals. Zola had worn chipped teeth, and an old fracture on the crown of the upper left carnassial tooth which the veterinarian could not assess definitively as to whether or not the pulp chamber exposed but she strongly suspect so - such chipped teeth are consistent with prolonged chewing of hard objects such as bones or rocks. Zola had long nails and pressure sores on her ankles, elbows, and rump from chronic housing on hard surface. Zola has a severe chronic ear canal infections causing pain and itching. Possible allergic origin but has not been adequately treated for some time (months).
40. In response to my questions, Dr. Wilson clarified that body condition scoring was out of 9: 1 was near death and emaciated, 2 was quite thin with some muscle wasting, 3 was little to no fat inside the abdomen but muscles intact and 4 was slightly underweight; 5 was normal. She took age into account in her assessment as young dogs naturally carry more weight inside their bellies and have less muscle. She acknowledged there was a certain amount of subjectivity in these assessments as well as some veterinarians score out of 5 and some out of 9.
41. Dr. Wilson testified that any group of dogs would be fearful when seized or in unfamiliar environments but she can usually win over an average dog in 30 seconds with non-threatening body language. These dogs, she said, as a whole, were unsocialized. One dog wagged its tail once.

42. When asked about Dr. Bhullar's testimony that these dogs couldn't be unsocialized as the veterinarians were able to examine them, Dr. Wilson said that just basic touch is a low bar to reach and that a dog that lets you examine it does not mean it is calm and cool.
43. Dr. Wilson testified that Peanut did not want to walk on February 3, 2016 and she noticed a very obvious limp in the left hind leg which would splay out. Peanut was stoic on exam. An x-ray was done by another clinic and showed a fractured pelvis which had some remodeling which meant the fracture existed for long enough that some healing was seen. Peanut was put on the strongest painkillers she gives but surgery was not likely as healing had begun and the fair bit of pain felt on fracture would decrease as the body stabilizes.
44. Belle's bladder infection was causing her to drip urine and signs of this infection would be evident.
45. The dirt on all the dogs was extreme and on most dogs extended down to the level of the skin. The profound external dirt came from the environment and she could see and smell urine and feces and regular dirt. Her nose and eyes told her bits of feces were caked on the dogs (not from a recent bowel movement) and they were so dirty she had to change gloves after each dog was examined. Such fecal contamination can cause infections and diseases and whipworm and Parvo and parasites and viral issues all spread through feces. Urine can cause chemical irritations and infections. Whipworm, which the dogs had, is a gastrointestinal parasitic worm that bites the inside of the dog's colon and drinks blood. The body has an inflammatory response to this and the dog can become anemic and get periodic diarrhea or more serious illnesses.
46. Dr. Wilson testified that it took a while for the underweight dogs to get that way and it was a chronic problem, plus it made them more susceptible to disease.
47. The Appellant asked if the intact dogs had lower body weight and Dr. Wilson said yes so you need to feed them more. They are not inherently skinnier dogs but their metabolism needs higher food intake. Dr. Wilson confirmed she had treated "loads" of Great Pyrenees dogs.

Dr. Cindy Chow

48. Dr. Chow is a veterinarian in BC and confirmed she wrote the report at Exhibit 6 page 324 which stated that she saw Tonto on March 11, 2016. She shaved his matted areas and uncovered three moist dermatitis or hot spots. She described Tonto as very fearful and unsocialized, with debris in his ears.
49. Under cross-examination, Dr. Chow testified that Tonto did not need sedation, was very fearful but allowed a muzzle to be put on him. She shaved the dog to expose the skin to find the hot spots which could not be seen due to the thick matted coat. Shaving exposed the hot spots. Tonto did not bite. Dr. Chow does not think Tonto is unadoptable but will require a lot of work. Dr. Chow agreed that walking a dog for an hour or more each day and being taken to work and involved with neighbours is part of its socialization.
50. In response to my questions, Dr. Chow testified that Tonto experienced a lack of touch and socialization, and that this has had a lifelong effect, and that such dogs don't cope well with new situations. She did not need to hear from the Society that this dog was fearful as she could see it for

herself from the time he was being removed from the truck and brought into her clinic. Tonto was withdrawn and nervous. Dr. Chow said an unsocialized dog is untrusting and fearful.

Special Provincial Constable Stephanie McKay

51. Special Provincial Constable McKay confirmed she was appointed under the *Police Act*.
52. SPC McKay's February 3, 2016 affidavit states she executed a warrant to enter the Appellant's property as she had concerns regarding multiple animals in distress. She discovered two adult Great Pyrenees dogs in the backyard of the house, outside; one dead puppy outside in the rain (backyard of the house); eight adult Great Pyrenees dogs inside the house (fighting); seven puppies in the house; and one dead puppy in the house. The living animals were in poor condition: underweight, dehydrated, pale gums, matted and dirty coats, long nails, limping. They displayed fearful and aggressive behaviours. In her opinion, the dogs were kept in unsanitary and unacceptable conditions. The backyard outside area was muddy and littered with feces, lacked any adequate shelter or potable water, and included injurious debris (gardening shears, pop cans). The interior of the house contained an abundance of feces and urine, smelled strongly of urine and feces, had accessible dirty water, contained an open bag of dog kibble spread over the kitchen floor on top of feces and contained chewed pieces of an unidentified animal carcass.
53. The Appellant's wife was present and told her four other puppies had died in the past 24 to 48 hours and Parvo was suspected.
54. SPC McKay understood the Appellant had taken two additional dogs to work with him: "Max," a Great Pyrenees large intact adult male and "Zola," a Black Labrador mixed breed adult spayed female.
55. During the February 3, 2016 seizure, the Appellant's wife was speaking on the phone to the Appellant. She handed SPC McKay the phone. SPC McKay told the Appellant the dogs were all in distress due to their physical condition and living conditions, and that the Appellant was responsible for all costs incurred by the Society to care for all the animals. The Appellant verbally agreed during her conversation with him to surrender all but four Great Pyrenees dogs that she had found at the Property (the surrendered dogs consisted of Alpha, Sunshine, Breeze, Scooter, Peanut and Bocci, plus all seven puppies) as well as four dogs that he had in Kamloops (which she understood to be Golden Boy, Blue, Lady and Doc), and that he authorized his wife to sign over the dogs in his absence, which she did.
56. On February 6, 2016, SPC McKay received an email from the Appellant advising that his wife lacked legal authority to sign the dogs over to the Society.
57. On February 10, 2016, SPC McKay returned to the property with a warrant and with police and upon entering the residence on the Property found "Zola" shaking her head. SPC McKay suspected she was suffering from an ear infection. She saw the Great Pyrenees Dog "Max" as well. He was friendly, but matted. Inside, the residence smelled strongly of bleach and feces. The floors appeared to have been mopped, but contained dirty smears. SPC McKay noticed caked feces and mud remaining over most of the floors. Water and food were available to the two dogs. The Appellant, who was present, refused to surrender the two dogs (Zola and Max). He also told her he

had not surrendered the previously seized dogs. Due to the continuing unsanitary conditions SPC McKay seized Zola and Max.

58. SPC McKay referenced veterinary reports which revealed that “Alpha” had a spinal injury (compressed disc). All of the examined dogs were found by the veterinarians to be underweight including some emaciated, foul smelling, dirty and with matted coats, having long nails, skin infections, fleas, ear infections, eye infection, puncture wounds and displaying fearful and/or aggressive behaviour.
59. In her testimony, SPC McKay said she attended the property in January 2016 as a dog at the Vancouver Pound matched the description of one of the Appellant’s dogs (Ursa). On that day, she smelled a strong odour as she approached the door and saw and smelled mud and feces in the yard. There was no answer so she left a request – not an order – for contact with her prior to January 20, 2016. When the Appellant picked up Ursa, SPC McKay spoke to him in person and left an order for him to have Ursa seen within 24 hours. She was concerned about the smell from his home and wanted to inspect the dogs there.
60. On January 24, 2016, SPC McKay confirmed Ursa attended “Atlas” and the dog went home with antibiotics and with a recommendation for blood-work and x-rays if there was no improvement, according to Dr. Grewal.
61. On January 27, 2016, SPC McKay tried to assist with capturing one of the Appellant’s dogs (Scooter) running loose, but Scooter was so terrified you couldn’t get near him. SPC McKay attended as the Vancouver Pound would not attend and SPC McKay was worried about the dog. She went to the Appellant’s home to ask for help and spoke to the Appellant’s wife and smelled quite a foul smell when the door was opened which she described as a “putrid wall of stench.” It smelled more like feces than anything. SPC McKay assisted the Appellant’s wife in capturing Scooter through the enticement of another of the Appellant’s dogs, Tonto. Tonto had a foul odour coming from him.
62. On January 31, 2016, SPC McKay posted a notice at the Appellant’s home regarding the Kamloops kennel dogs which were “surrendered as abandoned” from a boarding facility. The notice provided four days to dispute the surrender.
63. On February 2, 2016, SPC McKay followed up with “Atlas” about Ursa and spoke to Dr. Abbas who told her that Ursa had not come back in for a re-check, that he had seen the Appellant’s dogs before and they had presented in poor condition with dirty matted smelly coats and being fearful. He was concerned the remaining dogs might have issues with the living conditions. SPC McKay said the doctor did not actually use the term poorly socialized, that was her summary.
64. On February 3, 2016, SPC McKay applied for a warrant. She arrived to find friendly Ursa and fearful Scooter in the back yard along with a dead puppy by a chair. She could see multiple dogs in the house together with feces, urine and spilled food. There were feces in the mud in the yard. The officers tried leashing and coaxing the dogs out one by one and were using a board as a barrier for the dogs when SPC McKay noticed the Appellant’s wife sleeping in the front bedroom. She woke her and let her know the Society was there with a warrant. The Appellant’s wife said she did not want to deal with it and pulled the covers over her head. SPC McKay told the Appellant’s wife the Society was seizing all the dogs due to living conditions including open kibble over top of feces

and failure to seek veterinary care and that the dogs were in distress. At that point, the Appellant's wife assisted with leashing and walking the dogs to the vehicles, especially Tonto.

