

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 TWO
DOGS

BETWEEN:

RANDIP BAGGA

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Daphne Stancil, Presiding Member
Mary O'Callaghan, Member

For the Appellant:

self-represented

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

January 22, 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 two dogs, one male and one female.
2. The appellant appeals the December 19, 2018 review decision issued under s. 20.2 (4)(b) of the *PCAA* by Marcie Moriarty, Chief Prevention and Enforcement Officer for 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 two dogs.
4. The appellant advised he would be assisted by a representative living in another jurisdiction. On the day of the hearing the representative did not join the teleconference and he represented himself and gave evidence. He did not call witnesses to provide evidence, and provided letters of support from friends and neighbours as well as one notarized letter from a tenant. Counsel represented the society and called four witnesses: the veterinarian who attended and assessed the male dog when taken into custody, the Animal Control Officer (ACO) and Animal Protection Officer (APO) who visited the appellant's property before the seizure and a Special Provincial Constable (SPC) who attended the appellant's property with the APO on the day of the seizure. The panel recorded the hearing.
5. For reasons explained in detail later, the panel has decided that the animals in question (one male and one female dog) will not be returned to the appellant 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. The panel has also decided that the appellant is liable to the society for costs in the amount of \$3070.51 incurred by the society with respect to care of the animals while in custody.

II. Preliminary Matters

6. In advance of the hearing, the appellant applied for disclosure of documents in support of the warrant to enter his property, an extension in the time to submit his documents and an in-person hearing.
7. By email dated January 11, 2019, the panel advised the appellant that the documents in support of the warrant had been disclosed in the society's initial disclosure delivered to him by courier on January 4, 2019. The panel granted the appellant a request for an

extension to January 14, 2019 to submit documents. After considering the appellant's request for an in-person hearing and the society's response the panel concluded that the additional costs associated with an in-person hearing and the delay that would result, outweighed any potential benefit to the appellant of having an in-person hearing.

8. On January 17, 2019, the appellant applied to have the date of hearing put off for about one week beyond the scheduled date of January 22, 2019 due to his challenges securing the attendance of a witness for the hearing date. In her decision dated January 18, 2019, the presiding member refused to grant an adjournment concluding that the matter should be heard as expeditiously as possible, bearing in mind the potential length of delay the requested adjournment might cause, the suitability and accessibility of the hearing itself (informal and via teleconference) to enable appellants to self-represent, the ease by which witnesses could provide evidence during a teleconference, and additional costs that further delay would cause. In addition to these factors the presiding member took into account the best interests of the dogs that are being held in custody and reminded the parties that their interests are paramount.
9. The panel heard the appeal in a full day teleconference on January 22, 2019 as scheduled. The panel intended to begin the hearing at 8:30 a.m. and the appellant's representative was expected to join the teleconference. Several phone calls to try to reach the representative were not successful and the panel decided to continue with the hearing at 8:55 a.m. and the appellant represented himself. The panel was satisfied that the appellant understood the nature of the appeal and he had a full opportunity to present his case. The panel adjourned the hearing at 5:30 p.m., giving the parties the opportunity to make written submissions on the issue of costs. The parties made their submission as directed and the panel received, reviewed and considered them in coming to this decision.
10. During the course of the hearing, the appellant raised an issue with respect to the validity of the search warrant. For completeness, the panel notes that the appellant did not challenge the warrant in his submissions to the society as part of its review. However, he did raise this issue with the society after the release of the review decision in a letter dated December 28, 2018 which the society included in its disclosure to the panel.
11. The appellant asserts that the search warrant was illegally obtained and points to deficiencies in the society's supporting materials. He says that because the warrant was obtained illegally, it should be overturned or quashed and any evidence collected as a result of that warrant should be inadmissible and not used in this hearing or in any subsequent proceedings. The appellant says that this panel is not entitled to rely on any evidence obtained through unlawful inspections. The appellant says that his constitutional right to be secure against unreasonable search or seizure has been violated.

12. This is not the first time that an appellant has sought to challenge the basis upon which a warrant issued under section 13 of the *PCAA* was obtained. In *E.M. v. BCSPCA*, (BCFIRB, September 2, 2016; at paragraphs 18 – 21), the panel addressed this same issue as follows:

18. The Appellant has also alleged that her rights under the *Canadian Charter of Rights and Freedoms* were violated by what she considers to be an illegal search of her home and seizure of her animals. In essence, the Appellant is asking this Panel to overturn or quash the warrant granted by a Provincial Court Judge to the special constable in this case and thereby exclude any evidence obtained as a result of that warrant.

19. In *Binnersley v. SPCA* (April 15, 2014), similar issues were addressed by the panel, at paragraphs 23-25:

23 In his submission to the Society upon its review of the decision to take Bandit into custody and before BCFIRB on this appeal, the appellant challenged the validity of the warrant. He argues that the warrant and subsequent seizure and detainment of Bandit was unlawful. He argues that the Information to Obtain a Warrant (ITO) was misleading and failed to make full disclosure. He says among other things that there was no evidence before the presiding Justice of the Peace or Provincial Court Judge that the dog was in critical or normal distress or that it was impracticable for the informant (SPC) to attend in person to obtain the warrant. The term “premises” was not defined in the warrant and he questioned whether the warrant included Mr. Binnersley’s apartment at the same address. He says the suggestion that no medications had been dispensed was inaccurate as the veterinary invoice listed Surolan [an ear medication] as having been prescribed. He disputed the reliance on comments from an RCMP constable who had attended the property on January 22, 2014 to assess the dog as he is not a veterinarian and not qualified to comment.

24. Similar arguments were advanced before the Society and in her reasons, Ms. Moriarty concluded that the search warrant was properly obtained and executed.

25. I have reviewed the ITO and the circumstances under which the search warrant was obtained and executed. However, I do not see my role as a decision maker tasked with hearing appeals under section 20. 3 of the PCAA as giving me the authority to review the decisions of a provincial court judge or justice of the peace as to whether circumstances justify the issuance of a warrant. A party who believes that a warrant has been improperly issued or executed can challenge that decision through judicial review and ask by way of remedy that the warrant be quashed. Until such time as a warrant has been set aside, I am entitled to rely on its validity and I choose to do so in these circumstances. I want to make it clear that I am not suggesting that BCFIRB would never consider *Charter* arguments in the context of an animal seizure that took place without a warrant or by a person who had no authority because they are not an authorized agent. However, where, as here, the warrant has been issued by a court of competent jurisdiction, the appellant’s arguments all focus in one way or another on the warrant, and as I am satisfied that the warrant on its face applies to the premises in question, BCFIRB must in my view respect that court’s function and must also respect that

it is for the superior court, not this board, to assess the legality of a search warrant.

20. The panel's decision in *Binnersley*, and in particular its decision with respect to its ability to review the issuance of a warrant by a provincial court judge or a justice of the peace, was subsequently reviewed and affirmed by the Supreme Court of British Columbia in *Binnersley v. BCSPCA and BCFIRB*, 2014 BCSC 2338, where after referencing paragraph 25 of the decision above, Mr. Justice Thompson held "I think that this was a perfectly reasonable course for the adjudicator to adopt". This Supreme Court decision was appealed to the Court of Appeal and subsequently dismissed, *Binnersley v. BCSPCA*, 2016 BCCA 259. There is nothing in this Appellant's argument which would cause this Panel to diverge from the approach set out in *Binnersley*, supra.
21. Further, although it was not referenced in *Binnersley*, supra, section 45 of the ATA applies to BCFIRB in its statutory mandate under the PCAA and it specifically prohibits tribunals to which it applies from deciding constitutional questions relating to the Charter. [emphasis added]
13. In the panel's view, following the reasoning in *E.M.* and *Binnersley* and in the absence of a challenge to the warrant through judicial review, the panel is entitled to rely on the validity of the warrant. As such, this panel finds that documentary evidence and oral testimony arising from the execution of the warrant are admissible and the panel has proceeded on that basis.
14. The appellant also challenged the evidence collected by the society when attending to the appellant's home to check on the dogs on the basis it was collected unlawfully due to unlawful entry onto the property. On the occasions when representatives of the society attended the appellant's property before the seizure of the dogs, they entered the property with the consent of the appellant or his mother. On this basis, the panel concludes that their observations and records of those observations from those visits is evidence that is both relevant and admissible.

