

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

BETWEEN:

GREG NEUHAUS

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For The British Columbia Farm Industry
Review Board

Harveen Thuli, Presiding Member
Dennis Lapierre, Member

For the Appellant

Self-represented

For the Respondent

Chris Rhone, Counsel

Date of Hearing

February 14, 2020

Place of Hearing

Teleconference

I. Overview

1. This is an appeal pursuant to section 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *Act*) related to the seizure of five dogs and six puppies born in custody.
2. The Appellant, Greg Neuhaus, appeals the January 14, 2020 review decision issued under section 20.2(4)(b) of the *Act* 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 *Act* 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 permit the society, in its discretion, to destroy, sell or otherwise dispose of animals. The Appellant is seeking the return of the five dogs and six puppies.
4. On February 14, 2020, a BCFIRB hearing panel (the **Panel**) held a hearing via teleconference. The hearing was recorded.
5. The Appellant was self-represented and called one witness to testify on his behalf.
6. The Society was represented by counsel and called two witnesses: a veterinarian who examined the five dogs that were seized and the special provincial constable (**SPC**) who had contact with the Appellant before, during and after the seizure.

II. Decision Summary

7. In brief, this appeal concerns the Society's seizure of the following dogs from the Appellant's property:
 - a. four dogs¹ on December 31, 2019; and
 - b. one dog on January 17, 2020(collectively, the **Dogs**).

One of the Dogs seized on December 31 gave birth to a litter of six puppies on January 8, 2020 while in the Society's care. The Dogs and six puppies are collectively referred to as the **Dogs in Dispute**. For the reasons explained in this decision, the Panel has decided not to return the Dogs in Dispute to the Appellant. Pursuant to section 20.6(b) of the *Act*, the Society is permitted, in its discretion, to destroy, sell or otherwise dispose of the Dogs in Dispute.

8. The Panel has decided that the Appellant is liable to the Society for the full amount of costs claimed by the Society for the care of the Dogs in Dispute while in custody of **\$9,383.24**.

¹ Six dogs were initially seized from the Appellant's residence but the Appellant surrendered one dog on December 31, 2019 and another dog on January 8, 2020.

III. Preliminary Matters

9. BCFIRB received Mr. Neuhaus' Notice of Appeal and filing fee on January 16 and 17, 2020, respectively. His Notice of Appeal referred to other adult dogs and 17 puppies that he considered were "taken away" for "no real reason at all" on December 23, 2019. This decision will refer to them as the "**additional dogs and puppies.**" His position at the time of filing his Notice of Appeal was that the additional dogs and puppies should be included with the Dogs in Dispute in this appeal.
10. On January 22, 2020, the Society's counsel sent an email to BCFIRB seeking direction from BCFIRB confirming that the scope of the appeal was limited to the Dogs in Dispute. The Presiding Member issued an Order on January 27, 2020 requesting the parties to disclose all documents in their possession that related to the surrender or seizure of the additional dogs and puppies. Only the Society submitted further documents.
11. On review of the documents submitted by the Society, it became apparent that Vernon Animal Control impounded three adult dogs at large pursuant to a bylaw infraction on December 23, 2019. The three dogs were subsequently transferred to the Society after the Appellant did not claim them within the timeframe permitted under the bylaw. Later that same day, the Appellant voluntarily surrendered 17 puppies and two dogs to the RCMP. The RCMP then entrusted them to Vernon Animal Control. They were subsequently transferred to the Society for their care. Society staff was not present at the Appellant's property during the seizure or surrender on December 23.
12. The next day, December 24, 2019, Mr. Neuhaus surrendered one dog to the Society. He then surrendered two more dogs on December 31, 2019 and January 8, 2020.
13. On February 12, 2020, the Presiding Member issued a decision finding that BCFIRB lacked jurisdiction to hear an appeal related to the additional dogs and puppies. In brief, BCFIRB's jurisdiction is restricted to animals taken under section 10.1 (abandoned animals) or section 11 (animals in distress) of the *Act* by authorized agents of the Society only. Its jurisdiction is not triggered when an animal is impounded by Animal Control, which is a separate entity from the Society, or when an animal is surrendered.

IV. Materials Admitted on this Appeal

14. The Presiding Member identified all of the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1 to 23 and attached as Appendix A to this decision.

V. Review Decision

15. On January 14, 2020, Ms Moriarty issued her review decision in which she outlined her reasons for not returning the Appellant's four dogs seized on December 31, 2019. (On January 27, 2020, the Society's counsel advised that Ms Moriarty's review decision would also apply to a dog seized from the Appellant's property on January 17, 2020 as well as the

six puppies born in custody.) She was satisfied based on the evidence that the SPC reasonably formed the opinion the four dogs were in distress, as defined in section 1(2) of the *Act*, and his action to take custody of the four dogs to relieve them of distress was appropriate.

