

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 6 DOGS

BETWEEN:

WILLIAM EBEN

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
David Zirnhelt, Member

For the Appellant:

Self-represented

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

April 22, 2020

Location of Hearing:

Teleconference

I. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372 (PCAA)* related to the seizure of six dogs (the Animals).
2. The Appellant, William Eben, is appealing the March 18, 2020 Review Decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society).
3. Section 20.6 of the *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society, in its discretion to destroy, sell or otherwise dispose of the animals. The Appellant in this case is seeking the return of all of the Animals.
4. On April 16, 2020, a BCFIRB hearing panel (the Panel) held a hearing via teleconference. The hearing was recorded.
5. The Appellant was self-represented and testified, calling one witness who had visited the property prior to the seizure.
6. The Society was represented by counsel and called two witnesses: the veterinarian who attended the seizure and examined the dogs, and the special provincial constable who had led the investigation and seizure.

II. Decision Summary

7. In brief, this appeal involves the seizure of six dogs from the Appellant's property. For reasons explained in detail later, the Panel has decided not to return the animals in dispute 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 cover costs in the amount of \$10,579.93 which included costs associated with puppies which were surrendered by the Appellant. The Panel has decided that the costs incurred by the Society for the six adult dogs are reasonable and finds the Appellant, pursuant to s. 20.6(c) of the *PCAA*, is liable to the Society for the amount of \$9222.83 for the Society's costs claimed with respect to care of the Animals while in custody.
9. The Panel is prepared to receive submissions on the issue of whether, in the circumstances of this appeal, it has jurisdiction to adjudicate on matters in relation

to the puppies when they did not form part of the Appellant's request for review or his Notice of Appeal.

III. Preliminary Matters

10. The Society's Review Decision (March 8, 2020) identified the seizure of five dogs. In an email from the Society's counsel Christopher Rhone (Exhibit 10), the Society confirmed that although the Review Decision references five dogs, the appeal related to the seizure of six dogs. The Appellant agrees with this position.
11. On April 14, 2020, the Society objected to the Appellant calling Art Baulne, a pig hauler. The Panel ruled that the expertise and evidence of Mr. Baulne, which related to a prior incident involving the Appellant's pigs, was not relevant to the substance of this appeal (Exhibit 29).
12. In an email dated April 17, 2020, the Appellant requested that the Panel reconsider this decision. The Panel received oral submissions from the parties at the outset of the hearing. The Appellant submitted that Mr. Baulne could give evidence relating Dr. Langelier's attendance at the 2011 seizure of pigs from his property, which in his view spoke to Dr. Langelier's credibility as an expert witness. The Appellant clarified that he wanted to challenge Dr. Langelier's expertise relating to transportation of pigs including boars from his property which advice, according to the Appellant, resulted in injury to his seized pigs.
13. The Panel upheld its original decision and Mr. Baulne was not permitted to testify as Dr. Langelier's expertise in relation to pigs was not at issue in this appeal.

IV. Material Admitted on this Appeal

14. The Presiding Member identified as exhibits all of the documents received by BCFIRB in advance of the hearing. The record comprises Exhibits 1-31 and is attached as Appendix A to this decision.

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

15. On January 24, 2020, the BC SPCA received a complaint from a Cowichan Valley Regional District Bylaw Officer stating that dogs were being kept in boxes and were having puppies. The officer had attended the property, but the gate was closed and locked. From outside the gate, he observed a truck full of rotting food, and a family of cats living in the bed of the truck. He stated the property was hoarded with objects and there was a small pathway just big enough for someone to walk through to access the gate.

