

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 46 DOGS

**BETWEEN:**

TERRY BAKER

**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, Vice Chair  
(Presiding Member)  
Tamara Leigh, Member  
Peter Donkers, Member

For the Appellant:

Self-represented

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

March 29, 2018

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 (*PCAA*).
2. The Appellant appeals the March 2, 2018 review decision issued under s. 20.2 of the *PCAA* by Shawn Eccles, Senior Manager, Cruelty Investigations for the British Columbia Society for the Prevention of Cruelty to Animals (“the Society”). The review decision arose from the Society’s seizure of the 46 dogs on February 22, 2018.
3. While all 46 dogs were originally the subject of this appeal, the Appellant has since clarified that he only wishes to pursue the appeal in respect of 10 of the dogs.<sup>1</sup>
4. 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.
5. For reasons that will be explained in detail later in this decision, we have decided that we will not require the Society to return any of the dogs, nor will we require the Society to return any puppies born or due to be born from any of the dogs seized.
6. The Society claimed reasonable care costs which were appealed by the Appellant. The issue of costs is addressed later in this decision.

## **II. Preliminary matters**

7. The Appellant, at the outset of the hearing, revised his appeal to include only ten specific dogs he wanted returned, and the Appellant specifically said he did not want any puppies that were born since the seizure or that are due to be born from any pregnant dog seized. The Panel thoroughly explored this issue with the Appellant who satisfied the Panel that he knew he was only now appealing ten specific dogs, that he was confident he could accurately identify or describe which ten dogs he was appealing, and that he understood he was abandoning the appeal regarding the other dogs, which meant the Society could now sell or dispose of the other dogs. The Appellant also expressed that he had no wish to see the return of any puppies and the Society could have them, and he surrendered all puppies plus all dogs seized with the exception of these 10:

Tiny, Thistle, LJ, Dash, JD, Ghost, Molly, Cuddles, Chicken, and Jinx.

8. The Appellant did not abandon his appeal on costs.

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<sup>1</sup> Note that the decision regarding the non-return of the animals necessarily includes any animals born to any of the pregnant animals seized.

9. The Society accepted the revised appeal and surrender of the puppies and all but 10 dogs and offered that cost for care of all but 10 dogs would stop as of the date of the hearing, so the original request for the return of the animals would need to be revised. The Society did say that given the lack of any advance notice of this change, it would conduct its part of the hearing as if all dogs were under appeal, and the Panel could take that information as it applied to the 10 dogs now under appeal.
10. The Panel decided to accept the revision in the appeal as it applied to 10 specific dogs only plus costs in their totality and this decision reflects that revised appeal.

### **III. The Society's Review decision**

11. 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).
12. 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.
13. 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.
14. Ms. Marcie Moriarty, chief prevention and enforcement officer for the Society, issued her written reasons dated March 2, 2018 after her review of this matter. After she concluded the 46 dogs had validly been taken into custody to relieve their distress, the written reasons stated, in part:

Accordingly, I conclude that the seizure of the Dogs took place in accordance with the Act.

I now turn my mind to whether it would be in the best interest of the Dogs to be returned.

Before turning to the facts in this particular case, I would be remiss if I did not consider your past history that includes a conviction under the Criminal Code for animal cruelty from when you lived in Saskatchewan. Specifically, you pled guilty to animal cruelty charges after 70 dogs were found to be in distress and were seized from your property. Your sentence included that you were to not own or possess more than 10 dogs, 6 horses or 10 chickens, with the exception of an additional 20 dogs, horses, or chickens combined that are under the age of 6 months.

Instead of taking this conviction seriously and recognizing that you are not capable of looking after animals properly, you moved to a different province, ignored the judge and the terms of your bail and acquired more animals, effectively sentencing them to a life of distress. This complete disregard for the law and the Dogs wellbeing is extremely concerning and it is my hope that the courts will respond accordingly to your breach and subsequent continuation of an offence under the Criminal Code.

Turning to this particular case, it is apparent that you were provided with the opportunity to surrender dogs to the BC SPCA and while you did surrender a few dogs, this was not sufficient to either comply with the terms of your bail nor to ensure that the animals that did remain in your custody were free from distress. In making my decision, I rely on the entirety of ITO and do not feel the need to go into any more detail of the situation that led to the execution of the warrant on February 22nd.

It is clear from the veterinary report of Dr. van Haaften that not only were the living conditions for the Dogs woefully inadequate and causing distress, but that their physical and emotional conditions at the time of the warrant were extremely concerning. In making my decision, I rely on the entire report. Dr. van Haaften concludes her report by saying:

It is the opinion of this veterinarian that these dogs were experiencing distress due to lack of appropriate shelter, hygienic living conditions, adequate ventilation, and adequate veterinary care.

Perhaps most concerning is the lack of socialization causing extreme fearfulness in this population of dogs. Severe fear causes distress because fear is a negative emotional state. These dogs showed significant signs of fear when they were aware of people in their environment at any distance. This level of fear constitutes a significant welfare problem for this population of dogs, both in their previous environment and in the future without appropriate treatment.

While you have provided me with an email arguing that your Dogs were not in distress and that you were taking good care of them, the evidence simply does not support these assertions. In this case, I feel completely confident in drawing my conclusion that it is not in the best interest of the Dogs to be returned to you after taking into consideration your previous conviction of animal cruelty, the history leading up to this seizure and the veterinary evidence that clearly shows that these Dogs have suffered greatly in your hands. It is my sincerest hope that we will be able to reverse the incredible damage that you have inflicted on these Dogs and place them in loving homes. It is also my hope that you do not acquire more Dogs. We will be recommending

a second set of animal cruelty charges against you and if accepted and there is a conviction, our recommendation will be that you are given a lifetime ban on owning any animals as your actions clearly demonstrate a complete inability to keep them free from distress.

15. Ms. Moriarty thus determined in her review that the 46 dogs seized would not be returned, leading to the appeal before us.

#### **IV. The appeal provisions**

16. We are guided by the approach to appeals under the *PCAA* which is set out in detail in BCFIRB's decision *A.B. v British Columbia Society for the Prevention of Cruelty to Animals* (August 9, 2013), which decision was upheld by the Supreme Court on judicial review<sup>2</sup>. In summary, the right of appeal to BCFIRB gives persons adversely affected by certain decisions of the Society an alternative to a more formal judicial review or judicial appeal. The reforms give BCFIRB broad evidentiary, investigation, inquiry and remedial powers upon hearing an appeal: ss. 20.5 and 20.6. The *A.B.* decision reads in part:

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

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

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

#### **V. Pre-hearing matters**

17. As it was not abundantly clear that the Appellant, in his original notice of appeal, was also including costs, both the Appellant and the Society confirmed and agreed that costs formed part of this appeal.

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<sup>2</sup> *BC Society for Prevention to Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331.

18. Since the seizure, 24 puppies were born from some of the dogs seized, and of those puppies, one was euthanized. The Society believes more seized dogs are pregnant and anticipates more puppies being born. As stated above and agreed by both parties, the return of the puppies is not requested by the Appellant, who agrees they are surrendered to the Society.
19. The Appellant noted that after the seizure, he found one of his dogs roaming the highway and was ultimately able to bring that dog home, where it remained as of the time of this hearing.

## **VI. Material admitted on this appeal**

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

### **Exhibits:**

- a) BCSPCA March 2, 2018 decision (**Exhibit 1**)
- b) Appellant March 6, 2018 Notice of Appeal filed (**Exhibit 2**)
- c) BCFIRB March 7, 2018 NOA process letter (**Exhibit 3**)
- d) BCSPCA March 12, 2018 witness list (**Exhibit 4**)
- e) BCSPCA initial disclosure (Tabs 1-33) (March 12, 2018 by email and courier) (**Exhibit 5**)
- f) BCSPCA March 13, 2018 updated document disclosure index (Tabs 1-35) (**Exhibit 6**)
- g) BCSPCA March 13, 2018 Tab 34 – report of Dr. Karen van Haften (**Exhibit 7**)
- h) BCSPCA March 13, 2018 Tab 35 – updated Kelowna Veterinary Records (**Exhibit 8**)
- i) BCSPCA March 21, 2018 email requesting confirmation of Appellant address (**Exhibit 9**)
- j) BCFIRB March 21, 2018 email to BCSPCA re timelines for document disclosure (**Exhibit 10**)
- k) BCSPCA March 21, 2018 email confirming delivery of document disclosure to appellant (**Exhibit 11**)
- l) BCSPCA written submission (March 23, 2018 by email and courier) (**Exhibit 12**)
- m) Affidavit #1 of Marcie Moriarty (March 23, 2018 by email and courier) (**Exhibit 13**)
- n) BCSPCA Expert witness contact form (March 23, 2018 by email and courier) for Dr. Karen van Haften, and Dr. Cheri Galatiuk (**Exhibit 14**)
- o) BCSPCA Witness contact form (March 23, 2018 by email and courier) for SPC Carla Edge (**Exhibit 15**)
- p) BCSPCA updated doc disclosure index (March 23, 2018 by email and courier) (**Exhibit 16**)
- q) BCSPCA Tab 36 (March 23, 2018 by email and courier) (**Exhibit 17**)
- r) J.M. Support Letter (March 23, 2018 by email) (**Exhibit 18**)
- s) J.M. Support Letter (March 23, 2018 by email) (**Exhibit 19**)

