

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 67  
DOGS AND PUPPIES, 27 HORSES AND 3 ANIMALS

**BETWEEN:**

JANET FOULDS

**APPELLANT**

**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 Appellant:

Brendan Miller, Counsel

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

November 23 & 25, 2020

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 67 dogs and puppies<sup>1</sup>, 27 horses and 3 cats (the Animals).
2. The Appellant, Janet Foulds, is appealing the October 20, 2020 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society).
3. Section 20.6 of the *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society, in its discretion to destroy, sell or otherwise dispose of the animals. The Appellant in this case is seeking the return of the Animals with the exception of five horses.
4. On November 23 and 25, 2020, a BCFIRB hearing panel (the Panel) held a hearing via teleconference. The hearing was recorded.
5. The Appellant was represented by counsel, testified, and called six witnesses who had either been to the property in question or previous properties occupied by the Appellant.
6. The Society was represented by counsel and called six witnesses: the veterinarian who attended the seizure, the veterinarian who had treated a number of the horses, three veterinarians who were involved in the examination and intake of the dogs and cats, and the special provincial constable (SPC) who had led the investigation and seizure.

## **II. Decision Summary**

7. In brief, this appeal involves the seizure of 67 dogs and puppies, 27 horses and 3 cats from the Appellant's property. For reasons explained in detail later, the Panel has decided not to return the Animals to the Appellant. Pursuant to s. 20.6(b) of the *PCAA*, the Society is permitted, in its discretion, to destroy, sell or otherwise dispose of the Animals.

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<sup>1</sup> To date, 10 puppies and one horse have had to be euthanized.

8. The Society sought to cover costs in the amount of **\$253,667.97**. The Panel has decided that the Appellant is liable to the Society for costs in the amount incurred by the Society with respect to care of the Animals while in custody.

### **III. Preliminary Matters**

9. On November 10, counsel for the Appellant requested an extension for the initial disclosure from November 12 to November 16, 2020. No objections were raised by the Society. The Presiding Member granted the extension.
10. On November 22, 2020 counsel for the Society submitted a late affidavit from Ms. Moriarty providing a ledger of expenses for the Animals seized in September and October. Counsel for the Appellant objected to the affidavit on the grounds that:
  - (a) It was submitted late.
  - (b) The affidavit from Ms. Moriarty constituted hearsay evidence and should have come from the Chief Financial Officer along with proof the funds were actually transferred to the third party.
  - (c) The affidavit should be subject to further examination as the ledger covered all costs for all seized animals over that time and it was unfair to attribute the amounts in the ledger to the Appellant.
11. Counsel for the Society explained that the costs incurred were the direct result of caring for the Animals that were seized. They assert that BCFIRB can accept hearsay evidence and, further, the ledger constitutes business records, which are admissible as evidence as an exception to the hearsay rule. Such evidence has been accepted in numerous *PCAA* appeals before BCFIRB and by the BC Supreme Court in *Haughton v BCSPCA*, 2010 BCSC 2006.
12. Counsel for the Appellant was given the opportunity to address the costs issue at the beginning of the hearing, and whether he needed to be an adjournment but he chose instead to address the matter in his closing arguments. The Panel admitted the affidavit as an exhibit in the proceeding on the basis that the material was provided with sufficient time for the Appellant's counsel to review the affidavit and respond to the content given that this was a two-day hearing.

13. Following the first day of hearing, counsel for the Society indicated he wanted to call two additional veterinarians involved in the examination and care of the Animals. The purpose in calling these witnesses was to respond to an objection raised by the Appellant to evidence provided by Dr. Mills that:
  - (a) Dr. Mills could not speak to certain lab results because she did not conduct examinations or tests on the animals seized herself.
  - (b) An investigator who participates in an investigation cannot be an expert in the same case.
14. Counsel for the Appellant objected to the two new witnesses on the grounds that admitting them would violate the rules of procedural fairness.
15. The Panel, after hearing from the parties, determined that sufficient notice had been provided by the Society and, as the Appellant would have the opportunity to cross-examine these witnesses, there was no procedural unfairness to the Appellant. Further, it should be noted that the Society's purpose in calling these witnesses was to address concerns raised by the Appellant regarding Dr. Mills not being able to testify to these matters. On that basis, the additional witnesses were allowed to testify.
16. During the course of the hearing on November 25, counsel for the Appellant took the unusual step of objecting to a line of questioning by the Panel to one of the veterinarian witnesses alleging it was prejudicial. The basis for the alleged prejudice was the fact that the Panel had sustained an objection by the Society to the Appellant's questions which appeared to be asking the witness to give a legal interpretation of the meaning of "distress." The Appellant requested that the Presiding Member recuse herself on the basis that the manner in which she framed her question demonstrated bias.
17. The Presiding Member declined to recuse herself on the grounds that there was no intended bias or basis for recusal. However, in light of the Appellant's objection to the way that the question was framed, the question was re-framed and the hearing continued.
18. In a related matter, in her closing submissions the Appellant argued that the Panel could not place any weight on Dr. Mill's evidence as she attended the seizure and, as such, was acting both as an investigator and an expert witness. The Appellant says to place weight on Dr. Mills' opinion evidence creates issues of procedural fairness and bias due to the inherent risk that any opinions given would attempt to justify the decision to seize. A similar argument was made with the respect to the

evidence of SPC Affleck. The Appellant says that while the SPC can testify to facts, any opinion of whether the animals were in distress should be given limited weight.

19. This argument is not persuasive. Section 11 of the PCAA asks the “authorized agent” of the Society to form an opinion as to whether an animal is in distress prior to seizing that animal. Distress is broadly defined and includes circumstances related to deprivation of such things as food, water, shelter, care or veterinary treatment, in addition to medical issues related to sickness or injury, abuse or neglect. This Panel needs to hear from those persons in attendance at the seizure about the circumstances in which the animals were found and their physical condition. A conclusion by an investigating officer or an attending veterinarian that an animal was in distress is not determinative of the Panel’s finding of distress, but it is certainly a relevant consideration.

#### **IV. Material Admitted on this Appeal**

20. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1 – 33 and is attached as Appendix A to this decision.

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

21. In August 2020, the Princeton RCMP department filed a concern with the BCSPCA regarding 30 dogs/puppies and 10-12 horses that were reported as being neglected and without water. The RCMP had initially received an anonymous complaint about large numbers of animals at the property. They attended the location on Old Hedley Road, Princeton, and observed the following:
  - 12 puppies in a horse trailer,
  - Feces throughout the property,
  - Animals confined in wire crates,
  - Animals on chains and animals contained in man-made chicken wire type pens,
  - Cages on the upper deck of the home; and
  - 30 dogs/puppies and 8-12 horses

22. APO Daniel Chapman reviewed the complaint and searched the Appellant's name in the Society's database to see if there was any previous history with her and found 40 animal cruelty complaints.
23. On the direction of the Regional Manager of Cruelty Investigations, APO Chapman requested that a Special Provincial Constable (SPC) attend the Appellant's property with him due to the extensive history on the file.
24. On August 21, 2020 at 11:30am, APO Chapman and SPC Affleck attended the property and met with the Appellant. After advising her of the complaint, they requested to see the animals. The Appellant stated she would only show them the animals noted in the complaint. She did not allow APO Chapman or SPC Affleck to inspect all the animals on the property and requested that they leave, which they did. The attendance resulted in a Notice (B27087) being issued to the Appellant with instructions.
25. The Appellant agreed to a compliance check on the Notice scheduled for August 25, 2020.
26. On August 24, 2020, the Appellant phoned APO Chapman and left a voicemail saying that she needed to reschedule the compliance check because the vet was coming out on August 25 to examine a sick horse and because she was under a COVID-related quarantine until August 30. APO Chapman contacted the Appellant by email and rescheduled a compliance check for September 1, 2020.
27. On the morning of September 1, 2020, the Appellant called APO Chapman stating that she needed another week extension because she had issues with her farrier and her veterinarian was coming to the property on September 2, 2020.
28. Later that day, APO Chapman and SPC Affleck arrived at the property to conduct the compliance check as previously scheduled. They noted an underweight horse with visible ribs and hip bones loose on the driveway. The Appellant denied entry and would not allow them to inspect the animals. SPC Affleck read the Appellant an Official Warning.
29. The Appellant advised that a veterinarian would be attending the following day to examine a sick horse. APO Chapman issued a Notice (B27092) to the Appellant to have the thin horse in the driveway seen by a registered vet and to follow all the vet recommendations within 24 hours.

30. On September 2, 2020, APO Chapman contacted the Appellant by email to request a compliance check for September 4, 2020. The Appellant replied on September 3 stating that she was unavailable on that date and she was taking her puppies to be vaccinated by her vet in the Lower Mainland.
31. Between September 3 and 9, 2020, APO Chapman had conversations with three different veterinarians that contradicted the information provided by the Appellant regarding the examination and care of the animals.
32. On September 9, 2020, APO Chapman and SPC Affleck returned to the Appellant's property to conduct a compliance check on the August 21<sup>st</sup> Notice. During the compliance check, they observed a number of animals that were underweight, injured, without water, without shelter, and with overgrown hooves. The Appellant was argumentative and stopped the inspection to request that SPC Affleck and APO Chapman leave the property immediately. The compliance check was not completed and the officers were unable to determine if any of the Notice conditions had been complied with.
33. On September 18, 2020, APO Chapman drove by the Appellant's property to determine if he could see any animals in distress. He did not enter the property and was unable to confirm if food, water and shelter were provided for the animals.
34. On September 22, 2020, SPC Affleck submitted the Information to Obtain a Search Warrant (ITO). He executed the search warrant on September 23<sup>rd</sup> with APO Chapman, accompanied by a veterinarian, other Peace Officers and BCSPCA staff.
35. It is important to note that the procedural history set out above relates only to the current seizure under appeal. There is, however, a significant history between the Appellant and the Society that is noted here in brief:
  - i) It has received a total of 40 complaints of inadequate care provided by the Appellant between 2006 and 2020. The majority of these complaints arose in the Surrey and Langley area, where the Appellant had multiple properties.
  - ii) The Appellant has a history of owning large numbers of horses, dogs and cats, and moving them between properties.
  - iii) In August 2015, the BCSPCA executed a warrant on one of the Appellant's properties in Surrey, BC, which resulted in 34 dogs, six cats and 16 horses being seized as they were found to be in distress.

- iv) In October 2015, following the seizure in August, the BCSPCA recommended Animal Cruelty charges against the Appellant. While the charges were accepted in May 2016, they were not laid as the Crown ran out of time.
  - v) The BCSPCA has issued many Notices over the years to alleviate animals' distress, often related to the same concerns, including hoof care, vet care, cleanliness and sanitation, and provision of clean water. While the Appellant has complied with most of the orders, monitoring was necessary to ensure that adequate care was provided to her animals.
36. I note here for completeness that while past history is not particularly relevant to the question of whether animals are in distress at the time of the seizure and legitimately removed, it is relevant to the question of whether it is in the best interests of the Animals to be returned and whether the Animals would remain in good condition or return to circumstances of distress. That is how I have used the prior history in this case.

