

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 13
SERVAL CATS, 2 DOGS AND 1 DOMESTIC CAT

BETWEEN:

CAMERON CHURCHILL and NISHA BHASIN

APPELLANTS

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Tamara Leigh, Presiding Member

For the Appellants:

Courtney AuBuchon, Counsel

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

September 5-6, 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 13 serval cats¹, 2 dogs and 1 domestic cat.
2. Cameron Churchill and Nisha Bhasin (the Appellants) are appealing the July 30, 2019 review decision issued under s. 20.2(4)(b) of the *PCAA* by 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 Appellants in this case are seeking the return of all the seized animals.
4. The Appellants were represented by counsel and called two witnesses: a veterinarian who had treated the Appellants' animals in the past and an individual with whom they have an informal arrangement to provide care for their animals should they need help in the future. The Society was also represented by counsel and called four witnesses: the veterinarian who examined the dogs and domestic cat (but not the veterinarian who examined the serval cats) following the seizure, the veterinarian who performed the post-mortem on the deceased serval cat, and the special provincial constable (SPC) who had contact with the owner before, during and after the seizure. The hearing was recorded.
5. In brief, this appeal involves the seizure of serval cats, dogs and a domestic cat from the Appellants' rural property in Little Fort, British Columbia. For reasons explained in detail later, the Panel has decided to return the domestic cat, but not to return the dogs or the serval cats to the Appellants. 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 and serval cats.
6. The Society sought to cover costs in the amount of \$14,333.35. The Panel has decided that the appellants are liable to the Society for costs in the amount incurred by the Society with respect to care of the animals while in custody.

II. Material Admitted on this Appeal

7. The following materials were admitted into evidence:
 - a) BCSPCA July 30, 2019 Decision (**Exhibit 1**)
 - b) Appellant August 1, 2019 Notice of Appeal (**Exhibit 2**)
 - c) Appellant August 6, 2019 Filing Fee (**Exhibit 3**)

¹ A serval cat is a tawny, black-spotted long-legged tiger cat native to Africa. Although they are considered exotic, they are not subject to the Controlled Alien Species Regulation.

- d) BCFIRB August 7, 2019 Notice of Appeal (NOA) process letter (**Exhibit 4**)
- e) BCSPCA August 8, 2019 email requesting change of hearing date (**Exhibit 5**)
- f) BCFIRB August 12, 2019 confirmation email changing hearing to Sept. 5th (**Exhibit 6**)
- g) BCSPCA August 14, 2019 Small Felide Husbandry Manual (**Exhibit 7**)
- h) BCSPCA August 14, 2019 SOP-70-045 Husbandry of Serval Rev 1 (**Exhibit 8**)
- i) BCSPCA August 14, 2019 SOP-70-082 Cat Building Exhibits General Maintenance Protocol (**Exhibit 9**)
- j) BCSPCA August 14, 2019 Zoo Standards for Keeping Small Fields in Captivity (**Exhibit 10**)
- k) BCSPCA August 14, 2019 Felid Standards February 2018 (**Exhibit 11**)
- l) BCSPCA August 14, 2019 Riverview DIET review SERVALL (Sept-Apr) May 22 2019 (**Exhibit 12**)
- m) BCSPCA initial disclosure (Tabs 1-39, including updated tabs 2-4) (Aug 14, 2019) (**Exhibit 13**)
- n) BCSPCA disclosure (Tab 23) (videos) (Aug. 14, 2019) (**Exhibit 14**)
- o) BCSPCA disclosure (Tab 37) (videos) (Aug. 14, 2019) (**Exhibit 15**)
- p) Appellant August 21, 2019 disclosure (Tabs 1–90) (**Exhibit 16**)
- q) Appellant Aug. 21, 2019 witness contact form (**Exhibit 17**)
- r) Appellants Aug. 21, 2019 written statement (**Exhibit 18**)
- s) Written Submissions of BCSPCA (Aug 26, 2019) (**Exhibit 19**)
- t) Affidavit #1 of Marcie Moriarty (Aug 26, 2019) (**Exhibit 20**)
- u) BCSPCA Witness contact form (Aug 26, 2019) (**Exhibit 21**)
- v) BCSPCA Expert Witness contact form (Aug 26, 2019) (**Exhibit 22**)
- w) BCSPCA further disclosure (Tab 40, 41) (Aug 26, 2019) (**Exhibit 23**)
- x) BCSPCA updated document disclosure index (Aug 27, 2019) (**Exhibit 24**)
- y) BCSPCA further disclosure (Tab 42, 47) (Aug 27, 2019) (**Exhibit 25**)
- z) BCSPCA further disclosure (Tab 48, 51) (Aug 27, 2019) (**Exhibit 26**)
- aa) Appellant Aug 29, 2019 updated index (**Exhibit 27**)
- bb) Appellant Aug 29, 2019 submission of Nisha Bhasin & Cameron Churchill (**Exhibit 28**)
- cc) Appellant U. Euthanasia Info (Aug 29, 2019) (**Exhibit 29**)
- dd) Appellant V. Nutritional Evaluation (Aug 29, 2019) (**Exhibit 30**)
- ee) Appellant W. Photographs of Titus (Aug 29, 2019) (**Exhibit 31**)
- ff) Appellant X. Photographs of House and Barn (Aug 29, 2019) (**Exhibit 32**)

III. Grounds of Appeal

- 8. In their Notice of Appeal, the Appellants identify the following grounds:
 - a. They did not receive copies of the reports of Dr. Langelier and Dr. Denstedt, which the review decision relied on and as a result, did not have the opportunity to prepare a proper response.

- b. The review decision did not provide details of how the Appellants' plan was inadequate or the rationale behind the conclusion that they would be unlikely to be able to deliver on the plan.
 - c. The Society's file did not disclose suitable evidence to sustain keeping the dogs and domestic cat so the Appellants are not aware of the case they must meet.
 - d. The Society's decision appears based on the conditions at the time of seizure without proper consideration of the proposed changes to prevent future problems.
9. The Appellants also appeal the society's claim for costs.

IV. Preliminary Matters

10. In their grounds of appeal and in their submissions, the Appellants set out procedural fairness arguments related to the Society's failure to disclose certain veterinary information in advance of the review decision and the inadequacy of the reasons given.
11. To be clear, appeals to BCFIRB under Part 3.1 of the *PCAA* are not to be mistaken for judicial review. These are appeals by way of rehearing (where the onus of proof is on the Appellant and the Appellant can adduce any evidence they wish and challenge the decision for any error of fact, law or judgment): *A.B. v. BC Society for Prevention of Cruelty to Animals*, August 9, 2013 (paragraphs 80-93). Whether or not the Society followed a procedurally fair process in coming to its decision, is not the substantive issue to be determined on this appeal.
12. I agree with the following passage in *A.B.* where the Panel stated in paragraph 93:
- Where, as here, the Society has made a reasoned review decision, BCFIRB will consider and give respectful regard to those reasons. However, that consideration and respect does not mean the Society has a "right to be wrong" where BCFIRB believes that the decision should be changed because of a material error of fact, law or policy, or where circumstances have materially changed during the appeal period. BCFIRB can give respect to Society decisions without abdicating its statutory role to provide effective appeals.
13. The Appellants also alleged that the Society wrongfully relied on complaints from a group of individuals who engaged in what they describe as a sustained campaign of harassment against them over a number of years. They say these individuals made false complaints to the Society, and the Society failed to adequately investigate and verify the allegations. The Appellants have commenced lawsuits to address these allegations as they consider them frivolous and vexatious.
14. Although these allegations were not well developed on the appeal, the motivations of complainants making reports to the Society and the Society's reliance on those reports are not relevant to the Panel. This appeal focuses on the observations of those persons in

attendance leading up to, and at the time of, the seizure and whether, based on that evidence, the Society made a reasonable determination that the animals were in distress at the time of their seizure.

15. In this decision, the Panel must first determine whether the animals were in distress when seized, and if so, whether it is in the best interests of the animals to be returned to the Appellants. To make these determinations, the Panel must first evaluate the evidence. As presiding member, I have reviewed and considered all of the documents in the exhibits listed above and all the evidence provided during the hearing whether or not it is summarized in the following paragraphs.

V. History Leading to Seizure of Animals and the Day of Seizure

16. On May 26, 2018, the BCSPCA Call Centre received a cruelty complaint regarding the purchase and subsequent death of a serval kitten. The complainant stated that their veterinarian advised that the kitten had a broken pelvis, two broken legs, and something was seriously wrong with the sternum that was likely from over-breeding. The veterinarian recommended euthanasia. The complainant stated that the Appellants took the kitten back offering to replace it with another kitten which the complainant declined.
17. On June 1, 2018, SPC Carla Edge attended the Appellants' property with RCMP Constable Hall. While on the property, she observed two large serval cats. Mr. Churchill initially denied there were servals on the property but when asked if the animals in the windows were servals, he said yes. He denied SPC Edge's request to inspect the animals.
18. On June 2, 2018, SPC Edge inspected the Appellants' property and met with Mr. Churchill. During this visit, SPC Edge met Ms. Bhasin. After explaining that she was concerned about the welfare of the servals, SPC Edge issued a Notice to the Appellants to address the poor ventilation, high ammonia levels, lack of space and lack of exercise, and to require that they provide veterinary records.
19. On August 2, 2018, SPC Edge spoke on the phone with Mr. Churchill who advised her that the two servals had been sold two weeks after SPC Edge's attendance and that the veterinary records had been sent to the new owners. He indicated that they would no longer be breeding servals, that the ducks and chickens had been sold, and that the pigs were in the freezer. SPC Edge advised Mr. Churchill that the servals were part of an investigation and, as a Notice had been issued, she needed to follow up with the new owner to ensure that welfare concerns were being addressed. She issued verbal directions to Mr. Churchill to provide contact information for the new owner and vet records by August 8, 2018.
20. On August 8, 2018, SPC Edge received an email with attachments including a bill of sale, and invoices for services including x-rays at two different veterinary clinics in Ontario confirming a broken right hind leg. SPC Edge was unable to contact the new owner.

21. On August 12, 2018, SPC Edge contacted the Ontario SPCA and requested they attend the address provided on the bill of sale. On October 11, 2018, SPC Edge spoke with the Ontario SPCA Officer who attended the address on the bill of sale and found two apartments. One unit was vacant and one was being renovated. She canvassed the neighbours and could not locate any individual owning large serval cats in the area.
22. On October 27, 2018, SPC Edge attended the Appellants address but the driveway and walking access was blocked with chains and barbed wire. She observed a vehicle parked beside the house and pigs in the pen.
23. On April 29, 2019, the BCSPCA Call Centre received a cruelty complaint from Valleyview Veterinary Clinic in Kamloops regarding a serval kitten with two broken femurs that was not getting veterinary care and was believed to be in the possession of the Appellants.
24. On April 30, 2019, SPC Edge spoke by phone with Dr. Maricle, the Kamloops veterinarian who advised that approximately one week prior, the clinic received a phone call from a veterinarian in Ontario about a serval kitten with both back legs broken. He said it was being sent back to the breeder, Cannish Servals, in British Columbia. Dr. Maricle's staff contacted Ms. Bhasin to set up an appointment and when she did not show up for the appointment, he called Ms. Bhasin. She stated that the kitten was healing fine and sent Dr. Maricle a video and x-rays that were taken by the veterinarian in Ontario.
25. On April 30, 2019, SPC Edge spoke by phone with Dr. Auger, the Ontario veterinarian who confirmed that a client had brought a serval kitten into the clinic with broken femurs. He recommended an orthopedic consult or euthanasia. The animal owner stated that she wanted the x-rays sent to Cannish Servals and Ms. Bhasin for her veterinarian to review. Dr. Auger did not hear back from the animal owner so he contacted her and was advised that the breeder took the kitten back.
26. On April 30, 2019, SPC Edge received records from the Ontario and Kamloops veterinary clinics. In addition to the records about the kitten that initiated the complaint, the records included a history going back to April 2015 indicating health issues or injuries to 5 serval kittens in the care of Ms. Bhasin.
27. On May 3, 2019, SPC Edge spoke with Ms. Bhasin by phone and was advised that the kitten in question was in Ontario and they did not have serval cats at their property. Ms. Bhasin described the injury as an unfortunate accident and explained that servals have delicate bones. SPC Edge made arrangements to attend the property on May 13, 2019 but she received a voice message from Ms. Bhasin the same day indicating SPC Edge would have to contact Mr. Churchill before attending their property.
28. On May 3, 2019, SPC Edge spoke by phone with the Ontario woman who had purchased the serval kitten. She stated that she was cutting the kitten's hind nails and thought she hit a

nerve because the kitten couldn't walk afterwards. She indicated she could not have the kitten with her in Quebec until she obtained a permit, which required a 100-hour course to learn how to care for the kitten. She explained that the kitten was in the care of a friend in Ontario, and that she intended to seek a second opinion on the kitten's condition after completing her training.