16. On February 4, 2020, the BC SPCA received a call stating that the Appellant was hoarding pigs and Great Dane dogs. They reported ten puppies being kept in a shed with no windows or lighting. After contacting the CVRD Bylaw Officer, Animal Protection Officer (APO) Toni Morrison attended the Appellant's property to investigate. She left a BC SPCA door notice asking the Appellant to contact her to arrange inspection of his animals within 24 hours.
17. On February 5, 2020, as the Appellant did not contact the BC SPCA, APO Morrison applied for a Warrant to Search, which was granted and executed on February 6, 2020.
18. On February 6, 2020, the Warrant to Search was executed with RCMP Officers and four other BC SPCA Officers. During the search, APO Morrison found 30-50 pigs living in makeshift pens outside, 11 adult Great Dane dogs and six Great Dane puppies inside the dwelling, and a number of ducks, chickens and cats were observed loose on the property. APO Morrison seized seven animals: one cat and six piglets. APO Morrison issued four Distress Notices to the Appellant relating to multiple issues with the animals on his property, including Notice B23371 requiring the Appellant to clean all dogs' living areas and unsanitary living conditions in the house and provide adequate ventilation by February 10, 2020.
19. On February 10, 2020, APO Morrison returned to the Appellant's property with BC SPCA Regional Manager of Cruelty Investigations, Kaley Pugh, to follow up on the notices. The Appellant had moved the puppies to another location in the dwelling, and some of the cluttered items had been removed. There was no marked improvement in the ventilation or air quality. The Appellant surrendered one dog, Merlin, to the BC SPCA. SPC Morrison issued two more Distress Notices, one for the pigs and one for the dogs. The Appellant agreed to a voluntary recheck of the animals and living conditions on February 17, 2020.
20. On February 11, 2020, SPC Morrison attended the property to allow the Appellant to surrender two adult dogs. At that time, he decided to surrender the seven animals seized on February 6, 2020.
21. On February 13, 2020, a female puppy from the litter of six was surrendered to the BC SPCA through the Chase River Animal Hospital.
22. On February 19, 2020, APO Morrison attended the Appellant's property with APO Klokeid. She found that no improvements were made to the unsanitary living conditions and lack of ventilation for the dogs and puppies in the dwelling and found no improvement to the pens or shelters for the pigs. After discussion with

the Appellant, APO Morrison requested a Warrant to Search to be issued and exercised the following day.

23. On February 20, 2020, APO Morrison executed the warrant with APO Klokeid and Dr. Langelier. At that time, the decision was made to seize six adult Great Dane dogs, five Great Dane puppies (the seizure that is the subject of this appeal).
24. 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:
 - i) Between 2006 and 2019, 11 complaints have been filed against the Appellant regarding the living conditions of domestic and farm animals, and animals running at large. The BC SPCA has spoken with the Appellant about the care and housing of his animals on several occasions and referred matters to animal control on others.
 - ii) In October 2011, the BC SPCA completed an investigation of animal cruelty. At that time 90 pigs and 16 ducks were seized. No appeal was filed.
25. The Panel notes that the Society relied extensively on this history in seeking the February 19, 2020 Warrant to Search, and materials related to this history comprised much of the Society's disclosure in this appeal. Regardless of the history of the Appellant, each appeal must be heard and decided based on its own facts and merits. Past misconduct is not particularly helpful to the Panel in determining whether, at the time animals are taken into custody, they meet the definition of distress. However, if BCFIRB finds that the animals in question were in distress as defined under s.1(2) of the *PCAA*, and as such were legitimately removed, then history will play a factor in assessing whether it is in the best interests of the animals to be returned.

VI. Review Decision

26. On March 18, 2020, Ms. Moriarty issued her Review Decision in which she outlined her reasons for not returning the Appellant's dogs seized on February 20, 2020. She reviewed the Warrant and Information to Obtain (ITO) of APO Morrison, related veterinary records, photos, videos, veterinary charts, and submissions from the Appellant. Ms. Moriarty was satisfied, based on the evidence, that the SPC reasonably formed the opinion the Animals were in distress, as defined in section 1(2) of the *PCAA*, and her action to take custody of the Animals to relieve them of distress was appropriate.

