

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

BETWEEN:

GLEN AFFENZELLER (aka GLEN ZELLER)

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For The British Columbia Farm Industry
Review Board

Dennis Lapierre, Presiding Member
Al Sakalauskas, Vice Chair

For the Appellant

Self-represented

For the Respondent

Chris Rhone, Counsel

Date of Hearing

September 30, 2019

Place of Hearing

Teleconference

I Introduction

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 four dogs (Mieka, Duphous, Carebear, and Hazel).¹
2. The Appellant, Glen Affenzeller (who also goes by the surname Zeller) is the owner/operator of Dogtalk Ventures Ltd. in Vancouver, British Columbia. He provides a dog walking and training service employing four of his own dogs which “aid in the teaching and influence of clients’ and rescue dogs.” He is appealing the August 29, 2019 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 all the seized animals.
4. On September 30, 2019, a panel of BCFIRB held a hearing via teleconference. The Appellant was self-represented. He identified 15 witnesses he intended to call at the hearing. As the hearing progressed, the Appellant agreed to the Panel’s suggestion that not all this testimony was necessary given that letters of support were already in the hands of the Panel. He ended up calling 11 character witnesses.
5. The Society was represented by counsel and called four witnesses: two veterinarians who examined the dogs, an animal behaviour and welfare scientist who attended at the seizure and assessed the dogs, and the special provincial constable (SPC) who had contact with the owner before, during and after the seizure. The hearing was recorded.

II Decision Summary

6. In brief, this appeal involves the seizure of four dogs from the Appellant’s residence following a complaint about an incident of abusive behaviour observed on August 1, 2019. For reasons explained in this decision, the Panel has decided 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.

¹ In the clinical records and other documents, there are various spellings for Mieka and Duphous. The Panel has used the Appellant’s spelling throughout the decision to avoid confusion.

7. The Panel has decided that the Appellant is liable to the Society for the full amount of costs claimed by the Society with respect to care of the animals while in custody of **\$7,401.86**.

III Preliminary Matters

8. On September 11, 2019, BCFIRB received an *ex parte* application from the Society seeking an order for non-disclosure of a video in the possession of the Society under section 42 of the *Administrative Tribunals Act (ATA)*:

s. 42 The tribunal may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any interveners, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.

9. The Presiding Member, having satisfied himself that the Society's review decision accurately described what was depicted in the brief video and determined that there was a reasonable likelihood that the disclosure of the video to the Appellant could place third parties at risk, received the video in confidence to ensure the proper administration of justice.

IV Materials Admitted on this Appeal

10. All affidavits and witness statements, emails, photographs, records, and materials submitted were, with the exception of the video in the possession of the Society which was received in confidence but which was commented upon by three Society witnesses, were entered into evidence. All documents received by BCFIRB in advance of the hearing were identified as exhibits; the record is comprised of Exhibits 1 – 38.

V Review Decision

11. In her review decision, Ms Moriarty outlined her reasons for not returning the Appellant's four dogs. She noted that the Appellant had not provided any submissions addressing the August 1, 2019 video where he picked up a dog by the head, slammed it onto the concrete and punched it closed fist multiple times. In addition, he failed to address the veterinarian's conclusions that "it was clear that some of these dogs suffered mental or emotional injury and distress ... (and) have been experiencing chronic ongoing pain and discomfort in addition to blatant neglect and untreated medical conditions".
12. The Appellant failed to refute the violent act against the dog and the expert opinions regarding the health of the dogs in his care, as described in the Information to Obtain a Warrant (ITO). As such, Ms Moriarty found it would absolutely not be in the best interest of these dogs to be returned.