65. The Appellant's wife mentioned that Peanut was injured and limping. SPC McKay also found another dead puppy, wedged between computer equipment. At the end, the Appellant's wife thanked the Society for intervening.
66. The Appellant's wife called the Appellant and passed the phone to the SPC. The Appellant asked the SPC to go away from earshot of his wife. The Appellant said he would take the puppies to the veterinarian in two days but the SPC said they wouldn't last two days. The Appellant asked her 'what are we looking at' and she said possible charges, jail time, and a fine, and she gave dispute instructions. The Appellant surrendered the puppies but disputed six dogs (four in Vancouver and two in Kamloops): Ursa, Belle, Jasper, Tonto, Gunner and Obe. The Appellant told SPC McKay to ask his wife to sign the form. She advised him to clean his house and take the two dogs with him – Max and Zola - to the veterinarian if there were any issues.
67. SPC McKay testified that the home was fairly bare with exposed concrete floor. Everything was covered in dirt, dust and feces. There was soiled carpet in the bedroom and a soiled mattress. The couch was partially chewed and soiled. Photographs were taken.
68. On February 10, 2016, SPC McKay executed the second warrant for Max and Zola. The police assisted in gaining entry to the Appellant's home but no guns were drawn. The house had a foul odour of feces and bleach. The floors looked like they were covered with feces smeared with a mop. Food and water were present. Zola was shaking her head and Max was quite matted. The two dogs were taken due to their living conditions, matting, and the Appellant's failure to provide veterinary care. There was still urine and feces in a majority of the home.
69. On cross-examination, SPC McKay testified that on previous visits to the Appellant's residence, when she had been let in, the home was quite clean, and that prior to January 2016, she had not seen any reason to seize the adult dogs. In August 2015, the Appellant's wife surrendered five puppies. Around that time, the Appellant told her that he was looking for homes for some of his dogs and was focused on having six to eight, though she was unsure how many were actually in the home.
70. SPC McKay testified that the Society does not have an animal control contract with the Musqueam Band so it is not required to be accompanied by Musqueam security while on the land. The Society attends as a courtesy.
71. In response to my questions, SPC McKay confirmed that prior to January 20, 2016, there had been issues at the Appellant's house but they were rectified as the Appellant either cleaned up or took his dogs to the veterinarian. On January 20 and February 3, 2016, she said the Appellant had partially complied. She said she could initially see into the home from outside the back fence by looking through a sliding glass door which was open for in and out access by the dogs. She also viewed the inside of the home by standing outside the front door through a partially opened blind. She acknowledged her information sworn as part of the ITO did not include the fact she viewed the home from outside or that the Appellant had complied with previous orders. She could not recall dates of when she was inside the house and saw it dirty or when it was cleaned, but SPC McKay said she was inside when the house was cleaned after she had issued an order in the past.

72. SPC McKay said she saw hot spots on a dog where it had chewed through its coat. She saw injurious objects in the yard. She had her own views on the dogs' behavior issues and how the dogs should be housed, but confirmed no behaviorist had seen these dogs nor made recommendations.
73. SPC McKay clarified that Dr. Abbas did not say poorly socialized but that she interpreted his comments about the dogs being fearful and scared as being poorly socialized. SPC McKay did say Dr. Abbas said he was concerned about what the house looked like and that the dogs were always dirty and bad smelling. She recalled this as she was quite distressed to hear such a comment from an owner's own veterinarian and it was one of the first times she had heard from an Atlas veterinarian, so it was memorable.
74. On final questions from the Appellant, SPC McKay said she only called Atlas to get an update on Ursa and did not ask Dr. Abbas about the other dogs but he offered that information.

The Appellant's Case

75. The Appellant relied on all his submitted material and submissions, and I have reviewed and considered all material, submissions and testimony, whether or not I refer to it here.
76. The Appellant's position is that the Society has not proved abandonment regarding the Kamloops dogs so those dogs must be returned. The Appellant further asserted that distress had to be proven for each of the 12 other dogs, rather than as a group, and so they must be returned.
77. The Appellant's summary (Exhibit 2(b)) argues that the Society can only hold the dogs if its seizure was proper and to do that, each dog had to be reasonably understood to have been in actual distress. If not, the seizures were unlawful. The summary asserts that the *PCAA* does not appear to specifically define "distress" although it is necessarily something less than the "critical distress" defined by section 12. "Distress," as ordinarily used, is something significantly more painful than mere discomfort. The *PCAA* does state when an animal is "in distress" which requires the animal to be in a condition mentioned in section 1(2). The evidence regarding these animals at the time of seizure may perhaps (for some of them) rise to the level of some discomfort, but that is a far cry from being in distress.
78. The summary argues that an analysis of whether any particular animal was in distress should have been performed on an individual, dog by dog, basis rather than being based on an uncritical determination for all animals at once. The Society when seizing should have examined whether each individual animal was in actual distress, or whether its condition was merely one of discomfort (even extreme discomfort that did not rise to the level of distress). The failure to do so renders the seizures in breach of the *Act* and the return of the dogs is mandatory.

Witnesses for the Appellant

Aaron Point

79. In Exhibit 2, the Appellant acknowledged his responsibility towards the dogs. He stated that in the past, he had demonstrated an obvious ability to care for his animals properly, and now feels capable of doing so again. The Appellant says that in November 2015, he discovered the extent of abuse his late father had suffered in the provincial residential schools, which led the Appellant to

have what used to be referred to as a mental breakdown and an inability to cope with day to day matters regarding the animals' best interests, compounded by the near death of his mother and the pressures of a deteriorating marriage. He submitted that he has overcome those challenges and is now fully capable of properly caring for his animals.

80. The Appellant included a plan for the animals in his submissions, some excerpts of which I include here:

I love all the dogs presently in the custody of the BCSPCA. All those dogs love me and are strongly attached to me. With the exception of the much loved Zola, who I adopted from the BCSPCA in 2009, all the dogs have spent their entire life or almost their entire life with me. I consider my most important goal is the happiness and welfare of these dogs. I believe that is also the goal of BCFIRB, but I no longer believe that is the goal of the BCSPCA.

... My dogs are also attached to each other and some of them are attached so to one another that they should not be separated from each other.

There have been drainage problems at my residence for the last five years. These problems are the responsibility of the housing authority at Musqueam. In April 2015 I realized that the drainage problems at my residence had created difficulties for my dogs....The cost of fixing the drainage problem and the damage caused to the backyard and foundation of the residence by lack of drainage will be approximately \$10,000 plus the cost of landscaping, the addition of more topsoil, and the addition of concrete pavers. The Musqueam Reserve must pay for creating proper drainage and repair of the backyard and the foundation. In the interim, until the Musqueam Band corrects the drainage, repairs the foundation, and pours concrete on the back yard, I will place wood pallets over the entire back yard to make a safe and dry back yard for the dogs. I have completed cleaning the under floor of the residence and replacing the top flooring in the residence and that should serve until the Musqueam Band corrects the drainage, repairs the foundation, and places a new subfloor in the residence. I have arranged for new mattresses and sofas to replace the ones that were removed as a result of damage to the residence. The dogs have always slept on my bed and on the extra mattresses and sofas which I have replaced approximately every two to three months.

I have always and will continue to bath, clip, and comb my dogs as needed and as required by their breed.

I have acquired 235 acres of land at Williams Lake. I am seeking work in Williams Lake and have arranged for a mobile home to be moved to the acreage there when I obtain work in Williams Lake.

Upon return of the 18 dogs to me I will keep Zola, my beloved mongrel, and the Great Pyrenees dogs Ursa, Belle, Max, Tonto, Jasper, Gunner with me at my residence, with the changes to the residence and yard I outlined above and in my Notice of Appeal. All of the six Great Pyrenees dogs have been together most of their lives. Tonto is protective of both Ursa and me and would never be happy or calm with anyone else. He was very unhappy at the farm/kennel in Kamloops which is why I brought him home very quickly. Tonto is what I understand the BCSPCA calls "unadoptable" and therefore will be killed by the BCSPCA. Ursa and Belle and are particularly close to me, to Tonto, to each other, and to Zola. These seven dogs are happiest as a group. I wish to spend time with them, ease their unhappiness and sadness at seizure and loneliness, and re-establish their routine of sleeping with me and daily morning and evening walks and of three or four of them going with me to work each work day. Ultimately, these dogs will go with me to Williams Lake.

I have agreed to adopt out Alpha and Peanut to a forever home with Phil Harms who lives on large acreage in Alberta, near Camrose. There will be no fee for this adoption to Phil Harms. Alpha and Peanut will be what Great Pyrenees are intended to be, working dogs on acreage with livestock to tend and they will have each other.

I have agreed to adopt out Sunshine, Bacci, and Breeze to a forever home with Ahmed Fasih, a farmer who lives on acreage near Williams Lake. There will be no fee for this adoption to Ahmed Fasih. Sunshine, Bacci, and Breeze will be together, work together on a farm, and have the run of acreage.

I have agreed to adopt out Little Lady and Blue to a forever home with Lorraine Simms, a cousin of mine who for some time has wanted to adopt some of the my Great Pyrenees dogs. She is semi-retired and lives in Campbell River on Vancouver Island. There will be no fee for this adoption. Little Lady and Blue will be together and have enough room to run.