III. Material Admitted on this Appeal

15. The following materials were admitted into evidence:
 - a. BCSPCA December 19, 2019 Decision (**Exhibit 1**)
 - b. Craigslist Ad attached to BCSPCA Decision (**Exhibit 1a**)
 - c. Appellant December 21, 2019 Notice of Appeal (**Exhibit 2**)
 - d. Appellant December 21, 2019 receipt for filing fee (**Exhibit 3**)
 - e. BCFIRB December 21, 2019 NOA process letter (**Exhibit 4**)
 - f. BCFIRB REVISED December 27, 2018 NOA process letter (**Exhibit 5**)
 - g. BCSPCA initial disclosure (Tabs 1-16) (Jan 4, 2019 by courier) (**Exhibit 6**)
 - h. BCSPCA further disclosure (Tabs 17-21) (Jan 9, 2019) (**Exhibit 7**)
 - i. Appellant request for documents associated with warrant (Jan 10, 2019) (**Exhibit 8**)

- j. Appellant request for an extension to document disclosure (Jan 10, 2019) **(Exhibit 9)**
- k. BCSPCA response to documents associated with warrant (Jan 10, 2019) **(Exhibit 10)**
- l. BCSPCA response to appellant extension request (Jan 10, 2019) **(Exhibit 11)**
- m. Appellant request for in-person hearing (Jan 10, 2019) **(Exhibit 12)**
- n. BCSPCA response to appellant representative (Ms. Williams) email (Jan 11, 2019) **(Exhibit 13)**
- o. Courier slip confirming delivery of BCSPCA document to appellant (Jan 11, 2019) **(Exhibit 14)**
- p. BCFIRB preliminary issues response to parties email (Jan 11, 2019) **(Exhibit 15)**
- q. Appellant's document disclosure (Docs 4 – 9 photos) Jan 11, 2019) **(Exhibit 16)**
Of these photos, photo 3 and 9 are repeats. All of these photos appear again in Exhibits 37-39.
- r. Appellant's document disclosure (Docs 7- 7 videos taken on June 10, 2017; August 24, 2017; October 24, 2017; and October 26, 2017) Jan 11, 2019) **(Exhibit 17)**
(These short phone video clips appear again in full in Exhibit 35 and the first four are repeated in Exhibit 30).
- s. Written Submissions of BCSPCA (Jan 16, 2019 by email and by courier) **(Exhibit 18)**
- t. Affidavit #1 of Marcie Moriarty (Jan 16, 2019 by email and courier) **(Exhibit 19)**
- u. BCSPCA Expert witness contact form for Dr. Sidhu (Jan 16, 2019 by email and courier) **(Exhibit 20)**
- v. BCSPCA Witness contact form for SPC Jacqueline Hall, APO Sandra Windover, and RAPS ACO Shane Burhnam **(Exhibit 21)**
- w. BCSPCA Updated index for document disclosure with (Tabs 22-24) for binder (Jan 16, 2019) **(Exhibit 22)**
- x. Appellant second request for extension (Jan 17, 2019) **(Exhibit 23)**
- y. BCSPCA response to adjournment (email 1) (Jan 17, 2019) **(Exhibit 24)**
- z. BCSPCA response to adjournment (email 2) (Jan 17, 2019) **(Exhibit 25)**
- aa. BCFIRB Adjournment Decision (Jan 18, 2019) **(Exhibit 26)**
- bb. BCSPCA further updated document disclosure index January 17, 2019 **(Exhibit 27)**
- cc. Randy Bagga docs – images of drivers licences for individuals who provided letters of support for appellant shown in Tab 5, Exhibit 6; images of receipts for pet supplies (total of 6, April 2017 – June 2018); images of three text message exchanges – two with society, one with tenant **(Exhibit 28)**
- dd. Randy Bagga docs 5 – four undated photos of female dog alone on grass on long leash; one of both together on grass on long leash **(Exhibit 29)**

- ee. Randy Bagga docs 6 - four phone video clips also shown in Exhibit 17 (**Exhibit 30**)
 - ff. Randy Bagga 8 - bylaw - images of two tickets: (Richmond) animal control and dog without a licence (**Exhibit 31**)
 - gg. Video from Randy Bagga – phone video of vehicles at Bagga property on day of seizure (Dec. 4, 2018) (**Exhibit 32**)
 - hh. Randy Bagga docs 8 bylaw ticket – repeat of same two images in Exhibit 31 plus two more: (Richmond) animal control infraction and dog without a licence infraction (**Exhibit 33**)
 - ii. Randy Bagga docs 9 police photo – four photographic images from date of seizure (two of vehicles; two of enforcement personnel) and one phone video similar to Exhibit 32 (**Exhibit 34**)
 - jj. Randy Bagga docs 7 –the same photographs as in Exhibit 17 (**Exhibit 35**)
 - kk. Randy Bagga docs 2 – photographic images showing email receipt for purchase of hay; hay on hood of white vehicle in garage; two wire crates in garage; same crates in garage with tarp and blanket resting on top; receipt for pet supplies; two photographs of the wire crates originally shown in garage now in the entrance hall of home, one showing dogs; cat with food; and appellant in retail setting apparently purchasing cat food (**Exhibit 36**)
 - ll. Randy Bagga docs 4 (**Exhibit 37**)
 - mm. Randy Bagga docs 4 (**Exhibit 38**)
 - nn. Randy Bagga docs 2 (**Exhibit 39**) (**Exhibits 37 – 39 each contain the same images as found in Exhibit 16**)
 - oo. Randy Bagga docs – letter of support from neighbour M. Cleminson (**Exhibit 40**)
 - pp. Randy Bagga docs –photographic image of notarized correspondence from Jayasankar Jayaraman to the society in support of appellant (**Exhibit 41**)
 - qq. Randy Bagga docs – photographic image of driver’s licence of Mr. Myers who provided a letter of support for Mr. Bagga (**Exhibit 42**)
 - rr. Randy Bagga docs – copy of letter (June 27, 2017) from the City of Richmond to Surjit Bagga regarding a secondary suite. (**Exhibit 43**)
16. Subsequent to the hearing, by email dated January 25, 2019, the appellant advised that he had remembered things that he wanted to say but overlooked and wanted to “go back and clarify some things”. After hearing from the society, in an email dated January 29, 2019, the panel advised as follows:

The fact that you now remember things that you wanted to say but overlooked is insufficient reason to reopen a hearing that has concluded. The decision to reopen a hearing is extraordinary relief which is rarely granted and only upon a party demonstrating that such evidence is substantial, material, and where, the new evidence did not exist at the time of hearing, it could not have been obtained through the exercise

of reasonable diligence. Evidence that was not introduced through oversight does not fit within this exception.

17. On January 29, 2019, the appellant's representative applied to the panel to re-open the hearing. By email dated January 31, 2019, the panel dismissed the application concluding that the request failed to disclose any new reasonable grounds upon which the hearing could be re-opened.

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

18. The society disclosed documents providing the history of Richmond Animal Control personnel and society personnel attending to the appellant's home in Richmond. SPC Rhonda Ott attended the home on September 14, 2017 following a complaint made September 13, 2017 by a neighbour that two puppies were left outside unattended in pens with little shelter and food for 12 hour periods of time. The SPC left a notice on the door of the appellant's home that day as no one was home and returned September 21, 2017 and met with the appellant. She noted that there were two young dogs, one female dachshund/terrier cross and one male dachshund/terrier cross outside in open metal pens. The appellant advised her that these were his "first pets". She noted that she spent some time reviewing dog husbandry with the appellant and in particular she advised him that he should ensure the dogs:

- a. have access to clean potable water at all times,
- b. are free of insect infestations,
- c. are provided shelter that offers protection from heat, cold and moisture; provides shade; is clean and offers protection from predators, and
- d. are not left unattended for more than a couple of hours at a time or kept outside at night.

The appellant advised he intended to build a dog run with shelter for their use in the daytime.

