

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
24 CATS, 18 RABBITS AND 9 DOGS

BETWEEN:

MICHAEL CLENDENNING

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 Appellants:

Dale Robert Pedersen, Counsel

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

March 8, 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 February 8, 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 51 animals, which are the subject of this appeal, from the Appellant on January 9, 2018.¹ We note that amongst the animals, there were animals that were euthanized or had died, as well as some births.
3. 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.
4. 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 rabbits, cats, or dogs that were seized or that have been born from the seized animals.
5. The Society did request costs which were appealed by the Appellant, and the issue of costs is addressed later in this decision.

II. Preliminary matters

6. Both parties agreed that any animals born from any of the animals seized would be included in this appeal.

III. The review decision

7. The March 20, 2013 legislative reforms, set out in Part 3.1 of the *PCAA*, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: *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).
8. The *PCAA* does not set out any specific process for the review. Administratively, the Society’s current process where a review is requested is to prepare a disclosure package and then to invite submissions from the owner concerning the return of the animals and to consider these submissions in light of the investigation results to determine whether it is in the animals’ best interests to be returned to their owners.

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

9. 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.

10. Mr. Shawn Eccles, Senior Manager, Cruelty Investigations, issued written reasons dated February 8, 2018 after his review of this matter. After concluding that the 24 felines, 18 rabbits, and 9 canines had validly been taken into custody to relieve their distress, the written reasons stated, in part:

I turn now to the question as to whether or not it would be in the best interest of the Animals to be returned to your client. In making any determination regarding the best interest of the Animals, I consider whether you would be able to ensure the Animals remained distress-free if they were returned. This is a duty owed by an owner pursuant to section 9.1 of the Act. I also consider the history leading up to the seizure of the Animals.

History

- There is an extensive history with your client and the BC SPCA, dating back to March 15, 2004;
- The BCSPCA received a call of complaint from the Animal Welfare Society of North Vancouver regarding the conditions of 28 cats that had been previously surrendered to the AWS and subsequently returned to your client and that a number of animals had since passed away in his care;
- A search warrant was obtained by the BCSPCA and on March 26, 2004 and 44 cats were removed from the custody of your client.
- On April 21, 2014 an agreement was drafted and signed by your client for the return of animals to his care;
- The agreement set out a number of terms but in particular were the following terms:
 - The animal's owner and or another person responsible for the animals will attend to the animals on a daily basis for the purposes of ensuring the health and wellbeing of all of the animals;
 - To provide clean potable drinking water for the animals at all times;
 - To ensure litter boxes are cleaned daily and waste material disposed of in an appropriate fashion;
 - Not to increase or replace the animals in his possession;

- To ensure the coats of the animals are groomed regularly and as often as necessary to maintain the health of the animals.
- File #126554 Dec 22, 2011 Complaint from District of North Vancouver regarding the number of cats and the inability to clean them, strong smell of ammonia;
- File #178710 July 6, 2014 complaint regarding health concerns of a cat in your client's care;
- File #207961 July 8, 2015 complaint received about the conditions of animals in your client's care. The Special Provincial Constable reported that upon attendance your client refused entry but that when the door had been opened the smell of urine caused the officers eyes to water;
- File #240700 Sept 28, 2016 complaint received reporting concerns for your client's animals and the property was described as "in a state of squalor". The attending Special Provincial Constable noted that the house was dirty and that there was a strong smell of ammonia. The animals were difficult to examine but appeared to be underweight with poor hair coats;
- File # 241255 Oct 7, 2016 complaint received regarding the living conditions of cats, dogs and rabbits in your client's care, reportedly a number of cats had died as well.

Incident

- **November 30, 2017** the BCSPCA received a call of concern regarding 30-40 cats and 9 dogs in the custody of your client
Between December 1, 2017 and January 8, 2018 BCSPCA Officers attended the property 5 times:
 - On each of these occasions animals (dogs, cats and rabbits) were observed to be in need of veterinary care;
 - Conditions were wet and damp and there was a lack of bedding;
 - Ventilation was poor and comments from the investigating officers were that their eyes watered and their nasal passage were irritated and burned;
 - On some occasions animals were found dead or reported to have died;
 - Ammonia levels were taken commencing December 13, 2017 and found to be in the range of 50 to 100 parts per million (ppm);
 - Subsequent visits and ammonia readings in the housing rooms were found to be as low as 40 ppm but were generally found to be around 50 ppm;
 - Notices identifying areas of concern or distress were provided at each of the visits and included:
 - Bedding for dogs to keep warm and dry;
 - Areas for rabbits to withdraw and keep warm and dry;
 - Bedding and area for cats to keep warm and dry;
 - Ensure all animals are provided with access to clean potable water at all times;
 - Ensure the animals coats are free of matting and debris and are cleaned as necessary;
 - Ensure animals are not confined in an enclosed area without adequate ventilation;

- Provide shelter that ensures protection from cold and dampness to all animals;
- Ensure living area is sanitized regularly;
- Provide animals placed in group housing the opportunity to withdraw from one another;
- Provide veterinary care when the animals exhibit signs of pain, injury, illness or suffering that requires medical attention.

On January 9, 2018 a search warrant was executed and BC SPCA Officers accompanied by Dr. Mark Steinebach removed 51 animals.

- Conditions noted on the 24 cats removed from the property include: severe breathing difficulty due to suspected infectious or congenital disease, wounds, eye problems-infections, ulcers, scarring, chronic damage, conjunctivitis, long nails, fleas, skin conditions, debris filled ears, diarrhea, emaciation, dehydration, dental disease, scarring, abdominal bloating, upper respiratory infection (URI) symptoms, nasal discharge, mild-severe fear, urine/fecal staining, grooming (mats).
- Conditions noted on the 18 rabbits removed from the property include: severe breathing difficulty due to suspected infectious or congenital disease, wounds, abscesses, conjunctivitis, hairloss, long nails, scarring, emaciation, eye problems, pregnant, URI symptoms, nasal discharge, mild-severe fear, urine/fecal staining
- Conditions noted on the 9 dogs removed from the property include: Grooming/matting, staining of fur, moderate to severely fearful, ocular discharge, mild tartar, undersocialized, 4 dogs still require an intake exam at this time as they are too fearful for the exam to be completed.
- Ammonia level in room 1 was found to be at least 50 ppm;
- Ammonia level in room 2 was found to be at least 100 ppm;
- Ammonia level in room 3 was found to be at least 50 ppm.

Given your client's extensive history with the BC SPCA, I would expect that he should be more than familiar with the minimum level of care required for his Animals and the expectations of care as set out in the Act.

In my opinion, the expert veterinary evidence and observations of the attending Special Provincial Constables and Officers, clearly demonstrates that the Animals were in distress as a direct result of lack of care and neglect. Three of the Animals removed from the property were found to be in critical distress and were euthanized.

All of the above demonstrates either an inability to recognize the true condition of the Animals or a deliberate decision to ignore distress in his Animals. As a result, I am not convinced that he will ensure the health of the Animals in the future if they are returned.

11. Mr. Eccles thus determined in his review that the 51 animals would not be returned, leading to the appeal before us.

IV. The appeal provisions

12. 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 review². 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

13. At the start of the hearing, the Society advised that the previous day, it had conducted a search, which included SPC McKnight, of an area just outside of the Appellant's property and had located a burial pit of animals. The burial pit contained 93 dead rabbits, cats, and dogs. This was not subject to a search warrant as the Society had the permission of the manager of the Crown land. The Society advised it had photographs that it did not have time to submit, but that it had advised the Appellant's counsel. The Panel asked Appellant's counsel Mr. Pedersen for his thoughts on this disclosure and he said he had none. The Panel determined we would deal with the issue as it arose in the hearing.

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

VI. Material admitted on this appeal

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

Exhibits:

- a) BCSPCA February 8, 2018 decision (**Exhibit 1**)
- b) Appellant February 9, 2018 Notice of Appeal filed (**Exhibit 2**)
- c) Appellant February 12, 2018 Notice of Appeal filed by legal counsel (**Exhibit 3**)
- d) BCFIRB February 13, 2018 NOA letter (**Exhibit 4**)
- e) BCSPCA request to extend initial submission date (**Exhibit 5**)
- f) BCFIRB response granting extension date by one day (**Exhibit 6**)
- g) BCSPCA initial disclosure (Tabs 1-42) (February 20, 2018 by email and courier) (**Exhibit 7**)
- h) BCSPCA updated witness contact list in email (**Exhibit 8**)
- i) Appellant initial disclosure submission (**Exhibit 9**)
- j) Appellant witness contact form (**Exhibit 10**)
- k) Appellant, Mike Clendenning submission (**Exhibit 11**)
- a) BCSPCA written submission (February 28, 2018 by email and courier) (**Exhibit 12**)
- b) Affidavit #1 of Shawn Eccles (February 28, 2018 by email and courier) (**Exhibit 13**)
- c) BCSPCA Expert witness contact form for Dr. Emilia Gordon, Dr. Karen van Haften, and Dr. M.A. Steinebach (**Exhibit 14**)
- d) BCSPCA Witness contact form for APO Jarrett Marleau and SPC Jeanette McKnight (**Exhibit 15**)
- e) BCSPCA updated document disclosure index (**Exhibit 16**)
- f) BCSPCA Tab 43 (**Exhibit 17**)
- g) Appellant March 2, 2018 index to disclosure - tab 7 to 11 have been added (**Exhibit 18**)
- h) Appellant March 2, 2018 Mike Clendenning reply submission (**Exhibit 19**)
- i) BCSPCA March 5, 2018 Animal Health Report Addendum – Dr. Gordon (**Exhibit 20**)
- j) Appellant March 5, 2018 photograph submission (**Exhibit 21**)
- k) Appellant March 6, 2018 request for additional witness accompanied by a letter from B.J. dated March 4, 2018 (**Exhibit 22**)

VII. The Society's material and witnesses

Dr. Emilia Gordon

15. Dr. Gordon provided a written report dated January 9, 2018 regarding the intake of animals, and included a several pages long individual assessment of each animal, to the Society that said, in part:

POPULATION HEALTH FINDINGS (for entire population examined by KVH and EG)³

The majority of the animals in this population, particularly the cats and rabbits, were underweight or emaciated. Only 15/42 cats/rabbits had an adequate body condition of 4- 5/9. However, dry food was available for the animals when the property was attended on several occasions. Possible reasons for the poor body condition despite food being offered include: competition for food such that some individual animals were prevented from eating by others, illness (such as dental pain or URI congestion) causing reduced appetite, internal parasites, an inconsistent provision of a quantity or quality of food necessary to maintain adequate body condition of all animals, or a combination of these factors. The bottom line is that the majority of these animals were not consuming adequate calories to maintain a healthy body condition.