16. Ms Moriarty next considered whether it would be in the best interest of the four dogs to return them to the Appellant. She noted the Appellant's significant history with the Society, which included 25 complaints since 2010 over concerns for dogs in the Appellant's care. She wrote that Society staff attended the Appellant's property multiple times over the years and issued several notices relating to his shortcomings in his care of the dogs. She acknowledged that although he complied to varying degrees with the notices, the Society continued to receive complaints, which led to the issuance of further notices for his lack of adequate care. She stated the Appellant's conduct demonstrated a "pattern of neglect." This pattern, combined with his failure to acknowledge his "care philosophy" for the dogs was problematic, did not reassure Ms Moriarty that the Appellant was either willing or able to provide consistent minimal legal levels of care for the dogs in his custody. She further added the Appellant had multiple chances to address the dogs' welfare and keep them free from distress but wrote, "...nothing has substantially changed."

VI. Key Facts and Evidence

17. In an appeal under the *Act*, the Panel must determine whether or not the Dogs were in distress when seized and if they should be returned to the Appellant. Below is a summary of the relevant and material facts and evidence based on the parties' written submissions and evidence adduced 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.

Written Submissions Provided to BCFIRB before the Hearing

The Appellant

18. On February 3, 2020, the Appellant submitted 17 photos of his property or dogs. His email describing the photos stated:

Hi [...], here's some photos of my areas for the dogs. There are five cable runs which are hard to see but allow the dogs about a 50 meter run and enough dog houses for all the dogs. The sundeck is where the puppies were which has a 12X4 foot covered area, but they stay in a bedroom until they are about 4 weeks old. Also here are photos of my adult dogs being taken. The dogs and puppies were all in very good health and there was absolutely no reason to take them away.
19. On February 4, 2020, the Appellant advised Crystal Davidson would be a witness in an email to BCFIRB staff.

20. On January 16, 2020, the Appellant sent an email to BCFIRB staff. Most of his email discussed the additional dogs and puppies, which are not included in this appeal. He wrote, in part:

Then on Dec 31st the SPCA showed up again and took the rest of my adult dogs except one they couldn't catch. The reason they gave for that was that my adult dogs were playing in the snow. It was our first big dump of snow this winter and Huskies love the snow. Anyway, I feel that there was no justification to take any of my dogs away. Year after year I have done everything that the SPCA has required me to do on their growing list of requirements. And then they just took them anyway with no real excuses at all. I would just like to be given my dogs back as they are actually a part of my family.

21. The Appellant did not provide any other written submissions or documents before the hearing.

The Respondent Society

22. On January 28, 2020, BCFIRB received the Society's initial document disclosure. The Society also advised the names of its two witnesses: SPC Matthew Affleck and Dr. Stephanie Royston.
23. On February 7, 2020, the Society submitted its written submissions and Ms Moriarty's affidavit. In its written submissions, the Society relied on several documents, including but not limited to:
- the information to obtain a search warrant (**ITO**) of December 31, 2019 and January 17, 2020;
 - the notes of SPC Affleck and the Society's Regional Manager of Cruelty Investigation (**Regional Manager**);
 - photographs taken on December 23, 2019;
 - RCMP Constable Josh Fralick's statement;
 - the distress notices issued by SPC Affleck to the Appellant;
 - the Appellant's complaint history;
 - surrender forms signed by the Appellant;
 - two reports produced by Dr. Royston about her attendance at the Appellant's residence and her examination of the dogs; and
 - Ms Moriarty's affidavit.

On the same day, the Society also submitted two additional documents and an updated document disclosure index.

Events Leading up to the Dogs' Seizure

24. The events leading up to the Dogs' seizure are described in the Society's written submissions as well as the Society's document disclosure. The following paragraphs summarize the relevant and material facts and evidence leading up to their seizure. The majority of the information is taken from the ITOs.