29. On the afternoon of May 3, 2019, SPC Edge spoke with Mr. Churchill who stated no one was to attend his property without his permission and without him present. He expected to be at work in the East Kootenays until June 2019 with the exception of a court date in New Westminster May 14-16, 2019. SPC Edge negotiated an agreement to attend the property on May 17, 2019.
30. On May 17, 2019, SPC Edge and SPC Affleck attended the Appellants' property. They toured the kennel and barn and observed the cat room of the house from the window outside. SPC Edge also observed two dogs that she was concerned needed care: Coco, a dog with a significant injury to its right ear, and Zurg, a male Rottweiler who was noticeably thin. When SPC Edge advised Mr. Churchill that she would be issuing a Notice for Zurg, Mr. Churchill became angry and insisted the SPCs leave the property before the inspection was over. No Notice was issued because they were unable to complete their inspection.
31. On May 21, 2019, SPC Edge received an email from Ms. Bhasin stating that Zurg had been taken to Central Animal Hospital and that she received a new dewormer from the veterinarian. She did not indicate that Coco had been seen for the injury to the right ear.
32. On June 24, 2019, SPC Edge followed up with the Central Animal Hospital and obtained the veterinarian records relating to Zurg which showed that the clinic left a message for Ms. Bhasin and Mr. Churchill to pick up the prescribed dewormer but it was never picked up.
33. Based on her earlier interactions with the Appellants, on June 25, 2019 SPC Edge sought and obtained a warrant to enter the Appellants' property and, if necessary, to seize the animals. The warrant also included permission to search for and seize electronic equipment including computers, cameras, cellular phones, tablets and memory devices for the stored names, and contact information of Mr. Churchill and Ms. Bhasin's partners and buyers related to the breeding and sale of serval cats.
34. SPC Edge executed the warrant on June 27, 2019 with the assistance of SPC Affleck, a Conservation Officer and an RCMP Constable, and two others to assist with the seizure. Ms. Bhasin was home at the time of the seizure.

VI. The Review Decision

35. On July 4, 2019, the Appellants requested a review by Chief Prevention and Enforcement Officer Marcie Moriarty of the decision to seize their animals, disputing the grounds for seizure and requesting the return of their 13 serval cats, 2 dogs and domestic cat.
36. Ms. Moriarty issued her review decision on July 30, 2019. After reviewing the Warrant and Information to Obtain (ITO) of SPC Edge, related veterinary records, field notes and the submissions from the Appellants, Ms. Moriarty advised that she was satisfied that it was reasonable that SPC Edge formed the opinion that the animals were in distress, as defined by section 1(2) of the *PCAA*, and that the appropriate course of action was to take the animals into custody to relieve their distress.
37. When considering whether it would be in the best interest of the serval cats to be returned, Ms. Moriarty noted that there was no dispute that the conditions in which the servals were found at the time of seizure were unsatisfactory. She added “your own submissions acknowledge that the conditions were “unacceptable” and Dr. Langelier summarizes his review of the conditions by stating that the “deficiencies were not only numerous, but severe in nature.”
38. Ms. Moriarty also noted that the servals were examined by a veterinarian (Dr. Dentstedt) after their removal, who found that it was medically evident that the serval cats had “endured injuries of varying severity and it is highly unlikely that veterinary attention was pursued for these injuries at the time they occurred.” While Ms. Moriarty acknowledges that the examining veterinarian did not know for sure if veterinary treatment was sought, she noted that the Appellants provided no evidence to prove otherwise in their submissions.
39. Turning to the Appellants’ submissions, Ms. Moriarty noted that while the Appellants put forward a 9-point plan to accommodate the needs of the servals, their history with the Society demonstrates that they are unlikely to complete the work. With regards to the Appellants’ invitation to the Society to inspect and provide feedback on the housing plan, she noted that it is not the role of the Society and further states, “nor am I convinced that you would necessarily be receptive to feedback from the BC SPCA given your history as outlined in the ITO, including not being honest at times with our constables.”
40. With regards to the return of the dogs and domestic cat, Ms. Moriarty found that the Appellants’ submissions did not make any mention of the domestic cat, and only mentioned the dogs as an afterthought, saying that they would live in the shed on the property. While the veterinary examinations found all three animals to be in reasonably good health when they were seized, she noted that the dogs demonstrated significant

fearful behaviour. Ultimately, she found that the Appellants did not make a strong enough case for the return of the dogs and domestic cat in their submissions

41. Ms. Moriarty upheld the initial seizure and refused to return any of the animals to the Appellants.
42. The Appellants filed their appeal with BCFIRB on August 1, 2019.

VII. Appellants' Evidence

Appellant – Ms. Bhasin

43. Ms. Bhasin identified the name and type of the animals that were seized:
 - a. King Sheera, serval
 - b. Prince Akash, serval
 - c. Princess Ava, serval
 - d. Princess Avani, serval
 - e. Prince Vega, serval
 - f. Queen Seada, serval
 - g. Princess Malia, serval
 - h. Prince Sahil, serval
 - i. Prince Titus, serval
 - j. Princess Xeenaa, serval
 - k. 3 serval kittens born June 2, 2019 to Princess Ava and Akash (no names)
 - l. Nikita, Maine Coon Cat
 - m. Coco, brindle Mastador (lab/mastiff cross)
 - n. Black Jack – Coco's brother
44. Ms. Bhasin testified that she got her first serval cat, King Sheera as a kitten in 2012. She first found images of servals when she was researching how to bring cheetahs to Canada and decided to pursue servals instead. She says that she researched servals for three years before buying her first animal, including consulting with breeders, brokers and nutritionists about how to properly care for servals.
45. By the time they moved to Little Fort in February 2013, Ms. Bhasin testified that she and Mr. Churchill owned 5 serval cats and were already thinking of breeding servals.
46. Ms. Bhasin described the Little Fort property as approximately 10 acres with a full creek touching the property line. The house is approximately 2180 square feet and includes two floors and a basement. Other structures on the property include a large barn (approximately 2100 square feet), a small barn, and a small kennel for the dogs.

47. She testified that the big barn was used to house Mr. Churchill's tools, feed grains, and at the time of seizure, the dog Black Jack. Black Jack did not normally reside at the property. He was given to Mr. Churchill's brother as a puppy and had been dropped off at the property about a week before the seizure because the brother was going on a road trip.²
48. She described the kennel structure as an open kennel that all of the dogs could go in and out of as they pleased to get away from the weather. She says the kennel was not used for anything other than housing dogs.
49. Ms. Bhasin testified that when she and Mr. Churchill first moved to the property, they kept all 5 serval cats in the house, only separating individuals when they were in heat. She referred the Panel to a number of photographs [Exhibit 16, Tab P-69] that showed the servals in the house at Little Fort.
50. She described living with 5 servals like living with 5 dogs. "You train them, clean up after them, walk them. I take them to the creek or into the bushes. They sleep with us on our beds or on our couch. We treat them like a family member."
51. Ms. Bhasin noted that while in nature servals will fight among themselves, in captivity the owners are responsible to maintain order.
52. When asked about socializing the servals, Ms. Bhasin stated that she hosted monthly socials at their house, and that she would take them off the property regularly to see friends. Other activities include going out for coffee or dinner, attending cat shows, introducing the servals to strangers, and taking them on ferries, planes and car rides.
53. With regards to exercise and enrichment, Ms. Bhasin testified that she walked the servals every day on-leash around the property, and that she often uses a split-leash to walk multiple animals at a time. She also said that they use a variety of toys, training and socialization to overcome the naturally shy nature of serval cats, and train them as domestic pets. To illustrate this, the Appellants provided over 80 videos [Exhibit 16, Tab T] of servals feeding, training, walking on leash, cuddling, mating, nursing kittens, bathing and playing³.
54. Ms. Bhasin told the Panel that the situation at the house changed after two plumbing-related floods in 2016 that "completely destroyed the house." She said the cost to repair the house was going to be expensive to fix all at once, so they decided to fix it as money was

² It should be noted that Mr. Churchill's brother did not challenge the initial seizure and did not appeal the review decision. I have proceeded on the basis that while the Appellants may not be the "owner" of Black Jack, there is no dispute that they were the "persons responsible" for Black Jack within the meaning of section 11 of the *PCAA*.

³ The videos were unable to be shown during the hearing due to technical difficulties but were viewed independently following the first day of evidence.

available. They had to dry the whole house out and investigate to see if there was mold. Mr. Churchill did all of the construction work, renovation and repairs, while Ms. Bhasin helped with painting.

55. After the floods in 2016, Ms. Bhasin testified that the servals were housed at another location owned by a “silent partner.” According to Ms. Bhasin, the exact location and the name of the silent partner were protected by a confidentiality agreement prepared by the partners’ lawyer and signed by the Appellants.
56. Ms. Bhasin stated that the servals were relocated to the new location in part because of the need to renovate the house, and also for greater security from the “stalkers.” She told the Panel that they have a history with stalkers who have been harassing them by taking pictures, flying drones over the property, and “killing our dogs.” She testified that they have had dogs poisoned and shot and that they were worried for the servals, so they started looking for another property. Ms. Bhasin said that they called the RCMP to report the activity, but that the RCMP wouldn’t do anything because she didn’t have any evidence. As a result, Mr. Churchill and Ms Bhasin put up security cameras, electric fencing and barbed wire to improve security on the property.
57. Ms. Bhasin described the secret location where the servals were kept from late 2016 to one week before the seizure as “gorgeous, absolutely clean.” She described it as having lots of space inside and out, with beds, litter boxes, water cooler fountains, food dishes, toys and blankets but provided no supporting photos. She testified that both she and Mr. Churchill would see the cats on a regular basis.
58. Under cross-examination, Ms. Bhasin testified that they did not advise Ms. Moriarty that the animals had been kept off-site because of obligations to their secret partner. She also stated that they told SPC Edge that the animals had been kept off-site, but not Ms. Moriarty.
59. Ms. Bhasin testified that all of the servals were kept at the secret location except for Xeena, Vega, and Ceasar while they were caring for him. She said they eventually sold Xeena and Vega to an individual in Ontario who paid cash but then returned them a few months later. Xeena had broken her leg while in the care of the previous owner and that the Ontario vet said to put a splint on it and ship the serval home. Ms. Bhasin testified that she took Xeena to two other veterinarians and was told there was no need for surgery. She said that the previous owner did not want to pay for the serval’s care, and “basically abandoned Xeena with us.”
60. Ms. Bhasin testified that she and Mr. Churchill purchased two holiday trailers in mid-May 2019 that they were planning to use to house the servals when they moved to the new property in Quesnel. Their plan was to build outdoor enclosures around the trailers. She stated that both trailers had air conditioning, fans, windows, beds and kitchenettes. She

later stated that the initial plan was for Mr. Churchill and Ms. Bhasin to live in the trailers when they moved to the new property.