- t) Appellant Witness Contact Form for G.B. (March 23, 2018 by email) **(Exhibit 20)**
- u) Appellant Witness Contact Form for D.H., J.M. , T.S. (March 23, 2018 by email) **(Exhibit 21)**
- v) Appellant vet appt card for “Dandy & Princess” (March 23, 2018 by email) **(Exhibit 22)**
- w) Appellant photo of ‘dog room’ (March 23, 2018 by email) **(Exhibit 23)**
- x) Appellant photo of ‘house in the snow photo’ (March 23, 2018 by email) **(Exhibit 24)**
- y) Appellant ‘inside shed’ photo of (March 23, 2018 by email) **(Exhibit 25)**
- z) Appellant photo of 5 dogs (March 26, 2018 by email) **(Exhibit 26)**
- aa) Appellant photo of 3 dogs (March 26, 2018 by email) **(Exhibit 27)**
- bb) Appellant photo of 4 dogs (March 26, 2018 by email) **(Exhibit 28)**
- cc) Appellant photo of group of white dogs (March 26, 2018 by email) **(Exhibit 29)**
- dd) Appellant photo of Molly (March 26, 2018 by email) **(Exhibit 30)**
- ee) Appellant photo of Tiny (March 26, 2018 by email) **(Exhibit 31)**
- ff) Appellant photo of Thistle (March 26, 2018 by email) **(Exhibit 32)**
- gg) Appellant photo of Rooster (March 26, 2018 by email) **(Exhibit 33)**
- hh) Appellant photo of dogs on the porch (March 26, 2018 by email) **(Exhibit 34)**
- ii) Appellant photo of kitchen (March 26, 2018 by email) **(Exhibit 35)**
- jj) Appellant photo of dining room (March 26, 2018 by email) **(Exhibit 36)**
- kk) Appellant photo of Sweetie (March 26, 2018 by email) **(Exhibit 37)**
- ll) Appellant photo of barn building (March 26, 2018 by email) **(Exhibit 38)**
- mm) Appellant photo of dogs in living room (March 26, 2018 by email) **(Exhibit 39)**
- nn) Appellant photo of wood cutting (March 26, 2018 by email) **(Exhibit 40)**
- oo) Appellant photo of dog houses (March 26, 2018 by email) **(Exhibit 41)**
- pp) Appellant photo of dogs on hardwood floor (March 26, 2018 by email) **(Exhibit 42)**
- qq) Appellant photo of group of dogs outside in snow (March 26, 2018 by email) **(Exhibit 43)**
- rr) Appellant photo of bucket on cement floor (March 26, 2018 by email) **(Exhibit 44)**
- ss) Appellant written submission (March 26, 2018 by email) **(Exhibit 45)**
- tt) Appellant photo of outdoor building in snow (March 26, 2018 by email) **(Exhibit 46)**
- uu) Appellant photo of house with dogs in carport (March 26, 2018 by email) **(Exhibit 47)**
- vv) Appellant duplicate photo of dogs in living room (March 26, 2018 by email) **(Exhibit 48)**
- ww) Appellant dog contract (March 26, 2018 by email) **(Exhibit 49)**
- xx) BCSPCA revised expert witness contact form (March 27, 2018 by email) **(Exhibit 50)**

## VII. The Society's material and witnesses

21. The Society submitted, as part of its material, a report written by veterinarian Dr. Cheri Galatiuk who attended the seizure on February 22, 2018 (but was not called as a witness), and who works at Williams Lake Veterinary Hospital. Dr. Galatiuk assessed the behaviour and living conditions of the 46 dogs. She noted 5 separate dog enclosures that did not prevent dogs from moving from one enclosure to another. She noted a large amount of fecal material and trash in all enclosures. She noted 3 dog houses built out of plywood, with scant bedding and no insulation; a plastic dog house with no door; a plywood dog house with several doors and openings for ventilation; and a space under the house where dogs had dug out a shelter.
22. Dr. Galatiuk's report also noted a wooden shed and a horse trailer with wood chips and a plastic kennel. She noted that upon entering the Appellant's home, there was an extremely strong smell of ammonia, with some dogs loose on the main floor and others which appeared to be locked in the basement. She noted a wide range of behaviors:

only 1 dog out of the 47 dogs strived for human attention and affection even without food. On the other end of the spectrum, a few dogs were noted to hide and freeze in fear in our presence. One puppy in particular did not show any interest in people and did not come out of the front closet in the house. The majority of the dogs however demonstrated behaviors in between these two extremes. Most showed fear towards strangers by barking and backing away (See Appendix 9). This was very apparent in the group that was first met on arrival on the property (See Appendix 10). The more social dogs were able to be bribed to take treats however a large number of dogs would not even venture close. Only one dog would be considered to be slightly aggressive. This smaller white dog would attempt to bite the back of your leg when no attention was directed at it. According to the Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372 (the "Act"), the 47 dogs were assessed to be in distress due to the following:

- 1) Lack of access to sanitary shelter. The only sanitary shelters that would protect these dogs from the weather were the 3 dog houses and the wooden box under the car port in the first enclosure. Although these 4 structures only had minimal floor and no wall insulation, they were at least out of the elements and had 3 solid walls with a small door in order to best allow wind protection and accumulation of body heat. The structures in the 4 other enclosures (none in enclosure 2, large plywood house in enclosure 3, shed in enclosure 4 and horse trailer and plastic kennel in enclosure 5) would provide inadequate protection from the cold as they had all had large openings or incomplete walls. The owner's dwelling was also considered inadequate as a source of shelter as it was unsanitary due to poor air quality and fecal material. Thus, although there were 4 houses that could be considered as minimally satisfactory shelter, this left the 43 dogs without sanitary shelter.

- 2) Lack of Veterinary Care. Although no veterinary records were made available, as mentioned above, it was noted by Constable Edge that none of the dogs were altered. This in turn would mean potential inbreeding and a huge amount of unplanned litters. It was mentioned by Mr. Baker that the dog in enclosure 5 was in heat and contained. Although this dog was separated, it is likely that several more females would be in heat at one time and these heats may go unnoticed given the large population.



3) Neglect. With a huge population of breeding dogs Mr. Baker can be considered to have a kennel operation. According to "A Code of Practice for Canadian Kennel Operations" "Puppies that are not sold at 8 weeks of age should receive a minimum of 20 minutes twice a day of individual (i.e. away from both visual and physical contact with littermates and other dogs) socialization with people in order to prevent the puppy from imprinting on other dogs." Imprinting on other dogs can lead to extreme fear and/or aggression towards people individually or in a pack. Although some fear of strangers can be considered normal, severe debilitating fear or inability to overcome fear with time or food bribes is generally a result of lack of socialization. In summary, Mr. Baker was unable to provide adequate sanitary shelter, veterinary care and socialization to this huge population of dogs. Based on these insufficiencies, these 47 dogs were considered in distress and removal from Mr. Baker's property was attempted.

*Dr. Karen van Haaften*

23. Dr. van Haaften is a veterinarian licensed to practice in BC. She graduated from veterinary school in 2009 and has practised in small animal and emergency medicine and has spent 3 years pursuing a specialty in behaviour, but has not yet written her exams, which is the only remaining item she has to complete. She works full-time at the Society.
24. Dr. van Haaften provided the following report, excerpted here, as a result of her attendance at the seizure and her subsequent examination of the dogs:

ENVIRONMENTAL CONCERNS

Environmental set-up: Approximately 6 dogs were confined to the main floor of the house, 3 adults (2 female and 1 male) and 4 x 10-week-old puppies were confined to the basement. The remainder of the dogs were roaming freely outdoors.

Concerns included:

1. Hygiene

Indoors:

The indoor environment was contaminated with urine and feces, and the air had a foul odour.

Fecal material was caked to the floor on the main floor and basement. (Fig 1-3)

Bedding for the puppies in the basement was heavily soiled with fecal material and urine. (Fig 1)

Bloody discharge was present on the concrete floor in the basement. (Fig 2)

Outdoors:

A fresh snowfall loosely covered thick layers of frozen fecal matter under the car port and around the shed in the yard. (Fig 4,5)

2. Lack of Ventilation

Ammonia levels inside the house were measured at 10-20ppm.

3. Lack of Shelter

3 dog houses with straw bedding were present under the car port. One plastic crate and an open-topped wooden crate was also present (Fig 6). Each was big

enough for one dog. Several dogs were found seeking shelter in a dug-out area under a shed in the yard. Together, these locations were estimated to provide shelter for <25% of the dogs on the property.

Winter weather in this area regularly reaches extremely cold temperatures. Shelter was very inadequate for the outdoor dogs.

Nordic breeds are more tolerant of cold temperatures than average dogs, but individual shelter is recommended even for sled dogs, per the BC Sled Dog Code of Practice:

Sled dogs need access to shelter from the elements that provides warmth, comfort, and is free from draughts and excessive heat or cold, to meet their physical needs. A sled dog may share a human dwelling, or be provided with shelter by a dog house. The dog house needs to provide a dry bed and enough space to lie down, stand, and turn around.

## BEHAVIOURAL CONCERNS

### 1. Extreme Fear and Lack of Socialization

All but 3 dogs on this property showed significant fear of people. When approached by a person, or even looked at directly by a person, the majority of the dogs would cautiously back up or run away.

When cornered, dogs would show avoidance behaviours and signs of stress including tucked tails, hunched posture, avoiding eye contact, ears pulled back, lip licking, and alarm barking.

Even the 10-week-old puppies showed signs of fear and avoidance of people. This is highly unusual – normally puppies at this age are very curious about new things in their environment.

Attempts were made to build trust with the dogs through offering treats, using non-threatening body language, and spending time with the dogs. With few exceptions, the dogs were only minimally responsive to friendly overtures from BC SPCA staff.