## **VI. Review Decision**

37. On October 20, 2020, Ms. Moriarty issued her review decision in which she outlined her reasons for not returning the Animals to the Appellant. She reviewed the ITO of SPC Affleck, various redacted veterinary records, the reports of Dr. Mills and Dr. van Haaften, invoices, photos, videos and the submissions from the Appellant. Ms. Moriarty was satisfied, based on the evidence, that the SPC reasonably formed the opinion the Animals were in distress, as defined in section 1(2) of the *PCAA*, and his action to take custody of the Animals to relieve them of distress was appropriate.
38. Ms. Moriarty next considered whether it would be in the best interest of the Animals to be returned. She noted the Appellant's significant history with the Society, which included over 40 complaints regarding animals in her care since 2006. In 2015, the Society seized 34 dogs, 16 horses and six cats from the Appellant as they met the definition of distress. Ms. Moriarty notes that, "We recommended animal cruelty charges at that time for the very reason that we hoped to avoid being in the exact situation that we find ourselves today." While Ms. Moriarty acknowledges that the past is not determinative, she concluded that the similarities between the past and present seizures were significant in considering whether the animals would remain free from distress if returned.
39. With regards to the current seizure, Ms. Moriarty noted that the Appellant has been provided with "every opportunity and all of the knowledge of your legal obligations



towards animals.” Despite that awareness, the Appellant accumulated and bred animals in a state of distress. “It is even more troublesome to me that you stated in your initial submission for return that you were seeking the animal back in ‘the same healthy condition or better, than they were at time of removal.’ After having the benefit of reviewing the veterinary reports, I feel that to describe the seized Animals as ‘healthy’ is akin to comparing the Covid pandemic to a mild flu.”

40. Illustrating the incongruity, Ms. Moriarty cited the outbreak of parvo virus among the puppies within a few hours of the seizure. She drew on the veterinary notes, photographs and invoices to demonstrate that the seized animals were not “healthy,” and pointed to Dr. Mills’ conclusion that the Appellant “failed to provide the basic necessities of life to the animals in her care, including vaccinations and deworming that would have prevented great suffering in the puppies and even some of their deaths.”
41. With regards to the horses, Ms. Moriarty questioned why the Appellant continues to accumulate horses that she was unable to care for. She pointed to the condition of a horse with a broken scapula left untreated for months as an example of the suffering of the horses in her care.
42. In addressing the possibility of returning the Animals, Ms. Moriarty raised concerns with the long-term contamination issues with parvo virus and the lack of an adequate care plan. Ultimately, she questioned how one person can realistically care for 86 dogs, horses and cats “even in the best of health and in the best of facilities, let alone in these conditions.” She noted that the Appellant was uncooperative in providing health information at the Society’s request when the animals fell ill and needed treatment, noting that is not the behaviour of a “caring and competent animal owner.”
43. She concluded that the Appellant’s history of animal care issues, inability or unwillingness to respond appropriately to the basic care of her animals, continued compulsion to accumulate animals in numbers beyond her capacity to care for, and lack of a believable care plan demonstrated that it was not in the best interest of the Animals to be returned.
44. The Appellant filed her appeal with BCFIRB on October 26, 2020.

## **VII. Key Facts and Evidence**

45. In an appeal under the *PCAA*, the Panel must determine whether the Animals were in distress when seized and if they should be returned to the Appellant. Below is a summary of the relevant and materials facts and evidence based on the parties' written submissions and evidence presented during the hearing. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

### **The Hearing of this Appeal**

#### **Appellant – Janet Foulds**

46. The Appellant confirmed that she provided three “Willsay” statements in the submissions relating to the seizure of her animals: the first document deals with her past history with the BCSPCA and the current incident leading up to the seizure, the second is a response to the veterinary reports about the health of the animals, and the third outlines her plan for the future care of the animals. Her testimony during the hearing confirmed the information contained in the statements.
47. The Appellant moved to the property in January 2020. She has always had a large number of animals. She identifies herself as a breeder and adopts out dogs needing to be re-homed.
48. The Appellant detailed her history with animals in statement #2 (Exhibit 12), noting that she has been involved with animals for over 50 years, and has had horses since she was 15 years old. She has learned from veterinarians over the years and “can attend most minor injuries and can safely administer most drugs.” She has been involved in boarding, breeding and showing horses over the years, as well as buying them from auctions where they were destined for meat markets and helping rescue others.
49. The Appellant maintained that no animals were in distress on her property, and all animals have been appropriately cared for and socialized. On August 21, 2020, she was in the process of feeding and caring for the animals when the BCSPCA officers arrived. She greeted them at the front gate and allowed them to enter the property to view the animals involved in the complaint.

50. Regarding the visit of SPC Affleck and APO Chapman on August 21, 2020, the Appellant stated:
- (a) The constables were immediately aggressive in questioning her about her past history of complaints. SPC Affleck was particularly intimidating and told her that she was to stop making excuses when she defended herself in their conversation.
  - (b) They asked if she was going to surrender any of her animals, and she declined.
  - (c) While they were viewing the animals, the officers continued to comment that the animals were “in distress” despite knowing that she was in the process of their morning feeding, watering and cleaning.
  - (d) Due to their continued aggression and “bullying”, she asked the constables to leave the property.
  - (e) The constables wrote up a Notice for care that she said she was already in the process of complying with while they were at the property.
  - (f) In addition to the Notice, SPC Affleck told her that, “No animal is to leave this property while under investigation and, to do so, you will be breaking the Law.” She felt like she was being forced to hold the animal’s “hostage” when the constables knew that she needed to adopt a lot of them out.
  - (g) The Appellant maintains that she was not being argumentative, she was explaining the previous files. She says she was not being evasive about the number of animals that she had, she was hesitating while she tried to get a count and guess for them.
51. In response to the orders included in the Notice, the Appellant states:
- (a) Water is always topped up or freshly filled daily, sometimes twice a day if needed.
  - (b) Algae was only in one water pail and is not harmful.
  - (c) The pens had some feces in the corners, not all over and she had no chance that morning to clean before the SPCA's arrival.
  - (d) The pens for the dogs had provided some shade from the sun but did not have formal shelters. These pens and tie out areas were for temporary use only, before the dogs were let out/off to exercise, play or play fetch before coming back on deck with access to open wire crates
  - (e) The dogs were only in the pens and on ties temporarily while she did her chores. Ties are a minimum of 10 feet long and are for temporary use when

someone is available if they became tangled. Only one dog was tangled, and she was present to untangle her immediately.

- (f) The pups in the horse trailer had been fed just prior to the SPCA's visit and she was in the process of getting water for them when the SPCA arrived. When they received water, they were thirsty because they had been waiting for it after eating dry puppy food.
- (g) The horse stock trailer has a 10-inch opening all around the top and is fully roofed. It also had a 1-inch gap around the bottom where the floorboards did not meet the wall, allowing air flow. It was only used temporarily and with someone in attendance.
- (h) The 8-week-old pup was loose because it had escaped an 8' x 8' play pen. Pups are not put out unless someone is attending.
- (i) All her dogs eat horse manure. She was told by a vet that it is good for them and their digestive system as it provides enzymes and yeast.
- (j) The dog chasing the horse was playing and the horse is too fast for the dog to bite her. The Appellant called the dog after SPC Affleck yelled at her. The dog came immediately. "I told him she was contained being that she was on our property, not off it."
- (k) The four dogs tied in pole barn were livestock guardian dogs. They were there temporarily waiting to be fed, checked over and then let loose again to roam property.
- (l) Upstairs crates on deck held a Pom pup and Persian cat waiting to be groomed, and two kittens in their outdoor 3-tiered playpen. Other wire crates were empty because the dogs were down with her in pens or tied temporarily.
- (m) Cascades Vet had already been contacted to come check the underweight horse (filly) with a nasal infection.
- (n) The underweight Dalmatian was recently weaned from her four pups and was gaining weight nicely and quickly.
- (o) At night, some dogs are housed in wire crates and pups are housed in exercise pens.
- (p) The Notice gave extremely short time periods to comply, but it was easy to complete because she was already in the middle of doing the work. Everything was completed after the constables left the property.

52. The Appellant acknowledged that she rescheduled the compliance visits, but she said that it was always for good reasons and that she kept the BCSPCA informed through phone calls, text messages and emails.
53. The Appellant spoke with APO Chapman on August 25 to inform him that she would be in COVID-related quarantine until August 30. She let him know that the vet appointment for the sick filly was being delayed because of the COVID quarantine, and the new kennel panels were on order and would not be available for pick up until August 27, and she needed time to put them together.
54. Prior to the September 1 visit, the Appellant contacted APO Chapman to tell him that Dr. Ridgeway was scheduled to examine the sick filly on September 2 to determine the cause of a nasal discharge whether it was contagious. She requested that the visit be delayed for another week. Despite that request, APO Chapman and SPC Affleck arrived at the property on September 1. The Appellant refused them entry. At that time, she was given another Notice to have a thin stallion checked by a veterinarian within 24 hours. The constables already knew that a vet was coming the next day.
55. The Appellant testified that Dr. Ridgeway attended on September 2, 2020. He examined the sick filly and the underweight stallion, and they discussed the mare with an injured shoulder. She reported that he agreed with her approach to dealing with the injury and offered her pain medication for the injured mare which the Appellant declined because she already had powdered Bute. They also discussed the old aged underweight bay mare and agreed that the best solution was to have her humanely put down. The seizure occurred before she had an opportunity to make those arrangements.
56. The Appellant did not have an appointment for the puppies at Apollo Vets because she does not make them until she is ready to go in case she can't leave the property for some reason. She said that she always gets accepted as the clinic is open until 10 pm, seven days a week.
57. Regarding the care of the horses, the Appellant explained that all horses had full clean water and all horses had access to shelter with the exception of the two in the front pen. The horses in the front pen were there temporarily.
58. Horses were generally housed in large pastures with trees for shelter. They were grouped in "compatible herds" and foraged the pastures. They were provided with salt licks, hay and free flowing water from the creek as well as water tubs.

59. The Appellant provided an extensive response to Dr. Mills' veterinary report in statement 2 (Exhibit 12) concerning the condition of the property and the animals at the time of seizure.
60. With regards to the dogs, the Appellant's major points are noted as follows:
- (a) There were 34 pups in a 50' x 60' side yard with a 10' x 14' covered carport to come and go from. They were fed just before the seizure and had water available to them (warrant photo #34).
  - (b) The Appellant panicked when she saw the BCSPCA coming for the seizure and started putting puppies in the downstairs bathroom in hopes they didn't have a warrant for the house. She put nine or 10 pups loose in the downstairs bathroom.
  - (c) Similarly, dogs were put in the upstairs bathroom in hopes of avoiding seizure.
  - (d) There were 22 or 23 pups left in the yard pen or running free in the yard, and another two pups that were separated with two adult dogs for company.
  - (e) The pups were not dirty with fecal material – intake photos even show that their nails were clean.
  - (f) The 10 puppies in the crate in the lower bathroom were just there for safe keeping while she cleaned their exercise pen in the dining area. They had sufficient space to move around in the crate, and the bathroom vent provided adequate ventilation. It was only intended to be temporary.
  - (g) It is not unusual for people to have dogs loose in their living room.
  - (h) Dogs in the laundry room in extra-large wire crates were just fed and waiting to run around the farm as they do every day. "These are my herding dogs as well as great for getting rats and mice."
  - (i) The dogs outside in individual runs had water and shelter and "were obviously fine." The two dalmatians lost weight adjusting to the new kennels which she bought to satisfy the BCSPCA because they didn't want them tied out.
  - (j) There was no overcrowding of pens, kennels, crates, exercise pens, deck, or yards.
  - (k) Pups were on a regular worming program. Puppies have a continual susceptibility to worms until after six months of age, and need to be wormed every 10-14 days, then monthly from three to six months, and again at one year. The adult dogs were worm free as per test results.