61. Under cross-examination, Ms. Bhasin stated that the servals were returned to the Little Fort property on June 19 or 20, 2019 because their silent partner was going through a divorce. There was no talk of the servals coming back before then.
62. When asked to describe the days leading up to the seizure, Ms. Bhasin testified that Mr. Churchill left for work on June 24, 2019. She woke the next day with a serious migraine and tried to do chores, but she could not walk the cats or clean the trailers. Eventually she went inside, took medication and went to sleep. She reports that she woke up feeling dizzy, but still fed the animals. She did not walk the cats, but took Black Jack out to relieve himself, and then put him back in the crate.
63. For the following four days, Ms. Bhasin testified that severe migraines and nosebleeds prevented her from being able to do anything. She told the panel that she called a friend, Ms Nadin, for help, but she was not available. She then called Mr. Churchill and asked him to come back from work early.
64. On the day of the seizure, Ms. Bhasin testified that she was still in bed when the BCSPCA arrived, and that she saw the cars arrive from the window.
65. Ms. Bhasin told the panel that prior to the seizure, she had only spoken with SPC Edge once for 5 minutes. She said that SPC Edge had not raised any concerns aside from Zurg, who looked very skinny. SPC Edge told Mr. Churchill that she wanted the veterinary records for Xeena and Vega, and they provided those records. She testified that prior to that incident, SPC Ken Kokosa responded to a complaint about the dogs, and that time he saw all of their dogs and serval cats.
66. Ms. Bhasin testified that on the day of the seizure the condition of the trailers was “not okay,” that she understands that it was unacceptable, and that she is sorry that she could not fix it. She told the Panel that she has made plans in case anything happened to her in the future, specifically Mr. Churchill will be permanently working locally and not be on the road anymore. She also indicated that they have a back-up facility that they can move the servals to for care and she has made arrangements with Ms. Nadin.
67. When asked about her plan for care should the servals be returned, Ms. Bhasin responded that she has an intensive nutritional plan developed in consultation with the Toronto and San Diego Zoos, among others, and that she is going to be researching more with “a renowned vet and nutritionist” in Quesnel. When questioned further about where the servals might be placed, she named Ms. Osborne at TLC Kennel in Kamloops as an option but did not produce any evidence of their conversations or formal arrangements.

68. With regards to the move to Quesnel, Ms. Bhasin said that they were not currently planning to move because they needed to put power and other services onto the property. In the meantime, they intended to build outdoor enclosures around the big barn on the Little Fort property, a project that she expected to take just a couple of days and no more than a week.
69. Speaking to the matter of health issues with the several cats in the past, Ms. Bhasin testified to the condition of Ceasar identified as the deceased kitten seized from the freezer in the house. She said Ceasar was part of a litter with Maximus and Burja. She testified that the kitten was given a clean bill of health by Dr. Maricle at the Valleyview Veterinary Clinic after a health check, vaccinations and microchipping. A day or two after the vet visit they noticed something wrong with the kittens and thought it might be the result of the microchip insertion. Ms. Bhasin and Mr. Churchill took Ceasar back to the vet for x-rays that identified a hairline fracture of the pelvis, though Ms. Bhasin stated that Dr. Maricle did not provide the report or tell them that the pelvis was broken.
70. After the x-rays, Ms. Bhasin said Ceasar started to decline. She testified that she took him back to see Dr. Maricle, and he told her to put the kitten on pain meds (Metacam) and let him rest. She referenced veterinary records and a medication workflow sheet where she documented daily observations of Ceasar from May 18-July 18, 2018 [Exhibit 16, Tab F-34]. Ms. Bhasin testified that Ceasar stopped eating around July 15, 2018 and she called Dr. Maricle and a local veterinarian, but they did not call back. She could not take Ceasar to the veterinarian herself because she does not drive and could not get a cab. She testified that Ceasar was euthanized by Mr. Churchill on July 17, 2018.
71. Under cross-examination, Ms. Bhasin was asked if the medication workflow sheet recorded what was fed or what was eaten. She answered that she did not recall and sometimes she would remember to write it down if he didn't eat something, and other times she did not. She still insisted that the records were reliable and accurate.
72. Ms. Bhasin testified that she noticed Ceasar's deformity, and that "he wasn't running around like a normal serval cat would." She kept him separated in the nursery room of the house for a few days, and then transferred him to the silent partner's house. She testified that Ceasar was eventually brought back to Little Fort because they couldn't make arrangements to care for him at the other location. He was with them "about 3-5 weeks" before he was put down.
73. Under cross-examination, Ms. Bhasin was asked if she noticed the bends in Ceasar's legs before he died [see Exhibit 13, Tab 34, Figures 6 & 7], to which she responded, "I don't have the same technology that vets have." She admitted that she took the serval to the vet because he was not developing normally but would not address why she did not make any note of the deformity in her workflow notes. When asked how old Ceasar was when he

died, she said that he was 4 months old, not 10 months old as she had told SPC Edge on the day of the seizure.

74. Ms. Bhasin also described health issues with a number of other servals, including:
- a. Titus, who she described as having similar issues as Ceasar, was taken to see Dr. Bajwa, who advised that they consult a zoo nutritionist and include a commercially prepared cat food as part of his diet.
 - b. Burja 2.0, who had the same problem. “The bones weren’t very good, but he initially got a good bill of health.” She testified that the person who bought him called to say that he had a leg fracture and a broken pelvis. The Appellants do not know if a fall caused the fracture but “Cam euthanized Burja 2.0 because he wasn’t walking properly. He showed signs of paralysis.”
 - c. Burja (a different animal than Burja 2.0) died after being treated with an antibiotic administered by Dr. Maricle to treat salmonella.
 - d. Akira was sold to a Ms. Laforest in Quebec, and a few weeks later broke both of her front legs while she was having her claws trimmed. The veterinarian suggested either surgery or euthanasia and the owner wanted a second opinion. Ms. Bhasin testified that she sent the x-rays and videos to Dr. Maricle but that Akira was never sent back to British Columbia.
 - e. When asked about a serval named Koshi, Ms. Bhasin testified that Koshi never had any issues while under her care, and that “allegedly the owner brought in fake documents during the litigation and said that Koshi had passed away.”
75. Ms. Bhasin provided a genealogy chart for the servals in her submissions [Exhibit 16, Tab A]. She initially testified that the records presented were complete, that they used different names, and that the chart recorded the dates of birth, not dates of breeding. Under cross-examination, Ms Bhasin was asked about a post-it note found and photographed in her office on the day of the seizure that said there were kittens born on February 27, 2019 [Exhibit 13, Tab 10, photo DSC_0072]. She testified that she had forgotten to enter that litter into the registry, and it was a mistake.
76. When asked if it was difficult to get veterinary support for her animals, Ms. Bhasin said that there are about 15 vets in Kamloops, and at times they have all been fully booked. There is also a mobile vet in Clearwater (Candle Creek), and Dr. Peters is a last resort at Canada West.
77. In response to questions about the plan for housing and keeping the dogs if they were returned, Ms .Bhasin testified that they had plans to convert some of the outdoor kennels to housing for the dogs, and to convert the pig barn to a dog barn because they don’t have

pigs anymore. She stated that the crate that housed Black Jack is no longer in use, and will not be used again in the future.

78. With regards to the domestic cat, Nikita, she said that he will be living in the house, and will have an upstairs room with cat trees, a litter box and toys, as well as a window to go in and out of as he pleases. She said that he has always been an indoor/outdoor cat.

Appellant - Mr. Churchill

79. Mr. Churchill is a contract millwright by occupation and has been working in the field for 30 years.
80. He said he has been breeding servals since 2014, and dogs since 2012 or 2013. He is no longer involved with breeding dogs as all of his breeding stock has died of old age.
81. Mr. Churchill described the plan to renovate the barn if the servals are returned. He said the barn space will be fully insulated, ventilated and lighted, with beds, toys, and structures for the servals to climb on. He said the space will be heated with radiant in-floor heating powered by a wood boiler outside the barn. The wood boiler will run the system for 12-15 hours off of one load of firewood and take 2-3 days to fully cool down to where it would actually freeze. He indicated that the inside of the barn would be divided by constructing an interior wall with wood framing and a wire. There would be an 8-inch air gap between the walls so the servals can't reach through. He estimated that constructing the interior wall should take 5-6 hours.
82. Mr. Churchill testified that the outside addition to the barn would include a 10-12 foot chain link enclosure that would run the length of the barn (32 feet) on both sides. The enclosure would be covered and include a pond and swings for the servals. The outside perimeter fence would have electrified fencing as a secondary defense to keep wildlife away from the primary fence. He estimated that enclosure would take 1-2 days to fully assemble.
83. When asked what the plans are for the servals when they moved to Quesnel, Mr. Churchill answered that he has 2 or 3 different plans. He said that the barn in Little Fort is easily movable and could be moved in two weeks if required. He also said there are other outside enclosures and housing areas on the property, though he offered no specifics.
84. Mr. Churchill testified that the servals were first put into the holiday trailers on the weekend of June 22 - 23, 2019. He left home for work in the late evening of June 24, and he was planning to be home from work on the evening of June 28 or the morning of June 29th for the move to Quesnel. He said that the plan with the servals was to keep them in the trailers during the evenings, and to take them out and walk them during the day. He said the idea was to get them used to the trailers to reduce stress when they moved.

85. Mr. Churchill stated that the trailers were originally purchased for Ms. Bhasin and himself when they moved to Quesnel but, when the silent partner had to return the servals, the plan changed. The new plan was that the trailers would be parked on the property when they moved, and a wire enclosure would be built around both trailers to allow the servals access to the outdoors. Ultimately, he testified, the plan was that he would have built a barn-like structure to house them which would have taken 7-10 days to construct everything that was needed.
86. With regards to the move, Mr. Churchill testified that the plan is still similar, but that he and Ms. Bhasin are in “no rush to move up there.” In the meantime, the servals will be housed on the Little Fort property in the barn enclosure. He stated that while the enclosures are being built, they have friends who own and operate kennels who could take the servals - one on Vancouver Island, one in Kamloops, and friends in Ontario. On cross-examination, Mr. Churchill was unable to name the people on Vancouver Island, and struggled to recall the name of Ms. Osborne or her kennel in Kamloops. No evidence was submitted to verify any discussions or arrangements with these people.
87. Mr. Churchill told the Panel that the silent partner had an acreage on the Lower Mainland with a large barn and enclosures that had been modified for keeping serval cats. He testified that they moved the servals there in late 2016 or early 2017 because they were concerned for their safety due to stalking and harassment. He stated, “we kept no records to have any evidence to trace us to it.” He testified that prior to the seizure, he told SPC Edge that they had no servals on the property, that they were at a silent partner’s place. The silent partner had to return the servals to Little Fort in June and is no longer an option for keeping the servals going forward.
88. With regards to the ammonia levels on the property, Mr. Churchill testified that he is fully trained in gas testing as part of his training as a millwright. He said there are always levels of ammonia present, as it is an essential part of life for nature and mammals, and that any sort of feces has ammonia in it. He cited that under WorkSafeBC regulations [Exhibit 16, Tab I], safe levels of ammonia for humans are 35ppm for 8 hours exposure. He told the panel that he has a digitally calibrated ammonia tester, and that he did not have any concerns about the ammonia levels on the property. On cross examination, Mr. Churchill said that he had researched the effect of ammonia on animals, but that “there was not a lot on it.” He indicated there was “pretty limited information” with regards to shelter standards for ammonia levels, despite claiming to have reviewed the Canadian Shelter Standards. He also admitted that he did not use his tool to test for ammonia in the trailers before he left for work on June 24, 2019. He said that he did not consult a veterinarian about acceptable levels of ammonia for animals because “it’s not a vet’s level of expertise.”
89. Mr. Churchill testified that they raised their own food for feeding cats, and that he had built a CO₂ chamber to kill rodents and other whole prey. He said that he researched different

euthanasia techniques by reading the American Veterinary Medical Association Guidelines for the Euthanasia of Animals (Guidelines) [Exhibit 29, Tab U]. He said that he constructed the chamber with a vent on it and used a bottle of compressed CO₂ with a glass valve so he could test how much oxygen was in the chamber.