25. On December 23, 2019, the Society's call centre received a complaint about Husky dogs and puppies in distress at the Appellant's property in Vernon.
26. That same day, at approximately 1:40pm, a SPC and Vernon Animal Control Officers (ACOs) attended the Appellant's property. When the Appellant did not answer his door, the SPC posted a Society notice on the door requesting the Appellant contact the Society within 24 hours to avoid further legal action. The SPC noted:
- two female dogs were tied to posts under the deck, tangled, and unable to access nearby dog houses;
 - eight adult dogs and one puppy were loose on the property;
 - no food or water was available to any of the dogs or puppies; and
 - the snow around the property was brown with feces.
27. On December 23, 2019, at approximately 5:30pm, a Vernon ACO attended the Appellant's property with the RCMP to conduct a welfare check. The ACO noted:
- the Appellant was initially found completely naked and unresponsive but then became very aggressive;
 - the Appellant was covered in feces;
 - the Appellant surrendered the puppies to the RCMP because he could not care for them. The RCMP took 17 puppies and two adult dogs at the Appellant's request;
 - the RCMP was disgusted with the condition of the Appellant's residence and the amount of feces inside;
 - the Appellant replied when asked about the number of dogs he had, "I have no idea, they die, other dogs kill them, I have no idea"; and
 - eight dogs were left at the property.
- The Vernon ACO impounded three dogs at large on the property pursuant to a bylaw infraction.
28. On December 24, 2019, SPC Affleck, the Society's Regional Manager, and two Vernon ACOs attended the Appellant's property. SPC Affleck noted:
- there was approximately 30 centimetres of snow covering the property grounds;
 - eight to ten Husky dogs were living outside;
 - the snow around the dogs was covered with feces and urine staining;
 - two dogs were tied up, tangled, and unable to reach shelter. The other dogs were loose on the property;
 - the only available food was that provided by the ACO on the previous day;
 - there were a few food and water containers but they were empty, upside down or contained ice;
 - two wooden dog houses under the deck did not have any bedding; and
 - two dogs named Suka and Nuka appeared underweight as their ribs, hips, and spine were visible.
29. After the Regional Manager knocked on the door, the Appellant answered it completely naked and made no attempts to cover himself. The Regional Manager explained the concerns over the welfare of the Appellant's dogs. The Appellant stated he had been sick

with the flu for two weeks. He insisted his dogs did not need water as they could eat the snow nor did they need any shelter given their breed.

30. The Appellant allowed the Regional Manager, SPC Affleck, and Vernon ACOs inside his residence so that they could examine the condition of the deck and he could get dressed. SPC Affleck noted the entry level of the Appellant's residence was filled with dozens of empty alcohol bottles and cans, feces, broken glass, garbage, several empty bags of dog food, and rotting food on a table and the floor. The Appellant's bedroom also had several empty alcohol bottles and cans. SPC Affleck had to remind the Appellant to get dressed.
31. The deck where the Appellant kept his dogs and puppies was covered in snow, had one pot containing ice, and a plastic dog kennel with large holes in its sides. The deck was only accessible by going through the Appellant's residence. SPC Affleck asked the Appellant to provide water to the dogs. As soon as he set down a large pot of water, the dogs started to drink it.
32. The Appellant agreed to surrender Suka, one of the underweight dogs. Suka's ear had been bitten by another dog. The Appellant had poured hydrogen peroxide on Suka's ear and did not take her to see a veterinarian.
33. SPC Affleck issued a distress notice to the Appellant and explained it to him. The distress notice required the Appellant to:
 - provide access to clean potable drinking water at all times;
 - provide sufficient quantity of suitable food to allow for normal growth and the maintenance of normal bodyweight;
 - ensure food and water containers are clean and disinfected and located as to avoid contamination by excreta;
 - provide necessary veterinary care when the animal exhibits signs of injury, pain, illness or suffering that require medical attention;
 - provide shelter that ensures protection from heat, cold and dampness appropriate to the protective outer coat and condition of the animal;
 - provide shelter that ensures sufficient shade to protect the animal from direct rays of the sun at all times; and
 - provide shelter with sufficient shade to allow the animal to turn freely and easily stand, sit and lie down.

The distress notice required the Appellant to address the above issues by 5:00pm on December 28, 2019 and to take Nuka, the other underweight dog to see a veterinarian by the same time and date.

34. On December 27, 2019, SPC Affleck contacted the Appellant to obtain an update on his progress on meeting the requirements of the distress notice. The Appellant stated the dogs had snow for water and a sheltered deck and that Huskies were meant for cold weather. The Appellant told SPC Affleck to stay away from his property and leave him alone. SPC Affleck advised the Appellant of possible legal action, including an application for a search warrant.