In order to crate these dogs, staff used low-stress handling to herd them into dog crates for transport. The dogs reacted like wild animals – showing fear and avoidance of people throughout the process.

Severe fear of people in dogs can be caused by social isolation (especially during dog's socialization period [6-16 weeks of age]), genetics, or by having received harsh or inappropriate treatment from people in the past.

Finding a small number of fearful individuals in a healthy, well-cared for population of dogs is not uncommon. However, in this case almost all of the dogs in the population (including young puppies and dogs of different ages) showed significant fear of people. Because of this, lack of proper socialization, genetic causes, and/or harsh/inappropriate treatment of these dogs is highly suspected.

### 2. Lack of Access to Food and Water

Outdoor dogs (approximately 40 dogs) had access to only one gravity-feeder with a small amount of kibble (Fig 7,8) and one bowl of water (Fig 9,10). Both were under the car port. Even if always available, this low number and clumping together of crucial resources in one location would naturally lead to competition and resource-guarding of these basic resources among the large number of dogs forced to share a single food and water source.

Body condition scores for the dogs ranged from thin (3 out of 9) to normal (5 out of 9). This range of sizes likely indicates some dogs were more successful than others in regularly accessing food.

Several adult dogs were observed to be eating snow on the property. This is most likely a coping mechanism due to infrequent access to fresh water.

## ADDITIONAL CONCERNS

### 1. Uncontrolled Breeding

No signs of effort to control breeding within this population of dogs were apparent on the property. Intact male and female dogs were mixed together in multiple locations. Several females in the mix were showing signs of being in heat (blood discharge from urogenital area).

Five 10-week-old-puppies from at least 2 separate litters were present on site.

Many of the adult dogs appeared to be between 5-7 months of age.

Humane breeding involves carefully selecting dam and sire candidates based on health and behavioural characteristics to result in healthy puppies who make good companions for people.

The set up on this property would most likely result in exactly the opposite situation – unintended breeding occurring outside of the owner’s control between animals not chosen for any particular health or behavioural characteristics.

Puppies showed significant signs of fear of people – indicating adequate socialization of these puppies was not occurring.

### 2. Health Care

Based on the extremely fearful behaviour of the majority of the dogs and their obvious lack of experience with handling, it is highly unlikely these dogs are receiving recommended annual complete veterinary examinations and essential preventative health care measures such as vaccinations and parasite-prevention. Up-to-date vaccination and parasite prevention status is extremely important to the physical health of dogs, especially when breeding. Vaccine-preventable diseases such as Parvovirus and Canine Distemper are common in British Columbia and when contracted result in extreme suffering and are often fatal.

Fleas and flea dirt were present on all dogs and puppies in this group. Flea infestations can cause skin disease, uncomfortable itchiness, and in puppies sometimes life-threatening anemia.

Bloody diarrhea was present on the concrete floor in the basement. This is an indication of severe intestinal inflammation, due to viral or bacterial infection, parasites, or other causes.

## OPINION

It is the opinion of this veterinarian that these dogs were experiencing distress due to lack of appropriate shelter, hygienic living environment, adequate ventilation, and adequate veterinary care.

Perhaps most concerning is the lack of socialization causing extreme fearfulness in this population of dogs. Severe fear causes distress because fear is a negative emotional state. These dogs showed significant signs of fear when they were aware of people in their environment at any distance.

This level of fear constitutes a significant welfare problem for this population of dogs, both in their previous environment and in the future without appropriate treatment.

25. Dr. van Haften testified that she performed a behavioural not a physical exam on the 46 dogs. She referred the Panel to Exhibit 5 tabs 28, 29, 30, 33, 34, 35 and to Exhibit 7, her March 12, 2018 report which included a per dog assessment, a population treatment plan, and summary and conclusions, which are excerpted here:

Severe fear of people in dogs can be caused by genetic causes, social isolation (especially during the dog's socialization period of 6-16 weeks of age), or by having received harsh or inappropriate treatment from people in the past. Finding a small number of fearful individuals in a healthy, well cared for population of dogs is not uncommon. However, in this case, the vast majority of dogs showed significant to extreme fear of people. Even the 10 week old puppies showed fear of people, which is highly unusual.

Without detailed knowledge of these dog's past treatment and environment, it is difficult for this veterinarian to definitely determine that underlying cause of the abnormally fearful behaviour in this population. However, the dogs do look remarkably similar, and due to the uncontrolled breeding occurring on the property, it is reasonable to assume they are related to each other. Therefore, an underlying genetic cause paired with lack of appropriate socialization and/or harsh/inappropriate interactions is suspected.

Because of the potential genetic association, it is concerning that there was uncontrolled breeding occurring on this property. Puppies with this genetic background raised in their previous environment stand a poor chance of growing into behaviourally healthy pets in human homes. Fear and anxiety disorders are a likely outcome for such dogs.

Severe fear disorders impact animal welfare because fear is a negative emotional state. The level of fear of people in this population represents a significant welfare concern for these dogs, both in their previous home and in the future without appropriate treatment.

26. Dr. van Haften's testimony confirmed her concerns regarding lack of shelter, sanitization, high ammonia levels in the house and ventilation. She agreed with Dr. Galatiuk's opinion that there was only adequate shelter for 4 dogs that would protect them from the elements and that were sanitary. She read and agreed with Dr. Galatiuk's findings.
27. She noted 3 good sized shelters in the carport, each with scant straw. Dogs had sought shelter under the shed and several were found hiding in there; it was clearly dug out. Although some dogs got shelter, there was inadequate shelter for the number of dogs.
28. Inside the house, the space for the 8-10 dogs found there was unsanitary with dried fecal matter on the floor and ammonia measuring 10-20 ppm which was strong enough to sting her eyes, make her feel dizzy and require her to have to go outside several times for relief. She was able to recover quickly once outside, then return inside, and did not wear any eye or breathing protection as she had none with her.
29. In the basement was a similar situation or worse, she said - with fecal matter caked on the floor, some covered with a sheet with dog feces and urine, and approximately 3 adult dogs

and four 10 week old puppies. There was bloody diarrhea on the bedding though it could have been bloody vaginal discharge from a dog in heat.

30. On the property there was fecal matter under fresh snow and few areas where the dogs could escape the weather or wind. There was a significant amount of fecal matter around in relation to the number of dogs. Some was old and dried onto plywood and the dogs she concluded lived in unsanitary conditions. Dogs would not choose to do so, and this is especially worrisome given the puppies' undeveloped immune systems.
31. Dr. van Haaften said the dogs were Nordic breeds, not purebred, and had thick double coats so were hardier than the average house breed but still needed clean dry space and protection on four sides from wind and rain. They need thick enough straw to provide bedding insulation.
32. She was unaware of any veterinary recommendations prior to her attendance and would be surprised if the dogs were receiving adequate preventative healthcare.
33. Some of the dogs had to be sedated for their physical examinations. There were fleas and internal round and tape worms in the representative population testing done and those things are easy to treat and preventable. The vast majority of dogs showed worms in their stool and dead parasites the day after treatment. All puppies received their inoculations and any treatment necessary on intake.
34. She explained the rabies and regular inoculation protocols for vaccinations. Only a veterinarian can give a rabies shot.
35. Dr. van Haaften testified that normal behaviour for dogs, which are a domesticated species, is to be in close contact with people and enjoy people. The seized dogs differed significantly in that the Society staff could not get close enough for physical contact even when offering high value treats. She found these dogs to be significantly fearful. She testified that dogs showing these signs of fear had lived in a state of fear for prolonged periods of time and were likely kept isolated from people. She testified that in a community there would be unavoidable triggers to this state of fear just by the natural comings and goings of people.
36. Dr. van Haaften testified that fear can result in distress and long-term health consequences. One paper she referred to generally said that this type of stress increased dermatological and gastrointestinal disease from the constant state of anxiety and this could become critical distress in extreme situations, resulting in undue suffering and at this stage, such suffering cannot be relieved through reasonable intervention as it is too severe.
37. In some of the seized dogs, she saw behaviour inhibitors such as retreat or not moving including no interaction with other dogs or people, no eating or grooming – the dogs shut down, including a severe lack of appetite with some going 48 hours without eating.

38. The team developed interventional strategies for these dogs such as securing their environment to eliminate or limit triggers, co-housing with same sex pairs or groups, access to outdoors, and controlled play. The strategies also included medications to reduce anxiety.
39. Four of the 46 were potentially in critical distress; they were at that critical level but are now responding to treatment.
40. Dr. van Haaften explained that the Society sees 23,000 animals a year and is used to seeing varying levels of discomfort of dogs coming into a shelter environment or strange people but in the case of the 46 seized dogs, it was not the shelter the dogs were afraid of; it was people. It caused some of them to freeze or try to escape or to hunker down or use aggression as a coping mechanism. However, the behaviour of these dogs was not all that different from when they were on their own property in that they reacted negatively to people and tried to hide or escape.
41. Once in the shelter the majority of dogs could not be touched at all. Only 8 allowed any touch at all and of those 3 allowed themselves to be petted. Only 1 enjoyed touch and sought it out of the 46 dogs seized. The vast majority were showing extreme fear.
42. Dr. van Haaften testified that there are 3 causes of such behaviour disorders: genetics as fear can run in families; poor socialization in the critical early puppyhood weeks, and inappropriate treatment. Dr. van Haaften said that all the dogs were probably related, and they looked alike genetically and if they are already predisposed to fear, that would make sense. She could not say for sure, but she could infer from what she knew in order to make an educated guess.
43. Dr. van Haaften only saw the dogs on February 22, 2018.
44. She testified that all dogs should accept people regardless of where or what type of situation they live in, and good breeders seek out socialization opportunities for puppies to interact with new situations in the future, regardless of being urban or rural dogs. She said she has seen some aggression in some of the dogs which was not unexpected as it is a coping mechanism.
45. Dr. van Haaften testified she was aware of two previous surrenders from the Appellant -10 dogs on December 2017 (all of which were euthanized) and 10 dogs in January 2018 (of which 8 were euthanized and 2 are still alive). She said most were euthanized because their prognosis was so poor as the dogs were unable to live amongst humans. With those dogs, the Society had tried behaviour modification and treatment in 7 of the 10 in the second group for 6 weeks, but some treatment was ceased when those dogs showed aggression. Dr. van Haaften testified that they treat under-socialized dogs all the time and are capable of working with such dogs, but these dogs' conditions were so severe there was a danger to staff and the dogs were unresponsive to treatment, therefore had to be euthanized.