90. Mr. Churchill testified that he used the CO₂ chamber to euthanize Ceasar because “it’s what I had currently on the property, and he needed to be euthanized right away.” He stated that he gave the serval some Metacam, put him in the chamber, and slowly introduced the CO₂ gas. He said the serval was comfortable and quiet.
91. On cross-examination, Mr. Churchill reiterated that he had read all of the Guidelines, and determined it was appropriate to use a CO₂ chamber to euthanize the serval cat. On cross-examination, Mr. Churchill was advised that p. 43 of the Guidelines appeared to be missing from his exhibit. This page says that the use of CO₂ in euthanizing companion animals can be challenging and is only “acceptable for use in institutional situations where trained personnel are available to monitor.” Mr. Churchill testified that he remembers reading that part of the Guidelines and still chose to proceed using that method. In response to a question about whether he was trained for euthanasia of cats in CO₂ chambers, he responded that he had trained on rodents and prey animals.
92. Mr. Churchill testified that he was present in the days leading up to Ceasar’s death and described the serval as happy and attentive, though his mobility was limited. He testified that Ceasar quit eating 2-3 days before he made the decision to euthanize the serval.
93. When asked if he had attempted to take Ceasar to a vet’s office, Mr. Churchill responded that there were none available, and that he didn’t want to drive an hour with an animal suffering. He stated that he could have called an emergency vet, but that it would have cost double or triple the normal fee. When pushed on the matter of cost versus availability, Mr. Churchill responded “I’ve probably spent \$120,000 on vet care. Vets always want you to bring your cats in because that’s how they make their money.”
94. Mr. Churchill testified about a serval named Titus that got his foot caught in a kennel in the nursery. He said that when the serval pulled his paw out, he tore his flesh and fractured his front leg. Titus was treated by a veterinarian and referred to an orthopedic surgeon for consultation and surgery at the Twin Rivers Veterinary Clinic. Mr. Churchill testified that the veterinarians said there was something wrong with the bone density, but he attributed that to the fact that serval kittens grow quite fast.
95. Mr. Churchill says that Ms Bhasin does the majority of the animal care and nutrition. The serval diet is raw meat ground with bone-in, and they give supplements. Younger animals are fed Science Hill Kitten Development food and the mothers are given KML Milk while nursing.

96. Mr. Churchill spoke to the health of another serval, Burja 2.0, who he testified came back from the veterinarian lame after going for vaccines and microchipping. After they sold him, the client took him to a veterinarian in Kelowna who found issues, including fractures and abnormalities with the sternum. There was a note in the veterinary records [Exhibit 16, Tab F-28] that there were issues with bone density.
97. When asked about the bone density issues with the kittens, Mr. Churchill responded that the issues were all with one litter of kittens. He said that there didn't appear to be a pattern of concern with their other cats and they could draw no conclusions despite their research as part of the worldwide serval community. "Lots of breeders have this issue," and a lot has to do with how fast the serval kittens grow. By 6 months old they weigh approximately 20 pounds, by 12 months they are approximately 30 pounds, and they reach full size of about 40 pounds between 18 months and 2 years.
98. Mr. Churchill testified that if the dogs are returned, the plan is to keep the outbuilding behind the house as a kennel, and to modify the big barn for the dogs. He said the dogs will have access to clean water from a creek on the property and that they keep an outside bowl of water heated in the winter to keep ice off.
99. With regards to the domestic cat, Nikita, Mr. Churchill said the plan is that Nikita will live in the house and use the cat door to go outside when required. He said that he has finished modifications to the house, and the cat will have a clean litterbox with food and water available.
100. Mr. Churchill described extensive damage to the house as a result of water line failures in 2016. He testified that he has repaired the lines that split, opened the walls, stripped the flooring out of the place, and got rid of the mold caused by the flooding. The next step is to lay down new flooring when he can afford it and has the time.
101. When asked on cross-examination about his plans for the future, Mr. Churchill testified that he won't be traveling for work for long stretches anymore, although he was not able to submit a contract or submissions from an employer. He said, "you have to take my word for a lot of stuff in these proceedings."
102. In the time leading up to the seizures, Mr. Churchill described travelling extensively for work. While his schedule varied, he testified that he was on a schedule of 2 weeks on and 1 week off. When asked if he told SPC Edge that he would be gone for up to 29 days, he responded, "I have done that in my 31 years, yes."
103. Mr. Churchill testified that he could not recall the specific dates of SPC Edge's visits. He did recall telling her that there were no longer serval cats on the property and said that he did not give her any information about his silent partner. When asked why not, he responded, "it's none of her business, it's part of my business," and cited corporate privacy

and the confidentiality agreement that he had with his partners. Mr. Churchill characterized the Society's investigation as "intrusive" and repeated in verbal and written submissions that the "SPCA has been used as a tool against us." He specifically stated that he has hard feelings toward SPC Edge.

104. On cross-examination about the plans to build enclosures and upgrade the barn, Mr. Churchill estimated that it would take no more than a week to complete the work. When asked why they have not already started the work, he stated that materials cost money and it would not make sense to spend \$5,000 and hope to get the animals back. He stated that some of the work has been done but did not provide any photographs or other documentary evidence. When asked why he did not build the enclosure as part of the Notice issued in June 2018, he said that he did not build the enclosure because they sold the cats.
105. With regards to the two serval cats who were observed on the property by SPC Edge, Mr. Churchill identified them as Xeena and Vega. He said they were both with the silent partner in 2017 and returned to the Little Fort property sometime in 2018, not long before SPC Edge made her first visit. He testified that after the visit they were contacted by a buyer from Ontario; the buyer came and picked them up and took them to Ontario. Asked when the transaction took place, Mr. Churchill responded that he could not recall and would have to refer to the bill of sale.

Appellants' Veterinarian - Dr. Pavitar Singh Bajwa

106. Dr. Bajwa has been a veterinarian since 1986 and opened the Surrey Veterinary Clinic in 2002. He testified that he has had serval cat clients, including the Appellants, since 2004.
107. Dr. Bajwa provided services to the Appellants' serval cats including vaccinations, spay/neuter and declawing from 2004-2017. He is not a specialist in serval cats but said that when he needs specialized information, he can get it through the Veterinarian Information Network.
108. Dr. Bajwa testified that he never had any complaints or questions about the care the Appellants provided their serval cats. They traveled from Kamloops to Surrey to get treatment and provided treatment when the cats needed it. "They were caring people. Whenever an animal needed anything, they would bring that animal at the right time."
109. Dr. Bajwa testified that serval cats are hunters and need fresh meat. He said he cared for one of the Appellants' cats over 22 days in 2017 and fed it the meat that they brought and stored in his fridge. He was not aware of any additional supplements. He had no concerns with the animals being too thin or overweight.

110. Dr. Bajwa cared for the Appellants' serval cat Titus in 2017 for surgery on a fractured leg. He stated that x-rays showed signs of osteopenia and he referred them to a specialist. At that time, they followed up with blood tests and found that the calcium and phosphorus levels in the blood were normal. "There was nothing special to recommend."

Appellants' Witness - Ms Deleah Nadin

111. Ms. Nadin testified that she has known the Appellants for at least 12 years. She is not currently employed and lives an hour away. The Appellants have approached her about looking after their animals if they are not available due to illness or travel. She has cared for them two or three times in the past.
112. She described the serval cats as happy, healthy and rambunctious. She has been to the Appellants' house at least a dozen times before and has never observed fighting amongst the cats or anything that would be a concern about the servals or any of the other animals on the property.
113. Under cross-examination, Ms. Nadin said that she was last at the house in 2017. When asked if Ms. Bhasin had contacted her prior to the seizure of the servals in June 2019, she testified that Ms. Bhasin told her about the migraines when they started in May, but that she did not call her to come to the property in June.

VIII. Respondent's Evidence

Respondent's Veterinarian - Dr. Marina Mann

114. Dr. Mann received her DVM from the Western College of Veterinary Medicine in 2015 and works in small animal practice. She has worked on a number of animal cruelty cases with the Society in the past. She prepared the Population Health Report for the two dogs and the domestic cat following the seizure but did not examine the serval cats.
115. Dr. Mann found the two dogs to be in fairly good physical condition. Her biggest concern was their fearful behaviour. She said that fearfulness isn't uncommon in a veterinary setting, but that these dogs were more fearful, indicating a lack of socialization. She did not recommend treatment until after the Society staff indicated to her that the dogs weren't handling the transition well. At that point, she prescribed Trazadone as an anti-anxiety medication.
116. Dr. Mann testified that if the dogs were always in a fearful state, she would consider them to be in distress, as opposed to only being fearful when travelling or coming to the clinic for the first time. She said the need for Trazadone could be an indication that the dogs have not been properly socialized. Under cross-examination, Dr. Mann admitted that the dogs

were not aggressive or dangerous. She said that it would increase fearfulness for an animal from a farm to be moved to a kennel but clarified that they would normally settle in after a bit of time. When questioned about whether fear is a sign of abuse or neglect, she answered, no.

117. After the initial report, Dr. Mann was provided with photos of the conditions from the warrant and seizure. Based on the photos, she testified that her biggest concerns were cleanliness, especially for the dog found in the cage with no access to clean water and contaminated feed bowls. She said the dirty conditions are concerning because it leads her to believe that the dog spends all of its time in the kennel and doesn't get out for socialization. Based on the images provided, she estimated that it would take several days to a week for the feces to build up like that. She said that it wouldn't be uncommon not to see food in a kennel, but that there should always be clean, fresh water. She observed that the dog in the kennel did not have enough space to fully extend and lie down or to escape feces. She performed fecal tests on both dogs and found that one tested positive for giardia, a protozoal parasite that dogs get from either the soil or fecal contamination. Giardia can cause illness and diarrhea and can potentially transfer to people or other animals. She testified that it's possible the dog contracted giardia from its living conditions through fecal contamination of bedding, food or water.
118. With regards to the cat, Dr. Mann found the domestic cat to be in very good condition. He was friendly, with a good temperament. Her only concern was some matting of the coat. She commented that she was concerned with the cat being in the home. Based on the photos that she saw, that there appeared to be a lot of fecal material on the floor and dirt in the household. She was concerned that there was no access to a clean litterbox in the photos. She was also concerned by the high levels of ammonia in the house because cats are quite sensitive to it.
119. Dr. Mann explained that the standard ammonia level should be less than 2 parts per million even before the morning cleaning routine is done. In the photos of test strips taken during the seizure show the levels of ammonia were significantly higher than that. Her worry is that irritation to the eyes and airways could, over the long term, result in bronchitis. Bronchitis may present as runny eyes or a runny nose accompanied by breathing pattern changes and a cough.
120. Based on her observations of the dogs and cat, Dr. Mann testified that she would have concerns with the animals being returned to the living conditions seen in the photos. She was concerned that if returned that they would continue getting sick with giardia. She said that mental stimulation and room to exercise are important, and the inability to stay away from feces is a big stressor in any animals' life. Under cross-examination, Dr. Mann clarified that every animal should be given mental stimulation and the ability to exercise. Given the amount of feces observed in the shelter, she was concerned that the dogs were

not getting out, and she did not see any toys in the photos. She explained that she had not been to the property and that she based her conclusions on the Society's photos. When asked if she would have concerns with the physical health of the animals, had she not received these animals from the Society and seen photos of the seizure, she responded no.