35. On December 28, 2019, a Society call centre operator received a call from a female witness who asked to speak with SPC Affleck. He spoke to the female witness who had bought several dogs from the Appellant. She advised:
- the Appellant apparently told her he was overwhelmed and had four litters of puppies;
 - the Appellant had a small cabin on his property where he had kept dogs and puppies in the past;
 - the Appellant's residence smelled of feces as he kept dogs and puppies in bedrooms and on the deck; and
 - the Appellant used to plan his litters but now just lets the male dogs impregnate the female dogs. The witness believed the Appellant tied up the female dogs so the male dogs could easily impregnate them.
36. Later that same day at 2:20pm, SPC Affleck was told by the Regional Manager that RCMP Constable Josh Fralick was called to the Appellant's property because of a disturbance. The Appellant was taken to the hospital for injuries. The Appellant's friend, PV, was at the Appellant's residence to assist in caring for and breeding the dogs. Constable Fralick was also contacted by the Appellant's neighbour, Crystal Davidson who advised some dogs were loose on the road.
37. In his notes, Constable Fralick wrote, in part:
- CST Fralick was one of the members on scene who witnessed the terrible living conditions that Neuhaus has for his dogs. **There was empty liquor bottles/broken bottles, garbage and animal feces throughout the residence. Outside there was about 3 feet of snow, where the majority of Neuhaus' dogs are forced to live as he only permits his puppies in the residence.** Neuhaus vocalized this to CST Fralick before leaving in the ambulance and requested that members make sure no dogs were left in his residence. **CST Fralick could not locate any food or water for Neuhaus' dogs outside. According to Neuhaus' friend [PV], the dogs hunt in the wild for food to survive as Neuhaus hardly feeds them. Neuhaus' neighbour, Crystal DAVIDSON reported that the dogs were running wildly all over Six Mile Creek Rd and they are without food and water.** DAVIDSON advised that she would feed the dogs and give them water as she is appalled at their living situation. [Emphasis is added.]
38. At approximately 3:00pm, the Regional Manager contacted the Appellant's friend, PV, who stated the Appellant asked him to help with the dogs. He then stated that once inside the Appellant's residence, he realized how filthy it was. There was feces everywhere and his eyes began watering because of the strong smell of ammonia. PV refused to stay. He and the Appellant had a physical altercation, so the RCMP was called and the Appellant was taken by ambulance to the hospital.
39. At approximately 4:15pm, the Regional Manager attended Vernon Jubilee Hospital and met with the Appellant and his adult son, Erick. The Regional Manager talked to the Appellant about surrendering the remaining dogs but the Appellant was not willing to do so. Erick agreed with the Regional Manager the Appellant was not able to care for himself or the dogs.
40. On December 30, 2019, SPC Affleck applied for a search warrant.

41. On December 31, 2019, SPC Affleck attended the Appellant's property to execute the search warrant with other Society staff, an RCMP officer, and Dr. Royston.
42. Once the Appellant was given a copy of the search warrant, SPC Affleck checked the dogs on the deck. He noted 5cm to 30cm of snow on the deck and five dogs without access to adequate shelter or water. These five dogs were then seized.
43. There were two loose dogs that were difficult to catch because they were very fearful. The Appellant refused to help catch them. Dr. Royston used medication to sedate them but Society staff was only able to seize one dog.
44. SPC Affleck issued another distress notice to the Appellant. It was virtually identical to the first distress notice he received on December 23 but listed additional requirements. Among other things, the Appellant was required to ensure the remaining dog had access to adequate shelter and water as well as be seen by a veterinarian within seven days because the dog was underweight.
45. Photographs showing the condition of the Appellant's residence and property were taken during the execution of the search warrant. The inside of his residence had been cleaned by the Appellant's neighbour, Ms Davidson.
46. On January 8, 2020, SPC Affleck returned to the Appellant's property with Society staff. The one remaining dog was loose on the property and did not have adequate shelter or water. SPC Affleck noted a deceased puppy approximately seven weeks old under the deck.
47. SPC Affleck met with the Appellant who smelled of alcohol and appeared intoxicated. The Appellant did not agree that the remaining dog was underweight and stated the dog was "built that way." After SPC Affleck advised the Appellant that the other seized dogs and puppies had parasites, including round worm, giardia and coccidian, the Appellant yelled, "Fine, I'll take the dog to the vet."
48. As for the deceased puppy, the Appellant stated the mother killed it and reminded SPC Affleck he had previously told him the mother killed other puppies. The Appellant did not surrender the deceased puppy because he did not want the Society to use it as evidence. The loose dog later picked it up and ran off with it.
49. The Appellant made an appointment with the veterinarian for January 10, 2020. He cancelled it because of the snow and rescheduled it for January 15, 2020. On the same day, another SPC drove by the Appellant's property and advised SPC Affleck that it was plowed and accessible. SPC Affleck then contacted the veterinarian's office and was told the Appellant did not show up for his appointment nor did he cancel it.
50. On January 16, 2020, SPC Affleck applied for a search warrant and executed it the next day. Dr. Royston was present to examine the remaining dog, which was seized.

Medical Evidence

51. The Society submitted medical evidence to support its case. The following paragraphs summarize relevant information from Dr. Royston's two reports.

52. Dr. Royston described the condition of the Appellant's residence and property as follows:

The first 5 dogs were found on an uncovered porch with thick snow. There was a metal bowl of frozen water with snow on it and 2 plastic buckets with water with ice chunks. The only food observed was a large vertebral bone. **There were 2 broken kennels and a chair covered in snow, no toys or things that could be used for play.** The dogs were very enthusiastic to eat treats but were difficult to handle and it took a long time to be able to handle them and get leashes on them.

Further exploration of the house revealed a room in the back that had previously been used to house puppies and was in very poor condition. There were very large holes in the walls exposing electrical wires that puppies could easily chew on. There was also a large hole in the door.

The other 2 dogs were loose outside the house. There were a couple of metal and plastic bowls with a small amount of icy water but no food observed. There was an old wood dog house under the porch but no insulation. There were multiple chains connected to pillars or pulleys observed. [Emphasis is added.]