5/18 rabbits had wounds consistent with bite wounds in various stages of healing. This indicates ongoing fighting. Contributors to this could include competition for limited resources, pain/illness, and having a large number of sexually intact animals in a small area.

Many of the animals also had mild-severe fear suspected to be due to lack of socialization (see KVH reports). Only 5 of the 51 animals did not have signs of at least one medical or behavioural illness at intake, and did not require any special care, medication, or follow-up. These 5 animals were all rabbits, who were still mildly underweight, soiled with urine and had long nails. All of the rabbits required a special feeding plan (see Rabbit Feeding Plan) to help restore health.

At the time of the writing of this report (1/19), some fecal and ringworm tests are still pending. Infectious disease known to be present in the population is listed in the attached Animal Health Overview (also updated today).

URI: Nearly all of the cats showed visible signs of URI at intake. URI was also known to be chronically present in the population. Feline URI is caused by a complex of contagious viral and bacterial pathogens, and is associated with poor housing conditions and poor population management. It can be transmitted directly between cats or indirectly via inanimate objects or human caretakers. It is not airborne.

Clinical signs include sneezing, congestion, conjunctivitis, oral ulcers, and oculonasal discharge and can progress to pneumonia or chronic nasal/sinus

³ Where KVH refers to Dr. Karen Van Haften and EG refers to Dr. Emily Gordon.

infection. 10 of the cats displaying clinical signs were sampled for diagnostic testing to determine what pathogens were present in order to prescribe a population health plan. Swabs were taken from the back of the throat and from the conjunctival membranes and submitted to Idexx Laboratories for polymerase chain reaction (PCR) testing for common URI pathogens.

Results of URI Testing

Pathogen	# cats testing
Calicivirus	9
Chlamydomphila felis	6
Feline Herpesvirus 1	1
Bordetella bronchiseptica	2
Mycoplasma felis	4
H1N1 Influenza Virus	0

Many cats tested were positive for more than one pathogen, indicating co-infection. Only one cat tested negative for all pathogens. 7 of 10 tested positive for at least one of the bacterial pathogens (Chlamydomphila, Bordetella, Mycoplasma). While Mycoplasma can be present in clinically normal cats, both Chlamydomphila and Bordetella are not typically detected in clinically normal cats and are highly correlated with poor husbandry practices.

Viral shedding (Herpes and Calicivirus) can also occur in clinically normal cats (based on limited studies), but the rate of Caliciviral shedding in this population (90% shedding Calici) is higher than what is typically reported in studies, as well as being higher than baseline levels observed in other population sampling at BC SPCA facilities over the past few years. Calicivirus is the URI pathogen that can cause the most severe and painful disease and is the most significant primary pathogen in this population. These results indicate that the cats from this property were clinically ill due to URI pathogens.

Ringworm: Several of the cats and one rabbit showed signs at intake consistent with dermatophytosis or ringworm, a fungal infection of the hair shafts. Ringworm is a contagious and zoonotic condition that can be self-limiting in individual, healthy, non-stressed animals housed in hygienic living conditions. Ringworm can also cause severe disease and/or population level outbreaks in groups of animals who are unhealthy, stressed, or housed in substandard conditions with inadequate biosecurity. The infection tends to be more severe in cats (vs. dogs and small mammals). Clinical signs include hair loss with varying degrees of inflammation. The infective spores can live for years in the environment and are highly resistant to disinfection except for with specific disinfectants. They can be readily transmitted on inanimate objects and by human caretakers unless strict biosecurity precautions are in place.

Due to the serious nature of this condition in populations of animals, and zoonotic risk to staff, 50 of the 51 animals who were brought directly to BC SPCA facilities underwent diagnostic testing for ringworm (one of the kittens had to be euthanized for critical distress within 48 hours of intake so was not tested). All animals had toothbrush samples taken (by brushing the coat to collect hair and spores) and plated for fungal cultures at an in-house laboratory, which is the gold standard diagnostic but can take up to two weeks for results.

At the time of the writing of this report, 22 animals have tested positive for ringworm via fungal culture, with the remaining tests pending. The culture results are further reported via a quantitative measure based on the number of colonies. P3 is the highest number of colonies (> 10 per plate) and usually reflects active infection with shedding of fungal spores (it can also reflect heavy environmental contamination). So far all positive animals except for two dogs are P3 positive.

These results indicate that at least half of the animals from the property were either infected with or heavily exposed to ringworm.

Giardia: Giardia is a protozoal gastrointestinal parasite that infects a variety of mammalian species, including humans. While theoretically zoonotic, transmission between humans and companion animals is currently thought to be rare. Transmission is through the fecal-oral route and is common in high density housing environments with inadequate sanitation practices. Clinical signs include diarrhea, flatulence, weight loss, and less commonly inappetence and vomiting.

Fecal samples (Ova & Parasites with Giardia ELISA through Idexx Laboratories) were collected on a subset of the cats and dogs at intake. Most results are still pending, but two of the cats tested positive for giardia. Because of the highly contagious nature of this condition, and because the treatment can replace a standard dewormer that is given to all animals at shelter intake, we elected to treat all animals.

POPULATION TREATMENT PLAN:

Attached please find a summary of the population treatment plan for the animals from the CLENDENNING property (Document: 266253 CLENDENNING: Animal Health Overview- Infectious Disease)

In brief, the animals required the following infectious disease treatments in addition to routine health procedures and treatment for other individual conditions:

- 1) All animals: five days of once daily Panacur (fenbendazole) orally for treatment/prevention of giardia and other gastrointestinal parasites.
- 2) Ringworm positive animals (at least 22/51) Three weeks of oral Sporonox (itraconazole) once daily, followed by pulse therapy of one week on/one week off until cleared (typically takes 5-10 weeks); twice weekly topical dipping with Lime Sulfur Dip until cleared; weekly toothbrush cultures.
- 3) Cats with URI signs: 14-28 days of once daily doxycycline orally.

The treatment/management plan for infectious disease also included strict isolation of these animals, both from another in individual cages unless part of the original room groupings, and from the general population in each BC SPCA facility where they were housed. This required a large quantity of personal protective equipment (gowns, gloves, caps, booties) for staff and volunteers. Strict sanitation protocols using a 1:40 dilution of accelerated hydrogen peroxide (PeroxiGard) were implemented.

Due to the extremely high level of infectious disease in this population and a

number of animals with additional individual behaviour and medical problems, the daily care of these animals (including basic cleaning and feeding, providing medication, providing for behavioural/welfare needs, recordkeeping, and communication) took 30-60 minutes per animal during the first few weeks in care. These estimates do not include time spent performing and interpreting diagnostic test results such as weekly cultures or other administrative tasks.

SUMMARY/CONCLUSIONS

While the environment was the initial concern in this case, and was undoubtedly very unsanitary with extremely high ammonia levels and visible feces/urine, the distress caused in this case extends well beyond the environment. These animals were exposed to high levels of multiple infectious pathogens, had untreated (in some cases painful) illnesses/injuries, were in constant contact with a high density of other animals (of the same and different species), and in some cases were exposed to ongoing fighting. The physical examinations show that at intake, the majority of the animals in this case were malnourished or starving.

The extremely high level of infectious disease in this population caused these animals considerable distress. Animals were suffering from concurrent respiratory, dermatologic, and gastrointestinal disease with no (or very inadequate) treatment provided. High ammonia levels cause irritation of the mucous membranes and would worsen symptoms of respiratory illness in both cats and rabbits. Malnutrition and stress further weaken the ability of animals to resist and recover from infectious disease. Some of these diseases, such as Chlamydia, Bordetella, and Ringworm are virtually never detected in clinically normal cats. Others, such as the remaining URI pathogens and Giardia, may sometimes be detected at low levels in clinically normal animals but were clearly present at excessive rates and causing clinical disease in this population.

The pathogens that cause URI, ringworm, and giardia are microscopic. In addition to the prompt removal of organic waste (which was not occurring in this case), disinfection is also necessary to prevent ongoing environmental contamination. It is not possible to reach this level of infectious disease in a facility, particularly in young animals who were presumably healthy (or at least healthier) upon entry, without incredibly poor biosecurity/ husbandry/ animal management. Reaching this level of infectious disease requires at least months of failure to provide adequate veterinary care and failure to provide sanitary conditions.

The infectious disease in this population appears to have been spreading in an uncontrolled fashion due to poor housing, stress, malnutrition, and nonexistent biosecurity. The few animals not already clinically ill were at greatly elevated risk of becoming clinically ill, particularly from ringworm, which was heavily contaminating the environment. The number of animals present on the property would be beyond the ability of most property owners to provide care, even if they were healthy. The degree of suffering in this case is hard to quantify, but between the poor environment, widespread infectious disease, untreated medical problems, and malnutrition/starvation, would have been substantial.