I have agreed to adopt Scooter out to a forever home with Cathy Monkman who lives on acreage in Alberta, near Calgary. Scooter is an adaptable dog and will have the run of the acreage and the love of Cathy Monkman.

The seven dogs which will be temporarily at my residence and the proposed adoptions account for all my dogs except Obe, Golden Boy, and Doc. Each of these dogs is a special case and requires very special and understanding homes. They are likely considered “unadoptable” by the BCSPCA. Obe is a very sensitive female who has always needed great understanding and comforting. Golden Boy is a nervous boy dog unless he is with the older dogs and he should not be exposed to strangers or strange situations. Doc was very seriously ill in 2014 and has been much slower to adapt to changes and strangers since his illness. I want to board these three special needs dogs with Phil Harms until I can take them to Williams Lake with me and the other seven dogs at my residence. I will be able to visit them often. I feel comfortable with them in the care of Phil Harms until they can come with me to Williams Lake. If the move to Williams Lake ever seems to be impossible, I will find forever homes for them with the dogs already at Cathy Monkman’s and/or Lorraine Simm’s so that they will be with known dog companions.

I will all take Obe, Golden Boy, and Doc to their new boarding home and visit them until they are settled in and comfortable.

I will arrange for a veterinarian to inspect my residence and yard and report on the health of Zola, Ursa, Belle, Max, Tonto, Jasper, and Gunner during the first month that they are home at my residence and again two months later. I will arrange for a veterinarian to inspect the homes that Alpha, Peanut, Sunshine, Bacci, Breeze, Little Lady, Blue, and Scooter go to and report on their health during the first month that they are adopted and living in their new homes. I will similarly arrange for a veterinarian to go during the first month they are boarded to where my three special needs dogs are boarded and inspect the home and report on the health of Obe, Golden Boy, and Doc.

I will make a more concerted effort to have the seven at my residence and the three being boarded to the veterinarian every six months.

I have already attached a lock to my backyard gate so that never again will one of the neighbor children be able to let my dogs loose. I am planting hedges around the interior of my backyard to muffle the sounds of the dogs while in my backyard and so they will not see anyone outside the yard to cause them to bark. I will hereafter always walk my dogs on a leash in the Musqueam Reserve so that none of them will chase after coyotes on the Reserve and be picked up by a neighbor and given to the Vancouver Pound. As a result of our matrimonial difficulties, I have requested that my wife move out of my residence and she has agreed. Either my mother or my brother will come to live at my residence so that the dogs will not be alone while I am work.

81. In his testimony, the Appellant reviewed several photographs to explain who each dog was. He said when he found out about the seizure on February 3, 2016, it was the worst day of his life. He believes an allegation he previously made about the Indian Band has influenced how the Band has treated him. He believes that in August 2015, SPC McKay, as a result of allegations about him wanting to harm his dogs (which came from his wife during a “spat”), tried to get his young dogs surrendered. He said that SPC McKay knew then that his wife had no authority over the dogs. About every two weeks he would get a text, email, or visit from the Society, which bordered on harassment.

82. He worked for one employer as a courier from 2011-2015 and always had some dogs in the vehicle with him on deliveries. After a second complaint that he smelled like a dog, he was fired as he was told to leave his dogs at home but continued to take his dogs to work. His current employer is a courier company that has no complaints about him bringing some of his dogs to work.
83. In late 2014 to 2015, he was pulled over by the RCMP 15-20 times - every time for “stupid things” like assaulting his dogs. He did the Cesar Milan tap to the nose and a lady said he punched the dog in the nose.
84. On February 3, 2016 his wife stopped working, so he went to work fulltime, but from September to October 2015, he found out his dad, who had died when he was four, was abused and tortured and he went into “breakdown mode” for two months. During that time he increased the length of walks for his dogs. He needed to come to peace with being wrong about his dad for all those years.
85. The Appellant’s wife was supposed to be cleaning the house and yard. He and his mom had been giving his wife money to send to the Kamloops kennel and he understood more than \$18,000 had been sent. The Appellant testified that his wife slept 24/7.
86. The Appellant negotiated a deal to buy 235 acres in Williams Lake and needed time to get a business going or find work.
87. The Indian Band indirectly faulted his dogs for the state of the property. Currently, the Appellant has put pallets in his yard sitting on top of the soil to resolve the issue of mud. He has stripped and leveled the floor. He took the garbage out and painted inside with new blinds and sofas and mattresses and is working on soil and re-seeding the grass.
88. The Appellant asserted he had no contract with the Kamloops kennel. He asked the owner if he could send money online and she responded that he could pay when he can. He recognized the forms in Exhibit 6 page 182 but that is not his signature on page 183 and it does not even resemble his signature.
89. On February 3, 2016, he was at work when his wife called and explained the Society was there. She was on “serious medications” at the time. He did not surrender the dogs but he did speak to SPC McKay on the phone and told her not to speak to his wife. He felt threatened by SPC McKay as she indicated he would not have dogs again. He thought the Society would be the best option to save the puppies and he cried when he learned they had euthanized the seven puppies.
90. He and his wife did not find the Society notice left at his door on February 8, 2016. On February 10, 2016 he was at home with Max and Zola. He had been in the hospital the day before. The doctor told him he had sepsis and might not survive yet he was home the next day walking his dogs.
91. When he got home from walking the dogs on February 10, 2016, he lay down and the cops came in with their guns pointed at him and SPC McKay had her gun at her side. Four police came in with guns pointed. SPC McKay had either a gun or pepper spray that looked like a gun. Later, SPC McKay posted on Facebook how much good she does and when he confronted her about this, she removed the posting. It tore his heart out when the Society took Max and Zola.

92. The Appellant confirmed he signed his affidavit and that other than the seven puppies, he did not surrender any dogs. When he got official notice about the Kamloops dogs, he disputed this immediately to Ms. Moriarty. Max and Zola had been with him at work when the other dogs were seized February 3, 2016 and they themselves were seized February 10, 2016.
93. Before the seizure, he had had Breeze's ear looked at and Ursa had seen the veterinarian for "a few things". SPC McKay said Ursa had mastitis but Dr. Bhullar said there was no mastitis. SPC McKay said she would stop by and check up on Ursa on February 3, 2016 but there was a different result that day, in that the dogs at home were all seized.
94. The Appellant summarized his plan for the dogs. He said he had arranged some dog adoptions prior to the seizure, but those animals had not left yet for their new homes. He said he will arrange for a mobile home in Williams Lake. His house is now ready for his "big babies." He will continue to fight the Musqueam Band to fix the drainage. He will walk all dogs on leashes and is working on finding a supplier of meat and bones in Williams Lake. He will take four dogs with him to work each day. He will better arrange for veterinary visits and grooming and nail care.
95. The Appellant reiterated that the four months preceding the seizures were the worst in his life. Whatever he has to do to keep his dogs he will do. The seven "babies" are his life: Max, Zola, Ursa, Belle, Tonto, Gunner and Jasper.
96. The Appellant believes the Society will destroy five of the other dogs seized and he wants them home to get them back to normal for a few weeks before sending them to their new adoptive homes.
97. On cross-examination, the Appellant admitted he did not dispute an August 2015 dog seizure that was okayed by his wife as he believed once the government had control of his dogs, he couldn't get them back. He did not authorize his wife to give away the dogs.
98. The Appellant said when he spoke to SPC McKay on the phone February 3, 2016, he asked her to step away from his wife as she was not well. He did not name which dogs he wanted to keep and did not surrender the rest.
99. Regarding Dr. Wilson's evidence, the Appellant said that the dogs were not as clean as they should be but he never saw feces or urine except on walks. He stated that 12 dogs were kept in his house - five adults (Max, Zola, Tonto, Belle, Ursa) and seven young dogs (6 months old) (Bocci, Breeze, Scooter, Alpha, Peanut, Sunshine and Obe, which stands for One Blue Eye, and who was mis-identified as Opie).
100. On the evening of February 2, 2016 and the morning of February 3, 2016, two puppies died, yet the video taken only a day or so earlier on February 1 or 2, he says, showed extremely healthy dogs. From day to night the puppies went from healthy to dead. He had the second puppy sleeping with him and wrapped his hair around the puppy and woke up to find the dog dead.
101. The Appellant said he groomed the dogs himself. Atlas was his only veterinarian since 2014 and the only veterinary care the dogs received since 2014 was recorded in the Atlas records submitted at the hearing. When he left for work the morning of February 3, 2016, the dogs were not covered

in feces or urine. His plan to keep the seven big dogs in his home includes assistance he will get from his mother or brother who live in Duncan. They will move over here to help.