VI Key Findings of Facts and Evidence

13. The Appellant described the events leading up to the August 1, 2019 incident. He testified he was walking six dogs tethered together in three couples when they encountered two dogs barking aggressively from behind a fence. One of his dogs, Dawson, barked aggressively at the dogs behind the fence and continued to bark when told to stop. Dawson then bit down on Carebear's ear. The Appellant reacted by punching Dawson twice, then a third time, as a necessary emergency response. He said, "when dogs act aggressively, they are doing HIS job—he teaches dogs to respect (their) masters first."
14. The Appellant described his teaching approach. He integrates the dog being trained into a pack with his own dogs. His belief is that this shows the dog that it is safe to respect pack hierarchy. It also shows the dog who the master is. He believes his training methods are good and he "has a gift."
15. He explained that most of the dogs he trains have behavioural problems and typically don't respect their masters. His aim is to facilitate good dog-owner communication. By tethering the dogs together on walks, the dogs teach each other. He learned his training approach through observation and has no formal qualifications. He acknowledged that his reading abilities are limited by an attention deficit disorder condition.
16. With respect to the August 1, 2019 incident, the Appellant stated that the action he took was essential but he might handle it differently if it were to happen again. Both dogs had been tethered before with no issues but he has learned never to tether these two dogs together again. He says his clients are happy with how he has addressed their dogs' behavioural concerns. He says he works to unload behaviour responsibilities onto the dogs so they learn to behave better.
17. He also agreed that the care his dogs have been given had diminished.
18. The Appellant called several clients as witnesses to attest to his understanding of dog behaviour and his training techniques. In brief, these clients stated as follows:
 - a) E.L. met the Appellant in 2013 after adopting a Mastiff/Lab cross, King, with aggression issues. Someone recommended the Appellant to her and she was impressed with his understanding of dog behaviour and he "brought out the best aspects of King." She ultimately offered King to the Appellant to become part of his pack. King has since been renamed Duphous. Since 2014, she says she has walked dogs with the Appellant 3 or 4 times. She was aware of several complaints about the Appellant. She felt that understanding the context was important and she understood the need for control in certain circumstances.

- b) C.A. credited the Appellant with effecting significant and positive changes in her 120 lb Great Dane dog, Mya, who became a handling problem following a house fire. The Appellant worked with the dog and the family, to help to establish “house rules” essential to creating a calm environment. She had worked with other dog trainers with no results. Mya continues to be in the Appellant’s care 2-3 days per week.
- c) L.D. adopted an 18-month-old Golden Retriever that developed severe aggression issues, especially towards other dogs. It also bit her 5-year-old daughter. She was referred to the Appellant and, while she felt his methods appeared unorthodox because of his assertive dominance as a pack leader, he was also affectionate. She has seen the Appellant flip her dog on its back once. She says the Appellant’s methods have taught her to become more in control of her dog. She made use of his services until the dog died at 12 years of age.
- d) H.B. said her mother-in-law (a prior client) recommended the Appellant. Her dog, Lebron, is a 75 lb rescue dog, with leash aggression, severe anxiety and stress problems she attributed to an abusive previous owner. She was seeing positive results after only a month of training with the Appellant. She felt she could understand how an onlooker might not understand the Appellant’s training methods.
- e) Dr. [REDACTED] is a practicing veterinarian with 16 years of experience. He received a recommendation about the Appellant’s services to help his adopted dog Skylar, a Pitbull mix, become the perfect family dog. He says that Skylar did phenomenally well under the Appellant, became calm and confident, and showed no emotional trauma. He has known the Appellant for a year and two months. When adopted, Skylar was rambunctious, not aggressive, but in need of a trainer. When they met, the Appellant explained his approach to training, which the witness favourably linked to his familiarity with the way the Israeli army trains dogs. He says the Appellant’s methods appear rough but the dog responded to his method. He secretly followed the Appellant a couple of times to see how he worked and thought his method was perfect and professional. He understood the Appellant only took on challenging, large breed cases. He stated that punching and holding a dog to the ground is sometimes necessary, but in his view, it is not abusive. Dr. [REDACTED] agreed he is a qualified veterinarian and not a behaviourist.
- f) S.P. rescued Zoe, a Golden Retriever, from a puppy mill as a 3-year-old in 2008. She was referred to the Appellant by a local kennel to address the dog’s aggression issues. In the first year, she learned how to maintain control of her dog by being alpha and going on lots of walks with the Appellant. She saw the Appellant put her dog to the ground but never saw a dog punched or thrown to the ground. She describes the

Appellant as an excellent teacher and says she now has a solid and reliable dog. She still uses the Appellant's services for boarding when required and dog walking 3 days per week.