46. Of the 46 dogs seized, she said not all the dogs got along. Dogs were put with friendly dogs and were put on trazadone to decrease anxiety. They started behaviour modification. The amount of time Society staff spends with the dogs is all day long, but the minimum required is 45 minutes a day in three segments.
47. In response to Panel questions, Dr. van Haaften testified that most owners don't permit dogs to live in freezing temperatures without shelter, or live in their own fecal matter, or to put out only one food source even with only 10 dogs as that would not meet the dogs' basic needs. For the seized dogs their basic needs had not been met in the past and she sees no indication that that would change. She said interaction with the Society and this Appellant would not likely be positive and she has no reason to believe that it is not the Appellant himself who is frightening to these dogs. These dogs need to be habituated to people to develop their tolerance levels and to lead a life where their social and behavioural needs are met.
48. She testified that she is impressed with the results the Society is seeing with the dogs and this group of 46 is showing better progress than the 2 previous groups of surrendered dogs. Currently 24 of these dogs now allow physical contact, and the puppies including the fearful puppies on the property are doing well, and as a group the dogs have made significant progress. Of the dogs seized, 25% have not yet met the adoption criteria. The Society is not able to warehouse dogs long term and it is possible some dogs may be euthanized but most have made good progress and some of the dogs that originally couldn't be touched now crawl into people's laps.
49. Dr. van Haaften said that uncontrolled breeding on the property means that many dogs were inbred which leads to significant health risks, as dogs have no aversion to mating with siblings or other related dogs.
50. She said that it is possible that a dog could have bloody diarrhea if the food was changed as some dogs have sensitive gastrointestinal systems and the blood in the basement could have been vaginal discharge from a dog in heat, she did not know. In any event the issue has been resolved while the dogs have been in care.
51. She said the dog with the fractured tooth with exposed pulp would have been in pain when the nerve ending was exposed, and there was potential for a bacterial infection. Calculus indicated a level of build up that could be scaled and polished off. Feces matted on the rear ends of dogs was unsanitary and could be from resting in feces or from the act of defecating, but since dogs are naturally clean they would not choose to live in a contaminated area. Matted feces on a dog can lead to infection.
52. Dr. van Haaften confirmed that the progress of the dogs in care exceeded her expectations and the majority of seized dogs are now capable of living with people.
53. Dr. van Haaften confirmed that each dog needs its own appropriately sized cage or house with clean dry and sufficient bedding and a roof and walls on four sides.

54. Dr. van Haaften explained the estrus cycle and behaviour of dogs and said it could be identified by a lay person and that other dogs would treat the dog in estrus differently, but that's not a good plan to prevent unwanted breeding. Preventive measures have to be taken before a dog goes into heat which they do 2-3 times a year. She recommends segregation from males or spaying the dogs. She concluded that if a person had 24 unplanned dog pregnancies they have a very poor success rate as a breeder.
55. When asked about the veterinary notation in files that said 'healthy' Dr. van Haaften said that referred to physical health not behavioural well being. The Society has daily behavioural sheets.
56. In response to questions from the Appellant, Dr. van Haaften testified that the Appellant could seek help from one of many skilled dog trainers in his area who could provide – or he could provide – desensitization and counter conditioning training. Medications are also available from a veterinarian. She said high ammonia levels are usually due to excessive urine in an area due to a chemical compound in the urine.

*Special Provincial Constable Carla Edge*

57. SPC Edge testified she is in her 4<sup>th</sup> year as a Special Provincial Constable (SPC) and has worked for the Society for 5 years. She attended on February 22, 2018 with a search warrant. She swore the ITO in Exhibit 5. Her own notes are in Tab 18 and 21, which she made during and immediately after conversations.
58. SPC Edge originally attended the property on October 21, 2017 as a result of a warning from a veterinarian who had attended to assess horses on the property, and who found the dogs and horses to be worth watching. He noted he had concerns in general and notified the Society.
59. On that visit, she noted the dogs had a lack of housing. A couple of dogs were friendly and one nipped the back of her legs from behind. There was debris and feces everywhere. Dogs were confined to 3-4 separate areas. The dogs in the "castle" (a large structure left by the previous owner, now used as a dog kennel or dog house) were very fearful and all kept their distance. She issued an order due to there being too many feces and too little shelter. One dog near the "castle" was limping and she wanted a veterinarian to see that dog.
60. SPC Edge also attended on November 25, 2017 to discuss a surrender of some dogs with the Appellant and since it was now one month after her first visit, she did not see any improvement to the property. There were still feces and debris and a lack of shelter for the dogs although the weight of the horses (not under appeal here) had improved. SPC Edge observed the dogs in a similar situation compared to her previous visit running around, chaotic, barking, feces in the ice, garbage and torn food bags. The dogs did have food and water, and the Appellant told her he loved the dogs like family.
61. On December 1, 2017 SPC Edge re-attended the property and saw the same dog with the same limp she had seen in October, and the Appellant had not sought any veterinary care



for the dog. The Appellant had told her earlier that the dog had improved but that was not what she witnessed on this subsequent visit.

62. On the December 1 2017 visit, she saw dogs fighting, the male still limping, and she noted the Appellant was not able to touch the dog though he told her in time he could corner the dog and grab it. She tried befriending the dog who nipped the back of her legs and she would give it treats but it would still nip. The same 2 dogs wanted scratches but if she reached out to them, they ran away. She told the Appellant she wanted to help him with the dogs, but she wanted him to surrender adoptable dogs that would be good candidates for adoption, including the puppies.
63. Twice, SPC Edge testified, she picked up surrendered dogs - 10 on December 15, 2017 and 15 at the January 2018 surrender. Between those dates, she attended the property at least twice more.
64. Generally speaking, she observed the same situation each time she attended: fearful dogs, feces all over.

On December 15, 2017 at the surrender, the Appellant's nephew was on the property cleaning it up. SPC Edge said she found out soon after that it was a condition of the Appellant's court order from Saskatchewan that he keep his property clean

65. The reason SPC Edge ultimately applied for a search warrant was that nothing had changed with the Appellant, she had significant concerns about the welfare of the dogs and the Appellant had taken no steps to relieve their distress. There were environmental conditions with garbage and feces and a lack of proper socialization of the dogs. She had discussed socialization and the fearfulness of the dogs with the Appellant. He had asked her what happened to the surrendered dogs, the first 10, and she told him, and he was upset but the euthanasia was not her decision.
66. At the time the warrant was executed, she found the same conditions and the same welfare concerns. The Appellant had not relieved the distress for the dogs some of which were living in ammonia levels of 10-20 ppm which was more than the allowable 2-5 ppm for humans and dogs are more sensitive. SPC Edge testified that she was present when SPC Goodine took the photos.
67. She had heard from a member of the public, who said they purchased a puppy from the Appellant that seemed "dead inside" and was fearful, had difficulties eating, walking on leash. That puppy was returned to the Appellant.
68. In response to Panel questions, SPC Edge testified that she believed the Appellant understood her concerns expressed all along about the behavioural issues of the dogs but he did not feel it was an issue.
69. In response to Appellant questions, SPC Edge testified she saw the same dog limp as when she commented on it being the same dog, the Appellant did not correct her.

## VIII. The Appellant's material and witnesses

70. The Appellant submitted written material and provided testimony and was subject to cross examination and called witnesses.

### *Terry Baker*

71. The Appellant testified his dogs were not in distress. The situation was not “perfectly ideal” but they were well-fed, happy and no one was harmed or abused. He took care of the dogs, loved them, they were part of his family but things “got away” from him when his mom died. He was doing his best to find the dogs homes and had done what the Society said when he surrendered some dogs, but the Society killed those dogs. He was going to give some dogs to a rescue, but the rescue person got sick. The dogs were happy, healthy and vaccinated and he misses them terribly. He said each morning he would wash the floor with bleach-water.
72. He testified the definitions in the law were vague and the Society does not say why the dogs were taken.
73. In response to the Society's questions, the Appellant said he had had all these dogs since they were puppies. He knows their approximate age but not date of birth. His daily routine is to get up and check the dogs then eat his breakfast then wash the floor and do the basement now that there are pups. He testified he sweeps and washes the floor every 3<sup>rd</sup> day with bleach. He fed and watered the dogs daily and cleaned outside when there was no snow by raking and throwing away garbage. This task got away from him a bit with all the snow. He had no system with the snow which made dog waste hard to find. In January and February 2018 there was 3-4 feet of snow. He would clean the buildings and use the empty dog food bags for poop. He would spend a couple of hours a day feeding and cleaning up after his dogs. Twice a day he would feed and water them. He spent half an hour a day on his horses. He testified that no one else helps him. When he got sick with the flu, the basement got dirty.
74. The Appellant testified that SPC Edge with her ITO was a case of bad timing. She used her own definition of clean and there were a few bad spots because of the puppies. The dogs pulled out insulation and tore up empty dog food bags. SPC Edge only ever told him about insulation and dog poop not building material.
75. The Appellant testified he could neuter his dogs with the money he received from the sale of his house. He used to charge \$250 for his puppies as people would not treat the puppies well if they got them for free. The puppies were meant to be pets or working dogs.
76. The Appellant testified he was going to make an appointment for the dogs to be spayed and he did not even need money from the sale of the puppies – that was only to guarantee they puppies would be valued.