- (l) The Appellant did not believe the puppies had parvo, suggesting instead that their diarrhea and vomiting was caused by the stress related to the seizure, examinations, vaccinations and new food. She suggests that the dogs instead had “Dog Show Crud,” a condition that is “well known in the dog show world and if treated like parvo, pups/dogs will die.”
61. The Appellant says all of her dogs were on a proper vaccination and worming program, but also noted that vaccinations are not mandatory. She put the responsibility for the puppies falling ill on the BCSPCA for putting them at risk by seizing them and removing them from her property and giving the puppies shots and sprays on the night of the seizure without verifying whether they had received shots or not. In oral testimony, the Appellant stated that the BCSPCA was “trying to blame me and my bad worming for their sickness.”
62. When asked to describe her routine with the dogs, she said she fed the puppies in the morning and night, and the adult dogs at night. Dogs had freedom and access to the house, deck, and yard, and 90 acres. They were turned loose in groups of five or six, and there was a main group of dogs that was always with her and had freedom to exercise in the whole 90-acre yard. They all had water buckets and dishes full of water. The dogs were only tied when she was down in the area working like she was at the time of the seizure.
63. The Appellant said that she has never had to deal with sick or injured dogs or had a dog die in her care.
64. On cross-examination, the Appellant stated she had no knowledge of what parvo was and had never had to deal with it. “Unless I get information from a vet properly, I don’t know what parvo is,” she said. She insisted that there was nothing proving that the dogs died of parvo.
65. When asked how she would return her dogs back to the property when it has been contaminated with parvo, she responded “They don’t have parvo. It hasn’t been confirmed.”
66. With regards to the three kittens, the Appellant noted:
- (a) The young orange cat was put in a crate to eat before being freed to run around the farm. The crate was closed so no dogs would eat his food.
  - (b) The two kittens were in their outside playpen, a 3-tiered structure to keep them safe as they were too young to roam the farm. These were house kittens.

67. With regards to the horses, the Appellant stated:
- (a) "Some old horses were thin but not unhealthy." Weight loss was due to the change from the alfalfa mix hay that she usually feeds to grass hay for about a month when she could not get other feed. Once the horses were fed alfalfa mix again, they started gaining weight.
  - (b) The old stallion was thin because he was stressed about the mares being moved but was gaining weight again.
  - (c) The buckskin mare in the front pasture (#74) was new. She had food and water and was to be introduced to the herd the afternoon of the seizure. She was injury-free when she arrived and any injuries in the photos are related to the seizure.
  - (d) The Clydesdale stallion had hay and was eating. He fit in the shelter but did not use it.
  - (e) The five horses in the pasture all had good weight and fat bellies. Burrs were being managed by trimming manes and grooming every day. Only the palomino and white horse (#73) that the BCSPCA took photos of still needed to be done.
  - (f) The palomino colt that was lame (#79) had been seen by a farrier. The farrier had attempted to trim the feet but stopped when he exposed underlying bruises that needed time to heal before the trim could be completed. He was not lame prior to trimming.
  - (g) None of the horses had injuries before the seizure except the old mare with the shoulder injury.
  - (h) The female Appaloosa filly with the nasal discharge was seen and treated by Dr. Ridgeway.
  - (i) She had decided to euthanize the mare with the shoulder injury, as well as the old, thin mare and four other old mares before cold weather set in.
  - (j) The mare and foal had good weight and were being free fed.
  - (k) The old Appaloosa's eye condition was a hereditary issue in their breeding, and her eyesight was not a problem for her in the pasture.
  - (l) The farm equipment posed no threat to the horses – they were all injury-free until the seizure.
  - (m) She was unaware of dental disorders on horses #84 and 88 as the horses were "relatively new to the farm and were not showing any signs of eating problems." "Both also have good weight indicating they are eating fine."



- (n) Overall the horses were “fine, under vet care and only a few out of 27 horses were thin due to hay change and old age.” She said pictures show the horses feet were short. The farrier was coming weekly to maintain what needed to be done.
  - (o) The horses all had fresh, clean water. The horses in the pasture had a stream to drink from so she did not provide buckets of water.
  - (p) The Appellant had been told by an SPCA constable that visited in the property in the spring that trees were considered shelter in Princeton. The horses had treed shelter except for the front pasture.
68. With regards to the mare with the shoulder injury, the Appellant described how she had had a young horse with a similar injury in the past that took six months to put full weight on, and eight months to run on. The mare “was healing and now putting some weight on leg for use.” She stated that Dr. Ridgeway had agreed with everything she was doing.
69. The Appellant’s submissions included three veterinary records from Dr. Ridgeway – one for the examination of “Nellie,” an Appaloosa filly examined for nasal discharge [Exhibit 26], one for “Stealer”, a palomino stallion that was examined as per the BCSPCA Notice [Exhibit 25], and a “herd health” consult [Exhibit 24].
70. When the Panel asked why Dr. Ridgeway was not called as a witness, the Appellant indicated he had been asked to participate but declined because he did not want to be involved in a case with the BCSPCA.
71. The Appellant’s statement #3 (Exhibit 12) explains her care plan should the animals be returned. She proposes to adhere to conditions as follows:
- Horses**
- (a) I will ensure all farm equipment and any other items of concern that may cause injury are removed from all pastures/paddocks, making pastures/paddocks safe for their use before returning
  - (b) I will have separate sheltered pastures/paddocks ready for all stallions and for mare and foal
  - (c) I will construct or provide enough shelters for all pastures/paddocks to ensure all horses have plenty of shelters before their return
  - (d) I will provide horse blankets should any horse need added warmth or protection from the elements, new, clean and ready when needed

(e) I will have enough quality hay on hand and a hay supplier to contact for any ongoing needed hay to provide horses free choice hay at all times and have grain on hand for any extra nutritional value needed for any horse in need of it

(f) I will provide large mineral salt licks in place for free choice access

(g) I will provide large clean water barrels ready to fill with fresh free choice water access in all pastures/paddocks which are easy to clean and/or sanitize daily

(h) I will use Princeton's local Vet., Dr Ridgeway for basic, immediate or needed products and provide consent for Dr. Ridgeway to give information to BCSPCA

(i) I will resume Farrier hoof care and needed appointments ensuring hoof care continues for all horses; and

(j) I will continue to check all horses daily to make sure they are debris and injury free.

### **Dogs**

(a) I will change, add, build or provide any needed improvements ensuring all requirements are met to accommodate all dogs before return, providing clean sheltered pens and enclosed exercise areas as per SPCA's satisfaction;

(b) I will ensure they have fresh clean water at all times;

(c) I will continue to provide exercise and play with other dogs for socialization ensuring happy well balanced dogs;

(d) I will continue to provide adequate feed and products needed for chewing to have healthy clean teeth and good weight;

(e) I will continue to provide play toys and play time for happy exercise and keep their minds and well-being fresh; and

(f) I will continue to provide Veterinary care as directed by Vets I use and fulfill any needed Vet care as requested.

### **Cats**

(a) Will continue in providing all their needs and comforts in my house, keeping up any grooming or veterinary care and monitoring any outside time ensuring they are safe from harm or predators plan and number of animals to be requested returned.

### **General Conditions**

(a) The animals returned will be in my possession for no more than six (6) months from the date of their return. The animals will be re-homed, sold, or destroyed in the cases of animals incapable of treatment and care in that time period.

(b) During the six (6) month period in (a), I consent to the BCSPCA attending my property for inspection without the need for further consent. For safety purposes, the BCSPCA will

announce their attendance in typical fashion either by knocking on the door of my home or calling me by phone. Inspections can occur during regular business hours between 8am and 5pm any day with or without notice, but an announcement on arrival is required. Upon inspection, the BCSPCA will not threaten, intimidate, or harass me. The BCSPCA will provide in writing a follow up email to me outlining details of any non-compliance with the *Prevention of Cruelty to Animals Act* and provide me a reasonable period of time to remedy any non-compliance.

(c) After the six (6) months at (a) and (b), I shall not possess more than six (6) animals of my choosing for so long as I resided in the Province of British Columbia and within the jurisdiction of the BCSPCA and the *Prevention of Cruelty to Animals Act*.

72. When questioned about this care plan by her own counsel, the Appellant appeared reluctant to abide by its terms. She said to do so made her feel guilty.
73. The Appellant said that she may be moving to a new property in January which is a 120-acre farm near the current location. There will be 3000 bales of hay available when she gets there. She agrees to provide the address to the Society when the move is confirmed.
74. On cross-examination, the Appellant testified that she recently became a dog breeder. She had not kept dogs since the seizure in 2015 but started investing and getting dogs again in January and February 2020 because she found a property where she could “build a proper kennel.” She testified that the number of puppies was the result of incidental breeding and that all the adult dogs were up to date on their shots.
75. The Appellant did not pre-sell any puppies before breeding. She marketed them on Kijiji and had one confirmed buyer for a puppy by September 23, 2020.
76. The Appellant agreed she did not have any employees or assistance with the care of the animals at the time of the seizure. To get help with dogs, she hired her sister who moved from Ontario to the property on August 15, 2020, and left the property on September 12, 2020 following “a major argument.” Prior to August, the Appellant had been helped by her 10-year-old granddaughter.
77. With the seizure of the puppies and dogs, the Appellant says that she has lost her business as a breeder. She said she has spent the last of the money that she received after her husband died and will have to find another job because “my last line of income left September 23.”

78. Based on the care plan that the Appellant presented, she said she had plans to move all the adult dogs and most of the puppies to new homes. She does not know which animals she would choose to keep. When asked if she would continue breeding dogs, the Appellant said, "I'm good at it. I enjoy it. I don't have a single record for sick or uncared for dogs. I don't know if I'll do that or not."
79. Asked to describe what she would look for in her animals as signs of distress, the Appellant responded that, for the dogs, she would look for loose poo, diarrhea or if they go off their food. She regularly checks her dogs' ears and checks their stool for worms. The only issue that she has ever dealt with in her dogs is mange. For horses, she would look for them going off their feed, if they were lethargic or hanging their head. As evidence of the quality of care her animals received, she said "I have no vet bills to prove it because my animals were healthy."
80. In her oral testimony and statements, the Appellant said she felt intimidated and bullied by the BCSPCA officers throughout the process. "I kept trying to comply and nothing I could do could make them happy. I kept trying to have them back and I couldn't take the pressure of Constable Affleck."

#### **Appellant's Witness – Amber Douglas**

81. Amber Douglas is a family friend and mother of the Appellant's granddaughter. She has known the Appellant since 2011 when she lived on her property. Her evidence is as follows:
  - (a) The Appellant is known for putting her animals first before anything else. She dedicated her entire life to rescuing animals that were in need.
  - (b) She sometimes would breed animals but any money made off the litters went back into providing the necessary care for the animals. She never bred any animal for monetary gains.
  - (c) The BCSPCA has been targeting the Appellant for many years. In 2015 they "bullied their way onto her property" at a time when the Appellant felt she was not in a position to care for all the animals. The Appellant decided to surrender the animals at that time.
  - (d) The Appellant moved to Princeton to start fresh and make her dreams of starting a kennel and making a business as a breeder come true.
82. On cross-examination, Ms. Douglas admitted that she had no personal knowledge of the Appellant's activities and she was not aware of the number of animals that were in her care at the seizure.

### **Appellant's Witness – Charleen Foulds**

83. Charleen Foulds is the Appellant's daughter. Her evidence is as follows:
- (a) The Appellant has always had animals over the years. She was involved in rescue and breeding activities.
  - (b) She still helps the Appellant with animal care from time to time, and her children have also helped provide care. The youngest daughter (10 years old) visits the farm often to help her grandmother with cleaning, feeding and caring for the dogs.
  - (c) She was at the property with her daughter on the September long weekend to help put up new kennels for the dogs.
  - (d) The Society's actions are unacceptable and there was no reason for the Appellant or her animals to have to experience the trauma of having the animals seized.
84. On cross-examination, Ms. Foulds said she saw quite a few animals on the farm in September but did not do a headcount. She reported that they were "all in good shape, happy and healthy."
85. She says the Appellant is skilled at caring for animals on her own. When she was younger, she remembers having the vet out for shots or for anything that the Appellant could not handle.

### **Appellant's Witness – Jeremy Winnig**

86. Jeremy Winnig has known the Appellant for over 30 years. He currently lives in Alberta, and last visited the Appellant's property two years ago.
87. According to Mr. Winnig's Willsay statement, he purchased a puppy from the Appellant five and a half years ago. The puppy came with up-to-date shots and was vet checked. He has witnessed the Appellant caring for her animals and tending to their needs.
88. Mr. Winnig is a cattle hauler and has been around horses and livestock his entire life. When he stayed at the Appellant's property in Langley two years ago, he observed four or five horses on the property. He remembered them to be in good health.