- g) L.O. lives in an apartment with her 5-year-old, 170 lb Great Dane, Makalu, she purchased as a puppy. The dog does not have aggression issues but, as L.O. wanted it to be well-rounded, she obtained a referral to the Appellant from her veterinarian. The Appellant walks and trains Makalu and she and her husband receive training on how to handle the dog. The dog has become easier to handle as a result. She has never seen the Appellant use aggressive control measures. She continues to board Makalu with the Appellant on occasion.
 - h) R.B. has a male, neutered Boxer that had become aggressive, barking or snapping at other dogs randomly. It was 3 ½ years old at that stage and had obedience training and private training. The dog's behaviour improved over the 4-6 months with the Appellant's approach of training dogs in a pack. She still employs the Appellant's services 3 times per week.
 - i) J.S. met the Appellant by chance while walking his dog, George. When George showed an aggressive reaction to a greeting, the Appellant gently put George on his back who then yelped defiantly. The Appellant then made George and the dog that was with the Appellant "comfortable friends." The event upset onlookers, who made a complaint. In essence, he says the activity was misunderstood by the onlookers.
 - j) C.H. has known the Appellant for 12 years. He walked his dog Rambo with the Appellant for a while. He felt the Appellant provided a valuable service. He feels many potentially aggressive dogs go untreated. "He has the ability to employ his pack training methods to change aggressive and dangerous behaviour." He has seen the Appellant put dogs on the ground gently but has never seen him hit, shout or lift one off the ground.
 - k) A.C. is a neighbour who has acted as an assistant to the Appellant for the past five years. He helps the Appellant take dogs on walks, sometimes with and sometimes without the Appellant. He has seen dogs change from being aggressive and unbalanced to balanced and secure by working in a pack. He says dog security comes from the leader, the alpha dog. He has never seen the Appellant abuse a dog but has seen dogs put on the ground and heard them yelp. A.C. has no educational background relating to dog behaviour.
19. These witnesses spent little if any time at the Appellant's residence and offered no meaningful evidence about the state of his residence or property.

20. SPC Alex Jay was the investigating officer for the Society. He testified that he filed the ITO after reviewing the video of the August 1, 2019 incident and also on the basis of complaints the Society had logged about the Appellant's handling methods. These complaints spanned from 2006 to 2019 and included a total of 42 separate complaints from various parts of Vancouver.
21. The video shows that on August 1, 2019, the Appellant was walking six dogs in a lane close to his residence when an altercation with two dogs behind a fence resulted in a fight between two dogs under his control: his dog Carebear and a client's dog Dawson. This video was later reviewed in detail by the Society's animal behavioural expert and a veterinarian.
22. The Panel's review of the Society's complaint records show abuse examples including: a pit bull type dog having its face shoved into the ground and spat at after it had dragged another dog it was tethered to; a dog's foot being stepped on; a dog being kicked in the head and yelled at; dogs tethered together being yelled at; a dog being grabbed by the lip; and a dog being thrown to the ground and punched four or five times in the face. These complaints all, in some way or another, related to dogs being roughly handled and made fearful. On more than one occasion, the Society issued Notices relating to rough handling.
23. SPC Jay obtained a Warrant which was executed on August 3, 2019 in the company of three other SPC officers, two Vancouver Police Department officers, and Dr. Rebecca Ledger, an animal behaviour scientist. Dr. Ledger spent two hours at the premises, observed the six dogs, Carebear, Mika, Duphous, and Hazel who are the subject of this decision and Skylar and Simba that belonged to clients. She made observations related to nutrition, environment, health, and behaviour.
24. SPC Jay seized all six dogs. That same day, Skylar and Simba were returned to their respective owners under a care agreement which included direction not to use the services of Mr. Affenzeller or his company Dog Talk for any services in the future.
25. The owner of Skylar is the Appellant's veterinarian, Dr. [REDACTED]

