

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 15 DOGS AND 2 PARROTS

BETWEEN:

NEIL and DALE DRIEDIGER

APPELLANTS

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Tamara Leigh, Presiding Member
Al Sakalauskas, Member
Dennis Lapierre, Member

For the Appellant:

Self-represented

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

April 9, 2019

Location of Hearing:

Teleconference

I. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*) related to the seizure of 15 dogs and two African grey parrots (the birds).
2. The appellants appeal the March 12, 2019 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the society).
3. Section 20.6 of the *PCAA* permits the British Columbia 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. The appellant in this case is seeking the return of the seized animals.
4. The appellants represented themselves and gave evidence. They did not call any other witnesses. Through its counsel, the society called two witnesses: the veterinarian who examined the dogs (but not the veterinarian who examined the birds) following the seizure, and the special provincial constable (SPC) who had contact with the owner before, during and after the seizure. The hearing was recorded.
5. For reasons explained in detail later, the panel has decided to return the two birds, but not to return the dogs to the appellant. Pursuant to s. 20.6(b) of the *PCAA*, the society is permitted, in its discretion, to destroy, sell or otherwise dispose of the dogs.
6. The society sought to cover costs in the amount of \$7,254.42. The panel has decided that the appellants are liable to the society for costs in the amount incurred by the society with respect to care of the animals while the animals were in custody.

II. Preliminary Matters

7. On March 29, 2019, the appellants requested additional time to make their written submissions. The panel granted an extension of one business day.
8. At the time of seizure, the appellants surrendered three dogs to the custody of the BCSPCA, reducing the total number of dogs seized to 13 (from 16).
9. On March 18, 2019 the appellants surrendered a fourth dog (Chloe) to the BCSPCA.
10. On March 20, 2019, a fifth dog (Tess) and her unborn puppies were surrendered by the appellants.
11. Further to the seizure, one of the dogs (Ginger) gave birth to a litter of four puppies. These puppies are included in the appeal, bringing the total number of animals under appeal to 15 dogs and two parrots.

III. Material Admitted on this Appeal

12. The following materials were admitted into evidence:
 - a) BCSPCA March 12, 2019 Decision (**Exhibit 1**)
 - b) Appellant March 12, 2019 Notice of Appeal (**Exhibit 2**)
 - c) Appellant March 13, 2019 receipt for filing fee (**Exhibit 3**)
 - d) BCFIRB March 13, 2019 Notice of Appeal (NOA) process letter (**Exhibit 4**)
 - e) BCSPCA March 18, 2019 email appellants surrendered animals (**Exhibit 5**)
 - f) BCSPCA initial disclosure (Tabs 1-24) (March 22, 2019 by courier) (**Exhibit 6**)
 - g) BCSPCA March 28, 2019 email appellants surrender of unborn puppies (**Exhibit 7**)
 - h) Appellant document disclosure (emailed April 1, 2019) (**Exhibit 8**)
 - i) BCSPCA April 3, 2019 email response to appellant requesting to reverse their initial surrender of animals to the BCSPCA (**Exhibit 9**)
 - j) Appellant April 3, 2019 email appealing costs (**Exhibit 10**)
 - k) Written Submissions of BCSPCA (April 3, 2019 by email and by courier) (**Exhibit 11**)
 - l) Affidavit #1 of Marcie Moriarty (April 3, 2019 by email and courier) (**Exhibit 12**)
 - m) BCSPCA Witness contact form for SPC Carla Edge (April 3, 2019 by email and courier) (**Exhibit 13**)
 - n) BCSPCA Expert Witness contact form for Dr. Marina Mann (April 3, 2019 by email and courier) (**Exhibit 14**)
 - o) BCSPCA Updated index for document disclosure with (Tabs 24-25) for binder (April 3, 2019) (**Exhibit 15**)
 - p) BCSPCA further disclosure (Tab 24, page 212) (April 3, 2019) (**Exhibit 16**)
 - q) BCSPCA further disclosure (Tab 25) (April 3, 2019) (**Exhibit 17**)
 - r) Appellant final reply submission (April 5, 2019) (**Exhibit 18**)
13. Subsequent to the hearing, the society submitted an updated summary of expenses for the consideration of the panel.

IV. History Leading to Seizure of Dogs and the Day of Seizure

14. On July 31, 2018, the society call centre received a cruelty complaint regarding a puppy mill located in Lone Butte, British Columbia. The complainant stated that the property had been visited and the area containing the dogs was extremely dirty, a dog was tied up beside a very dirty water bowl, and a kennel had old and new feces inside of it.

15. On August 9, 2018, SPC Edge attended the property to follow up on the complaint. She met with the female appellant. She observed multiple small breed dogs, mostly poodles, in a chain link pen located off the front porch of the residence, a small dog in a very small exercise pen at the bottom of the stairs, a number of dogs in transport kennels in a back room of the residence. There was a female dog with a litter of puppies in a trailer on the property that was locked at the time of the visit. In total, there were 22 dogs and two large African grey parrots on the property. As a result of her concerns, SPC Edge issued a notice which directed the appellants to, among other things, clean all pens daily of feces, provide adequate ventilation and cooling from the sun, review the Code of Practice for Canadian Kennel Operations, and to construct kennels appropriately to the size of the dogs within seven days.
16. On August 10, 2018 SPC Edge attended the property again to meet with the male appellant and inspect the mother dog and puppies that had been in the locked trailer. SPC Edge reminded the appellants that they needed to comply with the Code of Practice for Canadian Kennel Operations and provided the website address for the Code.
17. On October 11, 2018 SPC Edge attended the property to follow up on the required changes and no one was home. She noted a strong odour of ammonia at the front door of the residence and several piles of feces on the front porch, inside the black metal exercise pen, and in the chain link fenced gravel area beside the front porch. SPC Edge could hear numerous dogs barking inside the residence.
18. On October 27, 2018 SPC Edge attended the property again to re-inspect the home. She re-counted the dogs and noted there were a total of 15 dogs on the property and one puppy, and noted that the two African grey parrots were still in cages in the living room. SPC Edge advised the appellants that she was concerned that nothing had changed since the first visit and reminded them that they are breeding dogs and classify as a kennel, and therefore need to follow the guidelines as set out in the Code of Practice for Canadian Kennel Operations. The appellants stated that they didn't agree with that as they only breed dogs as a hobby. SPC Edged advised them that she would discuss the situation with a Senior Officer and be in touch.
19. On October 29, 2018 SPC Edge spoke with one of the appellants by phone who stated that they had come up with a solution to better keep the dogs in the house. SPC Edge reminded them that they are breeders and they need to follow the Code of Practice for Canadian Kennel Operations and emailed the website address and a copy of the Code of Practice for Canadian Kennel Operations to the appellants and advised that she would attend the property on November 3, 2018.
20. On November 3, 2018 SPC Edge emailed the appellants advising that she was unavailable to attend at the agreed upon time, but could attend Monday, November 5 after 1600 hours. The appellants sent a reply confirming the new date.
21. On November 5, 2018 SPC Edge received a voicemail from the appellants that one of them had been ill and had been in the Emergency Room at the hospital, and that they needed more time. Arrangements were made for SPC Edge to attend the following Saturday, November 10, 2018.
22. On November 10, 2018 SPC Edge attended the property and met with the appellants to review improvements. SPC Edge noted that the changes to improve housing for the dogs were not

complete. She inspected the dogs and after noting a number of grooming and dental issues, she issued a notice directing among other things that:

- all dogs were to be groomed;
- that seven of the dogs were to be seen by a registered veterinarian regarding their teeth; and
- kennels needed bedding.