19. The SPC attended the property again on October 6, 2017 following another complaint that the young dogs were barking at night after being left outside with inadequate shelter for the rainy weather. The appellant was not at home.
20. On November 10, 2017, an ACO for the Regional Animal Protection Society (RAPS), Shane Burnham, responded to a complaint regarding the living conditions of the appellant's dogs and attended the appellant's home. He reviewed, with the appellant, the living conditions that are required for dogs pertaining to shelter, nutrition and cleanliness. ACO Burnham informed the appellant that he would conduct random follow up inspections. He reported that he closed the file on December 28, 2017 as he did not see the dogs outside on further visits and did not receive any more complaints in 2017.

21. On November 6, 2018 ACO Burnham attended the appellant's home in response to a complaint RAPS received about dogs outside at all times. The appellant moved the dogs into the garage when he learned that neighbours complained about him and how he handles the dogs. Dogs were also reported to be barking 24/7 and were wearing shock collars two sizes too big.
22. Before attending, ACO Burnham enquired via email to the City of Richmond Bylaw Department as to whether the two dogs were licensed for 2018. He discovered notices had been sent, but licences had not been purchased. While attending the appellant's home, he issued the appellant two bylaw infraction notices or tickets for failing to purchase licences for the dogs. ACO Burnham spent some time educating the appellant on the dog licensing bylaw. When at the appellant's home, he noted the dogs' living conditions and the same day advised the society by email of his concerns.
23. On November 15, 2018, ACO Burnham accompanied APO Sandra Windover, an employee of the society, to the appellant's home to check on the dogs. The appellant took them to the garage where they observed the dogs in a wire crate. APO Windover reviewed the deficiencies in the dogs' living conditions with the appellant, listing these as "breaches"¹ on a notice which she left with the appellant. She advised him to provide her with photographs showing that he had made changes to the dogs' living conditions in response to the notice.
24. On November 20, 2018, APO Windover returned to the appellant's home to review the dogs' living conditions. She observed two wire crates in the garage, but the dogs were not in the crates. The appellant invited her into the home and she noted that the two dogs were in the kitchen in a medium sized plastic crate without direct access to food or water which was outside the crate. APO Windover and the appellant discussed the changes that would be necessary to keep the dogs inside.
25. ACO Burnham's record of November 23, 2018 shows that he made another visit to the appellant's home on that date. He reported that he found the dogs in a small dirty cage in

¹ The listed breaches

Failure to

- Provide access to clean potable drinking water at all times (01),
- Provide sufficient quantity of suitable food to allow for normal growth and the maintenance of normal bodyweight (02),
- Ensure food and water containers are clean and disinfected and located as to avoid contamination by excreta (03),
- Provide shelter that ensures protection from heat, cold and dampness appropriate to the weight and protective outer coat of animal (10),
- Provide shelter with sufficient space to allow the animal to turn freely and to easily stand, sit and lie down, (12)
- Ensure the shelter is cleaned and sanitized regularly, (13)
- Ensure the animal is not deprived of human contact, (18) and
- Provide animal(s) placed in group housing the opportunity to withdraw from each other (20).

the garage. The dogs were dirty also and did not have food or potable water. He issued two animal control regulation infraction tickets to the appellant, one for depriving an animal of food or water and the second because the receptacles for the food and water were not clean.

26. APO Windover spoke with the appellant that day by telephone after the visit by ACO Burnham, and reiterated that the living conditions where the dogs were in the crate in the garage were substandard. She exchanged text messages with the appellant about the size and location of housing for the dogs in the front entry way of the house.
27. APO Windover returned on November 26, 2018 to check on the dogs living conditions. Based on her observations including that the appellant had placed the dogs inside the home in the front entry way, she discussed with the appellant what remained to be done to bring the dog's living conditions to an acceptable standard. This time she noted that five (01, 02, 12, 13, and 20)² of the eight breaches (listed in footnote 1 above) from November 15, 2018 remained uncorrected.
28. APO Windover reattended the appellant's home on December 3, 2018 accompanied by SPC Jacqueline Hall of the society. The appellant was not at home; the dogs were in the front entry way of the house enclosed in a carrier within an X-pen. None of the changes APO Windover expected had been made.
29. On December 3, 2018, the society obtained a search warrant to enter the appellant's property and if necessary, to seize both dogs. SPC Hall, and APO's Windover and Buksa, executed the warrant on December 4, 2018 and removed two dogs. Two RCMP officers attended with the society.
30. The appellant was at home on December 4, 2018 at the time of the seizure. The society's personnel had a brief discussion with the appellant, provided him with a notice of disposition, seized the dogs and provided advice regarding the procedure to dispute the decision to take an animal into the society's custody (*PCAA*, s 20.2(2)).

² Failure to

- Provide access to clean potable drinking water at all times (01),
- Provide sufficient quantity of suitable food to allow for normal growth and the maintenance of normal bodyweight (02),
- Provide shelter with sufficient space to allow the animal to turn freely and to easily stand, sit and lie down, (12)
- Ensure the shelter is cleaned and sanitized regularly, (13), and
- Provide animal(s) placed in group housing the opportunity to withdraw from each other (20).

V. The Review Decision

31. The appellant contacted Chief Prevention and Enforcement Officer Moriarty by email on December 17, 2018 requesting that she review the seizure, return the dogs and provide a rationale for her decision.
32. Ms. Moriarty issued her review decision on December 19, 2018 declining to return the dogs. Ms Moriarty advised that she was satisfied that it was reasonable that SPC Hall formed the opinion that the dogs were in distress as defined by the *PCAA*, section 1(2) and that in these circumstances it was “the appropriate course of action” for the society to take custody of the dogs to relieve their distress, and that the society had met the legislative requirements regarding the notice of disposition and taking the dogs into custody.
33. Ms Moriarty next considered whether it would be in the best interest of the dogs to be returned to the custody of the appellant. She reviewed the history of the appellant with animal control personnel and the society that led to the seizure of the dogs and if the appellant had acted on the directions to improve the living conditions of the dogs after each visit. She concluded that although the society gave the appellant explicit instructions to bring the standards of care to a satisfactory level, the appellant either changed his direction on the type of housing and shelter he would adopt or he failed to fully implement the instructions. The result being that he never achieved the level of care for the dogs that is required to ensure the dogs were not in distress.
34. As to the letters the appellant provided, Ms Moriarty concluded that she could give no weight to the two letters from friends not living in the Richmond area that focused on the appellant’s character. She indicated that the other letters did not provide useful information about the standard of relevant living conditions that the appellant provided the dogs and suggested that the neighbours who submitted the letters had never seen the appellant feed the dogs.
35. Based on her determination that the dogs were in distress when seized and that if the dogs were returned, the appellant would not likely establish a standard that would result in adequate care, Ms Moriarty decided that it was not in the best interest of the dogs to be returned to the appellant.
36. The appellant filed his appeal with BCFIRB on December 21, 2018.

VI. Grounds of Appeal

37. In his Notice of Appeal, the appellant states that he followed the directives of the society regarding how he housed the dogs. He could have made further changes and given the dogs the “run of the house” and an expanded space on the porch, but the society did not

give him a chance to do so before they seized the dogs. He asks that the dogs be returned without costs.

VII. Appellant's Evidence

38. In an appeal under the *PCAA*, the panel must determine whether or not the dogs were in distress when seized and whether they 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, images and videos in the exhibits listed above at paragraph 15 and all the evidence provided during the hearing whether or not it is summarized in the following paragraphs.
39. The appellant lives with his mother in a home in Richmond; he assists her with managing her properties in California. The appellant advised his mother had recently been seriously ill and he had been looking after her and assisting her with her business affairs.
40. The appellant testified that he saw the dogs (a black smooth short coated female dachshund/terrier cross and a white and grey long haired male dachshund/terrier cross) listed for sale on Craig's list and then followed up to acquire them. The owners lived in Yakima, Washington. He went to see the six week old puppies from the same litter and wanted to purchase them. Having confirmed with a veterinarian that immunization against rabies was not necessary, the appellant bought the puppies and brought them into Canada in June 2017.
41. The appellant commented that the large yard where he lives provided a place where the dogs could spend time and move about. He indicated he had several types of shelters, crates and kennels that he could use to house the dogs properly. He pointed out one of the wooden structures he had built, but in the end had not used for the dogs.
42. The appellant stated that he had done "everything they (the society) wanted me to do" and yet the society seized the dogs. He found this particularly disappointing because he thought he had an understanding with APO Windover after her visits to the house on November 15 and 26, 2018 and follow-up phone exchanges (November 23, 2018) that if he made certain changes to the dogs' living conditions she would "close his file". He felt he had made those changes and referred to his phone text to APO Windover of November 28, 2018. He admitted that the dogs did not have licences when ACO Burnham attended on November 6, 2018, but he indicated that they were reasonably well fed and they were always happy to come to him when he called them because he never mistreated them.
43. As to the changes the appellant made to the care of the dogs after visits from the society, he advised that he has been cooperative overall. He made a change of providing separate bowls for milk and water; did not leave the dogs outside overnight; walked the dogs; took them to places for an off leash run as shown in the phone videos of June 10, 2017;

August 24, 2017; October 24, 2017 and October 26, 2017, and many photographs; he adjusted the crates on request of the society, provided them food and, showed himself to be a good caretaker. He says the dogs are healthy, happy and strong and they “are witness” to the fact that they are well cared for.