Medical Evidence

26. The Appellant's veterinarian, Dr. [REDACTED] assessed Carebear's ear injury resulting from the August 1, 2019 incident. He noted the ear was partially amputated and bleeding profusely. Despite the injury, he says the dog was easily examined.
27. Dr. [REDACTED] differentiated between "critical distress" and "distress" under the *PCAA* and said that animal owners can decline treatment where it falls into the category of "distress." He says pain has many faces and is subjectively determined. He says in his daily practice, owners often decline recommended treatment. As an example, he said with tooth problems the cost of treatment is often a deciding factor for the owner. He agrees Carebear was in distress because of the ear damage and a few additional superficial scratches on his neck but says he wouldn't die if not treated. Duphous had some chronic health issues—eyes, teeth, osteoarthritis and a lump on its elbow—but these were not significant pain issues. In his view, none of the conditions were painful and treatment would be expensive. The Appellant declined treatment for Duphous. Dr. [REDACTED] stated that these were working dogs and not in the best of condition but that was not a concern to him. [REDACTED] evidence was that he would be the first to speak up if ever the Appellant was to neglect his dogs. His opinion is that the Appellant comes across as rough-edged and that his treatment of the dogs isn't perfect, but it is acceptable.
28. Dr. [REDACTED] was asked if he had reviewed Dr. Karen Harvey's 28-page report on her examination of six dogs. He stated that while he largely agreed on her assessment of the medical conditions, he did not feel this amounted to neglect.
29. Dr. Ian Welch is a veterinarian who was asked by the Society to provide his opinion on the video clip. His description detailed, at several second intervals, the act of an individual lifting a dog from the ground, briefly suspending it in the air, then forcefully driving the left side of the dog's skull into the street, followed by the left shoulder, chest and hip hitting the street. The individual then strikes the dog on the right side of his face twice in rapid succession and five seconds later strikes the dog again in the face with a closed fist. He then stands and gestures for the dog to stand up and then appears to talk to other of the dogs nearby. Twelve seconds later he again strikes the dog on the right side of his face with a close fist. There is a break at the 30 second mark of the video. By the end of the first 30 seconds the dog was still lying on its side. During the last six seconds of the 36 second video the dog's front legs were lifted off the ground and the dog's front shoulder was then driven to the ground.
30. Dr. Welch's report describes an image of Dawson taken at the time of a veterinary exam on August 5, 2019 and references the attending veterinarian's findings of a swollen left cheek, reportedly from a bite received August 1, 2019. His report states, "It is clear from

the video that Dawson was acting very submissively and fearful with only flinching movements when the individual punches him in the head.” Dr. Welch testified that it was his belief that this injury was likely a result of blunt force trauma. Dr. Welch offered that the video was about abuse, not positive punishment. The dog was punished for about 30 seconds, well beyond what a dog could understand.

31. In response to questions from the Appellant, Dr. Welch testified to having had lots of animal behavioural training, that dogs have a poor long-term memory and that any correction must be made within a 1-2 second timeline. Anything beyond 3-5 seconds is abuse. All general veterinarians have some training in behaviour modification but there are specializations to pursue beyond that.
32. In response to Panel questions, Dr. Welch stated that dog trainers are not certified and there is no process for certification. The vast majority of dog trainers use positive reinforcement approaches. He describes negative punishment approaches as “old school.”
33. Dr. Harvey, a veterinarian, provided a report following her examination of the six dogs on August 3, 2019 at the Vancouver SPCA shelter. She concluded that all the dogs were suffering from chronic conditions. Summing up her 27-page report, Dr. Harvey reported that while all the dogs were of decent body condition, all except the one that received care for the lacerated ear (Carebear) showed chronic disease processes of the eyes, skin, joints/arthritis, severe dental disease and abscessation. She found that the older dogs (Mieka and Duphous) both suffered from exceptionally severe dental disease. She was also concerned about the level of scarring. She stated, “I have no doubts that the animals I have examined today have been experiencing chronic ongoing pain and discomfort in addition to blatant neglect and untreated medical conditions. For the younger dogs especially, I do find it unusual for them to have accumulated as many scars as they did in their short lives.”
34. Dr. Ledger was qualified by the Panel as an expert in animal behaviour and welfare. Her report summarizes her observations while attending the execution of the warrant and seizure on August 3, 2019, her review of the video including the Appellant striking Dawson, the response of the other dogs, and the state of the premises where the dogs were housed. She acknowledged speaking to the Appellant at the time of seizure to obtain context for the video and the events which preceded the video including Dawson’s aggressive behaviour.
35. She described Dawson’s reaction as becoming very stiff and still when put down, employing a fearful strategy typical when fight or flight is not available. She describes this as a state of freeze indicative of a high state of fear lasting half a minute or so. She supported the view of Dr. Welch that Dawson was well past the learning stage. Animals

don't learn when in a high state of stress and he would be unlikely to link this treatment with a lesson. In her view, it is wrong to use a dominance hierarchy approach when teaching dogs. She does not believe in dominance relationships. In comparing dominance hierarchy methods with positively reinforced training, her opinion is that the latter is far better. Considering the history of the dogs, Dawson's known history of aggression, dogs being tied together, putting them face to face, and using punishment, her opinion is that the problem as depicted in the video was foreseeable. She concludes that the Appellant's actions cannot be considered as necessary intervention; rather, they were delayed punishment. Such punishment will not be effective in preventing a future, similar aggressive incident between these two dogs.

