

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

BETWEEN:

RYAN UNGER

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:

Ryan Unger

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

September 6, 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 August 5, 2016 review decision issued under s. 20.2(4)(b) of the *PCAA* by Shawn Eccles, Senior Manager of Cruelty Investigations for the British Columbia Society for the Prevention of Cruelty to Animals (BC SPCA) who acts, in the absence of the Chief Prevention and Enforcement Officer Marcie Moriarty, to oversee the Cruelty Investigations Department.

II. Brief Summary of the Current Decision Under Appeal

3. The August 5, 2016 written reasons of the Society concluded that it was not in the best interests of the four dogs and two snakes to be returned to the Appellant. These four dogs and two snakes were seized from the Appellant's residence in Kersley, British Columbia on July 6, 2016 as the Society determined them to be in distress. The Society did not seize other animals it found on the property including a cat, rabbits, and horses. The Appellant had asked for the review of the original seizure, which led to the August 5, 2016 review decision, but failed to provide any additional information for the Society to reconsider.
4. The Appellant disputes some content of the search warrant and I will address that issue in the decision.
5. At the start of the hearing, the Society said it was willing to return the two snakes to the Appellant on a care agreement which the Appellant must sign. The Society said that the care agreement would reference the payment of costs of \$90 for the care to date of the snakes, as invoiced in its disclosure package; and written agreement by the Appellant that:
 - (a) the two snakes be housed in an appropriate glass container with appropriate heat and light and humidity;
 - (b) that the snakes be properly fed and food be on-site; and
 - (c) that the Society may, without advance notice, return to the Appellant's property to inspect the snakes.

I asked the Appellant if he understood what was being presented to him and he said yes. I explained that should he be unwilling to sign the agreement, the matter would be subject to appeal and both the Appellant and the Society agreed that that would be the case. I advised the Appellant that if he wished to enter into an agreement with the Society, the snakes would be removed from the appeal and I would make a decision on only the dogs. He said he understood this. I advised him that if I hear the appeal I may return with or without conditions or not return the snakes, and may vary or not the costs for the care of the snakes, but that should the Appellant wish to enter an agreement with the Society, I would not make any decision at all regarding the snakes, and they would not be part of the appeal. Both parties understood and I was satisfied that both parties understood and the Appellant removed the snakes from this current appeal. Therefore the appeal was only regarding the four dogs.

6. Section 20.6 of the *PCAA* permits the BC Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or

without conditions or to permit the Society in its discretion to destroy, sell or otherwise dispose of the animals.

7. For reasons that will be explained in detail later, I have decided to order that the four dogs be returned to the Appellant with a condition on one dog.
8. I will deal with the issue of costs below.

III. The Society's Powers and Duties

9. 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".
10. The March 20, 2013 legislative reforms, set out in Part 3.1 of the *PCAA*, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: *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).
11. 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.
12. 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

13. 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

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

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.

V. Additional Issues

14. All affidavits and witness statements, emails, photographs, and materials submitted were entered into evidence. Parties were sworn before giving oral testimony.
15. During the hearing, the Appellant advised that he had additional evidence, such as photographs of the dogs socializing, that he wished to provide at the end of the hearing. I advised the Appellant that no additional material would be admitted as he had earlier opportunities to provide his evidence and this was the hearing date.
16. Subsequently, during the Appellant's testimony, the Society had the Special Provincial Constable (SPC) make a phone call to obtain evidence to dispute a point raised by the Appellant, and suggested to the Appellant that the Society would introduce this new evidence later in the hearing. I asked the Society to explain how that would be fair to the Appellant given my earlier decision that the Appellant could not introduce new evidence. I asked the Appellant if he agreed to allow this new evidence to be presented and he did not. The Society stated that it would not pursue the new evidence.
17. The Appellant also had some dispute with the warrant to enter the property. He did not make a protracted argument other than to say the warrant was in his mother's name and that it was executed ten minutes early. He also claimed his witness, Ms. King, was at his home when the warrant was executed and that he wanted her to stay as a witness but SPC Edge would not permit it and made her leave.

18. With regard to the time the warrant was executed, the Society took the position that the warrant was executed within the times given. The Appellant has not satisfied me that the warrant was not executed within the relevant time, and in any case, in my view, nothing turned on that potential ten minutes. I take the same view with regard to the Appellant's complaint about whether Ms. King should have been allowed to stay. Neither of these issues has any bearing on the welfare of the animals, which is the key issue for me to consider on this appeal.
19. With regard to the listed premises, the warrant described it as the residence barns outbuildings and property of [AB] in Kersley. This is the same property where the Appellant now owns and keeps the dogs as well as other animals. There was no evidence disputing that the animals were now owned by the Appellant and in fact the Appellant declared he also owned the property and had been allowing his mother to live there. The warrant clearly was about the same property and the same animals that are in dispute here. The mother did previously own the animals and did previously live at the same property and did live there with the Appellant for a time. The transfer of ownership occurred, according to the Appellant, two weeks prior to the seizure. Based on the information before me, I am satisfied that the warrant on its face allowed the Society to enter the property, and that any technical argument about whose name was on the warrant is not my role to adjudicate. As just noted, my role is to assess the Society's decisions concerning whether the animals were in distress and whether, if they were, the Society's decision not to return the animals should or should not be upheld.
20. With regard to the ITO and the circumstances under which the search warrant was obtained and executed, I do not see my role as a decision maker tasked with hearing appeals under section 20. 3 of the *PCAA* as giving me the authority to review the decisions of a provincial court judge or justice of the peace as to whether circumstances justify the issuance of a warrant. A party who believes that a warrant has been improperly issued or executed can challenge that decision through judicial review and ask by way of remedy that the warrant be quashed (which does not necessarily mean that the evidence collected would be inadmissible on this appeal: *Administrative Tribunals Act*, s. 40(1)). Until such time as a warrant has been set aside, I am entitled to rely on its validity and I choose to do so in these circumstances where, as here, the warrant has been issued by a court of competent jurisdiction.
21. As such, the remainder of my decision focuses on the issues of whether the dogs were in distress at the time of seizure, and whether they should be returned to the Appellant, as well as the issue of costs. In this regard I will, later in this decision, as it relates to the issue of "distress", address the history and significance of the background set out in the ITO insofar as it makes reference to the Society's history at the property with prior animal seizures while those animals were under the care and control of the Appellant's mother.
22. The following materials were admitted into evidence:
Appellant:
 - a) Appellant Notice of Appeal (**Exhibit 1**)
 - b) Appellant's August 24, 2016 Submission (33 pages) (**Exhibit 2**)
 - c) Appellant witness list via email August 31, 2016 (**Exhibit 3**)
 - d) Appellant's final reply submission via email September 1, 2016 (**Exhibit 4**)
 - e) Appellant's witness list via email September 1, 2016 (**Exhibit 4a**)

- f) Appellant's witness list via email September 1, 2016 (**Exhibit 4b**)

Respondent:

- a) BCSPCA Binder (Tabs 1-14) (August 16, 2016 via courier) – (**Exhibit 5**)
- b) BCSPCA addition to Tab 14 – (August 17, 2016 via email) (**Exhibit 6**)
- c) BCSPCA Written Submission (Tabs 1-6) (August 30, 2016 via courier) (**Exhibit 7**)

BCFIRB:

- a) BCFIRB letter to parties (August 25, 2016) (**Exhibit 8**)
- b) BCSPCA response (August 26, 2016 via email) (**Exhibit 9**)

VI. The Appeal

Brief History

- 23. In the fall of 2013, the Appellant's mother was the subject of Society orders for complaints that included, amongst other things, that dogs were kept confined to cages with excessive fecal and urine build-up, including "that the smell was so strong in the house that the complainant's lungs seized up."
- 24. On November 19, 2013, nine dogs were removed from the property including a Great Dane named Cortez. The Appellant's mother (the dogs' owner) at that time refused to sign a care agreement for the nine dogs and subsequently surrendered all of them including Cortez. As monies were owed to the breeder for Cortez, that dog was returned to the breeder.
- 25. On October 22, 2015 there was an investigation into animal cruelty that involved the Appellant's mother as the complainant. The Appellant's mother apparently filed the complaint about a dog she was given to rehabilitate and the Society, in its investigation, saw that the dog was rehabilitating well.
- 26. The Appellant's mother advised the Society, in response to its questions on December 4, 2015, that she had three dogs on the property including the Great Dane Cortez, which she had re-purchased from the breeder after the earlier seizure. One of the reasons that Cortez was originally seized involved being confined to a too small kennel, and the Appellant's mother confirmed that a larger kennel had been purchased. The Society states in the current ITO that it reminded the Appellant's mother at that time of her requirement to house the dogs in sanitary environments after the Society detected a strong odour of urine and observed multiple piles of feces outside in a dog enclosure.
- 27. On February 22, 2016, the Society received a complaint that the dogs were being confined to cages and urine and feces were not being cleaned up.
- 28. On March 4, 2016, and in my view this is an important detail, the Society's SPC Edge attended the Appellant's (and his mother's) home, observed one dog on the front patio and heard one dog barking inside the home. SPC Edge posted a notice requiring contact. The Appellant's mother did

contact the Society and on March 9, 2016, the Society attended the property again. The Appellant and his mother were there and agreed to an inspection. SPC Edge detected a distinct odour of ammonia in the sun room, a strong odour of cigarette smoke and minimal natural lighting in the home. Cortez was in a kennel that permitted him to stand upright but not to lie down while stretched out. Cortez was reportedly confined to the kennel on veterinary advice due to a torn cruciate ligament.

29. On March 19, 2016 SPC Edge re-inspected the home with the Appellant and his mother present. She observed that the chain link dog run was clean and newly raked, but that the ammonia odour was still present. SPC Edge then entered the home and saw Cortez in the kennel with water and two other dogs confined to a kennel and an area in the kitchen respectively. It was noted that there was still a strong cigarette odour.
30. On June 18, 2016 the Society received a cruelty complaint that dogs were confined to their kennels 24/7 and that a cat was confined to a travel carrier and that there was a strong odour of feces and urine and five horses were standing in deep manure.
31. On July 5, 2016, the Society applied for and received the Warrant. On July 6, 2016, the Society attended the property under the authority of the Warrant and removed the animals on the basis that they were in distress.