Respondent's Veterinarian - Dr. Ian Welch

121. Dr. Welch is Director of Veterinary Services and Research Support and a University Veterinarian at the University of British Columbia. He received his DVM from the University of Guelph in 1992 and completed a Certificate in Veterinary Forensic Science and Medicine in 2019. He has 36 years of experience in clinical research pathology and forensic settings and has provided lectures and forensic pathology support to the society since 2018.
122. Dr. Welch performed a forensic post-mortem of the serval cat found in the Appellants' freezer. He does not have specific experience working with serval cats, but drew on research in the literature and other pathologists.
123. On gross examination of the cat, Dr. Welch testified that it was obvious the animal was severely emaciated and had significant deformities of the extremities. There was a total absence of fat anywhere on the animal, including the abdomen, liver and heart. The heart is considered the last organ where fat would be lost from an animal.
124. Dr. Welch's diagnosis is three-fold: 1) Osteodystrophy Fibrosa; 2) Emaciation; 3) Megacolon. He determined the cause of death as megacolon complicated by severe emaciation. The manner of death is listed as non-accidental, meaning that the death of the animal was preventable.
125. Dr. Welch highlighted the bone deformities evidenced in Figure 5 and 6 of his report [Exhibit 23b, Tab 41], which he states show scoliosis or curvature of the thoracic vertebra of the spine, and a dramatic curving of the radius and ulna in the left front leg of the animal. Radiographs confirmed the bone is particularly thin and demineralized. He explained that the bone bends in very young animals because the softest part of the bone is near the joints. As young animals with mineral deficiencies grow, they are more likely to bend in the soft places of the bone than they are to fracture. In an older animal with the same condition, the bone is more likely to fracture. In young animals, they are most likely to fracture in the pelvis and see bending in the spine and long bones. When asked under cross-examination what supplements he would have suggested, Dr. Welch replied that as servals are exotic animals he would have referred the owners to someone with experience feeding servals or a specialist in exotic cats.

126. Dr. Welch stated that there are a number of conditions that can lead to osteopenia, but the most common cause if it is not congenital is nutritional. He stated “a meat only diet is the most classic way to create osteopenia in a cat. Calcium is important for so many biological functions that an animal will pull calcium from bone to preserve the beating of the heart and conducting signals through neurons.” In this case, he testified that dietary deficiencies are the most likely cause. “Regardless of what the diet was, it still was not providing the right amount of mineral in the right balance for the bones to mineralize.” He said that the curving of the bone requires some kind of loading, so the deformity would begin as the kitten grew and started to move around. The curving would have started not long after weaning and gotten worse as the serval grew.
127. With regards to the megacolon, Dr. Welch observed that the colon was enlarged to approximately 5cm in diameter with firm stool extending from inside the pelvis. The vast majority of the contents of the stool was hair and little bits of water. He specifically noted in his report and testimony that there were no bones in the stool. When asked if there would be evidence of bone or other food in the colon if the animal had eaten a few days before death as indicated on the workflow sheet presented for the serval “Ceasar,” Dr. Welch explained that cats with megacolon are generally constipated for a very long time. If the cat had eaten a chicken drumstick on July 15, he would have expected evidence of it at the time of death. He noted that megacolon is treatable, and most owners would notice it at an early stage.
128. On the matter of emaciation, Dr. Welch emphasized that this was an animal with a Body Condition Score of 1 on a scale of 9. “I don’t know how to emphasize how weak and poor an animal would look with a BCS of 1. That is a medical emergency.” He added that with the benefit of a post-mortem he was able to confirm that there was zero fat in the cat. That level of emaciation, he testified, would take a long time and would be obvious to someone who was caring for the animal. Under cross-examination, Dr. Welch was challenged on the use of the Purina BCS for domestic cats in his report and for making comparisons to domestic cats when discussing issues with bone development, to which he replied “some of these principles are universal. Emaciation is universal.”
129. Dr. Welch reviewed the x-rays taken of a serval identified as “Ceasar” by Dr. Maricle in May 2018 and asked if he thought it was possible that they were from the same cat that he examined. He replied that the two radiographs are not consistent with each other. The images taken in May show a displaced fracture of the pelvis, and relatively straight limbs. He stated that it was relatively impossible to develop that kind of bending in the bones in the 8 weeks between when the radiographs were taken in May, and the death of the cat in July.
130. Dr. Welch testified that based on its deformities, the deceased kitten would have been obviously lame and had difficulty moving normally, if at all. The chronic emaciation

would be both physically and psychologically stressful, and the megacolon would have been very painful. While he would have recommended that the animal be humanely euthanized, he testified clearly that CO₂ gas is not an acceptable method of euthanizing cats and would be extremely stressful and quite painful.

Respondent's Veterinarian - Dr. Ken Langelier

131. Dr. Langelier has been a practicing veterinarian in Nanaimo, British Columbia with extensive experience with exotic pets including servals. He has been in practice since 1981 having graduated from the Western College of Veterinary Medicine, and done externships with the Toronto and Chester Zoos. Dr. Langelier has experience working with serval cats specifically, having provided care to breeders on Vancouver Island over the years, as well as doing some work with a vet in South Africa to reintroduce servals.
132. Dr. Langelier wrote a report assessing the conditions of the serval cats at the time of seizure that form part of the society's submissions [Exhibit 13, Tab 28]. His report is based on the photographs of the trailers at the appellants' property and the field notes of the people who inspected the area; he did not attend the property himself.
133. Dr. Langelier explained that exotic pets require substantially more than domestic pets in the way of housing. Zoos and associations put out minimum standards for housing, and the housing shown in the photos of the seizure was far below standard. He described the minimum standard for a single animal is 6.5x13x8 feet with a 50% increase in size for each additional animal. He explained that servals need a fairly high enclosure that is open or closed at the top. They need places to explore and hide. He described servals as a grassland species that tend to move around quite a bit. He stated that the trailer the servals were found in was not suitable unless they were being used to move the cats immediately from point A to B. "It's not adequate for one serval for one day except for that reason," he said.
134. Dr. Langelier explained enrichment as having various natural or semi-natural things for animals to do. He provided the example of hiding food, having things like soil, grass and water. He stated there was no evidence of enrichment to provide mental stimulation other than tearing up bedding or other things that could be hazards. The blacked-out windows meant that there was not adequate light and no direct sunlight, which is important for vitamin D synthesis.
135. Dr. Langelier's main concern was the unsanitary environment that the servals were in. Looking at the amount of feces and urine in the photographs, and the testing that the officers did on ammonia levels, he testified that the animals could have been in there for at least a week and possibly longer. He said that with the amount of feces spread around created an opportunity of cross-contamination from one animal to another as some of the servals tested positive for giardia in fecal tests.

136. Speaking to the issue of the ammonia levels, Dr. Langelier said that ideally there would be no ammonia in a serval's environment. He acknowledged that the test strips photos from the seizure show high levels of ammonia, and put it in context saying, "if it's irritating to people, it's irritating to the servals." He explained that high ammonia levels are not good for the servals' delicate respiratory tract and would be a stressor for them that could contribute to larger problems over time.
137. He commented that particularly when feeding raw food, things must be kept very clean. He noted that there is an opportunity for various bacteria to be on raw meat, and that it should be defrosted slowly in a refrigerator instead of set out on the counter. Dr. Langelier observed that in the photos it appears that the servals were stripping the meat off the bones and not ingesting the calcium that they really needed. He added that carrying the meat and bones around created another opportunity for contamination. He also noted contamination concerns with the presence of raw food in the water.
138. With regards to nutrition, Dr. Langelier emphasized the importance of getting the proper ratio of calcium to phosphorus. He stated that meat has a poor calcium/phosphorus ratio and recommends feeding a zoo-prepared diet for wild cats. He said that domestic chicken is not the same as a natural prey animals – it is designed to be more of a meat product only. When asked if servals are known to have brittle bones, Dr. Langelier replied that they should not, adding: "I would question the genetics and diets if they have brittle bones." He explained that servals need good supplementation because they grow so quickly, and that they need a proper ratio of calcium and phosphorus, plus vitamin D. When asked if the number of fractures in serval cats is higher than domestic cats, he explained that servals are wild cats that leap to hunt and fall from heights greater than a table or shelf all the time. He said they would not survive in the wild with any kind of fracture or lameness.
139. Dr. Langelier reviewed the veterinary records of three kittens – Ceasar, Maximus and Burja 2.0 – and was asked to comment on any concerns. He testified that the bone density looks poor in all of the kittens, and that he would be concerned about the femurs and the pelvic fractures. He explained that folding fractures occur when there are nutritional deficiencies, and that Maximus and Ceasar both have parallel fractures of the pelvis indicating metabolic bone disease, and that Maximus' records show a spine injury as well. He expressed concerns that these kittens would be in quite a bit of pain and would likely have trouble walking. He recommended a nutritional consultation to figure out what needed to be changed in the diet. When asked about Ceasar specifically, and to compare the radiographs provided from the Valleyview Veterinary Clinic to Dr. Welch's post-mortem report, Dr. Langelier testified that it was "impossible or near impossible." He specifically notes that on the radiographs from Dr. Welch that the growth plates were closed, indicating that it was done growing. He testified that it was extremely unlikely that the cat taken from the freezer was a four-month-old cat. He noted that the 2019 radiographs were "one of the most extreme things I have ever seen," and that the animal

would have been in a lot of pain. Under cross-examination, Dr. Langelier was asked what course of action he would recommend if presented with the bone density issues in radiographs. He responded that he'd start with complete blood panels looking for kidney disease, then look at ionized calcium levels, parathyroid levels and vitamin D. "The first thing you do is question the diet that they are on." If the blood tests come back normal, he stated he would look at the diet and access to sunlight in order to be able to absorb the calcium, and then look for elevated enzyme levels.

140. When asked to comment on the use of CO₂ to euthanize a serval cat, Dr. Langelier stated it is an extremely inhumane method of euthanasia and is not acceptable at all. He noted that if a cat was given an anesthetic it would be fine, but that Metacam is a non-steroidal anti-inflammatory drug that would do nothing to reduce the amount of suffering in a CO₂ chamber. He suggested that if a person couldn't get to a vet to euthanize an animal that it would be more humane to shoot the animal than use CO₂ gas.
141. Under cross-examination Dr. Langelier stated that he had owned a serval cat for a few months before he realized that it was not a good pet. He said they weren't very clean, were picky about who they like, and that he worried they would do harm to his kids. He expressed the opinion that it is inappropriate to keep servals in the house. He built an outdoor enclosure for his servals. When asked about the training servals, he was skeptical, stating that they still have the wild gene and could easily startle.

Dr. Ellen Denstedt

142. For completeness, the Panel notes that the serval cats were examined by Dr. Denstedt, D.V.M. Her June 27, 2019 Population Health Report of the 13 serval cats (10 adults and three kittens) was tendered in these proceedings although she was not called as a witness. Her report states:

Conclusions

In my professional opinion, it is medically evident that these Serval cats have endured injuries of varying severity and it is highly unlikely that veterinary attention was pursued for treatment of those injuries at the time they occurred. The nature of these injuries would have resulted in pain and suffering, and in some instance significant as in the case of the Serval missing its entire carpus. It is also important to consider that it would be near impossible to ensure these animals received appropriate pain control after their injuries occurred due to being housed in large groups and their extremely fractious nature.

In addition, I also consider it highly unlikely that the declawing procedure performed on these individuals was performed by a veterinarian with adequate analgesia and follow up to ensure proper healing. It is also worth noting that declawing domestic cats for cosmetic purposes has now been banned in the province of British Columbia for humane reasons.

All individuals smelled strongly of ammonia, and some individuals were covered in their own urine and feces at the initial time of their examination. Felids of all species are typically exceptionally clean animals that regularly groom themselves and failure to do so is either the result of being medically incapable of doing so or poor living conditions.

None of the individuals were emaciated. In fact, many of them were over conditioned which can lead to secondary medical issues as well. This may reflect the individual in question's inability to manage their nutritional intake.