44. The appellant stated he was “open” to suggestions about the care of the dogs and often sought advice from a neighbour who also had dogs when that person walked by his property. He was eager to ensure he understood how to care for dogs.
45. The appellant was not expecting APO Windover and SPC Hall when they came with the search warrant and seized the dogs. Something happened that he could not understand between the time of the society’s last visit with him (November 26, 2018) when he thought he was working cooperatively with APO Windover to adopt changes to the dogs’ living conditions, and the time APO Windover and SPC Hall came with the warrant. He felt he was being “bullied” by the authorities. He found this particularly hard to accept because he was looking after his mother who had suffered a stroke. He also had to travel and look after his mother’s California rental properties, which he explained was an extra pressure. The appellant noted that unexplained complexities had arisen with respect to the properties. He did not think of buying the licences for the dogs because these other matters were on his mind.
46. The appellant acknowledged that the society (SPC Ott) attended the property in September 2017 to look into how he kept the dogs. He agreed that the SPC left him a list of actions he should adopt – make sure the dogs have water all the time; be monitoring for insect infestations; provide appropriate shelter, especially if outside; provide shade if hot outside; keep living environment clean. He denied leaving the dogs outside in the rain and mentioned that if the dogs were outside all night they were in a large kennel on the sundeck when it was neither cold nor rainy. He adjusted the crates they were housed in when and as requested. He felt any complaints made to the society about him were “bogus” – and that people making complaint calls anonymously say what they want.
47. When shown photographs dated November 10, 2017 of the dogs in wire pens (about nine feet long, four feet wide, two feet high) with wire “tops”, the appellant confirmed this is how he kept them in November, 2017 in the back yard when ACO Burnham first visited him. He explained that the wire product was like fencing that was heavier than chicken wire that he had used to assemble the pens. The appellant advised that in early November 2018, when he kept the dogs in the garage he had set up two sources of heat to keep the dogs warm in the open crate – a heater and a lamp. He confirmed that a photograph dated November 6, 2018 showed the crate that the dogs were kept in which was located in the garage and covered with a blanket and tarp. The tarp extended about half way down the sides of the crate.

48. The appellant pointed out one of his photographs dated September 17, 2017 showing the rounded pen configuration he kept the dogs in on that day, outside on grass in the backyard, two bowls with water, one divided bowl with milk and kibble, with ample space for the dogs to lie down. He added the top seen in the photograph of November 10, 2017 because of the concerns that SPC Ott raised on her visit about protecting the dogs from raptorial birds. He then went on to say that he put the dogs in the pen outside when he was outside, leaving them to go into the house for short periods, and that he brought them into the house at night. When he put them in the pen, he attached a long line leash to each of them, which was attached to a stake in the ground.
49. When asked if he remembered when ACO Burnham attended on November 10, 2017, that the water and food bowls were knocked over, he said he did not recall the details. He advised that when the dogs jumped around they knocked them over, but that they would not be “over for long”. He advised he would replace the bowl and any contents within 1.5 hours. He did not recall if the ground within the pen structure was wet from urine on November 10, 2017. He mentioned he had been trying to train the dogs to urinate on pheromone treated pads and noted that the dogs did relieve themselves on them. He denied keeping the dogs outside in these pens in rainy weather.
50. Although he advised he did not remember all the details of the discussion he had with ACO Burnham on November 10, 2017 regarding water and food, he did recall ACO Burnham advising that the dogs must have access to water at all times. He also discussed “shock” and “citronella” collars with ACO Burnham for use in bark control.
51. The appellant recalled ACO Burnham attending his property on November 6, 2018 and issuing him tickets because the dogs did not have licences. He advised that he had been distracted because his mother was ill and he had extra work to do in connection with her rental properties. He confirmed that the dogs were in a crate in the garage as described above in paragraph 21. He was not sure if the liquid in the photograph of that date in the crate and outside on the garage floor was urine. He conceded that although he tried to keep the dog crates clean, sometimes he could not keep up with it. When asked what was in the blue bowl inside the crate, the appellant advised it was pasta. He offered “they like what I eat, so I give them some”.
52. The appellant confirmed that the dogs were still in the crate in the garage on November 15, 2018 when ACO Burnham and APO Windover attended to check on the dogs. He indicated that he took them out once a day and that he had put them in there when he had to go to California in October. He repeated that he provided two sources of heat for them while they were in the crate in the garage. He mentioned that dogs are kept outside in Alberta and he could not understand why his dogs could not be outside in Richmond where temperatures in winter are usually warmer. He stated after the society’s visit on November 15, 2018, he brought the dogs into the house.

53. When questioned about APO Windover's inspection report from November 15, 2018, the appellant advised he did not notice a strong odour of urine and feces when he went into the garage to "clean up" the crate; he did notice feces in the crate when he went into the garage with APO Windover, and advised that the space heater was "off" at that time. There were three bowls in the crate - one for water, one for milk and one for food. He confirmed that he had been keeping the dogs outside because his mother did not want them inside. Once he brought them in his mother was "OK with it". The appellant was quite clear that he did not recall (as noted in the inspection details) APO Windover offering that he surrender the dogs to the society, and he in turn declining the offer.
54. In response to further questions about November 15, 2018, the appellant did not recall APO Windover telling him that the garage door should be closed if the dogs were to be kept there for any time and advised that in any event he moved the dogs into the house after the society's visit on November 15, 2018. He indicated that although the dogs had relieved themselves in the crate when the society visited on November 15, 2018, he normally kept their living areas clean. He also commented that the dogs were not house trained, but "it was heading in that direction". When asked if he thought they were not house trained and relieved themselves where they were kept, was because they were confined to pens all the time, the appellant did not provide a clear answer.
55. When counsel for the society referred the appellant to the notice to relieve distress of the dogs issued November 15, 2018, he said he remembered it and generally discussing the notice with APO Windover. He specifically remembered the requirement for clean potable water, although he did not see fecal material in the bowl for water within the crate. He recalled the requirement for food, but did not recall any discussion with APO Windover that pasta was not good for the dogs. He did recall being advised that he must always have water available for the dogs and indicated that APO Windover had advised him at one point that milk may not be the best source of food for the dogs. He confirmed that he kept the dogs in a crate in the garage when he was in California for about 3.5 weeks and that the dogs had some contact with people during this time when the tenant fed them and when the neighbours gave them food and occasionally took them for walks.
56. The appellant denied that on November 20, 2018, APO Windover advised him that if the living conditions for the dogs did not improve, she may initiate further legal action. He commented that if this was the case "they were in a completely different place" because he thought "we were on the same page" as to working together to achieve appropriate living conditions for the dogs. He also advised that when he brought the dogs into the house and had them in a small crate together, he did this so as not to antagonize his mother. He claimed that APO Windover said nothing to him on that date about surrendering the dogs.