16. Dr. Gordon affirmed that she was a licensed veterinarian in BC, and a fulltime veterinarian for the Society, running the shelter health program. She has spent half her training and experience in shelter and non-profit veterinary medicine.
17. Dr. Gordon testified that her report was authored by her and is accurate.
18. She said the big picture findings at the intake performed at the Chilliwack shelter was that there were a lot of rabbits and cats with respiratory infections, congestions, eye and nasal discharge, trouble breathing, soiled with urine and feces, chronic staining, and a few animals had diarrhea some hair loss and grooming issues. Some had ringworm and samples were taken. The majority of animals were underweight and using the 1 (emaciated) to 9 (obese) scoring system she personally examined 42 of the 51 animals and 15 were scored at 4 or above, or adequately weighted, the rest were emaciated or underweight. The rabbits had bite wounds at various stages of healing, so it was a population issue. There were additional mild medical issues and some severe dental issues but out of the entire population, there were only 5 animals with no signs of illness.
19. The rabbits had all been fed pellets which alone is inadequate food. She likened it to eating junk food as a steady diet. Typically, a balanced diet for rabbits is one-quarter pellets and the rest timothy hay and maybe vegetables. That would be to maintain body score. These animals were underweight and struggling to meet to a healthy body score so adding calories with alfalfa and in some cases critical care powder was what the Society was doing.
20. When ringworm testing was completed, Dr. Gordon noted it takes 14 days for ringworm samples to be tested, and between 19-22 animals had ringworm. There is a 1-4 week incubation period and the animals were not bathed on intake so their status was accurately reflected. On seizure. 86% or 43 of the 50 animals were positive (one rabbit was not tested as it was euthanized). The level of ringworm according to tests was that the animals were infected and shedding large numbers of spores or were in a heavily contaminated environment. She testified that one does not find ringworm spores on healthy animals.
21. Two of five sick rabbits tested positive for another parasite and were treated. Four dead animals had necropsies performed.
22. Testing of the population for upper respiratory tract infections involves, due to cost, testing a sample population and applying findings to the entire population. Of this sample, 90 % shed viruses of serious upper respiratory infections plus other pathogens. It is possible in large populations of animals to prevent the spread of disease like this using proper animal husbandry processes, but in this case she concluded that the environment lent itself to infectious diseases compounded with the stress of crowding and animal to animal interactions with no choice to escape. Bleach, Dr. Gordon said, is not recommended for disinfecting. Dr. Gordon added that any body stress like malnutrition would impact an animal's ability to rely on its immune system to fight infection.

23. Dr. Gordon concluded that her examination of the population exhibited poor hair coats, loss of muscle, poor nutrition and those contributed to the animals being sick from infectious diseases.
24. She testified it was unusual to see cats with nasal bacterial infections causing extensive bone loss and megaesophagus and polyps in the airways caused by upper respiratory infections. These are likely secondary infections that developed over a period of one-to-two months.
25. Necropsies were performed on the dead cats: Cat 021 died from breathing complications due to a dilated airway which decreased its ability to breathe and caused pneumonia. Cat 022 was in “very very poor” condition and with supportive care did not turn around. It had severe systemic fungal infection affecting its intestines from absorbing nutrition. It is “very very rare” in cats and coupled with upper respiratory infection and emaciation made the cat very compromised. Cat 039 was in “really poor condition” and was euthanized. It was determined it was not absorbing nutrition and was starving. Cat 041 was euthanized a few weeks after seizure as it could not eat and had massive intestinal lymph inflammations likely from bacteria. It mimicked cancer but was not cancer.
26. Dr. Gordon said the first 3 cats deaths were preventable or treatable if the underlying condition of starvation had been treated, and had the animal received treatment. The 4th cat had a secondary infection due to being immunocompromised due to starvation.
27. Dr. Gordon testified that animal care would take 30-60 minutes per cat for food, medications and supplements delivered in a low stress way. Regular animal care is closer to 15 minutes per animals for basic care and feeding and cleaning, not including medical record keeping, behaviour modification, exercise or enrichment. She stated 51 animals would take a minimum of 12.75 hours of care each day, times by 2-4 for sick animals which would take 25-50 hours per day.
28. Today all the living cats are doing well, they are clearing the ringworm with medication and 2x weekly baths. They continue to work on riding the cats of upper respiratory infections. Dr. Gordon testified these are huge files and a number of dentals were needed and will be done once weights and health issues return to normal. All animals, she says, are “hanging in there.”
29. Dr. Gordon said if any of the animals were returned, and she has not met the Appellant nor seen the property herself so she has no feeling about him or his home, from the standpoint of the animals alone, the amount of time needed for the animals could not be provided by the Appellant alone or with intermittent help. The animals were very sick and half were starving and some starved to death or were fighting secondary health issues due to lack of nutrition.
30. Dr. Gordon said an average owner can recognize the signs of starvation in an animal and can recognize the sign of illness and distress and should be able to take appropriate action. These animals were not cared for adequately and the results were not recognized which

allowed them to get to the point they were in when seized. A minor change on the part of the Appellant will not prevent the situation from repeating.

31. The issue she said goes beyond just the sheer numbers of animals. Some were so sick and so starving that the caretaker should have recognized it, even with so many animals. It is possible to have this many animals and keep them at an acceptable body scores but a combination of factors in this case resulted in an owner that did not take action.
32. In response to questions from the Appellant, Dr. Gordon confirmed the animals were transported in Society vehicles to Chilliwack. She did not speak to the Appellant herself or see their food source but the health and habits of the rabbits support the finding the animals ate primarily pellets.
33. Dr. Gordon testified that she personally examined 2 dogs and some dogs were not examined as they were too fearful. She said all the dogs were fearful and a new environment can induce fear as can transport. However, Dr. Gordon said she would not anticipate 100% of the dogs being afraid of unfamiliar people.
34. Two of the dogs body condition scores (BCS) were adequate. The other dogs were just visually not manually examined until they received medication and behavioural supports for their fear.
35. Of the 2 dogs she examined, they were in very good physical health. In the ringworm testing, there were 4 dogs not positive.
36. In the Society's facility the dogs were so fearful they were considered to be in a state of emotional distress. They were not tested for upper respiratory infections as they demonstrated no clinical signs. She concludes the dogs' behavioural needs were not met. Overall, an owner needs to be able to respond to their animals' medical and behavioural needs and grooming itself does not equate to an animals' long term needs.

Dr. Karen Van Haaften

37. The Society submitted a report from Dr. Van Haaften dated January 19, 2018. It contained individual findings and said, in part:

POPULATION BEHAVIOUR FINDINGS (for entire population examined by KVH and EG)

Behavioural concerns for this population were limited to the dog population. The cats and rabbits in this population showed an appropriate level of fear and anxiety considering the stress of the seizure and intake processes. In general, the cats and rabbits were relatively easy to handle and friendly with people during their intake examinations.

Dogs

All of the dogs from this population showed significant fear of people. When approached by a person, they would back away and show signs of stress

including tucked tails, hunched posture, avoiding eye contact, ears pulled back, lip licking, and escape behaviour.

The clinicians and branch staff attempted to build trust with all dogs by using non-confrontational body language (crouching down and turning to the side), tossing highvalue treats to the dogs, and moving in a slow and predictable manner. Only 4 dogs (452050, 452051, 452052, and 452053) responded positively and approach clinicians during these interactions. Most dogs were too fearful to respond to these overtures, and just showed fearful body language and escape behaviour in response.

Using low stress handling, examinations were possible in 5/9 dogs, although none of the dogs would eat while they were being touched by people, and they continued to show significant fearful body language throughout the exam.

Four of the dogs (452045, 452046, 452047, and 452049) could not be examined on the same day of intake due to extreme fear behaviour when approached by EG and KVH. Examinations had to be postponed until the next day.

POPULATION BEHAVIOURAL TREATMENT PLAN:

Treatment for fear of people was initiated for all dogs at time of intake.

The treatment plan included anxiety-reducing medications (trazodone) to help the dogs cope with their new environments, and reduce their levels of fear to speed progress with behaviour modification training.

Humane behaviour modification training exercises were started on Jan 11th, and included Desensitization and CounterConditioning (DS/CC) to people approaching using high- value treats. Once dogs became comfortable with the presence of people, DS/CC to touch was begun.

Anxiety reducing medications are still necessary at the time of preparing this document, but they will likely be discontinued when trust is established through DS/CC training. Some individuals may require life- long anxiety control medications.

SUMMARY/CONCLUSIONS

Severe fear of people in dogs can be caused by social isolation (especially during dog's socialization period [6-16 weeks of age]) or by having received harsh or inappropriate treatment from people in the past. Genetic causes have been established in some breeding lines.

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

Severe fear disorders impact animal welfare 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.

38. Dr. Van Haaften testified that she is a veterinarian and has taken advanced training in animal behaviour but is not board certified as a specialist as she has not yet written the examination. She is the senior manager of animal behaviour and welfare at the Society.
39. Dr. Van Haaften testified she did write the report noted above. She explained her focus was on the behavioural examination of the dogs and in the Appellant's dogs, she found an unusual level of fear constituting distress. Some dogs backed far into the end of the kennel and shook and tucked in their haunches and avoided eye contact. This was escape behaviour. It is unusual to see that a shelter attendant is unable to gain their trust in a short time.
40. She agreed that being in a shelter induces fear for a short time, and anxiety, in normal animals but it was this exceptional level of fear she didn't normally see. And it occurred with all the Appellant's dogs; all 9 were abnormal. She sees all spectrums of dogs come into the shelter with fear, but less than 5 % were at this extreme end of the spectrum where she found all the Appellant's dogs.
41. Some of the dogs were able to be examined after several minutes of trust building. With dogs 046, 049, 045 and 047, they were unable to examine them as they were too afraid. Anxiety medicine was used to reduce anxiety and 2 dogs were ultimately sent to Dr. Steinebach for examination about a week after seizure.
42. Dr. Van Haaften said she recognized that fear and anxiety is a normal reaction to transport and an unfamiliar environment and unfamiliar people and smells and sounds, but the response she saw in the Appellant's dogs was out of normal. Having to administer medication on the first day is rare.
43. She explained there are 3 causes of this type of fear: genetics, which was unlikely in these dogs of different breeds and ages; inadequate socialization; and past trauma. She concluded it was likely one of these final 2 causes.
44. Since seizure they have worked with these dogs to counter condition and train and some are still medicated however today, 2 months later, all dogs are showing signs of significant improvement at various levels.
45. Shelter volunteers spend 4 hours a day with the worst of the dogs working on desensitization. 30 minutes per day is minimum requirement.
46. She testified that a wagging tail can be misinterpreted as friendly when it can also mean simply that the dog is alert and is going to interact which could include a bite. When a dog is afraid of people to this extent they are in poor welfare.