### **Appellant's Witness – Greg Leydier**

89. Greg Leydier's evidence is as follows:
- (a) Mr. Leydier visited the Appellant's house in Princeton on September 13 and 14, 2020. While there, he noted that the Appellant provided a high level of care for her animals, which impressed him considering how many animals there were.
  - (b) The puppies had a large open area to play and socialize in with a large undercover area to bed. He found them to be well-socialized and interactive.
  - (c) He has owned horses himself and noted that the Appellant's horses had "more than ample food, space, shelter and care" and he did not see any of the horses with problems.
  - (d) He stated, "I understand that the numbers of how many animals were in Janet's care would be overwhelming to most people, but I did not see inappropriate care given. I believe the SPCA overreacted to the sheer [sic] number of animals in her care instead of reacting appropriately to the way they were cared for."
90. On cross-examination, Mr. Leydier said he did not see any of the horses as overly thin. They had plenty to eat and the Appellant was feeding above what they would have required as they had plenty to graze on. He also did not observe any horses that were lame or injured.
91. He noted that there were "a lot of dogs" but he did not count them. He said that the Appellant mentioned in conversation that it was not her intention to have so many dogs.

### **Appellant's Witness – Dean Bagshaw**

92. Mr. Bagshaw owns the property that the Appellant has been renting for the past year and estimates that he has been to the property 10 times. He bought the property three years ago, and farms hay on it. He has never owned livestock.
93. Over the course of the year, he has seen the Appellant's animals multiple times. There was always feed and water when he was there. The property has a lot of trees around it that provide shade.
94. He noted that some of the horses looked skinny to him and the Appellant told him they were older.

95. He did not interact with the dogs, though he noted that there were two to three guardian dogs that were outside the pole barn, and four to five additional dogs. At one point, he estimates in April, there were more dogs on the property and he had to discuss it with the Appellant. He did not have any concern with the care of the dogs, but he was surprised by the number.
96. Mr. Bagshaw said the original agreement was that there would be 22 horses.
97. On cross-examination, Mr. Bagshaw estimated that there were 17 dogs on the property in April. When they discussed it, he said the Appellant really wanted to have a kennel, but that he and his wife were not interested. "We would prefer not to have that many dogs."
98. The number of dogs seized by the Society was a surprise to him.

#### **Appellant's Witness – Tanya Hislop**

99. Ms. Hislop is a farrier who has been working with the Appellant's horses since September 2020 before the seizure took place. She has become friends over the time she has worked with the Appellant and she was on the property on the day of the seizure.
100. Ms. Hislop has been a farrier since 2012. She works at more than 10 different farms and ranches in the area. She gave evidence that there were no foot problems with the horses, and she had no concerns about their treatment or care.
101. She only saw the horses on the property and noted that they were "a little skinny." She was told by the Appellant that it was because of a feeding switch. She helped the Appellant find and haul new feed for the horses and said that they were starting to improve.
102. She never visited the dogs on the other side of the property.
103. On cross-examination, Ms. Hislop said she was working on the Clydesdale stallion's feet. It has some issues on the skin that the Appellant said she was treating with an antifungal powder.
104. She was looking after two horses' feet and looked over the rest of the herd to see if there were any glaring issues. She saw none aside from a horse that was

limping, which the Appellant said she had already agreed to put down, and a horse with overgrown toes that she did not have enough time to deal with.

## **VIII. Respondent's Evidence**

### **Respondent's Veterinarian – Dr. Britt Mills**

105. Dr. Mills is a veterinarian licensed to practice in the province of British Columbia. She has been a practicing veterinarian for 31 years and runs her own equine and small animal practice in Armstrong, BC. She was qualified as an expert in the field of veterinary medicine, with particular expertise in equine and small animals.
106. Dr. Mills attended the Appellant's property with the Society's constables on September 23, 2020. She provided a report on the condition of the animals and property.
107. The dogs were examined first. She noted that there were significantly more dogs than originally expected. Given the number of animals in question, they divided them into groups to identify dogs in need of immediate care.
108. Her evidence on the dogs' condition is summarized as follows:
  - (a) There were approximately 28 12-week-old puppies in an outdoor pen with no food and water visible. The puppies were alert, but many were in thin to emaciated body conditions with potbellies suggestive of malnutrition or internal parasites.
  - (b) In the downstairs bathroom there were seven 12-week-old puppies with no food or water and an open toilet with human fecal matter in it. These puppies were also thin with most of them showing visible ribs and a pot belly. Estimated average body condition score (BCS) of the group was 2 to 3 on a scale of 9.
  - (c) There was also a crate with several dogs in the downstairs bathroom. These dogs had insufficient space and no food or water. Some of the crates had wood pellets thrown in, presumably to absorb urine and feces. Other crates were bare, and the dogs were living in their own excrement.
  - (d) Upstairs there were two dogs loose in the living room – one appeared to be a puppy that was several months old and the other was an older poodle-type dog.
  - (e) Crated dogs were found in the upstairs bathroom. They were covered in their own urine and fecal matter. These dogs included:



- (i) An older Maltese-type dog that appeared to be in some distress and was in emaciated body condition.
  - (ii) A dog in a crate that appeared to be distressed with no food or water present.
  - (iii) A pair of Cavalier spaniels in a crate together that were covered in fecal matter.
- (f) On the outside porch area there were a number of dogs in crates living in their own fecal matter. This included a mature Corgi that had blood-tinged discharge from both eyes, and Papillons in small, stacked crates. There were also three cats in this area – two living in a large crate with a cat tree, and another confined to a small crate.
- (g) A dog was found hiding under some dog food bags in the laundry room.
- (h) Outside there were some adult dogs in individual runs, including two Dalmatians with BCS of 3. Water and shelter were present for these dogs.
109. Dr. Mills recommended immediate seizure of all the dogs based on strong evidence of lack of basic care, severe overcrowding, inattentiveness to basic veterinary needs, and cruelty from inhumane living conditions. She said it was “overwhelmingly clear that their basic needs were not being met in any way.”
110. Body Condition Scores are based on a 9-point scale where 9 is obese. A BCS of 3 or less is consistent with disease process as a result of starvation.
111. Dr. Mills’ report details an outbreak of parvo virus among the puppies following the seizure. In her oral testimony she noted that she did not see that the puppies had parvo when she was assessing them prior to seizure. She noted that the incubation period for parvo is at least three days, and that they would have contracted it at the farm.
112. Responding to questions about parvo virus, Dr. Mills stated that parvo virus can be fatal, but typically has a 90% success rate for treatment. In this case, the recovery rate was significantly lower (70%), because the puppies had underlying malnutrition and parasites.
113. She said that parvo virus is “extremely easy to prevent” by vaccinating mothers prior to birth and vaccinating the puppies every several weeks up to 4 months of age.

114. With regards to the living conditions of the dogs at the property, Dr. Mills referred to photos taken on the day of the seizure, noting poor sanitation, poor body condition, and no food or water present. She emphasized that an owner should always have water available as it is the foremost requirement for animals.
115. Examination of the 27 horses on the property identified the following concerns:
- (a) A buckskin mare in the front area with a BCS of 4.5 with no food, water or shelter.
  - (b) A Clydesdale stallion with a BCS of 2. There was no food in his pasture and the available shelter was too small for him to use.
  - (c) A thin Cremello stallion, BCS 3, who appeared to be lame in the front entrance area. There were a number of sharp hazards in the area.
  - (d) Five horses in a pasture, including a small buckskin, a bay mare with shoes and three other young mares. All horses had low BCS of 2 to 3. One palomino mare had a deep cut to her right hind pastern which had been left untreated. She had a lameness score of 3 on a scale of 5. There was machinery and sharp hazards in this pen as well.
  - (e) Two young Appaloosas in a paddock area. The Palomino colt had severely deformed front feet and was lame. The young black, female Appaloosa had nasal discharge from one nostril. Both horses had low BCS of 2 to 3. There was a small amount of hay in the area, but no visible water. There were sharp hazards including wire fence panels on the ground.
  - (f) There were four horses in a central pasture area – an Appaloosa mare with severe lameness in her front left leg, an extremely thin Appaloosa mare with a BCS of 1.5, and a dark mare with a buckskin foal. No food or water was present. One horse was observed eating feces.
  - (g) Approximately 14 mature horses were kept in a large field at the back of the property. Most of the horses had moderate to extreme hoof neglect. The pasture itself had hazards from sharp machinery parked in it. There was creek water in this pasture. Most of the horses in this pasture had BCS of less than 3. There was no hay present. Deciduous trees were present in the pasture, but they would not offer adequate shelter in winter. Many of the horse had large amounts of burdock in their manes and tails.
116. Specific concerns were raised about the Appaloosa mare with severe lameness in her front left leg (115(f) above). On further examination, she was found to have a fracture of her left scapula. Dr. Mills estimated that the injury was at least three months old. The horse had severe atrophy of her left shoulder region, was

reluctant to bear weight on the left foot and would only toe touch. Her right front foot was splayed and deformed from excessive long-term weightbearing. Her BCS was 1.5. The horse was determined to be in severe distress. She was given pain medication so that she could be moved and was euthanized the following day. Dr. Mills noted that upper limb fractures in horses will not heal because of their weight and size. There was no prognosis other than euthanasia.

117. Dr. Mills recommended that all the horses be seized due to inadequate food and shelter, untreated wounds, poor body condition scores, pasture hazards and the presence of one animal that had been left in severe distress for months.
118. She noted that this was an unusual seizure because the horses had such low body condition scores in September. Most BCSPA seizures happen in February or March. She was concerned that these horses were going into winter and “would not have fared well at all.” She noted that the horses acted very hungry when they were fed by the Society following the seizure, and that they demonstrated food protective behaviour.
119. Fifteen of the 27 horses had BCS of less than 3, indicating disease process related to malnutrition. They would have required a high level of care and food to bring them back to health and avoid “refeeding syndrome,” an electrolyte imbalance that affects horses and prevents them from regaining weight.
120. On further assessment of the horses, Dr. Mills noted that most of the horses had sharp edges on their teeth that required care, and many of them had severe dental disorders.
121. On cross-examination, Dr. Mills confirmed that she was paid for her services by the Society. The arrangements were made by APO Chapman.
122. She was asked to review the warrant photos from the date of the seizure to identify the animals covered in feces. She specified photos from the submissions showing soiled wood chips, bedding, and staining on the rump and paws of some dogs.
123. Dr. Mills confirmed that she did not have an opportunity to speak with the Appellant during the seizure to ask how long the dogs were in those conditions or when they were exercised. She stated “there were 67 dogs on the property. Even if some of them get out periodically, there was no way that these dogs were being kept in suitable conditions.” Her conclusion that the dogs spent significant time in

the kennels was evidenced by staining on the paws and poor body condition scores.

124. Dr. Mills was asked to identify photos illustrating the potbellies on the puppies. She identified six photos in particular and directed attention to the photo of a group of puppies with their paws up on the fence. She explained that the potbellies indicate malnutrition and parasite load, which is what was found on further examination of the puppies.
125. When questioned about how much food was present at the property at the time of seizure, she replied “regardless of how much food was present, it didn’t change the fact that the animals were malnourished.”
126. When asked why she included lab results and follow-up information in her report when she did not perform diagnostics or follow-up care, Dr. Mills replied that it was to provide evidence to support the original premise of her assessment, and that those examinations subsequently showed her assessments to be correct.