57. The appellant remembered APO Windover's visit of November 26, 2018 and the notice she left him and that she mentioned that the dogs required bedding in that area of the house inside the pen. He advised that when the society attended the house on December 3, 2018 and he was not home, there was a tarp over the pen which extended down the sides to prevent the female dog from climbing out of the pen. He did not recall being advised at any time that this was a problem because it blocked light from reaching the dogs. He steadfastly reported that he kept the living areas for the dogs clean and bathed the dogs, but the male dog peed on himself.
58. The appellant stated he was very surprised when APO Windover and SPC Hall attended with a search warrant. He was extremely upset with the number of vehicles that arrived at the property and that the society arrived with RCMP officers.
59. The appellant advised that a typical day began in the morning (the timing dependent on when he arose) with him walking the dogs in the neighbourhood for about an hour. He sometimes walked the dogs in the evening. If he was in the yard, he would take the dogs outside as well. The backyard was fenced and the front yard has a hedge, but when outside with the dogs he usually had them in a pen. The dogs had not been ill so he had not taken them to see a veterinarian, although he knew where one was in the area where he lived. As to the male dog's nails, he had not clipped them, but had a trimmer for grooming. He was aware that the dogs were litter-mates, but although he was not trying to breed them, if "it was going to happen it would". He left them intact because he felt it was unethical to deprive them of "that" experience.
60. When asked if he was aware of the matting in the male dog's coat he said it was getting long and going in that direction. He would have trimmed the dog if it had not been taken. As to the impacted anal glands, the appellant was aware that the male dog "dragged his bum" sometimes and he had not noticed if the dogs had worms.
61. The appellant also provided as evidence letters written by friends and neighbours on his behalf. The society considered these letters in its review decision. The letter from the Morris's of Summerland advised that they had known the appellant most of his life and had never known him to be "in trouble with the authorities", but did not know the specifics regarding the seizure of the dogs. Mr. Meyers wrote from Alberta that he had known the appellant for some years and knew the appellant as a "a very decent, law abiding Canadian citizen and a solid contributor to Canadian society."
62. One of the tenants living in the appellant's property Mr. Jaysankar, wrote to the society December 12, 2018, about the appellant's character, and advised with respect to the dogs - he had seen the appellant "feeding the dogs regularly, giving them clean water and milk regularly". He also observed the appellant "walking the dogs and exercising them all the time" and notes the dogs are "healthy, happy, and strong". Mr. Jaysankar sent another letter dated January 14, 2019 which was notarized as to his signature, repeating this

advice. The appellant confirmed that this is the tenant who fed the dogs while he was away in 2018 in California.

63. The neighbours who live across the street from the appellant advised the society in writing that they had observed the appellant feeding and walking the dogs and that they also fed and walked the dogs. A neighbour living two blocks away (Mr. Bhatti) wrote to advise the society that he had seen the appellant walking the dogs and never mistreating them. Finally another neighbour, Mr. Cleminson, wrote the society to advise that he was a dog owner and often stopped to talk with the appellant who asked him questions about raising dogs. He commented that the appellant was eager to learn about caring for dogs.

IX Respondent's Evidence

64. The panel has outlined the actions of the society and RAPS that took place in 2017 and 2018 above, up to the seizure of the dogs on December 4, 2018. The history includes four visits to the appellant's home in 2017 and six in 2018 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.

ACO Burnham

65. ACO Burnham reviewed his visits to the appellant's home in 2017 and the first half of November 2018 as noted above in paragraphs 20 to 23, inclusive. He then referred to the two bylaw tickets he issued to the appellant on November 23, 2018, when he observed the dogs each in a small, wire crate in the garage. One ticket was for depriving an animal of food and water; the other for using unclean receptacles. He concluded the dogs were without potable water and food. He commented that there was some water in the bowls, but it looked dirty, as did the bowls. He could not tell if the contamination was from dirt or feces. When the appellant asked him if he had examined the water by testing it to determine if it was contaminated, he said he had not, these were visual observations only.

APO Windover

66. APO Windover has been employed by the society since August 2018 as an APO. In addition, she works part time as a veterinary technician in Langley and Vancouver. She visited the appellant's home to investigate the living conditions of the dogs on November 15, 20, and 26, and December 3, 2018 and attended with others on the day of the seizure of the dogs, December 4, 2018.
67. On November 15, 2018 she saw the dogs in a metal crate with a plastic bottom located in the garage. There was no bedding in the crate; the floor of the crate was wet as were both dogs. The male dog's white longish coat appeared yellow. She noted there were bowls in the crate, one with white liquid, one with pasta and a red sauce. There was no water

available to the dogs. She stated the sanitation of the crate was a concern as was its size. The dogs had no way to move away from one another if lying down and had no choice but to excrete waste close to the bowls containing food. There was a lack of heat since the garage door was open and could not be closed so any cold wind chilled the air quickly. Although there was a heater and heat lamp near the crate, they were not on. She commented that the dogs really needed a house if kept in the garage, not an open crate. During that visit before issuing the notice, APO Windover offered that the appellant surrender the dogs to the society, he declined.

68. APO Windover referred to a photocopy of a notice she had left with the appellant on November 15, 2018, listing the points of concern that in her opinion were likely to cause distress to the dogs. These eight points are noted in paragraph 23 above. She also provided advice that hay or straw could be used as bedding to insulate the dogs against the cold. She advised the appellant that the dogs should be taken out of the crate so they can have human contact. She testified that in her view, the dogs had been left alone too long without human contact when the appellant was in California on business.
69. When APO Windover returned on November 20, 2018 to see if the appellant had corrected the circumstances that were likely to cause distress of the dogs, she discovered that while the crate was still in the garage and had been doubled in size, the dogs were in the house: in the kitchen and confined to a small carrier. The carrier was too small to house both dogs and a source of water. She advised the appellant that the space was too small especially because the dogs could not get out of the carrier, and that they needed access to water and food. APO Windover's inspection report indicates she offered that the appellant should surrender the dogs to the society and he declined. The appellant advised her he would clear a space to keep the dogs in the front entry way to the house. She indicated she would return in seven days to check that the appellant had made the changes he had suggested and those she expected. In the meantime, the appellant sent her photos of the X-pen set up he had put in place for the dogs and she gave directions for expansion of the size of the pen.
70. On November 26, 2018, APO Windover entered the appellant's home to check on the new space for the dogs that she had seen in the photographs sent via phone November 23, 2018. During that phone exchange, she had advised the appellant that the area within the X-pen in the photograph was too small and should be doubled.
71. APO Windover referred to photographs of the area where the dogs were housed on November 26, 2018 in the front entry way of the home, showing the X-pen to be about four feet wide and five or six feet long and aligned against items stored under a stair case. The space was not much larger than the space she had seen via telephone. The space was clean. There were two plastic "boot" trays, a tray lined with a pee pad, bowls and another plastic container as well as the dogs within the pen. One bowl contained milk. APO Windover again discussed the dogs' nutritional needs with the appellant. She pointed out

that her concern with leaving milk out in bowls for the dogs for long periods was that the “milk could go bad” and be unhealthy for the dogs. She advised that pasta may not be the best carbohydrate for the dogs and recommended others if the appellant was going to provide them food made at home. She recommended that he consult with a pet nutritionist or veterinarian regarding appropriate nutrition. The appellant indicated to her that he was “against” spaying and neutering and APO Windover replied that there were health risks associated with not spaying and neutering.

72. APO Windover performed a “hands on” examination of the dogs during this inspection. She noted their body scores to be about 4.5/9 or good, that their eyes, ears, teeth and coats were in “adequate” condition and that they were dry with no smell of urine or feces.
73. APO Windover issued another notice to the appellant this time identifying five points of concern (refer to paragraph 27 above) that would have to be altered so the dogs would not be in distress. Her concerns at the time covered nutritional needs (access to water and type of food), providing adequate space and maintaining a sanitary condition. She gave the appellant seven days to make changes and advised that failure to do so could result in further legal action. She emphasized that lack of space was a major concern for her because the dogs could not move around in the pen or withdraw from one another. She recommended that the appellant “continue to clean out” the area to make more space. The appellant asked if he could put a small crate inside the pen and APO Windover advised that would be okay so long as the door was open and the dogs could come and go.
74. Seven days later on December 3, 2018, APO Windover attended the appellant’s home with SPC Hall. The appellant was not at home, but his mother let them into the entry area where the dogs were. On this visit, the area within the X-pen was about the same as during the last visit, on November 26, but the configuration was changed from an oval shape, to narrower and longer, and it had been moved back from the front door. The dogs were in a smaller carrier and unable to leave it. The water in the pen area was inaccessible to the dogs. They did not inspect inside the carrier. The clutter outside of the pen had not been moved.
75. When asked by the appellant if APO Windover noticed the dogs to be in distress and requiring urgent medical attention on that day, she concluded that the dogs were in distress as defined by the *PCAA*, s. 1(2)³.