47. There are 3 reasons dogs bark, she said: environmental triggers, attention-seeking, and anxiety including separation anxiety. Barking is a tool for coping. Significant vocalization is not normal. In her experience while the dogs have been at the shelter, excessive barking has not been as issue and debarking is not recommended as it provides no benefit for the animal and causes significant pain. If dogs bark for emotional issues, debarking will not address those issues.
48. While the dogs she examined were of adequate physical condition, they had urine staining, and 6 of 9 dogs had grooming, ear and matting issues including fecal mats near their bums which would be uncomfortable and unsanitary due to bacterial risks and itching and skin infection risks. Dog 047 had a sever rash at its neck and needed medical treatment.
49. Based on her exam, she concluded that if even 1 dog was returned, she would remain very concerned about its emotional and physical health and all the rabbits and cars were in very poor condition and there was no indication that the Appellant recognized physical or emotional distress and return would not be in the best interests of these animals.
50. In response to questions from the Appellant, Dr. Van Haaften testified that she did not know the cause of the dogs generalized anxiety and even if it was shown to her that the dogs were friendly while at the Appellant's house, she would not question her diagnoses as while the dogs have been in her care, they have shown they are suffering from chronic anxiety, She said there is a significant amount of work still to be done with the dogs, and environmental controls would be necessary.
51. In response to questions from the Panel, Dr. Van Haaften testified that one paper she read on chronic anxiety indicates that the result of chronic anxiety couldbe long-term skin issues, gastro-intestinal issues, and some health risks. She likens it to a human having a fear of spiders, a pathologically severe fear. Such fear would prevent a person from showing normal behaviour and the fear would cause shaking and sweating as outward signs. If you made that person live amongst spiders, they would live in near constant fear. She testified it was uncommon to see this level of anxiety in all the dogs seized.
52. She testified that for 24 cats, 25 litter boxes would be needed. It is not enough to get a larger litterbox. Each cat needs one litter box plus one extra and each box needs to be in a separate location not side by side.

Dr. Mark Steinebach

53. Dr. Steinebach testified that he was a veterinarian practicing since his graduation in 1994. He owns the practice where he works and has given expert testimony in 26 cruelty files. He confirmed he wrote the above report and that it is accurate.
54. The Society submitted a report dated January 23, 2018 written by Dr. Steinebach. It is 11 pages long, with individual findings he saw as a result of his attendance at the seizure. In part his summary reads:

A number of concerns arose during my involvement in the above noted case from the earliest moments (during attendance at the Hansom Road

property) to interactions with some individual animals presented for assessment at Valley Veterinary Services Hospital.

Initially while in attendance at the Hansom Road property the overwhelming concern was relative to air quality within the 3 housing areas containing animals. As noted above the ammonia content in the air was qualitatively unsustainable without inordinate distress relative to breathing. Ammonia levels were found to be 50 – 100 parts per million as tested. Ammonia is a toxic gas particularly at levels of 50 parts per million or greater where it is an extreme irritant to delicate mucous membranes including those found in the respiratory system and to eyes particularly given that ammonia is a water soluble gas that reacts directly with these moist mucous membranes. The irritant effect on these mucous membranes will cause inflammation and thus dysfunction of these critically important respiratory tissues. This dysfunction can also predispose to secondary infection. With chronic exposure permanent damage and changes to these tissues can occur, particularly in the deep lung tissue, nasal passages and eyes. 8 of 10 animals presented for examination were noted to have respiratory distress, infection, and inflammatory disease. 5 of 10 had significant ocular disease. 8 of 10 had significant excrement contamination of their skin and hair coats consistent with the excrement accumulation within the enclosures that would have been in part the genesis of the extreme ammonia concentration in the air within these environments. And while having large numbers of animals crowded into small enclosures can significantly contribute to elevation of ammonia concentrations secondary to excrement buildup, all of this is completely preventable.

While there was significant correlation between respiratory and ocular diseases extant and the chronic exposure to toxic and irritating levels of ammonia gas there were other pathogenic conditions noted during examination of the individual animals presented.

Emaciation was noted in 6 of the 10 individuals presented. Emaciation in practical terms means that the individual examined has not taken in sufficient energy to meet all of the metabolic needs of life and as such the body extracts the additional needed energy requirements through digestion of its own tissues, initially fat and eventually muscle and other vital structures. If animal caretakers do not provide food of sufficient quantity and quality to meet the animal's needs on a metabolic level, then emaciation will subsequently occur. Concurrent processes that increase the metabolic demand for nutrients (i.e. disease, debilitation from injury, infection, inflammatory disease and age) will hasten the onset of the emaciation state. Evaluation of emaciation is generally done using a Body Condition Scoring scheme that is widely used within veterinary medicine to quantify this state. In this circumstance a 9 point scale was employed in evaluating the animals examined. In evaluation of BCS it is always clear that housed animals will have no capacity to feed themselves apart from predation upon other animals housed within the same enclosure and so rely utterly on the caretaker for this provision. In addition these animals will rely on a caretaker for ensuring that medical conditions exacerbating metabolic challenges that can lead to emaciation are summarily addressed or prevented.

Animals that were examined by myself were also noted to have the following pathogenic findings: painful dental pathology including dental fractures (5 of 10), skin infections (pyoderma/dermatitis) and excrement contamination of the skin and haircoat (8 of 10), ear infections and parasitism (5 of 10), eye infections including evidence of past and current painful ulceration (5 of 10). All of these animals had a common factor at play. All of these conditions resulted in outward and recognizable pathology that any laymen with exposure to these individuals would have been aware of. All of the conditions had outward manifestations that would even to the untrained eye, lead to suspicions that the affected individuals were unwell (i.e. abjectly abnormal skin and haircoat, abnormal appearance to eyes including large corneal opacities, redness, squinting and marked crusting around the eyes and discharges, abnormal accumulation of black debris within the external ear canals).

The lack of provision of basic care for the animals housed at the Hansom Road property was alarming. This lack of care extended to overcrowding, a lack of appropriate cleaning and hygiene that lead to buildup of toxic gases in these environments. The toxic gases were not vented (where this was possible in part due to the presence of fans that were not being employed). Diseases (i.e. respiratory and ocular) resulted or were exacerbated by this. In addition food was not provided in adequate quantity to meet caloric needs and clearly no special provision was extant for the ill animals with additional requirement in this regard. No general grooming appeared to be provided as needed despite the additional need due to the unhygienic nature of the housing imposed on these animals. The end result was suffering. All animals had to breathe the toxic air and could not choose for themselves not to be so exposed. Animals had to endure the suffering associated with chronic hunger. Animals had to suffer painful, treatable and/or preventable medical conditions. The result of this degree of “care” was the resultant preponderance of suffering that resulted in so many of the animals trapped in this circumstance.

55. Dr. Steinebach testified at the time of his attendance at the property all the animals were inside the buildings.
56. He noted the temperatures were not particularly low for healthy animals with appropriate coat and bedding but it was a problem for an emaciated or thin animal or animal with a thin coat. Such animals need greater caloric intake to maintain body temperature and additional energy is needed to combat low ambient temperature.
57. He observed that the air quality was a significant feature in the 3 rooms where the animals were found. The ammonia content in the rooms was dramatically elevated over the tolerable level and was measured by the Society. Greater than 5 ppm is detectable and arguably tolerable, greater than 25-50 ppm is intolerable and extremely irritating and over 100 is extraordinarily irritating and arguable toxic.
58. Dr. Steinebach testified he had difficulty breathing not wearing a mask and it was difficult to open his eyes as they would tear up and he would cough. A few minutes at a time was as

much as he could bear. The measurement was over 50 ppm and for animals this was an extreme irritant to their mucus membranes and would cause an inflammatory response and there would be excess secretions and swelling and pain in the mouth, nose, upper airways, lungs and bronchial tubes. Ammonia in the small airways would cause more damage as the tissue is more delicate and the deeper into the lung, the more profound the effect of the irritant.

59. Dr. Steinebach said that sanitation was required with strict removal of feces and urine daily as it was the source of the ammonia even without direct access to the excrement by the animals. It is not enough to use clumping litter, it is still off-gassing.
60. He said that once in an environment, it hardly matters what type of cleaning you do, you cannot just clean whatever pathogen exists. Regarding pathogens, once there is exposure, cleaning hardly matters. Cleaning must entail using an appropriate sanitizing agent that has a direct effect on the particular pathogens, then physical removal of debris. This must be done in a depopulated setting and before reintroduction of animals. The surfaces must be made impervious to fluids and paint will not work. It must be vinyl coating or stainless steel so pathogens cannot be absorbed. Even those must be cleaned daily. Bleach is not the best cleaner. And after using bleach, it must appropriately dissipate before reintroducing animals.
61. Dr. Steinebach testified that the animals he saw had been sick for 3-4 weeks minimum or it could be a year, it was impossible to say. The 3 dogs he examined were in notably better condition than any cat. Most BCS were acceptable and there were grooming issues and some dental issues but generally the dogs were in better condition though some had filthy matted feces and urine entangled in their coats. He testified their behavior was fearful and he said their behavioral issues were recognizable to him. He noted a muddy yard and dog footprints and concluded the dogs were allowed access outside, so they were not as affected by airway disease as the other animals even though the dogs were sometimes kept and were found inside the ammonia filled building.
62. Dr. Steinebach testified he concluded that the animals were in distress. He said that the medical pathology equaled distress but that aside, confining animals to an airspace with this level of ammonia to this degree would be extraordinarily distressing as the animals had no choice but to stay. Forced breathing of these levels of ammonia caused distressing, suffering circumstances.
63. Dr. Steinebach testified that there were no good animal husbandry practices in place at the Appellant's property "at all" and even basic husbandry and care provided by any pet caretaker would include grooming of feces stuck to the pets hair and feet once aware of it, and he would hazard to say most of what he say was intolerable to the animal so it should have been removed to normalize the animals behavior. Almost universally he saw feces on the dogs and cats which produced more complex disease control and he would have expected an owner to have dealt with it. It is not a "pie in the sky expectation; but is a basic one".