27. 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 history of complaints and the large seizure of animals as a result of an investigation in 2011, and expressed concern that "over a period of 14 years you have had difficulties with either safely containing your animals within the property or providing appropriate living conditions for them."
28. Ms. Moriarty noted that there were serious concerns with the living conditions and health of all of the animals on the property during the investigation but focused her attention on the matter of the dogs. She noted that APO Morrison had provided detailed information and direction about the improvements required to address the ventilation and air quality and overall unsanitary living conditions.
29. She states:

You had agreed that you would take action and make the very basic and necessary improvements to the living conditions of the Dogs a number of times Mr. Eben, and your failure to make take responsibility and make improvements is one of the reasons why I do not feel that returning the Dogs to your care would be in their best interest. I do not believe you would make any fundamental improvements to their living conditions, as even in your submissions from March 13th you do not even acknowledge there being any concerns or problems with the Dogs' environment; in fact, you seem to firmly believe that they "had everything a dog really needs". Therefore, it is my belief that if returned to you, the Dogs would inevitably return to the same 'dwelling' and its dismal conditions. You do not seem to recognize the conditions your Dogs and yourself, are living in.
30. The Appellant filed his appeal with BCFIRB on March 20, 2020.

VII. Key Facts and Evidence

31. In an appeal under the *PCAA*, the 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 materials facts and evidence based on the parties' written submissions and evidence presented during the hearing. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

The Hearing of this Appeal

Appellant's Witness – Edwin Dittus

32. Mr. Dittus gave evidence that he has known the Appellant for about ten years. The two share pick-ups for pig food, so he would unload boxes of bread and vegetables at the Appellant's gate about three times a week.
33. He told the Panel that he always sees the Appellant with a few (3-5) dogs following him, and that the dogs do not live in the house full-time. He described the dogs as "always in good shape and always friendly." He said that he could touch and pet the dogs, and never saw any sign of intimidation or aggression. He said they always appeared well-fed, and that he had never seen any of the dogs tied up in the yard.
34. Mr. Dittus said that he had been in the Appellant's house twice and seen the dogs, noting that they had water and feed, and were in good condition. He addressed the condition of the house directly, saying: "I know the problem is now the conditions, especially the conditions in his house. The house is a mess, but it's not that the dogs are living constantly in this place. When I was there, they were outside with Mr. Eben." He described the dogs as pets, adding that they are "his company and his family." He said the dogs live in the house but can choose to go outside.
35. Mr. Dittus and his daughter have been helping the Appellant sell a significant number of his pigs. He said part of the problem is that the number of animals is not manageable for one person. Once the herd size is reduced, he expects the Appellant will have more time to "deal with his place."
36. Under cross-examination, Mr. Dittus said that he had never seen the puppies, only the adult dogs.

Appellant – William Eben

37. The Appellant is 71 years old and has lived at this property in Cowichan Bay since 1976. He has been a full-time farmer since 1984. He currently has about 30 free-range, rare breed pigs, eight ducks, three chickens and a rooster.
38. The Appellant is adamant that the dogs were not in a state of distress at the time of the seizure. He offered the following testimony about the care of the dogs:
 - a) The dogs were treated like family and lived in the house. He stated "I have no argument that the house is a mess, but the dogs were fine."
 - b) There are two to three acres fenced off around the house that the dogs can run in.