102. The Appellant said it looks simple in hindsight but he did not follow up on payment to the Kamloops kennel as he relied on his wife as her phone was working and his was not. He has still not paid the money he owes the Kamloops kennel but is working on that. The Appellant said he now sees his mistake in trusting his wife, and he had told her that his dogs were his top priority and if there was ever a conflict between her and the dogs, the dogs were staying.
103. In response to my questions, the Appellant testified the land was acquired in Williams Lake on a rent to own basis but then said it is not acquired and there is nothing in writing as he was supposed to take possession the week after the dogs were seized but that did not happen.
104. The Appellant confirmed he had no letters from those identified as adopting some of his dogs. He said that if any of those people cannot take those dogs, he has a back-up plan and would keep them at home until he found someone else.
105. The Appellant said he did not notice Tonto's hot spots as they were under his fur and he wouldn't see them unless they were scratched raw. He only trims their nails every few months. He cleaned their ears with q-tips. Every night the house was cleaned with bleach and there was no diarrhea or "crap" on the floor. He guesses there was some, but just on the day of seizure. His dogs do not need to socialize with other dogs and it is not a priority for him to allow the dogs to socialize with people although he will let people pet his dogs. He has never seen anything in Obe's eyes.
106. When asked if his dogs go to the bathroom in the house, the Appellant said the adults rarely went to the bathroom inside and the house was cleaned every night. The 12 big dogs went for walks morning and evening and mostly his wife cleaned up the feces in the yard every few days or he would do it when he was smoking in the yard and saw feces. He agreed the dogs were inside while he worked and Belle might have pooped and his own sense of smell is not that good.
107. He said in response to the Musqueam community impact statement filed as part of Society's submissions that Rick and Lorna Point had never been in his house so he does not know where their comments on his house came from. The Appellant said the Musqueam report was a blatant lie.
108. Regarding the dog Peanut with the fractured pelvis, the Appellant said the dog might have limped for a short while so it couldn't be anything that major, and that the dogs play fight and run after coyotes and wolves in the forest all the time. He never noticed what the veterinarian described as the leg splaying out to the side as Peanut didn't come out for walks. When asked about this, the Appellant said that after a certain time, Peanut and Scooter and Breeze were left in the house with his wife for at least the couple of weeks before the seizure.
109. In the Appellant's opinion, the dogs were not thin and he could determine that as he lifted up each dog every day. I asked him whether, when he lifted Peanut, the dog was in pain, and the Appellant said Peanut might have flinched but he didn't think anything of it. The dog may have flinched more than once.
110. The Appellant said the dogs pooped in the yard and in the house throughout the day but his wife cleaned it during the day and he cleaned it at night but his sense of smell was not good.

111. On final cross-examination, the Appellant said that he never stopped walking his dogs ever, but then agreed he did stop walking the ones that stayed with his wife as she was deteriorating rapidly and was comforted by the dogs.

Dr. Hakkam Bhullar

112. Dr. Bhullar is a veterinarian registered to practice in BC. He testified that one of the Appellant's dogs in 2014 had and survived Parvo, with veterinary intervention.
113. The dog Ursa was seen three times at his clinic, including under the name Goose on January 19, 2016 for mastitis. Goose/Ursa was seen by Dr. Abbas and given medication to reduce swelling after being brought in by someone who gave a false name and telephone number and did not pay her bill.
114. Dr. Bhullar testified that when he looked at the photographs of the dog on pages 122-148 of Exhibit 6, there was no evidence the declaws had gone into the pads, and that dewclaw removal was cosmetic and only necessary if infected or broken away from the root. He did not think the nails in those photos needed removal, only trimming. Dr. Bhullar said it was hard to tell from the photographs if the dogs were underweight because of their long hair. He said floppy eared dogs commonly had ear infections. He saw minor infections or redness in the photos, some redness which could be normal. He saw no serious signs of infection in these photos. He could not see the nails in the photos just the declaws and did not see big nails. When asked if he saw filth, he said it was very hard to say due to the long hair. Dogs like these with the double coat are self cleaning where the outer coat could look terrible but the undercoat could be soft and clean. Based on the pictures it was a very hard question to say they were in distress.
115. When asked if the Appellant provided adequate care for his dogs, Dr. Bhullar said in the last three years, such as in 2014 with the Parvo, the Appellant spent more than \$800.
116. Dr. Bhullar noted that in reviewing Dr. Cindy Chow's observations about the dog Tonto which Dr. Chow described as unsocialized, Tonto did not need sedation for his ears to be examined and stated that if you can handle a dog without sedation, it is not a totally unsocialized dog. He agreed with the Appellant's description of Great Pyrenees being wary of strangers, calm if unprovoked, and affectionate. He said a dog can change behavior if the owner is not present.
117. With reference to Exhibit 6, page 162, Dr. Bhullar stated that, overall, the dogs don't look that bad, yet the way the report was written makes the dogs look bad. There were some skin infections but it looked like there was some exaggeration. With Alpha, there was some exaggeration in the way the report was written because dogs, for instance, do bark at clinics, then after handling they are okay. With the dog Ursa, the veterinarians who saw Ursa twice at his clinic prior to seizure scored Ursa at a body condition score of 3 out of 5 and both Atlas veterinarians say that is normal. The Dr. Wilson report says the dog has advanced dental disease, which is not so and Dr. Bhullar wonders what happened from 30 days ago to account for the dental disease go from mild to advanced. With Alpha, the socialization information is wrong. By looking at Ursa, Dr. Wilson's report is so wrong it makes him very upset as there are so many differences and it makes him doubt the entire report. Comparing Ursa's Atlas record with Dr. Wilson's record, Dr. Bhullar said "this is not right; something is wrong here." Looking at two photos of Ursa's teeth, Dr. Bhullar says a lot

of dogs play outside and their teeth wear down. In the photos, Ursa's gums were not red or bleeding and there was no advanced dental disease

118. The dog Breeze was another dog seen in Dr. Bhullar's clinic in December.
119. Dr. Bhullar was not in a position to give evidence about whether or not the costs claimed by the Society were reasonable.
120. On cross-examination, Dr. Bhullar confirmed that Goose and Ursa were the same dog with the same history, as per Dr. Grewal and Dr. Abbas who both saw Ursa. Dr. Bhullar was 99.999 % sure it was the same dog.
121. Dr. Bhullar said Ursa and Breeze were seen by colleagues, and all the dogs were seen five to six years ago but his records had been purged.
122. In response to my questions, Dr. Bhullar testified that Dr. Abbas was at his clinic the day before the hearing. Dr. Bhullar asked Dr. Abbas if he said the Appellant's dogs were not socialized and he responded that he did not say that and that was not a word in his "dictionary." Dr. Abbas was apparently angry as the Society called him (he is only in on Tuesdays) and was told the dogs had been seized which were very dirty and filthy in the Society's words, and he merely said 'yes' in conversation and was not actually agreeing that he knew they were dirty. Dr. Abbas had only seen two of the dogs in the two to three years he worked at Dr. Bhullar's clinic.

Lonna Point

123. Ms. Point has known the Appellant for three to four years. She lives across the street and has seen the Appellant walk his dogs hundreds of times and has not seen his dogs be aggressive toward her eight pound dog. She has seen the Society or the Vancouver Pound trucks outside his residence many times waiting for him to come home. It seemed like they were always there while he was at work. She knows the Appellant has had water issues at his house. She has never seen him harm his dogs; they are like his children. She did not see the dogs very often but when she did, they did not seem skinny.
124. On cross-examination, Ms. Point said she knew the Appellant had more than one dog but she is not really obsessed with keeping track of what he was doing and she did not see 12 dogs but she may have seen two or three. She never touched the dogs but recalls being introduced to them, but her memory is so bad, she had to write their names down to include them on her Christmas card. Ms. Point explained she had a centre brain injury.

Ron Wallace

125. Mr. Wallace lived across the street from the Appellant and lives with Ms. Point. The houses were built at the same time and the back yard is a mess in the rainy season. With a clay subgrade, the water won't drain. He sees the Appellant walking four to five dogs at a time every day or more. They seem like big white dogs not on a leash and he pets them when close enough. He has never seen the Appellant harm his dogs and the Appellant always looks after them and controls them like kids. He never saw skinny dogs; they were happy and healthy and playful but were sometimes wet after a walk.

126. On cross-examination, Mr. Wallace confirmed he saw one black dog and three to four white dogs and the walks were in the early morning or evenings.
127. In response to my questions, Mr. Wallace said he has been inside the Appellant's front door when helping him to change a lock and there was no smell but he could see a big hole in the floor leveling compound and subfloor. Nine months ago he saw that the backyard was pretty clean of dog poop. The dogs were walked off leash and would come back most of the time when the Appellant called them. He never noticed the smell of urine or feces when he petted the dogs.

Howard Grant

128. Mr. Grant knew the Appellant for three years as a baby and was reintroduced in 1990. Mr. Wallace has chatted with the Appellant over the last five to six years and has seen two beautiful white and one black animal. Mr. Grant lives on the other side of the reserve and saw the dogs at the grocery store or when he drives by. The dogs did not seem thin. Mr. Grant has never seen the Appellant be violent to his animals.
129. On cross-examination, Mr. Grant testified he petted two dogs in the back of the Appellant's vehicle a few times every four to five months and the last time was a couple of years ago. He saw the dogs at the horse trail three to four months ago and they were quite clean when he touched one dog's head. He has never been in the Appellant's house.

VII. Analysis and Decision

A. Number of dogs included in this appeal

130. The first issue to be addressed concerns the number of dogs that should be considered in this appeal. The Appellant asserts it is all 18 dogs, while the Society asserts that it is only the 6 dogs referenced in Ms. Moriarty's review decision.
131. In my March 15, 2016 preliminary decision, I said that "while a party is entitled to ask for a preliminary determination, the panel is not required to make a preliminary ruling unless satisfied that the matter is appropriately dealt with on that basis. In my view, based on the conflicts in the material, the course of prudence, wisdom and efficiency in this case is to rule on these issues after hearing all of the evidence and submissions. Further, given the Society's position regarding the distress of all of the Group 1 and 2 animals, and its position on the "surrender by contract" issue, I do not find that hearing the appeal on all issues raised by the Appellant imposes any undue burden on the Society. My final decision will address the issues the Society has raised in its preliminary application."
132. In addition to the information I reviewed and summarized in this March 15, 2016 decision, I did not hear any additional evidence from the Appellant at the hearing. The Society augmented its preliminary position at the hearing by adding its interpretation of the clause in the kennel agreement, basically saying that given the absence of a pick-up date for the dogs in Kamloops, the kennel could start the 72-hour clock for considering the animals abandoned once it tried to make contact with the Appellant.