64. Dr. Steinebach testified he saw overt and obvious signs of illness as some animals were incapable of opening their eyes and discoloured pus was exuding and anyone would know this is an unhealthy departure from normal. He said you do not need a veterinarian to tell you that something is significantly wrong. Logic says if you wipe it every day you must know it's there.
65. Dr. Steinebach testified that "no one with intact faculties' thinks its normal for pus in the eyes and for animals to squint in pain or have a deranged of normal look. It is not rational and it is illogical unless the owner does not possess intact faculties.
66. Even if 1 animal goes back, he said, unless there is remedial training in animal care and extraordinary remedial efforts to clean and sanitize the environment and reduce the concentration of animals, to return the care of animals to the same person would ensure the animals would suffer again in short order.
67. In response to the Appellant's own questions, Dr. Steinebach testified that the dogs were not acting normal and he did not examine the dogs until 2 days later when he examined 2 dogs, on January 11, 2018. He testified that most of the difficulties he saw in the dogs were "absolutely' preventable. Their teeth could be done, they could have been groomed, and they could have been kept in an ammonia-free environment and they could have been fed appropriately. The BCS was adequate for the 2 dogs.
68. One issue, he said, was the housing for the dogs and the sheer number of animals contributed to the air quality; there were too many animals in a small area. Since animals don't all go to the bathroom at the same time, cleaning has to occur continually. When you crowd animals together in a small space, aside from behavior factors, "when you impose that on them, you mess with their minds."
69. He said dogs are not rubber trees and need to get what they sensibly require to flourish. He testified he thought there was still a danger in the physical environment with the ringworm organism and other parasites as they will still exist until properly sanitized. It may be necessary to gut the interior. If these dogs had been free to roam and be kept in a clean environment, none of their circumstances would have come to pass, he said. They do not want to walk in their own feces and have feces stick to their coats.
70. In response to panel questions, when asked to advise on which issues in the Appellant's description of what his new helper C.T. would be doing, Dr. Steinebach testified that a person who is not a veterinarian can vaccinate an animal but not for a fee, and some of the other tasks would be extraordinarily difficult to do. Untrained persons could clean and groom daily and pay attention to their hands-on check of the animals but could not diagnose illness or disease. Even spending 5 minutes per animal would have required 250 minutes a day and they would likely need more. That is without cleaning or significant grooming. It's a fulltime job, he said and even a couple of people would need significant help every day 7 days a week.

71. When asked if the Appellant would have known if his emaciated animals were thin when he held them, Dr. Steinebach said the animals were skeletal and there was no way the Appellant could not have recognized that, they were as thin as possible while still being alive. There was no way to misinterpret it unless the person's faculties were not intact. No special knowledge or training would be needed and especially as some animals were better than others, the owner should have been able to determine the difference.
72. Dr. Steinebach said it was an extraordinarily blatant nature of emaciation that cannot be missed.
73. Dr. Steinebach confirmed that if the animals are rehabilitated and then returned to the same situation, they will revert to distress absolutely.
74. In response to additional questions from the Society, Dr. Steinebach testified that he had grave concerns about even 1 animal being returned as the "most rudimentary care" by the "most ignorant caretaker" had not been applied to any animal. It must be because of ignorance, incapacity or malice, he said. As the Appellant provide no follow up care as directed by his own veterinarian, Dr. Steinebach concluded that that dispels the ignorance factor for him and his pendulum, he said, shifted towards malice.

Special Provincial Constable Jarrett Marleau

75. SPC Marleau testified he was hired by the Society as an animal protection officer 10 months ago and became an SPC 2 months ago, but was not an SPC at the time of this seizure. He has since been appointed under the *Police Act*.
76. He confirmed his complete notes were submitted as part of this hearing at Tab 29. He took notes at the property and upon leaving the property he pulled over and finished his notes.
77. SPC Marleau testified he had never worked as extensively with anyone as he did with the Appellant. Each time he was at the property he spent about 3 hours with the Appellant informing him how to improve. The Appellant did not comprehend the ammonia issue even though SPC Marleau had left a notice. There were 6 separate notices and all mentioned ventilation. Another SPC drew a diagram for the Appellant to teach him about ventilation. The first 4 notices said to bathe the animals. Improvements should have been in place before the Society arrived and he should have already had a plan in place.
78. SPC Marleau stood side by side with the Appellant while he read the notices and he explained them to the Appellant and answered all his questions. The Appellant told him he understood. SPC Marleau said each time he visited and went over concerns, it was the same concerns each time. SPC Marleau acknowledged that the Appellant appeared to be learning but it was very slowly.
79. At the initial visit, he described the conditions as absolutely horrible, and the rabbits had no enrichment, no comfortable bedding and no dry areas; all bare concrete was soaked in urine and feces. There were some improvements by the time of seizure in that dog beds had

been added and there were a couple of litter boxes, but no bedding in the dog beds. It took multiple trips to explain things to the Appellant.

80. SPC Marleau said the Appellant seemed willing to follow through but many of the issues remained unaddressed each visit. The Appellant had begged him for a chance and seemed agreeable which is why SPC gave him chances.
81. On the day of the seizure, the fans were installed and when turned on did lower the ammonia, but it was still too high, higher than acceptable. There were beds in the kennel boxes. There was a litter box in each room, but it was unused and there was feces and urine all over the place. There were insufficient perches and hiding spots for the animals present. In the boxes added for hiding, there were urine-soaked rags. The cats huddled on top of the boxes for warmth. The rabbits had drooping ears typically a sign of sickness or stress. When SPC Marleau showed up without advance warning, the conditions were absolutely unacceptable. The animals could not get out of the situation. There was always food available but with territorial issues, not all animals had a chance to eat. The Appellant had little to no grasp of animals' social cues.
82. SPC Marleau saw nothing that convinced him of any beneficial improvement for the animals.
83. SPC Marleau said of the 93 animals found in the burial pit where the Appellant had only lived for 1.5 years, their deaths were not representative of their natural lifespans.

Special Provincial Constable Jeanette McKnight

84. SPC McKnight was appointed in 2017 under the *Police Act* and confirmed the information she swore to in the ITO is accurate.
85. On her first attendance on December 3, 2017 she discussed the problems with the Appellant and told him animals cannot lie in urine on cement. The Appellant had asked her to give notice before she attended again so he could turn on the fan so the ammonia readings wouldn't be so high.
86. SPC McKnight returned to follow up on December 13, 2017, and on January 8, 2018 and at the execution of the warrant on January 9, 2018. She found the conditions similar on January 9 as previously. There was urine and feces everywhere. There was no light and no access to fresh air. The cats were listless and didn't lift their heads. When she looked at the cats, she could see their eye infections.
87. SPC McKnight testified that the seizure was at 11:30 am and all the animals were locked up and the inside of the building was dark and smelled bad. During the execution of the warrant, the Appellant was upset and called his veterinarian to come and euthanize all the animals rather than surrender them. She had previously offered to have him surrender half his animals to make it easier for him but he refused.

88. SPC McKnight also testified about a previous incident of concern when he attended the property and observed the Appellant trying to gather up his dogs, one dog lay on its back and the Appellant dragged it under the armpits into the building and closed the door.
89. On March 6 and 7, 2018, SPC McKnight became aware of the Fraser Valley Regional District's involvement with the Appellant. She received a call from a FVRD animal control person who had heard 4th hand that the Appellant had asked about incinerating some dead animals kept in a graveyard on his property. The Society called a contact at the City of Chilliwack who confirmed he got a call from the Appellant about incinerating some dead animals. At some point a person from "Natural Resources" became involved as there was information about piling animals' feces and debris on Crown land in a pit. "Natural Resources" had been investigating, she testified, and advised the Appellant they had found an option for disposal of cat litter and feces but not dead bodies. That person learned the disposal pit was just outside the Appellant's fence and provided permission for the Society to enter Crown land and investigate.
90. The SPC testified she found a square patch of turned-up dirt and they dug it a quarter at a time. The first quarter was done until dark on March 6 and the rest on March 7, 2018. The first night they found 15 packages; the 1st package was a cloth bag wrapped in a dog food bag then paper towel and duct tape. It was a dead rabbit. The next day they found 72 additional packages. When they spoke to the Appellant about their findings, the Appellant asked them what else was he supposed to have done?

VIII. The Appellant's material and witnesses

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

Michael Clendenning

92. The Appellant submitted material outlining in his submissions the type of help he had arranged and the changes he was going to make or had made to his property should he get his animals back.
93. The Appellant testified that he was 71 and had been caring for animals for 30-40 years and had cared for more than one animal for the past 20 years. He had dogs, cats, and rabbits mostly as of late.
94. In 2003/04, he said he had interactions with both "animal control" [apparently the municipal animal control people] and the Society. In 2003 28 cats were removed for medical attention but 4 dogs were not taken, and in 2004 the Society took 44 cats and no dogs.
95. His evidence is that on January 9, 2018 his 9 dogs were absolutely fine. Even the Society Animal Protection Officer (APO) and SPC said they were fine, just some dental tartar and hair matts. They were puppies that had grown up with him and the dogs were playful and

happy and friendly. The dogs were not groomed often and not bathed but had a grassy yard where they wore out the grass.

96. The Appellant said the witness C.T. was going to groom the animals at least twice a week and used to be a veterinary assistant and he wants to learn as well about animal care, so she will teach him. That witness will assist him by keeping track of medical and related health records, giving vaccinations and looking at their condition and inspecting to see if they have worms. The other witness B.J. will provide some live-in help, daily for a few hours each day. She will help with medications and cleaning bowls, and he will watch and learn to keep track of BCS (body condition scores).
97. The Appellant said he would follow the instructions of the witness C.T. if she told him what to do, and that he will have all his dogs debarked or 7 of the 9 debarked as the 2 little dogs don't bark. He currently alternates his dogs between the lower yard and cannot control his dogs barking (prior to the seizure).
98. He has reviewed the dog and cat guides a "little bit" and will read them again as they are currently with witness C.T.
99. He admitted to refusing entry to the Society when it did not provide 24 hours notice as he wants 24 hours notice "and I won't do it" otherwise. He had never noticed the smell of ammonia.
100. He said that a handyman he can call on 2 days notice and C.T. and B.J. will assist him at different times. T.W. came to his property and looked at his kennels and told him what he needed to do to improve his kennels. He is cleaning and painting, sealing the floors, built 4 dog beds and 4 rabbit hutches, 10 cat litter trays, 2 electric fans.
101. The Appellant testified he feeds his rabbits pellets and Timothy hay, and vegetables on occasion, and he feed his cats and kittens kitten and cat chow and transitions kittens to cat food at 4 months. The dogs get wet puppy food for several months before dog chow. He said he was surprised to hear from the Society how much was wrong with his animals. He said if the SPCs had not noticed when they first came, how could they expect him to notice?
102. When asked about a burial pit in Crown land, the Appellant testified there was a rough area of 35 square feet where he had buried animal waste and he wrapped them up in a "dignified" manner in plastic bags twice and duct tape. He testified he loves his animals and would not dump them into the ground, so he gave them a proper burial. He did not keep track of how many and is really upset and cannot believe the Society when they say 93 as he thinks it is only 35 to 50.
103. In response to questions from the Society, the Appellant testified he had lived on his property for 1.5 years, having moved there in October 2016. He said when the cats were taken in 2003, it was for the same sort of thing as why the current cats were seized.: upper respiratory infections, some fleas and mites, some ear issues. The type of conditions the 2003 cats were taken from are similar to his current conditions. In 2003, 28 cats were taken

and then given back and since 44 cats were taken in the recent seizure, he says then not many had died in the ensuing time. The Appellant said that the animals have now been in Society's care for 6 weeks, and \$4500 has been spent and the animals are not much improved. He said a large number of his cats did not have upper respiratory infections and the Society has not got rid of the infections. He said he neglected a lot of treatment but always cleaned his animals' eyes each day otherwise they could get infections. He said he did not neglect their veterinary care on purpose.