- c) They always had water available, and that the BC SPCA allegations that they did not have water are untrue.
 - d) The dogs always had bedding in the area where they slept every night. Bedding consisted of a rug, blanket or old pair of jeans on top of lettuce boxes for a soft underlay.
 - e) "They had lots of room, lots of love, good food, and they always had water."
39. The Appellant produced veterinary records and spoke of his long-term association with the Chase River Animal Hospital. He said that he took the dogs for regular visits and would take them to the vet anytime he had a concern. The Appellant estimated that he has spent \$15,000 on veterinary visits since 2016. He testified that there were no ongoing health concerns with the dogs under appeal except for an issue with Caesar's hind leg that had recently been seen by a vet.
40. He said that he put the dogs in the house when the BC SPCA came because the dogs are not accustomed to people coming on the property, and they can knock people down in their excitement. On another BC SPCA visit, he put one of the dogs on a chain outside.
41. In response to the allegation by the BC SPCA that there was not adequate ventilation in the home, the Appellant testified that there was an overhead ceiling fan in the area where the dogs lived, and a built-in blower system that was part of the woodstove's air circulation. He said that the windows could be opened, and the kitchen door was open in the summer. In his words, "There's no question that the air was circulating. I lived in the same house; I breathed the same air."
42. Under cross-examination, the Appellant said that he has recently engaged two people as part-time help to work on the property. His neighbour, Warren, has been doing work for him since January to help clean up the property and set up scaffolding in preparation to replace the roof this year. His friend, AH, started working on the property about a month before the hearing to start clearing out the inside of the house.
43. Describing the work they are doing to clean up the property, the Appellant said, "Each thing is a decision that really only I can make, but I tell them what I'm after and what not to throw out. I take some to the dump, but I don't bring garbage in." He said a lot of the clutter outside is building materials brought in for the pigs.
44. When asked what measure he took to address the concerns identified in the Notice issued by APO Morrison on February 6, 2020, the Appellant said that he cleaned out the floors inside and used pulverized limestone to neutralize the smell.

He made sure the inside quarters were clean and the dogs had bedding and water. The dogs had lots of light and ventilation and access to the outdoors so he didn't think that was an issue. The ceiling fan was going all the time and the windows could be opened if that was appropriate.

45. Walking through a series of photographs of the property in Dr. Langelier's report (Exhibit 5, Tab 26), the Appellant offered the following information:
- a) The chain link kennel in the photographs was never used for dogs because the dogs ran free. The kennel was open for any of the animals to go into if they wanted.
 - b) He was aware of the risks that chewing wood and splinters posed to the dogs and tried to stop them or provide rawhide chews as an alternate. He said the pigs were constantly chewing wood.
 - c) He does not feed corn cobs to the dogs – the cobs shown are chicken food.
 - d) The boar that was photographed hanging was due to be cut up for dog food before the BC SPCA served the Notice on February 6, 2020, and it got left because he had to deal with other things. He said there were no unsafe butchering practices – the animal was slaughtered “stress-free”, hung, gutted and ready to be cut up for dog food. Because of the delay the meat was wasted and not used for the dogs.
 - e) Photos of the kitchen area do not represent the state of the room since he started clean-up with his friend AH. He says the clutter and lack of cleanliness around the sink did not mean he could not use it. He said he washed his dishes and the dog dishes in the sink and takes water from the tap to fill their water buckets. He accused Dr. Langelier of “finding things wrong.”
 - f) The door frame and chewed drywall has been like that for many years. The house was never fully finished, and the drywall went up in 1989.
 - g) The puppies were very active and pooped a lot. He put newspaper and big sheets of cardboard down so it could just be rolled up and discarded for cleaning. He said that the puppies had the full run of the house to exercise and play when the other dogs were outside.
 - h) He dismissed the idea that chewed drywall or exposed electrical outlets could be dangers to the puppies. He said the puppies don't bother with the drywall or pay attention to the outlets, and that it has never been an issue.

