

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 EIGHT  
DOGS, FIVE BIRDS, THREE CATS, TWO RABBITS AND ONE PIG

**BETWEEN:**

SANDRA SIMANS

**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:

Self-represented

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

March 6, 2020

Location of Hearing:

Teleconference and by written submission

## **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 (*PCAA*) related to the seizure of eight dogs<sup>1</sup>, five birds, three cats, two rabbits and one pig (the Animals).
2. The Appellant, Sandra Simans, is appealing the February 6, 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 (Society).
3. Section 20.6 of the *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society, in its discretion to destroy, sell or otherwise dispose of the animals. The Appellant in this case is seeking the return of all of the Animals.
4. On March 6, 2020, a BCFIRB appeal Panel held a hearing via teleconference. The hearing was recorded.
5. The Appellant was self-represented, testified, and called two witnesses who had visited the property prior to the seizure.
6. The Society was represented by counsel and called four witnesses: the veterinarian who examined the birds, the veterinarian who examined the pig, the veterinarian who examined the dogs, cats and rabbits, an animal welfare and behaviour scientist who attended the seizure, 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 eight dogs, five birds, three cats, two rabbits and one pig 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.
8. The Society sought to recover costs in the amount of **\$25,144.13**. 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.

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<sup>1</sup> Nine dogs were seized but one was not owned by the Appellant and was, with permission, returned to the owner.

### **III. Preliminary Matters**

9. During the hearing, the Appellant raised the concern that counsel for the Society had sent 65 pages of documents as part of their submissions the day before the hearing. She argued that it was impossible for her to go through that much material and prepare a response on such short notice.
10. Counsel for the Society explained that these late documents were further records relevant to the ongoing health of the animals, mostly from third parties, and that the Society had a duty to provide them to the Appellant and the Panel.
11. The Panel decided not to admit these late documents on the basis of procedural fairness, since the material was not provided with sufficient time to allow the Appellant to properly review them and prepare a response.

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

12. The Panel identified all of the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1-18 and is attached as Appendix A to this decision.

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

13. On January 6, 2020, the BCSPCA Call Centre received a phone call from a complainant (referenced in this decision as AW) regarding dogs, cats, a pig, rabbits and birds owned by Ms Simans. The complainant stated that she had been staying at the Simans' property since before Christmas and was concerned with the lack of care the animals were receiving. She reported that there were ten dogs kept in crates for 16-18 hours at a time with no water and no ability to readily relieve themselves. She expressed concerns regarding the size of crates and the lack of care for the dogs, and the health of the dogs, cats, birds, pig and rabbits.
14. On January 9, 2020, SPC Hommel read the complaint and reviewed Ms Simans' history with the Society.
15. On January 12, 2020, SPC Hommel received an email from the complainant saying that she had stayed at the Simans' residence December 23, 2019 to January 8, 2020. Her statement summarized the number of animals and the conditions and treatment that she had observed while she was staying in the home.
16. On January 14, 2020, SPC Hommel received a warrant to search the Appellant's home on January 15, 2020. This search was called off due to poor weather conditions.
17. On January 18, 2020, SPC Hommel received a second warrant to search the Appellant's home for January 19, 2020.

18. SPC Hommel executed the warrant on January 19, 2020 with the assistance of SPC Hall, SPC Marleau, SPC Carey, SPC Collins, SPC Monteith, SPC Idle, SPC Cyr, Dr. Rebecca Ledger, two RCMP Constables, and a livestock hauler to assist with the seizure. The Appellant arrived home as the investigation and seizure was underway. She was asked to leave the property.
19. It is important to note that the procedural history set out above relates only to the current issue under appeal. There is, however, a significant history between the Appellant and the Society that is noted here in brief:
  - a) In 2012, the Society seized 39 dogs and 19 cats from the Appellant. Most of the animals were eventually returned to the Appellant with conditions. The Appellant sued the Society and the City of Burnaby after the fact, alleging illegal seizure and defamation.
  - b) In December 2014, the BC Supreme Court rejected the Appellant's position that the animals were unlawfully seized, finding demonstrated medical problems with some of the animals, including malnutrition. While the Court rejected the claim of unlawful seizure, and rejected most of the allegations of defamation, the Court found that one incident of defamation had been made out and awarded Ms Simans what the court described as "modest general damages" of \$2500 against the Society.
  - c) In September 2016, the Society seized 88 animals, including some of the same animals that had been the subject of the 2012 seizure.
  - d) This resulted in BCFIRB's December 2, 2016 decision dismissing an appeal of the Society's October 7, 2016 review decision. In summary, the panel found that there were multiple grounds on which the animals were in distress, including Ms Simans' failures to obtain and follow veterinary advice. The panel had no confidence, based on Ms. Simans' history and the evidence at the hearing, that the animals would remain distress-free if returned.
  - e) Ms Simans judicially reviewed BCFIRB's December 2, 2016 decision. The petition was heard on March 9, 2017 and dismissed by Mr. Justice Saunders in written reasons dated September 5, 2017.
  - f) On March 20, 2017, the Society seized 17 animals from the Appellant's property – one rabbit, four cats, one greyhound dog, and one Rhodesian ridgeback female dog with ten pups. A pig, duck, two dogs, a rabbit and five birds were not removed.
  - g) The March 20, 2017 seizure resulted in an appeal of the review decision seeking the return of one dog, two cats and one rabbit. BCFIRB's May 25, 2017 decision dismissed the appeal. In summary, the panel found that there were, once again, multiple grounds on which the animals were in distress and, while the Appellant had improved certain behaviours, the conditions of the animals seized demonstrated "an

ongoing lack of insight and is part of what is regrettably an ongoing pattern of numerous failures to provide appropriate care to animals generally.”

104. I start by noting that Ms. Simans must be given credit for proactively taking the rabbit to Dr. Tomar shortly after purchasing it on March 11, 2017. Further, Ms. Simans was entitled to rely on Dr. Tomar’s advice that she could take a “wait and see” approach.
  105. However, that limited credit is far outweighed, in my view, by Ms. Simans’ failure to identify and take adequate steps to seek veterinary care for Hadley, and by her failure to keep her cats in an environment that was properly ventilated and where she continued to strenuously deny that ammonia levels were a problem. I note as well that, with respect to the dog Rhea, Ms. Simans’ reaction was to question the diagnosis of mastitis as being “contradicted” by the subsequent veterinary examination (see Ms. Simans’ March 30, 2017 submission to the Society), rather than recognizing that a serious concern had been identified and that both diagnoses could live together. **That Ms. Simans exhibited all these deficiencies in the wake of the lengthy history of neglect described above, and in the face of the findings made in the December 2016 decision, is especially concerning. It shows an ongoing lack of insight and is part of what is regrettably an ongoing pattern of numerous failures to provide appropriate care to animals generally. I have no confidence that the animals would remain distress-free if returned to her care.**
  106. Counsel for the appellants has offered the option of a return with conditions. She has submitted that Ms. Simans is now committed to “improving her documentation of all animals in her care, whether permanent or temporary, to ensure that routine metrics of health are both measured and recorded on a regular basis for each animal. This would include maintaining current records of veterinary consultations for both routine and specific reasons”.
  107. In my view, no set of conditions that could apply to the appellants would be effective without meaningful external monitoring. However, the appellants have not suggested any external monitor, let alone one who, apart from the Society, could credibly act as an external monitor. It is obvious to me that conditions that depend on effective monitoring by the Society would, as circumstances currently stand, be doomed to fail. The facts of this case clearly demonstrate Ms. Simans’ ongoing hostile and distrustful attitude toward the Society, an attitude that needs to be understood in light of previous disputes, including the lawsuit arising from the 2012 seizure and Ms. Simans’ challenge to the 2016 seizure. The Society itself has expressed concern about how the appellant’s attitude and conduct will impact her ability to work with the Society in the future.
- h) This decision was also judicially reviewed. However, on September 1, 2017, the Petition was dismissed as being moot.

20. Regardless of the Appellant's history, each appeal must be heard and decided based on its own facts and merits. However, if this Panel finds that the Animals were in "distress" at the time of seizure as defined under s.1(2) of the *PCAA*, and as such, were legitimately removed, then the Appellant's history may be a relevant factor in my assessment of whether the animals ought to be returned and the Appellant's willingness to comply with conditions.

## **VI. Review Decision**

21. On February 6, 2020, Ms Moriarty issued her review decision in which she outlined her reasons for not returning the Animals seized on January 19, 2020. She reviewed the Warrant and Information to Obtain (ITO) of SPC Hommel, related veterinary records, photos, videos, notes and observations of various SPCs attending, 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 (section 1(2)) and her action to take custody of the Animals to relieve them of distress was appropriate.
22. Ms Moriarty next considered whether it would be in the best interest of the Animals to be returned to the Appellant. She noted the Appellant's significant history with the Society which included numerous complaints over the past 10 years regarding the health and welfare of animals in the Appellant's custody. The Society previously seized a total of 47 dogs, 23 cats, five goats, three sheep, one pig, one rabbit and a number of birds as a result of two previous warrants. In both cases, the seizures were appealed and BCFIRB upheld the Society's decision. In response to the Appellant's submission that the Society had acted too quickly in seizing the animals in this case and had not given her the opportunity to rectify concerns, she wrote, "My response is that we have spent 10 years giving you opportunities and yet, here we are again, dealing with very similar issues regarding the care of animals in your custody." She concluded that the Appellant's history of animal care issues and reluctance to cooperate with the Society in the past, combined with her continued compulsion to accumulate animals in numbers beyond her capacity to care for, demonstrated that it was not in the best interest of the Animals to be returned.
23. The Appellant filed her appeal with BCFIRB on February 7, 2020.