Society's Decision Under Appeal

32. In his August 5, 2016 written reasons, Mr. Eccles of the Society found upon review that the dogs were in distress when they were seized, and he declined to return the four dogs to the Appellant. The decision is excerpted here:

On the strength of the warrant SPCs Edge and Bohanan accompanied by Dr. Angela Gutzer, DVM entered the property. Dr. Gutzer in her report noted the following:

Two dogs (referred to as the "deck dogs") were kept in an enclosed area that is divided into three spots

- The small laundry room area was 8 feet by 2.5 feet
- The floor space was damp due to urine and had a strong ammonia smell
- There were 2 buckets hanging from the wall, 1 was full the other ½ full of water
- The smaller of the two dogs would have great difficulty getting water as the bucket was suspended 1.5 feet and had a depth of approximately 1 foot
- The deck area had several piles of feces
- There was a stained dirty blanket on the floor with a fecal pile
- There was 1 kennel to provide shelter
- Although the deck had good ventilation because of airflow between the slats there was still a strong ammonia and fecal smell
- An outdoor enclosure was approximately 19 feet by 22 feet. The dogs had access to this area at all times. There were several piles of feces in the area
- Felix – approximately year old neutered male border collie cross dog. Good body condition
- Lola – 1 6 month old intact female mixed breed dog, good body condition

In the kitchen area were 2 dogs:

Dudley – a 4 year old neutered male shih tzu cross

- enclosed in a fenced area
 - The linoleum was covered in both dried and fresh urine mixed with some fecal material
 - The ventilation was poor
 - The house had no open windows and the occupants smoked
 - Dudley's paws were covered with brown urine
 - He was of adequate body condition and had adequate levels of water and food
 - His right ear showed symptoms of having a previous ear infection for it was thickened and sensitive
 - He had recently been groomed
 - There was no evidence he left his enclosure
 - It appeared he used his living area to urinate and defecate
- Cortez – a 4 year old neutered male black and white Great Dane
- Enclosed in a kennel larger than seen on the previous warrant
 - The kennel measured 54" x 35" x 45"
 - He could stand at full height, sit and lay in sternal recumbancy
 - He could not however, lay down in lateral recumbancy
 - His enclosure was urine soaked and had a thin blanket that was also soaked with urine
 - The ventilation was poor
 - He had adequate levels of water in a suspended bucket but no food in his dish
 - He gets a raw food diet
 - He apparently had anterior cruciate ligament repair done in May 2016

Dr. Gutzler does provide information on Horses, Rabbits and a Turtle all of which are not currently in dispute so are not mentioned here

Dr Gutzler reports on the 2 Snakes as follows [*redacted by the Panel as the snakes are no longer in dispute*].

Dr Gutzler in her summary and conclusion reports the following:

- The "deck dogs" were kept in unsanitary conditions
 - They were deprived of interaction with people as the door was always closed
 - It is my opinion that the dogs expressed their anxiety by barking with nervous, constant high pitched yelp and running he (sic) enclosure back and forth
 - Both dogs were deprived of exercise
 - This would be considered neglect
-
- "Dudley" was kept in unsanitary conditions and
 - Was isolated from interaction with other dogs and people
 - There was no evidence of allowing him to leave his area of confinement
 - He was deprived of adequate ventilation and natural light
 - He was also deprived of adequate exercise
-
- "Cortez" was kept in unsanitary conditions with poor ventilation
 - His needs were not being met as he had no outdoor enclosure
 - His exercise level was in question, but as he had an anterior cruciate repair 12 weeks earlier, leash walking was within the realm of proper exercise standards
 - He had symptoms of improper housing with his lack of bedding and callous formation over the elbows
 - Because of their large frame and weight they need very thick bedding and correct levels of exercise and nutrition to combat the musculoskeletal issues of this breed
 - The enclosure was soiled and had improper bedding

-The overarching theme for this case was undue care and neglect. Although the individual tried his best to maintain care, he failed. I myself would not have the amount of animals under my care in fear I would not have their best interest in mind. I am disturbed by the fact that we have removed animals from this residence and that there are replacement animals in the same locations receiving the same or worse care. The most worrisome aspect is that of emotional neglect. Dogs especially need attention from their “pack leaders”. They need environmental stimuli and exercise. All these animals had little to no social interaction. The dogs were in desperation for attention literally crawling up their enclosures for a brief touch. These animals have been quarantined to their respective environments without release or attention. The question arises “why have the animals” (sic) They have not been house-trained so they all urinate and defecate in their enclosures posing health risks. I am concerned with the psychological health of the occupants of the home as the premise was uncared for. Having knowledge of the financial constraints there is no way to care for all of these animals on the premise.

-For every animal on the premise there was an element of distress as outlined above. Due to that distress 4 dogs, 2 snakes and 1 turtle were removed from the home July 6, 2016.

On July 27, 2016 at 10:32 AM I spoke with you on the phone regarding the removal of the animals and the requirements that would be necessary in order to return animals. I confirmed that you had been busy attending to issues outdoors with respect to the horses but had not yet done anything indoors. I confirmed with you that communicating via email was acceptable and advised that I would be forwarding a disclosure package

I provided you with the documents and pictures referred to above in an email at 3:35 PM as well as inviting you to provide submissions regarding why you feel the Animals should be returned by August 2, 2016

To date I have not received any further correspondence or submissions from you or any other person acting on your behalf

There is a positive obligation for animal owners as noted in section 9.1 of the Act that requires that an animal owner should be taking proactive measures to keep their animals free from distress.

In reviewing all of the above and relying on the opinion of a veterinarian that was present at both warrants I would agree that animals in you or your mother’s care were found to be in distress not only once but on several occasions and in the case of Cortez am greatly dismayed that he was returned to you and as Dr. Gutzer states “placed back in the same locations receiving the same or worse care.”

Having regard to all the above, I am not prepared to return the animals to you as I do not believe it is in their best interest.

Pursuant to section 20 of the Act, you are responsible for the costs of care associated with the animals whether they were returned or not. I will review and forward these costs shortly in a separate letter.

The Society’s Case

33. The Society relied on all its submitted material and submissions, and I reviewed and considered all material, submissions and testimony, whether or not I refer to it here.

Witnesses

Dr. Angela Gutzer

34. Dr. Gutzer, a veterinarian licensed to practice veterinary medicine in British Columbia, wrote a report dated July 6, 2016 which was admitted into evidence. It is reproduced here in part, with reference to the dogs only:
1. Statement of Qualifications: My name is Angela Gutzer. I am a qualified veterinarian licensed to practice by the College of Veterinarians of British Columbia (license # 2069). I have a Doctorate of Veterinary Medicine from the Western College of Veterinary Medicine (2007). I have worked at the Williams Lake Veterinary Hospital since graduating.
 2. Purpose of this Report: This report is meant as an assessment of the welfare of the animals cared for by Ryan Unger and [AB] of Kersley, BC. This report is also meant to give recommendations for the horses, rabbits, and the cat left in their care.
 3. Facts and assumptions: I was asked to accompany two special constables: Carla Edge, and Chad Bohanan, to a premise in Kersley where animals were reported to be in distress and a serving order had been issued. This was the second time I had come to the premise for a related investigation November 19, 2013. An RCMP officer was also in attendance. The serving warrant involved the 4 dogs, 2 snakes, a turtle, 2 rabbits and 5 horses, and 1 cat kept on the premise. The premise included a single wide home, 3 shed rows with attached runs for the horses, and 2 outdoor dog enclosures. The dogs, snakes, turtle, and cat were each assigned a specific area within the home or outside the home and will be discussed on a location by location basis or on an individual basis.

The "deck-dogs"

Two dogs were kept enclosed in an area that is divided into three spots. The first spot was a small laundry room with floor space of approximately 8' by 2.5'. The floor space was damp due to urine and had a strong ammonia smell. The area surrounding the light switch had multiple scratches creating a hole in the drywall. Multiple scratching episodes would have been necessary to create that degree of damage. There were 2 buckets hanging from the wall. 1 bucket was fairly full of water and the 2nd was ½ full of water. It was noted that the smaller of the two dogs would have great difficulty getting water as the buckets were suspended on the wall about 1.5' and had a depth of approximately 1'. The laundry room door was assumed to be closed consistently. There was a dog doorway leading into the next area which I will call the front deck. The deck area had several piles of feces. There was a stained dirty blanket on the floor with a fecal pile. There was one kennel to provide some shelter. Although the deck had good ventilation because of airflow between the fence slats, there was still a strong ammonia and fecal smell. The deck was attached to an outdoor enclosure made by chain-linked fence units lined with crushed rock. The area was approximately 19' by 22'. The dogs had access to this area at all times. There were several piles of feces in the area (13). Although this area was accessible; the dogs continued to urinate and defecate within all three areas making me conclude that they were not housetrained.

Felix:

An approximately year old neutered male border collie cross dog. Good body condition. Friendly and excitable. Somewhat anxious using high pitch yips and barks quite constantly. Tried and successfully escaped into the main living area although efforts were made to contain him. Very determined to leave the laundry enclosure.

Lola:

A 6 month old intact female mixed breed dog. Good body condition. Friendly and playful. Very interactive and needy. It is assumed that both dogs do not leave these 3 areas and have little interaction with people. No food was seen that day.

Kitchen:

Dudley:

A 4 year old neutered male shih tzu cross. Enclosed in a fenced area in kitchen. The linoleum was covered in both dried and fresh urine mixed with some fecal material. The ventilation was poor. The house had no open windows and the occupants smoked. The whole home was dust covered, cluttered, soiled and malodorous. Dudley's paws were covered with the brown urine. Dudley was of adequate body condition and had adequate levels of water and food. His right ear showed symptoms of having a previous ear infection for it was thickened and sensitive. He had been recently groomed. There was no evidence he left his enclosure. It appeared he used his living area to urinate and defecate and therefore was not house-broken. He was very friendly and enjoyed the attention.

Living room:

Cortez

A 4 year old neutered male black and white (Mantle colouration) Great Dane. Cortez was enclosed in a larger kennel from the previous warrant November 2013. It was 54" by 35" by 45". He could stand at full height, sit, and lay in sternal recumbancy. He could not however, laydown in lateral recumbancy. His enclosure was urine soaked and had a thin blanket that was also soaked with urine. The ventilation is described above under Dudley. He had adequate levels of water in a suspended bucket but no food in his food dish. He gets a raw food diet. He apparently had an anterior cruciate ligament repair done May, 2016. The scar was evidence of the repair and was healing nicely. He had bilateral elbow callouses about 6 by 6 cm in size. There was a small volume of purulent material exuding from his right eye. His gait was moderately stilted. At a sit-both elbows and hips were in an externally rotated position appearing as though he was trying to offset the weight off of these joints. His thighs were both measured to compare the leg with surgery to the leg without surgery. The ACL (anterior cruciate ligament) repair side was 3/4 cm smaller in width. Both thighs were atrophied quite equally and comparable in size. One would have expected a larger difference between the two limbs. I suspect the ACL tear to be bilateral. He had no obvious enclosure outside. He apparently gets leash walks. Cortez is the typical sized Great Dane and is not leash trained. The act of walking him on-leash was a display of great excitement and pulling to which the caretaker had difficulty in controlling. There is a 40' by 40' foot enclosure outside the house but no evidence that it is in use.