23. SPC Edge directed that the changes were to be done within 14 days. She also offered the option of surrendering some of the dogs to help reduce the numbers of dogs to be cared for.
24. On December 10, 2018 SPC Edge received a telephone call from the appellants saying they were not as far along as they had hoped, and that they were both recovering – one from hip replacement surgery, and the other from a serious fall. They indicated that one dog had been euthanized for biting another dog, and another had been returned to its owner.
25. On December 14, 2018, the appellant called SPC Edge to tell her that one of them had fallen and was going to the hospital. They stated that no further changes had been made since the previous visit. SPC Edge advised that she would contact them again in January 2019.
26. On January 16, 2019 SPC Edge attended the property and knocked on the door, but there was no response.
27. On January 17, 2019 SPC Edge attended the property with SPC Affleck to do a re-check. The appellants were still working on improvements, and one of them had recently been injured in a fall. SPC Edge advised them to get the improvements done as soon as possible. SPC Edge also observed that the parrot cages had not been cleaned.
28. On February 6, 2019 SPC Edge received an email from the appellants stating that they had put 6-7 dogs up for adoption on their website and found a new home for another dog once it was spayed at the end of February. They also stated that they would be using better materials for the kennel construction in the back room.
29. On February 11, 2019 SPC Edge replied to the appellants' email and advised that she would be coming by later in the week.
30. On February 12, 2019 SPC Edge received an email from the appellants stating that they were having troubles with their heat and water in the cold weather, and that they would like another week before her follow-up visit.
31. On February 27, 2019, the society filed the Information to Obtain a Warrant "ITO" which resulted in a warrant being issued by a Judicial Justice of the Provincial Court to enter the appellants' property and to "take any action authorized by the (*PCAA*) to relieve the animal's distress."
32. On February 28, 2019 SPC Edge attended the property and provided the appellants with a notice of disposition. The appellants were home at the time of time of the seizure. The society removed 14 adult dogs, two puppies, and two birds, and provided advice regarding the procedure to dispute the decision to take an animal into the society's custody (*PCAA*, s 20.2(2)). At the time of the

seizure, the appellants surrendered three dogs to the society, bringing the total number of dogs seized to 13.

V. The Review Decision

33. The appellants contacted Chief Prevention and Enforcement Officer Marcie Moriarty by email on March 4, 2019 disputing the seizure and requesting the return of 12 dogs and two birds.
34. Ms. Moriarty issued her review decision on March 12, 2019 declining to return the dogs or birds. Ms. Moriarty advised that she was satisfied that it was reasonable that SPC Edge formed the opinion that the dogs and birds were in distress, as defined by the *PCAA*, section 1(2) and that the appropriate course of action was to take custody of the dogs and birds in order to relieve their distress.
35. Ms. Moriarty next considered whether it would be in the best interest of the dogs and birds to be returned to the custody of the appellants. She reviewed the history of the appellants with the society that led to the seizure of the animals, including notices and instructions issued by SPC Edge, and whether or not the appellants acted to make improvements to the cleanliness, ventilation, access to water and bedding, space, grooming, veterinary care and compliance with the Kennel Code of Practice. She noted that despite the society attending the appellants' property eight times over six months and providing specific direction to refer to the Kennel Code and to address the welfare concerns for the animals in the appellants' care and while the appellants made some improvements, overall their efforts fell short. As the weather got colder and issues arose with heat and water, combined with the appellants' history of non-compliance, the society was granted a search warrant and removed the dogs and birds.
36. Ms. Moriarty also noted that the animals were examined by a veterinarian after their removal¹, and after reviewing the medical records, she determined that all the dogs and birds were in varying stages of neglect "primarily due to their living conditions and there is no indication that any of these animals received vet care for any of these issues, specifically in the area of dental care."
37. Turning to the appellants' submissions, Ms. Moriarty notes that at the time of her decision, the heat and water issues had not been resolved, and the issue was not addressed in their submissions. She further addressed the photographs of improvements made to the home since the animals were seized, noting "... I can see that you have made some substantial improvements in the area of cleanliness. However, given you do not currently have any animals in your care, this makes it exponentially easier to keep a clean home and does not serve as proof of your future behaviour."
38. Based on her determination that the dogs and birds were in distress when seized and that if they were returned, the appellants did not demonstrate an adequate grasp of animal husbandry to meet the standard of adequate care, Ms. Moriarty decided that it was not in the best interest of the dogs and birds to be returned to the appellants.
39. The appellants filed their appeal with BCFIRB on March 12, 2019.

¹ The records indicate the dogs were assessed in Prince George by Dr. Mann and the parrots were assessed in Williams Lake by Dr. Magnowski. The report from Dr. Magnowski is included in the society's written submissions.

VI. Grounds of Appeal

40. In their Notice of Appeal, the appellants stated “I want to appeal the decision made today against returning our dogs and Parrots to my husband and myself. I disagree with some of the claims that the SPCA has stated as true.” The appellants are also appealing costs.
41. In an appeal under the *PCAA*, the panel must determine whether or not the dogs and birds were in distress when seized, and whether the dog and birds should be returned to the appellant. To do so the panel must first evaluate the evidence. The panel has reviewed and considered all of the documents in the exhibits listed above and all the evidence provided during the hearing whether or not it is summarized in the following paragraphs.