133. There is no dispute that four of the dogs seized on February 3 and the two seized on February 10, 2016 form part of this appeal.
134. Regarding the other dogs removed from the Appellant's residence on February 3, 2016, I do not doubt that SPC McKay subjectively believed, based on her discussion with the Appellant's wife and her telephone discussion with the Appellant, that the dogs she would have otherwise "seized" as being in distress were surrendered. However, that was immediately disputed by the Appellant the same day of seizure. Insofar as the Society relied on the Appellant's wife, I am satisfied based on the evidence of the interactions between the Appellant and Society prior to execution of the warrant, the Society knew that it should only deal with the Appellant and that his wife did not have authority to surrender the animals. While the Society referred to the kennel agreement in which the Appellant referred to his wife as "co-owner" (an agreement the Appellant says does not bear his signature) it is not clear to me whether SPC McKay was aware of that clause on February 3, 2016 and in any event, I find that that does not change the objective fact that the Appellant was the sole owner of the animals and that the Society should reasonably have known and in fact acted in recognition that any surrender required his consent.
135. With regard to SPC McKay's evidence that the Appellant agreed to surrender the animals during their phone conversation, I find that there was a lack of precision in the evidence of both SPC McKay and the Appellant regarding their specific conversation. I find that, taking into account the highly charged history, atmosphere and circumstances in which the phone call took place, there was a genuine misunderstanding between the parties, who came away believing different things. But the surrender of an animal needs to be clear and unequivocal. The Appellant has satisfied me based on his evidence and actions that he did not clearly and unequivocally agree to surrender the animals, despite SPC McKay's good faith belief to the contrary. Ms. Moriarty appeared to recognize the ambiguity on this issue in her February 18, 2016 email to the Appellant in which she said "While the report covers all the dogs, I note that only six dogs are currently in dispute, however, I will be considering all of the animals in making any decision regarding the best interest of the dogs."
136. What is clear and unequivocal on the evidence is that the Society had formed the view that the animals were in distress and needed to be removed if they were not voluntarily given up. In my view, on the balance of the evidence, the better view is that these animals were seized as being in distress and are properly subject to this appeal. As made clear in the *PCAA*, an appellant may appeal a seizure to BCFIRB even if no review decision has been made regarding them, and this case is a good example of why the right of appeal was framed this way: *PCAA*, s. 20.3(1)(a). As already noted, Ms. Moriarty recognized that there might be an issue on the question of surrender, and I think she helpfully and realistically included a consideration of all of the dogs in her review decision.
137. Regarding the final group of dogs, the Society says the dogs were abandoned by operation of the contract the Appellant had with the Kamloops property, who then turned them over to the Society.
138. The Society left a note on the Appellant's door on January 31, 2016 after the dogs came into its care on January 29, 2016. The Appellant says he disputed this with the Society on February 3, 2016. Ms. Moriarty responded that she did not understand his dispute. The Appellant's email seems clear to me when he says he is disputing the abandonment of his dogs in Kamloops, and that he challenged the notice within the time required.

139. The Society later took the position that the notice was issued in error because the abandonment had essentially happened by contract – it argues that when he failed to comply with the contract, the Kamloops boarding facility became the owner of the dogs, and they simply exercised their right to turn the dogs over to the Society.
140. The Society says that the Appellant’s last contact with the Kamloops facility was November 24, 2015 and that due to the Appellant’s failure to fully pay boarding costs, and accordance with the Kamloops property’s contract with the Appellant, the Kamloops property gained ownership of the dogs, and it then surrendered those dogs to the Society in January 2016.
141. In fact, the material provided to me does not support this conclusion at all. The boarding contract states that: “upon agreed pickup or contact time, if within 72 hours and we have had no contact from said owner, and after we have exhausted all avenues of contacting the owner, Country Pawz Estates will consider dog/dogs are abandoned and we will take necessary steps to either find them new homes, or surrender them to a rescue facility or the SPCA.” Nowhere have I been provided with the agreed upon date when the owners were to pick up the dogs. The contract says 72 hours after an agreed upon time and only then after the Kamloops facility has exhausted all avenues of contacting the owner, of which I have insufficient evidence to show the kennel exhausted all avenues of contacting the owner. In fact, once the Society had those dogs, it knew exactly where to find the Appellant and leave him the notice. I have no evidence regarding whether or not the kennel had the Appellant’s address. I also note that even in a case where the clause is activated, there is no express language stating that the dogs become the property of the kennel. It simply says the kennel will consider the dogs abandoned.
142. SPC McKay states in her February 11, 2016 email to Ms. Moriarty that “if you look at the 3rd image there’s mention of no contact from the owner within 72 hours...” to which Ms. Moriarty emails back “So basically it would be safe to rely on that contract is what you are saying. The ownership transferred to the kennel in November.” And SPC McKay replies “Do you think it’s enough legally? Hope so.”
143. I do not think it is enough legally. As noted, there is no mention of ownership transfer. Instead it says one of the options, which was apparently chosen, was for the Kamloops property to consider the dogs abandoned and surrender them to the SPCA, which it did January 31, 2016, and which was disputed by the Appellant within the required four days. There is no information in front of me to indicate that the Kamloops property claimed ownership of these dogs.
144. My decision is that ownership of the dogs did not change contractually, that the Society in fact acted correctly in issuing a notice of abandonment, that the Appellant requested a review in time, and the Kamloops dogs also form part of this appeal, for a total of 18 dogs under this appeal.

Positions of the parties on the merits

145. The Appellant’s position is that the photographs at Exhibit 21 show the home after the seizure where the kibble had been spilled as a result of the seizure, and where mud was tracked in by the people in attendance at the seizure. The photos are only of the worst areas and there were other areas that were pristine. The feces on the floor were likely cleaned up by him given the state his wife was in and he would clean up feces that occurred when the dogs could not hold it between there last evening and first morning walk.

146. The Appellant fears the Society is isolating, marginalizing and humiliating Tonto to show him as unsociable and will euthanize him if not returned to the Appellant. The Appellant feels the photos of his dogs in cages show the dogs are sad, lonely and dispirited but clean and healthy dogs. The Appellant said Ursa never had mastitis and Dr. Bhullar testified to that effect and the records show mastitis was R/O (ruled out). The Appellant says that Alpha never had a spinal injury but instead had a healing fracture as Dr. Wilson testified, found through x-rays the Appellant has not seen. The Society did not prove that any of the young dogs were in distress and they should be returned without costs. The Appellant says a point should not be missed and that point is that it is the review itself which is being appealed and regardless how one might feel about the decision to seize, it is by confirming the review that the five adult dogs have been kept from the Appellant. The review only concerned the five dogs so it was flawed from the beginning as the Society did not review the other 12 dogs [I am aware this number of dogs does not add up]. The review was only Ms. Moriarty telling herself she was right as she had been engaged with SPC McKay in scooping up all the Appellant's dogs.
147. Regarding costs, the Appellant asserts there are no boarding fees permitted under unlawful seizures. What the Society asks for is not comparable to City pounds. Courts only allow expenses which are actually paid, and not the cost of staff or overhead. Information was submitted by the Appellant's lawyer (who was replaced with Ms. Liberson by the Appellant prior to the hearing) that CRA uses cost accounting and *PCAA* s. 20 does not contemplate cost accounting and it is impossible to include those costs in s. 20 and given that, most importantly, the seizures were not lawful and for certainty costs should not include overtime paid to staff. There should be no costs for the Kamloops kennel dogs as the Society should not have had them.
148. The Society's position is that all the Appellant's dogs kept in Vancouver were in distress. The dogs were kept in unsanitary conditions. They lacked adequate food, water, care and veterinary treatment. Some were injured, sick in pain or suffering. They were neglected. Ursa apparently suffered from large inflamed teats or mastitis. The Atlas Animal Hospital record includes a differential diagnosis list which includes mastitis.
149. On February 3, 2016, SPC McKay attended the Appellant's property and located a dead puppy outside in the rain, heavy fecal contamination in a muddy backyard, garbage and other debris including injurious object (gardening shears), lack of any shelter or potable water for two dogs outside in the rain. Once inside, she noted a very strong smell of feces, urine and garbage. Kibble was strewn on a fecal contaminated floor. Numerous dogs were in the house, displaying signs of aggression with one another. Dr. Wilson testified to her observation of fecal contamination on the dogs' fur when she examined them and her testimony of the harmful effects of this contamination including the spread of whipworm (found in the dogs) and a variety of skin ailments and conditions. She noted her concerns regarding the low body condition of most of the dogs. Dr. Wilson concluded they lacked adequate nutrition. She also noted the dogs' poor socialization. She indicated this arose due to owner neglect.
150. Concerning feces inside the home, the Society argues that the Appellant initially accepted that the large dogs defecated in his home. However, he then seemed to vacillate during his testimony, and the Society notes the various improper whispering and interjections of his representative during his testimony on this point. However, ultimately he admitted his large dogs did defecate inside the home. Feces were found in the teeth of one dog.