36. Dr. Ledger commented in her report on the response of the other five dogs present during the videoed event. In her view, their body posture all indicated anxiety, a sign of distress.
37. Concerning her two hours of observations while the seizure was occurring, she noted health issues with Duphous, Mieka, Hazel, and Carebear similar to those identified by Dr. Harvey, as well as significant behavioural concerns with respect to Hazel. Hazel exhibited a startled reaction to a water hose being raised, leaping away to avoid handling, flinching to a raised hand—all indications of being fearful and lacking affection.
38. Dr. Ledger made observations using what she described as a Five Domain model which provides a framework for comprehensive assessment of the welfare of animals across the following four domains: Nutrition, Environment, Health, and Behaviour. The impacts of deficits in these four domains are described in the fifth domain, Affective Experience or Mental State. There were no significant findings under nutrition. Under environment, she found the yard spacious with no apparent hazards. One dog bed was urine-soaked and the yard was very dirty, heavily soiled, and contained multiple piles of feces in various states of decomposition. Soiled dog crates are indicators that dogs were being kept in their crates too long. Carebear was wearing a cone (as a result of treatment) and was unable to stand in the crate. Under health, she notes concerns related to arthritis, dental issues, ear injuries from attack, tight fitting collar and overgrown nails. Under behaviour, her significant findings related to no observed play opportunities and fearful responses.
39. She concludes:

In general, the veterinary care and general care of ... DUFUS, HAZEL, and MIKA was inadequate, leading to the dogs unnecessarily suffering from RESPIRATORY DISCOMFORT, PHYSICAL DISCOMFORT, STIFFNESS and PAIN. ...The environment was poorly maintained and heavily soiled, leading (to) OLFACTORY DISCOMFORT, ANXIETY. [emphasis in original]

40. In response to these environmental and care observations, the Appellant stated that he was in a car accident and one product of his injuries is stress. As a result, he has had to learn to delegate. He is in the process of negotiating facility care in a bartered arrangement with someone in need of accommodation. The hope is that the facility would be kept in better condition in return for providing that person accommodation. Since the seizure, he has made some improvements. He has cleaned up the kennels and planted grass. The urine-soaked bed was Mieka's, and he believed the urine problem was a result of arthritis medication. He has discontinued its use.

VII Analysis and Decision

Distress

41. Part 2.1 of the *PCAA* 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.

42. 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.

43. Given the statutory framework, this Panel must first determine whether the Appellant's four dogs (Hazel, Carebear, Duphous, and Mieka) were in distress at the time of seizure.

We have considered the competing views on the issue of distress (and whose views should be accepted) and then determine whether the seizure was justified.

44. In considering the issue of distress, the Panel identified two key, interrelated elements: the Appellant's dog handling and training approach, and the dogs' housing and care (including health concerns). We consider each dog in turn.

Hazel

45. On the dog handling and training elements, it is not clear that this dog was involved in the videoed event and it is not clear on the evidence the extent to which she was used as part of the Appellant's training routines. However, Dr. Ledger's evidence is helpful on the second element related to housing and care. She found Hazel generally healthy but she appeared highly fearful of the Appellant upon seeing him pick up a hose and she seemed to suffer from anxiety, fear and panic when in the presence of the Appellant. Dr. Ledger concluded this was evidence of abuse. Hazel's coat was described as greasy and yeasty, she had some ulcerations on her gums and, as with all the dogs, she was living in unsatisfactory conditions.
46. The Panel accepts Dr. Ledger's opinion, supported by Dr. Harvey's findings that Hazel was in distress at the time of seizure.

Carebear

47. On the dog handling and training elements, this dog was part of the Appellant's training technique and was injured in the altercation while under the direct care and control of the Appellant. Dr. Ledger, Dr. Harvey and Dr. Welch all considered this incident abuse. Dr. Ledger was of the opinion that the attack was foreseeable. The Appellant's training choice that day failed to protect Carebear from circumstances likely to cause (and which in fact did cause) distress and significant injury. Any other concerns related to care and housing are insignificant in relation to this injury.
48. The Panel accepts these experts' views that Carebear, having suffered a significant, preventable injury on August 1, 2019, was in distress at the time of seizure.