104. He testified that he was not aware the ammonia level was high and he was busy cleaning his animals' eyes. He said that he had been aware that ammonia can be high as there is always strong urine in the house, it's a 40-year-old house and no matter what he does he cannot get the smell out. He was only recently aware there was a method of testing for ammonia levels.
105. He has not yet purchased an ammonia tester.
106. He did install a fan in each indoor kennel and 1 in the basement, but he did not turn them on the night before the seizure and that morning he had not yet had a chance to get out there and turn them on., It was too cold at night to put on a fan. He did not turn on the heater as it would get too hot with the heater on all night. He usually turns on the fans at 8:30 or 9 am, or a bit later.
107. On January 2017 he saw either Dr. G. or Dr. S at his regular veterinary hospital and other than one dental appointment elsewhere, all his veterinary care is from this one hospital.
108. On January 5, 2018 when the veterinarian made a house call for his cats, he recommended 4 cats be euthanized and the veterinarian saw a lot of medical issues but told him with a lot of veterinary treatment, the cats would be okay. The veterinarian took one cat with him to euthanize.
109. The reason the Appellant did not take the other four cats to the veterinarian the next day as he was so upset after one cat was euthanized, he just couldn't take in the others. Two of those others died within a day. He testified that he did not know what to do and when he spoke to the veterinarian regarding the Society's "yellow slip" the veterinarian was upset with him that he did not bring in the cats the next day. He now agrees if the veterinarian recommends euthanasia he would agree but he loves his animals and was too upset.
110. The Appellant testified that he did not provide follow-up care for his animals.
111. When asked about multiple notes in his own veterinary records recommending veterinary care for his animals, the Appellant said he could not remember other than the 4 cats discussed above.
112. Regarding some of the photographs of the animals' submitted, the Appellant explained that "black Amos" had the same skin problem as Mary, and Mary's fur came back so he was hoping the same would happen with Amos.

113. Regarding the rabbits, he says only 1 rabbit was found dead in the basement and it did not receive any vet care regarding a medical issue with its testicle as he did not see it.
114. The Appellant does not dispute there were upper respiratory infections or that his animals needed a lot of medical care he just does not understand why the Society's employee "Drever" had access to the cat's exam from his veterinarian, then she seized his animals and then got a second exam done. It's like the Society didn't notice Dr. G's exam which said it would be okay for the Appellant to continue to treat the animals, and the Appellant does not know why he is paying for 2 exams or why "APO Jarrett" didn't see anything wrong with his animals yet there are so many things wrong with the rabbits and if the society doesn't see it, how can they expect him to see it?
115. In response to Panel questions, the Appellant said he did not notice "at all" that some of his animals were starving or thin. He said no one was skinny under their hair. He held his cats all the time and he just felt a lot of fur.
116. He did notice the eye discharge all the time and thought if their noses were cold, they were fine. He saw green discharge but the animals ran around and jumped so he didn't know. He testified he did not do much to get rid of the discharge, he would wipe the eyes of the animals but the discharge was back the next day. It did not occur to him to think of seeing a veterinarian for advice or care.
117. Regarding the 35-50 animals that had died in his care since October 2016, he testified that he did not know why they died, He considered seeing a veterinarian but most of the dead animals were rabbits or bunnies and illness is hard to detect. One day they are fine and the next they are dead. His own veterinarian does not treat rabbits and he had "a sneaking hunch" when he bought the rabbits there was something wrong with them.
118. The dead dog was Peppy who was walking less and less at 13 years of age, and when the dog had difficulty walking then couldn't walk back from the fence he called the veterinary hospital who advised him to keep an eye on it. The dog could walk just not much. It died the next day.
119. There were 7-9, 10 cats at the most buried in the pit and he didn't even know why they died. He considered a veterinarian for Teddy but Teddy died so quickly. If the cat had been sick longer, he was thinking he may have to do something.
120. When asked what is different now than in 2003/2004, he said now he sees what can happen and knows he has to ask himself what he can do to make things better, like having a groomer come over and have people monitor and record information. He has so much help now that he never had before, and he hopes with help and with fans for ammonia and getting the dogs debarked and a "number of things" he feels things will be "altogether different."

121. When asked if he read the Code of Cattery, he said he read it once and not again and it mentioned things to look for and watch for every single day.
122. In response to final questions from his counsel, the Appellant said if any of his assistants said to get veterinary care, he would, plus C.T. would do vaccines. "If she says do it, I will do it," he said of any direction C.T. might provide. He added that it was important for her to keep records.

B.J.

123. B.J. met the Appellant a few weeks ago and is starting university in the Fraser Valley and found a positive situation with the Appellant where she will help with his animals in exchange for room and board and she has visited the property. She will help on weekends as she works part time in addition to going to school. She thinks she can help 1-2 hours a day and 4-6 hours on weekends.
124. She testified she will help with medicines and grooming and walking with all three types of animals and will do "well-being checks" and will inspect for physical signs of distress. She will look at their coat, check for skin lesions, tell the Appellant to neuter the males, check for matts and will look for signs of worms, or mucus or fluid in their eyes or noses.
125. She has her own car to pick up medicines and pet food on weekends. She plans on staying for 2 years minimum.
126. In response to the Society's questions, B.J. testified she has no training in the care or examination of animals but she has a friend who is a dog trainer and a groomer who can tell her what to do. She has never owned 50 or even 10 animals at one time, the most was 3 dogs and 2 cats. She was aware the Appellant had 51 animals seized and she is committed to assisting with the care of 51 animals relying on the other help he has to assist in their care.
127. She testified that she is not clear who those other individuals are and how they will work but she thinks the Society already has that information. She believes that not all the animals will be returned, just a limited number, she was told. She said the Appellant has gone a long way to make his property the best for the animals, but he has an emotional problem. He does not intend to hurt his animals, but she has some psychiatric behavioural experience and we should show mercy in this case.
128. She testified that if all the animals or some of the animals are returned, she and the others will ensure there is enough staff to take care of the animals in their best interests.
129. She testified that the Appellant's lack of knowledge got him into this place where he finds himself.
130. She was not aware that 45 animals tested positive for ringworm. It does not bother her that ringworm is communicable from animals to people. She testified she has no training in communicable diseases. She has no plan for this other than asking a veterinarian.

131. In response to panel questions, B.J. was asked to review the tasks she said she would be responsible for performing with the Appellant's animals. She said she would check for fleas, mites and ticks. She would see if the animals were underweight or listless or discoloured, she would check for blood in their stool or "saliva in their eyes" or any "sporadic" behaviour and would check their temperature "not do it with a rectal thermometer' but by looking at them to see if they are dehydrated based on skin tenting, and moisture on their noses, and would check their poop. When asked how she would check for blood in stool, she said she would check by looking. She said she thought it would take her 15 minutes per animal without walking or grooming and no cleaning. Cleaning up would mean picking up excrement, spraying with "whatever." B.J. testified that looking for hot spots would entail a loss of fur in a cat and looking for ringworm would entail an irregular circle on a cow, horse or dog.
132. B.J. testified that she has no training in psychological or behavioural assessment and has gained that type of knowledge in her experience as a personal trainer and working in real estate, plus some workshops.
133. B.J. testified she goes to school 4 hours a week, spread over 2 days, and her course work will take 1.5 hours additional per day and she works part time outside the home 5-9 hours a week.

J.F.

134. J.F. is a repairman working for the Appellant at times since September 2017. He fixes kennels and "stuff" around the house about 3 times per week, but not at Christmas. He does not help with any animals. He has been at the Appellant's house before and after the seizures.
135. In November and December he was installing vents and shelves and made rabbit hutches and cat litter boxes. He made 9-10 litter boxes, 4 hutches and 4 dog beds and he put one fan in each kennel.
136. J.F. testified he saw the 7 dogs in a pen and usually petted them but only did so when he was putting down the floor and the dogs were in there with him. He could touch them but did not play with them. They did not show fear and did not look unhealthy, just dirty. Nothing concerned him about their condition. He could see they were getting fed but did not pay attention to food and water.
137. He said he has been to the Appellant's home 3 times since the seizure, to paint and do a garbage run. He used Kilz paint on the walls and inside surfaces of the kennels to make them waterproof. He will urethane the floor later. There is no unpainted wood now in the kennels. He was supposed to finish some work there today but got called away to another job. He testified he is able and willing to try to help in the future.
138. In response to Society questions, J.F. testified he is a handyman not an animal care or veterinary person. He could help feed the animals but not clean. He comes whenever there

is work for him to do. Sometimes other jobs interfere with his ability to physically attend the Appellant's property.