151. The Society argues that the Appellant appears to have been oblivious to his dogs' conditions. Respecting the lame dogs, he noticed some minor issue but never bothered to have a veterinarian look into the issue. He said often his dogs would chase "wolves and coyotes" and then limp for a while, shake it off, and be better. The Appellant also adamantly refused to accept that his dogs lacked basic grooming or that any of them were severely underweight or lacked socialization. Yet they would not have achieved the incredibly poor condition observed by the Society and veterinarians had they in fact been cared for properly.
152. The Appellant's failure to recognize obvious veterinary ailments, or to recognize the need to attend to his dogs' daily needs (care) including provision of sanitary housing, grooming and socialization, and proper nutrition causes the Society grave concerns for the dogs' long-term future should they be returned to the Appellant. Simply put, they were in distress when seized, and the Society is very concerned that they will be returned to a condition of distress if returned to him.
153. The Appellant testified to certain steps he has allegedly taken to clean his property since February 10, 2016. But his dogs lack of socialization and houstraining, which means his home will likely become unsanitary should the dogs be returned. The Society also notes the lack of any independent testimony, photographic evidence or documentation respecting the efforts made by the Appellant to allegedly ready his home for the dogs' return.
154. As to the abandoned dogs, the facility was entitled to transfer them to the Society. Even if the dogs were not abandoned, the Appellant wrote in the contract with the boarding facility that Ms. McLean was their co-owner. Thus, her surrender of Golden Boy, Blue, Lady and Doc is effective. If he has a claim, it is one for damages against Ms. McLean. If the Appellant did not intend to abandon the Kamloops dogs, their best interests nevertheless preclude their return to the Appellant. The *PCAA* allows for disposition of abandoned animals, or their return on conditions. Thus the consideration is the same as it is for animals in distress. The Society incorporates its above submissions concerning the distress these Kamloops dogs would experience if returned to the Appellant.
155. Regarding costs, the Appellant's representative argued against "overtime" pay. The Society has not sought any "overtime" pay in its submissions nor particularized any such costs in its affidavit materials. The Appellant argues that operating or overhead costs should not be charged to him. But the Society is using its own resources to house the Appellant's animals - resources that could be used to house other animals or for other purposes. Such costs were reasonably incurred to care for the Appellant's animals, as contemplated by s. 20 of the *PCAA*, and are justifiably charged to the Appellant. The Society says the costs were all reasonably incurred pursuant to s. 20 of the *Act*.
156. The Society asks that if an order is made for return of dogs, it ought to be contingent upon the Appellant first paying the Society, with failure to pay in full in seven days immediately entitling the Society to dispose of the dogs. The Society notes the Appellant's admitted failure to pay Country Pawz Estates for boarding his dogs, which issue he claims to be "working on". This reveals the low chance the Society would ever be paid if the order sought were not granted.

Assessment of witness evidence

157. I begin by noting that while there were some differences in the veterinary evidence, the conflicts seem to be for the most part about subjective interpretations and do not necessarily mean one is

right and one is wrong. In the circumstances of this case, the conflicts in the evidence did not determine the outcome of this case. I note that only a small number of dogs were ever seen by Atlas.

158. The three witnesses for the Appellant - Ron Wallace, Lonna Point and Howard Grant – were credible but their evidence was not particularly helpful or relevant to the issues at hand. These three witnesses did not provide sufficient information on the condition of the 18 or even 12 dogs' cleanliness or health, or the inside of the Appellant's home, and had only seen a few of the Appellant's dogs.
159. With regard to the evidence of SPC McKay I accept her evidence about the condition of the home and the dogs, which were all supported by photographic evidence and other testimony.
160. I had a concern regarding allegations by the Appellant about the way in which SPC McKay presented a small part of her evidence. Specifically, SPC McKay said that Dr. Abbas said the Appellant's dogs were poorly socialized, but Dr. Bhullar testified that Dr. Abbas told him that that word was not part of his dictionary. I believe Dr. Bhullar. In fairness, SPC McKay clarified her evidence to say that Dr. Abbas did not say "poorly socialized" but she interpreted that conclusion from words he did use. While this error did not taint her other evidence, I will note that it is preferable for me to hear what people actually say or at least, to know when an interpretation is actually an interpretation. Also SPC McKay did not include in her ITO the fact that the Appellant, in prior interactions, had taken necessary steps to meet those previous Society orders but instead listed the previous contacts without any mention of compliance. I am not saying that SPC McKay was required to add compliance information, but in leaving out information that painted the Appellant in a positive light, it does lend some credence to the Appellant's assertion that evidence collected by the Society only showed negative things. In fact, it was one of the positive points regarding the Appellant's history that led me to a conclusion about Max and Zola, discussed below.
161. Having made these points, it must be said in fairness that the evidence of the Appellant was also not always entirely clear and consistent, as for example his evidence summarized above regarding the frequency of his walking of the dogs, his ownership (or not) of the Williams Lake property, or even his explanations for uncleanliness. As noted in more detail below, many of the Appellant's statements, particularly with regard to his plans for many of the animals, are not statements in which I can have confidence.

Distress

162. I turn then to the first issue, which is whether the Vancouver dogs were in distress at the time of seizure. The *PCAA* defines "distress" as follows:
 - 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.
163. Meeting any of the elements within that definition is adequate to find an animal in distress.

164. I find that all the Vancouver dogs except Max and Zola were underweight. Dr. Wilson testified that was due to a lack of nutrition. I understand Dr. Bhullar's testimony regarding the subjective nature of body score assessments, but in the final analysis, Dr. Bhullar did not physically examine these dogs himself. Dr. Wilson did, and for that reason, I prefer Dr. Wilson's assessment of the dogs' body condition. I find that all but two dogs lacked adequate nutrition and were therefore in distress.
165. All the dogs including Max and Zola were soiled and matted. The soiling was described as a foul smell. I understand Dr. Bhullar's credible testimony that Dr. Abbas was merely agreeing in a polite way when he said "yes" to SPC McKay's description of the filth on the dogs, but Dr. Abbas did not testify and there was other evidence related to the filth in the home, such as photographs of feces in the house, the description of feces on the dogs' fur when examined by Dr. Wilson and the fact that all the dogs had whipworm, which not only created health concerns and risks, but was acquired by being in an environment contaminated by feces. Combined, that evidence convinces me that there was sufficient soiling to constitute excessive soiling with feces.
166. Further, Dr. Wilson, whose evidence I accept, described the dogs (except Max and Zola) as having a powerful odor of feces, foul diarrhea, infection and to a lesser extent urine. The fact she could smell the distinctive smell of Parvovirus diarrhea on these unaffected dogs means that they were in heavy contact with the virus laden feces of the puppies. The dirt went right down to the skin. Dr. Wilson testified that she has only ever encountered this level of odor when an animal is subject to prolonged confinement in unsanitary conditions where the air is permeated with this smell. I find that all the dogs, including Max and Zola who lived in the same house, were in distress as they were kept in conditions that were unsanitary.
167. I find that several of the dogs were deprived of veterinary treatment and were injured sick or in pain and suffering. Many had ear infections and skin conditions. They all had discharge in their ear canals and many had chronic ear and skin infections. A number of dogs had infections of the outer ear flap which were more severe than the infections within the ear canal, indicating that either the ear infections were present for so long that they hurt themselves by scratching at their ears, or that prolonged contact with external filth and bacteria caused the outer ear flap infections. Belle had a painful bladder infection where pieces of pus were passed in her urine. Peanut had a fractured pelvis and a second untreated but healed trauma. Due to the ear and skin issues, I find all the dogs were in distress as they were denied veterinary treatment for their ears and skin, and two were denied veterinary treatment for the broken bone and the infection, and all were suffering with the ear and skin ailments.
168. I also find that all the dogs except Max and Zola were neglected. Neglect is the only word that could describe the level of a lack of care these dogs exhibited. I do not believe the Appellant had an intent to allow his dogs to be thin, suffer from any medical ailment, suffer with whipworm, or be so filthy, nor do I think he meant for his home to deteriorate to the conditions SPC McKay found when she attended on February 3, 2016, but I find that all these areas lacked the attention each needed until collectively, they resulted in 16 dogs who were neglected.

Abandoned animal

169. Section 10.1 of the *PCAA* defined "abandoned animal" as follows:

10.1 (1) In this section, "**abandoned animal**" includes an animal that

- (a) is apparently ownerless,
- (b) is found straying,
- (c) is found in a rental unit after expiry of the tenancy agreement in respect of the rental unit, or
- (d) if a person agreed to care for the animal, is not retrieved from that person within 4 days following the end of that agreement.

(2) If an authorized agent is of the opinion that an animal is an abandoned animal, the authorized agent may take custody of the animal and arrange for food, water, shelter, care and veterinary treatment for it.

170. The definition of “abandoned”, unlike the definition of “distress”, is not exhaustive.
171. In my view, the six Kamloops kennel dogs were abandoned at the time the kennel turned them over to the Society. Based on the evidence before me, it was reasonable for the kennel owner, who had not been paid and who could not contact the Appellant, to decide that the kennel was no longer willing to house the animals at a financial loss. While the animals were still the property of the Appellant, the kennel had no obligation to subsidize and house the animals in the circumstances. When the kennel did the responsible thing and turned the animals over the Society, the Society rightly concluded that the animals were “abandoned” and, as I have found above, correctly issued a notice to that effect. While Ms. Moriarty did not return the dogs on the basis that they had been surrendered, it is clear from the Society’s evidence and position on this appeal that it takes the position that dogs would not properly have been returned in any event.

Should some or all of the dogs be returned?

172. Having determined that the seizure of the animals was justified for all 18 dogs, I turn now to the best interests of the 18 dogs and whether their best interests are served by returning them to the Appellant or having them remain with the Society to dispose of at its discretion.
173. I note that 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.

174. I also note the following passage from *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.):

The goal and purpose of the act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as the Plaintiff’s counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in the distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain the good condition in which it was released into its owner’s care.

175. The Appellant is not interested in keeping for himself 11 of the 18 dogs and states he has made alternate arrangements for adoptive homes. However, none of those plans was confirmed other

than by the Appellant's say-so as no evidence from any prospective adoptive family was submitted. The Appellant testified and submitted that he has a plan for each of the 11 dogs but in fact he himself recognizes the uncertainty in those plans as he also testified he has back-up plans if those plans fall through. He did not share details of his back-up plans but said those dogs could be brought home. Further, and for a reason I do not understand, the Appellant wants the dogs he intends to adopt out to first be returned to his care to become accustomed to his schedule before being sent out to their new homes. This seems to me to be even more disruptive to the dogs and seems designed to provide comfort only to the Appellant. Should the Appellant not find immediate homes for the dogs, they would, according to his own testimony, come home with him.