³ This is a reference to the definition of distress which provides 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.

76. The appellant asked APO Windover if he had been given enough of a chance to respond to the changes she had asked for. He commented that he thought the seven days “was a deal”. APO Windover replied that she expected the “clutter” to be moved within the time frame and it had not been. When the appellant asked if he was being cooperative, Office Windover responded “yes” but then clarified that the appellant did not make changes in a timely way which meant he really was uncooperative. She pointed out that she developed the timeframes for changes with the appellant, but the appellant would never fully implement the changes in that time frame. Everything took extra time. She thought that the appellant understood what she directed him to do, but he would “fixate” on only one item and disregard others.
77. When APO Windover attended the appellant’s home with the other officers to execute the warrant , she observed the same X-pen she had seen on December 3, 2018 now covered with a blue tarp like the one she had seen on the crate in the garage in November. It extended down the sides of the pen to the floor, preventing any ambient light from entering into the X-pen space. She could not see the dogs until she removed the tarp. She noted the area was unsanitary and there was no bedding. The pen was the same in area as she had seen the day before.

SPC Hall

78. SPC Hall testified that she accompanied APO Windover to the appellant’s home on December 3, 2018. She confirmed APO Windover’s account that the two dogs were enclosed in a small carrier kennel inside the X-pen area. The dogs could not get at the water which was in the X-pen area along with boot trays and a pee pad. Even in this area, the two dogs could not lie down without touching one another.
79. SPC Hall advised that after leaving the property, she and APO Windover reviewed the file and then completed the information to obtain the search warrant, which warrant was issued by a Judicial Justice on December 3, 2018.
80. SPC Hall attended the residence on December 4, 2018 assisted by APO’s Buksa and Windover and two RCMP officers who secured the residence before the society personnel entered. SPC Hall confirmed APO Windover’s observations of the living conditions of the dogs on that day as being unsanitary (smelling of urine and feces), with little light and cramped space. She observed that the dogs’ coats were wet, the male dog’s nails were of a length that they required clipping and his coat was matted. She had a brief discussion with the appellant advising that they were taking the dogs into the custody of the society. SPC Hall gave the appellant a notice of disposition and advised he could apply to have the seizure reviewed.
81. When questioned, SPC Hall responded that she found the dogs to be anxious, excitable and eager to get out of the enclosure when they arrived to seize them. In response to the

appellant's questions, she felt that he refused to accept that keeping animals comes with conditions.

Veterinary Evidence

82. Dr. Gurinder Sidhu testified on behalf of the society regarding the male dog in the custody of the society that he saw on December 6, 2018. Dr. Sidhu has been licensed to practice veterinary medicine in British Columbia for four years and is currently employed by the Norgate Animal Hospital in North Vancouver, BC where he treats pets, mainly dogs and cats.
83. Dr. Sidhu referred to the report he prepared after examining the male dog. It showed the dog's musculoskeletal, cardiovascular, respiratory, and digestive systems to be normal and after a clinical assessment, that the male dog's eyes, ears, nose, throat, genitals, and neurological and lymphatic systems were normal. He found the dog to be bright and alert. In the same report, Dr. Sidhu observed that the male dog:
 - a. Had a urine stained coat all over the body, and
 - b. Was sensitive to touch in the hind region.
84. With respect to the urine stained coat, Dr. Sidhu suggested this could be from sitting in urine. He strongly advised that the dog's housing conditions be changed and proper hygiene adopted to deal with this situation. He recommended a medicated bath to improve the condition of the dog's hair and skin. The report from the groomer who bathed and groomed the dog, removing some mats, noted bad "scalding" on the dog's legs. Dr. Sidhu advised this was consistent with his observation of the dog. He suggested that this resulted from the dog being in direct contact with urine, likely sitting or lying in it. He indicated that the scalding was superficial in nature and that there was no infection where the skin was affected, which can be an outcome when urine is left on the skin. He also indicated that urine left to dry on the skin can produce crevices that when inflamed result in hot spots.
85. Dr. Sidhu found the dog's anal glands to be impacted and full on both sides of the anus. He expressed the glands of their thick discharge. He stated this condition can be a result of too little fibre in the diet.
86. Dr. Sidhu also ordered blood work to test for the presence of infectious agents for a number of respiratory diseases. All the results were negative. Dr. Sidhu recommended that the dog's teeth be scaled to maintain good oral hygiene but the condition of the teeth was nothing unusual.
87. Dr. Sidhu reviewed and commented on the reports for the female dog prepared by other veterinarians since he did not examine or see her. The first report that Dr. Sidhu reviewed

was from Ambleside Animal Hospital. The female dog's caregivers at the society noted she was listless and did not want food, so took her to Ambleside. The attending veterinarian examined her the morning of January 10, 2019. The report showed that the female dog's eyes, ears, coat and skin, lymph nodes, musculoskeletal system, heart and lungs, GI tract and abdomen, urinary tract and genitals and nervous system were normal. The report noted that she had mild tartar on her teeth and her gums were pink and a bit "tacky". As a consequence, the report for mouth/teeth and gum was recorded as "abnormal". Dr. Sidhu commented that this will often be reported after an examination of dogs. Overall the report showed that the female dog was quite alert and responsive.

88. An ultrasound showed her uterus was thickened more than normal and her blood work showed she had inflammation somewhere and her white blood cell count was higher than normal. The early diagnosis was that she may have pyometra. Dr. Sidhu explained that this diagnosis meant she may have an infection of the uterus. When a female dog is not spayed, infection is almost inevitable since non-breeding intact female dogs are prone to it.
89. Dr. Sidhu commented that "irritants" could lead to an infection of the uterus, but he was not aware of a direct linkage between cleaners and disinfectants and pyometra. He noted that "we usually see pyometra after a heat cycle". After reviewing the reports for the female dog from the Ambleside hospital, for January 10 and 11, 2019, Dr. Sidhu indicated the diagnosis of pyometra would have been made taking the dog's appearance into account, her bloodwork and other clinical work. Ambleside noted she had just completed a heat cycle when they first saw her.
90. In response to questions from the panel about whether or not dogs should be spayed or neutered, Dr. Sidhu stated that pyometra could be avoided by removing the uterus. He also added that neutering male dogs may reduce the risk of prostate cancer and may result in modified behaviour, which is sometimes beneficial to the dog and owner. He respected that it is always the owner's decision as to whether or not to spay or neuter a dog.
91. After treating the female dog with antibiotics over a two day period, the treating veterinarian at Ambleside recommended that her uterus be surgically removed. She was transferred to Mountainside Animal Hospital where the surgery was performed on January 12, 2019. The hospital reported that she recovered well and she was returned to the care of the society on January 13, 2019. Other than mild tartar build up on the female dog's teeth, she did not show any other health issues.

IX. Analysis and Decision

Definition of Distress

92. The first issue for the Panel to consider is whether the dogs were in distress at the time of the seizure. For this purpose, we set out the definition of “distress” in s. 1(2) of the *PCAA*, which must be read together with s. 11 of the *PCAA*:

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.

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.

93. The appellant’s main argument is that the dogs were not in distress at the time of seizure. He challenges the society to explain “what is the distress that the dogs are suffering”. In his view, in order to find that a dog is in distress, the dog must require urgent medical attention or be suffering a life-threatening condition. He says his first interest is the welfare of the dogs and that they were happy, healthy and strong in his care and were not distressed. He points to the assessment report of the veterinarians who examined the female dog (Dr. Bridges, Ambleside Veterinary Hospital) and notes the body score of 4/9, or ideal for the female dog. He suggests this is because she is well nourished and cared for. Looking at all the veterinary evidence, he says there was nothing medically wrong with either dog when they were seized and that the primary focus of the society was the dogs’ living conditions not their state of health. The society did not produce a report from a veterinarian indicating the dogs were in distress which the appellant says would be required for the society to lawfully seize the animals on the grounds of “distress”.