139. He testified he did discuss with SPC Marleau the ventilation priority at the Appellant's property and he put in the best fan money can buy, although "for sure" there are other huge fans out there. The type of fan was his decision based on the volume of air that needed to move. He did not think a stronger fan was necessary. He said the fans are not an issue when they are turned on.
140. He did once notice a strong smell of ammonia that was strong enough that he would not go into the room. He felt the fans would be able to clear the air in 10 minutes. He had not finished the floors as it has been too cold outside, and all work stopped after the animals were seized.
141. He had observed the cats. He did not get too close only saw them through a window and they looked dirty. He told the Appellant he should wash them, and the Appellant told him he has a groomer coming.
142. J.F. was questioned about a letter he prepared dated January 3, 2018. He testified that he prepared this letter at the request of the Appellant's lawyer as the Appellant needed witnesses to prove his animals were not unfriendly. He was asked for a letter before Christmas and only got around to writing it January 3, 2018. He had been amongst the dogs and observed them from afar. The dogs seemed interested in what he was doing when he was in the kennel and he petted some of them. Once in a while they would bark, and the Appellant would yell but the dogs were so loud it didn't matter, it was pointless to do anything. J.F. confirmed there were only 7 dogs.
143. In response to Panel's questions regarding his statement about not entering the kennel due to smell, J.F. testified that one time the Appellant wanted him to enter a room where the fan would go and he said "whoa" he wasn't going in there as the smell was bad and he has a weak nose and the smell made him want to throw up because he cannot handle bad smells. The Appellant opened the window and fan and he was able to go in the next day.
144. In response to the Appellant's question, J.F. confirmed the kennels were about 8x15 feet each, with one fan each.

C.M.

145. CM, a realtor, testified that his February 7, 2018 letter was true. One dog was friendly and about 4 other dogs he didn't really pet. When he would go to the fence the dogs would come up and they "looked normal" and they just ran around and he saw nothing alarming. He was in the back yard with 3-4 dogs at the most. There was nothing about the dogs' behaviour that concerned him but he didn't have a close look.

146. He is willing to help the Appellant but not with any long-term animal care, just in an emergency. The Appellant's dogs seemed normal and happy and he himself only stepped inside the cat area once briefly.
147. In response to Panel questions, C.M. testified he found the smell of ammonia in the cat room "quite noticeable" and he probably did mention the smell to the Appellant; he does not recall but knows he would have said something.

C.T.

148. C.T. testified she had been a groomer and a receptionist at a veterinary clinic which included assisting with vaccines and cleaning and surgery such as passing instruments or cleaning up afterward. She would make notes in files. With the Appellant she has groomed his shelties since 2010, trimming nails, looking at their teeth, taking off matts, checking for injuries.
149. If the Appellant gets his animals back she will attend his property for a fee and check the animals and would tell him what he needs to take care of. She can give recommendations. If she found anything wrong and the Appellant was not receptive, she would report him to the Society. She would teach him what to do but is relying on his other assistants to care for the animals as well.
150. In response to Society questions, C.T. said all the dogs that she used to groom in 2010 had since passed away. She lives in Vancouver and would come out to see the Appellant's animals 2 times a week for 5-6 hours per time. If she were to find another job that she is seeking, she would tell the "other girl" who lives there what to do or get a real veterinarian in before she left.
151. In response to Panel questions, C.T. said the most animals she had in the veterinary clinic at one time was 19 (12 cats and 7 dogs) and that would be with 2 "girls" and 1 veterinarian.

IX. Submissions

The Appellant's Position

152. The Appellant's position is that he loves his animals and meant them no harm and is definitely motivated to learn but is a slow learner. He has owned dogs for a long period of time and no dogs have ever previously been seized by the Society. He has encountered canine difficulties only recently. Dr. Steinebach testified that the Appellant's care of the dogs is definitely good so if the Appellant was limited to a few animals with strict onerous conditions, that would be preferable. No dogs, he submits, have ever been in a state of distress. The Appellant is of the view that with others' help, like B.J. and C.T., plus after he sanitizes his property, he deserves another chance even though he has had chances already.

153. The Appellant submits that the Appellant sincerely and genuinely loves his animals. And it may be reasonable to conclude that the Appellant would not be expected to do anything to intentionally abuse or harm the animals. The Appellant has a comprehensive plan to ensure the health, humane care and good condition of the animals. This will be accomplished through proper professional monitoring and ongoing education on the part of the Appellant.

The Society's Position

154. The Society's position is that the Appellant failed to properly care for the Animals. They were deprived of adequate food and many were severely underweight and malnourished as a result. Veterinary care was provided in a haphazard, piecemeal manner and many animals that were injured, sick, or in pain were left untreated. Additionally, the Appellant failed to provide adequate and sanitary shelter for the animals which ultimately led to the infection and spread of URI, fungal infections and gastrointestinal disease.

155. The animals were forced to remain in an environment that caused them to be sick and to contract rare illnesses, all of which were preventable with adequate and appropriate animal husbandry.

156. The Appellant's complete lack of understanding regarding the required care for his Animals has caused them to suffer needlessly. In some cases, animals lost their lives due to severe neglect, malnourishment, and inadequate veterinary care. As noted by Dr. Steinebach, many of the issues were obvious and apparent to the untrained eye.

157. Regarding the Appellant's request for another chance, the Society submits that there is a positive duty on an owner to ensure animals are not in or do not remain in a state of distress. It is not sufficient to say the Appellant will learn and avoid distress in the future. It needs to be immediate. Although the Appellant's plan will at times provide assistance, there had been little evidence that anything in the past had changed with the recommendations and orders of the SPC. What the Appellant is saying now is what he said in 2003 and 2004.

158. Overall the evidence is that the Appellant is incapable due to lack of knowledge or malice to recognize illness or care for his animals.

X. Analysis and decision

Assessment of witness evidence

159. We will at the outset outline our assessment of the evidence of witnesses.

160. We accept the evidence of SPC Marleau. His evidence was consistent with what was in the ITO and in evidence and was not shaken on cross examination and was not countered by the Appellant in any meaningful way. Further, SPC McKnight's evidence was also accepted for the same reasons.

161. We accept the evidence of all the veterinarians as it was consistent and supported and not countered in any meaningful way by the Appellant except for the evidence about the dogs. Although the Appellant disagreed with the veterinary assessment about the fear level of the dogs, this was confirmed by Drs. Van Haften and Steinebach and at least two of the dogs continue to receive therapy, supporting the Panel's conclusion that it accepts the evidence of all 3 veterinarians.
162. We found the evidence of C.T. and C.M. and J.F. to be credible but not of much assistance to the Panel. In fact, despite J.F. and C.M. testifying how much the Appellant loves his dogs and his animals, none of these witnesses provided much evidence of interacting themselves with the dogs, and both confirmed they found the smell of ammonia to be so strong, it prevented them from entering the building.
163. We did not find the evidence of B.J. to be convincing or helpful. After knowing the Appellant for less than 2 weeks, and without any training in psychology, she used her experience as a personal trainer to "diagnose" mental illness in the Appellant, and to provide information on how she would assess the animals' health that was incorrect or even impossible in one case, as Dr. Steinebach testified you cannot tell temperature by looking at an animal. We put no weight at all on the evidence of this witness.
164. While we did find the Appellant to be forthright in his testimony, in the end, we found that he was completely oblivious to the state of distress and neglect of his animals and completely underestimated the magnitude of work associated with looking after the number of animals in his care.

The seizure

165. Our first task was to determine whether the Society justifiably formed the opinion that the 9 dogs, 24 cats and 18 rabbits were in distress when they were removed.

"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.

166. 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.

167. We find that all the animals seized (all the rabbits, cats and dogs) were in distress due to being deprived of adequate ventilation (definition of “distress” (a)). Dr. Steinebach attended the seizure and elaborated on the high ammonia levels where all the animals were located at the time of seizure. He said it was difficult to breathe or to open his eyes. SPCs Marleau and McKnight said that the ammonia levels had not improved over the time from their first visit in December until the day of seizure, despite the installation of the fans as the fans were not turned on. The cats and rabbits were suffering from medical issues affecting their eyes and nasal passages. The Panel wishes to be clear that it is not necessary for every animal to show physical symptoms of airway damage to be found to have been in distress. The fact the animals were kept in these conditions, and on the day of seizure remained in these conditions meets the definition of distress in our view. This alone is grounds for their seizure, however there is more.
168. Of the 42 cats and rabbits, 27 were underweight or emaciated. Dr. Steinebach described some of the cats as skeletal, saying they were as thin as they could be and still be alive, and that it was impossible to hold these cats, as the Appellant had, without feeling how emaciated they were. Possible reasons provided by Dr. Gordon for these body condition scores include too much competition for food resulting in some animals not eating, and inadequate quality and quantity of food, amongst other reasons, but she concluded that the bottom line was the majority of these animals were not consuming adequate calories to maintain a healthy body condition, The panel has no difficulty at all in concluding the cats and rabbits were deprived of adequate food.
169. All the animals were deprived of veterinary treatment. It is astounding to the Panel that the Appellant, who professes his love of his animals, carried some 93 dead animals over 18 months to his back fence and buried their bodies without it occurring to him that something was killing his animals and he needed to seek veterinary care. Despite the Appellant wiping pus daily out of the eyes of his cats, he failed to seek veterinary care for his animals. Despite 5 rabbits having wounds consistent with bite wounds in various stages of healing, the Appellant did not seek veterinary care. Nearly all of the cats showed visible signs of URI at intake. URI was also known to be chronically present in the population. Despite being ordered to have a veterinarian out to his property to check the cats, and despite the veterinarian taking one cat away to euthanize it, the Appellant refused to follow the veterinarian’s direction to bring an additional 4 cats in to be euthanized the next day. Looking at all the Appellant’s animals, only 5 of the 51 animals did not have signs of at least one medical or behavioural illness at intake, and did not require any special care, medication, or follow-up. These 5 animals were all rabbits. The Panel finds no hesitation in finding that each of the animals seized in this matter were deprived of adequate veterinary care.
170. The Panel also finds that the animals were kept in conditions that were unsanitary: (definition of “distress” (a.1)). Almost every animal was covered in some way by feces and urine. The rabbits lived on concrete covered in feces and urine. The cat boxes were placed against rags soaked in urine. The dogs had urine staining and fecal matter on their fur. All the animals, in our view, were kept in unsanitary conditions, far beyond just dirty, but unsanitary enough to cause health risks and illness.