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

24. In an appeal under the *PCAA*, a Panel must determine whether or not the animals 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 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.

## **Medical Evidence**

25. The Society submitted medical evidence to support its case. The following paragraphs summarize relevant information from the report of veterinarian Dr. Derek Peters who examined the dogs, cats and rabbits.
26. Dr. Peters performed assessments of nine dogs, three cats and two rabbits at the BC SPCA shelter in Vancouver in order to give expert medical assessment and opinion on their condition. He noted the following areas of concern for each animal:

### **The Dogs**

- a) Dog #1 – White Standard Poodle. Dark, dried crusted discharge at the medial canthus of both eyes causing matting in this area. Matted fecal matter 360 degrees surrounding anus with significant urine staining extending the ventral aspect of her tail. **Body Condition Score 3/9 – this dog is underweight.**
- b) Dog #3 – Border Collie Cross. Matted hair on abdomen including penis and legs. Matted hair on ears. **Very low body condition score of 2/9** - feed a diet appropriate to attain and maintain ideal BCS of 4-5/9.
- c) Dog #4 – Labrador. Multiple raised crusts on inner ear pinna of both ears ranging in size from 3mm to 0.5cm. Focal areas of alopecia around the eyes and muzzle. Focal areas with mild crusting on the lateral tarsus of the right and left hind legs. BCS: 5/9.
- d) Dog #5 – Smooth collie missing hind legs. Dark coloured urine with an odour – suspect urinary tract infection that most likely originating from dragging her vulva on the ground. 1-inch focal point of alopecia on her sternum. Severe tartar on two teeth and moderate tartar on all premolars. **BCS: 7/9** – feed a diet appropriate to attain and maintain ideal BCS of 4-5/9.
- e) Dog #6 – Pit Bull Terrier. Pink, raised lesion on the lower lip. All four paws had mild interdigital erythema diffusely between all digits. Hind paws also had moderate to severe erythema on the plantar aspect. On the left hind foot, the fourth digit was laterally deviated and inflamed at the base of the nail. **BCS: 3/9** – feed diet appropriate to attain and maintain ideal BCS of 4-5/9.

- f) Dog #7 – Maltese. Dental abrasion/worn canine tooth on caudal aspect. This type of lesion is commonly seen from dogs who chew on their cage bars. Severe tartar build-up and gingivitis on tooth 109, and multiple other teeth missing. Multiple areas of matted hair bilaterally on thighs. BCS: 5/9.
- g) Dog #8 – Maltese. Moderate dental tartar and moderate to mild gingivitis on some teeth. Many teeth were missing. Grade ¼ luxating patella in the right hind leg (common in small breed dogs, resulting instability can lead to osteoarthritis in the stifle joint). Crepitus notes is indicative of some degree of osteoarthritis. Heart murmur. **BCS: 6/9** – feed a diet appropriate to attain and maintain ideal BCS of 4-5/9.
- h) Dog #9 – Rottweiler. Fearful demeanor, unable to safely examine without injectable sedation. Moderate to severe tartar build-up on teeth. Dental abrasion on tooth. This type of lesion is commonly seen from dogs who chew their cage bars. **Significantly low body condition score of 2.5/9** – feed a diet appropriate to attain and maintain ideal BCS of 4-5/9.

### The Rabbits

- a) Rabbit #11 – Black Dwarf Rabbit. 4mm abrasion on rostral lower lip (right side). 4<sup>th</sup> digit deviated laterally in both hind legs. All nails on all four paws were significantly overgrown. Pododermatitis lesions (0.75cm area of alopecia) on both plantar hock joints. BCS: 4/9.
- b) Rabbit #12 – Black/White English Lop Rabbit. Lower incisor had slightly uneven wear pattern. Pododermatitis lesions: the plantar aspect of the hock joints were stained on both sides, and there was a pain reaction upon palpation of the left hock lesion. These lesions are common in rabbits housed on abrasive surfaces or those that sit in soiled bedding or soil litter boxes. They are often indicative of poor general welfare. All nails on all four paws were significantly overgrown. The second digit on the right foot was broken. **Low BCS: 3/9** - feed a diet appropriate to attain and maintain ideal BCS of 4-5/9.

### The Cats

- a) Cat #13 – Persian. Multiple masses (polyps/cysts) in the left ear. Lesions in the left ear were approximately 0.5-2cm in size and there were multiple smaller but similar masses in the right ear. Multiple areas of matted coat including the right ventral neck and inguinal area. Mats on tail and perianal area had feces imbedded in them. Severe tartar on some teeth – gingivitis suspected but the tartar was covering the gum line. Mild-moderate gingivitis on another tooth. This degree of dental disease is painful for this cat. Mild discharge on the medial canthus of both eyes. BCS: unknown.



- b) Cat #14 – Grey/White Domestic Shorthair. Moderate to severe tartar on some teeth. Mild gingivitis. Focal areas of alopecia on both hind paws. BCS: 5/9.
- c) Cat #13 – Orange/White Domestic Shorthair. Mild gingivitis present. Underweight BCS: 3/9 - feed a diet appropriate to attain and maintain ideal BCS of 4-5/9.

27. In summary, Dr. Peters wrote:

Based on the above findings, it is certain that many of these animals were not receiving regular veterinary attention that could have relieved unnecessary pain and discomfort. Based on physical exam findings I suspect that this population of animals as a whole had poor general welfare prior to seizure by the SPCA.

28. The results of the examinations of the birds and pig were dealt with in detail in oral evidence provided by veterinary experts during the hearing as set out below.

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

#### **Appellant's Witness - Joyce Telfer**

29. Ms Telfer has known the Appellant for almost 25 years and has spent the night at her home on more than one occasion. She gave the following evidence:

- a) In the morning, all of the dogs have the opportunity to go outside, run their energy off and play in the yard, and get water to drink. After that they come back inside and are fed in their kennels.
- b) Ms Simans goes to work with horses every day. She estimated that Ms Simans is gone up to one and a half hours each day.
- c) When Ms Simans returns from the barn, the general practice is play time for the dogs, either indoors or outdoors depending on the weather.
- d) She has seen Ms Simans with her animals and noted that there was “never any unkindness in the behaviour towards the animals” and she had never seen her withhold food as a punishment.

30. On cross-examination by the Society, Ms. Telfer gave evidence that:

- a) She would visit the Appellant's home and stay overnight at least every couple of months since about 2016. Her most recent visit was around Christmas 2019.
- b) She was aware that the animals were seized in January 2020, but she was not there at the time. She had little knowledge of the previous seizures.

- c) She described the condition of the home as very clean and that Ms Simans is “neurotic about vacuuming and cleaning.”
- d) The dog kennels looked “appropriate” to her, and she didn’t see any problems with the way the dogs were kept. She also admitted that she does not know much about dogs and is more of a cat person.
- e) She has not spent time in the cat room, but it “seemed to have the things that cats like to have – climbing things, toys, litter boxes sufficient for the number of cats that were there.”
- f) She had a special relationship with the birds. They were perky, chirpy and active. She did not see any problem with the way their cages were kept.
- g) When she first came to the house, she was shown the garage. At that time, she didn’t see the rabbits, but she saw the pig outside playing and watched it being fed extra food.
- h) When asked about how the Appellant interacts with the dogs, she described the Appellant as “instructive,” playful and loving with them.
- i) She noted that the dog, Lara, seemed to be a special dog to the Appellant and they would cuddle and talk. She noted that Lara had a wheelchair, but that she was quite mobile without any assistance.

**Appellant’s Witness - Carolyn Hemphill**

31. Ms Hemphill has a small hobby farm and has experience working with farm animals. She gave evidence that:
- a) She was familiar with “Sweet Pea,” the Vietnamese potbelly pig that was seized and described her as “in very good shape.”
  - b) Ralph’s Market sets aside old produce for people to take for their animals and she has seen Sweet Pea being fed this produce.
  - c) Ms Simans attends to horses every day and is away from her home for about an hour and a half in the morning and evening.
  - d) She has observed Ms Simans’ dogs, cats and birds.

- e) She described the birds as very happy, that their cages were always clean, and food and water was always available. They were kept in the dining room next to a large window.
32. On cross-examination, Ms Hemphill confirmed that she had previously testified at the November 2016 hearing regarding a previous animal seizure. At that time, her evidence was that she had no concerns with the Appellant's treatment of animals.

**Appellant – Sandra Simans**

33. The Appellant provided the following testimony relating to the day of the seizure:
- a) On January 19, 2020, she left to do the horses as per her normal schedule. Prior to leaving she let the dogs out. She was gone for about an hour and a half.
  - b) She received a call while she was returning home from the barn telling her that the SPCA was at the home. When she arrived, there was a house full of people. She was served with a warrant.
  - c) When she arrived, she entered the house, found the dogs "in an uproar" and requested that they be let out of their kennels to "relieve them of their distress." She said that the normal expectation of the dogs when she got home was that they would get out and play. The request was not welcomed, and the Appellant was handcuffed and told to leave.
34. The Appellant described her regular morning routine and used photographs to illustrate the conditions in which the dogs were kept:
- a) The normal routine is to let the dogs out in the morning to run and play while she has breakfast. She said that it is a fairly lengthy process. If it is raining, they come inside or play on the large covered patio.
  - b) Her practice was to keep the dogs in kennels for their own safety when she was out of the house, and at night "so we could all sleep well."
  - c) When she is home with the dogs, they are kept out and run freely on the property. Aside from her time with the horses twice a day, and occasional errands, she is home.
  - d) There was an abundance of food, and water was never withheld from the dogs.
  - e) Photographs were presented to demonstrate the availability of toys and food, showing the dogs playing out in the yard and walking at a local park.