Duphous

49. On the dog handling and training elements, this dog was also not apparently part of the Appellant's training technique as he was described by the Appellant as being retired. Relating to health and care, Dr. Harvey was of the opinion that Duphous needed the most extensive medical attention of the four dogs seized. Even the most supportive veterinary

witness, Dr. [REDACTED] agreed with Dr. Harvey that the dog was suffering from a range of conditions affecting his eyes, teeth, and mobility. While he discounted the dog was in pain, he recommended treatment which was declined by the Appellant. Treatment, generalized Dr. [REDACTED] is expensive and often people decline to treat their dogs because of cost.

50. Despite the views of the Dr. [REDACTED] the Panel prefers the evidence of Dr. Harvey and concludes that this dog was not being properly cared for, was being deprived of veterinary treatment and was suffering from neglect.

Mieka

51. On the dog handling and training elements, the Panel heard no specific evidence that this dog was involved in the videoed event. It was, however, referred to at least once as being part of the training routine in the complaint logs. On health and care, Dr. Harvey's evidence is that Mieka exhibited significant discomfort related to severely overgrown toenails and chronic arthritis; she also suffered from exceptional dental disease.
52. The Panel finds that this dog was being deprived of veterinary treatment, in pain and suffering from neglect.
53. In making the above determinations, the Panel has had to review the evidence of all witnesses and determine whose views to accept. Clearly, the Appellant does not believe his training techniques are abusive. The many clients and supports called claimed that his methods have produced desired results. Notably, these witnesses had little comment on rough handling although some admitted that onlookers may have gotten the wrong idea and they understood why there may have been complaints. These witnesses described their personal interactions with the Appellant, going on walks, and seeing the Appellant demonstrate handling by gently pushing the dog to the ground. These witnesses did not report rough handling, yelling, or throwing. They did not speak to the timing of effective corrective action nor did they speak to the state of the Appellant's residence. Specifically, the Appellant's own veterinarian, Dr. [REDACTED] while acknowledging the Appellant's methods appear rough, took no issue with them. Based on his observations, he did not find the Appellant's techniques abusive. Dr. [REDACTED] as the treating veterinarian, also commented on the dogs' health generally. While he agreed with Dr. Harvey's assessment of the range of conditions suffered by these dogs, his main dispute is that he does not believe the dogs were in pain or neglected.
54. In response, the Society's expert, Dr. Ledger, was highly critical of the Appellant's training techniques which she says are not supported by the behavioural studies in the literature. Her opinion was that the Appellant's actions in the video were not only

inappropriate but, extended beyond the very brief timeframe for correction that is considered acceptable. She described the actions as abusive and counterproductive. Both Dr. Ledger and Dr. Welch provided a second-by-second description of the video which they felt depicted violent treatment going well beyond the brief window of useful learning where a dog can link correction to behaviour. With the punishment extending over the entire 36 second video, the dog was put into a high state of fear, in addition to suffering injury at the hands of the Appellant. As well, the accompanying dogs also exhibited anxious responses.

55. Dr. Ledger felt that the supportive evidence of the Appellant's witnesses could be explained; dogs trained in this manner were perhaps exhibiting an appearance of betterment. She felt it likely they had only developed inhibitions.
56. Based on her undisputed qualifications and her opinion supported by relevant behavioural studies, the Panel prefers Dr. Ledger's opinion on matters related to animal behaviour to that of the untrained Appellant or his clients. We also prefer her evidence to that of Dr. [REDACTED] who by his own admission had not witnessed harsh treatment first hand. He also did not comment on the video or its contents as summarized in the review decision or by other experts.
57. Turning finally to whether the seizure was justified, the Panel having seen the video, heard from the Society's expert witnesses and found all four dogs in various stages of distress, finds the seizure was reasonable in the circumstances.

VIII Return of the dogs

58. Having determined that Carebear, Mieka, Duphous and Hazel were in distress and their seizure justified, the Panel now must turn to considering the best interests of the dogs and whether those interests could be served by returning any, some, or all of them to the Appellant. The courts have considered the legislative framework in 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.