VII. Appellant’s Evidence

42. Given that there are two appellants in this case, that they shared joint responsibility for the animals, and that they both were present for most of the events in question, the panel agreed to hear their evidence and testimony at the same time. This approach was requested by counsel for the society and agreed upon by the appellants. For the purposes of the evidence, they will be addressed jointly as the appellants, and individually as Mr. or Mrs. D.
43. The appellants began their testimony by challenging the truthfulness of the initial complaint made to the society. Mr. D. stated that they never tie any of their dogs up, that they always clean the dog run, and they do not allow people on the property until the puppies are eight weeks old.
44. The appellants do not deny that the house was in poor condition when the dogs were taken from them. They testified that the situation was the result of “hard luck” when the pellet stove broke and the water froze during a particularly cold spell. During that time, they heated the residence with ceramic heaters, and bought water from town for the animals and themselves.
45. The appellants stated in their testimony and submissions that they were trying to sell their property last summer, and that they were residing in the trailer when SPC Edge first attended the property in August. They testified that they were with the dogs in the residence during the day and brought some of the dogs to the trailer with them at night to sleep. As winter approached, they took their property off the market, and moved back into the house. They purchased a mattress and put it on the living room floor, where they slept with the dogs and the birds. They are planning to list the property again this year, and would like to sell it to move closer to their kids.
46. The appellants testified that the dogs were usually out in the pens or loose in the house when they were home. They stated that the reason the dogs were always in crates when SPC Edge came to the property was because she asked that they “put them away.” They stated the dogs were only put away when the appellants left the property to protect the dogs from squabbling with each other or getting into trouble.
47. Mrs. D. testified that they have been breeding dogs for the past 10 years. She first started working with dogs 40 years ago as a groomer and has attempted several times over the years to get into breeding different kinds of dogs. They began breeding poodles in 2010. Mrs. D. testified that they usually have 2-3 litters of puppies per year. Over 10 years they have had 20 litters for a total of 67

pups. They have not taken any formal training, but have read a lot of books and sought the advice of veterinarians over the years.

48. The appellants testified that they are members of the Canadian Kennel Club (CKC), and that all of their litters and puppies are CKC registered. They testified that all of their puppies are guaranteed for two years against any crippling genetic disorders and they supply everyone with six weeks of free pet health insurance. They testified repeatedly that they consider themselves “hobby breeders,” indicating they were different from professional breeders because they breed “not for quantity, but for quality.” Their dogs are sold or “adopted out” as pets, for show quality and breeding quality. Their submissions included testimonials from a number of people who had purchased puppies from them in the past. On cross-examination, the appellants testified that they take deposits on puppies after they are born, and the balance paid when they go to their families at 10 weeks old, and they register their puppies after payment is received.
49. When asked how much they charged for their puppies, Mr. D. answered that they charge about \$1200 for a pet quality puppy and \$1500 for a show or breeding quality puppy. Annually he estimated that they make about \$14,000 per year from the dogs, though he admitted that the only records that they keep are through the CKC registrations, and that they keep no formal records of what money comes in or out. He estimated costs for food and veterinary expenses at \$250-300 per month. The appellants testified that they have no other income outside of their disability pensions and the income from the dogs, but that they both hope to return to work soon. Under cross-examination, the appellants were asked about an email sent to SPC Edge on February 12, 2019 where they said, “Have to adopt out a puppy in order to fix the pellet stove to get it working again.” They responded that they did not end up needing to sell a puppy to cover the cost, that they sold a camper van instead, and reiterated that they do not rely on puppy sales to cover their living expenses.
50. When asked about their breeding for the past year, the appellants testified that they had intentionally bred four dogs – Chloe, Ginger, Tess and Gretchen – and that they had decided to adopt out these animals after breeding. The appellants testified that they never breed females back to back, and that they don’t breed every dog every year. On cross-examination, the appellants reported that between August 2018 and February 2019, they had five litters of puppies (Sugar had one puppy from a pregnancy that was not planned, Chloe and Tess each had one litter of puppies, and Ginger had puppies in August and was pregnant again at the time of seizure). On cross examination, the appellants were asked to review the CKC registration records provided in their submissions and clarify the number of litters and puppies born in 2018. The appellants were unable to remember the number of puppies or the litters and said that they often registered litters and puppies months after the fact. When pushed further for a response, the appellants struggled to reconcile the discrepancy between the records and their testimony. During their testimony, they further disclosed that Tess had a litter of puppies (born deceased), and Gretchen had a litter of puppies in April 2018.
51. The appellants testified that Mrs. D. does all of the grooming for their dogs, and occasionally as a service for other people. She testified that she groomed the dogs every three months or so, and “put a brush through them at least once a week.” She described bathing the dogs with shampoo, trimming their nails and hair, and plucking and cleaning their ears. Mrs. D. testified that the dogs were all groomed in December 2018. When asked if she did the work when SPC Edge asked for the dogs to be groomed, she responded that she did it, including scaling the dogs’ teeth with an

ultrasonic unit. They did not seek veterinary care for any of the dogs as directed in the November notice. On cross-examination, the appellants were asked to review a number of photos of the dogs with serious periodontal disease from the veterinary exams. In response to each photo, the appellant acknowledged that the teeth needed to be cleaned, but stated repeatedly that they would have been done in March, and denied that they required veterinary care. They stated that if they were adopting out the dogs that they would be posted on their website, and once they had someone interested, they would send the dog to be spayed/neutered and have their teeth cleaned at the expense of the person adopting the dog.

52. With regards to ear infections, the appellants testified that they cleaned the ears with a vinegar solution and used a veterinary solution for infections. When asked if they noticed ear infections in any of the dogs prior to seizure, the appellants answered that two dogs had issues with ear infections, and that a veterinarian had given them “opti-clean” to use. They later stated that the dogs with ear issues were not under the care of a vet at the time of seizure, and that it had been “years” since the dogs had been to a vet. When told that the veterinarian found 5 of 16 dogs had ear infections following seizure, the appellants denied that it could be true, saying “I don’t think so, maybe two.” With regards to eye infections, the appellants acknowledged that some dogs had eyes that were oozing, and stated that they were planning to take one dog to the vet before the dogs were seized. They testified that they were treating three dogs with “medicated drops,” but they had not taken any of them to a vet, and they had not been examined because it was “not a serious issue.” When asked to comment on a photo of one of the dog’s eyes during the exam, the appellants would not acknowledge an obvious swelling near the eye.
53. When questioned by the panel about general veterinary care for the dogs, the appellants testified that they take a dog to a vet if they are not responding to natural remedy treatments. They provided veterinary records from Twin Rivers Veterinary Hospital in Kamloops in their submissions, including a partial chart for “Pearl” that was difficult to decipher, and a health certificate and vaccination records for a litter of puppies dated February 12, 2019 that did not include the signature of the veterinarian, Dr. Hardeep Kataria. They stated that they regularly deworm the dogs using Strongid T or pumpkin seed. They vaccinate their puppies up to one year of age, and that they do not vaccinate adult dogs. Responding to questions about vaccinations, the appellants stated that they stopped giving boosters to their adult dogs seven years ago after consultation with Dr. Andrew Jones. They said they just recently learned about titer tests, a test to determine the dogs’ level of immunity, but they haven’t had any of their dogs tested.
54. Mr. D. testified that their daily care routine for the dogs included getting up in the morning and putting the dogs out in shifts. He described a large fenced dog run with pea gravel. “In the summertime they are out as long as they want. The water is out there, and there is a covered porch for them to come in out of the weather.” In the winter time, he testified that they put the dogs outside 4-5 times per day if it’s not too cold, and they play inside the rest of the time. The appellants testified that the run is cleaned daily in the summer. Mrs. D. estimated that it takes 10 minutes per day to feed and water the dogs, and 30 minutes to clean the run plus “the odd mess” inside. They clean the deck with a pressure washer and disinfectant. When asked if they house train their dogs, they responded “for the most part, yes.” They added that one of the dogs had “a leaking problem,” and “if we’re sleeping and they have to go to the bathroom, they either pee or poo in front of the door or pee in their water bowl.”