77. Unfortunately, a few of his dogs got pregnant and he was going to take his dogs in batches of 3 to get spayed, in the first year of their lives, but last year was a nasty year for him. He was caring for his mother.
78. He could not follow his plan for spaying his dogs due to personal issues, so he did try to rehome some of them. There were 46 dogs on his property at the time of the seizure.
79. He had no plan but wanted to rehome all but 10 but he did not want the Society to kill his dogs so he was going to give 15 to a rescue group two weeks before the seizure but they did not come due to their own illness.
80. The Appellant did not think there would be 24 new puppies since the seizure and that surprised him but stated that if you feed your dogs a lot they will have big litters.
81. Previously in Saskatchewan he had 70 dogs taken due to inadequate shelter, food, water and care or at least that was the “official line” as they had plenty of shelter. He had to plead guilty to cruelty charges as he did not have hundreds of thousands of dollars. One of the conditions is that he cannot have more than 10 dogs and he was doing his best and he asked his probation officer for more time to rehome his dogs and she agreed.
82. He testified that Marcie Moriarty herself came into his yard about 2 weeks after he arrived in BC in late September to look at his situation and his dogs, and she introduced herself as the head of the Society in that area, but he could be wrong on her identity. It also could have been October. He testified he was sure she said her name was Moriarty. The Society took 21 dogs on a surrender. She said when the Society has more room, they were willing to take more dogs.
83. He testified he socializes his dogs by playing with them, petting them, picking them up and hand signal training. He said he could whistle and they would come. He did everything to make them friendly. He spent several minutes a day per dog and all they wanted was attention. He did not take them in the car other than to move some of them to BC, and he administered his own vaccines to them. He wormed them himself and there was no need for them to see a veterinarian. If they needed veterinary care, he said, they got it.
84. When one of his dogs was in season he would kennel it to keep it apart from the male dogs who would climb over the fence to get to them. He said it was pretty much an accident that they got pregnant. He would check daily for signs the females were in heat but it was possible some came into heat in the middle of the night or maybe he did not catch it. He made as much effort as he could to identify and separate dogs in heat. It was not his intention to breed the dogs. He believed dogs would not breed with close relative dogs.
85. He kept track in his head when the puppies’ shots were due and when he administered them. In their first year of life, puppies got vaccines at 8 weeks and 2-3 weeks later they got boosters, and rabies and a second dose when they got new homes. The veterinarian sold him vaccines and he bought the needles from Saskatchewan.

86. The Appellant testified that he was issued an order for his horses, but it was a nuisance thing that made no sense to him and it seemed redundant with the cleaning he was already doing. One horse has a bad bruise that abscessed but there was no penetration, so no tetanus shot was needed but the veterinarian who came said the horse needed a tetanus shot so he gave it to the horse.
87. The Appellant testified his probation order limits him to 10 dogs and 6 horses. He sold 11 horses to his nephew for \$10 each. That was a month ago but they have not yet been picked up due to truck problems and road issues, but the horses should be gone this coming weekend.
88. With the sale of his house, the horses will be moved to a local stockyard and he will move into a hotel as he has not found a property yet. He has arranged for friends to take his dogs if he gets them back. He will put them into a commercial kennel if he has to. He thinks some of his witnesses may help him take dogs. He thinks he should have a place by the time the dogs can be returned. He has not yet had a chance to check with a commercial kennel to see if there is room for 10 dogs.
89. In response to Panel questions, the Appellant confirmed that in April 2016, while living in Saskatchewan, he had 70 dogs. When he came to BC in September 2017, he had 30 dogs plus 5 puppies and on the day of seizure (February 22, 2018), he had 46 dogs.
90. The Appellant confirmed the “castle” is 8x16 foot plus a 60x8 foot fenced dog run, a 12x16 foot storage shed and another 50x70 foot dog kennel and a carport and 2 dog houses plus a fenced dog run of 100x40 feet.
91. When asked how he checked his dogs to see if they were in heat, he said he watched the other dogs sniff the females and would lock up the females if the behaviour of the other dogs changed.
92. The Panel asked specifically how many litters the Appellant’s dogs had had in the previous 10 years: he testified that he began having puppies in the last 10 years with 1 litter 9 years ago, 1 litter 8 years ago, no litters 7 years ago, a few litters 6 years ago, 2 litters 5 years ago, 3 litters 4 years ago, 3 litters 3 years ago, 4 litters 2 years ago and 5 litters last year for a total of 24 litters in the past 10 years.
93. The Appellant testified that his care of the dogs regarding pregnancy wasn’t the best as he could not afford it, but now he could afford to have them spayed.
94. He stated that his plan if the 10 dogs are returned is that he would have his new property by then and he would feed and water and handle and play with them and get veterinary exams if they looked out of sorts or acted or were injured. When asked about the injured horse he was ordered to seek veterinary care for, he said there was barely a mark and he did get a veterinarian in once he was ordered to do so. The 10 dogs could run in the house, and he would get them spayed, and if any got pregnant or were pregnant he would find homes for them.

95. Regarding the behavioural report from the Society, the Appellant said the dogs did not have issues and this was news to him. He stated that the dogs behave fine when they are with him. He stated that his dogs will be depressed if separated or placed in cages and if there is a problem he will find a professional or veterinarian to help him. When the Panel Chair asked what evidence would convince the Appellant the dogs had a problem, he said they did not have a problem. He said he could have someone check them out and do what they told him to do. He testified again that there was no reason for the seizure in Saskatchewan.
96. He said he would take his dogs to a veterinarian as he did in Saskatchewan but since arriving in BC they have all been healthy and happy.
97. To socialize his dogs prior to seizure in BC, he said his place is isolated and people who come to his property are welcome to play with the dogs who want to be petted.
98. He testified that the reason the puppy was returned was because that purchaser's landlord said she could not keep the puppy. He was upset that his surrendered dogs were put down when they were not aggressive or sick and whatever happens he did the best he could. It is the Society's actions that are distressing his dogs and the dog they left had a neck injury and that dog is now in the house but gets terrified when it sees a stranger. He said the dog's neck is fine, it was a small abrasion.

*T.S.*

99. T.S. testified that he "absolutely will stand up in trial" in support of the Appellant because he saw the dogs and they were very content and happy and did not look mistreated. All were in high spirits and happy to see him the 3 or 4 days he was on the property from 8 am until evening, working on the property. T.S. testified that the Appellant had already been out for an hour or more doing his "roundabout" in his rubber boots long before T.S. was out of bed. He testified he saw nothing out of the ordinary. The Appellant invited him into the house to share a meal at lunch and breaks and the dogs were not acting hungry but were taking turns coming up to the table.
100. Nothing "sparked" for T.S. the idea of dogs being mistreated. There were many dog food bags around. T.S. noticed nothing bad on the floor. He testified that the Appellant, a complete stranger, invited him into the house for two meals a day and that it was a nice home with nothing out of the ordinary. There was nothing "gross at all". He took off his boots, sat down and had a nice meal and good food. T.S. described the Appellant as a very gracious fellow. Nothing put him off having animals there, he said.
101. In response to Society's questions, T.S. testified that he was there late last summer doing tree removal work and stated that it was likely August 2017. He did not count the number of dogs but the Appellant told him the number was 30. It did not look like more than 30 and he did not go into the basement. He did pet dogs at the table, where there were 2 or 3 or 4 dogs maybe. When he passed through the yard there was many dogs. They sniffed his legs and wagged their tails. He petted maybe 15 dogs on the property, either on the head or

a good dog scratch on the back. He did not see aggression and did not enter the dog pens. He only went into the section by the house.

102. He said there was probably the smell of dogs in the house but not of urine. The house did not smell of “shit and piss” as if a dog poops, you know it and it did not smell like that. He testified he was in the house a total of 3 days and has not been back since.
103. In response to Panel questions, T.S. said he had no information about how long the Appellant had been outside prior to T.S. going outside but the Appellant did not look like he had just rolled out of bed. He testified that he saw 4-5 dogs at lunch inside the house, not 30 but just a handful and it seemed like the Appellant knew the dogs by name. It was just a small group of dogs in the house and they were very friendly.