35. The Appellant spent much of her testimony challenging the credibility of the complainant, AW, and her statement of complaint (which led to this seizure). AW was not called as a witness in this appeal. Nevertheless, the appellant characterized AW as unstable and said that she created a story and fabricated the notes that she submitted as part of her statement. She argued that the Society and Dr. Ledger's dependence on AW's statement tainted their ability to assess the situation objectively. The Appellant described the Society's use of AW's statement as an example of confirmation bias which she defined as "the tendency to search for, interpret, favor, and recall information in a way that confirms or strengthens one's prior personal beliefs or hypotheses."
36. The Appellant went through the list of the dogs seized and provided information about when they arrived in her care, a description of their temperament, health and habits:
- a) Dog #1 – "Muffin" is a female standard poodle that arrived in October 2019. The Appellant says she is training Muffin as a service dog. She provided a receipt from a groomer dated October 19, 2019 and a veterinary exam dated October 17, 2019 that notes she was dewormed and due to be spayed in one month.<sup>2</sup> The Appellant concedes that Muffin wasn't well-groomed at the time of seizure because the weather had been bad, and things were muddy and dirty. She maintains that the kennel had enough room for her to stretch out and get comfortable despite comments by the SPCA that it was too small. She added that the SPCA video showed the dog as relaxed and calm despite the number of people and chaos around her.
  - b) Dog #3 – "Arrow" is a male border collie cross who arrived in her care in September 2017. She provided veterinary records dated February 17, 2018 as evidence that the dog was seen for blood work and testing. She provided photographs of the special raw food diet that Arrow was on because of allergies and maintains that the special diet caused darker urine. Her submissions included an email exchange that appeared to be with a veterinarian who confirmed that a raw diet could possibly cause darker urine. With regards to weight, the Appellant stated that "he could put on 3-4 pounds, but he was not under-fed." She stated that dog was matted and dirty at the time of seizure because the weather was poor and everything was "mucky and yucky," but that she had planned to take him for a bath when the weather broke.
  - c) Dog #4 – "Miracle" is a male Labrador retriever who came into the Appellant's care in April 2017. She characterized the dog as very active. She noted that there were persistent issues with his ears and that she had bought ear cleaner and coconut oil to help manage them. The Appellant provided a receipt from a veterinarian from April 2017 for vaccinations. She also included photographs of Miracle playing outside in the yard, at Williams Park in Langley, and getting a bath.

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<sup>2</sup> According to Dr. Peter's clinical exam, Muffin was not spayed.

- d) Dog #5 – “Lara” is a female collie cross with no hind legs that came into the Appellant’s care in February 2018. She noted that the hind legs were injured before she came into the Appellant’s care, and that she can run on her two front legs without assistance. She stated that the dog does not have full control of her bladder and sometimes messes in her kennel. She provided photographs of Lara’s kennel showing bedding with a sheet on top to “create softness and absorbance in case she has an accident.” She also provided a picture of the dog wheelchair that Lara used on occasion, and a “drag bag” to protect her hind end from abrasions when she ran.
  - e) Dog #6 – “Christian” a male pit bull terrier came into the Appellant’s care in January 2018. The dog was born with a developmental deformity of his toe, that did not bother him. She described him as “one of the most active dogs that I have been around,” and said he could jump five-feet straight in the air. She noted that she watched his feet and noticed that he occasionally had some redness on the bottom, though she never saw him itching his feet or bleeding. She used foot wax to protect his paws in the snow and kept cortizone cream and coconut oil for them as well.
  - f) Dogs #7 & 8 – “F1 and F2” are a pair of female Maltese that came into the Appellant’s care at the end of September 2019. These dogs came to her in poor condition from a bad situation. The Appellant reviewed photographs of their condition when they arrived showing poor teeth and mammary tumours. She also submitted veterinary receipts and records dated October 5, 2019 detailing dental cleanings and extractions, spay, nail trims, lumpectomies and biopsies for both dogs totaling \$2645.41. The Appellant stated that her plan was to eventually get the animals placed in a home together.
  - g) Dog #9 – “Girlie” is a Rottweiler cross who came into the Appellant’s care in February 2018 after being abandoned by her owner. The Appellant stated that Girlie was spayed in October 2019.<sup>3</sup>
37. The Appellant provided brief comments on the birds, cats, rabbits and pig as follows:
- a) She has had the birds since 2015 or 2016 when she bought them at the Fraser Valley Auction. The bird cages were of an adequate size and were cleaned on a regular basis. She submitted photographs of bird food and stated that clean water was always available to them.

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<sup>3</sup> The veterinary evidence shows Girlie was spayed on February 3, 2018. Not much turns on this inconsistency.

- b) The Appellant submitted photographs of the cages by a large window for natural light. She said at the time the SPCA came the curtains were closed, but she normally has a sheet that allows light to pass through while stopping any drafts.
  - c) The cockatiel had a bald spot on the back of his head that she believed was common among poorly bred cockatiels. The cockatiel had been in her care since before the 2016 seizure and the Society did not express concern about his bald spot at that time. She testified that “at the time he was seized I had no concern that he seemed unwell.” She had never noticed any breathing problems, dullness or lethargy.
  - d) Regarding the Persian cat (Cat #13), the Appellant said that the benign mass in the ears is common to the breed. She checked the cat’s ears and brushed her and was aware that the cat had some mats at the time of seizure, “but they weren’t to the point of abuse.”
  - e) The grey and white cat with no tail (Cat #14) and the orange and white cat (Cat #17) belong to someone else, but she has been taking care of them while they try to find a place to live that accepts cats. According to the Appellant, the owners told her the cats are micro-chipped, but they haven’t been contacted by the SPCA.
  - f) The rabbits had been around for a long time and were not recent additions. She described their nails as “mildly long” and admitted that “they could have been trimmed.” She said she was planning to clean the hutches at the time the SPCA came. “If you would have come Monday, they would have been perfect, but you came Sunday.”
  - g) With regards to the pig, the Appellant said she had never personally seen mites on the pig or seen the pig itch itself. She said that there were thick rubber mats under the straw bedding in the garage where the pig sleeps at night. She said the pig likes the garage door open and created a hole in the chicken wire that she liked to walk through. At the time of the seizure, she said the pig was locked in the garage with water available.
38. On cross-examination about conditions relating to Dog #1, Muffin, the Appellant acknowledged that there was some matting and staining but disagreed with the severity described in the veterinary notes about fecal matter and urine staining. She claimed the Society’s photo showing Muffin’s head touching the top of the crate is misleading because it had a thick padded cushion. “This certainly wasn’t a kennel that I would leave her in for very long periods of time, but she can turn around, she can extend her legs, she looks comfortable.”

39. In response to questions regarding the two Maltese dogs, the Appellant provided the following clarifications:
- h) The two Maltese dogs shared a kennel because they were most comfortable when they could curl up together. She said that the kennel was an appropriate size and that both of them could turn around and lay in separate areas without touching each other.
  - i) She took the Maltese to a vet in Squamish because it was recommended by a friend and they had more affordable rates. The name on the receipt was redacted because someone else took the dogs into the vet and paid for the procedure. They did not want their name in these proceedings.
  - j) After the Maltese dogs went to the vet, the Appellant had a couple of follow-up conversations about medication after one of the dogs appeared to have a seizure and to seek clarification about a kidney issue with one of the dogs. These conversations happened within 10 days of the medical procedures.
  - k) She did not notice the brown discharge from ear of the Maltese noted by Dr. Peters.
  - l) When questioned further about the dental concerns with the Maltese dogs, the Appellant said she thought the dental issues had been fully attended to by the veterinarian. She had no reason to expect more dental issues within three months.
40. When questioned about the condition of the Dog #3, Arrow, the Appellant said that she had plans to have him groomed, and that her photos were evidence that he had been groomed in the past. When asked if she had noticed Arrow's body condition deteriorate over the time in her care, from a 5/9 BCS in February 2018 to 2/9 in January 2020, the Appellant was adamant that the dog's weight was still in the range for border collies, and that the BCS was a subjective score that would change from vet to vet. She confirmed that Arrow has not seen a vet since February 2018.
41. When questioned about Dog #4, Miracle, she confirmed that the dog was taken to the vet for vaccinations when she got him in April 2017, but she had not taken him to the vet to have his ears looked at despite issues and scabbing. When asked about Miracle's alopecia and white pupital discharge noted by Dr. Peters, the Appellant explained that these were common issues and she was not concerned.
42. When asked why she did not take Miracle to the vet to have his ears looked at, the Appellant said that she has taken a two-year course on advanced animal welfare, and she can inspect animals and make decision on their welfare. She stated that there's a pharmacist in Cloverdale that reviews photos and makes recommendations about medications to try. "I

can't afford to run to the vet for every little thing," she said, and then clarified that it's not always a cost issue, "sometimes it's good common sense."