Summary and Conclusion

The purpose of my presence in this case was to determine if the dogs, horses, snakes, rabbits, turtle, and cat on site were in distress, and if so, would be removed by the cruelty investigation team.

The Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372 ("the Act") distress has been defined as follows:

For the purpose of this Act, an animal is in distress if it is

- a) Deprived of adequate food, shelter, ventilation, light, space, exercise, care of Veterinary treatment
 - 1) kept in conditions that are unsanitary
 - 2) not protected from excessive heat or cold.
- b) Injured, sick, in pain or suffering
- c) Abused or neglected

Neglect can be defined as (SPCA website):

- a) To pay little or no attention to; fail to heed; disregard
- b) To fail to care for or attend to properly
- c) To fail to do or carry out, as through carelessness or oversight.

The "deck dogs" were kept in unsanitary conditions, and under the act, would therefore be in distress. They were also deprived of interaction with people as the door was always closed. It is in my opinion that the dogs expressed their anxiety by barking with nervous, constant high pitched yelps, and running the enclosure back and forth nervously. Both dogs were deprived of exercise. This would be considered neglect. "Dudley" was kept in unsanitary conditions and was isolated from interaction with other dogs and people and there was no evidence of allowing him to leave his area of confinement. Therefore he was deprived of adequate ventilation, and natural light. He was also deprived of exercise.

"Cortez" was kept in unsanitary conditions with poor ventilation. His needs were not being met as he had no outdoor enclosure. His exercise level was in question, but as he had an anterior cruciate repair 12 weeks earlier, leash walking was within the realm of proper exercise standards. Cortez had symptoms of improper housing with his lack of bedding and callous formation over the elbows. Great Danes have special requirements given their "giant" stature. Because of their large frame and weight they need very thick bedding and correct levels of exercise and nutrition to combat the musculoskeletal issues of this breed. Cortez was earlier surrendered to the S.P.C.A because of the earlier neglect. The previous owner later got the dog back by the breeder. The enclosure had improved from November 2014 in the fact that it was larger; however it was still soiled and had improper bedding. Cortez has still not been housetrained as evidence with the urine soaked enclosure.

The overarching theme for this case was undue care and neglect. Although the individual tried his best to maintain care, he failed. I myself would not have the amount of animals under my care in fear I would not have their best interest in mind. I am disturbed by the fact that we have removed animals from this residence and there are replacement animals in the same locations receiving the same or worse care. The most worrisome aspect is that of emotional neglect. Dogs especially need attention from their "pack leaders". They need environmental stimuli and exercise. All of these animals had little to no social interaction. The dogs were in desperation for attention literally crawling up their enclosures for a brief touch. These animals have been quarantined to their respective environments without release or attention. The question arises "why have the animals?" They have not been house-trained so they all urinate and defecate in their enclosures posing health risks. I am concerned with the psychological health of the occupants of the home as the premise was uncared for. Having knowledge of the financial constraints there is no way to care for all of these animals on the premise.

I only hope these animals will find safety in another home and the occupants will find an understanding as to why we took their animals. Hurt people hurt people-and animals as well. Although they meant well they were not able to care for other sentient beings in their hurt state.

For every animal on the premise there was an element of distress as outlined above. Due to that distress 4 dogs, 2 snakes, and 1 turtle were removed from the home July 6/16. The horses, rabbits and cat were kept on the premise and will be monitored.

35. In her oral testimony, Dr. Gutzer noted some improvement and an overall shift in the types of animals present upon her July 2016 visit as compared with her visit on November 19, 2013. She stated the overall appearance of the premises was unchanged and was akin to hoarding with an unkempt appearance, poor ventilation, poor air quality and "smoking was a major factor." The cleanliness was not changed but there were some improvements in the outdoor dog run attached to the deck. Inside the home there were "typical dirty dishes", stains, cigarette smoke and all dogs were contained in areas: pens, kennels or on the deck. Their individual areas were soiled with their

“own” feces and urine. Comparing 2013 to 2016, Dr. Gutzer said there was a definite soiling issue which remained unchanged.

36. Dr. Gutzer testified that her report (Tab 7) was authored by her and it was her role to assess the situation as a veterinarian and report what she had seen and whether or not the animals should be seized according to the *PCAA*. The deck dogs, she explained, were in a three part attached area comprised of the laundry room, deck area, and improved outdoor run. There was soiling throughout. The dogs were very anxious and wanted attention and interaction. They barked and were territorial until she entered and then they became friendly and wanted interaction. Inside the laundry room there were scratch marks on the walls and door. There was staining indicating both old and new urine. There were damp fecal areas that had been recently cleaned but she could still see the outline of where the fecal matter was. Out on the deck were old and new feces. The blanket was soiled. There was a doggy door flap to the outside area. There were strong ammonia and fecal odours. It was obvious to her that not one of the dogs was housetrained. The entire area was used for urine and feces. A run had been installed based on the Society asking for it – an outdoor room-to be installed previously.
37. Dr. Gutzer said she heard a high pitched yelp/bark all morning indicating anxiousness on the part of the dogs. The dogs would jump on them when they tried to leave an area. Felix escaped once and looked like he was good at escaping, like he had done this before. The dogs jumped up and down and yipped the entire time that she and the Society were in the horse barn. She concluded the reaction of the dogs to her presence was nervous excitement and the dogs tried to hug her leg as she was leaving. They were not fearful but overwhelmed with excitement. Dr. Gutzer suspected but could not say it to be true that the dogs don't get enough attention; they get fed, that's it.
38. She testified that the Appellant was not bothered by the sound and did not make eye contact with the dogs or try to communicate with them while they were upset. The dogs were in need but there was no response from the Appellant.
39. She did not see a leash hanging on the door or a hook, indicating there was no evidence of being walked on a leash. Dr. Gutzer said the onsite assessment took longer than she planned and she had to leave before the actual removal of animals. She was present however when Cortez was walked on a leash and she did see the water buckets for Felix and Lola suspended too high for Lola to drink from it given the bucket height and water level, which was then half full. There was no food down for the dogs. There was a hole in the drywall which indicated abnormal behavior based on boredom or stress.
40. In the kitchen there was an environmental concern for Dudley. His feet were stained. It looked like Dudley had recently pooped as someone had brought soiled paper towel out of the area when they arrived, and it looked to Dr. Gutzer than some fecal matter had been recently removed and some had caked on to Dudley's feet. There was a large enough area that Dudley could avoid the fecal matter on one side. Urine however runs, which explained Dudley's staining as he would be unable to get out of the way. There was a little bed in his enclosure in the kitchen which was not appropriate to keep a dog in long term, and there was no evidence according to Dr. Gutzer that the dog was ever walked. The dog did have enough room to lay down, but would become soaked in urine at that moment in time. The dog had adequate food and water.

41. Dr. Gutzer noted that comparing 2013 with 2016, it was so dissatisfying to see another dog in a similar enclosure as it was a small kitchen and one would think keeping a dog in there would further reduce the kitchen space. It was, she said, unfortunate to have a dog in the kitchen and neglect it. The whole house did not have sufficient ventilation and natural light as the drapes were closed and made it dark. No windows were open and they were heavy smokers with piles of butts in the ashtrays. Dr. Gutzer acknowledged she herself was a smoker but she was uncomfortable in that smoky environment as she cannot smoke indoors herself as she becomes overwhelmed. There was a lot of smoke without a window open. There was mild discomfort to her but mostly she was claustrophobic. It was difficult to be in a place of low ventilation and no air supply. She stated that day to day, this would wear on the animals' respiratory system in kept in that area, causing "minor inflammation" of the respiratory tract. There are cases of primary lung cancer in that environment long term.
42. Dr. Gutzer stated that Dudley had a prior ear infection that was "potentially" treated by a veterinarian in the past. She stated that the dog could get a chronic inflammatory response if it got repetitive infections, whether or not they were treated, which would cause a thickening of the ear tissue caused mostly by chronic ear infections or if left untreated.
43. Cortez, she said, was an example of small improvements, with his cage being replaced by a larger cage. A Great Dane should be on the couch, she said, and due to the breed's genetics and size, they deserve a comfortable cushion even without additional issues, just due to their size and the weight on their bones. In 2013, the cage size prevented Cortez from standing and caused shaking at his front end. In 2016, currently, he was able to stand and lay down, but not stretch his legs out while lying down. There was no way of him getting away from his urine or feces in the cage.
44. The cage was adequate post-op, she said, but still failed as there was not adequate bedding and it had not been cleaned. Cortez had elbow calluses which were very common for the breed and which were there in 2013, she added, and the best way to prevent them is soft thick cushions. It was appropriate post-op to keep Cortez confined for the first eight weeks after surgery and it was good that he could stand but after eight weeks he needed to stretch his legs out. He was wet when she was on-site. The Appellant told her the surgery was 2-3 months earlier. There was a pen area outside but Cortez was post surgery and there was no evidence the pen was in use. The volume of urine in his cage was quite large, filling the cage as evidenced by the fact Cortez was standing in urine.
45. There was purulent material in Cortez's right eye and he had earlier had surgery for cherry eye and was now more susceptible to bacterial infection. This was a minor infection which was quite common.
46. Cortez suffered from bilateral ACL issues and needed further surgery on the other leg and now was the time to do it. It would cause pain if not repaired.
47. Cortez was not leash trained and it was important to leash train the dog if walking was to be his main form of exercise. When he was taken outside on a leash during her attendance, he pulled on the leash as he was so excited to be outside and it could be dangerous if he pulled. If Cortez got loose, Dr. Gutzer said, she imagined him to be the type of dog to just run around. Dr. Gutzer said she felt the dogs were "incarcerated."