- i) Banana boxes shown in the photos of the hallway where Coco and Caesar were kept were “on their way out.”
 - j) Two of the dogs used the area around the wood stove as a bedding area.
 - k) The dog crate found and photographed in the house “hadn’t been used in years.” It used to be for Merlin before he started sleeping with the Appellant.
 - l) He was unable to identify the contents of a food box that was photographed outside. He said, “Somewhere in this whole thing it says that I bring back rotten food on my truck – I don’t pick up anything rotten.”
46. As for the circumstances of the seizure, the Appellant said that he received a phone call from a neighbour who he did not identify on January 24, 2020 who said, “I’m going to get you and I don’t care how much it costs me.” The neighbour has made many complaints about the Appellant over the 30 years he has been there.
47. The Appellant does not breed dogs every year and stated it has been two or three years since his last breeding. He said that raising puppies takes a lot of energy. Puppies sold for \$600-1200. When asked if he planned to continue breeding, he said “I’m way too busy. I’m cutting down on the pigs and focusing on other things that need doing like the house.”
48. He described Great Danes as a breed that is slow to mature. He said they are quite a handful in their extended puppyhood with non-stop activity and play, and that they will chew anything.
49. The Appellant described feeding different rations according to the age and the needs of the dogs. Puppies would get large breed puppy food. Once the dogs are fully developed, they get large breed adult dog food and cooked meat and vegetables that the Appellant prepares. Adults are fed individually out of clean dishes. They always have water available.
50. The Appellant differentiated between where the dogs were kept and where they slept. He said they bedded down in the house, but that most of the time they were outside with him.
51. He said that he tried to explain that there was light and ventilation to APO Morrison, but “he didn’t get very far with her.”
52. When asked why he chose to surrender some dogs but not others, the Appellant explained that Merlin was old and his hind quarters were weak, and he thought it was a good idea to send him to a home for a retired dog. Dana was still young and

was still going to be a puppy for another two or three years. Fortine was prone to fighting with another female, Nana, and he wanted to keep Nana.

53. If the animals are returned to the Appellant, he says that he is willing to keep them in an outside run if required but he would prefer to have them in the house with him.

VIII. Respondent's Evidence

Respondent's Veterinarian – Dr. Ken Langelier

54. Dr. Langelier is a graduate of Western College of Veterinary Medicine in Saskatoon and is licensed to practice veterinary medicine in the province of British Columbia. He has been practicing since 1982 and works at Island Animal Hospital in Nanaimo. He was qualified by the panel as an expert in veterinary medicine.
55. Dr. Langelier attended the Appellant's property on the day of the seizure. He examined the dogs that day and authored a Veterinary Health Inspection Report (Exhibit 5, Tab 26) providing a professional assessment of the living conditions of the dogs. Dr. Langelier previously attended the Appellant's property in 2011 for another investigation by the BC SPCA.
56. Dr. Langelier described the property as a hoarding situation. Outside the house, he expressed the following concerns related to the dogs:
- a) The area around the house was overgrown with brush, vines and moss.
 - b) He was concerned that a large portion of the roof was covered with plastic, indicating that it was leaking. Inside the house, it appeared that the roof leak had caused the ceiling to collapse in some areas.
 - c) He was very concerned about the amount of accumulated material in the yard, including pallets, boxes and buckets, that was piled with a pathway only wide enough for a person to walk through. There was an outside dog run that he hoped was not being used because it was unsanitary and had splintered wood that he considered a hazard.
 - d) There were no safe toys for the dogs to play with, just the dangers from wood splinters, rotting cardboard and debris. He could not identify any large outdoor area where the dogs could safely run and play.
 - e) The only source of water that he could see was a wheelbarrow with accumulated water.

- f) He expressed concern that the boar carcass that was observed hanging on the property was unsuitable for dog food.
57. When asked about typical chewing behaviour, Dr. Langelier said that all dogs chew to some extent and that they need to be provided with alternatives. “I see a lot of dogs that are brought in for behavioural issues like chewing, and it’s because a dog has energy but no outlet for it. Once they get started, they can keep going and going especially if there’s no enrichment or toys.” He characterized chewing up to six feet high, as was observed by the damage in the house, is almost an act of desperation. He said the amount of destruction that he witnessed was consistent with displaced behaviour of dogs that are not getting enough socialization.
58. Inside the house, Dr. Langelier described the following concerns with regards to the dogs:
- a) Inside the kitchen, Dr. Langelier identified the location and condition of the stove as a fire and electrical hazard. There was not counter space for cleaning or preparing food, therefore no possibility of proper hygiene. He did not see any freezers for keeping food harvested for the dogs and did not see any sign of commercial dog food.
 - b) The woodstove posed a burning risk to the dogs, and a fire risk with cardboard stacked nearby. There were too many large dogs, too close to the stove to be safe.
 - c) He was concerned that the exposed electrical wires and outlets with the drywall chewed away posed a risk of electrocution to the puppies or dogs if they peed on them.
 - d) There were a number of places where the ceiling was almost collapsing. In addition to the structural risk of collapse, he indicated concern with wood rot, mold and other related dangers.
 - e) He expressed concern that the boxes and debris stacked in the house could fall on the dogs, and stated it is a “tight and dangerous space.” He noted that many of the banana boxes were wet and moldy, and looked to have been there for some time.
59. Dr. Langelier specifically addressed the matter of air quality inside the house. He pointed to photographic evidence of an ammonia test strip that registered 20ppm in the puppy area, which would be enough to irritate the throat and eyes of dogs or humans. Addressing the Appellant’s submission that he lived in the same area as the dogs and did not think there was an issue, he said, “If you’re in it all the time