43. With regards to Lara (Dog #5), the Appellant stated that she had not noticed anything abnormal about the dog's urine. The dog was able to lift her hind end and was very mobile, so she was not concerned about increased risk of UTIs. When asked if she noticed the alopecia noted by Dr. Peters, she replied "Honestly, what I notice on video with the SPCA is that they tried really hard to find something. Life happens, there's small little things."
44. When asked if she noticed Girlie's (Dog #9) low BCS, the Appellant replied that she was still growing, and that with the volume of food that she was getting and the fact that she's up-to-date on worming, she should be close to ideal weight. She argued against Dr. Peter's recommendation to increase her food to bring her BCS up to 4/9.
45. The Appellant conceded that the dog Christian (Dog #6) with the deformed paw had never been taken to the vet and neither had the rabbits, cats or birds.
46. Looking at photos of the empty dishes in the dog crates, the Appellant explained that she did not leave water in crates to avoid spilling. She stated the suggestion (by AW) that she hit the cages to quiet the dogs was "ludicrous." She denied a major infestation of rats in the garage but conceded that as she lived on an acreage rats were present. The Appellant pointed to documentation of her daily regime in her submissions and insisted that this is the way that she has lived since the previous seizures. These records were compiled after the seizure; the Appellant concedes her records are generally not well-organized.
47. The Appellant said that, if the dogs are returned to her, she only intends to keep five of them. She will find homes for the two Maltese and the poodle. After that, she said, the door is closed. "Going through this process is disturbing and disheartening. When the Society raised the fact that under the Langley animal bylaw she is only allowed to have two dogs, the Appellant stated that it is three dogs if one of them is elderly or handicapped, and Lara is considered handicapped."
48. With regards to the complainant AW, Ms Simans describes her as a family friend. She offered AW a place to stay while she visited family over the holidays. She arrived December 23 and left January 8, 2020.
49. There are other people living at her residence but they are not involved substantively in the care of the animals and they were not called as witnesses.



## VIII. Respondent's Evidence

### Respondent's Veterinarian – Dr. Uri Burstyn

50. Dr. Burstyn is a veterinarian licensed to practice in the province of British Columbia. He is the owner and medical director of Arbutus West Animal Clinic and has been practicing veterinary medicine for about 12 years. Nearly 30% of his practice consists of exotic animals. He was qualified by the panel as an expert in veterinary medicine with a specialization in exotic animals.
51. Dr. Burstyn examined the five birds the day following the seizure – January 20, 2020. He offered the following observations of each of the birds:
- a) Bird #19 – Parrotlet mix. He found the bird to be largely normal with some routine feather sheaths along the belly and some down, which is suggestive of either being a juvenile or routine molt. Generally, this is the sign of a bird that is something less than ideal in their condition. The BCS of this bird was 5/9, and he concluded that overall it was a healthy animal.
  - b) Bird #20 – Parrotlet mix. He characterized this bird as bright and chirpy, but noted that it was significantly under condition or skinny with a BCS of 3/9. The left leg was missing digits three and four, and the right leg digits one and three were missing nails. The feathers looked rough, not smooth and preened as they should. Missing nails or toes is often linked to inappropriate perches and is a sign of poor husbandry.
  - c) Bird #21 – Cockatiel. This bird was found to be somewhat underweight, with a BCS of 3/9. It had nasal congestion and likely an upper airway issue like a cold or upper respiratory infection. He noted the loss of feathers in the back of the head and neck, and a missing left leg. There were white specks on the feathers, and the feathers were generally in poor condition. He noted poor muscle mass in the chest, and the left wing was sensitive to handle, which is typically interpreted as discomfort. There was some concern regarding inflammation or soft tissue injury. The cockatiel also had fecal staining of the cloaca tail feathers, indicating soft stools or diarrhea.
  - d) Bird #22 – Lovebird mix. This bird appeared in normal condition with a BCS of 5/9.
  - e) Bird #23 – Lovebird mix. This bird had a normal BCS of 5/9, but had some rough feathers, dandruff and some feather loss on the right wing. He found no mites, so the white specs would be dandruff or oil build-up. He could not find a definitive explanation for the feather loss.

52. Dr. Burstyn said that, generally speaking, he would have expected the owner of birds like these to bring them to a vet. Feather loss or respiratory issues are clear indicators that the birds need veterinary care.
53. Under cross-examination, Dr. Burstyn clarified the following:
- a) The retained feather sheathes on Bird #19 is a fairly subtle abnormality. Some people would try to treat it themselves before seeking help from a vet.
  - b) Nail loss, like that noted on Bird #20 may regrow if there is no damage to the nail bed. If the nail bed is damaged, it will not grow back. It is hard to say what to expect with this specific bird without knowing the history.
  - c) He would never consider missing feathers on the back of the neck to be normal for a cockatiel. Feather loss in birds is never normal.
  - d) When asked if Bird #21 could be a Lutino Cockatiel that has a genetic mutation with feather loss, Dr. Burstyn replied that this is a very rare trait that he has never seen in regular practice, and that this appeared to be a regular cockatiel.
  - e) If Bird #23 (with rough feathers, feather loss and dandruff) was presented to him in normal practice, Dr. Burstyn would do a review of husbandry to determine the cause of its condition. “There is always a reason, you just have to find it. I could not find an injury or parasite, so I would do a deep dive into husbandry and diet.”
54. As a population, Dr. Burstyn said that all of the birds showed some sub-optimal condition. “Whenever you see a group of animals who suffer abnormalities, you definitely look at the environment – temperature, lighting, diet and disease control.” He noted that the cockatiel (Bird #21) was in medical distress due to respiratory illness, which reduces quality of life and could possibly lead to death.
55. He suggested that, as a guideline, every animal should be seen by a veterinarian once a year for a health check. He said that typically husbandry-based conditions will improve and resolve themselves when the root cause is corrected.

### **Respondent’s Veterinarian - Dr. Aaron Gibbins**

56. Dr. Gibbins is a veterinarian practicing livestock medicine who currently works for Langley Animal Clinic. He is licensed to practice in British Columbia and has been working exclusively with livestock for over eight years. The panel qualified him as an expert in veterinary medicine with specialization with regards to livestock.

57. Dr. Gibbins wrote a report assessing the condition of the female potbelly pig, "Sweet Pea." The original examination was conducted on January 20, 2020 by his colleague, Dr. Omid Mavedati, who found no immediate distress or emergency medical treatment needed.
58. Dr. Gibbins did a more thorough examination on February 4, 2020 and noted minor scaling of the skin on the lower legs and mild redness of the skin behind the ears, consistent with skin mites. Sweet Pea was treated for mites with ivermectin. Skin mites are very common in pigs and are easily treated with a common antiparasitic. Some pig owners will treat their pigs annually for mites as a preventative. He found overall that the pig was in very good physical condition with a BCS of 3/5. He noted that her hooves needed to be monitored and trimmed within a couple of months.
59. Under cross-examination, Dr. Gibbins provided the following clarifications:
  - a) The skin mite issue was not severe, but still warranted treatment.
  - b) At the time of his examination, he did not feel that this was a pig in distress.
  - c) He noted that her feces was very dry and hard, indicating that she had not been drinking properly for a couple of days. He agreed this could have also been caused by a stress response as pigs can sometimes sulk and refuse water even if it's available.
  - d) When asked about housing conditions, Dr. Gibbins stated that hygiene is one of the most important things for pig health. Having feces around is bad. "If the bedding is clean pigs will do fine in cold temperatures if there is a way to burrow. When things are soiled and dark it tends to lend itself to disease. Whether foot issue or skin issues, there is more opportunity for problems than in better lit and ventilated housing."

#### **Respondent's Veterinarian - Dr. Derek Peters**

60. Dr. Peters is a veterinarian licensed to practice in British Columbia. His practice is primarily dogs and cats. The panel qualified Dr. Peters as an expert in veterinary medicine with particular emphasis on dogs and cats, and some experience with rabbits.
61. Dr. Peters performed the intake assessments of nine dogs, three cats and two rabbits following the seizure. The exams were conducted on January 20, 2020 and the detailed results of these exams are summarized in the Medical Evidence section above.
62. Speaking to the condition of the 14 animals from a population health perspective, he found nine were not in ideal body condition (six were underweight, three were overweight), eight had visible dental pathology where veterinary intervention was recommended, two had

evidence of dental abrasions often indicative of chewing on cage bars, and four had matted fur which can be indicative of poor general welfare, discomfort and inflammation of skin. One dog had a UTI, another had inflamed digits, and another had a heart murmur. Both rabbits had overgrown nails and hock joints and one required medical attention. One cat had cysts or polyp lesions in its ears. Two animals tested positive for parasites.