48. Overall, she said, the deck dogs were in unsanitary environment, suffering from neglect and were in distress due to the levels of attention they received. In general she said being around urine and feces is unsanitary and the levels were “getting unmanageable”. She said it was not a huge risk for a dog to have poop on its feet but if the dog got cut, there was potential for infection dogs don’t like dirty feet and dirt could contribute to inflammation and infection of the feet over time. The ventilation for the deck dogs was poor but they could go outside. There was no evidence of bedding in the laundry room and only one kennel for one dog on the deck.
49. Dr. Gutzer said the dogs were neglected as they were deprived of exercise. Dogs, she explained, like to work in a pack on a trail or you can throw a ball for them but dogs won’t exercise themselves and she herself has asked her own dogs to exercise themselves and they just won’t do it. Dogs want a pack leader and there was no evidence the Appellant’s dogs were given exercise.
50. Dr. Gutzer stated that there was poor ventilation and light, and that Dudley could lack vitamin D which compromises immunity if there is not enough Vitamin D in his food and he is not exposed to the sunlight. The poor ventilation and smoke increase the risk of respiratory system and immune system issues.
51. Cortez was not given proper sunlight and was not walked outside and could potentially suffer low vitamin D synthesis which would create dysfunctional immune system and increase the risk of potential respiratory infections and inflammatory irritation.
52. Dr. Gutzer said that the dogs were emotionally neglected and dogs love being in a group inter-relating and these dogs were incarcerated in poor ventilation and the dogs on the deck did not interact with the inside dogs. Overall, she testified, she had a feeling of neglect and that the dogs’ emotional needs were not met.
53. Upon cross examination, Dr. Gutzer confirmed the dogs were kept without socialization and that Cortez did have a bilateral ACL tear and would need the same surgery on the other leg. She said there was muscle atrophy to both legs when she did her quick palpation but she did not do a full exam due to the dog’s excitement.
54. In response to my questions, Dr. Gutzer confirmed that Dudley’s ear thickening could be as a result of past or multiple past infections or one bad one not being addressed. No dogs were obese as when she assessed the dogs in 2013. None of the dogs seized currently received veterinary care from July 6-11, 2016 but Dudley and Cortez did see another veterinarian after that.
55. Dr. Gutzer confirmed that none of the dogs were suffering conditions secondary to poor ventilation other than urine soaking and fecal contamination on their paws. There were no medical issues at that point, she said. Regarding the deck dogs, their risk for illness due to poor ventilation was low depending on whether or not the door was sealed. At the time of seizure, two of four dogs had access to the outdoor pen, which was new. Regarding the two dogs that were inside, Dr. Gutzer said the kitchen dog, on a scale of ten with zero being no risk from the poor ventilation and ten being extreme risk from poor ventilation, Dudley scored a two and Cortez scored a two.
56. Lola was a typical 6-month-old puppy but the atypical behavior was that the dogs hugged her leg when she tried to leave which was indicative of a high level of need on the part of the dogs.

57. Dr. Gutzer based her assumption that the dogs were not exercised, she said, on the fact that she tried to find an area where a leash or collar would be hung up and did not see any. This was combined with the fact the dogs were scratching through drywall, indicating boredom. Plus the fact the dog tried to escape when the door was opened showed a willingness and a need on the dogs' part to get out. There was also the yelping and high pitched bark which showed a high level of anxiety. Dr. Gutzer did not find that the scratch marks up so high near the light switch were common and without an identifiable reason for a dog to scratch, it was uncommon. It told her that the dogs were stressed or bored or both. Dogs get bored, she said, and need stimulation. Two dogs together alleviate some of that boredom. Dr. Gutzer testified that she was the alpha for her two dogs and they look forward to her to encourage them to play and explore. Two dogs need a caregiver to alleviate boredom, she said.
58. Dudley was seen without any advance notice so how she found him, she would expect to see him day to day. The animal was enclosed and incarcerated and was not out of its enclosure to interact. She based that opinion partly on one moment in time, she said, but the dog was also not housetrained and was "covered" in urine and feces and if given a choice, a dog would not go to the bathroom in its own enclosure. Dudley might, she said, go out intermittently but there was no leash present and no fecal matter on the lawn so "if I had four dogs I would expect some feces outside."
59. Cortez potentially had an ACL rupture and she would expect this would affect and atrophy his muscles but her concern when she first saw him was lack of exercise. Cortez looked underdeveloped based on the breed standard however the timing in 2016 was after recovery and she was not surprised by the muscle atrophy. The first eight weeks are pivotal; with rest and incremental exercise should be introduced after that and at three months there should be physical therapy.
60. Dr. Gutzer explained that Cortez injured his toe while in the Society's care and his exercise had now been cut back. There was a 40 x 40 foot pen at the Appellant's in need of repair in a minor way and it would be suitable with repairs.
61. The dogs on the deck were deprived of exercise as there was no evidence of any leashes or any attention paid to them and the Appellant ignored the dogs while she was there. The level of anxiety the dogs showed to her by hugging her as she left indicated a lack of exercise and attention.
62. The dogs did not show any physical signs of deterioration or effect due to a lack of natural light and she concluded that since it was about 11 am and the house was dark and the windows were covered that that was the situation all the time. She noted partial light in the kitchen and said there could be natural light if the curtains were opened.
63. When I asked about the volume of urine in Cortez's cage, she said the tray was half full (there is a lip running around the base of the kennel tray that would contain liquid). Dr. Gutzer said there was about 750 – 1000 ml and a dog that size produces about three litres a day so it was less than one day's urine and given the time, it was likely the dog's morning urine and a person should have cleaned all the enclosures.
64. Cortez's calluses looked puffy but there was no direct evidence that it was due to the presence of urine. But being puffy, they could get infected and were more susceptible to infection from urine and feces. Calluses are like pressure sores she said and they progress more quickly with inadequate

bedding and the progression of calluses in Cortez's case was premature and definitely due to a lack of bedding. If calluses are soft, they can fill with fluid and surgery is not a good option and they can crack and could elicit an infection, she said.

65. Dr. Gutzer confirmed that the dogs did not receive any form of assessment for their emotional needs. She testified that she was not aware of any standard way of assessing emotional neglect but the high pitched yelping and the fact the dogs were very interested in interacting with her, overly so, and the fact they continued to yip for two hours indicated an underlying emotional neglect or anxiety. The dogs' emotional needs were assessed through her observation and not as any part of her training as a veterinarian. There is no assessment form or assessment done on these dogs and she would be interested to see it if it were done.
66. I asked Dr. Gutzer about comments made in her report about the Appellant and his mother. Dr. Gutzer confirmed she had no psychological health training and her knowledge about the Appellant and his mother came from SPC Carla Edge who told her that the Appellant's mom had cut all ties both financially and emotionally with that house, and the Appellant, she was told, now worked at Walmart. The mother moved to the coast after finding a new partner.
67. Dr. Gutzer testified that "hurt people hurt people" was her overall philosophy when dealing with people; that if those people hurt a family member or hurt an animal it is because they themselves have been hurt. If there is peace and contentment in life, then people cannot hurt another person or animal. A person must be fragile to hurt an animal or partner. Dr. Gutzer concluded that the Appellant unwillingly hurt his animals as there was not "a lot of T's crossed or I's dotted, in regards to home life, the environment, their own personal health, from an outside point of view there was a lot of things unkempt and unattended to."
68. Dr. Gutzer confirmed she did not wear any respiratory protection but did wear a smock and did keep her shoes on while in the house. When I asked her if she suffered any respiratory effects from being in the house, she said no, she just suffered emotionally from being in the house.
69. Dr. Gutzer testified that with the dogs on the deck, the smallest dog that could not reach the water did not show any physical symptoms of being dehydrated.
70. In follow up of her comment about Dudley being soaked in urine, she testified that Dudley's feet, not his body, were soaked in urine.
71. Upon further questioning from the Society, Dr. Gutzer explained that her emotional assessment of the dogs was observational which means she uses data and evidence to formulate a hypothesis in her head and not on a piece of paper. She did not put the dogs through an exam and is not aware of how to assess a dog's emotional health on paper. As a veterinarian, they paint a picture and put the pieces together. Ninety per cent of her work is with small animals and she has seen numerous dogs and in the course of her work she has learned to appreciate dogs displaying emotions.
72. Cortez's blanket was thin and off to the side and was useless for a dog of his size but it could have been used to absorb urine and it was partially soaked.

73. Regarding the dogs interacting, she did not see feces outside and concluded the pen was not in use and therefore the dogs were confined; also corroborated by the amount of urine and feces in their enclosures.

Dr. Asha MacDonald

74. Dr. MacDonald is a veterinarian licensed to practice in British Columbia. Dr. MacDonald submitted two reports, each dated July 19, 2016; one for Cortez and one for Dudley. They are reproduced here in full:

Cortez:

July 19, 2016

“Cortez” (SPCA #407798), an approximately 1 1/2 year-old male neutered Great Dane, presented for physical examination on July 11, 2016 with a history of difficult getting up and sitting down. On physical examination, Cortez was bright, alert and responsive. His temperature and respiratory rate were within normal limits, his heart rate slightly elevated likely due to nervousness. His skin was diffusely dry, with a coarse-feeling coat and moderate dandruff. No specific parasites or lesions were noted on the skin. His left stifle showed a scar on the medical aspect consistent with surgical repair of the cranial cruciate ligament. Cortez’s right leg was obviously sore, as he was holding it out and reluctant to bear weight on that side at a walk. There was also loss of muscle mass on that side.

A radiograph of his right knee was recommended. This showed moderate to severe arthritis. Under sedation for the radiograph, significant laxity was felt in the joint, indicating a ruptured cranial cruciate ligament in the right knee that has likely been chronic in nature given the arthritis visible in the radiograph. Surgery to repair the right knee and reduce pain was recommended.

July 19, 2016

“Dudley” (SPCA #407799), an approximately 7 year old male Shi-tzu cross, presented for physical examination on July 11, 2016.

On presentation, Dudley was bright, alert and responsive. His temperature, heart rate, and respiratory rate were within normal limits. He had a thin hair coat and somewhat pendulous abdomen. He was moderately sensitive over palpation of his thoracolumbar spine, indicating some level of back pain. He also had moderate dental disease. Dudley’s right kneecap was found to be out of position (medial patellar luxation, grade II-III). The insides of Dudley’s ears were both found to be mildly inflamed, with the right ear in particular showing signs of chronic inflammation (changes to the skin inside of the ear). There was moderate waxy debris in the right ear, which was examined under the microscope and found to contain yeast but no bacteria at this time. It was recommended that he be started on Surolan ear drops however I neglected to send him home with a prescription that day.

75. Dr. MacDonald testified that she received the history of the two dogs from the Society representative.
76. Cortez was more stiff in the hind right leg than hind left and due to his reluctance to weight bear, it is difficult for him to get up or down. He had dry skin and evidence of surgery on his left hind knee. She suspected cranial cruciate rupture on palpation and observation but confirmed a complete rupture when the dog was sedated and x-rayed. He will remain in pain if nothing is done. Surgery costs about \$3000. Cortez did not appear to be fully recovered from his first surgery. She would have expected him to be stronger post op by now but it wasn’t a huge obvious thing. He is better but still not 100 per cent.