Respondent's Witness - SPC Carla Edge

143. Special Police Constable (SPC) Edge is an employee of the Society having been appointed as an SPC under the *Police Act*. She has been employed in this job for 5 years, and before that was a probation officer.
144. SPC Edge testified that she became involved with the Appellants in 2018 after the Society received a complaint from a veterinarian. She attended their property on June 1, 2018, where she met with Mr. Churchill, who told her that there were no servals on the property. She testified that, from where she stood that day, she could see a large, long-limbed tan-coloured cat with spots on its body in the window of the kitchen. When she pointed the cat out to Mr. Churchill, he agreed that it was a serval cat. He refused to allow SPC Edge into the house or to show her the property and insisted that she make an appointment for another time.
145. SPC Edge testified that she attended the property for a second time on June 2, 2018. She did not enter the main part of the home but entered a "cat room" at the front of the house with windows and a door in which the two servals were being housed. She observed the room to be approximately 14x12 feet. When Mr. Churchill opened the door to the room, SPC Edge observed a strong odour of ammonia. She saw some sort of tile or linoleum on the floor, and two hanging nets with toys. She described the cats as terrified when they entered, jumping against the interior windows until they broke one of the panes of glass. SPC Edge exited the room after approximately 15 seconds. Mr. Churchill told SPC Edge that the litter box was immediately behind the door, which she later observed from an outside window.
146. SPC Edge testified that the cats were identified as Vega and Xena. She said Mr. Churchill did not invite her into the main part of the home and was told there had been a flood in the home and they were currently doing renovations. At that point, Ms Bhasin came out of the home and sat down to speak with her about the servals and their nutritional needs. SPC Edge says she asked Ms Bhasin about the serval that originated the complaint, which she believes was Burja 2.0, and Ms Bhasin explained that the owner had "broken the cat," and did not offer any further explanation.

147. SPC Edge testified that she researched serval cats before attending the property, and noted that they required significant enrichment, including fresh air and water. She expressed concern to the Appellants that there was no outdoor space for the servals and was told that they walked their servals on leashes. SPC Edge persisted about the need for an outdoor enclosure and asked why the outdoor enclosure discussed in a 2015 investigation of the property had not been completed. The Appellants confirmed that they still had the materials to build the enclosure, but they did not have the money, time or assistance required to complete the work. SPC Edge issued a notice for the two serval cats ordering the following be completed within 30 days except where specified:
- i. Provide access to clean potable drinking water at all times.
 - ii. Ensure food and water containers are clean and disinfected and located as to avoid contamination by excreta.
 - iii. Ensure the animal is not confined in an enclosed space without adequate ventilation. Noted: Must provide ventilation to room within 7 days.
 - iv. Ensure the shelter, pen, living area is cleaned and sanitized regularly.
 - v. Provide opportunity for periodic exercise to maintain good health, including opportunity to be unfettered from on a leash.
 - vi. To build an outdoor run for cats suitable to their breed.
 - vii. To clean inside room addressing the ammonia smell.
 - viii. To email vet records for past 3 years within 14 days.
148. SPC Edge described the Appellants as good to work with, friendly and open during this visit, and that she expected positive results.
149. When SPC Edge called to follow up on the Notice, Mr. Churchill informed her that they had sold the serval cats two weeks after her visit. She thought this was odd because during her visit Ms Bhasin stated that the cats were her babies and she said how much she enjoyed them. SPC Edge requested the medical records, bill of sale, and details about the purchaser. Mr. Churchill responded that they would send the documents, that they would no longer be keeping servals, that all the ducks and chickens were gone, and the pigs were in the freezer.
150. SPC Edge testified that she received the documents from the appellants after a series of email exchanges where they initially stated that they had sent all the original veterinary records with the new owner. They eventually produced the bill of sale, an address for the owner in Ontario, and the veterinary records.
151. SPC Edge testified that she began to search for the new owner. The phone numbers provided were out of service. She looked for the name on the bill of sale online through social media and found nothing then looked up the address online and was able to see from a Google street view that it was a two-story home. SPC Edge contacted the Ontario SPCA for assistance contacting the owner. After several weeks, the Ontario officer confirmed that

she had attended the address on August 22, 2018 and that there were two apartments – one vacant, and one under renovation. She also canvassed some people in the area, and no one reported seeing a serval cat in the neighborhood.

152. SPC Edge attended the Appellant's property again on October 27, 2018 and observed a new gate on the property that blocked entry. She noted that there were vehicles on the property, but there did not appear to be anyone around. From the public road she was able to use binoculars to see that there were still animals on the property, particularly pigs and chickens.
153. Over the following months, SPC Edge testified that she monitored the situation by watching the appellants' Facebook posts. She noted that there were a number of posts featuring photos of servals that were included in the ITO. Under cross-examination, SPC Edge stated that the pictures that were posted showed the Little Fort property in the background. When asked if she was able to determine when the photos were actually taken, she responded "just from when they were posted."
154. On April 29, 2019, the Society received another complaint about a serval cat associated with the Appellants, this time a kitten sold to an owner in Ontario had fractures of the pelvis and leg. A veterinarian in Ontario had discussed with the owner that the kitten needed to be humanely euthanized.
155. After receiving the complaint, SPC Edge contacted the Appellants to do another inspection of the property. She called to make an appointment and eventually got through to Ms. Bhasin. They had a lengthy conversation where she shared that the kitten involved was named Akira, that they do not have serval cats at their property, and that the kitten was not in her possession. They agreed that SPC Edge could come on May 13, 2019. Mr. Churchill called later that day to tell SPC Edge that she could not attend the property without him being home. When she tried to find another time that would work, Mr. Churchill advised that he would be gone for 30 days. SPC Edge testified that "at that point to me, Mr. Churchill was being evasive." They eventually agreed to meet on May 17, 2019.
156. SPC Edge attended the property on May 17, 2019 accompanied by SPC Affleck. The gate was not open, but that it was sagging and easy to step over. They stepped over the gate and walked up to the house to knock on the door. No one came to the door immediately, but Mr. Churchill eventually out of the rear of the house to meet them. Her observations were as follows:
 - a. They attended the dog kennel, where SPC Edge observed clean shaving on the surface over dirty shavings. A dog (Coco) was present and showed fearful tendencies towards Mr. Churchill. He had a significant injury to its right ear, which the appellants later told her was the result of a fight with a lone wolf. She

expressed concern to Mr. Churchill about the injury and the size and construction of the shelter available to Coco.

- b. There was an intact male (Zurg) and female (Chase) Rottweiler kept in the barn behind the house. The male behaved aggressively towards Coco, and his ribs were clearly visible along with a tucked and narrow waist. Mr. Churchill explained that there was in-floor heating, which SPC Edge thought was odd because the barn had chip-board flooring.
 - c. In the back of the barn, which Mr. Churchill described as his workshop, there was a strong odour of ammonia despite the fact that fans were running and the windows were open. There was a large wire kennel that measured approximately 3x3 feet in area and 5 feet tall with fresh wood shavings on the floor. Wood shavings dragged out of the front of the kennel suggesting that an animal had been recently removed from the kennel. When she commented on the smell of ammonia, Mr. Churchill told her that he sometimes slaughtered animals in the room. When she commented on the spots on the floor of the workshop, he said it was probably blood stains.
 - d. There were three pigs and two roosters in a small barn further back on the property. Mr. Churchill told her that they were planning to sell two of the pigs and slaughter the third.
 - e. There were trailers on the property that that Mr. Churchill stated belonged to his brother-in-law and he was storing them for him. She observed electrical cords running to the trailers but did not pursue further questions.
 - f. On the way to the residence, SPC Edge asked Mr. Churchill if there were any cats inside the home and he stated there were none. She inquired about a domestic cat that she had observed on the property on an earlier visit and was told that the cat had been found dead in the house.
 - g. SPC Edge asked to see the cat room and observed through a window because the door to the room would not open. There were no servals and the flooring and wall surfaces had been removed.
157. SPC Edge testified that when she told Mr. Churchill that she intended to issue a Notice about Zurg, he became upset and told her and SPC Affleck that they had to leave the property. She did not get an opportunity to issue the notice, and she did not complete the inspection of the property.
158. SPC Edge later received an email from the Appellants stating that they had taken Zurg to the veterinarian and he was loaded with worms. According to the email, the veterinarian

had prescribed a new dewormer because the one the Appellants were using was not working. The email did not address the injury to Coco's ear. SPC Edge checked with the vet towards the end of June 2019 and the Appellants had not picked up the dewormer after the appointment.

159. SPC Edge testified that she made the decision to obtain a warrant to follow up on the care of the animals on the property.
160. On the day of the seizure, SPC Edge was accompanied by SPC Affleck to assist on the warrant, a conservation officer and an RCMP officer. Ms Bhasin was home when they arrived. Walking into the home, SPC Edge testified that the kitchen, dining room and living area were completely bare, and very little had changed since 2018. There was a presence of ammonia on the lower levels, but it was not overwhelming. It was apparent that there were no clean food or water bowls available, and she did not see a litter box for the domestic cat (Nikita) in the home. Ammonia levels were tested in the upper part of the house where they found black trays filled with urine.
161. In the cat room/nursery on the main floor, they found one mother serval and three kittens. SPC Edge testified the Ms. Bhasin told her that those were the only cats on the property. The cat room that she had seen in May 2019 had not changed. It still had plastic sheeting and a paint roller that hadn't been used. After going through the home, they went outside.
162. SPC Edge walked to the barn and the door was open. Inside there was feces, dirty shavings, urine, and no food or water in sight. In the back of the barn, they found a large mastiff dog (Black Jack) cowering in a crate. The windows were open and fans running, but there was still a strong smell of ammonia. The bedding in the crate was filled with feces and urine soaked. There was no water available to the dog.
163. She also observed 3 pigs still in the barn and the male pig that the Appellants had said was going to be butchered was still present.
164. The warrant allowed for the collection of digital evidence. SPC Edge testified that while she was focusing on that evidence, SPC Affleck went outside to look at the trailer. Through blackened out windows he was able to identify pet dishes on the floor of the trailers, which he reported to SPC Edge. SPC Edge asked Ms. Bhasin if there were additional servals on the property and was told no. She asked who owns the trailers and was told Ms. Bhasin's brother-in-law. She asked again if there were servals in the trailers, and Ms. Bhasin eventually admitted that there were 8 additional servals inside (although 9 were in fact found). "It was a bit of a game back and forth to be able to get the keys and enter the trailers," said SPC Edge. After opening the trailer, Ms. Bhasin entered the trailer first.
165. When they entered the first trailer, the smell of ammonia was overwhelming. SPC Edge testified that she covered her mouth, took quick photos of what she immediately saw and

then stepped out of the trailer. The second trailer was the same situation with overwhelming levels of ammonia. She described the trailers as being in “overall disarray and horrible living conditions for those cats.” There was a lack of natural light and ventilation, no enrichment or ability for the servals to get away from one another. There was no clean water in either of the trailers. The servals had been pooping in the sinks and on the counters, and there was significant feces build-up in both trailers.