#### **Respondent’s Veterinarian - Dr. Joselyn McKenzie**

127. Dr. McKenzie is a veterinarian licensed to practice in British Columbia. She is an associate veterinarian at Wise Equine Veterinary Services Ltd. in Langley, BC, where she works only with equine patients including horses. She was qualified as an expert in veterinary medicine with specialization in equine services.
128. Dr. McKenzie was involved in treating eight horses seized from the property. She produced a report recording physical exam findings and treatments following their arrival at the Surrey BCSPCA. Her evidence is as follows:
  - (a) A blanket Appaloosa mare (#72) estimated to be two years old. Very thin with a BCS of 2/9. An oral exam showed severe sharp points on all premolars and molars causing her discomfort and resulting in dropped feed and abnormal chewing. A dental float was performed to remove the points.
  - (b) A palomino paint mare (#73) estimated to be two years old. Thin, BCS 3/9. On arrival she had a large laceration on her right hind pastern that was 2 cm deep and had a thick yellow discharge. A bed of granulated tissue in the wound indicated it was at least two weeks old. The injury was treated with antibiotics, cleaning and dressing, and continues to heal well. This horse also had a distended abdomen and was shedding a high level of ascarids in her manure. She required repeated deworming. The level of parasite burden indicated that

she likely had not received adequate deworming over her life. Ascarids are a particularly dangerous type of parasite. The horse remains bloated.

- (c) A red roan Appaloosa mare (#75) estimated to be in her late 20s. Poor body condition, BCS 1.5/9. On oral exam they found severe dental issues, including missing molars and premolars that are worn smooth, a condition referred to as “cupped out” that limits her ability to grind hay. Based on the extensive issues with her teeth, it was impossible for the horse to chew normally and grind and digest hay. It was probable that this horse has not received dental care and has been in discomfort for several years. Dental issues certainly contributed to her poor body condition. Treatment included repeated correctional teeth floating and antibiotics for a tooth root abscess. Future care will require a diet change from hay to a more readily digestible feed. She is currently being maintained on an entirely mash diet. In addition to dental issues, this mare had lice, which causes severe itchiness. Patterns of hair loss suggest she has been scratching for some time, possibly months.
- (d) A blue roan mare (#82) estimated to be in her early 20s. Poor body condition, BCS 1.5/9. Initial blood work performed by Dr. Mills revealed changes indicative of starvation, muscle catabolism and/or early kidney disease. When she arrived, her hind leg was swollen. It was treated with antibiotics, cold hosing and wrapping. She shows hyper-flexion of fetlocks, often a sign of injury and disease. This would cause pain. Staff also noted that she was unsteady in her hind limbs and would stand with abnormal posture. A neurological exam showed proprioceptive deficits in all four limbs. The horse was diagnosed with Pituitary Pars Intermedia Dysfunctions (PPID), a growth in the pituitary gland that cause abnormal metabolism. There is no cure for PPID and it requires lifelong treatment.
- (e) A red roan Appaloosa mare (#90) estimated to be in her late 20s. Poor body condition, BCS 1.5/9. When she first arrived, she was treated for an abscess in her left shoulder that resolved with antibiotics. An oral exam found two very loose molars and bacterial tooth root infections. Abnormalities in the wear pattern of the teeth prevented the horse from chewing properly. “Based on the severity of the dental issues observed in this mare, I suspect she has not received dental care in several years.” The lack of dental care contributed to her body condition. While in care, the horse became very unstable on her feet, and exhibited severe neurological symptoms. Her instability posed an increased risk to herself and staff, and the prognosis for recovery was poor. The horse was euthanized in care.
- (f) A grey Appaloosa mare (#91) estimated to be in her late teens. Poor body condition, 1.5/9. This horse had abnormalities in her right eye that indicated

past inflammation. She was treated for Equine Recurrent Uveitis, which causes periods of painful inflammation. The horse had cataracts and decreased vision in the right eye, suggesting that she has had recurrent episodes of ERU. This horse also had dental issues. She had two molars extracted and was put on antibiotics for tooth root infection. When asked if she could tell when the last time was that the teeth were floated, Dr. McKenzie replied, "I suspect it would be at least a few years."

- (g) A dark bay, suspected Thoroughbred/Percheron mare (#96) estimated to be in her late teens. Thin, BCS 3/9. Brought in for a prolapsed third eyelid. This can be caused by a number of different things. Treatment involves complete resection. She was not displaying indicators of pain.
  - (h) A black Percheron mare (#97) estimated to be in her early twenties. Very thin, BCS 2.5/9. She had overgrown hooves on arrival and a large pendulous abdomen.
129. Dr. McKenzie indicated certain horses will require extensive care going forward, particularly those with poor teeth, which will require extensive feeding programs. The horse with Uveitis will also require further care and medical attention.
130. On cross-examination, Dr. McKenzie defended her assessment of the cut on the pastern of the palomino pinto mare (#73), saying that there are certain aspects of wounds that allow you to estimate time. Granulation tissue begins to form five days after a wound is sustained. While it is possible that the wound could have occurred during the transfer of the animals during seizure, she says it is unlikely as the wound appears older.
131. Dr. McKenzie was not aware of Dr. Ridgeway's previous assessments or treatment of the horses and did not speak with him about these specific animals.
132. When asked why some of the horses in the photos still appeared skinny after being in the care of the Society for a month, she replied that "from this state, it would take two months to put on enough weight to go up one point in the body condition score." At BCS 5, you would not be able to see the horses' ribs.
133. When shown a medical record for "Nellie" (Exhibit 26), Dr. McKenzie was unable to confirm that this was the same animal identified as Horse #72 but said that the estimated ages matched. When asked to interpret the medical record for signs that the horse may have been in distress, she observed that the BCS of 3 was low and that the rectal temperature is below the normal range.

134. When asked by the Panel if the body condition scores could be low because of dental issues or availability of food, Dr. McKenzie said it would be difficult to interpret. She felt that the dental issues were contributing to their weight, but that the severe cases there would have to be a lack of food as well.
135. Regarding the diagnosis of PPID in horse #82, she said that she would expect an owner to notice stumbling issues and contact a veterinarian.
136. In summary, Dr. McKenzie found that “the low body condition scores, state of dentition and level of parasitism of horses described above make it obvious these horses have not received proper nutrition and deworming for a minimum of several months and likely have not received dental care for years. Skin abrasions on several horses and a substantial wound on one suggest these horses have been housed in areas containing hazards.”

#### **Respondent’s Veterinarian - Dr. Kai-Fong Ng**

137. Dr. Ng is a veterinarian licensed to practice in British Columbia. He has been a veterinarian since 2008 and works at the West Bank Animal Health Hospital. His practice is primarily dogs and cats. He was qualified as an expert in veterinary medicine with particular emphasis on dogs and cats.
138. Dr. Ng attended the shelter to perform the intake assessments of a number of the dogs following the seizure. The exams were conducted on September 24, 2020. Given the number of dogs requiring examination, he worked with another veterinarian, Dr. Jenner, and split the dogs into two groups. He personally examined 14 dogs.
139. Dr. Ng drew specific attention to a male poodle (#51) with a BCS of 2 that was so heavily matted that it had to be sedated and shaved. He described the dog as fearful and gave the impression of being in pain from the mats. This level of matting happens over weeks, not overnight, and is easily preventable. The dog also had some dental disease.
140. At a population level, Dr. Ng noted that the dogs were underfed, malnourished and thin. The dogs that he examined had low body condition scores. A number of them had minor issues with their teeth, eyes and skin.
141. Under cross-examination, Dr. Ng clarified that there is a difference between potbellied and thin, and dogs can be both at the same time. A potbelly in puppies

tends to be due to parasitism and can be easily treated with deworming. If a puppy is underweight and potbellied, it needs to be treated and dewormed. “The worms are not allowing the animal to get adequate nutrition.”

142. Dr. Ng was also involved in some of the follow-up care for the puppies diagnosed with parvo. He explained that parvo virus is shed in feces and lives in the ground for a very long time. It is completely preventable with vaccinations.
143. Parvo causes vomiting, diarrhea and dehydration and is often fatal. Even with treatment, there is only a 90% success (survival) rate. With this group, he says the number of puppies that died was not normal – more should have survived. Dr. Ng stated that the high number of deaths was due to the fact that they were not healthy and not getting proper nutrition to begin with.

#### **Respondent’s Witness – Dr. Karen van Haften**

144. Dr. Karen van Haften is a veterinarian licensed to practice in British Columbia; she has also completed a three-year residency in clinical behavior. She was qualified as an expert in veterinary medicine and animal behaviour.
145. Dr. van Haften prepared a report and testified on the condition of the dogs and cats as a population level at intake and through the first two weeks in care.
146. She testified that they did not know there was parvo in the population when the puppies were seized. There was one puppy on intake that looked lethargic and “dumpy”; it was sent to the emergency clinic and tested positive the next day. On second day, they knew they were dealing with parvo and had a large number of puppies would be infected. In total, 31 puppies and one adult dog developed symptoms; 10 puppies died.
147. Parvo virus is a highly infectious virus that can affect both dogs and puppies. It causes disease by killing rapidly dividing cells, mostly gastro-intestinal cells. It kills the intestinal lining causing diarrhea, nausea and malaise. Bone marrow is another area with rapidly dividing cells and parvo immunocompromises puppies by killing white blood cells. Parvo can also affect cardiac tissue.
148. There is a vaccine that is safe and 100% effective in preventing parvo infection. Parvo is well-studied in dogs. The minimum incubation period is three days from infection. Incubation is usually longer in puppies.



149. In a population where a normal dog owner has a single puppy, vaccinations start at eight weeks and then every few weeks until 4 months. Where somebody owns dozens of dogs or is housing many dogs on the same property, like a kennel, breeding operation facility or shelter, there is an increased responsibility to do regular vaccinations and keep records. As new animals enter the property, they should be isolated and quarantined until their health status is assured.
150. It is very important and standard practice for breeding female dogs to be up to date on their vaccines. Once they are pregnant, you do not want to vaccinate them. Pups take in antibodies through the mothers' milk. Pups may or may not get sick when they have protective antibodies.
151. When asked how one would eradicate parvo from a farm-type environment, Dr. van Haaften replied, "In my opinion you could not fully disinfect a large outdoor area for parvo. Have to assume it will be there for years and years." Parvo is a very hardy virus that can persist in the environment for years. BCSPCA shelters have non-porous surfaces and clean them with activated hydrogen peroxide. Any non-porous items that cannot be sanitized are thrown out.
152. She said with the one puppy positive on intake, the puppies would have contracted the virus at least three days before that. It could have been endemic on the property and the puppy found it on the ground, or it could have been a new animal on the property, but they definitely were exposed before they came to the BCSPCA.
153. Dr. van Haaften testified that the puppies in the Society's care got gold standard care for parvo and, even with that, they had a lower survival rate than what is published. With this treatment, 90% of puppies would be expected to survive. In this case, the rate was 70%. "It was surprising to us that we were losing so many. Our best guess is because these puppies were not healthy when they started - they had a heavy GI parasite load so they were dealing with other infectious diseases before parvo." In total, 10 puppies died, the others recovered.
154. Dr. van Haaften explained that there were four kinds of parasites found in this population. Two are commonly seen in BC - roundworm and giardia. Whipworm and coccidia are not common in BC. Whipworm is not transmitted through the milk but comes from the environment and is transmitted through feces. Both whipworm and coccidia are contracted by living in an unhygienic environment.