63. Dr. Peters said that the condition of the population as a whole and the follow-up findings of Giardia and roundworm, is generally indicative of poor general welfare and hygiene. He would have expected the owner to have sought veterinary care for these animals.
64. Under cross-examination, Dr. Peters said that he was asked to do the examinations at the last minute. He was told that the animals would all be coming from one location but was not informed of the general state of the animals. He was given a quick explanation that this was a repeat offender who had animal seizures in the past.
65. Dr. Peters offered the following observations of the animals and clarifications under cross-examination:
  - a) Dog #1 – After the fecal matter was removed and it was ensured that the dog was getting adequate calories, he did not think she required follow-up care.
  - b) Dog #3 – This animal lacked proper hygiene and adequate calories. After getting rid of the mats and getting calories up, the dog would not need further vet assessment most likely.
  - c) Dog #4 – The speed at which a UTI arises depends on what causes it. In this case, Dr. Peters suspected it was caused because the dog had no hind legs and contamination of the vulva area ascended into the bladder. He was unable to say how long the UTI had been going on for.
  - d) Dog #6 – The injury to the hind foot was enough of a concern that he would at least do a radiograph to assess it. He agreed it was possible that the injury could be caused by a developmental deformity when the scenario was put to him.
  - e) Dog #7 – He had not seen previous veterinary records but had suspected based on the missing teeth that a dental procedure had been done in the past or the teeth had fallen out due to dental disease. He stated, “previous medical history is always relevant and plays into decision making. In this case my main concern was significant tartar build-up and the wearing of one of the teeth.”

- f) Dog #8 –Heart murmurs can present between one examination and the next. It was hard to say how long it had been present. His recommendation on finding them for the first time is to do imaging of the chest and lungs.
  - g) Dog #9 – This dog was quite significantly underweight. He explained that there are published guidelines on how to properly evaluate dogs and cats using different assessments.
  - h) As for the dental abrasions on Dogs #7 and 9, these kinds of abrasions are commonly seen in animals that chew kennel bars, but concede that chewing on other things can cause similar lesions.
66. Across the population of dogs, Dr. Peters said he did not see any evidence of extreme dehydration 24 hours after the seizure. He noted that they could have been less than 5% dehydrated at the time. He explained that he would not expect signs of severe dehydration to clear with one night of oral fluids, but that it is difficult to assess after the fact.
67. Based on what he observed, Dr. Peters said he would have concerns returning the animals to the Appellant based on their poor general welfare and overall hygiene. “Matted fur, pododermatitis in the rabbits, animals that are underweight, these are things that with proper general hygiene and care shouldn’t be difficult to keep up with.” He added that the presence of giardia and roundworm are also generally indicative of poor hygiene.

#### **Respondent’s Witness – Dr. Rebecca Ledger**

68. Dr. Rebecca Ledger is an animal behaviour and animal welfare scientist based in Vancouver, BC. She has a PhD in behavioural assessment and management of dogs from Brunel University, and an MSc in Applied Animal Behaviour & Animal Welfare from the University of Edinburgh. She was qualified as an expert in the field of animal behaviour and animal welfare science.
69. Dr. Ledger attended the animal seizure on January 19, 2020. Her detailed report on the welfare assessment regarding the nine dogs was included in the Society’s document submissions (Exhibit 15, Tab 38).
70. Dr. Ledger reported that she arrived at the Simans’ property at 1:26 pm. She entered with SPC Hommel and they looked around to get a sense of where the animals were and how they were kept. She observed a dog in a crate in the hall, one tied to the sofa, two dogs in crates in the living room, five dogs in crates in the back room, a bedroom containing a number of cats, and two caged rabbits and a pig in the garage.

71. Her first impression of the environment in the home was that there was a smell of urine when she entered, and it was very loud because of the barking dogs. After the initial walkaround, she focused on the individual animals and documented the condition of each animal, their behaviour and their level of thirst. After each dog was examined, it was taken outside to pee. The urine was collected, and an assessment done on the amount and concentration.
72. Dr. Ledger said the process she used to assess the welfare of each dog is widely accepted and has been adopted by a number of organizations across the world as a gold standard framework. The details of the framework are set out in the appendix of her report. Broadly, it assesses four thematic areas to identify suffering/distress: nutrition (availability of food/water), environment, physical health and behaviour (the ability to express normal behaviour).
73. Dr. Ledger concerns are as follows:

**Dog #1:**

- (a) The dog was kept in a drafty part of the house near the front door and separate from all other animals.
- (b) She did not have adequate space in her crate to stand and move. She would have to bed or twist her body in order to rest and could never be fully recumbent or stretched out.
- (c) There was nothing for her to play with in the crate.
- (d) The bedding was soiled.
- (e) Behavioural evidence of suffering including trembling. The dog was tense and avoidant, and scared to come out of the crate.
- (f) Once out of the crate, she had an unusual gait suspected to relate to being confined to such a small space.
- (g) She could not wait for water to be offered, and immediately began eating snow to relieve her thirst. She produced a very small amount of concentrated urine described as a dark gold colour.

**Dog #3 (similar concerns to Dog #1):**

- (a) The dog was kept in a crate in the kitchen surrounded by other crated dogs and characterized as “aggressive.”
- (b) When taken out of the kennel, he strained to urinate and was found to have dry gums (a sign of dehydration).

**Dog #4:**

- (a) The dog was kept in a crate in the kitchen less than six feet from Dog #3.
- (b) Evidence from AW's statement said that she had seen the Appellant yelling at the dog and banging on his crate.
- (c) The crate was too small.
- (d) The dog was very aroused, lots of barking and frantic to get out of the kennel. When he was let out, he was very hyper.
- (e) When he got outside, he immediately started eating snow, stopped to urinate and then drank water "frantically." Urine was dark and concentrated.
- (f) Eating snow is very unusual, that dogs usually run out and play in snow, but that these dogs were just focused on rehydrating. "There was no play, loose body language or soliciting of attention."
- (g) Additional health concerns identified by SPC Hall, included dehydration and alopecia.

**Dog #5:**

- (a) The dog was kept in a crate in the living room surrounded by the social threat of other dogs near her behaving aggressively.
- (b) There was a lack of opportunity to explore and move around. Dog #5 was described as active, friendly, and gregarious at a shelter visit but "fearful aggressive," at the seizure and she seemed to anticipate harm or discomfort when handled at the initial exam.
- (c) There was nothing to chew on or play with
- (d) Bedding was soiled and there was a strong smell.
- (e) Drank frantically when she was taken out of the crate.

**Dog #6:**

- (a) When they first arrived, dog was observed to be aggressive and "having a massive stress response."
- (b) His nose was red, consistent with trying to get out of the crate, something noted in AW's statement.
- (c) Once out of his crate, he was very friendly and hyper.
- (d) Dislocated digit on left hind foot was bleeding, inferring pain.

**Dogs #7 and 8:**

- (a) Dogs were kept in the same crate, and at least had each other for company. They were deprived of positive interactions with people and surrounded by the presence of social threat from other dogs behaving aggressively.
- (b) There were no toys or things to play with.
- (c) Bedding was urine soaked.
- (d) Statement from AW that she observed the Appellant yelling at these dogs.
- (e) One of the dogs was chewing on the bars of the door. When she was removed from the crate, she froze. This behaviour indicates extreme fear of negative interaction. In contrast, the same dog was very relaxed at the SPCA kennel. She said, “we expect dogs to feel most comfortable in their own home.”
- (f) Urine staining on feet, and no hair on top of nose consistent with chewing on the bars of the door.

**Dog #9:**

- (a) She was very aggressive and frantic in her crate – the most aggressive of the dogs.
- (b) Consistent with AW’s statement, the dog was observed trying to get out of the crate and when out of the crate she was just desperate for attention.
- (c) The crate was in the far corner of the living room where there was very little light even in the middle of the afternoon. Low light could contribute to eye strain in addition to the other types of suffering noted with the other dogs.

- 74. Based on her observations and the reports available to her, Dr. Ledger found that each of the dogs at the Simans’ residence was suffering from distress at the time of seizure. The severity of suffering was moderate to severe in all of the dogs.
- 75. Based on the framework, qualifying the severity of suffering is a function of intensity and duration. “Anything that lasts for more than a couple of weeks would be considered severe because of a long duration.” Based on the statement of AW, and supported by a discussion Dr. Ledger had with the Appellant’s roommate DS during the seizure, she concluded that the dogs had been living in these conditions for longer than two weeks.
- 76. Her evidence is that the dogs were suffering as a result of their confinement in small crates for long periods of time. She identified specific sources of suffering as thirst, anxiety, boredom, olfactory discomfort, auditory discomfort, frustration, stiffness, physical discomfort, and, in the case of Dog #9, eye strain.



77. Dr. Ledger observed the garage where the rabbits and pig were being kept. The first thing that struck her was the strong smell of feces and urine. The garage was very dark and the light didn't seem to work. It was very cold. There were holes in the walls and doors, and evidence of rodents, including feces. The space was cluttered with old dog crates. She said the pig had defecated and urinated extensively throughout the garage. The garage did not look like it had been cleaned recently.
78. With regards to the pig, Dr. Ledger described a bedding area with a mixture of straw and hay. She said the pig had done a lot of rooting and pushing the material into a corner to make the bedding area but expressed concern that it would not have provided enough insulation to prevent chilling given the cold and drafts in the garage.
79. Her key areas of concern regarding the suffering or distress of the pig included loneliness (social isolation), olfactory discomfort as a result of living in an area that was heavily soiled, thermal discomfort as a result of the cold, and, given the darkness in the garage, possibly eye strain.
80. Dr. Ledger testified that she went into the cat room and did not have a lot of concerns about the conditions. She noticed the cats were very skittish, but there were adequate litter trays, perches and soft resting areas. Dr. Ledger did not recommend the cats be seized based on suffering but deferred to SPC Hall's assessment.
81. Under cross-examination, Dr. Ledger was questioned about her reliance on the statement of AW. In response, Dr. Ledger clarified that her report and oral evidence was informed by the following:
  - (a) The conditions that each dog was located in based on the written witness statement from AW, verbal evidence from the Appellant's roommate DS (witnessed by SPC Hommel) and her personal observation of the dogs at the time of seizure.
  - (b) The behaviour and physical condition of the dogs based on physical examination notes made by Dr. Peters and onsite physical examination notes made by SPC Hall, and other evidence collected at the scene.
  - (c) Dr. Ledger also relied on photographs and her own observations. She explained that there were many different kinds of evidence, both circumstantial and physical, that informed her conclusions. "The inference is what all of those different kinds of evidence tell us when they are put together, and the evidence is consistently telling us that there are major concerns with the care of these dogs," she said.
82. Dr. Ledger addressed the influence of the exceptional circumstance of the seizure on the dogs' behaviour. She agreed that the noise and barking could have been partly as a result of

having strangers in their home, but she also cited AW's observation that the dogs barked as a result of prolonged confinement.