77. Dudley had evidence of chronic ear infection but it didn't look ultra severe. She found yeast but not bacteria. There was moderate dental disease and she recommends a dental. Dudley's knee cap was out of position and that could be managed medically. If the knee cap pops in and out it could be painful but she saw no evidence of that. No lameness workup was done. His pendulous abdomen and thin hair could be due to weight or to endocrine but no blood work up was done. This dog had various conditions moderately which she sees frequently and they need attention but not urgently. The dog should see a veterinarian regularly. If the ear condition subsides and the blood work came back alright, he could just be seen annually.
78. Cortez had an elevated heart rate; Dudley was bright, alert, and responsive but very timid and scared. She did not form any conclusions as to the dog's psychological wellbeing as it is difficult to assess in a veterinary clinic and she cannot comment in this setting.
79. In response to questions from the Appellant, Dr. MacDonald opined that Dudley's knee condition was a conformational abnormality quite common in Shi Tzus. The treatment is surgical if it causes pain. The knee was out at palpation. Pain is caused when it goes both in and out, which would also cause a limp, which she did not observe and she did not do any further investigation.
80. Cortez had an elevated heart rate but it wasn't severely elevated in the sense he had a cardiac problem; she attributed it to stress as dogs are anxious in the clinic.
81. In response to my questions, Dr. MacDonald confirmed it was simply an oversight that she sent the dog home without medication for its ears. Regarding Dudley's poor coat, it did not tell her anything specific. It is often diet related but Dudley was not there for his skin and no parasites were found. There was no concern for his health or well being due to his coat. If it was not itchy, he was not affected.
82. Regarding Cortez, the other treatment option for his knee was pain control and glucosamine supplements. At his size, though, surgery was the only chance to stop the pain as medical management only works in small dogs. The time was now for the next surgery. Dr. MacDonald recommended surgery when she saw the dog in July as the tear was severe and the dog was reluctant to weight bear and she is not sure why surgery had not yet happened but most likely it should have happened by now. The dog won't get better without surgery.

Special Provincial Constable Carla Edge

83. SPC Edge is a Special Provincial Constable (SPC) appointed under the *Police Act*, and is an employee of the Society. Much of the information in the ITO (information to obtain a search warrant) was sworn by SPC Edge and appears in summary under Brief History, above.
84. SPC Edge testified that she arrived at the Appellant's property to execute the search warrant at about 10:50 am on July 6, 2016 to determine if any animals were in distress at that time. Inside the home were the Appellant and Ms. King whom SPC Edge had a history with. SPC Edge asked her to leave as SPC Edge was entitled to do since she had care and control of the property. She had the RCMP assist Ms. King in leaving and Ms. King was not given a choice. SPC Edge testified that the RCMP advised her it is her decision who stays during the execution of a warrant. Ms. King had no legal interest in the property so was not entitled to stay.

85. SPC Edge observed the kennel containing Cortez, and a small dog which was put in the laundry room which was then taken outside to relieve itself.
86. SPC Edge testified that the Appellant had just awakened and was a little disoriented and was unclear on what was happening. She denied blocking his way to take Cortez out to relieve himself.
87. SPC Edge recounted her prior attendance in 2013 when she seized nine dogs in distress from the Appellant's mother. The Society was prepared to return the dogs on a care agreement but the Appellant's mother refused to sign so the dogs were seized. Lack of care, cleanliness, and caging were issues at that time.
88. In October 2015, SPC Edge attended the property in relation to a cruelty complaint regarding a dog not involved with this appeal. While there, she saw Cortez, who had been seized in 2013 and re-purchased by the Appellant's mother. SPC Edge was advised that a new larger kennel was purchased for Cortez allowing him to stand up.
89. SPC Edge testified about a complaint in February 22, 2016 and a visit to the property on March 4, 2016 where she observed one dog on the deck, heard one dog barking inside, and got no answer at the door. She left a call back notice. She did receive a call back and testified that some scheduling challenges prevented an inspection until March 9, 2016.
90. SPC Edge attended the property on March 9, 2016 and entered the home and smelled the distinct smell of ammonia and cigarette smell. The home was very dark at 3:30 pm. She testified that there was no change from 2013.
91. On that day, Lola was in the Appellant's mother's hands, Dudley was in a pen, and Cortez had the largest kennel that is available. He could stand better than in 2013. She did not recall seeing feces or urine. The home smelled dirty; a not clean environment. Cigarettes, ammonia and underlying odour like a long-term lingering pee smell soaked into the floor. There were the snakes, and a cat on the bed. There was testimony about the snakes. At that visit there was not enough on the dogs for her to issue a notice of distress although she did for the reptiles. She advised the Appellant to open a window and reminded his mother of the care needed by the animals.
92. On the March 19, 2016 re-inspection, Felix was also present at the home. The deck-yard was cleaned and recently raked but there were old feces in an area at the side. SPC Edge gave verbal direction to the Appellant's mother (the Appellant was also there) to improve ventilation for the dogs. SPC Edge testified that she had issued a notice of distress for the snakes. With regard to the dogs, SPC Edge testified that she reminded the Appellant and his mother to care for the other animals and to open a window, but there was "not enough on the dogs" to issue an order as there was no distress.
93. SPC Edge was shown posts dug into an area where another larger pen outdoors was being built. About five posts had been dug with many others lying on the ground. The pen area was for Cortez when he was healed. She was advised that Dudley was being walked regularly.
94. On June 18, 2016 the Society received a cruelty complaint that dogs were confined to their kennels 24/7 and that a cat was confined to a travel carrier and that there was a strong odour of feces and urine and five horses were standing in deep manure. This led to the ITO and the warrant. SPC Edge

testified that both the Appellant and his mother were well aware of what to do with the animals and when she had observed that the horse pen was not clean she applied for and got the warrant.

95. Referring to the photographs in Exhibit 5, photos 1 and 2 show Dudley having been recently groomed. His pen was askew, there were a couple of urine spots and a couple of toys available. No feces were seen.
96. Photos 3 and 4 show Cortez in his cage beside a smaller wire cage which was for Lola. Felix was on the deck, SPC Edge testified, and the odour inside was smoky and it was dark with a strong ammonia smell and dirty ashtrays and dirty dishes.
97. SPC Edge was concerned regarding ventilation as addressed previously with the Appellant and his mother. The bedroom window needed to be open for ventilation. She did not do an ammonia test strip as she is sensitive to ammonia and it was not at a level to use the strip; it was not going to be high enough, in her opinion. She said any amount of ammonia is unacceptable; it should be none.
98. Photos 15, 16, 17 and 18 show feces on the deck and in the run and on the bedding. Strong ammonia smelled indicated to her that there was urine on the deck and ground and there was nothing there to break down the ammonia.
99. Photos 19 and 20 showed the outdoor penned area with easily a week's worth of feces in there.
100. SPC Edge said Cortez's eye was inflamed and he was very excited. He pulling very hard and was hard to manage when he was on the leash. It only lasted a short time, and then he lay down like he was tired. His confirmation was odd. She has two Great Danes herself and Cortez has an odd shoulder rotation and his feet are splayed and she isn't sure why; it might be the way he is.
101. Since being at the shelter, his behavior has changed. He is a good dog and now when he barks, his tone has changed; his body language has changed. He comes forward and greets people and wants attention and wants to be a lap dog. He seems happy and content. His foot was injured and x-rayed but there was nothing there and it is now healing beautifully. She was aware of the surgical recommendation, but the Society does not do large interventions during disputes. They would do a public appeal later.
102. SPC Edge testified that there was someone lined up who was aware of Cortez, who is a vet tech, who has access to a surgeon at a reduced rate and who can care for issues that may come up, such as stomach tacking or confirmation issues, who is willing to take Cortez if the tribunal does not return Cortez.
103. Based on her experience, SPC Edge is concerned about the over-excitability of the dogs at the premises. Felix was quite aggressive at the fence and she recalls that she was cautious walking into the area. Both Felix and Lola suggest they had little human interaction and they barked constantly even though they were not afraid of her. Dudley was a bit more timid and that is not uncommon if a dog has not been socialized.
104. SPC Edge said she seized the dogs due to environmental issues. Specifically Lola and Felix had feces in their enclosure and no proper house or shelter. Lola had no access to food or water. Dudley had a chronic ear infection.

105. SPC Edge testified that the Appellant's mother did often take the dogs to the veterinarian; she would make an effort but did not do a lot of follow-up. It was environmental concerns for Dudley including feces, urine and poor ventilation. Cortez was seized due to environmental concerns and poor follow-up care after his surgery and the condition of his other leg according to Dr. Gutzer. Environmental and ventilation issues had been discussed multiple times with the Appellant and his mother. The drapes were always closed and it was a poor living environment for the animals, thus she considered them to be in distress.
106. She confirmed that contrary to a claim made by the Appellant, she does not know the Appellant's mother's ex-husband.
107. There were no questions on cross-examination.
108. In response to my questions, SPC Edge clarified how the vet tech who wishes to adopt Cortez became aware of Cortez through a call she made to Ospika Vet to request veterinary records and x-rays. She had said she had seized Cortez as the reason for her requesting his file. The vet tech then called her directly and freely provided information to SPC Edge.
109. Regarding my question about the billing from Dr. Gutzer especially around the attendance at the seizure and subsequent reporting, SPC Edge testified such charges varied somewhat and this was a cheaper rate in Williams Lake. Dr. Gutzer did drive herself this time, whereas she had a ride in 2013 which saved her mileage. The cost for writing a report varies and this report took a while. Historically, SPC Edge has seen reports like this cost more and cost less depending on the clinic and the size of the report.
110. Although it was not in dispute, I asked the SPC about the cat and why it was not taken, given reports it was indoors, and given the SPC's comments and concerns about the indoor environment. She testified that the cat was not in distress although its litter was somewhat dirty, it was not excessive, and the cat's overall health was good. It was not enough to remove the cat. The cat was inside the house but was able to remove itself from the home so not be in distress. The dogs couldn't remove themselves as the deck had feces and urine plus in the laundry room and run; it was a combination of factors. The cat could exit the home and roam free. The litter box, she said, was not overflowing as horrible as that sounds. The cat had other options; the dogs did not.

The Appellant's Case

111. The Appellant relied on all his submitted material and submissions, and I reviewed and considered all material, submissions and testimony, whether or not I refer to it here.

Witnesses for the Appellant

Ryan Unger

112. The Appellant said that when the Society came to do its investigation, he had only recently acquired the animals. He was working on improving their conditions but he had only been the owner for two weeks. The property is owned by him, and his mother had previously lived there with him. He had just gone for a nap when the Society arrived and so was not socializing the dogs as he works nights. He said he had photos of the dogs socializing but did not submit them. His

mother wanted to move and get away so she transferred ownership of the dogs to him at Marshalls Vet where she put the animals under his name.