53. Dr. Royston then wrote:

The living conditions observed were inadequate as there was no food and no shelter to get away from the elements on the sun deck. This same set-up was also used in the middle of the summer when it was over 30C and there was no shade for the dogs to hide from the heat and sun. **This was the case when I was at the property on June 28, 2019 at the invitation of Mr. Neuhaus. The puppy room in the back had been in poor condition for at least a year and a half as was in similar condition on June 29, 2018** when I first was at the property at the invitation of Mr. Neuhaus. [Emphasis is added.]

54. Dr. Royston discussed her examination and condition of the dogs in her first report. She wrote they all showed varying degrees of skittish behaviour and most were difficult to leash. Despite giving oral sedation to two dogs, one could not be caught because she ran away when anyone got close. Some dogs had additional medical issues. She wrote:

[...]

Dog 3 - Owner gave same name as Dog 1. 2.5 year old intact female as per owner. **She was underweight, spine quite prominent and ribs palpated too easily. Possible causes include parasites, lack of food (either via access or competition), recent energy drain (ie pregnancy and lactation), other disease (metabolic, neoplasia) etc.** Recommend assessing for parasites and increasing food access to start and further diagnostics if she doesn't gain weight.

Dog 4 - "Tiska" 11 year old intact female as per owner. She took a very long time to get on a leash, extremely skittish. **She had fractured right lower canine with nerve root exposure and her right upper canine was also fractured but did not appear to have nerve root exposure. Her left lower canine was pale brown so possibly a deceased tooth.** Recommend

a dental with extractions.

[...]

Dog 6 - White adult female. No age given. Very skittish, had to give oral sedation which finally allowed her to go inside the house where she could be leashed. **Her right upper incisor is fractured with nerve root exposure, requires extraction.** [Emphasis is added.]

55. She added:

None of the dogs were socialized and acted very fearful of anyone, including Mr. Neuhaus. They were not used to be handled or put on a leash and were extremely anxious. I recommended anti-anxiety medication while they are being socialized in the care of the SPCA and phoned in a prescription for trazadone. [Emphasis is added.]

56. Dr. Royston further discussed the condition of the Appellant's property and the one remaining dog that was seized on January 17. She wrote:

I was asked to return to the Neuhaus property on January 17, 2020 after Mr. Neuhaus failed to take the remaining dog for veterinary care. **The water dishes that were outside were all frozen, one was even 90% buried in the snow and ice. No food was seen. Dog 7 was very skittish but after approximately 30 minutes we were able to entice her into the live trap with food since she was very interested in the food as long as we stayed a distance away. Once in the trap she started to growl and was quite stressed so I sedated her.** Once sedated, she allowed a leash to be put on her and she was carried to the SPCA vehicle (there was a lot of snow that had not been plowed around the house and property to the point that a truck got stuck). On examination there were no abnormal findings. I reversed the sedation and we took her to the SPCA shelter. At the shelter **I recommended she be on 100mg of trazadone (anti-anxiety medication) twice a day to help her to feel more comfortable as she was quite anxious.** [Emphasis is added.]

57. The Society submitted fecal samples from multiple dogs to the IDEXX laboratory. Dr. Royston summarized the findings as follows:

[...] **These came back positive for roundworms (Toxocara species), Coccidia (Isospora species) and Giardia. Roundworms and Giardia are zoonotic (so can infect people) and can cause significant health concerns with animals including diarrhea, weight loss, inappetence and can be fatal in heavily parasitized puppies. Coccidia can also cause diarrhea, weight loss and inappetence but is species-specific.** Given the moderate levels seen and the presence of multiple different parasites **it is clear that there is poor biosecurity and husbandry at the property. It would now be very difficult to eradicate all of the parasites from the environment** as the dogs are mainly kept outside or on the wood sun porch. [Emphasis is added.]

The Hearing of this Appeal

The Appellant

58. The Panel believes it is important to describe the Appellant's conduct at the hearing before providing its analysis of this matter. The Appellant was belligerent and disruptive from the outset. He hurled condescending remarks at the Presiding Member, the Society's counsel and witnesses and he was repeatedly told to stop interrupting. He became increasingly

abusive as the hearing progressed. During the closing, the Presiding Member asked the Appellant to describe his future plans. The Appellant stated if the Dogs in Dispute were not returned to him, he would sell his property, leave Canada and move to “Margaritaville”, and drink himself to death. He then confirmed he was currently drinking because the hearing “stressed him out.” The Presiding Member abruptly ended the hearing at its conclusion because the Appellant was angry and yelling abusively at her and Society’s counsel.