*G.B.*

104. G.B. got to know the Appellant in December 2017 on the property regarding a piece of machinery. He went back to the property 2-3 weeks later, so had been on the property twice. The Appellant needed help with his heating system. He was there for a few hours to help the Appellant. Both times were in December 2017.
105. He saw a large number of dogs in the yard and 10-12 horses but he did not count. He and his wife have dogs and horses on their own small acreage close by. He saw the Appellant’s dogs access different areas of the property.
106. He testified he saw the condition of all the animals and they all appeared happy and healthy and he saw no evidence of anything being done the wrong way. That was the extent of his two visits to the Appellant’s property. He went in the house once and recalls seeing a clump of hair, which was not very unusual.
107. In response to Society’s questions, G.B. testified that he did not enter the basement but did walk through the dog area on his second visit to get into the house. All the dogs were around him and he did not see one reason for alarm, like dogs suffering or injured. Most of the dogs were white so blood would be obvious. There was not one drop of blood on these dogs. No animal was picking on another and the majority of dogs were running around inside the fenced portion of the yard and appeared happy to see humans. There was no anxiety or aggression and no one tried to bite him. He did not go into the dog shelters. He sees no problem with these types of dogs being outside dogs. They are bred to handle that. They are not chihuahuas.
108. He said everyone has an opinion on shelter. A horse would do better without a blanket and would have a good winter coat and it should be left alone with what nature provides. There were no emotional problems with the dogs. A neighbour has a pit bull who tries to attack when it sees another dog so the pit bull has an “extreme emotional problem.” He said he touched the dogs which sought his attention as they were running around. A few were shy but that could be due to pecking order if a more dominant dog was near him. He touched quite a few dogs without getting bitten.

109. In response to Panel questions, he said that he did not have much experience with conditions in which dogs might show anxiety but if a dog was anxious it would behave aggressively towards dogs or humans, and that it was normal to be curious. He said he was not looking for signs of anxiety. Nothing was alarming except for the number of dogs.
110. G.B said he could not smell anything bad as he “probably had a cold at that time” and he is sure he saw every dog, 44 or so, but he cannot recall young puppies. He explained that every dog has a place in canine society and there is a pecking order and large male dogs were more aggressive than younger dogs who would shy away, and there could have been “a bit of that.” He said the larger dogs were up close so the smaller dogs stayed further away as smaller dogs are anxious they will get nipped by larger dogs.

*J.M.*

111. J.M. went to the Appellant’s property in December 2017 with a view to purchasing the property, which she did. She testified that all the dogs were in a fenced-in area. When she arrived with the house inspector the dogs were not aggressive and looked taken care of. The inspection took 3 hours. The Appellant had locked up 1 dog in a vehicle as it was not comfortable with visitors. The other dogs were social; there were several puppies and the mom was not aggressive, just concerned. She handled the puppies. Nothing concerned her and she herself owns 2 dogs.
112. J.M’s purchase of the Appellant’s property completed the day of the hearing.
113. J.M. testified that she dined with the Appellant at a restaurant, and that he knew the dogs by name and he loved them. He had purchased the home for his mother but the wildfires prevented them from moving in right away.
114. In response to the Society’s questions, J.M. testified that she experienced difficulty making arrangements to see the property. She had to arrange a visit via advance notice through the realtors. The offer was made subject to view and inspection, and December 22, 2017 was the only day an inspection could be scheduled. The inspection took 3 hours and she inspected the home not the dogs. She went into the basement. There were 2 litters of one-month old puppies and the basement was like a kennel where dogs lived. It “obviously” needed clean-up and she said that was to be expected. There were feces on the ground but not a significant quantity, and that did not strike her as abnormal given the age and lack of housetraining of puppies. There was also a smell of urine and ammonia and urine on the floor; a condition of the sale was that the Appellant had to clean up the place and no remains of animals such as feces or urine or animal food could remain.
115. J.M. testified that she picked up the puppies and the mother dog let her, but was wary not aggressive. The mom sniffed her to “make sure” she was “safe.” She said the Appellant told her he was going to spay or neuter the dogs but the wildfires and his mom’s death disrupted his plans.

116. She said there were some “issues” there for sure but the Appellant was loving to the dogs and the dogs seemed well taken care of, and things were not like what she had read about in the newspaper. The dogs responded positively to her. There were 36 dogs but she did not count and it is possible she did not approach them all. She noted that many were similar looking. The Appellant had names for the animals and they would listen when he spoke to them. She petted the heads and faces and backs of many dogs in the basement and outside.
117. In response to Panel questions, J.M. testified that she is an animal lover and that when she read in the newspaper about the Appellant, she assumed she would be walking into a breeding mill but that was not the case; the dogs were roaming freely and all were barking and wagging their tails. From her limited knowledge of dogs that was a sign they were happy. There was a male dog in the area that was stand-offish so she did not interact with him. Another dog was locked in the trailer as he was not comfortable with people, the Appellant told her.
118. J.M testified that the basement smelled worse than the main floor. She was in there for 30 minutes with no physical reaction. It smelled strong but she has a strong stomach. On a scale of 1-10, if 10 meant gagging, the main floor was a 4 and the basement was a 7. She did not notice any feces stuck to the dogs’ rear-ends but she did not look at their rear-ends. She did wash her hands once she arrived at the restaurant, but they did not smell.

## **IX. Submissions**

### *The Appellant’s Position*

119. The Appellant’s position is that he did his best for his dogs. He was sick for the two days prior to the seizure accounting for the mess, but prior to that he kept his house as clean as possible. There were no feces on the floor. There were just a few feces in the basement on the floor. The blankets did look bad but he did the best he could. The Appellant stated that he misses his dogs terribly. He said a lot of the debris found on the property was left there when he purchased the property or as he made improvements to the carpets. The dogs slept in the carport or a warm shelter or in the basement and 10-12 slept in the house. They could all warm up. They were well fed and watered and they never saw strangers.
120. He said he did his best. His mom died in October and he has been “pretty darn depressed”. He is not making excuses; he did his best and he misses and loves his dogs.

### *The Society’s Position*

121. The Society’s position is that the best interest of the dogs is most important and in this case the dogs were found to be in distress due to behavioural issues and also due to lack of shelter, lack of protection from the elements, unsanitary conditions with dogs covered in feces and the smell of ammonia, and the observations of SPC Edge in the ITO and during her testimony that she found the dogs to be in the same condition upon each of her visits. There was garbage and feces all over, not just when the Appellant was sick with the flu. It



was an ongoing issue and despite constant reminders from the Society it was not dealt with.

122. The dogs had significant behavioural issues and several that were previously surrendered to the Society, voluntarily, in December 2017 and January 2018, had lost their lives due to a lack of socialization, which the Appellant denied existing. The dogs lost their lives as they were unintentionally bred several times. The Appellant was not able (or legally permitted) to have so many dogs. His goal may have been to reduce his numbers, but he continued to build his population through unintended breeding after seizures and surrenders. He had no plan in place to reduce his numbers. Twenty-four puppies had been born just since the seizure. His only plan was to rely on the “graciousness” of the Society and of rescue organizations.
123. The fact that the Appellant only asks for the return of 10 dogs is important, but he already has one dog at his property, so he will be at 11 dogs if the return of 10 is granted. The Society noted that he has no home since he sold his place. He is moving into a hotel. He has no plan for the dogs. He has no veterinary care plan to spay or neuter the dogs. He is incapable of preventing mating and this will likely continue to happen, as supported by the evidence.
124. The Society submitted that while the witnesses for the Appellant said the dogs were friendly, none of the veterinarians or behavioural diagnoses support this. Further, those witnesses were only on the property a few times and had no long-term interaction with the dogs so little weight should be placed on their testimony. Even the veterinarians and the SPC said some dogs are friendly.
125. The Society noted that one witness only looked for signs of blood on the dogs’ white coats as evidence of distress. That witness also said horses and dogs do better without blankets or shelter.
126. The Society submitted that the veterinary testimony was not shaken on cross examination. The dogs were suffering; they were in distress and the emotional issues and anxiety caused the problems. It has been a painstaking process to help the dogs overcome their distress. The Appellant was under orders from Saskatchewan for a criminal conviction of animal cruelty and is on probation. It was people other than the Society also complaining about the situation with these dogs.
127. The dogs did not interact with different people and there was no doubt these dogs were suffering fear and anxiety due to the Appellant’s failure to care for the dogs. The Society’s position is that no dogs should be returned to the Appellant especially given the likelihood that the Appellant will breed the dogs and expose them to the same situation from which they were seized and put them again in distress and cause their potential euthanasia as a result.

## **X. Analysis and decision**

### *Assessment of witness evidence*

128. The Panel was faced in this case with two competing version of reality. The position of the Appellant and his witnesses was that the dogs were happy and well cared for, and that the conditions as they appeared on February 22, 2018 was a case of bad or unfortunate timing given his mother's recent passing. The position of the Society, including the expert veterinary evidence, was that the dogs, as a group, were exposed to substandard hygiene, lack of proper ventilation, insufficient shelter, inadequate access to food and water, uncontrolled breeding, likely inadequate veterinary care and that "all but 3 dogs showed significant fear of people". As noted by Dr. van Haaften, "Finding a small number of fearful individuals in a healthy, well-cared for populations of dogs is not uncommon. However, in this case almost all of the dogs in the population (including young puppies and dogs of different ages) showed significant fear of people. Because of this, lack of proper socialization, genetic causes, and/or harsh/inappropriate treatment of these dogs is highly suspected". Dr. van Haaften opined that "this level of fear constitutes a significant welfare problem for this population of dogs, both in their previous environment and in the future without proper treatment".
129. In assessing the competing evidence, particularly with regard to the issue of "extreme fear and lack of socialization", we have no hesitation in accepting the evidence of Dr. van Haaften who provided detailed information on each animal as well as its progress. Her direct and expert testimony was not shaken in response to questions from the Appellant and the Panel. Her evidence was supported by Dr. Galatiuk's written report and the evidence from SPC Edge. Dr. van Haaften, who has relevant experience and animal welfare expertise, appeared to be well aware of the implications of removing these animals, and she had no incentive to exaggerate her report or her findings. Her report and her oral testimony came across as being objective and professional. She highlighted the unusual characteristics of this cohort of animals. The credibility of her conclusions was reinforced by the fact that she undertook a specific assessment of each animal, by her participation in the removal, by the advantage she had in observing the property, and by the Society's experience after the seizure in the shelter where the dogs were determined to require considerable treatment. Her evidence had added credibility in the fact that she did not paint all of the animals with one brush (she noted a continuum of behaviours) and was prepared to express uncertainty as to the underlying cause of the characteristics she observed.
130. Our acceptance of Dr. van Haaften's evidence does not require us to conclude that the Appellant and his witnesses were being blatantly dishonest. It may well be that in the Appellant's presence, especially inside the house, and in T.S.'s case, especially with food present, some of the dogs did not behave in a fashion that would cause alarm to his witnesses. However, the fact is that those witnesses are not experts and J.M and G.B. encountered the dogs only incidentally. The fact that these witnesses saw no cause for alarm during their limited time on the property does not undermine the expert evidence regarding the behavior and condition of the dogs as assessed by Dr. van Haaften.