113. As for taking care of the dogs, he is building a secondary run in his back yard and has installed the posts but is awaiting the panels so it was not complete at the seizure. For Cortez's care, he followed the veterinarian's guidelines from Ospika Vet.
114. He noted that in photo 19 and 20 there are a few fecal deposits but not an overwhelming amount and there was adequate room there. There was some dirt on the floor of the laundry room in photo 17 but a lot of that was brought in from the Society when they entered.
115. Under cross examination, the Appellant testified that he lived with his mother at the current property but was in and out on jobs. He works at WalMart but had a different job with the travel team. He agreed that at the time of the 2013 seizure, his mother was not taking care of the animals. In 2016, the animals kept in the house were different except for Cortez who had been re-purchased.
116. He agreed that he was at the property on March 4, 2016 and had heard the Society being told the run was being constructed but it had not been completed by the time of the July seizure. The ground was frozen in March, and in May and June, he installed the posts but the panels were being shipped from the USA but had not arrived. They were due in about a week from the company High Hog. In March, the Society saw three posts; now all of them are in. This new run is meant primarily for Cortez but could include others including Dudley.
117. Dudley and Cortez are taken for walks and let into the small run from time to time to share the space. Cortez is walked twice a day on leash at night and in the morning. He is leash trained but if you don't know his cues, he won't respect you.
118. The Appellant sleeps during the day and works overnight within a 15 minute commute.
119. The Appellant watched his brother take Cortez for a walk each morning before he went to sleep in the morning. Cortez had surgery around April 30, 2016. Post surgery he was walked according to the guidelines. His brother would walk the dog in the two weeks prior to the seizure for 30 minute stints followed by 30 minutes of rest, and would take ice with him for Cortez's leg, according to veterinary instructions. The dog was walked again around 5:30 pm. It was one to two hours depending on how the dog felt, but he did not see his brother do the evening walk.
120. Cortez was in the cage due to his surgery but Dudley was penned in the kitchen while the Appellant was asleep as he got into stuff and was penned for his safety. The deck dogs enjoyed walking around outside. He would bring the dogs in to feed them and play with them after his own nap. He would possibly consider allowing all three dogs to be together in time, when Lola and Dudley learned to get along. He is working on that.
121. In the photos, Dudley is seen in the kitchen but he normally spends the day on the couch and is in the cage while the Appellant naps or goes out. Most times when he is sleeping there is no interaction with the dogs but his brother Jake and friends and family do interact with the dogs. The brother was at work at the time of the search warrant. He does live there however. Michelle King helps care for and clean up after the dogs. His friend Glen Thompson does too.

122. In the photo on page 74, the linoleum is missing a piece, but not because of the dog. Instead it is because of a leak. He did see urine in the photos and Dudley is not housebroken. There was urine and feces in Dudley's cage as he had not gone out yet for his walk. The mat needed cleaning from urine.
123. The Appellant acknowledged his mom kept Cortez in a cage but that was not his decision. The dog was in a cage at the current seizure to prevent re-injury. His veterinarian said the dog should be x-rayed in August due to some swelling. Cortez is housebroken. He urinated in the cage that morning as he had to pee. The Appellant told the Society the dog had to pee but they would not let him take Cortez outside. The cage was dry at 6:30 am when Jake took the dog for a walk. He would have got an even bigger cage but this was the biggest cage you can buy. Cortez was fed about 7:30 am and is fed twice daily with a raw food diet due to his pancreatitis.
124. He testified that the dogs drag their blanket sometimes through feces and he did see feces in photos on page 81 outside on the deck. Felix is trained but Lola is not yet trained. The two dogs can run in their dog run and are taken for walks on leash by friends but Felix does not like walking on a leash. The Appellant walks the dogs himself on weekends and does not pay others to dog walk. The Appellant agrees the dogs were neglected to some degree when they were with his mother; getting less attention than what he thought they needed, but he was not around as much due to his job. He is now home-store-based.
125. His mom moved in May. He can pay for Cortez's next surgery through a family loan. He disagrees that Cortez would be better off with the vet tech, and instead said Cortez is bonded with him emotionally and he is prepared to pay for surgery and healing and anything else the dog needs. Despite veterinary testimony that Cortez's rehab was not where they would expect to see it, the Appellant feels confident he can secure the money and take the dog to Ospika Vet for surgery and then take the dog outside to the bathroom and for walks now that he is home more often. His brother would help. Getting a family loan is not going to be hard to do. His grandma will loan him the money and he will pay it back as he has done before.
126. On the photos on page 81, he said he saw hair and dirt but not feces though it was possible. The outer panel of the wall is being replaced due to an earlier fire around the washer and dryer. That explains some of the debris on the floor. Normally it is cleaner but he had not got to it yet.
127. He had lifted the bowl off the floor for the dog water as he did not want the dogs to get dirt in the bowl but there is another bowl outside that both dogs can access.
128. The Appellant testified he was aware of the scratching high up on the walls but the dogs were in there when the fire broke out and he put out the fire but the dog scratched in response to it. The one dog is destructive, however, and gets into things. That's how those dogs behaved; not because of lack of socialization.
129. He testified that Cortez's eye had discharge and he had seen a veterinarian already about this, at Marshalls. He testified that Marshalls should show him in their records as the current owner of the dogs despite the Society's suggestion that was not the case.
130. He testified if the dogs were returned he needed to change a lot of things and would finish the outside pen, and clean more although he had only just started the cleaning. He planned to make big

changes. He disagreed with the Society's view that he did not have the time or money to care for this number of animals, testifying that he is not the only one to contribute financially to the household and that he is trying to get a better paying job, and will discuss a change of shifts at work. He has no plans to acquire any new animals as he does not have time for any more.

131. In response to my questions the Appellant testified he did email his response to the Society but they did not get it then there was the weekend and he did not include it as he did not think it was relevant. He has rearranged the living room for Cortez and has a larger mat for the dog so he won't be in his kennel as much. He has already rearranged the dog water bowls lower on the walks and is working on the front pen and is cleaning up around the house. He purchased the larger mat at Costco two weeks ago and had already lowered the water buckets as they were too high for Lola. The laundry room floor has already been cleaned and the porch swept into a pile and carted off to the disposal area and the deck washed. The Appellant testified he has the time and money to care for these four dogs.
132. He is trying to rearrange his time at work to allow for more time for the dogs and will complete the dog play area and repair the damaged one. He plans to step up his routine regarding cleaning of feces and urine and clean messes quickly and take the dogs outside when they need to go. He will discuss this more with friends and family to improve. He said they all sort of help each other there. The leashes hang on the back door behind the jackets and Jake is home three days a week.
133. He testified he intends to keep the dogs even if his mother wants them back as she has had problems before. Cortez and Felix and Dudley are leash trained but not Lola yet, and Felix is not calm on a leash until several minutes into a walk. The Appellant acknowledged that the dogs have gone to the bathroom when he's been asleep and that wasn't good.
134. He bought the fence panels in Quesnel at the Co-op manufactured by a US company and the panels are 8 feet by 9.5 feet and there are 17 of them. Sixteen posts are in the ground and this new fence, when built, will back onto an existing fence for part of the perimeter. The panels have been paid for and are due in two more weeks.
135. The Appellant cleaned Cortez's eye each day and was putting three drops of medicine in the dog's eye at night but the drops were only good for two weeks. Cortez spent time inside the house loose, in the pen and outside on walks. Dudley was mostly in the house and the other two dogs were in the three-zone area including outside.
136. In response to further Society questions, the Appellant said Cortez had been on eye drops and he took him back again in June for his eye and the vet upped the dose as the eye was worse and he was to give three drops in the eye once a day. He went back to the vet without the dog to get more eye drops as he had run out two days before the seizure but did not produce invoices as he did not know they were necessary. He testified he also cares for the horses plus has some help from a friend. The cat is with him all the time and sleeps in his bedroom while the horses take about 70 minutes a day. He also has rabbits and will soon get his two snakes back. He is working on a way to find the horses new homes so he has more time available for the other animals.
137. In response to my request for further clarification on the eye medicine, the Appellant testified he got eye drops on July 5 as he had run out, and he opened the brand new bottle July 5. Cortez was seized July 6, 2016 and he threw out the bottle on July 20 as it was only good for two weeks and

that the year and day were listed on the expiry date but not the month and he thought it expired in July right after it was prescribed.

138. The Appellant in his final comment said he is working on things and is not perfect but is trying to improve and he deserves a chance at least. If he starts having trouble keeping up with the dogs or snake he will have to re-home them or contact the Society. Sometimes things don't work out but at least he should have a chance to try.

Rich Kolar

139. Mr. Kolar testified that he had not been to the Appellant's home and did not know the type of care he gave to his animals, but the Appellant purchased raw food from him and it cost more and was superior to kibble and the Appellant bought raw food as he cared about the welfare of his dog and he seemed like a good person.

Michelle King

140. Ms. King, I have to say at the outset, had difficulty giving evidence and took an inordinate amount of time to answer questions, often giggling and seeming hesitant to answer questions.
141. She testified that she helped him clean and feed his animals and that there was always room for improvement but that he should not have done more. The exercise of the dogs was enough and should not have been more. The dogs were being taken care of.
142. In response to cross examination, Ms. King testified she was at the house every couple of days, and that she never saw pee or poop at the house and it was clean; well, not spotless. She did see pee and poop when the Society broke into the house executing the search warrant and the animals then did evacuate their bowels in the house. She cannot recall the condition of the litter box but it was probably clean. When she was at the Appellant's house Cortez would roam the house wherever he wanted to and Dudley was allowed out of his playpen and Felix and Lola were in a kennel in the house or in the run outside.

VII. Submissions, Analysis and Decision

143. The Appellant's position is that the warrant was issued to his mother and he was under the impression he would be given a list of concerns by the Society and time to address the concerns, as he was given with the horses. He was not given any time to address the dogs' needs. He had just acquired ownership of the dogs and was making progress. He had the horses' feet cleaned and trimmed and had a load of hay ordered and set up a day to have the horse pens cleaned and scraped by machine. He was about to address the dogs and snakes when they were seized.
144. The Appellant provided some options for the Panel to consider including the possibility that he might be willing to surrender Felix and Lulu in order to get the rest of the animals back and to alleviate some of the Society's concerns; if some or all of the animals were returned he would work with the local Society to improve the animals living conditions, as he was never against working with the Society in the first place; or if some or all of the animals were returned, he would be open to them being returned on a trial basis or graduated return with the Society assessing his progress

and monitoring the animals' care. The Appellant asked for the chance to make this right and have his animals come home, since he was not given adequate time after taking ownership of them.