59. The Appellant was given multiple opportunities to explain how he would care for the Dogs in Dispute if they were returned to him. His main assertions were the Dogs in Dispute belonged to him and his property was 150 acres. The Appellant also stated either directly or under cross-examination:
- he lives on a big property and needs the dogs for protection;
 - the dogs are his family;
 - he provided good food, including bones and meat scraps and water to the dogs;
 - the deck was sheltered but he acknowledged there was snow on the deck;
 - the dogs had access to cable runs and dog houses;
 - the dogs ripped up the bedding in the dog houses;
 - some puppies were accidents;
 - the adult dogs killed the puppies on a couple of occasions and the mother dog killed the puppy found under the deck on January 8;
 - he cancelled the veterinarian appointment of January 10 because he was “snowed in”. He apparently lost his power, so he could not cancel the rescheduled appointment two days later and he was still snowed in and could not drive; and
 - he stated, “I don’t know. Maybe they did” in response to whether he knew the dogs had worms but claimed it was “pretty normal” for dogs living in the country to have worms.
60. The Appellant denied questions put to him under cross examination:
- he stated, “I guess I deny that” in response to whether he had two female dogs tethered;
 - he denied the snow was covered in feces and urine;
 - he denied Dr. Royston expressed concerns when she visited his property on June 29, 2018; and
 - he denied having a problem with alcohol.
61. The Appellant initially claimed that Society staff had smashed bottles on his head to explain the broken glass in his residence. He stated more than once he would not “press attempted murder charges” if the Dogs in Dispute were returned to him. Later on, the Appellant changed his testimony and advised his friend, PV, had smashed two bottles on his head which landed him in the hospital on December 28.
62. As for costs, the Appellant advised he could not afford to pay anything but, if the six puppies are returned to him, he could then pay some money by selling them.

The Appellant's Witness, Crystal Davidson

63. The Appellant called Crystal Davidson as his witness. She stated:
- the dogs were well fed and seemed happy;
 - their fur was not matted;
 - she saw nothing that alarmed her;
 - one of the Appellant's dogs killed one of her ducks approximately five years ago; and
 - there had been an increase in coyotes and other nuisance dogs since the seizure.
64. Ms Davidson confirmed under cross-examination:
- she was the Appellant's tenant and leased land from him;
 - she rarely went to the Appellant's residence, which was about a 10 to 15 minute walk from hers, and did not have a lot of interaction with the Appellant;
 - she was surprised by the condition of the Appellant's residence and did not know he had been ill;
 - she had no formal dog training except for her hands-on experience;
 - she did not know the Appellant's dogs had killed puppies;
 - two of the Appellant's dogs were very skittish and she could not get close to them;
 - her husband put straw in one of the dog houses;
 - she helped clean up the Appellant's residence together with the Appellant's son, daughter-in-law, and another neighbour when the Appellant was in the hospital;
 - she acknowledged there were a lot of empty liquor bottles in the Appellant's residence, but she did not have enough interaction with him to know whether he had a drinking problem; and
 - she shared the same road but not the same driveway as the Appellant and was able to drive into town on January 5.

The Respondent Society

The Society's Witness: SPC Matthew Affleck

65. SPC Affleck has known the Appellant for about one year and confirmed the Society had received approximately 25 complaints since 2010 about the Appellant's property and dogs. SPC Affleck had issued orders and distress notices to the Appellant requiring him to provide water and shelter to his dogs as well as clean living conditions on several occasions.
66. SPC Affleck confirmed the information in the ITOs. Since this information is already set out above in the section, "Events Leading to the Dogs' Seizure", it is not necessary to repeat it here. His observations and action taken are described in paragraphs 24 to 50.
67. SPC Affleck described the photographs taken on December 31 during the execution of the search warrant. The photographs showed: the bedroom where the Appellant kept the puppies until they were older; walls with chewed-up drywall as well as a half chewed-up

bathroom door; holes in the walls exposing electrical wires; dog houses with holes and/or covered in snow; unsanitary living conditions; short tethers that held the two dogs seen on December 24 and 31; plastic bags full of empty liquor bottles and cans; water bowls with frozen water; and vomit under the deck.

68. SPC Affleck confirmed he drove to the Appellant's property on January 8 and observed the Appellant's driveway had hard packed snow and was driveable. He had no issues driving onto the property.
69. SPC Affleck confirmed that the Appellant appeared intoxicated and smelled of alcohol on December 24 and January 8. The Appellant apparently confirmed on January 8 that he was taking Ativan with his alcohol.
70. SPC Affleck advised that the strong smell of ammonia inside the Appellant's residence was the result of an accumulation of urine not being cleaned up.
71. The Appellant did not conduct any helpful cross-examination of SPC Affleck. He yelled, "You better give me my dogs back" and was generally belligerent. The Presiding Member then moved on to the Society's next witness.