83. When cross-examined on the issue of thirst, Dr. Ledger stated:

“None of the dogs in question were provided with water when we were there. Legally they should be provided with fresh water. When the dogs were let out from the first to the last, they all drank frantically, not just the dogs who waited. I made a clear note of the time I arrive – it was 1:26 pm. I don't think being without water for an hour and a half would account for that level of thirst or dehydration.”

84. Dr. Ledger said that whatever water had been provided to these dogs was not enough to hydrate them. A number of the dogs produced small amounts of concentrated urine, and SPC Hall noted that most of the dogs were dehydrated according to the skin tenting test.

### **Respondent's Witness - SPC Vanessa Hommel**

85. Special Police Constable (SPC) Hommel is an employee of the Society having been appointed as an SPC under the *Police Act*.

86. SPC Hommel testified that she sought the warrant to search issued January 19, 2020 authorizing the Society to enter and seize the animals. She clarified that the time on the warrant specifies time of entry, not time of exit. She noted that they arrived at 1:26 pm and left the premises at 7:23 pm.

87. SPC Hommel spoke to the condition of the birds. She said they were kept in the dining room area of the house near the window. She made the decision to seize the birds based on their living conditions and physical condition.

88. She described the room as dimly lit even in the middle of the afternoon. The birds had feces built up on the bottom of the cage and on perches. While water was present, it had been contaminated with feces. The cockatiel did not look healthy and had obvious feather loss.

89. SPC Hommel agreed with the assessment of Dr. Ledger that there were no issues with the living conditions of the cats. The concerns came when they were physically examined and three of the cats had issues with matting, fecal matter, ear health, being underweight and dehydration. On the basis of these issues, she determined three cats to be in distress. They did not see any medical concerns with the other three cats and decided to leave them.

90. Speaking to her concerns with the rabbits, SPC Hommel said she found the two rabbits in separate hutches, both with a build-up of feces in the litter. There was water present but

there was feces in one dish and the other water dish was dirty. The garage was dark and cold, and there was a notable odour of ammonia. The decision to seize the rabbits was made because of their long nails and poor living conditions.

91. SPC Hommel made the decision to seize the dogs based on her own observations and after consulting with Dr. Ledger. She was concerned for the physical and psychological well-being of the dogs.
92. Under cross-examination, SPC Hommel said that she first read the complaint from AW on January 9, 2020, and that she received her written statement on January 12, 2020. Between those dates, she conducted the preliminary investigation. She applied for a warrant on January 14, 2020 to search on January 15, 2020 but the execution of the warrant was delayed by the weather. She reapplied for a warrant on January 18 and it was executed on January 19, 2020.

## **IX. Analysis and Decision**

93. 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.

94. 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.

95. 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 they seek (return of the animals) is justified. The first issue to consider is whether the animals were in distress at the time of seizure. Depending on the answer to that question, the next issue is to decide whether to return the animals or whether to do so would return them to a situation of distress.
96. In considering the first issue, I have considered the individual circumstances of the animals seized.

### **Seizure of the Dogs**

97. At the time of seizure, SPC Hommel 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*. She also concluded that their living conditions were unsanitary due to soiled bedding in some of the crates, s. 1(2)(a.1). Based on her observations and the assessment of Dr. Ledger, she also determined that the dogs were in a state of moderate to severe suffering, s. 1(2)(b). This determination was made based on the conditions of the dogs' confinement as well as thirst, anxiety, boredom, olfactory discomfort, auditory discomfort, frustration, stiffness and physical discomfort.
98. SPC Hommel sought the warrant based on the statement of the complainant AW, combined with the past history of Appellant with regards to animal welfare complaints and the seizure of animals in her care. Based on the conditions observed in the home at the time the warrant was executed and the assumed fact that the dogs had been living in these conditions for an extended period of time, she exercised the Society's authority under section 11 of the *PCAA* to take the animals into custody to relieve their distress.
99. The Appellant maintains that the dogs in her care were kept in good living conditions and received adequate care. She argues that the Society's decision to seize the animals was the result of a biased investigation process based on her past history of seizures and that they relied on unproven statements from an unreliable source, AW.
100. As neither of the parties in this appeal called the complainant AW as a witness, it is impossible for the Panel to assess her credibility or the reliability of her statements. As a result, the Panel has placed limited weight on the contents of AW's statement beyond its role as a catalyst for the Society to obtain a warrant to search the Appellant's residence. It is clear from the evidence provided by SPC Hommel, and the notes of the other SPCs involved in executing the warrant that they assessed the conditions of the animals based on their direct observations rather than relying on the initial complaint which led them to the residence in the first place.

101. While Dr. Ledger referenced AW's statement in her report and oral evidence, it is clear that she undertook her own investigations and weighed AW's statements alongside several other sources, including her own direct observation of the animals and the conditions at the time of seizure. The Panel does not agree with the Appellant's submission that Dr. Ledger's behavioural assessment was biased, and as such, I am confident weighing her evidence and conclusions alongside the other expert witnesses who testified on behalf of the Society. Indeed the evidence of Dr. Peters, based on his examination of the dogs, cats and rabbits which recorded the physical condition of the animals the day following the seizure, supports Dr. Ledger's conclusions.
102. While the Appellant argued that the health issues Dr. Peters observed in the dogs were not indicative of critical medical distress, I give significant weight to his observations of the overall number of issues across all of the dogs as an indication of poor animal welfare and hygiene practices.
103. It is important to note in these considerations in these proceedings 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) the panel explained that "... the Society does not need to wait for the animal to actually start to suffer before taking protective action."
104. 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]
105. Still, the facts of this case do not hang purely on the prevention of distress. I accept the evidence of SPC Hommel and Dr. Ledger that the dogs had no access to fresh water; they were being kept in kennels that were too small and many of them had soiled bedding. While it is impossible to determine exactly how long the dogs had been in the kennels at the time of seizure, behavioural evidence indicated that they were all extremely thirsty, and the physical evidence indicated that some of the dogs were housed in unsanitary conditions long enough to have urine staining on their paws and coats that were soiled and matted. These observations are corroborated by the notes of SPCs Hall and Carey in the Society's submissions.

106. Further, Dr. Ledger's detailed behavioural assessment of each of the dogs at the time of seizure found that each of them was suffering or in distress to a moderate or severe degree as a result of their nutrition, environment, health and behaviour.
107. 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**

108. I accept the evidence provided from the day of the seizure by SPC Hommel that the three cats in question had physical concerns that warranted their removal. Based on the physical examination by SPC Hall, concerns were identified with matting and fecal matter in the coat, ear health, dental health, poor body condition and dehydration. As such the cats met the definition of distress under s. 1(2)(a) in that they were deprived of adequate water, care, or veterinary treatment. I note also that SPC Hommel exercised her judgement and determined that three other cats were not in distress and those animals remained with the Appellant.
109. Based on the totality of evidence, I find the three seized cats were in distress under s. 1(2) and were appropriately and reasonably seized by the Society.

### **Seizure of the Rabbits**

110. The rabbits were found in hutches in the garage without a source of heat or light. According to notes from SPC Carey, the temperature in the garage was measured at 2°C.
111. Based on the evidence of SPC Hommel and Dr. Ledger, as well as notes and photos included in the Society's submissions from other SPCs attending the scene, the conditions in the hutches were unsanitary and water, while available, was contaminated.
112. Evidence from Dr. Peters' physical examination of the rabbits indicated that their claws were significantly overgrown, one of the rabbits was significantly underweight, and both rabbits had lesions on the plantar hock joints that are commonly caused by poor housing and hygiene.
113. Based on the totality of evidence, I find the rabbits were in distress under s. 1(2) and were appropriately and reasonably seized by the Society.

### **Seizure of the Pig**

114. I accept the evidence of SPC Hommel and Dr. Ledger regarding the conditions of the garage as dark, cold, cluttered and soiled with feces and urine. There was no clean water available and, while there was bedding, it too was heavily soiled.
115. While the physical examination by Dr. Gibbins indicated that there were no significant medical issues with the pig, I give significant weight to the assessment of Dr. Ledger who identified several sources of distress including loneliness as a result of social isolation, olfactory discomfort from living in a heavily soiled area and thermal discomfort as a result of the cold.
116. Based on the totality of evidence, I find the pig was in distress under s. 1(2) and was appropriately and reasonably seized by the Society.