145. The Society's position is that first, the Appellant provided no information or submissions to the reviewer, Mr. Eccles, to seek return of the Animals. The seizure was conducted in the presence of a veterinarian and that veterinarian reported that the animals were in distress and she recommended they be removed from the Property. As reported in her opinion, the overarching theme for this case was undue care and neglect. Although the individual tried his best to maintain care, he failed. She was disturbed by the fact that the Society had removed animals from this residence and there are replacement animals in the same locations receiving the same or worse care. The most worrisome aspect is that of emotional neglect. Dogs especially need attention from their "pack leaders". They need environmental stimuli and exercise. All of these animals had little to no social interaction. The dogs were desperate for attention, literally crawling up their enclosures for a brief touch. These animals have been quarantined to their respective environments without release or attention. The question arises "why have the animals?" The Society states that they have not been house-trained so they all urinate and defecate in their enclosures posing health risks. Having knowledge of the financial constraints there is no way to care for all of these animals on the premise[s]. While the dogs and snakes were removed, the horses, cats and rabbits were left and will be monitored. Photographs graphically depict the unhygienic and cramped living conditions within which the Animals were kept. There was also a history leading up to issuance of the warrant.
146. The Society submits that the Appellant complains of not being given time to rectify the situation. It notes that in fact, the Society had previously attended the property and animals were kept in poor conditions at that time (unsanitary conditions, lack of proper housing, lack of appropriate housing for the snakes, etc.). Prior orders were issued, as detailed in the ITO prepared by SPC Edge. Oral testimony outlined the unsanitary conditions, lack of socialization amongst animals, cramped housing, and inadequate care.
147. The Society states that the test is the best interests of the animals and in the Society's opinion, those best interests militate against a return to the Appellant. In particular, the Society is concerned that:
- (a) the Appellant fails to appreciate conditions of distress (environmental and health);
 - (b) the Appellant is unable or unwilling to provide appropriate medical care for the Animals;
 - (c) the Appellant is unable or unwilling to provide a suitably sanitary environment to house the Animals.

Seizure of the dogs

148. The Society's power to remove an animal in distress comes from section 11 of the *PCAA*:

11 If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal

(a) does not promptly take steps that will relieve its distress, or

(b) cannot be found immediately and informed of the animal's distress,

the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

149. The *PCAA* sets out the following definition of “distress” in section 1(2):

- 1 (2) For the purposes of this Act, an animal is in distress if it is
- (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
 - (a.1) kept in conditions that are unsanitary,
 - (a.2) not protected from excessive heat or cold,
 - (b) injured, sick, in pain or suffering, or
 - (c) abused or neglected.

150. I begin with the actual physical conditions of the animals. The dogs had no serious physical health issues requiring veterinary care and, in fact, two of the four dogs had no health issues at all. Of the remaining two with health issues, one, Dudley, had evidence of chronic ear infection but it didn't look very severe to the veterinarian, Dr. MacDonald, who examined him. She found his knee cap was out of position and that could be managed medically. If the knee cap pops in and out it could be painful but she saw no evidence of that. No lameness workup was done. His pendulous abdomen and thin hair could be due to weight or to endocrine but no blood work up was done. This dog, she concluded, had various conditions moderately which she sees frequently and they need attention but not urgently. Cortez had recent surgery and his rehabilitation was slower than expected but he also required no veterinary care or intervention while in the Society's custody other than for a toe infection received while in the Society's care. He was assessed for an ACL tear in his other leg, but the Appellant or his mother already had the dog assessed for that and were awaiting further rehabilitation before scheduling surgery.

151. I believe the Appellant when he testified he would have the surgery done, but in order to prevent unnecessary suffering of this animal, I will include a condition of return to ensure Cortez has his other leg fixed within a reasonable time. I do not otherwise see any indication of any of these dogs being sick, injured, in pain, or suffering nor being deprived of veterinary care and therefore cannot find they were in distress due to any of these conditions.

152. The Society and the veterinarian Dr. Gutzer maintain the dogs were living in unsanitary conditions – “kept in conditions that are unsanitary” within the meaning of s. 1(2)(a.1) of the *PCAA*.

153. In *Krecul v. SPCA* (June 26, 2014), the Board set out the following understanding of “unsanitary”, which I adopt in this case:

As the meaning of “unsanitary” is not defined, I have applied the principle that language is to be read in its entire context, in its grammatical and ordinary sense, harmoniously with the scheme and object of the Act.... It is clear to me that the word “unsanitary” must have some boundaries. It cannot be trivialized; it cannot, for example, be interpreted as merely “really dirty”. The word cannot be interpreted to invite mere speculation as to what might possibly happen. The 2011 amendments must be interpreted in accordance with the larger protective purposes of the *PCAA*. In this regard, while they broaden the definition of distress, they also reflect the flavour of the other definitions of “distress”. To accept the definition of unsanitary as merely “dirty” or “really dirty” would mean that animals could be seized for no other reason than a subjective assessment regarding the level of dirt in one's home. Surely this was not the intent of the legislators –to make it possible to seize otherwise healthy animals from merely dirty homes. All this leads me to conclude that these new terms were intended to invite and require a fact - based judgment connected with a significant risk to the animal's health and well-being. In this context, a condition will be “unsanitary” when it is so filthy as to carry a significant risk to the animal's health and wellbeing.”

154. In the circumstances of this case, while I understand the basis of the Society's concerns, having given due respect to those concerns and having taken into account the reality that the conditions in the house upon their arrival were certainly not clean or pleasant, I nonetheless find that the conditions did not meet the definition of "unsanitary" so as to justify the removal of the animals. In this regard, I have carefully reviewed the evidence including the photographs.
155. I note that Dr. Gutzers' report stated that: "They have not been house-trained so they all urinate and defecate in their enclosures posing health risks."
156. Dr. Gurtzer's opinion assumed that none of the dogs have been house-trained and that they all urinate and defecate in their enclosures. That is an inference based on her one visit, which inference stands in conflict with the Appellant's evidence, which I accept, that all but one of the dogs (Lola) is house-trained. Although there were photos confirming the presence of urine and feces, they were not in my view of such quantity, or shown to be present for such duration (given the Appellant's evidence, which I accept, as to his cleaning up) as to cross the line from dirty to unsanitary. Other than some staining on one dog's feet, there was no damage to any dog and there was no specific evidence to convince me that there was any substantial risk to the dogs due to the cleanliness of the home. While the circumstances were less than ideal, that is not the legislative test. I cannot find that the four dogs were in distress due to unsanitary conditions.
157. There was no evidence about distress due to excessive heat or cold so I cannot find the dogs were in distress due to those reasons. There was also no evidence of abuse and I cannot find the dogs were in distress due to being abused. There was no evidence that the dogs were deprived of adequate food so I cannot find the dogs were in distress due to inadequate food.
158. The Society did make arguments that the dogs were deprived of adequate water, shelter, ventilation, light, space, exercise, and care, and collectively were neglected. Again I am not convinced, in the circumstances of this case, that there was enough evidence to demonstrate that any of these situations existed and posed a significant risk to the dogs. Regarding the water, although one bucket was placed higher than could be easily accessed by a shorter dog, there was other water available to that dog and in any event the veterinarian reported there was no indication of dehydration in this dog. I therefore find that none of the dogs were in distress due to a lack of water.
159. Each dog had access to an inside area, whether it be the living room or kitchen or laundry room, plus two dogs had regular access to the outside run, and the other two were taken for walks. There was no evidence that convinced me that this situation deprived the dogs of adequate shelter so I cannot find these dogs were in distress due to inadequate shelter.
160. The SPC and Dr. Gutzter testified that the ventilation was poor due to smoke and ammonia and the odour of urine and feces, variably. This included testimony about the odour outside which I do not accept constituted poor ventilation. Inside the house, I agree it likely was smelly and not pleasant but like the definition of unsanitary, to be inadequate, ventilation must exceed merely smelly or unpleasant to having a substantial risk of some physical reaction or suffering due to the poor ventilation. Neither the veterinarian nor the SPC wore protective breathing or eye gear and when asked, the veterinarian did not complain of any effects of having been in the house other than her own emotional distress. In the circumstances of this case, veterinary testimony put the risk to the two inside dogs of developing a physical reaction to the poor ventilation at a scale of two out of

ten. In my view, that does not constitute a significant risk especially when coupled with the fact none of the four dogs showed any sign of being affected by inadequate ventilation therefore I cannot conclude these dogs were in distress due to poor ventilation.

161. Similar with the allegation of being in distress due to inadequate light, this cannot apply to the two deck dogs. Dudley in the kitchen was said to receive some light. Cortez in the living room cage was said to be in a dark room where light was blocked by the curtains, but there had to be artificial light as the SPC could describe the conditions of the room and of the dog and the photographs were not taken in the dark. I am not convinced that just because the room was dark at the time of the seizure initially, that it was always dark. Curtains could be opened and lights turned on and I am therefore not convinced these dogs were in distress due to inadequate light.
162. I am also not convinced that the dogs lacked adequate space or exercise. There was evidence of some muscle atrophy and weakness in Cortez but that was also explained by his recovery from leg surgery. The cage he was kept in was big enough for him to stand and turn around in, although he could not stretch out his legs sideways when he lay on his side. But I am not convinced that he spent his life in there. The Appellant testified that he and others walked Dudley and Cortez. The Appellant provided copies of veterinary records from Marshalls which state, on March 7, 2016, that for Cortez, the “Deramaxx tabs worked too well, he used leg too much while on them” indicating to me that pre-surgery, Cortez was exercised. While I appreciate that Dr. Gutzer inferred otherwise based on her inability to find evidence of leashes or collars during their visit, I do not find that evidence sufficient to outweigh the Appellant’s evidence that the dogs were regularly walked.
163. I likewise do not find there is enough evidence to convince me that these dogs had inadequate care. They were fed, watered, sheltered, and received veterinary care in the past including the recent past. I believe the Appellant does walk the dogs and I am hopeful he will finish the outside pen to allow Dudley and Cortez to get even more outdoor play time.
164. I am very alert to the comments made by Dr. Gutzer when she speaks of her own personal philosophy on the actions of people who suffer emotional hurt and how they can then turn on animals or other people. I am alert to her comments on her own emotional suffering after spending time in this home and I am especially alert to the fact that she was present in a previous seizure and she determined the current situation in this house to be the same or worse. I could hear in her testimony and read in her words that she had formed an opinion about the emotional state of the dogs and the Appellant. She referred more than once to the dogs being incarcerated. She stated:

The most worrisome aspect is that of emotional neglect. Dogs especially need attention from their “pack leaders”. They need environmental stimuli and exercise. All of these animals had little to no social interaction. The dogs were in desperation for attention literally crawling up their enclosures for a brief touch. These animals have been quarantined to their respective environments without release or attention.
165. While I respect Dr. Gutzer’s opinion, she is not an expert either on the Appellant’s emotional state or the emotions of the dogs in question. Her assumptions and connections on these matters are in my respectful view not supported by the evidence.
166. Dr. Gutzer testified she did no emotional assessment on the dogs. She testified that she was not aware of any standard way of assessing emotional neglect but the high-pitched yelping and the fact

the dogs were very interested in interacting with her, overly so, and the fact they continued to yip for two hours indicated an underlying emotional neglect or anxiety. The dogs' emotional needs were assessed through her observation, relying on her assertion that for much of her work as a veterinarian, she has learned to appreciate how dogs display emotions, and not as any part of her training as a veterinarian. There is no assessment form or assessment done on these dogs and she would be interested to see it if it were done.