131. While the Panel was impressed with the evidence of T.S., the fact is that he was only on the site for three days in August 2017. He is not an expert in animal behavior. Further, it was some time after T.S.'s three days at the property in August 2017 that a veterinarian, while examining the horses, expressed independent concern about the dogs to the Society. That concern prompted SPC's Edge's multiple visits to the property starting in October 2017, leading to Dr. van Haaften's assessment which took place in February 2018, six months after T.S.'s visit.
132. SPC's Edge's evidence, which we accept and which was not shaken by cross examination, was that right from her first visit in October 2017, she had concerns about inadequate shelter, about unsanitary living conditions with excessive feces present, about the dogs in the castle which were fearful, and about the Appellant having had so many dogs he was required to surrender several and could not properly care for the remainder. We note that a quarter of the dogs had still not progressed enough by the date of the hearing to be suitable for human companionship. In our view, this fact reinforces the evidence of the Society, and diminishes the weight we can place on the evidence of the Appellant and his untrained (and only casually in attendance, observing the dogs) witnesses.
133. With regard to the Appellant's evidence, we find that while he subjectively believes that he has done his best, and clearly did make some efforts, he minimized the difficulties identified by the Society with regard to hygiene and feces on the property and on the dogs themselves, the ammonia levels, the lack of proper shelter and non-competitive access to food, as well as the dogs' lack of proper socialization. The Appellant also minimized the circumstances surrounding his Saskatchewan conviction, which he still feels was unjust and which did not prevent him from keeping more animals than the order allowed (even though he discussed the issue with his probation officer). He also minimized the consequences of the in-breeding and the 24 unplanned pregnancies. To the extent that the Appellant took issue with the veterinary evidence regarding the dogs' behavior, we prefer the veterinary evidence.

#### *The seizure*

134. Our first task was to determine whether the Society justifiably formed the opinion that the dogs were in distress when they were removed.
135. "Distress" in s. 1(2) of the *PCAA*, a protective statute, is a specialized term. The *PCAA* defines "distress" as follows:
  - 1 (2) For the purposes of this Act, an animal is in distress if it is:
    - (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
      - (a.1) kept in conditions that are unsanitary,
      - (a.2) not protected from excessive heat or cold,
    - (b) injured, sick, in pain or suffering, or
    - (c) abused or neglected.

136. The criteria listed in s. 1(2) – any one of which is sufficient to satisfy the definition – constitute “distress.” The first three factors in subsection (a) reflect serious risk factors that foreseeably give rise to suffering and harm if protective action is not taken. While they must not be trivialized in their application, they also do not require the Society to wait until the worst happens. Thus, a dog can be physically healthy but still in distress where there is a foreseeable risk of harm given the conditions to which it is exposed.
137. It is also important to note that the Society must apply the test to the animals as they find them on the date of the warrant. They cannot apply the test to the condition of the animals as might have existed six months earlier.
138. We have no hesitation in finding that, on February 22, 2018, the date the warrant was executed, the Society was justified in finding that the animals were in distress.
139. We do not find it necessary to repeat the factors set out in the written reports and veterinary evidence, which we accept in full. The Society’s evidence and position, which we accept, was that the dogs, as a group, were exposed to substandard hygiene, lack of proper ventilation, insufficient shelter, inadequate access to food and water, uncontrolled breeding, likely inadequate veterinary care, and that almost all (but 3) of the dogs in the population (including young puppies and dogs of different ages) showed significant fear of people. While not every dog was impacted in the same way by each of these factors (any one of which would suffice to support a finding of distress in one animal), we are satisfied that each of the 46 dogs was in distress based on at least one of the factors outlined above. We reject the Appellant’s position that there was anything “vague” about the factors that informed the decision to remove these animals on February 22, 2018.
140. For the purposes of our conclusion, it does not matter whether the socialization issues reflected in these animals was caused by one or more of lack of proper socialization, genetic causes, and/or harsh/inappropriate treatment. Whether or to what extent the Appellant was the cause because of the in-breeding he permitted (the consequence of which he was unable to manage) or his treatment or neglect of the animals, or both, the fact is that the animals were in distress. A finding of distress does not depend on a finding of fault.
141. Thus, even if this lack of socialization was caused in part by the in-breeding permitted by the appellant (which reflects a lack of proper veterinary care), he was required to take his dogs as he found them. Where, as here, had dogs, in great numbers and with special needs for socialization, his failure to properly address those needs in our view constituted neglect that warranted action by the Society, which neglect also includes a considerable element of failure to obtain proper veterinary care (to prevent breeding), failure to provide adequate fresh water (as reflected by the fact that several adult dogs were observed to be eating snow on the property), failure to provide non-competitive access to food (resulting in differing body conditions cores of the animals, despite the availability of food), and failure to provide appropriate shelter for all of the animals.

142. We also find that animals were validly removed on the grounds that the conditions in which they were kept were unsanitary at the date of the seizure, as reflected in the evidence and report of Dr. van Haften under the heading “hygiene” and her evidence about needing to remove herself from the high ammonia environment. Whether or not the risk of unsanitary conditions had materialized in any particular animals (we note as well that the dogs also had worms and fleas, all easily preventable but untreated by the Appellant) we are satisfied based on the expert evidence that the conditions were sufficiently severe in the circumstances of this case as to give rise to a foreseeable risk of harm to the animals.
143. For these reasons, we find that the removal of all of the dogs (including the 10 dogs the Appellant seeks to have returned) was justified on the basis that they were in distress.

*Return of the 10 dogs*

144. Having determined that the seizure of the seizure of the 46 dogs, including the 10 dogs under appeal, was justified on multiple grounds of distress, we now consider the return of the 10 dogs.
145. The *PCAA* describes the duties of persons responsible for animals:
- 9.1 (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.
- (2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.
146. We 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.
147. We 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.
148. As made clear in *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at paras. 37-38, section 11 of the *PCAA* allows the Society to consider the circumstances as a whole. It does not require the Society always to give a person a “second chance” or numerous “second chances”.
149. The Appellant made several emotional pleas for the return of the 10 dogs as well as his promise that he now had the money to provide veterinary care related to spaying and

neutering for his dogs, should they be returned. In this regard, the Panel took into account the evidence of T.S. who ate meals over 3 days with the Appellant and who petted the heads and backs of some half a dozen dogs in the house, and who testified that all were in high spirits and happy to see him. We considered whether the day of seizure was just a “very bad day”, and whether returning to the Appellant the 10 dogs he requested would return them to a condition of adequate care, rather than exposing them to conditions that would foreseeably and once again result in a condition of distress.

150. While the Panel carefully considered this position, we also considered the evidence of SPC Edge, whose evidence we accept, and who on several occasions attended the property and made consistent observations. On several occasions she advised the Appellant to improve the living conditions of the animals (which he failed to do in any meaningful way) and encouraged him to reduce the numbers of dogs he owned. She found the dogs fearful and retreating from her, with one nipping at the back of her legs. Consistent with this evidence, Dr. van Haften reported, upon assessing all 46 dogs, that most concerning was the lack of socialization causing extreme fearfulness in this population of dogs. Only 8 of the 46 dogs could bear any type of human touch, and only 3 could be petted with only 1 seeking out attention. She said that severe fear causes distress because fear is a negative emotional state. These dogs showed significant signs of fear when they were aware of people in their environment at any distance. She noted that this fear and negative behaviour even existed in some puppies. Dr. Galatiuk made similar observations and conclusions.
151. In the face of these competing views, and as stated above, the Panel preferred the evidence provided and conclusions drawn by the veterinarian with advanced training in behaviour and who spent the time to evaluate each dog, develop a treatment plan, and who reported on significant improvements with a majority of these dogs since seizure after receiving treatment. While we cannot neatly reconcile this with the evidence of T.S. who stated that he petted several dogs in August 2017, animal behavior can be complex and that the non-expert experience of T.S. with a limited number of dogs over three days at a different time is not necessarily in conflict with the expert opinion of the veterinarian and SPC Edge regarding the overriding characteristics of these animals. The fact is that 18 dogs were euthanized in the months following T.S.’s stay because of poor socialization. We cannot in good conscience conclude that February 22, 2018 was simply a very bad day. Clearly, something more serious, and more long-standing, was at play.
152. If the Panel had any doubt as to the severity of the behavioural issues of the dogs, it had to only look back in the few months prior to the seizure, when the Appellant surrendered 20 dogs, and 18 of the 20 dogs had to be euthanized due to their behavioural issues, which caused distress to the dogs themselves and impacted the safety of staff, as the dogs could not live with people.
153. Compounding this problem is the Appellant’s denial that there is a problem with any of the animals and his statement that if there was, he would seek veterinary care. The Panel could not fathom a more persuasive and reliable assessment that these dogs were suffering from emotional distress requiring treatment than the testimony and treatment plan of Dr. van Haften. This was clearly not enough to even to convince the Appellant that there

was a problem. Without insight into the problem, it is difficult to have confidence that the Appellant would take the necessary steps to identify the problem and work toward a solution.