The Society's Witness: Dr. Stephanie Royston

72. Dr. Royston confirmed the information in her medical reports as well as the IDEXX laboratory report. This information is set out above in paragraphs 51 to 57.
73. Dr. Royston visited the Appellant's residence on four previous occasions before the seizures of December 31 and January 17. She administered medication to puppies on June 29, 2018 (five puppies); January 18, 2019 (13 puppies); April 24, 2019 (older puppies from previous litter and mother dog); and June 28, 2019 (six puppies). Dr. Royston made official reports to the Society after two of these visits. She was concerned the puppies would chew the electrical wires exposed from the holes in the walls, the lack of cleanliness and toys, and the dogs on chains. She examined the mother dog on June 28 and found her to be severely underweight but the Appellant declined to take her to the veterinarian because people were coming to see the puppies.
74. Dr. Royston advised there is a hierarchy to dog packs and, when food is a limiting resource, they will react by fighting with each other.
75. Dr. Royston further advised the puppies chewed the drywall because of boredom. They had no healthy stimulation such as toys. As for the chewed up bathroom door, she stated that this was the result of boredom or dogs trying to get out of the room. Dr. Royston confirmed that in her opinion, the dogs were in considerable distress to resort to chewing the drywall and door.
76. Dr. Royston responded, "Absolutely" when asked if she would have any concerns if the Dogs in Dispute were returned to the Appellant. She confirmed the Appellant did not

appear to understand there were any problems because he had made no attempt to fix the problems since her first visit in June 2018 and she doubted the Appellant would make any changes in how he would care for the Dogs in Dispute.

VI. Analysis and Decision

77. Part 2.1 of the *Act* establishes the standards of care for animals and establishes a duty on those responsible for 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.
78. The definition of “distress” provides:
- (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.
79. In considering the issue of distress, the Panel starts with the proposition 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 to conclude 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 *Act* provides they can be protected.
80. Once the Panel determines the animals were in distress at the time of seizure, the Panel must then decide whether any or all of the animals should be returned. The Appellant has the onus of showing that, based on the Society’s decision or based on new circumstances, the remedy he seeks (return of the animals) is justified.

The Seizure of the Dogs

81. At the time of the seizure, SPC Affleck concluded that the dogs were in distress because they were being deprived of adequate care and veterinary treatment and being neglected pursuant to section 2(1) of the definition of distress.
82. The evidence includes: the ITOs; photographs; Dr. Royston's reports; the notes of SPC Affleck, the Regional Manager, and Constable Fralick; and the testimony of all the parties, among other things. The evidence overwhelmingly paints a picture the dogs were not only in distress but in actual distress at the time of both seizures for some, but not all, of the following reasons:
- the dogs were deprived of adequate food, water, shelter, care, and veterinary treatment;
 - the Appellant's friend, PV even commented the dogs had to hunt for food in the wild;
 - given the lack of food, the dogs engaged in aggressive behaviour over food. The two underweight dogs were most likely unable to compete for food;
 - water bowls were found either empty, upside down or full of ice;
 - the dogs were kept in unsanitary conditions. There was a build-up of feces and urine inside and outside the Appellant's residence. Dr. Royston advised it would be difficult to eradicate the parasites from this environment;
 - the puppies were exposed to electrical wires after having chewed up the drywall. They had no healthy stimulation such as toys;
 - some puppies had been killed by their mother;
 - the deck had only a small overhang, which did not protect the dogs from excessive heat, cold or wind. A photograph submitted by the Appellant showed the lack of shelter over the deck;
 - many of the dogs were injured, sick, in pain or suffering. Some of the dogs examined by Dr. Royston had injuries or other medical issues and most had parasites;
 - the Appellant's failure to take the dogs for needed veterinarian attention showed abject neglect on his part. He claimed the accumulation of snow and a power outage prevented him from taking his one remaining dog to the veterinarian on January 10 and 15. However, SPC Affleck was at the property on January 8 and advised the snow was hard packed and driveable. Ms Davidson was also able to leave her property on January 5.
83. The Panel therefore concludes, based on the totality of evidence, the Dogs were in distress and appropriately and reasonably seized by the Society on December 31 and January 17.

Return of the Dogs in Dispute

84. Having determined the seizure of the Dogs was justified, the Panel must now consider whether it is in the best interest of the Dogs in Dispute to be returned.

85. The courts have considered the legislative framework of the *Act*. In *Eliason v SPCA*, 2004 BCSC 1773, Mr. Justice Groberman (as he then was) stated:

The scheme of the Act clearly is designed to all 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.

86. 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 distress in the first place, the court must be satisfied that if the animal is returned to the owner, it will remain [in] the good condition in which it was released into its owner's care.

87. The main matter in question is whether the Appellant is capable of providing adequate care for the Dogs in Dispute. The Appellant has the onus of showing that their return is justified.

88. The Appellant failed to provide any convincing evidence to support the return of any of the Dogs in Dispute. The photographs he submitted included some dogs but these photographs did not tell us they were all "in very good health" as his email of February 3 suggested. Two photographs showed the deck did not have adequate shelter. He also included four photographs of five dog houses. The photographs showed holes and lack of bedding in the dog houses as well as their dilapidated condition.