176. The unsanitary condition of the Appellant's home prior to these seizures and even after the first seizure of ten dogs was deplorable. The evidence of the filth, mud, feces, urine and of course the presence of the Parvo virus with all these unvaccinated dogs, poses a continued risk to the dogs if they were to be returned. The Appellant seems to be unable to detect the presence of feces in his home by smell, and gave conflicting testimony about whether feces existed and who cleaned them up, if at all. I am strongly of the view that if all seven wanted dogs are returned, they would be returned to a state of distress as the amount of care required by so many large dogs is huge. The Appellant works full time and although he claims his mother and/or brother will move to be near him to look after the dogs, other than the Appellant's words, there was no supporting evidence this would happen.
177. I also find it distressing that the Appellant seemed to change his testimony about the presence of feces in the home, first saying there were none, then saying his wife cleaned up during the day, then saying some of the dogs did defecate and urinate inside the house and one of them would clean it up, and then said his wife did not always clean up and if he saw it, he would, but with his poor sense of smell he was not aware of any. From the condition of the dogs' coats and the testimony of SPC McKay about the inside of the residence along with the photographs, I conclude there were feces inside the home that contaminated the dogs' environment.
178. While I accept the evidence that the Appellant has taken his dogs to the veterinarian when they have needed it such as when Doc contracted Parvo in 2014, and when Ursa had some inflammatory issue with her mammary glands, there is also evidence which I accept that the dogs had untreated ear and skin infections which caused them pain, and that Peanut suffered a painful broken pelvis and Belle suffered a serious infection. Both these dogs needed to see a veterinarian for treatment yet the Appellant was unaware these dogs suffered from any ailment. The Appellant even said he lifted his dogs including Peanut everyday and although Peanut may have flinched – more than once – the Appellant did not see anything that warranted veterinary intervention. I find with all the dogs that there is an unacceptable risk they, as a group, would be returned to distress if they were returned to the Appellant. I find the Appellant is not sufficiently reliable in his ability to take his dogs to the veterinarian when they need it.
179. With all the dogs except Max and Zola, I find their low body weights and thinness, even to the point of emaciation in two dogs, indicated that the Appellant had no understanding or motivation to provide proper nutrition to these dogs. I find there is a real risk that these animals will continue to suffer from a lack of adequate food if they are returned to the Appellant.
180. I did not have much faith in parts of the Appellant's plan especially about moving to Williams Lake. His submitted material which said he purchased some acreage, then he adjusted his

testimony to say he had a rent to own agreement and would put a mobile home on his property, then adjusted his testimony again to say that deal fell through but he was trying to re-negotiate it. He also said he still needed to find work in Williams Lake, which he has still not done.

181. There was abundant information from Dr. Chow and Dr. Wilson about the dogs being fearful, withdrawn, and only one dog wagging its tail, once. Dr. Bhullar said that the fact these dogs could be examined by hand indicated they were socialized enough. Dr. Wilson said being touched was a low bar to reach. I heard evidence that being seized and being in a strange environment away from their owner could contribute to the fear, but may or may not be enough to explain the level of fear. I also heard that the dogs, or at least some of them, could be petted while out on walks, and at least two dogs, Max and Zola, accompanied the Appellant to work. On balance, I do not need to make a decision about poor socialization in order to decide this appeal. There was sufficient evidence to allow me to conclude that the dogs, with the exception of Max and Zola, would be returned to or find themselves in a condition of distress if they were returned to the Appellant.
182. For clarity, this includes the Kamloops kennel dogs. I find that if they were returned to the Appellant, the concerns I outlined above would be in play - too many dogs, the lack of timely and necessary veterinary care, lack of adequate food, an unsanitary living environment - any one of which would give rise to conditions of distress.
183. I find one particular comment from Dr. Wilson's report to carry considerable weight given the circumstances of this case. She said:

I will start off by saying that as a veterinarian and an animal lover I think that it would be truly difficult for two people to adequately care for this many dogs no matter how good their intent is. There were some commonalities and some noticeable differences between the two groups which were telling. A finding common to all twelve dogs was obvious signs of neglect with respect to their basic grooming and hygiene. It was quite evident that they had been kept in overwhelmingly filthy and unhygienic conditions. They were undersocialized and all showed signs of inadequate housing and basic care such as appropriate food and chewing objects, cleanliness, bedding, socialization, minimal grooming for welfare and health. The infections, parasites, exposure to a potentially fatal virus, injuries and fear were all preventable with basic minimal care. The fact that they were universally present in each of these dogs is a clear cut case of neglect. What I found telling and honestly sad was that the two dogs in group 2 (Max and Zola) were obviously treated so very differently than the others. They were dirty and neglected but were well fed in fact a little bit overfed. They did not have them same powerful odour about them indicating prolonged enclosure in squalid conditions. They appeared to have had some exposure to other people as they were better socialized, less fearful and seemed more familiar with leashes and toys. I find this juxtaposition very disturbing as it indicates to me that the people caring for them had at least some level of knowledge and ability to provide more to these two dogs, but for some reason that same care was not extended to the other dogs in their care.

184. In considering whether to return Max and Zola, the two dogs seized on February 10, 2016, I was moved by the veterinarian's description of these two dogs being well-fed and having had some exposure to people. Dr. Wilson noted that "more" was provided to these two dogs.
185. I don't think it is necessary for me to make a value judgment on any favoritism shown to these two dogs, but aside from filthy coats and inadequate housing, which I find is due to a large part to the number of dogs in the house, these dogs seemed to be in adequate condition. They did have whipworm and the Appellant must, as any responsible dog owner should, attend to this with his veterinarian.

186. Given SPC McKay's testimony that in the past, the Appellant has adequately carried out her directions, including cleaning the house, and given Dr. Wilson's comment that it would be truly difficult for two people to adequately care for this many dogs no matter how good their intent is, I conclude that with only two dogs for the Appellant to care for, he should and would be able to clean his home as he says he has done, and keep it clean. These dogs have a history of accompanying him to work where they meet people and get exercise and attention. They are well-fed. Zola has an ear infection which the Appellant, as any responsible dog owner would, should attend to with his veterinarian. One would assume both dogs have been groomed and Zola had her ear medicated and would be returned in good condition and presumably would stay in good condition if returned to the Appellant. I am motivated fully by acting in the dogs' best interests and although I think the other dogs would suffer if returned *en masse* or even as a group of seven due to the work and time involved with their care, I am willing to conclude that Max and Zola would remain in good condition if returned to the Appellant.
187. I note that in the Appellant's submitted plan, he states he has prepared inside his residence and is preparing his back yard, and that he will feed his dogs as before, which has benefitted Max and Zola, and will walk his dogs, and provide his bed and other bedding for the dogs to sleep on, and take his dogs to work with him, which has been of benefit to Max and Zola. His plan states he will consult a veterinarian about the treatment for ear infestations and see if some other new treatment which he has not yet tried before can be more effective; and will do whatever it takes to keep his dogs loved and protected in safety and comfort. Regarding just Max and Zola, I believe the Appellant (as I said before, without the other dogs, the Appellant should have the time and attention to care for just these two dogs).

VIII. ORDER

188. Section 20.6 of the *PCAA* reads as follows:

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

- (a) require the society to return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
 - (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
 - (ii) any matter that the board considers necessary to maintain the well-being of that animal;
- (b) permit the society, in the society's discretion, to destroy, sell or otherwise dispose of the animal;
- (c) confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2).

189. I order that the two dogs Max and Zola be returned to the Appellant without conditions.
190. I order that the dogs Ursa, Belle, Obe, Tonto, Alpha, Sunshine, Scooter, Peanut, Bocci, Breeze, Golden Boy, Blue, Lady, Doc, Gunner, and Jasper may be disposed of by the Society under s. 20.6(b) of the *PCAA*.

IX. COSTS

191. Section 20 of the *PCAA* provides:

- (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.

192. 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)”.

193. The Society has asked for the costs of the Society has incurred and continues to incur expenses with respect to the Animals, including costs associated with providing the Animals with food, shelter and other care. Pursuant to s. 20 of the *PCAA*, the Society is seeking costs in the amount of **\$29,238.32**, broken down as follows (the headings below are merely for convenience, as set out in the Society’s submission, and must obviously be understood in view of my findings above):

The Seized Dogs:	
Veterinary and grooming costs	\$1597.44
SPCA time attending to seizure (Feb 3 & 10, 2016)	\$180.00
Housing, feeding and caring for the Animals	\$6,623.16
Total:	\$8,400.60
The Surrendered Dogs:	
Veterinary and grooming costs	\$2756.30
Housing, feeding and caring for the Animals	\$6,862.14
Total:	\$9618.44
The Abandoned Dogs:	
Veterinary and grooming costs	\$2702.07
Housing, feeding and caring for the Animals	\$7903.41
Total:	\$10,605.48
The Puppies:	
Veterinary costs	\$793.80

194. The veterinary and grooming costs total **\$7,849.61** (note that boarding costs have been removed from all invoices as they have been calculated separately below):