### **Seizure of the Birds**

117. With respect to the seizure of the birds, SPC Hommel gave evidence that the birds were seized based on their living conditions and concerns about their physical condition. She noted that there was significant feces build-up on the bottom of the cage and perches, water was contaminated with feces and debris and there was no enrichment available to them.
118. The on-site examination of the birds by SPC Hall raised concerns about feather loss and the general condition of the birds. Further examination by Dr. Burstyn found health concerns with all but one of the birds. He gave evidence that the cockatiel was “in medical distress” at the time of the exam as a result of a respiratory infection.
119. Based on the totality of evidence, I find the birds were in distress under s. 1(2) and were appropriately and reasonably seized by the Society.

### **Return of the Animals**

120. Having determined the seizure of the Animals was justified, I now consider whether it is in their best interests 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.

121. 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.

122. The question I must answer is whether the Appellant is capable of providing adequate care for the Animals. In these hearings, the onus is on the Appellant to prove the return is justified and to explain what, if any, changes have been made or will be made to prevent the seized 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.

### **Return of the Dogs**

123. The Appellant clearly cares about her animals and I would like to acknowledge the efforts that she has made to improve the conditions under which they are being kept. Evidence presented included veterinary records for intermittent care of the dogs, particularly the two Maltese dogs.

124. In support of her case, she called two friends as witnesses, who testified that they had visited her residence multiple times over the years, and offered the opinion that her animals were well cared for, with access to food, water, regular exercise and affection.

125. In her own submissions, the Appellant compiled records with information about the dogs, and provided a detailed table of her daily schedule. It is difficult to reconcile the picture that she constructs of her life and care for the animals with the conditions that the animals were found in.

126. In building her case, the Appellant focused largely on discrediting the Society and its witnesses by trying to demonstrate confirmation bias in the investigation leading to an unnecessary seizure by the Society. In essence, she argues the investigation was flawed because the Society prejudged the outcome and intended to seize her animals no matter what. She offered very little evidence to indicate she understood the state her animals were in or what improvements she intended to make in animal care and husbandry if her animals were returned.

127. Having made the determination above that the Society acted appropriately and the seizures were justified based on the conditions as they existed on the date of seizure, I am left to infer from Appellant's evidence and behaviour that she believes her care to have been



adequate, and that she believes the changes required to be minor. This is where the Appellant's history with the Society does her a disservice.

128. In her closing submissions, the Appellant argues that the Society should have attended her residence to do "an actual investigation," and that the issues with the animals could have been managed "by orders from the SPCA to be carried out while they continued in her care." She states, "Had they shared new information with me about my animals' health, I would have followed up on it."
129. Given the Appellant's lengthy history with the Society, including two previous seizures and the corresponding appeal decisions by BCFIRB, I would expect that the Appellant would have more insight and a better understanding of appropriate animal care and animal welfare than her comments suggest.
130. Previous seizures have dealt with similar issues, specifically lack of available water, keeping animals contained in kennels or crates for long periods of time, nutritional issues and failure to provide necessary veterinary care. It is my strongly held belief that the Appellant has had ample notice, guidance and opportunity for education in the care of her animals. At this point, I would expect that she would be more proactive in her approach, actively trying to demonstrate her understanding and competence in animal care.
131. The Appellant gave evidence that she did not make water available to the dogs to avoid spilling, despite having been ordered in the past to provide clean, potable drinking water at all times. [ITO, Tab 3, p14-15]
132. The Appellant continues to house dogs in travel crates and kennels for extended periods of time, despite having been ordered in the past to "provide shelter with sufficient space to allow the animal to turn freely and to easily stand, sit and lie down," and to "ensure all the animals have access to adequate exercise and stimulation." [ITO, Tab 3, p14-15]
133. When faced with the evidence of Dr. Peters that three of the dogs were critically underweight, the Appellant argued the subjectivity of BCS assessments and, despite being asked directly by the panel, offered no concrete plan to improve their condition.
134. I am particularly concerned by the Appellant's demonstrated inability to acknowledge the Arrow's (Dog #3), loss of condition (BCS) which is documented as 5/9 out of nine in veterinary records dated February 2018, and 2/9 at the time of Dr. Peters' exam in March 2020. This is despite receiving orders from the Society in the past to "provide sufficient quantity of suitable food to allow for normal growth and maintenance of normal body weight." [ITO, Tab 3, p14-15]

135. With regards to veterinary care, the Panel acknowledges that the Appellant provided some veterinary records in her submissions to deal with major issues including the dental procedures and lumpectomies performed on the two Maltese dogs. However, the records also show a lack of maintenance and follow-up, and the absence of annual exams and treatments for persistent issues.
136. The Appellant admits in her own evidence that she was aware of Miracle's (Dog #3) ear issues and the irritation and swelling on Christian's (Dog #6) paws, but she chose to address them with home remedies that allowed the conditions to persist instead of taking the dogs to a veterinarian for treatment. This is despite previous orders from the Society to "provide necessary Veterinary care when the animal exhibits signs of injury, pain, illness or suffering that require medical care." [ITO, Tab 3, p14-15]
137. The full scope of the issue is underlined by Dr. Peters' summary of his findings [Tab 33, p672]:

In summary, dental pathology where veterinary intervention is recommended to reduce oral pain and discomfort was noted in 8/14 animals. 2 dogs had evidence of dental abrasion indicative of excessive chewing on cage bars. 4/14 animals had matted fur indicative of poor general welfare. Both rabbits examined had evidence of pododermatitis and severely overgrown nails indicative of poor general welfare. One of the two rabbits was painful on palpation of the pododermatitis lesions and required medication to control the pain. 9/14 animals were not at an ideal body condition with 6/14 being underweight and malnourished and 3/14 of the animals being overweight. 1 dog had dermatologic lesions suspicious of dermatophytosis (ringworm). 1 dog had a urinary tract infection of unknown duration requiring prompt treatment with antibiotics. 1 dog had inflamed skin between digits of all paws, as well as concern regarding a deviated and possibly dislocated and painful digit. 1 dog had a heart murmur needing diagnostics to further assess the severity. 1 cat had concerning masses in both ear pinnas and canals that should be assessed further with appropriate diagnostics and treatment.

Based on the above findings, it is certain that many of these animals were not receiving regular veterinary attention that could have relieved unnecessary pain and discomfort. Based on physical exam findings I suspect that this population of animals as a whole had poor general welfare prior to seizure by the SPCA.

138. While the Appellant clearly cares for animals, the totality of the evidence indicates that she is either unable to identify the "signs of injury, pain, illness or suffering that require medical care" or unwilling to attend to them to prevent conditions from progressing to that stage.
139. In this case, the Panel finds that the Appellant has failed in her duty under s. 9.1(1) of the *PCAA* to responsibly care for her animals, including protecting the animals from

circumstances that are likely to cause distress. In light of the foregoing, I conclude that none of the dogs should be returned to the Appellant and the Society should be permitted to dispose of them as it sees fit.

### **Return of the Cats**

140. Having determined that the seizure of the cats was justified, I now consider whether it is in their best interest to be returned to the Appellant.
141. According to SPC Hommell, all three cats were seized because of concerns for their physical well-being and need for veterinary care.
142. According to the evidence of Dr. Peters, the Persian had multiple masses in both ears and suffered extensive matting with feces imbedded in the mats. It also suffered from severe tartar build-up and gingivitis. He wrote, “This degree of dental disease is painful to the cat,” and recommended “appropriate anti-inflammatories and antibiotics to address the dental pathology before surgery.”
143. In response, the Appellant dismissed the cat’s ear issues as typical of the breed and insisted that her grooming practices were adequate. In her words, “She’s a Persian cat, I brush her. She may have had some mats at the time she was seized, but they weren’t to the point of abuse.” She also failed to acknowledge the severity of the dental issues and Dr. Peters’ recommendations for medication and surgery.
144. It concerns me greatly that “the point of abuse” is the standard against which the Appellant evaluates the health and hygiene of the Persian cat. Her comments, though possibly careless, are also indicative of a greater disregard for her responsibility to ensure the appropriate care, including grooming and dental health, of her animals. I find it noteworthy that, while all three of the cats seized had dental issues, the issues were most severe for the cat that had been in the Appellant’s care the longest.
145. The Appellant told this Panel that the two domestic short-hair cats are not hers, and that she was taking care of them while the owners tried to find cat-friendly housing. She said that the owners were aware of the seizure, that the cats were micro-chipped, and that the owners had not been contacted by the Society. If this is the case, then it should be noted that the owners of the cats, having been made aware that their animals have been seized by the Appellant, have not come forward to the Society or this Panel to accept responsibility for them. As a result, I have treated the Appellant as the person responsible for the domestic short hair cats at the time of seizure and it is their return to her that I am addressing in this decision.

146. The Appellant gave evidence that she felt forced to take responsibility for the domestic short hair cats because their owners had effectively abandoned them. In her evidence, she stated that the owners had offered to move the cats to the BCSPCA, but “I didn’t think that was a such a good thing, so I said I would hang onto them until they move again.” This appears to be part of a pattern of “rescuing” animals that the Appellant admits to struggling with. It is obvious that she cares deeply for all animals, but her compulsion to take on more animals than she can reasonably provide adequate care for does not serve the best interests of her or the animals.
147. The Appellant addressed her past rescue behaviour at various points in the proceedings. Specifically regarding the domestic shorthair cats she said, “Moving forward, I have animals that I love and care for. I can’t cover for everybody else. Maybe I’ve done that before, but I can’t take anymore. I love the ones that I have and am completely committed to them, but there will be no more of this stuff.”
148. Given the Appellant’s acknowledgement of her past behaviour, and her stated lack of desire to continue, it surprises me that she pursued an appeal for the return of these two cats.
149. In all the circumstances, it is my decision that it is not in the best interest of the cats to be returned to the Appellant and the Society should be permitted to dispose of them as it sees fit.