94. The society's position is that the definition of "distress" is provided by s. 1(2) of the *PCAA*
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. [emphasis in society submission]
95. The society relies on this definition and submits that the appellant is mistaken in his understanding of the definition of distress.
96. The society submits that the *PCAA* provides it the authority to enforce the legislation.
97. The appellant challenges the qualifications of APO Windover and SPC Hall and their ability to make a determination regarding whether or not the dogs were distressed at the time of seizure.
98. Both APO Windover and SPC Hall gave evidence regarding their qualifications and experience with animals and advised that the society had appointed them authorized agents under the *PCAA*. Contrary to the appellant's assertion, the *PCAA* empowers authorized agents (such as APO Windover and SPC Hall) to make determinations about animals in distress and where the responsible person (section 11) does not take steps to promptly relieve that distress, allows them to take those animals into custody to do so. The panel accepts that APO Windover and SPC Hall acted pursuant to their legislative authority to make a determination of distress in accordance with the definition provided in the *PCAA* and finds that SPC Hall applied that definition when assessing and reporting on the dogs' living conditions when compiling the information in support of the warrant.
99. BCFIRB has considered the definition of "distress" in several of its decisions and has determined that the language provided by section 1(2) of the *PCAA* clearly describes the conditions that lead to "distress" in an animal. This panel considers this in greater detail below in paragraphs 100-104.

Consideration of Distress

100. At the time of seizure, SPC Hall concluded that the dogs were in distress based on an evaluation of the definition of "distress" specifically noting that the dogs had inadequate water, light, and space: s. 1(2)(a). She also concluded their living conditions were unsanitary due to the urine and fecal matter in the area of the house where they were kept: s. 1(2)(a.1).

101. This finding in combination with information from previous visits to the appellant's home by APO Windover of November 15 and 20, and 26, 2018 and a report from ACO Burnham's visit on November 23, 2018, led her to conclude that the appellant was not taking corrective action to eliminate the dogs' substandard living conditions pertaining to:

- access to clean potable water
- adequate food to support good nutrition,
- adequate space within which the dogs could stand up and lie down, and
- clean housing facilities free from urine and feces.

She had also reviewed the reports from the occasions (November 15 (Windover and Burnham) and November 23 (Burnham)) when the dogs were in the garage, when ACO Burnham and APO Windover reported inadequate heating and/or shelter.

102. The society submits that the dogs were often found unattended, and were unattended in November of 2017, and on November 10, 15, and 23, 2018. On the basis of this evidence, the society submits that from time to time the dogs were neglected and that they were neglected on December 3, 2018, when left alone. Neglect is part of the definition of distress: s. 1(2)(c).

103. The society submits that based on SPC Hall's reports of December 3 and 4, 2018 and her consideration of the reports from the earlier visits, including the visits in 2017, she made the only appropriate determination that is - the dogs were in distress. Relying on section 11, the society took the dogs into custody to relieve that distress.

104. 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. Instead, an animal can be found to be in distress when an animal 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. 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.

Deprived of adequate food, water, light, space, care

105. After carefully considering the evidence of APO Windover and SPC Hall, the panel concludes that over a period of time from early November to December 4, 2018, the dogs were repeatedly inadequately housed in cramped crates and pens that did not allow proper movement or function. Often the dogs were in pens or crates which did not allow access to food or water. If there was access to a food or water bowl inside the crate or pen, the space was too small to prevent the food or water dish from being contaminated by urine or fecal matter. Further, the inadequacy of the crate or pen meant that the dogs often had to sit or lay in their own waste and could not lay down without touching one another. On more than one occasion including the day of seizure, the crate was covered by a tarp preventing the dogs from being exposed to adequate light. In the panel's view the dogs were being kept in unclean conditions, deprived of adequate space, light, and drinking water, and as such met those aspects of the definition of distress.
106. The evidence of ACO Burnham and APO Windover is that the dogs were often fed "people" food – pasta and sauce and milk. The neighbour from across the street wrote that she often fed the dogs. The appellant confirmed that the neighbour prepared the food herself that she gave the dogs. He also indicated that the dogs liked the food he ate so he shared it with them.
107. The panel notes that it is widely acknowledged that table scraps or leftovers of "people" food are not nutritionally optimum for dogs, although the practice of feeding such food does exist. APO Windover discussed the nutritional benefits of food specifically formulated for dogs with the appellant on several occasions and specifically on November 26, 2018 encouraged him to seek specialist advice from a professional regarding their nutrition. The appellant did not seek any advice. The panel notes as well that Dr. Sidhu observed that anal gland impaction (such as observed in the male dog) can often be attributed to lack of fibre in the diet.
108. The panel makes no finding about the nutritional health of the dogs nor is it necessary to make such a finding. The only finding the panel needs to make is that, the dogs were being deprived of "adequate food" when they were crated and could not access it or because it was not provided. These circumstances meet the definition of distress.
109. The panel makes a similar finding that the dogs were repeatedly deprived of adequate water because they were often crated and could not access water dishes or when penned the water dishes were empty. SPC Hall specifically noted lack of water at the time of seizure. There were other times when water dishes were found inside the crate and the water was fouled by dirt or the dogs' waste.

Kept in conditions that are unsanitary

110. Dr. Sidhu raised a concern about the male dog's yellow stained coat. Dr. Sidhu suspected this was from the dog urinating and being left in its urine. The groomer's notes indicate the dog "tried to urinate everywhere" and reported bad "scalding" on the dog's legs. Dr. Sidhu advised this was consistent with his observation of the dog and suggested this resulted from the dog being in direct contact with urine, likely sitting or lying in it. He indicated that the scalding was superficial in nature and that there was no infection where the skin was affected. The panel also notes that on November 15, 2018 APO Windover observed that the floor of the crate was wet, as were both dogs, and the male dog's white longish coat appeared yellow and matted.
111. The panel finds that this evidence corroborates the society witnesses' observations that the dogs' living conditions were unsanitary over an extended period of time. When asked if the dogs were house trained, the appellant replied that he had been working toward that. The photographic evidence provided by the society and the reports of APO Windover regarding the living conditions suggest that the dogs were not house trained and were kept in unsanitary conditions on several occasions because of their need to urinate and defecate in their enclosures.
112. Although the urine scalding was reported only on the longer haired male dog, both animals were housed in the same crate at the time of seizure. On this basis, the panel concludes that at the time of seizure, both dogs were in distress due to the unsanitary conditions of their pen.

Neglected

113. The society argues that the evidence of penning and crating the dogs for long periods of time without having interactions with humans, is sufficient to support a finding of neglect. SPC Hall and APO Windover found the dogs alone in a pen in the front of the appellant's home when they checked in on December 3, 2018 and when they attended to execute the warrant.
114. The appellant disagrees; he argues that he has done everything the society wanted him to do. He has made changes to the dogs' living conditions. He does not leave the dogs outside overnight. He walks the dogs and takes them places off leash. He believes he is a good caretaker and the fact that the dogs are healthy, happy and strong is evidence they are well cared for. He indicated he had just stepped out when the society's representatives came to the house on December 3, 2018.
115. The panel is troubled by the repeated evidence, especially in the two months leading up to the seizure, of the dogs both being housed alone in cramped pens or crates. The appellant did not dispute that he left his dogs in a pen or crate in the garage when he was

in California for about 3.5 weeks. During this time, his evidence was that the dogs had “some contact” with his tenant and the neighbours who gave them food and occasionally took them for walks.

116. The conditions on November 15, 2018 where both dogs were found housed in a metal crate without bedding in an open garage was particularly bleak. The floor of the crate and both dogs were wet; there was no heat as the garage door could not be closed. In the panel’s view, these are not dogs of the size or type that could be housed outside unless they had shelters that provided adequate space, heat, ventilation, and bedding. The crate did not. While it appears that the appellant moved the dogs inside after this visit, on the date of the seizure and despite repeated warnings, the dogs’ living conditions had not improved significantly. The appellant was candid that his mother did not want the dogs in the house, and this seems to have resulted in them having limited access to the house.
117. In the panel’s view, the appellant has demonstrated very little understanding of how to properly care for his dogs. While he appears to have affection for his dogs, despite numerous conversations with society representatives, the fact remains that on December 4, 2018, the dogs were still being housed in a cramped unsanitary pen covered by a tarp with little access to natural light or water.
118. Based on all the evidence, the panel finds that at the time of the seizure on December 4, 2018, the two dogs were in distress as they were being deprived of adequate food, water, light and space and being kept in conditions that were unsanitary. The panel also finds that the dogs were neglected as evidenced by the conditions in which they were housed (a tarp covered cramped pen) separated from the rest of the house. The evidence of the male dog’s matted, urine stained coat also supports this finding.
119. In coming to a conclusion on distress, the panel has not made any finding that either dog was injured or in pain or suffering. The panel does not disagree with the appellant’s assertion that the dogs appeared healthy when seized. The panel accepts the veterinary evidence that both dogs were generally bright, alert and playful but this does not alter the panel’s finding that the dogs were in distress when the society took them into custody.
120. The panel notes that the female dog developed a medical condition (pyometra) while in the custody of the society which resulted in an operation. The panel deals with that issue below.