155. These kinds of parasites can create more GI symptoms - diarrhea, weight loss, anemia and bloody stools. She said that roundworm and giardia do not normally prevent puppies from keeping a normal, healthy weight. However, it would be hard to determine if the dogs were underweight because of lack of food (nutrition) or parasites or a combination of both.
156. Asked about other health concerns in the population, Dr. van Haaften spoke to the poor body condition scores, which were almost all less than ideal at intake. She explained that any score lower than 5 is considered underconditioned and too thin. BCS 4 is mildly underweight. Most of the dogs and puppies seized were in the 3/4 range, and a few scored at 2 out of 9.
157. In a population of 47 dogs, Dr. van Haaften said you could expect to find 2-3% of the population underweight. Seeing the vast majority underweight means that there is either a failure to prevent disease or failure to provide adequate calories.
158. The puppies acted as if they were starving when they were fed and showed food guarding behaviour. She noted that animals with history of food insecurity learn this behaviour. This behaviour resolved as the dogs and puppies were fed an adequate diet.
159. Necropsies were conducted on three of the puppies that were found to be in critical distress (#5, 16 and 26). The findings for all three were consistent with parvovirus enteritis complicated by sepsis with bacterial pathogens cultured in lungs, liver and (in two cases) spleen.
160. Two of the six-week-old Australian Shepherd puppies had focal seizures shortly after their first meal in care. Focal seizures are characterized by uncontrollable twitching of the face but no loss of consciousness. They were sent to the emergency hospital where one (#23) was found to be in Critical Distress by the attending veterinarian for ongoing abnormal neurological behaviour and was euthanized. A necropsy was performed but they were unable to determine the cause of the seizures. The second puppy (#29) was neurologically normal on presentation and returned to the shelter the next day.
161. Dr. van Haaften also noted several untreated dental and dermatological issues with the dogs from this seizure.
162. With regards to the three cats, Dr. van Haaften reported that they did fecal tests on the kittens and did not find any parasites in them. Physical exams showed that they were thin (BCS 4), but otherwise fine.

163. With regards to a treatment plan for puppies, dogs and cats, Dr. van Haaften noted the following:
- (a) The parvo crisis has passed, and all the surviving puppies have recovered and are gaining weight.
  - (b) In a big population like this, there needs to be in a regular parasite prevention program. Most vets would recommend an internal and external parasite plan. She would expect that the breeder would have a monitoring plan and consult with a vet for a preventative healthcare plan.
  - (c) Whipworm and coccidia prevention requires keeping the environment hygienic and cleaning up fecal contamination quickly. She noted that most larvae need a couple of days to sit there before they become infectious.
164. When asked how puppies should be kept at a property, Dr. van Haaften replied that it depends on your goals. If your goal is to sell them as household pets, then they need to be raised in the house, and socialized with people and animals in a safe way, taking into account their immature immune systems. They should be raised in hygienic conditions that allow for room to explore, contact with other animals, and time for relaxation and play.
165. On cross-examination, Dr. van Haaften was asked if she had ever heard parvo referred to as “Dog Show Crud.” She had not.

#### **Respondent’s Witness – Dr. Kevin Skelley**

166. Dr. Skelley is a veterinarian licenced to practice in British Columbia. He practices at the BCSPCA Penticton hospital. His practice primarily concerns cats and dogs. He was qualified as an expert in the field of veterinary medicine with specialization in dogs and cats.
167. Dr. Skelley was involved in the examination and treatment of the dogs following the seizure. He examined 32 dogs on September 24, 2020. None were in critical distress on that day.
168. Overall, Dr. Skelley found 75% of the dogs were underweight. Only a couple of dogs were a good weight. Most were matted with feces and urine in the fur. Many of the older dogs had bad teeth.
169. Dr. Skelley treated some of the puppies that tested positive for parvo.

170. On cross-examination, Dr. Skelley was asked about the accuracy of the 15-minute snap test he used to diagnose parvo. He responded that the test is quite accurate, with a 95% sensitivity (low false negatives), and 95% specificity (low false positives). Molecular diagnostics would confirm the snap test.
171. When asked about “Dog Show Crud” he replied that he had never heard of it.
172. Dr. Skelley was cross-examined on his choice to vaccinate the puppies at their intake exams. He said that he saw the stickers in the files but did not do the vaccinations himself. The vaccinations were all done by needle between intake and when he examined them. Dr. Skelley said that he would not vaccinate a dog that has a fever. Based on his experience of the dogs he saw, Dr. Skelley said there were no dogs on the intake exam that he wouldn’t have vaccinated.
173. When asked if giving a vaccination to dog that is ill would kill a dog, he replied that they would not give a dog a vaccine at that time because it might make the animal sicker. He said it would only result in the death of a puppy if it had an anaphylactic response.
174. When questioned about body condition scores, he specified that a BCS of 3 is not emaciated – that is a 1 or 2. He added that a dog with a BCS of 3 may be stressed from not getting as much food as they want. He said that they would not be suffering from pain, but that hunger is still a form of suffering.

**Respondent’s Witness - SPC Matthew Affleck**

175. SPC Affleck is an employee of the Society having been appointed as an SPC under the *Police Act*.
176. SPC Affleck testified that the first time he met the Appellant was when he attended her property with APO Chapman on August 21, 2020 to investigate a complaint about 30 dogs and 8-12 horses. There were concerns about puppies in a horse trailer compartment, high temperatures and the accumulation and smell of feces.
177. On August 21, 2020 they arrived at the Appellant’s property to a closed gate. From outside the gate, they could see half a dozen horses, dogs and puppies. The Appellant invited them in and noted that she had had several dealings with the BCSPCA on the Lower Mainland.

178. He observed about 20 dogs, six horses and one cat. Multiple dogs were in wire pens, some dogs were tied, there was a buildup of feces and water containers were dirty, empty or full of algae. A group of puppies were in the tack compartment in the trailer with no access to light, ventilation, water or food. The puppies were very thirsty. A Dalmatian was tied to a post. It was entangled in the line and thirsty. There was no adequate shelter. There were several horses noted on the property, but the Appellant did not allow him to see them. One horse's ribs and hips were visible. A cat was in a wire cage.
179. SPC Affleck noted that the Appellant was argumentative during their visit. She stated that she should not have allowed them to inspect the animals. APO Chapman asked her if she would like them to leave and she said yes. The Appellant asked if they were going to be getting a warrant and asked for a chance to rectify the situation.
180. They issued a Notice (B27087) to the Appellant requiring her to provide access to clean potable drinking water, sufficient quantity of suitable food, clean and disinfected food and water containers, address shelter, ventilation and lighting concerns, provide opportunity for exercise, ensure the area is kept free of injurious objects, address tethering concerns, provide human contact and separate animals into appropriate groups. Comments required that the Appellant to provide a location of any animals removed from the property, increase feeding for the underweight puppy (grey/black) and clean the two corgi's ears.
181. They arranged to return on August 25, 2020 and the Appellant agreed but then on August 24, she left a message for APO Chapman to reschedule.
182. SPC Affleck next attended the property on September 1, 2020. They were denied access to the property. There was a second female on the property at the time who was aggressive. They left Notice (B27092) with instructions regarding an underweight horse in the driveway.
183. SPC Affleck decided it was necessary to apply for a warrant following a visit to the Appellant's property on September 9, 2020 where he observed a lame horse that was underweight and had trouble walking, a turkey in a small cage without access to food or water, two dogs in a chain link run without adequate shelter, and two horses in a pen with no shelter. The Appellant told them that lame horse had been that way for a couple of months, and that Dr. Ridgeway had examined it.

184. SPC Affleck testified that as soon as they started to question the Appellant about the lame horse, she asked them to leave. Each time she asked them to leave the property, they left.
185. Regarding the rationale to seek a warrant, SPC Affleck said the Appellant cancelled prearranged visits and did not allow them to do a full inspection of her property before asking them to leave. He said, "it was clear that we were leaving animals in distress and that she had not complied with the full order."
186. On September 23, 2020, SPC Affleck and APO Chapman attended the property with the regional manager of investigations, Dr. Mills and the RCMP. Dr. Mills was there to provide immediate help with sick animals and assist in defining distress in the animals. Ultimately, the decision to seize the animals rested with SPC Affleck, but it was done on the recommendation from Dr. Mills.
187. He described being greeted by a Cocker Spaniel-type dog tethered to the front of the house that was extremely fearful. Fifteen puppies were loose in the yard. The Appellant could be seen carrying puppies into her house.
188. RCMP handcuffed and arrested the Appellant. She was given a copy of the search warrant. SPC Affleck reported the Appellant was argumentative and difficult to communicate with. The RCMP removed her from the property.
189. They walked through the house first and found dozens of dogs in poor condition, including puppies kept in unsanitary conditions, and made the decision to remove all 67 dogs.
190. They found 27 horses on the property, many with injuries, overgrown feet, underweight, lack of shelter and water. There was one small pile of hay out for the horses. They made the decision to remove all 27 horses.
191. Three cats were being kept in cages on the deck. He noted the conditions were unsanitary, there was a lack of clean water, and the litter box was full. The cats were surrounded by barking dogs and they appeared fearful. He made the decision to remove the three cats.
192. He was surprised by the number of animals that they found. "When we went to the property, we were expecting a dozen horses and maybe 20-30 dogs."

193. Under cross-examination, SPC Affleck was asked to show where in his notes from the seizure he said the Appellant was aggressive or fighting with him. He referred to his notes in the Society's disclosure (Tab 33, p. 1030) where it noted that the Appellant became upset and asked why they needed to see her horses.
194. He stated that the Appellant argued and did not agree that her animals were in distress. Any time they made an observation about a dog being tethered or a puppy, she argued that what she was doing was correct. Despite efforts to try and provide education to relieve the animals' distress, she denied that they were in distress and did not see the concern.
195. He said the Appellant did not provide any information that she was working on things or about what she was doing to alleviate the distress on the property. She did not tell them that she had changed the food for the horses. He asked her what kind of progress she had made and what steps she had taken to deal with the underweight horses. His evidence is that they tried hard to work with the Appellant.
196. SPC Affleck noted that on September 1, the Appellant wanted more time to comply with the notice. She told them that she had booked a farrier but they didn't show, and that Cascade Vet was coming out the next day. In some respects, she answered questions, and in others she did not.
197. A number of times the Appellant offered information about veterinary care that was later contradicted by the evidence. For example, she said that she had an appointment for some puppies at Apollo Vet, and yet no appointment had been made. She also told them Dr. Ridgeway has examined the severely lame horse, but Dr. Ridgeway said that he did not examine the horse but just observed it in passing.
198. When asked if it would be difficult for a lay person to tell the difference between a vet looking at a horse in passing and examining it, SPC Affleck referred to the submissions where the Appellant had two invoices from a vet for examining the other two horses and no invoice for a third horse.
199. He was concerned that she would not let them see all the horses and would not allow them access to follow up on the directions regarding the other animals. When asked why they did not grant more time to address the notice, SPC Affleck said, "Because the animals were in distress and it's my job to take whatever action to relieve their distress."

200. When asked if he thought the Appellant had trust issues with him, SPC Affleck said she had more contact and communication with APO Chapman.

## **IX. Analysis and Decision**

201. 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.

202. 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.

203. I have also proceeded on the basis that the Appellant has an onus to show, based on the Society's decision or changed circumstances, that the remedy she seeks (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.