55. The appellants testified that they have both had health issues since August that have resulted in falls and hospitalization. Mr. D. has had ongoing hip and knee issues that affect his mobility and had hip replacement surgery in November 2018. When asked who cares for the animals when they are away, they answered that the dogs would never be left alone. Their daughter on the coast would be an emergency back-up, but they have no local support. They stated that Mr. D. takes care of the horses and Mrs. D. is the primary caregiver for the dogs and parrots. When asked how they managed when Mrs. D. was in hospital following a fall, they testified that Mr. D. took over care for the animals. The panel asked the appellants to explain the reference in their submissions to their health issues and a need to cut back on the number of dogs. They responded that having fewer dogs would mean there was less work involved, and that the remaining dogs wouldn't have to compete for attention anymore. They stated that they thought adopting out the dogs would be better for the dogs and for them, but they did not want to surrender the dogs to the society because they want to adopt them out themselves.
56. On cross examination, the appellants advised they planned to slow down breeding as a hobby and were not planning on breeding again for two years. When asked which of the dogs subject to the appeal they plan to adopt out, and which they plan to keep, they responded that they intend to keep all of the adults except Ginger, and they would like Ginger's puppies (born since the seizure) returned so that they can be evaluated.
57. In response to allegations of poor body scores, the appellants testified that they feed the dogs a combination of kibble and raw diet. They assess body condition "by feel," and reiterated several times that the miniature poodle is supposed to be a lean dog, and referred repeatedly to the breed standard. They testified that they were providing supplemental "Satin Balls" and hemp oil to the older dogs to help them maintain weight and condition, and that the Satin Balls were fed as a treat to the other dogs as well. When cross examined on how they weigh their dogs, they confirmed they do not weigh them, and that "if you pick them up, you know how heavy they are. If you don't feel their bones, they're not skinny." When asked if they would agree that some of the dogs were underweight at the time of seizure, they replied "at the time of the seizure, there were none."
58. In regard to the birds, the appellants testified that they provide fresh water, food, fresh air, regular exercise and play with them regularly. They cleaned the cages out every day and usually scrubbed them every two weeks in the tub. They have an air purifier between the bird cages in the living room and a dehumidifier. They did not test for ammonia levels. When asked to describe what they saw in a photo of the bird cages taken at the time of seizure, they replied that they saw feathers, toys and egg crates for them to rip apart. They said that the pictures were taken 25 days after freeze-up, and they had not been able to clean the cages as usual. While they acknowledged that the photograph did not look clean, they said there is wire mesh at the bottom of the cage that prevents the birds from getting to the mess in the trays. The birds were usually out of their cages every day for a few hours, but during the time that it was too cold for the dogs to go out, the birds were kept in their cages.
59. The appellants testified that February was freezing cold, and the dogs wanted to relieve themselves on the deck. If the dogs messed inside, the appellants would clean it up. The appellants emphasized that the day of the seizure was "the worst possible day for them to come in." They admit that the smell was bad. Mrs. D. stated "we are not normally pigs; it was just a bad month. A very bad month." They testified that they were buying water for cleaning as well as drinking for themselves and the animals, stating that they filled four 5-gallon jugs 2-3 times per

day while the water was out. They gathered bedding, blankets and towels into a garbage bag and took them to town to do laundry. The pellet stove that was the primary heat source was broken. The appellants confirmed that the pellet stove and running water were still not working as of the date of the hearing, April 9, 2019. They testified that the pens were dirty on the day of the seizure because SPC Edge arrived in the morning before they had time to clean them. When asked to review photos of one of the dog runs on the day of the seizure that showed extensive excrement, the appellants stated that it wasn't as bad as it looked, but that they had cleaned and what was shown was caked and wouldn't come off. They eventually had to replace the floor. When shown photos of the puppy x-pens with several piles of feces, they testified that it was all the result of one night.

60. The appellants provided photo submissions of the new pens and the house when it was cleaned after the seizure of the dogs. In their submissions, they specify the measurements of the pens, and show clean floors and bedding, as well as air purifiers and heaters that have been purchased for the residence.
61. They testified that they are willing to reduce the number of dogs that they have, but when questioned which dogs they would most like returned, they listed all 15 dogs involved in the appeal.

VIII. Respondent's Evidence

Dr. Mann

62. Dr. Marina Mann testified regarding the health of the dogs that were seized. Dr. Mann graduated from the Western College of Veterinary Medicine in 2015 and is now practicing at Ospika Animal Hospital in Prince George, where she treats small animals, mainly dogs and cats. Dr. Mann also has a knowledge of birds.
63. Dr. Mann examined the 16 dogs seized on February 28, 2019. Her population health report was included in the society's submissions, and includes the following findings:
 - Most poodles had an inappropriate body condition score (BCS), with 5 of 16 poodles scoring 1-1.5 out of 5 (emaciated), 7 of 16 poodles scoring 2 out of 5 (thin) and 4 of 16 poodles scoring 2.5-3 out 5 (appropriate)
 - All poodles had evidence of fecal matting in between paw pads, and several poodles had fecal material in the coat. 13 of 16 poodles had overgrown coats with dreadlocks and matting starting to form. All required baths, trims, cleaning around the eyes and ears.
 - 15 of 16 poodles had dental disease that required attention. 7 of 16 had Grade III-IV periodontal disease and required full anesthesia dental cleaning and multiple extractions of severely infected teeth. 3 of 16 required full anesthesia dental extractions of teeth due to retained deciduous teeth or base narrow mandibular canines. 3 of 16 have grade II periodontal disease.
 - Most poodles had crusting discharge around their eyes, and 4 of 16 had evidence of conjunctivitis (bacterial infection in the eye).
 - 5 of 16 poodles had an ear infection.
 - 1 of 16 poodles had a soft tissue injury to the left hind leg.
 - Most poodles were fearful, which is not uncommon in a veterinary clinic setting but 4 of 16 continued to be fearful in the weeks following the seizure.