167. In *Viitre v BCSPCA*, in a decision where the Panel upheld the Society's' decision to not return a dog due in part to its emotional well-being, there is the following:

Dr. Ledger reviewed the materials that the Society had on file for Kello and performed her own, in person assessment of Kello on March 12, 2016. That assessment was included in evidence at the hearing and represents a particular process/analysis technique that has been developed by Dr. Ledger and used on thousands of dogs in determining the psychological wellbeing of the animal. The process involves Dr. Ledger interacting with the dog in a number of different ways and paying particular attention to the animal's physical responses in order to determine its level of fear, anxiety, comfort, etc. This assessment is the same type of evidence that Dr. Ledger has provided in other court cases."

168. I conclude from this paragraph that there is a formal assessment in place that has been used by the Society. While I have carefully considered Dr. Gutzer's comments about the some of the dogs "literally crawling up their enclosures", I do not find this to be proper proof of some detrimental emotional issue. This is not enough to convince me that these dogs suffered distress due to a defect in their emotional needs being met. In this case, the four dogs did not get any formal or systematic assessment for their emotional wellbeing and I note that Dr. MacDonald testified that she did not form any conclusions as to the dogs' psychological wellbeing as it is difficult to assess in a veterinary clinic and she cannot comment in this setting. There was in my view no persuasive evidence that the dogs were denied love or affection to such a great extent as to cause the dogs emotional suffering. In my view, in all of the circumstances, the seizure was not justified based on harm to the dogs' emotional well-being.
169. With regard to the evidence of "yipping constantly", I note that SPC Edge wrote in her ITO that on March 4, 2016 she attended the Appellant's home and observed one dog on the front patio and heard one dog barking from inside the home. I find it noteworthy that there was no evidence of the patio/deck dogs yipping.
170. Overall then, I do not find enough evidence to conclude these four dogs were neglected. While I appreciate the concern expressed by the Society and Dr. Gutzer, the term "distress" must be understood in light of its implications (the removal of an animal from its owner's care, with all the cost and disruption that entails). While the *PCAA* is concerned with the welfare and best interests of animals, it does not impose a standard of perfection. Even Dr Gutzer said she suspected but could not say it to be true that the dogs don't get enough attention. I do not find these dogs to be in distress as defined by the legislation. I cannot permit the Society to keep dogs that were taken without adequate evidence of distress and on which an observation was made at least in part based on what was suspected but not said to be true.
171. This is not to say the Appellant is not somewhat blameworthy here. He should have responded to the Society's request for more information when he asked for the review. The Appellant gave me cause for concern with some of this answers to questions, including his frankly bizarre statement

that an eye medication expired two weeks after being prescribed and that the vet explained he was getting soon-to-expire medication and he recalls seeing a year and a day but not a month on the bottle and even though he used it once, he discarded it during the dog's seizure. He also provided details of fence panels which seemed rather imprecise. While these aspects of his evidence concerned me, they did not taint the entirety of his evidence, and in particular his evidence regarding the dogs being walked, three of the dogs being house-trained, and his clean-up after the animals.

Return of the dogs

172. Having determined that the animals should not have been seized, I turn my mind to the issue of return of the dogs. This power comes from s. 20.6 of the *PCAA*:

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).

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. In my opinion, s. 20.6 of the *PCAA* give the panel the power to refuse to return an animal, or place conditions on the return of an animal, in the interests of an animal's welfare, even where the Panel has found that the initial seizure was not justified. To conclude otherwise would ignore the broad scope of the appeal which is not an appeal on the record, the evidence before me which may not have been before the Society reviewer (as was the case here with the Appellant's evidence), any changes in circumstances since the date of seizure, and other animal welfare considerations. While this would likely be the exception rather than the rule where the seizure has been found to be unjustified, the discretion must exist to achieve the purposes of the *PCAA*.

176. With regard to the issue of return, I have concluded that the animals should be returned. This decision is obviously informed in large part by the fact that I have concluded that the initial seizure was not justified, and the reality that conditions have improved slightly since the seizure.
177. My decision to return the dogs is also bolstered by other features of this case. SPC Edge testified that the Appellant's mother always sought veterinary care for the animals, and I am hopeful that this would continue by the Appellant, as he declared. When advised that the cage was too small, the Appellant did replace it with a properly sized cage. The Appellant testified that he has purchased a better dog bed for Cortez, and that he has already cleaned some areas and lowered the water buckets for the deck dogs. I am also bolstered by the fact that the horses were not seized because, in part at least, the situation with the horses was being monitored as the Appellant was making some efforts. Further, and with regard to the cat which was also not seized, the situation is being monitored and the cat was deemed by the Society not to have been in distress even though it lived in the same environment, at least part of the time. Finally, I am also bolstered by the fact that SPC Edge said that at the time of her March 19, 2016 visit, the last visit prior to the July 6, 2016 seizure, SPC Edge found that the dogs were not in distress at that time, despite her desire for them to have improved ventilation. There was insufficient evidence for me to conclude that these dogs were in distress at the time of seizure, or would return to distress by being returned to the Appellant, with the exception of the one condition I imposed.
178. I have considered what, if any, weight I should place on the history of this matter, and in particular the previous allegations made against the Appellant's mother, taking into account that the Appellant's mother was the subject of those allegations, even though the Appellant was often there to hear the Society explain its view on the care the animals.
179. Given my findings above regarding the particulars of this seizure, and taking into account the change in circumstances (the Appellant's mother being out of the picture) and the evidence and representations made by the Appellant, I find the past history to be at best a neutral factor in my decision. The history does not persuade me that I ought to decline to return to the animals to the Appellant.
180. Having concluded that the animals should be returned, I turn next to the question of what if any requirements I should impose as a condition of return.
181. I have considered but decline to make it a formal condition that the Appellant finish the fence enclosure and new run. The Appellant has said that he will finish it. As it will be a benefit to his dogs and since he has said he will finish it, I expect him to be true to his word.
182. While I am not prepared to impose the above condition, I do however consider it necessary to impose a condition of return to maintain the well-being of Cortez.
183. The evidence is clear that Cortez is in need of fairly immediate veterinary care for his injured and painful leg. Dr. MacDonald testified that the dog needs the surgery now, and that without surgery he will not get better. Cortez is experiencing pain now, the time to fix the leg is now, and in all likelihood it should have already been addressed, given the timing of the seizure and of recovery from the previous surgery. Part of the delay appears to have been the uncertainty arising from the removal during the month of August 2016, which was the original timetable recommended for the surgery. While the further delay in performing the surgery was perhaps understandable in light of

the review process and appeal (and the question as to who would pay for it), it has now led to a situation where, in my view, Cortez would indeed be in distress if prompt veterinary action is not taken following his return. The Appellant testified and represented that he would be able to get the money and spend the time fixing Cortez's leg. I will therefore make it a condition of the return of Cortez that within seven days of the return, the Appellant must seek veterinary care for Cortez at the clinic of his choice, and must arrange for surgery or whatever written treatment plan his veterinarian recommends and the Appellant must follow that plan including any rehabilitation plan Cortez will need. The timing of the surgical – or other including alternate – intervention will be at the discretion of Cortez's veterinarian.

VIII. ORDER

184. Pursuant to section 20.6 of the *PCAA* I make the following order:

1. That the Society return the dogs "Felix", "Lola" and "Dudley" to the Appellant;
2. That the Society return the dog "Cortez" to the Appellant on the following conditions:
 - (a) That within **7** days of the return, the Appellant must seek veterinary care for Cortez's left hind knee at the clinic of his choice, and must arrange for surgery or whatever written treatment plan his veterinarian recommends in accordance with the timing recommended by the veterinarian;
 - (b) That within **14** days of the return, the Appellant must provide to the Society a written copy of the veterinarian's written treatment plan (including the timetable for surgery, treatment and rehabilitation of Cortez's left hind knee);
 - (c) That if surgery is recommended and performed, the Appellant must provide the Society, within **7** days after the surgery, with a copy of a veterinary letter confirming the performance of the surgery and rehabilitation plan.

185. If the Appellant fails to comply with any of these conditions, the Society is entitled to proceed on the basis that the conditions of this return have been breached and that Cortez is in distress, and thus the animal Cortez returns to the Society's legal custody to destroy, sell or otherwise dispose of in its discretion. In the event that this happens, I am mindful that the Society has identified an individual who would accept Cortez and care for him.

Costs

186. Section 20 of the *PCAA* provides:

- 20 (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.
- (2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.
- (3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.
- (4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.

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

187. 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)”.
188. The Society has asked for its costs of \$9180.39 but removes \$90 for care of the snakes as this will be addressed in a separate care agreement, so costs are \$9090.39 broken down as follows:
- SPC cost \$161.30
- Housing feeding and caring for the animals \$6183.56 less \$90
- Veterinary and inspection costs \$2835.53 of which I note that \$1742.90 for Dr. Gutzler to drive to and attend the seizure and inspect the premises and write the inspection report.
189. The Appellant’s position on costs is that the cost for the veterinary visit for the seizure and report are quite high and there are better deals out there but the other costs seem reasonable. The Appellant made no specific submission on his liability for costs in the event that the panel did not uphold the seizures.
190. As I have found that the dogs should not have been seized, I am not awarding any of these costs in the circumstances. The dogs would have been cared for, fed, and sheltered at the Appellant’s home if they had not been seized. The veterinary costs were not for any urgent issues and there was no evidence that the issues with Cortez were not already receiving veterinary care. And the cost of the premise inspection and report were to support the Society’s position that these dogs needed to be seized.
191. I am not saying that I would never award costs to the Society in a case where a seizure was not justified, as I could imagine a medical need that required veterinary intervention incurring costs that should rightfully rest with an Appellant. That was not the case here. There was no evidence Dudley was in pain when he was brought in for his leg, and the veterinarian forgot to provide medicine for his ear. Cortez incurred a veterinary check regarding his leg and ears when there was already veterinary advice that he needed additional surgery in August, the same time frame when additional x-rays were done on Cortez.
192. There was an additional invoice dated August 15, 2016 for a veterinary visit on August 10, 2016 for Cortez that was not explained but presumably was for the toe injury he sustained while in the Society’s care. Since I have determined he should not have been in their care, I cannot hold the Appellant responsible for this invoice.

ORDER

193. I order that any amount owing by the Appellant to the Society be varied to zero, with the exception of any monies found to be owing for the reptiles, which are not covered by this appeal.

Dated at Victoria, British Columbia this 20th day of September, 2016

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read "Corey Van't Haaff". The signature is written in a cursive, flowing style.

Corey Van't Haaff, Presiding Member