204. In considering the first issue, I have considered the conditions of the animals by group.



## **Seizure of the Dogs**

205. At the time of seizure, SPC Affleck concluded that the dogs were in distress due to lack of adequate water, space, exercise, care or veterinary treatment, based on the definition of distress set out above in s. 1(2)(a) of the *PCAA*. He also concluded that their living conditions were unsanitary due to the conditions in the house and build-up of feces in the outdoor pens, s. 1(2)(a.1).
206. SPC Affleck sought the warrant based on the Appellant's lack of cooperation and unwillingness to provide access to the animals to demonstrate her efforts to improve their conditions. In his view, the Appellant's pattern of behaviour in rescheduling appointments and refusing access to the property or animals for follow-up, combined with her past history with regards to animal welfare complaints and the seizure of animals in her care, provided sufficient cause to seek a warrant. Based on the surprising number of animals found on the property at the time of seizure, concerns for their welfare based on poor body conditions across the population, and the living conditions on the property, he exercised the Society's authority under section 11 of the *PCAA* to take the animals into custody to relieve their distress.
207. The Appellant maintains that the dogs in her care were kept in good living conditions and received adequate care and exercise. She explains away the conditions of the animals and their environment by blaming the timing of the Society's visit while she was doing her chores. She dismisses concerns related to housing without access to water or food or tethering as being temporary in nature. She argues that she was not fairly treated by SPC Affleck and blames the seizure on the poor working relationship between the two of them.
208. In her application for review of the seizure decision, the Appellant tried to rely on the fact that the veterinary intake forms did not indicate significant health issues. This was not a position advanced in this hearing and I would observe that such an argument completely ignores the evidence that within days of the seizure, there was an outbreak of parvo that resulted in the death of 10 pups. Instead of acknowledging the widely recognized science surrounding incubation periods and transmission of parvo, which the veterinarians attribute to the Appellant's failings in her animal care practices, she blames the Society for the parvo outbreak.
209. It is important to note that it is not necessary to find every animal to be in immediate physical distress to justify seizure. In [Simans v BCSPCA](#) (December 2, 2016) at paragraph 180, the panel explained:

180. I note that “distress” in s. 1(2) of the PCAA is a specialized term. It does not require the Society to make a finding of pain and suffering as a precondition to removing an animal. While pain and suffering were present here for many of the animals, that is not necessary for the definition of “distress” to be met. Rather, in accord with the purposes of this protective statute, the definition extends beyond that. **The first three criteria listed in s. 1(2) – any one of which is sufficient to satisfy the definition – also constitute “distress” and make clear that the Society is not required to find “pain” and “suffering” before it may move to protect an animal. Those factors reflect serious risk factors that would foreseeably give rise to suffering and harm if protective action is not taken. While they must not be trivialized in their application, they also do not require the Society to wait until the worst happens.** [emphasis added]
210. In [\*Churchill and Bhasin v BCSPCA\*](#) (September 18, 2019), the panel found:
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. [emphasis added]
211. Still, the facts of this case do not hang purely on the prevention of distress. I accept the evidence of SPC Affleck and Dr. Mills that the dogs were not receiving basic care, were overcrowded, often in unsanitary conditions, crated and tethered and were not having their basic veterinary needs like vaccination and deworming attended to. These conditions created the opportunity for disease and mental suffering.
212. I further refer to the evidence of Dr. Skelley who did intake exams for roughly half of the population of dogs and found that 75% of them had body condition scores of 3 or under, indicating that they were not just receiving poor care, they were not getting enough food and hunger is a form of suffering.
213. The subsequent outbreak of parvo among the puppies, which I accept originated at the Appellant’s property and not while in the Society’s care, validates the concerns that were observed at the time of the seizure. The complicating issues that exacerbated the parvo infections in the puppies, lack of proper nutrition and high parasite loads, are concrete indicators that the puppies were not getting adequate care and nutrition in the Appellant’s care.
214. Based on the totality of evidence, I find the dogs were in distress under s. 1(2) and were appropriately and reasonably seized by the Society.

## **Seizure of the Cats**

215. I now turn to the seizure of the cats.
216. The Appellant argues that the Society did not present any real evidence that the cats were in distress and argued that, based on jurisprudence the findings of distress are per individual animal without a specific case reference or citation.
217. I disagree with this proposition. As is clear from the *Simans* and *Churchill* decisions cited above<sup>2</sup>, it is not necessary to list each and every animal in making a finding of distress.
218. Rather it is enough to look at the preponderance of evidence across the animal population (veterinary evidence, photographs, low body weights of many of the animals, quantities of feed, housing and a veterinary care and evidence of neglect) in considering whether the Society was justified and acted appropriately in removing the animals. The fact that some animals may not yet require medical attention does not mean they are not living in circumstances that create a significant risk of harm.
219. This approach was accepted by the in [Parker v. BCSPCA](#) (BCFIRB, March 20,2017):
217. In order to find that the cats were in distress, it is not necessary for me to go through each cat, since I have the benefit of the veterinary evidence, which inspected each cat, and because the cats were housed in common conditions, which pertain to the definition of distress.
220. I note that while there may be circumstances where distinctions in how an owner treats animals may result in different conclusions regarding findings of distress (i.e. when a seizure involves livestock and domestic animals or different types of animals), I am satisfied that that is not the case here.
221. Dr. van Haften concluded the cats were thin but otherwise healthy. The evidence of SPC Affleck on the day of the seizure was that the three cats were kept in conditions that warranted their removal. Based on the photographs of their housing and descriptions of the conditions that the cats were found in at the time of seizure, I find the cats were deprived of adequate water, space, exercise and care (s.1(2)(a) and were being kept in conditions that were unsanitary s.1(2)(a.1).

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<sup>2</sup> In particular, see *Simans*, paragraph 209.

222. Based on the totality of evidence, I find the cats were in distress under s.1(2) and were appropriately and reasonably seized by the Society.

### **Seizure of the Horses**

223. The Appellant argues that the horses were well cared for and received adequate food and water. Equipment in the fields and paddocks was not hazardous and did not pose a risk to the horses because they had adequate space to avoid any such objects. With regards to shelter, she references a conversation with another representative of the Society in the spring that told her trees were considered shelter in Princeton. Overall, the Appellant created the image of an environment where the horses were able to roam freely as nature intended.

224. The Panel heard evidence from the Appellant's farrier who, when providing care for two of the horses, did not have concerns about the other horses on the property. The Appellant also called a witness who stayed on the property for a night and observed that the horses appeared to be in good health. I note that both the farrier and the friend who stayed at the farm remarked that some of the horses were thin. The farrier even helped source and transport hay for the Appellant to help alleviate the situation.

225. Against this evidence, Dr. Mills speaks to the overwhelmingly poor condition of the horses at a time of year when they should have reserves to take them into the winter. Of the 27 horses seized, 15 had a body condition score of 3 or less, indicating disease or starvation. Two horses were identified as having severe dental disorders, and several of the other horses required dental care. One horse was deemed in critical distress at the time of seizure and was transported and euthanized the following day. Eight horses required veterinary care and follow-up for conditions that a responsible owner should have recognized and sought veterinary care for. It is telling that the horse with the best body condition and in the best health was the one who had spent the least time in the Appellant's care.

226. At least one of the horses, the Appaloosa with the broken scapula, in fact met the definition of "critical distress" found in s.12 of the *PCAA*. While the Appellant appeared to acknowledge the need to euthanize this horse, she failed to act in a timely way to minimize its suffering. This is evidence of neglect.

227. Based on the totality of evidence, I find the horses were in distress under s.1(2) and the Society's decision to seize them was appropriate and reasonable in the circumstances.

## Return of the Animals

228. 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.

229. 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.

230. The question at this stage is whether the Appellant is capable of providing adequate care for the Animals. The onus is on the Appellant to prove the return of the Animals is in their best interests and to explain what, if any, changes have been made or will be made to prevent the Animals from returning to a state of distress. I have applied this analysis to the facts of this case and considered each group of animals separately.

231. As part of my analysis, I have considered the Appellant's strongly advanced arguments that this is an appropriate case for return of the Animals on conditions to give her another chance with these animals. She says she has learned her lesson. She stressed that the seizure has taken away her livelihood and conditions would alleviate the Society's concerns. Conditions would allow for consent searches going forward while at the same time permit the Appellant to sell off animals to pay the costs of care. After that, there would be an agreement that she not have any more than six animals which agreement she argues, could be enforceable in court. In the absence of a consent agreement, the Appellant says nothing stops her from accumulating more animals. The Appellant argues this more proportional than leaving her with nothing.

232. I deal with this unusual second chance argument below after considering the return of animals generally. However, I note here a passage from the case of *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010

BCCA 519 at paras. 37-38, in responding to the argument that the Society must always give an owner “another chance” before it seizes animals:

37. In my view, s. 11(a) must be given a broad purposive interpretation. The words "does not promptly takes steps that will relieve ... distress" sometimes will lead to the authorized agent making orders and giving directions, in other circumstances he or she may conclude that the person responsible for the animals is unable to take the necessary steps or it may be apparent that the person is unwilling to take steps to relieve the distress. The cases referred to by the chambers judge illustrate these varied scenarios.

38. I do not think the cases support the notion, advanced by the appellant, that, as a matter of law, in every case the agent must give the responsible person time in which to relieve the animals' distress. In some cases, as in the present case, it will be reasonable not to do so. The word "promptly" suggests a consideration whether the person can or will take the necessary action.

### **Return of the Dogs**

233. The Appellant represents herself as a breeder – someone who is well-informed and capable in animal husbandry and care. In support of her case, she called witnesses, friends and family who gave evidence that they had visited her residences over the years, and who spoke to how much she knew about and cared for animals, both in Surrey and at the Princeton property.

234. Two witnesses, her daughter and a friend, who had been to the Princeton property in the month of September commented that her horses appeared fine. She called a farrier who recently began providing services at the Princeton property for two of her horses. While not presented as an expert witness, the farrier offered the opinion that the horses were “a little thin” but otherwise in good health. I found much of the testimony from the Appellant’s witnesses vague and superficial in nature, especially in light of the fact that my conclusion is that all the Animals were in distress at the time seizure, and not at all helpful in deciding on the substantive issues of the future well-being of the animals in question.

235. The Appellant’s case for the dogs is largely built around three themes: the seizure of the animals was unjustified, the dogs were in perfect health as she was already doing all that was necessary to support their health and well-being, and if the dogs are returned, the Appellant will re-home them within six months and reduce the number of animals in her care to six.

236. The Appellant relies on her care plan in support of the dog's return. However, I place very little weight on this document given the Appellant's reluctance to actually agree to the terms of the agreement when it was put to her by her own counsel in the hearing. The document appears to have been prepared by counsel on the Appellant's behalf to secure the return of her Animals but it does not appear to reflect her real intentions.
237. I have already made my findings with respect to the seizure and the health of the Animals above. Having made the determination the Society acted appropriately, and the seizures were justified, and faced with the Appellant's insistence that her care was already adequate, I can only conclude that there is complete failure to understand about the true state of the animals in her care. This lack of insight increased the weight I have placed on the Appellant's past history with the Society, particularly given the similarities in circumstances between the 2015 seizure and the one under appeal today.
238. As a breeder, the Appellant posed no breeding plan, no business plan and no rationale for how the number of dogs in her care went from starting to acquire dogs in January 2020 to 67 dogs in August.
239. In calling her current landlord as a witness, the Appellant underscored her own issues, and one that is central to this appeal when considering the conditions to which the animals will return. While on one hand, the landlord gave evidence that the horses appeared to be in good health, the over-riding message left by his testimony was that the Appellant had not been forthcoming about her plans to build a kennel and breeding business on the property, and that the landlord did not support the use of the property to house such a large number of dogs.
240. Further, I note the Appellant's evidence that she plans to move to an as yet undisclosed location in January. No particulars were given as to how this location would better meet the needs of her animals. Essentially, she is asking this Panel and the Society to trust that this move is in the best interests of the animals based on her word alone.
241. The Society's vets presented evidence that responsible breeders separate their males and females, vaccinate female dogs before breeding, and maintain a parasite control program to ensure the health of their animals. The Appellant provided evidence of none of these practices. Instead, the Appellant's case turns on casting doubt on the expertise of the Dr. Mills as an expert and blame on the Society for the outbreak of parvo.