154. The Appellant also said the Society was not clear in its reasons for the seizure and the behavioural issues of his dogs was news to him, yet SPC Edge testified she had spoken to the Appellant a number of times about the behaviour of his dogs. This undermined the credibility of the Appellant and our confidence that he would live up to any representations made to the Panel even if he acknowledged the problem.
155. Further to that, the Panel was left with little confidence that the Appellant would spay or neuter his dogs if a limited number were returned to him. Over a 10 year period, despite the Appellant's testimony that he did his best, separated dogs in heat, and he checked them daily, he admitted that he had not 1, not 2, but 24 unplanned pregnancies, resulting in 24 unwanted litters being born. The Appellant was not successful finding homes for all these unwanted dogs and had to keep them, as was evident by the young age of several of his current 46 dogs (remembering that 20 dogs just weeks before the seizure had been surrendered, most of which were euthanized). The Panel is mindful that the Appellant testified he had all his dogs from puppies.
156. As noted above, the Panel found the Appellant to minimize the shelter and sanitation problems in his home. Whatever the evidence of his witnesses about it being acceptable upon entry to his house, the witness J.M, the new owner, found the situation to be worthy of a purchase condition to specifically clean and remove dogs residue including feces, urine and food, according to her own testimony. The Panel was mindful that one of the reasons for the seizure and criminal conviction in Saskatchewan related to a lack of shelter, to which the Appellant testified to this Panel that there was plenty of shelter in Saskatchewan. SPC Edge has also told the Appellant a number of times to clean his property but there were no significant changes on each of her subsequent visits.
157. The Panel also found that should any of the 10 dogs ever need veterinary care, the Appellant was unlikely to seek it out, given his horse had an injury that he declined to get care for until he was ordered to do so by the Society and even then, he decided the horse did not need a tetanus shot based on his own knowledge, despite the veterinarian finding the horse did need the shot, which the veterinarian then administered. The Appellant's limited knowledge of animal medical issues was likely responsible for the many, many litters being born, and for the variation of his dogs' body condition scores, and our lack of confidence in his ability to manage behavioural and socialization issues.
158. Finally, the Appellant had absolutely no concrete plan for the future now that he sold his house. He was at a motel and had lined up people to help him, except that was not confirmed as he also said he was willing to put the dogs in a commercial kennel, except that too had not been confirmed as he had been too busy. There was no veterinary plan laid out to get his dogs spayed or neutered, such as a deposit with a veterinarian and a schedule. Rather, he testified that he had had a plan for spaying the dogs but he did not follow the

plan for the last year, due to a variety of very real personal issues, which combined to allow his dogs to fall into a situation of distress.

159. Based on our careful consideration of all the evidence and submissions, the Panel concludes that the Appellant would be unable to prevent his dogs from returning to a situation of distress if they were returned to him. The Panel comes to that conclusion independently of knowing that the Appellant was recently convicted of animal cruelty involving some 70 dogs in 2016 in Saskatchewan, and was aware he could have no more than 10 dogs when he had 46. We took care not to rely on the Saskatchewan conviction as deciding this case. At the same time (and while we would have made the same decision without the Saskatchewan evidence) the Appellant's recent history of non-compliance with a court order is obviously a relevant factor in our consideration of the confidence we can place promises or plans made by Appellant going forward. The Appellant's plan seemed to be one of resignation to the uncontrolled breeding and expansion of his number of dogs while he made little effort to actually do anything to address the problems, or the conditions of his court order.
160. In all the circumstances of this case, the Panel concludes that this Appellant, having already failed to provide for his animals and permitted them to fall into distress, would foreseeably continue to fail to provide for his animals if any, even one of them, were returned, with or without conditions. We cannot think of any condition or group of conditions that would protect these animals if they were returned to this Appellant and therefore conclude that these animals should not be returned to the Appellant.

## **XI. ORDER UNDER SECTION 20.6(b)**

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

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

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

162. It is our order, pursuant to section 20.6(b) of the *PCAA*, that the Society be permitted in its discretion, to destroy, sell or otherwise dispose of the 46 dogs including the 10 dogs under appeal. The Panel understands the Society will attempt to place these dogs and their puppies in suitable homes. The Panel is also aware that a number of dogs are not



sufficiently along in their progress to live with humans, and that the Society is not a warehouse, as Dr. van Haaften testified, but the Panel nevertheless expresses its desire to see the best outcome for each of these dogs.

## **XII. COSTS**

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

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

(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).

164. The Society relied on the Affidavit of Marcie Moriarty regarding the issue of costs. Based on a April 16, 2018 BCFIRB decision release date, the Society is seeking costs in the total amount of **\$60,375.17**, pursuant to s. 20 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 as follows:

- A. Veterinary and hauling costs: \$8,266.87
- B. SPCA time attending to seizure: \$568.75
- C. Housing, feeding and caring for Dogs: \$51,539.55
- D. TOTAL: \$60,375.17

All breakdowns were included in the Society's submissions and the cost for housing, feeding and caring for the dogs was \$51,539.55, calculated as follows:

A. Costs for Dogs seized on February 22, 2018: 54 days (February 22, 2018 to April 16, 2018 (being the anticipated date of the BCFIRB Decision))  
\$17.07/dog x 46 dogs = \$42,401.88;

B. Costs for Dogs born February 28, 2018: 48 days (February 28, 2018 to April 16, 2018) x \$9.69/dog x 5 dogs = \$2,325.60 [Exhibit A to this Affidavit];

C. Costs for Dogs born March 7, 2018: 41 days (March 7, 2018 to April 16, 2018) x \$9.69/dog x 11 dogs = \$4,370.19 [Exhibit A to this Affidavit];

D. Costs for Dogs born March 12, 2018: 36 days (March 12, 2018 to April 16, 2018) x \$9.69/dog x 7 dogs = \$2,441.88 [Exhibit A to this Affidavit]

165. The Society submits that these costs are estimates only and costs are likely far greater particularly in this case. Actual total costs are very difficult to calculate absent advice from a forensic accountant. The costs to retain a forensic accountant to determine the actual costs will outweigh the benefits of potentially recovering boarding costs from the Appellant.

166. The Appellant submits that regarding costs of care, the costs are not reasonable as the Society will make money off selling the dogs, and the Society's request for money is "kind of vague" and the reason the Society took the dogs is all on socializing which is not in the regulations and is not written in the procedures. Because it is not a reason for seizure, the

dogs shouldn't have been seized and so he should not pay the costs. The Panel expects that the Appellant, having read this far, is now aware that the suffering he caused his dogs was in fact sufficient to support the seizure of his dogs as permitted in the *PCAA*.

167. Beyond the position summarized above, the Appellant did not provide any evidence that the costs of care for his animals, incurred by the Society, were not reasonable. As noted, the Appellant's only opposition was that his dogs did not have the problems cited by the Society, and that he only wanted 10 dogs back, and had no position on the costs for the other dogs other than that they could be sold.
168. The Panel finds absolutely no merit to the Appellant's position. The dogs were clearly suffering from severe anxiety and had to be medicated and conditioned. The dogs had to undergo health checks, and routine parasite control. And the dogs had 24 puppies so far in care, which the Appellant should rightfully bear the cost of care for. And the costs are high due to the sheer number of dogs, which was all within the Appellant's control.
169. The Panel does not find it reasonable however to continue the costs of care for all dogs other than the 10 under appeal past the day of the hearing. The Appellant asked for costs of care to cease for all but 10 dogs as of the date of the hearing – the date of surrender. Counsel for the Society agreed that this premise was reasonable. At the time of the hearing, the Appellant surrendered all but 10 specific dogs, and thus the cost of care for all but 10 dogs, from that point forward, would be borne by the Society. The Society agreed that this position was reasonable.
170. The Panel reduces the amount of costs requested for the care of all dogs except the 10 under appeal by 18 days. Therefore, the Panel reduces the cost of care as follows:

Under A above  $17.07 \times 36 \times 38$  plus  $17.07 \times 10 \times 54 = 32,569.56$

Under B above  $9.69 \times 5 \times 30 = 1,453.50$

Under C above  $9.69 \times 11 \times 23 = 2,451.57$

Under D above  $9.69 \times 7 \times 20 = 1,356.60$

For a total cost of care for housing, feeding and caring for the dogs of \$37,831.23 which reduces the total request for costs from \$60,375.17 to \$46,666.85.

**XIII. ORDER UNDER SECTION 20.6(c)**

171. We find that the Appellant is liable to the Society for the amount of **\$46,666.85** in respect of costs of care.

Dated at Victoria, British Columbia this 16<sup>th</sup> day of April 2018.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



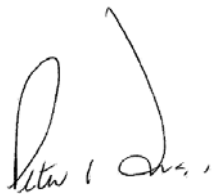
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Corey Van't Haaff, Vice Chair  
Presiding Member



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Tamara Leigh, Member



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Peter Donkers, Member