you can get used to it, but it's not healthy for your body and not healthy for dogs or puppies." The particle board flooring would have contributed to the odour as it absorbs feces, urine and ammonia.

60. Dr. Langelier deemed both the interior and exterior of the house as "entirely unacceptable." At times in his testimony, Dr. Langelier stated he would be concerned about a human living in the house, not just the dogs.
61. On cross-examination, Dr. Langelier addressed the fact that there were no injuries or significant signs of physical distress noted in the intake exams of the dogs. He responded that he sees injuries from situations like this all the time, and that it's a dangerous situation.
62. When asked to summarize what he felt constituted the distress for these dogs, Dr. Langelier responded that the primary thing was the unsanitary and dangerous living conditions. They were living in a dangerous place with mold, feces and ammonia. He also had concerns about nutrition because the puppy surrendered prior to this seizure was malnourished, had inadequate exercise and was poorly socialized.
63. Describing the physical consequences of living in these conditions, Dr. Langelier reported that a lot of the older dogs had cysts on their elbows from lack of proper bedding and some had ear infections. In his oral evidence, Dr. Langelier identified a number of issues requiring medical attention.
64. From the intake exams of the dogs following the seizure, he noted:
 - a) All of the dogs had a strong odour from the environment they lived in.
 - b) Several of the dogs had conjunctivitis and eye irritation.
 - c) One dog (Caesar) had a badly turned out foot.
 - d) A lot of the dogs were very lean (Body Condition Score 4 out of 9), though one dog was slightly overweight.
65. When asked what concerns he would have returning the dogs to the Appellant, Dr. Langelier replied, "My concern is that he kept saying there's nothing wrong with this. If you don't recognize the problem, how do you correct it?"

Respondent's Witness - APO Toni Morrison

66. APO Morrison is an employee of the Society having been appointed as a special constable under the *Police Act*.
67. APO Morrison first attended the Appellant's property for this specific file on February 4, 2020 to investigate a complaint. She left a notice for him to call back within 24 hours. When he did not, she applied for a Warrant to Search.
68. She arrived on February 6, 2020 in the late morning with an RCMP Officer and four other APOs. She testified that all of the dogs were in the house with the Appellant when she arrived and the pigs were roaming around outside, some loose and some in makeshift pens.
69. APO Morrison took a number of photos of the property on February 6, 2020 but did not take any photos of the dogs. She referred to some of the photographs to show an area close to the barn where the pigs were loose that was referred to as "the field," and to others to establish the conditions outside the house.
70. In response to a question about whether the dogs had access to "the field" or the area where the pigs were kept, she said there was a palletted area blocking access. She added that the alleyways among the debris near the house were quite narrow.
71. When she was there the Appellant had a few of the older, well-behaved dogs out with him. There were also dogs on a cemented courtyard by the house, as well as dogs in two separate parts of the house. She referred to photos in the Society's submissions.
72. The Appellant initially allowed each dog out one or two at a time for her to assess.
73. The Appellant only allowed APO Morrison into the home. She said that inside the dwelling was so dark in some places that she had to use a flashlight, which is why she addressed the issue of lighting in Notice B23371. She said the windows were partially blocked by debris. There was no light in the hallway where they saw the dogs, Coco and Caesar.
74. APO Morrison testified that there was no adequate ventilation and characterized the smell in the house as a combination of mold and ammonia. When asked if she was aware of the ceiling fan, she said she was not, but that fans could not manage the needs of the space. She testified that she explained her concern for both the wellbeing of the Appellant and the animals. After leaving the home, she had an irritated throat that persisted for over a day.