242. Regarding the parvo outbreak, evidence from the five veterinarians called by the Society was consistent:
- (a) Parvo virus has a minimum 3-day incubation period, so the puppies and dogs would have been exposed to the disease on the Appellant's property before the animals were seized and brought to the shelter.
  - (b) The expected survival rate for parvo infections is 90%. In this population, despite gold-standard care at the first clinical signs of illness, the survival rate was only 70% most likely due to the lack of food or nutrition, parasites or a combination of both. Ten puppies died.
  - (c) Parvo is easily prevented through vaccinations of the mother and puppies.
  - (d) Parvo is a long-lived virus that will stay in the environment on the Appellants property and continue to be a risk for years to come.
243. The Appellant argued that tests for parvo were inconclusive or unreliable. These arguments are distractions in a case where veterinarians in different locations, at different times, and assessing different puppies from the seizure all came to the same conclusion supported by reliable and accepted clinical diagnostics, confirmed by the results of three necropsy exams. The medical evidence is overwhelming.
244. It concerns me that the Appellant is unable or unwilling to accept responsibility for her role in the health of her animals. Her evidence lacked information or detail about vaccinations, deworming, feeding schedules, breeding plans, or any other substantive record keeping that would indicate that she was serious about the care and well-being of her dogs.
245. Moreover, these issues are not new to the Appellant. By her own evidence, she has worked with Society staff since 2006 to deal with various animal care complaints and has received their guidance and direction on the standards and requirements for care. She has had every opportunity to implement good animal care practices and yet continues to demonstrate that she is either unwilling or unable to do so.
246. While the Appellant puts forward a plan for a return on conditions that allows her to dispose of the animals herself over a six-month period, an agreement of that nature still puts the onus on the Society for continued education and enforcement for an extended period of time. The need for any such an agreement would be eliminated if the Appellant was able to realistically determine the limits of her own



capacity to provide care for animals. Given the sheer number of animals involved in this seizure, she clearly is not.

247. It is my decision that it is not in the best interest of the dogs or puppies to be returned to the Appellant, either with or without conditions, and the Society should be permitted to dispose of the dogs and puppies as it sees fit.

### **Return of the Cats**

248. Neither the Society nor the Appellant made significant submissions with regards to the wellbeing of the cats. In this case, the cats were found in such similar conditions to those of the dogs that I believe the above analysis regarding animal wellness and care applies to the cats as well.

249. It is my decision that it is not in the best interest of the cats to be returned to the Appellant, either with or without conditions, and the Society should be permitted to dispose of the cats as it sees fit.

### **Return of the Horses**

250. As with the other animals, the Appellant insisted that the horses were in good health and without injury prior to being seized. There are several notable exceptions to this assessment. By the Appellant's own account, there was an older Appaloosa mare that was severely lame and unable to use her left front leg as the result of a broken scapula. There were also a number of older horses that the Appellant had decided should be euthanized, and as a result, that she has requested not be returned as part of this appeal.

251. The evidence from Dr. Mills and Dr. McKenzie offer a different picture of herd health. Fifteen out of 27 horses were assessed with body condition scores of 3 or lower, indicating that these horses were not getting adequate nutrition. In addition to the horse with a broken scapula, there were a number of health issues that the veterinarians testified the average horse owner should have noticed, including a significant laceration, mobility issues, eye issues, worms, lice, overgrown hooves, chronic lameness and dental issues ranging from moderate to severe.

252. There is overlap between the horses that the Appellant does not want returned and the ones that had the lowest body condition scores and greatest health issues.

253. Argument was made that the Appellant could not be expected to be put in the position of an expert veterinarian, yet the Appellant herself claims to be well-versed in animal health and treating basic ailments. She put forward the herd health assessment from Dr. Ridgeway to illustrate the Appellant's diligence as an owner, but the report lacks even the most basic information like the number of horses that were examined, ages or identifiers, rendering it effectively meaningless in these deliberations.
254. Not only does the Appellant fail to acknowledge the condition of her horses, but she refuses to acknowledge her role in how they came to be that way. According to the evidence of Dr. McKenzie, "the low body condition scores, state of dentition and level of parasitism of horses described above make it obvious these horses have not received proper nutrition and deworming for a minimum of several months and likely have not received dental care for years. Skin abrasions on several horses and a substantial wound on one suggest these horses have been housed in areas containing hazards." In short, the condition of these horses was the result of long-term neglect and a failure to provide basic veterinary care.
255. Dr. Mills' statement stands out where it highlights the unique timing of the seizure, "the horses were very thin in September. Most equine seizure cases happen in February to March when there is no hay and no grass. The fact that these horses were going into winter with low body condition scores and no evidence of adequate feeding would not bode well for their survival over winter."
256. In seeking the return of the horses, the Appellant has chosen to omit five senior animals that she claims she had planned to euthanize before the seizure. I find it problematic that these animals were not surrendered to the Society earlier but have just been cast aside in the course of these proceedings. It demonstrates the Appellant's ongoing lack of consideration and sense of responsibility for her animals.
257. The evidence holds that the Appellant has proven herself unable to effectively monitor and assess the condition of her horses, and unwilling to accept feedback, from the Society at least, on how to improve their condition. Ultimately this has resulted in the deterioration and suffering of the horses in her care. Given the Appellant's history, and the position that she has taken in her defense during this hearing, it seems likely and even probable that the horses would be returned to similar conditions if they went back into her care.

258. It is my decision that it is not in the best interest of the horses to be returned to the Appellant, with or without conditions, and the Society should be permitted to dispose of the horses as it sees fit.

259. I have one final comment on the return of the Animals. It was clear that the Appellant's primary concern for the return of her Animals centered on the return of the Animals to support an income stream in her best interest. While it may be in her interest to have the animals returned so she could attempt to sell them, based on the entirety of the evidence before me, I am satisfied that even in the short term it is not in the best interests of any of the Animals to be returned to the Appellant's care .

## **X. Costs**

260. 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.

261. Section 20.6(c) of the *PCAA* provides that on hearing an appeal, BCFIRB 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)".

262. The Society is seeking costs as follows:

(a) Veterinary, hauling, boarding and feed costs:	\$191,245.42
(b) SPCA time to attend seizure:	\$ 958.65
(c) Housing, feeding and caring for the Animals:	<u>\$ 61,463.90</u>
(d) Total:	\$253,667.97

263. The Appellant argues that the costs are unreasonable and that there was a lack of detail in the records and documents submitted. She particularly objects to the admissibility of the general ledger that was submitted late in the process [Exhibit 33] and included veterinary costs for the entire organization in September and October. I considered the information in the general ledger provided and found it to be of limited value in my deliberations. I further note that there is nothing in the Society's Affidavit that attributes all of these costs to the Appellant. It was regarded as supplemental information that was illustrative of the kinds of costs incurred by the Society at best.
264. More broadly on the matter of costs, the Society's submissions provide detailed cost accounting, including invoices for veterinary care and detailed estimates on the daily operating costs associated with the care of each animal [Exhibit 18]. The Society's methodology for calculating these estimates on a per diem basis representing the average daily costs to feed and house different types of animals has been reviewed and supported in previous appeals before BCFIRB and in the Supreme Court of British Columbia: see *Haughton v BCSPCA*, *supra*.
265. In this case, the Society provided estimates for daily costs of care for dogs of \$17.35 and \$13.35 for cats. These rates are comparable to the daily costs of care charged by municipal pounds which were between \$20-\$25. I also note the Society's evidence that when animals are placed in foster care these daily costs are not claimed. The Society provided a detailed accounting of the costs associated each individual horse as opposed to relying on a per diem rate to reflect that horses are housed in different circumstances.
266. I reject the Appellant's unsupported argument that in order for costs to be assessed against an owner they must be payable (and documented paid) to a third party. Section 20(1) provides that an owner is liable to the Society for the reasonable costs incurred by the Society under the Act. I have found that the seizure was necessary to avoid distress and that the Animals should not be returned to the Appellant. It follows that the Appellant is liable for the reasonable costs of seizing and caring for her Animals.
267. Admittedly, the Society's costs associated are high, but on review I am satisfied they are accurately reflective of the costs associated with the seizure and care given the number of animals involved, the high level of veterinary care that was required, and the duration of time in care.

268. 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 **\$253,667.97**.

#### **XI. Order**

269. I conclude that the dogs at issue on this appeal were in distress, that their removal was appropriate and that it is likely and foreseeable that their living conditions would not improve, and they would return to situations of distress if returned to the Appellant. Consequently, and pursuant to s. 20.6(b) of the *PCAA*, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the dogs.

270. I conclude that the cats at issue on this appeal were 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 Appellant. Consequently, and pursuant to s. 20.6(b) of the *PCAA*, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the cats.

271. I conclude that the horses at issue on this appeal were 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 Appellant. Consequently, and pursuant to s. 20.6(b) of the *PCAA*, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the horses.

Dated at Victoria, British Columbia this 9<sup>th</sup> day of December 2020

#### **BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**



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Tamara Leigh, Presiding Member

## APPENDIX “A” – Exhibits

<b>Exhibit #</b>	<b>Date (Received)</b>	<b>Received from</b>	<b>Document</b>
Exhibit 01	Oct 20, 2020	BCSPCA	BCSPCA Decision
Exhibit 02	Oct 22, 2020	BCFIRB	Filing fee receipt
Exhibit 03	Oct 26, 2020	Appellant	Notice of Appeal (NOA)
Exhibit 04	Oct 27, 2020	BCFIRB	NOA Process Letter
Exhibit 05	Nov 3, 2020	BCSPCA	BCSPCA - LT all encl doc disclosure
Exhibit 06	Nov 3, 2020	BCSPCA	BCSPCA initial document disclosure, Tabs 1-36, Part 1
Exhibit 07	Nov 3, 2020	BCSPCA	BCSPCA initial document disclosure, Tabs 1-36, Part 2
Exhibit 08	Nov 3, 2020	BCSPCA	BCSPCA - Tab 25, photographs identifying each animal
Exhibit 09	Nov 3, 2020	BCSPCA	BCSPCA - Tab 9, various photographs and videos
Exhibit 10	Nov 10, 2020	BCFIRB	Email: confirmation of hearing date amendment
Exhibit 11	Nov 16, 2020	Appellant	Appellant - BMM Letter and Witness List
Exhibit 12	Nov 16, 2020	Appellant	Appellant - Willsays
Exhibit 13	Nov 16, 2020	Appellant	Appellant - Pictures
Exhibit 14	Nov 16, 2020	Appellant	Appellant - Vet, Bills, and Documents
Exhibit 15	Nov 16, 2020	Appellant	Appellant - Decisions
Exhibit 16	Nov 17, 2020	BCSPCA	BCSPCA - LT all encl submissions
Exhibit 17	Nov 17, 2020	BCSPCA	BCSPCA - submissions
Exhibit 18	Nov 17, 2020	BCSPCA	BCSPCA - Affidavit of Marcie Moriarty
Exhibit 19	Nov 17, 2020	BCSPCA	BCSPCA - Witness Contact Form
Exhibit 20	Nov 17, 2020	BCSPCA	BCSPCA - Expert Witness Form
Exhibit 21	Nov 17, 2020	BCSPCA	BCSPCA - updated document disclosure index
Exhibit 22	Nov 17, 2020	BCSPCA	BCSPCA - document disclosure Tabs 37-43
Exhibit 23	Nov 18, 2020	Appellant	Appellant - Witness Contact Form
Exhibit 24	Nov 20, 2020	Appellant	Appellant - Horse Herd Medical Record

<b>Exhibit #</b>	<b>Date (Received)</b>	<b>Received from</b>	<b>Document</b>
Exhibit 25	Nov 20, 2020	Appellant	Appellant – Stealer Medical Record
Exhibit 26	Nov 20, 2020	Appellant	Appellant – Nellie Medical Record
Exhibit 27	Nov 20, 2020	BCSPCA	BCSPCA – Document Disclosure Index Updated
Exhibit 28	Nov 20, 2020	BCSPCA	BCSPCA – Supplemental Cost Submissions
Exhibit 29	Nov 20, 2020	BCSPCA	BCSPCA – Document Disclosure, Tab 44
Exhibit 30	Nov 20, 2020	Appellant	Appellant - email reply on BCSPCA cost submissions
Exhibit 31	Nov 20, 2020	Appellant	Appellant – Compliance Check Email Chain
Exhibit 32	Nov 20, 2020	Appellant	Appellant – Replying to Questions Email Chain
Exhibit 33	Nov 23 2020	BCSPCA	BCSPCA – Affidavit #2 of Marcie Moriarty