64. Dr. Mann explained that the body condition score scale goes from 1 to 5, where 1 is emaciated and 5 is obese. The ideal dog (BCS 2.5-3) will have a light covering of fat over the ribs, and muscle and fat over the back, hips and spine. Dogs are scored based on feel and profile of the dogs. Dr. Mann testified that none of the dogs she examined had good muscle mass development over the spine or hips. When questioned about the weight of the dogs, she stated that the number is less important than how they look and feel. When asked if one bad month could explain the conditions of the dogs, her evidence was that "severe starvation" over the month would produce that condition. On cross-examination, Dr. Mann indicated that she understood the breed standard for miniature poodles, and that she scored the BCS based on the physical exam, not the breed standard.
65. With regards to the hygiene of the dogs, Dr. Mann testified that "what struck me the worst was how dirty the dogs were." She observed evidence of "some efforts to groom and clean" the dogs, but testified that overall, they were quite dirty with dirty ears and build-up of crusts in the eyes.
66. Dr. Mann testified that most of the dogs had a degree of dental disease that needed to be addressed, and that it would have taken several months for dogs to get to Grade III or IV periodontal infection. None of the dogs' teeth looked like they had been cleaned recently. Dr. Mann testified that the dogs with Grade III or IV periodontal disease will be experiencing pain, and Grade II periodontal disease may or may not be in pain. She estimated the cost of veterinary care for the Grade III-IV infection to be \$1000-1500 per dog, and the Grade II infection dogs to be \$700-1000. When cross-examined by the appellant about dental care, Dr. Mann testified that dogs need to be anaesthetized in order to fully clean the teeth and get below the gum line. She stated definitively that "the current level of infection shows that the current maintenance is not enough."
67. With regards to the deciduous teeth, Dr. Mann testified that they are residual baby teeth that cause crowding in the jaw and can push up into the hard palate of the mouth to cause pain and discomfort. She stated that the condition is common in poodles, and experienced poodle breeders should be aware of it. The recommended treatment is to remove the teeth from puppies and monitor the adult teeth over time.
68. Dr. Mann testified that three dogs tested positive for giardia based on fecal samples tested by the society three days after seizure. She stated that giardia is caused by fecal contamination in the environment, including bedding and water. It takes 5-16 days for giardia to start shedding infection, and it's possible that some dogs who test negative for giardia actually have it. Upon review of the society's photos of the residence and property on the date of seizure, Dr. Mann testified that there was "lots of fecal contamination and opportunity for transmission from dog to dog." When asked how often dog pens should be cleaned, Dr. Mann recommended at least once a day, but that most dogs need 2-3 times per day. Dr. Mann reviewed photos of the kennels at the time of seizure and in her opinion the mess was not the result of a single overnight, adding that the pens look like feces is old, smeared and dried. When cross-examined and asked if the giardia infections could be the cause of the poor body condition of some of the dogs, Dr. Mann replied that it was possible only if the dogs had had the infection for a long time.
69. Regarding the ear infections, Dr. Mann testified that she swabbed excess debris in the ears to confirm infection, and all of the dogs had their ears cleaned and monitored for infection. Dr.

Mann stated that usually dogs with ear infections are very irritated and the owners should notice the smell and seek help. She noted that while vinegar solution would be okay for cleaning ears, but treating an infection requires prescription ointment. When asked about the effectiveness of the cleaning by the appellants, Dr. Mann stated “if they were doing it with vinegar, it wasn’t working.”

70. Dr. Mann then spoke to the eye infections, stating that infected eyes will appear red and puffy. She noted that some of the seized dogs had purulent discharge. When asked to review a photo of one of the dogs, Dr. Mann pointed out discharge and crusting in the corner of the eye, indicating that the eyes have not been cleaned regularly. She noted that a dog owner should notice discharge.
71. With respect to vaccines and whether it is acceptable to wait between vaccines or titer tests, Dr. Mann testified that dog vaccines are labelled up to three years and titer tests are a way to see if a dog has enough protective immunity. If not, they need a vaccine booster. Dr. Mann specified that young dogs should be vaccinated for parvo and should receive their first vaccines at 6-8 weeks of age. Up until six weeks, they get their immunity from the mother, and if the mother is not vaccinated or has no titer to prove immunity, that the puppies are not protected during this time.
72. With regards to anxiety, Dr. Mann testified that 4 of 16 dogs demonstrated anxious behaviour following the seizure. While some dogs may have an anxious temperament, anxiety can also be triggered by major changes or if the dogs are poorly socialized. Dr. Mann defined good socialization as providing positive experiences with new people, situations and other dogs. She indicated that some of the dogs that were seized have been put into foster care and are doing better than the dogs in the shelter. She indicated that they are fitting in well and getting along with people and dogs. She noted, however, that feedback from the foster home is that a lot of the dogs are not house trained and will go wherever.
73. Dr. Mann did not examine the birds; that was done by Dr. Magnowski in Williams Lake. Dr. Mann testified about the general needs of parrots and in her view, parrots need lots of mental stimulation and interaction. They should be provided with a few different perches, toys and treats. When taken to the society’s photos of the parrot cages at the time of seizure. Dr. Mann observed that the cage “seems dirty”, and that there do not appear to be a lot of activities in the cage. She offered that cages should be cleaned every day at a minimum, and that the photos appear to show several days build-up of feces.
74. Based on her review of the photos, and examination of the animals following seizure, Dr. Mann testified that she has concerns about the amount of space, cleanliness, and lack of fresh water available for the dogs or birds. She expressed strong concerns about the dogs being returned, stating “I don’t think these living conditions are acceptable. Basic needs are not being met.”

SPC Edge

75. The panel has outlined above the actions of the society that took place in 2018 and 2019 up to the seizure of the dogs on February 28, 2019. The history includes five visits to the appellants property in 2018 and two in 2019 prior to the date of the seizure of the dogs. To the extent

possible, the panel will add to this information by reviewing the society witnesses' observations at these visits to the appellant's property.

76. SPC Edge has been a Special Provincial Constable with the society for six years. She first became involved with the appellants following a call of concern to the society from the Lakeland Veterinary Clinic.
77. SPC Edge first attended the appellants' property on August 9, 2018. At that time, she met with Mrs. D., who shared that the property was for sale, and that she and her husband were living in the trailer. SPC Edge observed a number of small poodle-type dogs and a standard poodle in a run near the house. She noted feces build-up in the pen and on the front porch. As she walked up to the home it was evident that there was a strong ammonia smell. Prior to entering the house, SPC Edge testified that the appellant indicated that one of the dogs (Nathan) was protective and sometimes bit, and that as a result she had asked the appellant to put that dog away. SPC Edge's evidence is that she did not ask the appellant to put away all of the dogs. Upon entering the residence, SPC Edge noted a puppy in an exercise pen and a number of dogs confined to crates in the house with no water or bedding. She also observed 2 African grey parrots in cages in the living room. The appellant told SPC Edge that there was a mother dog with a litter of puppies in the trailer on the premises, but that it was locked, and her husband was away with the key. SPC Edge testified that she was concerned about the ventilation in the trailer and wanted to return to see the dogs at a later date. SPC Edge discussed her concerns with Mrs. D. and issued a notice giving the appellants seven days to get the property cleaned up and address concerns with animal housing and ventilation. Her notice serves as a checklist of what was discussed so that owners can refer back to and know what the society needs. She explained to the appellant that as long as there was forward motion on improvements, that they would continue to move forward. At that time, SPC Edge also had a brief discussion with the appellant about the Kennel Code of Practice. When asked if the conditions observed on August 9, 2018 were better or worse than the photos of the property at the seizure, SPC Edge testified that the conditions were worse in August.
78. On August 10, 2018 SPC Edge returned to the appellants' property to examine the mother dog and puppies in the trailer and to get a clearer view of what was happening with the birds. At that time, she met with both appellants. She was shown the birds in the house, and noted that there was minimal to no ventilation, and that the cages needed cleaning. She observed the mother dog and pups housed in a mid-sized travel kennel in the trailer with no bedding. When she asked why there was no bedding, she was told by the appellant that the puppies make a mess, so they don't give them bedding. When SPC Edge examined the mother dog, she could smell urine. She reiterated the importance of proper ventilation, and informed the appellants that with the number of dogs that they had on the premises and the number of litters that they were breeding, that they were considered a breeder and needed to follow the guidelines set out in the Code of Practice for Canadian Kennel Operations. After the visit, SPC Edge received an email from the appellants indicating that there was an air purifier for the birds, and that they were not sure why it was not on at the time of the visit.
79. SPC Edge testified that she did not return to the property until the beginning of October 2018, but she did not see anyone home. She honked in case they were outside and noted feces in the gravel run, on the patio and in the x-pen area.