166. SPC Edge made the decision to seize the animals based on the environment and living conditions for the servals in the trailers. For the mother and kittens in the cat room of the house, she was concerned about high ammonia levels and the lack of clean water. The domestic cat, Nikita, was exposed to the same conditions with no litter box and no clean water. Black Jack’s living conditions in the barn were horrendous. Coco’s behaviour was so fearful that there “there’s no way to be able to manage a dog like that, even for the animal owner. For that reason and because his needs weren’t being looked after, I made the decision to remove him.” SPC Edge served Ms. Bhasin with the Notice of Disposition and provided directions about how to appeal.
167. SPC Edge noted that after Ms. Bhasin was notified of the seizure, she said that if anything happened to the mother serval and kittens in the SPCA’s care that they would owe \$40,000. She told SPC Edge that the servals were worth \$10,000 each.
168. While SPC Edge was speaking with Ms. Bhasin about what the mother and kittens were being fed, SPC Affleck discovered a dead serval cat in the freezer. Ms. Bhasin stated that the cat’s name was Ceasar and that he was 10 months old when he died. She told SPC Edge that the cat died and was found on the floor in the morning. She couldn’t recall exactly when but thought maybe around February. They couldn’t bury the cat, so they put it in the freezer. The deceased cat was also seized, and the remains sent for forensic examination.
169. With regards to the rest of the contents of the freezer, SPC Edge noted there was primarily trays of chicken along with a couple of large fowl. She characterized it as “meat you would buy at Costco,” and noted that there were no quail, chicks or rodents in the freezer at the time of the seizure. Under cross-examination, counsel put to SPC Edge that the servals’ daily feeding included fish, 1 pork loin per day divided equally, and 2 trays of chicken legs per trailer, and each cat would get two 3-day old chicks. When asked if she had any reason to doubt that was true, she replied that the only doubt was that they didn’t find all of that in the freezers. Without Mr. Churchill being there to drive Ms. Bhasin to get food, SPC Edge felt there wasn’t enough food in the freezers to accommodate the diet described and no whole prey was found.
170. Under cross-examination, SPC Edge was questioned about her note taking, data entry and the details of her dates and observations. She answered that her notes are handwritten on-

site, then entered into the computer at her desk. She maintained that the records are complete and referred back to the ITO as a direct reflection of her handwritten notes.

171. The warrant also included permission to seize and search computers and electronic devices from the home. SPC Edge completed the examination of the electronic contents by opening each folder and reviewing the documents that pertained to the serval cats. She testified that she reviewed over 600 folders, thousands of photographs and screenshots of conversations. She did not find additional vet records, the confidentiality agreement testified to by the appellants in these proceedings, evidence of calibration and ammonia levels from Mr. Churchill's ammonia tester, or charts tracking heat cycles of the serval cats. Under cross-examination, SPC Edge testified that she personally carried out the inspection of the computers with the exception of a tablet and three phones. She did not recall finding any encrypted files.
172. Under cross-examination, SPC Edge was asked about how Ms. Bhasin appeared to be coping on the day of the seizure. She responded that Ms. Bhasin was very articulate and able to speak with her lawyer and husband on the phone. She was texting with someone. SPC Edge admitted that Ms. Bhasin was quite upset when she was told that the animals were being seized, but she calmed down and agreed to help. She provided information about exactly how the cats were fed, provided dishes and spoons, and sent nutritional supplements.
173. SPC Edge was also cross-examined about the ammonia testing on the day of the seizure. She described the testing process of exposing litmus paper to distilled water and then walking the sample strip around the room to pick up particles. The strip is then compared to a color scale to determine the number of particles in the air. She testified that she has been trained through the society to perform ammonia tests in this way. When asked if anyone used respiratory equipment during the seizure, SPC Edge replied that they did not, but they should have. She had difficulty breathing in the trailers, and the discomfort lingered after she left the space. On follow-up questions, SPC Edge said that there were large accumulations of urine pooling in trays in the trailers. The servals had to walk through the urine and then tracked it through the trailer. In the home, she described a similar situation where the lack of litter meant the servals couldn't clean their paws from feces and urine.
174. SPC Edge was questioned about her experience working with fearful animals. She replied that she has received training through the Society dealing with fearful animals, and that she handled the largest seizure the BCSPCA has ever done in the North which included a large number of fearful dogs. When asked what potential harm is caused by fearfulness, SPC Edge explained that the biggest challenge is for the dog to be handled if he needs any kind of care, which was a concern. Being able to contain a dog and take him to be handled by a vet can cause a psychological distress when they are not socialized properly. She noted, "I

recall being told that they (the Appellants) had not had Coco to a vet. I was told that Coco didn't like to see people." According to SPC Edge, his psychological distress was evidenced by his fearfulness exhibited towards Mr. Churchill and Ms Bhasin's admission that he was difficult to handle.

175. SPC Edge testified that she has followed up on the progress of the dogs in care. She reported that Black Jack is doing very well and is playing ball and fetch with staff. Coco is still having challenges but is being medicated to help calm him. He has started reacting to staff members but "still has a long way to go."

IX. Analysis and Decision

176. 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.

177. 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.

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

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

179. I have also proceeded on the basis that the Appellants have an onus to show, based on the Society's review decision or changed circumstances, that the remedy they seek (return of the animals) is justified. The first issue to consider is whether the animals were in distress at the time of seizure. Depending on the answer to that question, the next issue is to decide whether to return the animals or whether to do so would return them to a situation of distress.
180. In considering the first issue, I have considered the individual circumstances of the animals seized.

Seizure of the Serval Cats

181. At the time of seizure, SPC Edge concluded that the serval cats were in distress due to lack of adequate water, space, ventilation, light and exercise, based on the definition of distress set out above in s. 1(2)(a) of the *PCAA*. She also concluded that their living conditions were unsanitary due to a build-up of feces and urine in trailers where the servals were found, and the conditions in the upstairs rooms of the house, s. 1(2)(a.1).
182. SPC Edge sought the warrant based on information from previous visits to the Appellants' property between May 2018 and June 2019, over which time she concluded that the Appellants failed to take corrective action based on the Notices issued, and in her view, they became increasingly difficult to work with. As the relationship eroded and the amount of misleading information built up, she became concerned for the care and safety of the animals on the property. On the day of the seizure, SPC Edge was surprised by the presence of 10 adult serval cats and three kittens on the property. The adults were housed in travel trailers in conditions she determined to be in distress. As a result, she exercised the Society's authority under section 11 of the *PCAA* to take the animals into custody to relieve that distress.
183. The Appellants concede that the living conditions of the servals on the date of seizure were unacceptable. Their main argument is that the situation was the result of a temporary illness that left Ms. Bhasin unable to attend to the animals for several days.
184. On the totality of the evidence, the Panel concludes that the serval cats were in distress and were appropriately and reasonably seized by the Society. I specifically reject the suggestion that the serval cats were only in distress due to a short-term illness on the part of Ms. Bhasin and that, had she not fallen ill, the circumstances would have been much better for the cats.

185. I say this for the following reasons:

- a) The veterinary evidence discloses a chronic issue with malnutrition, problems with bone development and propensity for fractures among the serval kittens and cats.
- b) Purchasers found developmental abnormalities in bones (femurs, pelvis) and complained of gait issues.
- c) The post-mortem on the deceased kitten supported a finding that the mother's diet was poor up to the time the kitten was weaned, and the kitten subsequently had a calcium deficient diet.
- d) Ms. Bhasin's excuse that servals have delicate bones was contradicted by Dr. Langlier's evidence that servals are wild cats that leap to hunt and fall from heights greater than a table or shelf all the time and would not survive in the wild with any kind of fracture or lameness.

186. The Appellants did not acknowledge any issues with their care and feeding of the serval cats that they breed and sell and through their evidence they sought to diminish any concerns as simply a one off due to a bad litter or mistreatment by an owner. I reject this evidence and find that the likelihood is that these animals had been in distress over a longer period of time than the few days leading up to the seizure. More will be said on this point below.

Seizure of the Dogs

187. I considered the seizure of the dogs separate from the servals.

188. I accept the evidence provided from the day of the seizure by SPC Edge that the dog, Black Jack, was found in an enclosure that was too small for him to move and rest in comfortably, or even avoid his own feces. The conditions that he was found in were unsanitary, with no access to clean water, and poor ventilation.

189. Given the conditions documented in Black Jack's enclosure, I conclude that he was deprived of adequate water, ventilation, space, exercise and care to meet the criteria for distress found in s. 1(2)(a) and further that the amount of feces and urine-soaked bedding in his enclosure is consistent with the definition of unsanitary found in s. 1(2)(a.1).

190. The dog, Coco, was in a different situation from Black Jack in that he was not confined to a kennel or enclosure; however, the panel accepts the evidence of SPC Edge that Coco presented with a level of fearfulness at the time of seizure that in her view constituted a form of psychological distress. SPC Edge's evidence that the potential harm caused by fearfulness includes the challenge of handling the dog when it needs any kind of care was particularly compelling. This evidence was corroborated by the Appellants who stated that

Coco had not been to a veterinarian, and by the fact that they did not take him for treatment for the injury to his ear in May 2019 despite the Society's direction to do so. The fact that Coco was deprived of veterinary care for his ear likely caused unnecessary pain and also forms part of my finding that Coco was in distress.

191. Based on the evidence of Dr. Mann and SPC Edge, the Panel determines that proper socialization of an animal is an important aspect of providing care, and as Coco was deprived of that care to the extent that he was essentially unmanageable, I conclude he too was in distress under s. 1(2)(a.).
192. For completeness, the Panel acknowledges that Dr. Mann found that both dogs appeared healthy (although one was infected with giardia). However, such a finding is not inconsistent with a determination of distress. The living conditions of the dogs are, in my view, sufficient to conclude they were both in distress at the time of seizure, and the *PCAA* does not require the society to wait until distress manifests itself in injury, sickness or pain before it can take preventative steps to ensure the well-being of an animal.
193. Having reviewed all the circumstances of the seizure, I conclude it was reasonable to remove the dogs at the same time as the servals.

Seizure of the Domestic Cat

194. I considered the seizure of the domestic cat separate from the servals and the dogs. The Panel accepts the evidence provided from the day of the seizure by SPC Edge that the cat, Nikita, shared parts of the house with the servals and was exposed to the same high levels of ammonia and unsanitary conditions. There was no litter box in the house or clean food or water dishes available. The Appellants did not dispute these observations.
195. Based on these findings, I am satisfied that at the time of seizure, the lack of adequate food, water, and ventilation meant that Nikita met the criteria of distress under s. 1(2)(a).
196. Again, for completeness, I acknowledge that Dr. Mann found the cat to be healthy. As such, while the living conditions of the cat are sufficient to support a finding of distress at the time of seizure, there is no evidence of injury, sickness or pain.
197. I have considered the circumstance of the seizure and find it was reasonable to remove the cat at the same time as the servals and the dogs were seized.

Return of the Animals

198. Having determined the seizure of the animals was justified, I now consider whether it is in the best interest of the animals to be returned. 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.

199. 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.

200. I have applied this analysis to the facts of this case and considered each group of animals separately.

Return of the Serval Cats

201. I acknowledge that the Appellants appear to care about their animals and have provided extensive submissions about their knowledge of serval cats. The matter in question is not if they care or if they have adequately researched the needs of their animals, it is whether they are capable of taking action on that information and providing adequate care for them should they be returned.

202. I am concerned by what appears to be a pattern of poor planning and preparation, and an inability to execute reliably on plans. By their own admission, the Appellants were not adequately prepared to house the servals when they were "returned" to the Little Fort property in June 2019, resulting in the plan to house the servals in holiday trailers until they were able to move to the Quesnel property. I place "returned" in quotes because I have significant doubts whether the serval cats were in fact ever in a secret location in the care of a "silent partner" who is protected by a confidentiality agreement which was not produced even in a redacted form, or that the servals Vega and Xena were sold to a buyer in Ontario, who could not be located and was not called as a witness, only to be mysteriously returned.

203. The timeline for the move to Quesnel was not well developed by the Appellants in these proceedings, as by their own evidence, there are no services or adequate buildings in place

to house servals at that property either. Ms. Bhasin's unexpected illness (a migraine) in June 2019 made the situation worse by preventing her from cleaning up after and caring for the animals, but it does not address the question of how long the servals would have been kept in the trailers if they not been found and seized.