### **Return of the Rabbits**

150. I now consider the matter of the rabbits and whether it is in their best interest to be returned to the Appellant.
151. According to SPC Hommel, the rabbits were seized because of distress caused by their living conditions and concerns with their physical condition, most notably overgrown nails.
152. The Appellant gave evidence that the rabbits had been around “for a long time,” and that they were purchased at the Fraser Valley Auction because they looked scared. She offered very little detail about their care other than the fact that they “get good food.” Of the two witnesses who spoke to the condition of the animals at the house, one could not remember seeing them, and the other noted only that she knew they were there. The Appellant gave no indication of what, if any, care or interaction the rabbits receive aside from being fed and watered. She stated in her evidence that she had never taken the rabbits to a veterinarian.

153. Based on the evidence of Dr. Peters, the poor housing and hygiene of the rabbits contributed to the presence of pododermatitis lesions on the hind legs of both animals. For one of the rabbits, the lesions were severe enough to cause obvious pain upon palpation. He also noted that the nails on all four paws of both rabbits were significantly overgrown which was confirmed in the Society's photographs.
154. In the face of these issues, the Appellant was dismissive of the veterinary evidence and need for nail care despite have received orders from the Society in the past to "provide necessary foot, nail, or hoof care." [ITO, Tab 3, p14-15]
155. Despite the Appellant's assertion that "if you would have come Monday the hutches would have been perfect," the presence of lesions and staining on the back legs of the rabbits leads me to believe that issues with housing and hygiene for the rabbits were longstanding despite the Appellant receiving orders from the Society in the past to "ensure the shelter is cleaned and sanitized regularly."
156. It is my decision that it is not in the best interest of the rabbits to be returned to the Appellant and the Society should be permitted to dispose of them as it sees fit.

### **Return of the Pig**

157. I now consider the matter of the pig and whether it is in its best interest to be returned to the Appellant.
158. SPC Hommel and Dr. Ledger provided evidence that the pig was seized because of distress caused by the living conditions in the garage. Evidence from the veterinarian, Dr. Gibbins, found that the pig was in good health with the exception of scaling on the legs and an easily treated mite condition. He also noted that the feces were dry, indicating that the pig was dehydrated at the time of exam.
159. At the time of the seizure, SPC Hommel, SPC Carey and Dr. Ledger all noted a strong smell of ammonia in the garage, and a build-up of feces and urine on the floor as well as soiled bedding. While water was available, it had been contaminated and was no longer considered suitable for drinking. The temperature inside the garage was cold, measured at 2°C and there was no source of heat or light.
160. The Appellant's evidence is that she was not aware that the pig had mites and did not notice any symptoms or itching. She had never taken the pig to the vet. There were rubber mats under the straw in the garage and the bedding was adequate for the pig to burrow and nest. The Appellant says the pig was only confined to the garage when she was away from

the property or at night, otherwise she usually had access to the outdoors. She ran loose in the garage, and sometimes urinated or defecated inside if she could not go out.

161. Having found that the seizure of the pig was justified based on distress caused by living conditions, it is difficult to justify the return of the pig without some evidence from the Appellant that she recognizes the unsatisfactory living conditions and has a plan to address the situation. She offered no such assurances.
162. It is my decision that it is not in the best interest of the pig to be returned to the Appellant and the Society should be permitted to dispose of the pig as it sees fit.

### **Return of the Birds**

163. I now consider whether it is in the best interest of the birds to be returned to the Appellant.
164. My concerns about the birds are best captured by the evidence of Dr. Burstyn. Regarding the lovebird (Bird #23) with the rough feathers and dandruff he said, “If I was to see this bird normally, I would do a review of husbandry to determine the cause. There is always a reason, you just have to find it. I could not find an injury or parasite [in the exam], so I would do a deep dive into husbandry and diet.”
165. Regarding the health of the five birds as a population, Dr. Burstyn told the panel, “Whenever you see a group of animals who suffer abnormalities, you definitely look at their environment – temperature, lighting, diet, disease control.”
166. Dr. Burstyn said that the general guideline for bird owners is that every animal be seen once a year for a health check. Feather loss and respiratory issues would be considered clear indicators that a bird needs veterinary care.
167. The Appellant’s evidence is that she bought the birds at auction several years ago, and that they have been to a veterinarian. She admitted “they have their flaws,” but she had no concerns about their overall health. Even with the cockatiel that Dr. Burstyn found in medical distress, the Appellant said, “at the time he was seized I had no concern that he seemed unwell.”
168. It appears that with the birds, as with the other animals, the Appellant is incapable of making an accurate assessment of their general health or identifying signs of concern that may warrant veterinary care. Faced with the evidence of Dr. Burstyn about the cockatiel’s feather loss, she minimized the health concerns and preferred to believe that it had a rare genetic mutation rather than acknowledging that it was a sick bird in need of additional care.

169. While the cockatiel had the most severe signs of ill health, all of the birds were in sub-optimal condition, indicating an issue with husbandry. Dr. Burstyn told the Panel that husbandry-based conditions like the ones seen in the Appellant's birds typically resolve themselves when the source of the issue is found and corrected. This would require the Appellant to first recognize that there are issues, and then be willing to investigate and address the cause. Nothing in the Appellant's evidence or submissions indicates that she is willing to pursue this course of action.
170. It is my finding that if the birds were returned to the Appellant that they would be returned to the same conditions that created their distress.
171. It is my decision that it is not in the best interest of the birds to be returned to the Appellant and the Society should be permitted to dispose of the birds as it sees fit.

## **X. Costs**

172. 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.

173. Section 20.6(c) of the *PCAA* provides that on hearing an appeal the board may "confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2)".

174. The Society has estimated its overhead costs as follows:

Costs for the Dogs = 66 days (Jan 19-Mar 24, 2020) x \$17.35/dog x 8 dogs = **\$9160.80**

Costs for the Cats = 66 days x \$13.35/cat x 3 cats = **\$2643.30**

Cost for the Rabbits = 66 days x \$10/rabbit x 2 rabbits = **\$1320.00**

Cost for the Pig = 66 days x \$14.00/pig x 1 pig = **\$924.00**

Cost for the Birds = 66 days x \$10/bird x 5 birds = **\$3300.00**

175. The costs associated with the seizure total **\$684.75**
176. The costs associated with veterinary care total **\$7,111,28**
177. The Appellant takes issue with the costs incurred by the Society and raised concerns about the Society's costs of care. Specifically, she objects to the Society including costs for treating the cockatiel when he injured himself under their care, and for treatments of dogs for diarrhea, stating that it was "going around" in the SPCA kennel.
178. In response, the Society submits that the Animals belong to the Appellant until such time as the Panel issues its order, and she is therefore responsible for these costs of care.
179. I accept the Society's rationale that the cost of care of the Animals is the responsibility of the Appellant until the Panel's decision and orders are issued.
180. I have reviewed the submissions of the parties and find that the Society's costs as presented are reasonable, and confirm, pursuant to s. 20.6(c) of the *PCAA*, that the Appellant is liable to the Society for costs of care in the amount of **\$25,144.13**.

#### **XI. Order**

181. I conclude that the Animals (eight dogs, three cats, two rabbits, one pig and five birds) 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 all of the Animals.

Dated at Victoria, British Columbia this 24<sup>th</sup> day of March 2020

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

**Per:**



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Tamara Leigh, Presiding Member



**Appendix A:**

Exhibit 01	Feb 6, 2020	BCSPCA	BCSPCA Decision
Exhibit 02	Feb 7, 2020	Appellant	Notice of Appeal (NOA)
Exhibit 03	Feb 10, 2020	CSNR	Filing fee Receipt
Exhibit 04	Feb 11, 2020	BCFIRB	NOA Process Letter
Exhibit 05	Feb 20, 2020	BCSPCA	SPCA Initial Document Disclosure (Tabs 1-33)
Exhibit 06	Feb 20, 2020	BCSPCA	TAB 27 (Video Footage)
Exhibit 07	Feb 26, 2020	Appellant	Witness Contact List
Exhibit 08	Feb 26, 2020	Appellant	Submissions Index
Exhibit 09	Feb 27, 2020	Appellant	Appellant Submissions (Tabs 1 – 18)
Exhibit 10	Feb 27, 2020	Appellant	Appellant Submissions (2 Videos)
Exhibit 11	Mar 2, 2020	BCSPCA	Affidavit #1 of Marcie Moriarty
Exhibit 12	Mar 2, 2020	BCSPCA	Written Submissions
Exhibit 13	Mar 2, 2020	BCSPCA	SPCA- Expert Witness Contact Form
Exhibit 14	Mar 2, 2020	BCSPCA	SPCA- Witness Contact Form
Exhibit 15	Mar 2, 2020	BCSPCA	Tabs 34-38
Exhibit 16	Mar 2, 2020	BCSPCA	Updated Document Disclosure Index
Exhibit 17	Mar 4, 2020	Appellant	Tabs 19-20
Exhibit 18	Mar 4, 2020	Appellant	Tabs 21-22