80. SPC Edge's next interaction with the appellants was October 27, 2018. She testified that when she arrived, she noticed three horses that were not previously on the property. On entering the residence, she heard a dog barking in a different room. The appellants showed SPC Edge to the room, where she observed a dog (Chloe) confined to a crate alone in a second bedroom with no water or food. SPC Edge also observed a puppy in an x-pen in the kitchen and was told by Mrs. D. that the puppy had been sold. She noted that the puppy was lethargic, and that there was a lot of feces and no water or food available. She did not pick the puppy up. As she left the residence, SPC Edge observed Chloe in an x-pen on the porch running in circles, a behavior that she testified was stereotypical behavior for dogs trying to "cope" with their environment. She stated that Chloe flinched when she tried to handle her. During the visit, SPC Edge asked the appellant if they were expecting any more litters, and Mrs. D. initially said no, and then outside the house, said that if Chloe was not pregnant that they would rehome her very soon. SPC Edge expressed concerns to the appellants there had not been improvements made since the last visit, that the dogs were still being housed in small kennels, many without water or bedding. She advised the appellants again that they needed to follow the kennel code, to which they responded that they weren't a breeder and it was just a hobby. During her testimony, SPC Edge noted that the appellants were very respectful and good to talk to, but that she was very concerned for the welfare of the animals. When asked to compare the conditions in October to the conditions shown at the time of seizure in February, SPC Edge testified that the February photos showed improvements, including better size and placement of the kennels.
81. On November 10, 2018 SPC Edge returned to the property to do an inspection of the dogs. She testified that the appellants had cleaned up the run, and that there was evidence that they had attempted to clean the front porch, though feces were still present. She noted the smell of bleach at the front door and testified that one of the appellants was in the living room with a shop vac trying to clean the bird cages. SPC noted a lot of debris throughout the house. Overall, she noted it was stuffy, but that the ammonia smell was less than it had been before. The appellants showed SPC Edge changes that they were making to the housing, including building a raised platform approximately 78" long and 3' wide, and changes to the pens and dog beds. At the time of the visit, SPC Edge testified that all of the dogs were in crates, and that there was no access to water or bedding. She could not see inside the crates to determine if they were dirty. SPC Edge testified that examining the dogs was difficult as they were not easy to handle. She testified that the dogs were "somewhat fearful" so she didn't get "hands-on," and was only able to see the front teeth. Based on the examination of the dogs, SPC Edge issued a notice to address the following specific issues:
- Provide access to clean potable drinking water at all times. **[for all dogs]**
 - Ensure food and water containers are clean and disinfected and located as to avoid contamination by excreta.
 - Ensure the animal's coat is free of matting and/or debris.
 - Provide necessary dental care.
 - Provide necessary foot, nail, hoof, horn or beak care.
 - Provide necessary veterinary care when the animal exhibits signs of injury, pain, illness or suffering that require medical attention.
 - Ensure the animal is not confined in an enclosed space (shed, dog house, vehicle or other structure) without adequate ventilation.
 - Provide shelter with sufficient space to all the animals to turn freely and to easily stand, sit and lie down. **[as per kennel code]**

82. SPC Edge specifically noted all dogs have to be groomed and bedding provided in kennels. She identified seven specific dogs that needed to be seen by a registered veterinarian regarding their teeth, and the need to follow the vet's advice. She gave the appellants 14 days to get the appointments booked and requested that they let her know when it was done. SPC Edge testified that she had a discussion with the appellants during the visit about their medical concerns and they indicated that they were trying to get all of the improvements completed before Mr. D.'s surgery on November 14, 2019. SPC Edge gave the appellants more time to make improvements because they discussed their plans. She also offered the option of surrendering some of the dogs to help reduce the numbers of dogs to be cared for.
83. SPC Edge testified that she attended the appellants' property again on January 16, 2019 without contacting them prior. She observed three horses in a pen. When she walked up to the porch there was a pallet blocking the gate to the porch. She described the area as "cleaner looking because of the snow." She proceeded to the front door and knocked. SPC Edge testified that she heard voices and dogs barking and waited for a response. She knocked two more times and the barking continued but no one answered the door.
84. SPC Edge attended again the following day, January 17, 2019 with SPC Affleck. When she arrived, both appellants were outside moving hay. They said they were still working on making changes, but that progress had slowed down because one of them had fallen and was injured. They entered the house from the back door, and SPC Edge observed an "overwhelming smell of ammonia." She observed a number of dogs in pens and kennels without access to water. The appellants showed SPC Edge the changes to the original room, where she observed new kennels measuring 32x40" with caulking on the floor and between walls. The appellants told her that they were going to continue to build using strand board, and SPC Edge advised that she was concerned that urine would soak into strand board. The appellants asked if they were doing enough, and SPC Edge advised that she would let her manager know about their progress. She further advised that they still needed to improve ventilation for the birds. Based on what she observed at this time, SPC Edge testified that she was very concerned for the welfare of the animals.
85. SPC Edge testified that she made the decision to obtain a warrant as a result of the ongoing lack of compliance as well as an email saying the appellants had lost their primary heat source and water supply.
86. On the day of the seizure, February 28, 2019, SPC Edge testified that when she entered the property one of the appellants told her it was not a good day. She asked the appellant to put the dog Nathan in a kennel. Upon inspection, she found the house in disarray. She observed the strong smell of ammonia, feces in the mud room and on the porch, and noted that the air in the house was "stuffy." A ceramic heater was pointed at a puppy pen with puppies gathered around it. A number of dogs were in kennels at the end of a dark hallway, and two dogs were in an x-pen. In the main bedroom, six dogs were in the run the appellants had built as well as in transportation crates. There was no water or food available to the dogs. Observing these conditions, SPC Edge decided that the dogs were in distress. SPC Edge looked at the bird cages and observed that the water dish in one cage was "slimy." SPC Edge testified that the parrots "were not animals that we wanted to remove, but based on discussion with the regional manager and the provincial vet, the decision was made to remove them."