Return of the Dogs

121. Having determined that the seizure was justified, the panel turns now to consider whether it is in the best interests of the dogs to be returned to the appellant.

122. 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.

123. In *Brown v BC SPCA*, [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.

124. 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.

125. The appellant describes himself as someone who is willing to work with the society's officers regarding the care of his dogs. He insists he is cooperative, but had a learning curve about the care of the dogs. He believes he "was doing the right thing" when caring for the dogs. "I'm a guy who is trying...".
126. The appellant argues that the female dog became ill in the society's care. She developed an infection (pyometra) which resulted in surgery to remove her uterus. Dr. Sidhu concluded that the cause of the pyometra was likely related to the repeated "heats" she had. The appellant would have no way of knowing this could be an outcome of not having her spayed because he did not seek veterinarian advice regarding the implications of leaving her intact. He made an "ethical" decision to leave her as is and indicated if she had puppies with her litter-mate, the male dog, the appellant would accept that outcome.
127. The appellant did not give any consideration (medical, ethical or otherwise) to the implications for the resulting puppies arising from a dog breeding with its own litter-mate. The panel finds the appellant's lack of interest in seeking veterinarian advice regarding the care of the dogs when he admits he has much to learn both perplexing and underwhelming. This does not give the panel much confidence that the appellant would adopt any different approach to the care of the dogs if they were returned to him.
128. The letters of support the appellant provided speak to the appellant's positive character attributes. The panel does not question these attributes. The panel does not find them

helpful in evaluating the appellant's history with adopting changes to bring the living standards of the dogs to a satisfactory level.

129. Instead the panel prefers to look at the facts. The society's position is that the appellant never fully implemented any of the changes directed by the attending officers necessary to meet the standard of care for the dogs despite his statutory duty to do so. APO Windover had the most experience working with the appellant and her view was that the appellant tended to focus on one of the required remedial steps and become side tracked from implementing the entire suite of changes required. The society encourages the panel to look at the appellant's history and decline his request to have the dogs returned.
130. In the panel's view, the appellant's history of response (or lack thereof) to the directions of the society given on numerous occasions, demonstrates that he is not prepared to meet the standard of care required for the dogs. The appellant tried to explain his deficiencies in care stating he was under stress because of the additional duties he had when his mother was ill. While it is unfortunate that the appellant's mother has been ill, the panel notes that circumstances in life change, while the standard of care for animals does not. The responsibility to provide adequate living conditions for the dogs continues no matter what life changes may befall the appellant. If circumstances become too difficult, it is the appellant's responsibility to make timely and suitable arrangements for the care of the dogs. Having the tenant or neighbours visit the dogs to feed them while they were kept in a small crate in the garage during the appellant's lengthy absence from his home is not conducive to ensuring that the dogs' living conditions meet the required standard of care.
131. The panel accepts the reports of APO Windover and ACO Burnham that during the appellant's absence and even upon his return in November 2018, the dogs living conditions did not meet the standard of care.
132. The panel also observes that despite the appellant's assertion that he wishes the dogs to have "free run" of the house, his actions do not support his intention. It appeared to the panel that the appellant consistently tried an "enclosure" based response after November 15, 2018 when he moved the dogs into the house. He kept the dogs either in crates, in pens or in crates inside pens. The panel relies on the evidence of APO Windover in concluding that all of the enclosures were too small for the dogs to have enough space to lie down so as not to touch one another, which is a requirement for acceptable living conditions. Also, the panel questions how the appellant could move from keeping the dogs in small enclosures to giving them "free run of the house", when it appears his mother is not supportive of this. Furthermore, as the dogs are not yet "house trained", the panel notes it would be some time if ever before the dogs would in fact have free run of the house.
133. The appellant testified that he had not been aggressive with the dogs and the fact that the dogs came to him whenever he called them was an indication that this was true. In their letters, the tenant (Mr. Sayankar) and a neighbour (Mr. Batti) supported the appellant's assertion that he was not aggressive with the dogs. The society also submitted that the appellant showed no "ill will" toward the dogs. The panel does not question the

appellant's assertion, but observes that the dogs' behaviour to come when the appellant called them is equally consistent with a willingness to interact with anyone who gave them some attention.

134. All of the evidence the panel considered and reviewed, despite the appellant's best intentions, gives the panel no reason to believe he can turn his behavior around because his past actions demonstrate otherwise. The persistence of the substandard living conditions provided for the dogs almost speak for themselves.
135. Another factor which the panel finds troubling is the appellant's unwillingness to accept the statutory definition of "distress". The dogs were not fine or not in distress just because they did not require immediate medical treatment. The society does not have to stand by and wait for the conditions to deteriorate to the point that animals require medical attention before the society can act to take the dogs into custody. The statutory definition of "distress" supports proactive intervention. Without the appellant's acceptance of the standards for living conditions required to prevent distress as defined by the *PCAA*, the panel cannot support a return of the dogs to the appellant's care.
136. The panel sees nothing to provide confidence that the appellant is motivated or able to implement what he claims are his intentions regarding the living conditions of the dogs, especially given his refusal to accept the statutory definition of "distress". He has been given many opportunities to improve his dogs living conditions but he has been either unwilling or unable to do so in the months leading up to the seizure.
137. The appellant did make one other submission of note. He felt he was being "bullied" by the authorities responsible for enforcing bylaws pertinent to how he lived and kept the property where he lives. He indicated that those in authority including the society were working together in some way to harass him. This is not a matter that the panel has jurisdiction to evaluate or make a determination about.
138. The panel takes its authority from the *PCAA* and has exercised its jurisdiction to determine that the dogs which are the subject of this appeal were in distress when taken into custody by the society and will not be returned to the appellant.

X. Order

139. 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 animals.

XI. Costs

140. 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.

141. 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)”.

142. The society has estimated its costs as follows:

(a) Veterinary costs: \$2,531.87

(b) SPCA time attending to seizure: \$273.90

(c) Housing, feeding and caring for the Dogs: \$2,220.80

(d) TOTAL: \$5,026.57

143. The appellant takes issue with the costs incurred by the society especially if his dogs are not returned. He does not feel he should pay for the spaying of the female dog because the society would not return her to him so he could have taken the female dog to a veterinarian himself.

144. On this point, the panel concludes that it is not clear that the appellant’s conduct directly resulted in the pyometra and the resulting need for surgery. Even in the absence of the pyometra diagnosis, it is the practice of the society to have intact female dogs in their custody spayed before adopting them out. As such, in the panel’s view the costs shown on the invoice from Mountainside Animal Hospital, dated January 15, 2019 in the amount of \$1956.06 should be deducted from the society’s estimated care costs.

145. The panel is of the view that the remaining veterinary costs of \$575.81, society costs of seizure of \$273.90 and the housing and care cost of \$2,220.80, totaling \$3070.51 are reasonable.

146. In his submission, the appellant seeks his costs associated with pursuing the appeal for advice and filing fees totaling \$1525. BCFIRB does not have a practice of awarding costs associated with pursuing an appeal except in very limited circumstance. There is no basis upon which we would award costs to this appellant.
147. The panel confirms, pursuant to s. 20.6(c) of the *PCAA*, that the appellant is liable to the society for the amount of **\$3070.51** as the reasonable costs incurred by the society with respect to the two dogs.

Dated at Victoria, British Columbia this 5th day of February, 2019.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Daphne Stancil, Presiding Member



Mary O'Callaghan, Member