171. The cats and the rabbits, as a group, were found to be injured, sick, in pain, or suffering (definition of “distress” (b)). The animals had ringworm, untreated. Testing indicated half the animals were either positive for ringworm or heavily exposed to ringworm. Two of the cats were positive for the highly contagious giardia. The animals were variously affected by other pathogens or intestinal ailments. Rabbits were wounded. Cats had infected eyes and were starving. Almost all the cats had upper respiratory infections and were suffering. Most were suffering from some form of starvation.
172. The dogs, in the view of the Panel, were also suffering due to their emotional issues, based on their fearfulness, as described in detail by Dr. Van Haften and as confirmed by Dr. Steinebach’s own prior assessment of the dogs during the seizure. All dogs were fearful to differing degrees and Dr. Haften described the fear as impacting their animal welfare as they are in a negative emotional state when fearful. All dogs had to undergo some form of retraining and some were put on anti-anxiety medication during desensitization training and conditioning.
173. The Panel is also of the view that in general, all these animals were neglected in that there was no independent proactive attention or care provided by the Appellant (definition of “distress” (c)). After visits from the Society, the Appellant did make a very few very small improvements that were insufficient to improve conditions for the animals, and each time he has had to be told, according to one SPC longer than he had ever explained anything to anyone, and there was still no adequate action taken. The simple conclusion the Panel comes to is this Appellant did not care enough to take care of his animals. Despite claiming to love them. All the animals seized, in our view, were in distress due to being neglected.

Return of the cats, dogs and rabbits

174. Having determined that the seizure of the seizure of the 9 dogs, 24 cats and 18 rabbits was justified on multiple grounds of distress, we now consider the return of these animals.
175. 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.
176. 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.

177. 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.

178. 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".

179. This Appellant is oblivious to the state his animals were in. All the animals were living in a dangerous situation due to the presence of an extraordinarily high level of ammonia. Just because the Appellant does not smell it does not mean it does not exist. The Society told him about the unacceptable levels of ammonia, his handyman told him he would not enter the building due to the smell, and his realtor friend said it smelled strong of ammonia, so the Appellant clearly cannot claim he was unaware. By the same token, the Appellant cannot rely on this Panel accepting his promise to fix the levels of ammonia in the future when he did not fix it in the past. Putting in one fan per kennel seems inadequate but is definitely inadequate when it is not turned on. The Appellant's own testimony is that when it is on, it is too cold but when the heater is on, it is too hot, so his conclusion is to leave the animals cold and breathing in ammonia that Dr. Steinebach describes as arguably toxic. The Panel has no confidence that the Appellant would be able monitor the levels of ammonia, and as he does not listen to his friends or the Society, the Panel has no confidence he will listen to B.J. or C.T. or any of his other helpers.

180. The Panel also has no confidence that the Appellant would recognize signs of injury, illness or distress in his animals that he would seek veterinary help should his animals fall ill. He failed to follow the advice of his own veterinarian advising him to bring in animals for follow-up several times, not just the four who needed to be euthanized, two of which died on their own due to the Appellant's failure to seek help. The Panel has zero confidence that this Appellant would listen to his helpers' advice or follow it. We also doubt the ability of the Appellant's untrained helpers to recognize the signs of illness or distress.

181. The Panel is not of the view that the renovation to the kennels is adequate to protect the best interests of the animals. Dr. Steinebach explained that the kennels would need to be impervious to liquid by using vinyl coating or stainless steel, yet the Appellant sought advice from a pet groomer on how to improve the kennels, not a veterinarian, and instead invested in Kilz paint to paint every surface of his kennel. The Panel does not believe that this will be adequate to protect the health of the animals from transmission of contagious diseases.

182. The Panel is not confident that the Appellant's desire to use bleach or some other sanitizer will be adequate as he has not sought advice from a reliable source in dealing with sanitization after an outbreak of ringworm and other diseases including respiratory diseases.
183. The Panel does not believe the Appellant could properly feed his animals to ensure each animal's nutritional needs are met. When the Panel deliberated on whether returning a small number of animals might mitigate this risk, we found we could not be confident of this Appellant's ability to monitor the weights and health of even a small number of animals given he was unable to hold an emaciated, skeletal cat and recognize it was starving to the point of being on the verge of death.
184. The Panel has no confidence at all in the Appellant's plan. He claims to be familiar with the two Codes for Kennels and Catteries but upon being questioned on his knowledge of these Codes, he could only say he read them once and gave them to someone else to read and will read them again sometime in the future. If he was serious about improving his knowledge and skills in animal husbandry, the Panel finds he should have done more than just read the Codes once.
185. Further the Panel is dumbfounded by the Appellant's plan to provide adequate care and animal husbandry by hiring people who are unqualified to provide such care, as is the case with B.J. and the handyman and the realtor friend, and by hiring a previous groomer/veterinary assistant to come twice a week. While the Appellant seems to believe this person will be able to provide diagnosis of illness, we accept Dr. Steinebach's testimony that this groomer/veterinary assistant would find it difficult to do all of what the Appellant says she will do by herself.
186. The Panel cannot help but conclude that this plan is actually a plan for failure as it doesn't really involve the Appellant nor anyone qualified to provide care. And as we've already said, we have no confidence that any plan that mentions following veterinary advice would be successful given that the Appellant has demonstrated repeatedly that he has not reliably followed veterinary advice in the past, and his animals have suffered greatly for his lack of care in that respect.
187. The Panel did consider the issue of return of his dogs separately given that the dogs were in reasonably good health. However, the Panel is of the view that this is more a function of luck than the Appellant's skill with dog care. The Appellant has used, as support for his request to have his dogs returned, the fact that the Society has never taken one of his dogs before, as if that alone is a testament to his ability to care for his dogs. In fact, his dogs were found in a toxic environment that the Appellant was aware of but did not bother to mitigate, and it was only due to the fact that these dogs were allowed to escape the putrid air and run outside on occasion that they were not critically ill. Taken another way, the Appellant's actions were basically saying that his canine husbandry consisted of placing his dogs in harm for a lesser amount of time than his cats and rabbits, therefore causing lesser risk. This is not acceptable.

188. Further the dogs were filthy and had feces and urine on their bodies, which is not how a dog would choose to live according to Dr. Steinebach. The Panel also considered the compelling evidence of Dr. Van Haaften that the dogs suffer from chronic anxiety and are undergoing treatment and would suffer emotional harm if returned. For all these reasons, the Panel finds that every dog, every cat, and every rabbit would be returned to a situation of distress if they were returned.
189. The Panel, in considering any type of return, was also mindful that the animals in 2018 were found in much the same condition as the animals involved in 2003 and 2004 when the animal control department and the Society were previously involved.
190. Finally, if there were any doubt remaining, the Panel has only to consider the dead animals in the burial pit. Ninety-three separate times, this Appellant had to wrap a beloved, he says, pet in a bag and duct tape and bury it in a pit without ever once considering that his animals were dying for a reason and it was his responsibility to find out why. Not once, not twice, but 93 times (or even 35-50 times according to his own random calculation) this Appellant had the opportunity to consider the poor health of his animals, and his part in their poor health, and what he could do to prevent more deaths, and yet he chose to do nothing.
191. This Panel is of the view that ‘nothing’ is the extent of what this Appellant is capable of doing for his animals, and that his animals would get nothing in the way of good care, good nutrition, and adequate living conditions if they were returned. In fact, the Appellant himself testified that he is changed in his ways but said that what must be done differently now is he needs to simply ask himself what he can do to make things better, not actually make things better.
192. 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)

193. 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).

194. 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 51 animals. The Panel understands that some animals seized have since died and at least one further animal born has survived, and it is our sincere hope that these animals will continue to be rehabilitated and that the Society will find new owners for each of these animals so that they may each experience a healthy life.

XII. COSTS

195. 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).

196. The Society relied on the Affidavit of Shawn Eccles. Based on a March 22, 2018 BCFIRB decision release date, the Society is seeking costs in the total amount of **\$42,177.84**, pursuant to s. 20 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 as follows:

- A. Veterinary Costs: \$23,003.09
- B. SPCA time attending to seizure: \$204.75
- C. Housing, feeding and caring for Animals: \$18,970.00
- D. TOTAL: \$42,177.84

197. The veterinary costs are found at Tab 42, p. 485 in the Binder totalling **\$23,003.09**. The BC SPCA Hospital invoices (Tab 42, pp. 495 to 506) set out the total for each invoice within parentheses as their accounting practices do not allow for the BC SPCA Hospital to bill the Respondent.

198. The Society also incurred labour costs respecting its special provincial constables' investigation and seizure of the Animals, with estimated costs for investigating, seizing and transporting the Animals on the seizure date at approximately **\$204.75** (\$22.75 *per* hour x 3 hours (approx.) x 3 Society staff).

199. In addition, the Society's costs to house, feed and care for the Animals exceed **\$18,970.00** which has been calculated for 73 days (January 9, 2018 to March, 22, 2018 (being the anticipated date of the BCFIRB decision)), by the following:
- E. Cost per dog per day = \$15.00;
 - F. Costs per cat per day = \$10.00; and
 - G. Costs per rabbit per day = \$10.00 [Tab 42, p. 484].
200. 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.
201. The Appellant submits that regarding costs of care, prior to the seizure, the Society directed the Appellant to have a veterinarian medically examine the cats. This was at a cost of approximately \$900.00. Once seized, the Society conducted a thorough medical and behavioural assessment of the animals at substantial expense. The Appellant respectfully submits that the follow-up assessments were unnecessary and it is unfair for him to bear this expense. Counsel for the Appellant said there was nothing more to add to his submission on page 7, paragraph 28.
202. 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 animals, or presumably the cats, did not require any additional veterinary expenses.
203. The Panel finds absolutely no merit to the Appellant's position. The cats were clearly sick and even his own veterinarian directed the Appellant to provide follow-up care. The Appellant could have had all this necessary veterinary work done himself at his own expense, but neglected to do so and now the Society has had to incur the expenses, which this Panel finds are rightfully the Appellant's to bear. None of the Society's costs have been shown to be unreasonable, and in fact the Panel finds them to be reasonable.

XIII. ORDER UNDER SECTION 20.6(c)

204. It is our order that the Appellant is liable to the Society for the amount of **\$42,177.84** in respect of costs of care.

Dated at Victoria, British Columbia this 22nd day of March 2018.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Vice Chair
Presiding Member



Tamara Leigh, Member



Peter Donkers, Member