87. SPC Edge testified that they had not made arrangements for the parrots, so she ended up having to take them and house them for a short time. She noticed that when she lifted the sheet to put the parrots in their cages in her home, there was a waft of cigarette smoke. She characterized the parrots as “friendly, happy birds” and noted that they were doing very well.
88. SPC Edge returned to the appellants’ property on March 8, 2019 at the request of her department head. She testified that there were significant changes, and that the appellant said they found a spot where the cats were messing. SPC Edge testified that nothing had changed in the living room or with the parrot cages.
89. When asked if the conditions on February 28, 2019 were the result of “just a bad month,” SPC Edge responded that this file presented and showed long-term neglect, and that in her opinion, these conditions were not the result of short-term hardship. Her evidence was that she would be very concerned for the future welfare of the animals if they were returned and the appellants lack understanding of how much they can manage.

IX. Analysis and Decision

90. The *PCAA* (part 2.1) also establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:

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.

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

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

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

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

91. The definition of “distress” provides:

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.

92. In considering the issue of distress, the panel starts with the proposition that the definition of distress is broad and the society does not have to establish an actual deprivation or harm to an animal before determining the animal is in distress. A medical finding that an animal is injured or in pain is not required in order to conclude that an animal is in distress. The definition of distress is intended to be protective and preventative. It does not require proof of actual harm; rather it

describes those circumstances that create a significant risk of harm to animals and should be avoided. When these circumstances are not avoided and conditions place animals at sufficient risk, the *PCAA* provides that they can be protected.

93. We have proceeded on the basis that the appellants have an onus to show, based on the society's decision or changed circumstances, that the remedy they seek (return of the animals) is justified. The first issue we consider is whether the animals were in distress at the time of seizure and then we move on to decide whether to return the animals would return them to a situation of distress.

The Seizure of the Dogs

94. At the time of seizure, SPC Edge concluded that, collectively, the dogs were in distress based on the lack of adequate, water, ventilation, cleanliness, space, care or veterinary treatment based on the definition of distress in s. 1(2)(a) of the *PCAA*. She also concluded that their living conditions were unsanitary due to a build-up of feces in the house and outdoor areas that the dogs had access to: s. 1(2)(a.1). As the weather got colder, there were significant issues with the main heat source in the house and the water lines froze, adding pressure to an already strained situation, and putting the animals at further risk of distress based on lack of adequate heat: s.1(2)(a.2).
95. SPC Edge, based on information from previous visits to the appellants' property between August 2018 and February 2019 and their continued non-compliance, concluded that the appellants were not taking corrective action to improve the dogs' substandard living conditions. As a result she exercised the society's authority under section 11 of the *PCAA* to take the dogs and parrots into custody to relieve that distress.
96. The appellant's main argument is that the harsh winter weather in February 2019 was the primary cause of the condition of the house and the state of the dogs and birds at the time the animals were seized.
97. However, we accept SPC Edge's evidence that over a seven-month period she observed similar conditions. She raised concerns and repeatedly directed the appellants to the Kennel Code of Practice as a reference for industry standards and provided two notices with explicit directions and timelines for what actions needed to be taken and issues addressed. Ultimately, SPC Edge testified that the conditions as shown in photographs taken February 2019 seizure showed some overall improvement in hygiene and housing since August 2018.
98. In addition to the evidence of SPC Edge, we also have the following veterinary evidence:
- 12 of 16 dogs had a body condition score of emaciated (5) or thin (7);
 - 15 of 16 of the dogs required attention, including 7 with Grade III or IV periodontal disease, and three that required full anesthesia dental extractions;
 - More than half of the dogs had eye infections, ear infections, or both and,
 - All of the dogs had fecal matting in their paws and required baths, trims and cleaning around the eyes and ears.
99. Dr. Mann's evidence is that these conditions were not likely to have occurred over a few weeks but were more likely the result of prolonged and on-going exposure to unhygienic living conditions, poor nutrition, lack of proper grooming and a lack of veterinary care, specifically for dental, eye and ear infections.

100. Further to the veterinary examinations, the society had the dogs tested for giardia. Three dogs tested positive, and all dogs were treated. Dr. Mann testified that giardia is transmitted by oral-fecal contact, and that it is not uncommon for dogs with giardia to test negative when the infection is present.
101. The panel considered the evidence of SPC Edge and Dr. Mann and concludes that, over a period of time from August 2018 to February 2019, the dogs were kept in conditions that were unsanitary and meet the criteria for distress in s.1(2)(a.1) for distress. Based on the findings of the veterinary exams, the panel finds that many of the dogs were either injured, sick or suffering, and in the case of the dental issues, they were likely in pain as well, which meets the criteria for distress in s. 1(2)(b).
102. The panel therefore concludes, based on the totality of evidence, that the dogs were in distress and were appropriately and reasonably seized by the society.

The Seizure of the Parrots

103. The panel considered the seizure of the parrots separate from the dogs.
104. The panel accepts the evidence provided by SPC Edge that the birds were housed in an environment with poor air quality and ventilation. Dr. Mann described the cage as dirty and that there did not appear to be a lot of activities in the cage. She felt that cages should be cleaned every day at a minimum, and that the photos appeared to show several days build-up of feces. In fact, the appellants did not dispute that when the weather was too cold for the dogs to go outside, the birds were confined to their cages instead of being able to get out and seek other stimulation during the day. Based on their testimony, we calculate that, at the time of seizure, it had likely been at least 25 days since the birds had been let out, and the cage to be fully cleaned and disinfected.
105. Given the birds' living conditions at the time of the seizure and the state of the cage, we conclude that the birds were deprived of adequate ventilation, space, exercise sufficient to meet the criteria in *PCAA* s. 1(2)(a) for distress. It is not clear whether the conditions of the cage were so bad as to meet the definition of unsanitary or whether the parrots were exposed to excessive cold due to the lack of heat in the appellants' home. As such, we make no findings on whether the conditions would meet the criteria for distress in s.1(2)(a.1) or (a.2).
106. For completeness, the panel refers to the society's submission that Dr. Magnowski found both birds appeared healthy with the only abnormal finding relating to dry skin on their legs. As such, while the living conditions of the parrots are sufficient to conclude the birds were in distress at the time of seizure, there is no evidence they were injured, sick or in pain.
107. The panel has considered the circumstance of the seizure, and finds it reasonable that, in conditions where the heat in the house was inadequate and there was a lack of running water, it was reasonable to remove the birds at the same time as the dogs.

Return of the Animals

108. Having determined the seizure of the animals was justified, the panel now considers whether it is in the best interest of the animals to be returned.
109. The courts have considered the legislative framework provided by the *PCAA*. In *Eliason v SPCA*, 2004 BCSC 1773 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.