The Seized Dogs:		
Tab 27, pp. 225-254	Ursa	\$286.54
Tab 27, pp. 225-254	Belle	\$305.53
Tab 27, pp. 225-254	Opie	\$262.50
Tab 38, pp. 323	Tonto	\$193.12
Tab 27, pp. 225-254	Max	\$228.33
Tab 27, pp. 225-254	Zola	\$321.42
	Total:	\$1597.44
The Surrendered Dogs:		
Tab 27, pp. 225-254	Alpha	\$742.74
Tab 27, pp. 225-254	Sunshine	\$190.00
Tab 27, pp. 225-254	Scooter	\$354.89
Tab 27, pp. 225-254	Peanut	\$748.21
Tab 27, pp. 225-254	Bocci	\$287.07
Tab 27, pp. 225-254	Breeze	\$433.39
	Total:	\$2,756.30
The Abandoned Dogs:		
Tab 27, pp. 194-199	Golden Boy	\$211.00
Tab 27, pp. 255-256	Golden Boy	\$267.00
Tab 27, pp. 186-190	Blue	\$105.00
Tab 27, pp. 220-224	Lady	\$142.56
Tab 27, pp. 191-193	Doc	\$60.00
Tab 27, pp. 255-256	Doc	\$267.00
Tab 27, pp. 200-209	Gunner	\$466.87
Tab 27, pp. 257-258	Jasper	\$1182.64
	Total	\$2,702.07
The Puppies:		
Tab 27, pp. 225-254	Puppies	\$793.80

195. The Society also incurred labour costs respecting its special provincial constables' investigations and seizure of the Seized and Abandoned Dogs. I estimate the costs associated with investigating, seizing and transporting the Seized and Abandoned Dogs at approximately **\$180.00** (\$12 *per* hour x 5 hours (approx.) x 3 SPCs) (very conservatively estimated).
196. In addition, the Society's costs to house, feed and care for the Animals exceed **\$21,388.71** which have been calculated as follows:

The Seized Dogs:	
Cost for Ursa, Belle, Opie and Tonto: 67 days (February 3, 2016 to April 9, 2016 (being ten days after the anticipated date of the Tribunal hearing)) x \$17.07/dog x 4 dogs	\$4,574.76
Cost for Max and Zola: 60 days (February 3, 2016 to April 9, 2016) x \$17.07/dog x 2 dogs	\$2048.40

The Surrendered Dogs:	
Cost for 67 days (February 3, 2016 to April 9, 2016) x \$17.07/dog x 6 dogs	\$6862.14
The Abandoned Dogs:	
Cost for Blue and Lady: 80 days (January 21, 2016 to April 9, 2016) x \$17.07/dog x 2 dogs	\$2731.20
Cost for Gunner: 78 days (January 23, 2016 to April 9, 2016) x \$17.07/dog x 1 dog	\$1331.46
Cost for Golden Boy and Doc: 76 days (January 25, 2016 to April 9, 2016) x \$17.07/dog x 2 dogs	\$2,594.64
Cost for Jasper: 73 days (January 28, 2016 to April 9, 2016) x \$17.07/dog x 1 dog	\$1,246.11
TOTAL:	\$7903.41

There are no boarding costs associated with the Puppies.

The sum of \$17.07 *per day per dog* is broken down as follows:

- a) Food cost feeding Hills Science Diet: \$2.00/day
- b) Staff time at a rate of \$16.13 per hour: \$8.07/day
- c) 10 minutes kennel and dog cleaning: \$2.69
- d) 10 minutes morning feeding: \$2.69
- e) 10 minutes evening feeding: \$2.69
- f) Overhead Costs: \$7.00/day (see below).

197. The Society submits that, regarding overhead costs, the Society's Shelter incurs costs to maintain the facility, a portion of which costs directly benefited the Animals. This includes expenses associated with utilities (heating/electricity); general facility upkeep and maintenance; administration costs including ordering supplies and managing staff (cleaning and food supplies for animals); taxes on land use; maintaining the Society's computer office and other management systems; interacting with the Animals throughout the day beyond the mere feeding and cleaning of kennels including ensuring their emotional contentment; interacting with, directing, training and coordinating volunteers and other staff members, all for the benefit of the Animals (note: staff costs noted in this paragraph are over and above staff costs associated with any one particular animal, which are discussed under "staff time" above).
198. The Society estimates overhead costs allocated per Animal at about \$7/dog, and acknowledges these costs are estimates only. Actual total costs are very difficult to calculate absent advice from a forensic accountant. The costs to retain a forensic accountant to determine the actual costs will outweigh the benefits of potentially recovering boarding costs from the Appellant.
199. The Society submitted that the Appellant raised no issues with the veterinary costs incurred. The Appellant's representative argued against "overtime" pay. The Society has not sought any overtime pay in its submissions nor particularized any such costs in its affidavit materials. The Appellant argues that operating or overhead costs should not be charged to him, but the Society is using its own resources to house the Appellant's animals and such costs were reasonably incurred to care for

the Appellant's animals, as contemplated by s. 20 of the *PCAA*, and are justifiably charged to the Appellant. The Society says the costs were all reasonably incurred pursuant to s. 20 of the *Act*.

200. Further, the Society asks that if an order is made for return of dogs, it ought to be contingent upon the Appellant first paying the Society, with failure to pay in full in 7 days immediately entitling the Society to dispose of the dogs. It notes the Appellant's admitted failure to pay Country Pawz Estates for boarding his dogs, which issue he claims to be "working on". This reveals the low chance the Society would ever be paid if the order sought were not granted. The Society outlines its concerns regarding payment in Ms. Moriarty's affidavit at para. 19.
201. The Appellant submitted that there are no boarding fees permitted under unlawful seizures. What the Society asks for is not comparable to City pounds. Courts only allow expenses which are actually paid, and not the cost of staff or overhead. Information was submitted by the Appellant's first lawyer that CRA uses cost accounting and *PCAA* s. 20 1 does not contemplate cost accounting and it is impossible to include those costs in s. 20 1 and given that, most importantly, the seizures were not lawful and for certainty costs should not include overtime paid to staff. There should be no costs for the Kamloops kennel dogs as the Society should not have had them.

Analysis and Decision

202. This analysis proceeds on the basis that while the Appellant did not oppose veterinary fees *per se*, he does oppose all costs associated with the seizures and I consider that the Appellant includes veterinary fees.
203. These animals were in distress and abandoned and required veterinary care, as I already determined. As such I find it reasonable for the Appellant to bear the costs of veterinary care for all his dogs, including the puppies he surrendered which were euthanized the same day as they were so sick. They were sick and actively dying while in his care, and two, minimum, had already died in his care and it is my decision that the Society is entitled to have its reasonable veterinary costs reimbursed.
204. The Appellant opposes boarding costs on the ground they arise out of an illegal seizure. Since I have already determined the seizures to have been legal as the animals were all in distress (or abandoned in the case of the Kamloops kennel dogs, in which case I decided it was right for the Society to have those dogs), the Society is entitled to have its boarding cost reimbursed. I further find it reasonable to assess those charges at \$17.07 per dog. The Appellant did not provide adequate information to persuade me this figure was not reasonable. The Appellant said others charged less, which was acknowledged by the Society (who also acknowledged that still others charged more). It is my decision that the costs for boarding of \$17.07 per dog per day are reasonable.
205. The Appellant provided inadequate evidence that the Society was charging overtime, and I saw nothing that supported this assertion. I find it reasonable the amount charged by the Society for the staffing portion of its claim, both in terms of a component of the boarding fee – overhead cost and in terms of the SPC and investigation time.

206. Finally the Appellant opposes the way in which costs are accounted for, saying that the Society can only claim actual expenses, that section 20 of the *PCAA* does not contemplate cost accounting and it is impossible to include those costs under s.20. In fact the *PCAA* refers to “reasonable costs” incurred with respect to the animals, and it is reasonable that someone be paid to feed and house and care for these 18 dogs. I find that the Society is entitled to its claimed costs for overhead, included in the above boarding amounts.
207. The Appellant has asked for time to pay should payment of costs be ordered. The Society submits that all its costs should be paid prior to any animals being returned.
208. In its recent decision *Stiasny v. BCSPCA* (April 1, 2016), the panel held as follows:
128. The Panel is not persuaded that the Appellant should pay her costs prior to having the animals returned to her. If the Panel were to make such a decision in the circumstances of this case, it, in effect, could delay or prohibit the return of the horses to the Appellant and the Panel has already determined that it is in the best interests of the horses to be returned to the Appellant.
129. The Panel is also of the view that the Appellant owes the money to the Society and the failure, in the Society’s experience, of other individuals being unwilling or unable to pay should not be visited upon this Appellant.
209. While I am sympathetic to the Society’s concerns about recovery of its costs in this case, the paramount consideration must be the best interests of the two animals that I have ordered should be returned.
210. A decision to order that costs must be paid by an otherwise successful Appellant as a precondition of the Society returning an animal is a great step beyond ordering, as I have done, that the Society is entitled to its reasonable costs and may take all steps legally available to it to collect those costs. Where, as here, I have determined that it is in the animals’ best interests to be returned to their owner, considerable caution is, in my view, in order before deciding that the animals could shortly thereafter be deprived of that best interests placement, and placed in the Society’s custody to dispose of as it wishes, based solely on non-payment of a financial debt by a particular deadline or schedule. In my view, despite the Society’s concerns about the potential difficulties it may face in enforcing its legal rights, I am not prepared to issue an order in this case that would make the two dogs’ best interests secondary to the Appellant’s timely payment of his debt. In my view, this is a case where the appropriate order is one requiring immediate return of the two animals, and as confirming the Society’s entitlement to its reasonable costs, which entitlement it may enforce with all the legal tools at its disposal.

COSTS ORDER

211. I order that the Appellant pay the amount of **\$29,238.32** to the Society as the reasonable care costs incurred by the Society with respect to the animals. This amount is due to the Society but failure to pay this debt will not prevent the Appellant from picking up the two dogs I ordered returned, namely Max and Zola.

Dated at Victoria, British Columbia this 14th day of April, 2016.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Presiding Member