204. Based on the direct evidence of the Appellants, I find no clear plan with regards to the holiday trailers or how the Appellants planned to house the servals. Now faced with the seizure of their animals, the Appellants have put forward detailed plans to develop the barn on the Little Fort property as housing for the servals, but they have not provided any evidence that they will actually do what they say.
205. The question of reliability and trust is central in this case. The Society's submissions include Notices going back to 2015 to address the housing needs for the servals including an outdoor enclosure. Despite assurances to the investigating SPC at the time, and gathering the materials for the project, the enclosure was never built. In 2018, SPC Edge issued another Notice to the Appellants ordering the construction of an outdoor enclosure to be completed within 30 days. The Appellants offered the excuse that there was not enough time or money to complete these projects and they say they sold their servals instead of building the enclosure and dealing properly with the Society's investigation. On this point, I must note the evidence falls far short of proving that the Appellants actually sold their servals. Some servals remained in the care of the appellants, perhaps at another location the suitability of which is unknown with a "secret partner," or they remained on the property in Little Fort.
206. Now I am being asked to return the animals to the Appellants on their assurances that a major renovation and construction project will be completed, by Mr. Churchill's estimation, in less than a week. This evidence is difficult to square with the fact that the Appellants have still not completed the necessary renovations to their home from the flood in 2016. Further and as noted in the review decision, the Appellants have had the opportunity since the date of seizure to take action on their plans and start construction, but they either have not, or they chose not to provide evidence of their progress. This history, combined with continued uncertainty with regards to Appellants' plans to leave the Little Fort property, make it difficult for me to give the Appellants' plans much weight.
207. I considered that the Appellants have also suggested other options for housing, including boarding the servals at kennels or with "friends in Ontario." However, at no point in the proceedings or the submissions did the Appellants call a witness or produce an affidavit, contract or email to corroborate their claims that they were trying to make alternative arrangements to house the servals.
208. Overall, I found it difficult to put much weight in the Appellants' evidence due to a number of inconsistencies and "mistakes," including but not limited to:

- a. Ms. Bhasin's evidence that she called Ms. Nadin for assistance during her migraine episode in June 2019 was contradicted by Ms. Nadin who testified that she last heard from Ms Bhasin in May 2019.
 - b. Mr. Churchill and Ms. Bhasin gave inconsistent evidence of Mr. Churchill's work schedule and when he was or was not on the property.
 - c. Ms. Bhasin's May 2019 email to SPC Edge stating she had received and treated Zurg with a new dewormer was inconsistent with veterinary records that showed she never picked up the deworming medication. When asked, Ms. Bhasin stated she had a dewormer at home and did not need the medication which was contradicted by her earlier statement that the dewormer she had was not working.
 - d. Ms. Bhasin provided a detailed worksheet observing the daily care and feeding of the kitten, Ceasar, but failed to record anything about his deformity.
 - e. Ms. Bhasin's genealogy registry is missing a litter of kittens born in February 2019 as documented on a sticky note on her desk.
209. As a result, I conclude that the Appellants cannot be taken at their word. They are inconsistent with their version of events, selective in their use of information and evasive about answering questions.
210. Turning to the question of the ability of the Appellants to care for the animals in the future, I find that the history of health concerns presented by both parties in the veterinary records, particularly in young servals is alarming and indicative of an inability to effectively adapt to the needs of their animals.
211. It is my conclusion that, as breeders, the Appellants have an increased duty of care when looking after their exotic and high need animals. The Appellants are clearly aware that guidelines exist which set out the considerable care required of exotic cats relating to housing, nutrition, exercise and stimulation. They even appeared to be aware of euthanasia requirements as witnessed by their own submissions and evidence. However, the Society has demonstrated that they either read those Guidelines selectively or simply choose not to adhere to them.
212. I was particularly alarmed at the Appellants' omission of the one page in the Guidelines for Euthanasia that specifies that CO₂ chambers are not appropriate tools for euthanizing companion animals. In an otherwise intact document in the Appellants' submissions, the absence of this one page casts doubt on the reliability of Mr. Churchill's evidence and his credibility. A similar selective pattern emerged when Ms. Bhasin was questioned about her own writings on serval care in contrast to the conditions of the servals at the time of seizure, and the history of health issues with their animals disclosed in the veterinary records.

213. The long-term impacts of attending to the health and nutritional needs of the animals was highlighted in the evidence in Dr. Welch's post-mortem report of the serval cat found dead in the Appellants' freezer:

It is my opinion that the bowing defects in this kitten are due to the queen being deficient in calcium up to the time the kitten was weaned and then the kitten subsequently going onto a calcium deficient diet. As the bones were growing, in their weakened state, they were soft and pliable allowing them to bend and bow as the kitten aged.

214. I note here that I am especially troubled by the circumstances related to the deceased kitten. I found both Appellants evasive in their testimony giving different versions of how the kitten died, its age at death and its condition prior to death. I prefer the evidence of the Society's veterinarians and conclude that this kitten is evidence of profound problems in the breeding and care provided to these serval cats.

215. Further, looking to the evidence in the veterinary records and complaints from the people who bought the kittens, it appears that over time health concerns were becoming more common, particularly in the young cats who appear to have inherited a condition of mineral deficiency. Despite a growing body of evidence that something was wrong with the way that they were caring for or feeding their cats, the Appellants, particularly Ms. Bhasin, insisted that everything was fine and deflected blame for injuries and illnesses onto the purchasers of the kittens.

216. In this case, the Panel finds that the Appellants have failed in their duty under ss. 9.1(1) of the *PCAA* to responsibly care for their animals, including protecting the animals from circumstances that are likely to cause distress. Looking to the history of the deceased kitten, Ceasar, in particular, and to the evidence of multiple veterinarians about the kind of pain that kitten would have endured prior to death, the Panel has no difficulty in concluding that the Appellants have proven themselves unable to meet their duty of care to not cause or permit animals to be, or to continue to be, in distress as required: ss. 9.1(2).

217. It is the decision of this Panel that none of the servals should be returned to the Appellants and the Society should be permitted to dispose of them as it sees fit.

Return of the Dogs

218. Having determined that the seizure of the dogs was justified, I now consider whether it is in the best interest of the dogs to be returned to the Appellants.

219. While the veterinary exam following the seizure of the dogs indicated that both dogs were in reasonably good physical health, it was noted by both Dr. Mann and SPC Edge that the dogs were fearful during their exams. According to SPC Edge's testimony Black Jack's anxiety has improved considerably and he now plays ball and fetch with people who

interact with him. Coco continues to have challenges and is receiving medication to help calm his anxiety.

220. Based on this evidence, I find the fearful behaviour of the two dogs was not just associated with the stress of the seizure and exam. SPC Edge testified that Coco was fearful of Mr. Churchill and the Rottweilers during her site visit in May 2019, and that his behaviour was acknowledged by the Appellants in conversation. This ongoing condition of fearfulness contributed to the Panel's determination that Coco was in a condition of distress at the time of seizure. Similarly, the Society's commitment to relieving that distress has resulted in incremental improvements in his behaviour to the point that he is now reacting positively with Society staff members.
221. While the Appellants maintain that Black Jack belonged to Mr. Churchill's brother, as noted above he did not come forward to the Society or this Panel to accept responsibility for this dog and explain what steps would be taken to ensure the dog did not return to distress. As a result, I have treated the Appellants as the persons responsible for Black Jack at the time of seizure and it is his return to them that I am addressing in this decision.
222. In the case of both dogs, I am struck by the lack of attention, evidence and planning presented by the Appellants in their appeal addressing the return of these dogs. I agree with the Society that the dogs have been treated as an after-thought to the appeal seeking the return of the serval cats. It begs the question of how much attention will be given to the care of the dogs if they were returned.
223. In all the circumstances, it is my decision that it is not in the best interest of either dog to be returned to the Appellants and the Society should be permitted to dispose of them as it sees fit.

Return of the Domestic Cat

224. I now consider the matter of the domestic cat, Nikita, and whether it is in the best interest of the cat to return to the Appellants.
225. If the dogs were treated as an aside or an afterthought, the domestic cat was almost completely overlooked by both parties in these proceedings. The only direct evidence offered during the hearing was Dr. Mann's assessment that the cat was in good health at the time of examination and that he appeared friendly and affectionate.
226. While I find that Nikita met the criteria for distress at the time of seizure, this finding was largely on the basis that he shared an environment that was unhygienic as a result of the presence of the serval cats in the home and the associated accumulation of feces, urine and ammonia. In their direct evidence, the Appellants testified about the improvements that they will make to the care of the cat by providing access to a litter box, clean food dishes

and access to a clean source of potable water. I also consider that Nikita is an indoor-outdoor cat who has always had the ability to come and go from the home, meaning that he had the ability to remove himself from the unhygienic conditions.

227. I have taken into account the fact that the removal of the servals from the shared environment will significantly reduce the amount of work and cleaning required in the household, alleviating many of the pressures that resulted in the original determination of distress. Therefore, it is my decision that it is in the best interests of the domestic cat, Nikita, to be returned to the Appellants subject to the three conditions set out in the order below.

X. Costs

228. 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.

229. Section 20.6(c) of the *PCAA* provides 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)”.

230. The society has estimated its costs as follows:

Costs for the Serval Cats = \$8,826.58

June 27, 2019 to July 19, 2019 (as indicated at Exhibit 13, Tab 31, p. 493) = \$4,800.58

July 20, 2019 to September 18, 2019: 61 days x \$66/day⁴ = \$4,026.00

Costs for the Dogs = \$2,914.80

84 days (June 27 to Sept. 18, 2019) x \$17.35/dog x 2 dogs

⁴ Exhibit 13, Tab 31, p. 492 indicates that the cost per week for 13 Serval Cats is equal to \$462.00 (\$462 / 7 days = \$66/day).

Cost for the Domestic Cat = \$1,121.40

84 days (June 27 to Sept. 18, 2019) x \$13.35/cat x 1 cat

231. The Appellants take issue with the costs incurred by the Society and raise concerns about the Society's costs of care for the animals. Specifically, Mr. Churchill expressed concern about what has been charged, including veterinarian fees and charges for overhead. He stated that it seems like the Society is trying to add costs by transporting the domestic cat and dogs to a facility 5 hours away instead of using the Kamloops facility which is only an hour away.
232. In response, the Society submits that initial investigatory veterinary care is necessary when they take animals from a situation of distress to assess health concerns, parasites and salmonella. Testing is also important for the protection of the other animals in the care of the Society. In this case, one dog and three servals tested positive for giardia, a highly transmissible infection. The Society does not charge for transferring animals to and from the veterinarian, or to other locations and the charges for travel in the Society's submissions were specific to the day of the seizure. The Society further submits that overhead costs have been allowed in other *PCAA* appeal cases, and the calculation is based on the assessment of a professional accountant.
233. I find that the Society's costs are reasonable, and confirm, pursuant to s. 20.6(c) of the *PCAA*, that the Appellants are liable to the Society for the amount of **\$14,333.35**.

XI. Order

234. I conclude that the serval cats 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 Appellants. 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 serval cats.
235. I conclude that the dogs at issue on this appeal were also in distress at the time of seizure, 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 Appellants. Consequently, and pursuant to s. 20.6(b) of the *PCAA*, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the dogs.
236. I conclude that the domestic cat at issue on this appeal was in distress at the time of seizure, but that it is in the best interests of the cat to be returned to the Appellants subject to the following conditions:
- a. That the Appellants pay the costs of the animal to be returned (Nikita) totally **\$1,121.40** within two days of the decision. If the payment of is not made within

this time, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the cat;

- b. That the Appellants immediately remedy the conditions in the house that caused the initial assessment of distress;
- c. That the Appellants must at all times provide a source of clean water, a clean food dish and a litter box for the use of the cat while in the house.

237. Upon payment of the sum of **\$1,121.40**, I confirm that the Appellants remain liable to the Society for the balance of their costs incurred to the date of the release of this decision, in the amount of **\$13,211.95**.

Dated at Victoria, British Columbia this 18th day of September, 2019

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Tamara Leigh, Presiding Member