110. In *Brown v BCSPCA*, [1999] B.C.J. No.1464 (S.C.) the court explained:

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 [in] the good condition in which it was released into its owner's care.

Return of the Dogs

111. The panel acknowledges that the appellants care about their dogs, but the matter in question is whether they are capable of providing adequate care for them. The panel was particularly concerned that, during the proceedings, the appellants seemed unable to see issues with the health and hygiene of their dogs when photos were put to them. By their own evidence, the appellants did not see the amount of feces in the pens as a problem when the situation was severe enough to cause an outbreak of giardia among the dogs. When faced with a professional determination from a licensed veterinarian that many of their dogs were severely underweight, they flat out denied that there was a problem. This demonstrates that the appellants aren't capable of recognizing either the conditions that contributed to the seizure, or the condition of the animal that resulted from them. This is of particular concern when considering returning the dogs, as the appellants' inability to identify distress gives us no confidence that the practices and conditions will change in the future.
112. The panel finds that the appellants repeatedly failed to follow what is required for good animal husbandry, and the guidelines set out for breeders and kennel operators in the Code of Practice for Canadian Kennel Operations. While the appellants' position is that this is a hobby and they are not a breeding business, the panel finds that they are contradicted by their own evidence and submissions, including customer testimonials, contracts, guarantees, website, CKC records and reporting significant annual income from the sale of the dogs.
113. It is the position of the panel that regardless of whether the appellants consider their breeding operation a hobby or a business, the needs of the animals are the same. The fact is that the appellants were housing a large number of dogs for the purposes of breeding and selling, and it is incumbent upon them to ensure that their practices are compliant with the industry standard for the well-being of their animals. The panel found the appellants' lack of record keeping and inability under cross-examination to identify the dogs and litters registered over the past year undermined their credibility as responsible breeders. This is given greater weight in consideration

of the appellants' evidence that they intend to continue breeding dogs if their animals are returned.

114. The panel considered the appellants' submissions showing improvements made to hygiene and animal housing in the residence in the weeks following the seizure. We note that, in the seven months they were working with SPC Edge and the society, the appellants could not make improvements, but in less than two weeks after the seizure, the changes were complete. This demonstrates to the panel that the appellants either had the ability to do the work but were not adequately motivated to do so until the animals were actually seized, or as the society submits, that they were not capable of caring for the animals and making the changes with the number of animals present. In our view, both possibilities raise concerns about returning the dogs.
115. Despite their submissions showing improvements, the appellants failed to provide evidence of how they intend to change their practices to ensure that the dogs do not return to the state that resulted in them being seized. The appellants' evidence suggests that they believe that they have done nothing wrong and they intend to continue caring for their animals in the same way that they always have, particularly with regards to feeding, grooming and veterinary care. They completely ignore the fact that the conditions the dogs were living in and the dogs' state of neglect are the direct cause of the infections and health issues observed.
116. Finally, we observe that both appellants have considerable health challenges and mobility issues. In the past few months, both have been hospitalised. There have been significant falls and a hip replacement. At the time of the seizure, the appellants' house lacked adequate heat or water. The appellants appeared barely capable of looking after themselves let alone the animals seized. In our view, the physical limitations of both appellants have added to their difficulties in managing their animals. The responsibility to provide adequate living conditions for one's animals is ongoing. If circumstances become too difficult, it remains the appellants' responsibility to make timely and suitable arrangements for the care of their dogs. The present circumstances demonstrate their inability or unwillingness to do so.
117. In this case, the panel is of the opinion that the appellants are incapable of ensuring the dogs will remain in good health if returned, and instead they would likely return to a state of distress. Therefore, it is the decision of this panel that none of the dogs should be returned to the appellants and the society should be permitted to dispose of them as it sees fit.

Return of the Parrots

118. Having determined the seizure of the birds was justified, the panel now considers whether it is in the best interest of the birds to be returned to the appellants.
119. Following the seizure of the parrots, they were examined by Dr. Magnowski. As noted above, his examination showed both birds were found to be in healthy condition with dry skin on their legs.
120. Where the panel considers and weighs the evidence differently in terms of the parrots is largely a function of the nature of their exposure to the unsanitary conditions created by the dogs. While we accept that the birds were subject to similar conditions in terms of poor hygiene, their cages and stands are up above the floor and as a result they do not appear to have been affected the

same way. The panel accepts the argument of the appellants that the society's photos do not adequately show the mesh barrier between the birds and the litter tray.

121. The society has provided little specific information or detail about the case for the birds aside from the photographs and SPC Edge's testimony that she could smell cigarette smoke when she took the sheet off the birds on the night of the seizure. In the end, the evidence provided in the veterinary examination shows the birds were not sick, suffering, injured or in pain. The testimony of SPC Edge was that the birds were "friendly, happy birds."
122. The appellants included in their submissions that the parrots had been with them for 22 and 7 years respectively. The panel considered that the parrots are pets, not breeding animals, and that despite their long-term placement in the home, they did not have any notable health issues aside from dry skin on their legs.
123. In our view, the fact that we have decided above that the dogs should not be returned, is relevant consideration as their removal will likely alleviate some of the hygiene concerns in the house, and the appellants will have greater capacity to attend to the care and needs of the birds.
124. With regards to the return of the parrots, the panel is of the opinion that the appellants have the capacity to care for and ensure the animals remain in good health, and that the animals would not return to a state of distress if returned to the appellants. Therefore, it is the decision of this panel that the parrots be returned to the appellants.

X. Order

125. The panel has concluded that the dogs at issue on this appeal were in distress, that their removal was appropriate and that it is likely and foreseeable that their living conditions would not improve, and they would return to situations of distress if returned to the appellant. Consequently, and pursuant to s. 20.6(b) of the *PCAA*, the society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the dogs.
126. The panel has concluded that the parrots at issue on this appeal were in distress at the time of seizure, but that they should be returned to the appellants.

XI. Costs

127. Section 20 of the *PCAA* states:

20 (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.
(2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.
(3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.
(4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.
(5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.

128. Section 20.6(c) of the *PCAA* states that on hearing an appeal the board may “confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2)”.
129. The society has estimated its costs as follows:
- Veterinary costs: \$1,192.36
 - SPCA time attending to seizure: \$237.90
 - Housing, feeding and caring for the Animals: \$5,788.16
 - TOTAL: \$7,254.42
130. The appellants take issue with the costs incurred by the society, not so much on the basis that the costs themselves are unreasonable, but rather because they lack the capacity to pay given that they are both on pensions.
131. The panel is of the view that the society costs are reasonable, and confirms, pursuant to s. 20.6(c) of the *PCAA*, that the appellants are liable to the society for the amount of **\$7,254.42**.

Dated at Victoria, British Columbia this 24th day of April, 2019

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Tamara Leigh, Presiding Member



Al Sakalauskas, Member



Dennis Lapierre, Member