59. 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.

60. The Panel has applied this analysis to the facts of this case. We acknowledge that the Appellant appears to care about his dogs. But the question we must answer is whether the Appellant is capable of taking action on the deficiencies identified by the Society's witnesses in his training, treatment, and housing so as to provide adequate care for his dogs should they be returned.
61. The Panel heard extensively from the Appellant on his dog handling and training approaches. He outlined his training methods and described how he works with dogs in packs, often tethered together on walks so that the dogs will learn from each other and learn to become subordinate to their master (him). He says most of the dogs he works with are not "normal", are unbalanced, and have behavioural problems. He believes his approach works. He diminishes the prior complaints made against him to the Society and the characterization of his techniques as abusive. He said he sometimes acts as if he is angry, but that this is an act. He denied striking, kicking or lifting dogs off the ground as reported but admitted that sometimes dogs do yelp. He says the videoed event as described was an exception. It was an emergency situation that he had to get under control. His views are in stark contrast to the expert witnesses who concluded the videotaped behaviour was abusive and the result foreseeable. The Appellant's conduct put his dogs in distress.
62. The Appellant has been employing this training method in his business for a number of years and called numerous supporters to demonstrate its effectiveness. The Appellant did not appear to hear the concerns of the Society's witnesses and, as such, provided no real response. His position is that his training methods are appropriate and successful; he sees the videotaped incident as an unforeseeable, one-time event between two specific dogs. We disagree. In light of the complaint history, the video and the expert testimony, we agree that the incident was foreseeable and without a significant adjustment to his training techniques, similar incidents are likely to recur. As the Panel found the Appellant had no significant insight into the abusive nature of his training techniques, we have little confidence that he will be able to change his practices. His techniques appear to be a deeply held philosophy which does not appear to share support among experts in dog behaviour.
63. With respect to Mieka and Duphous, there was evidence of neglect and a lack of veterinary treatment. While there was disagreement on the veterinary evidence as to whether the dogs were in pain due to untreated medical issues, the Panel decided above that the dogs' untreated medical issues led to distress. Dr. [REDACTED] indicated the Appellant had declined recommended treatment. The Panel heard no evidence from the Appellant of his intention to seek recommended veterinary treatment for his dogs in the future so as to alleviate any suffering should the dogs be returned. The Appellant gave no

evidence on how he has addressed the financial issues which interfered with him seeking recommended veterinary care in the first place.

64. Moving on to the second element, housing and care, the Panel again relies on the expert testimony of Dr. Ledger. While apparently being adequately fed, the dogs' home environment was described as inadequate and dirty. A dog bed was soaked with urine and there were piles of decomposing feces in the yard. The associated smells were stressful. While these conditions in and of themselves may not be determinative of whether the dogs should be returned, the Appellant's plan to delegate the responsibility of facility care in exchange for some future bartered arrangement for accommodation is, in our view, insufficient. We have no way of knowing whether the Appellant will even find someone prepared to enter into such an arrangement, let alone whether such an arrangement would result in better living conditions for the dogs. The Panel is not satisfied that the Appellant's plans adequately address the Society's concerns and this is yet another indication that these animals would find themselves continuing in a state of distress if returned to the Appellant.
65. Given the foregoing, the Panel finds that the Appellant has not met his onus to show why any of these dogs should be returned. He has failed to acknowledge the Society's concerns about his abusive training techniques, access to veterinary care and appropriate housing. He has also failed to identify meaningful and implement meaningful changes to remedy the Society's concerns which led to the seizure. As such, the Panel is in agreement with the Society's decision and finds that it would not be in the best interests of the dogs to be returned.

IX Order

66. In accordance with S. 20.6(b) of the *PCAA*, on hearing this appeal, the Panel permits the Society, in its discretion, to destroy, sell, or otherwise dispose of the animals.

X Costs

67. With respect to costs, and having heard no dispute from the Appellant, the Panel finds the Society's costs are reasonable, and confirm, pursuant to s. 20.6(c) of the *PCAA*, that the Appellant is liable to the Society for the sum of \$7,401.86 which represents part, but not all, of the costs of care associated with the four dogs.

Dated at Victoria, British Columbia this 11th day of October, 2019.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Dennis LaPierre, Presiding Member



Al Sakalauskas, Vice Chair