89. The Panel gave the Appellant many opportunities during the hearing to explain how he would care for the Dogs in Dispute if they were returned to him. He did not offer any meaningful solutions except to say that the Dogs in Dispute were his and his property was 150 acres.

90. The Panel calls into question the impartiality of the Appellant's witness, Ms Davidson given she is a tenant who leases land from the Appellant. She claimed the dogs were well fed and happy yet she reported to Constable Fralick that the dogs were running wildly all over Six Mile Creek Road and they were without food and water. She also acknowledged she rarely went to the Appellant's residence and did not have a lot of interaction with him. As such, the Panel places little weight on her evidence.

91. It is abundantly clear from the totality of the evidence that the Appellant has not taken any meaningful steps to improve his living conditions and provide an environment free from distress for his dogs. He lacks any insight into how his conduct and his treatment of the dogs are causing them distress. The Appellant has received many Society distress notices requiring him to provide basic care for his dogs, including water, food, shelter, a clean environment and veterinary care, but the problems have remained virtually the same despite 25 complaints since 2010. It was most telling when Dr. Royston advised he had made no attempt to fix problems, such as the exposed electrical wires from the chewed-up drywall, since her first visit in June 2018. The Appellant's "pattern of neglect" as described by Ms Moriarty and Dr. Royston's comment that she doubted the Appellant would make any changes on how he would care for the Dogs in Dispute are convincing.

92. It is also important to note that the Appellant appears to have an unhealthy relationship with alcohol. He acknowledged drinking during the hearing and his demeanour became increasingly abusive as the hearing progressed. He made quasi-threats similar to, “You better give me my dogs back or else... .” SPC Affleck confirmed the Appellant appeared intoxicated during the seizures. There is also a photograph of plastic bags full of empty liquor bottles and cans. The Panel would have serious concerns about the safety of the Dogs in Dispute, particularly the puppies, should they be returned given the Appellant’s interactions with SPC Affleck during the events leading up to the seizures as well as his conduct at the hearing.
93. The Panel is of the opinion that the Appellant is incapable of properly caring for the Dogs in Dispute to ensure they remain in good health, and instead they would likely return to a state of distress. Therefore, it is this Panel’s decision that it is not in the best interests of the Dogs in Dispute to be returned to the Appellant.

VII. Order

94. Pursuant to section 20.6(b) of the Act, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the Dogs in Dispute.

VIII Costs

95. The Appellant made no meaningful submissions about the reasonableness of the Society’s costs. His only comment was that if the puppies were returned he would have money to pay costs. Based upon our review, the Panel finds the Society’s costs are reasonable, and confirm, pursuant to section 20(6)(c) of the *Act*, that the Appellant is liable to the Society for **\$9,383.24**.

Dated at Victoria, British Columbia this 27th day of February 2020.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Harveen Thauli, Presiding Member



Dennis Lapierre, Member

Appendix A:

Exhibit 1	Jan 16, 2020	BCSPCA Decision, January 16, 2020
Exhibit 2	Jan 16, 2020	Appellant Notice of Appeal
Exhibit 3	Jan 16, 2020	Appellant email re additional dogs
Exhibit 4	Jan 17, 2020	Appellant Filing Fee
Exhibit 5	Jan 20, 2020	BCFIRB NOA Process Letter
Exhibit 6	Jan 27, 2020	BCFIRB Prelim Decision re: additional dogs
Exhibit 7	Jan 28, 2020	BCSPCA Initial Document Disclosure (Tabs 1-33)
Exhibit 8	Jan 28, 2020	BCSPCA cover letter for document disclosure
Exhibit 9	Jan 31, 2020	BCSPCA email with Exhibits 9-11
Exhibit 10	Jan 31, 2020	Husky Intake Form
Exhibit 11	Jan 31, 2020	Animal Control Officer Notes - McLaughlin
Exhibit 12	Jan 31, 2020	K-9 Dog Control Form (Surrender/Impound)
Exhibit 13	Feb 3, 2020	17 Photos of Appellant's property/dogs email description
Exhibit 14	Feb 4, 2020	Email with Appellant's witnesses
Exhibit 15	Feb 7, 2020	BCSPCA submission and Tabs 34-35 cover letter
Exhibit 16	Feb 7, 2020	BCSPCA written submissions
Exhibit 17	Feb 7, 2020	Affidavit #1 of Marcie Moriarty
Exhibit 18	Feb 7, 2020	BCSPCA Witness Contact Form
Exhibit 19	Feb 7, 2020	BCSPCA Expert Witness Contact Form
Exhibit 20	Feb 7, 2020	BCSPCA updated document disclosure index
Exhibit 21	Feb 7, 2020	BCSPCA Tab 34
Exhibit 22	Feb 7, 2020	BCSPCA Tab 35
Exhibit 23	Feb 12, 2020	BCFIRB Prelim Decision re additional dogs