75. APO Morrison discussed matters with the Appellant and said that his concern was that what was required to relieve the distress wasn't doable. He was concerned about the timeframe. Her expectation was that he understood that there were significant concerns and that she wanted him to make a good effort to relieve the distress. "It would depend on what I observed, but I was hoping he would get a good start at it and we would chip away at it from there."
76. She reiterated that her chief concern with regards to the dogs was the lack of adequate ventilation, unsanitary living conditions and lack of general care. She felt the dogs were neglected. She said that she talked to the Appellant about her concerns and what needed to be done, but that he doesn't see it. "He thinks everything is okay and meets the requirements for the dogs in the home."
77. APO Morrison returned to the property to check on progress multiple times between February 10 and 20 and issued more Notices. She said the improvements to the home were minimal, and the Appellant told her on several occasions that what they were asking of him was something he wouldn't be able to do.
78. When APO Morrison attended the property on February 20, she brought Dr. Langelier with her and discussed the situation with him before making the decision to seize the dogs.
79. When asked to specify what she considered dangerous or unhealthy to the dogs, as opposed to unsightly, APO Morrison stated that:
 - a) There was no area in the house that the dogs had access to that was sanitary.
 - b) Ventilation was an issue in all areas of the dwelling.
 - c) There was no area for the dogs to exercise inside the house.
 - d) Outside the house was also unsanitary and there were a lot of hazards the dogs could get into.

IX. Analysis and Decision

80. 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.

81. 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.

82. The Panel has 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 he seeks (return of the animals) is justified. The first issue to consider is whether the Animals were in distress at the time of seizure. Depending on the answer to that question, the next issue is to decide whether to return the Animals or whether to do so would return them to a situation of distress.

83. In considering the first issue, we have considered the individual circumstances of the Animals seized.

Seizure of the Dogs

84. At the time of seizure, APO Morrison concluded that the dogs were in distress due to lack of adequate ventilation, water, space, and exercise based on the definition of distress set out above in s. 1(2)(a) of the *PCAA*. She also concluded that their living conditions were unsanitary due to the condition of the house and the property surrounding the house, s. 1(2)(a.1).

85. APO Morrison sought the Warrant because she saw no meaningful effort by the Appellant to address the concerns specified in the Notices that she issued over a period of two weeks. Based on the conditions observed on the property at the time the Warrant was executed, she exercised the Society's authority under section 11 of the *PCAA* to take the animals into custody to relieve their distress.

86. The Appellant argues that the dogs were not in distress and the seizure of the Animals is unjustified. He admits that his property is cluttered and that his home is a mess, but he maintains that the dogs had ample space, food, water and care. In his closing statement he said, "Morrison couldn't see any signs of distress, she only talked about the conditions."
87. The Appellant challenges the testimony of Dr. Langelier and suggests that he is not an independent expert witness as he regularly appears on behalf of the Society and as such, is biased in favour of the Society. The Panel acknowledges that Dr. Langelier frequently testifies on behalf of the Society before BCFIRB. However, the frequency of his appearance does not elevate his evidence or his expertise. As always, the Panel considers the expert evidence and evaluates it along with the totality of the evidence before determining what weight to give that evidence.
88. While the veterinary exams by Dr. Langelier show no injuries or significant signs of physical distress, he testified that a collection of minor issues including irritated eyes, minor ear infections and cysts on the elbows from a lack of adequate bedding may be an indicator that the dogs were adversely affected by their living environment.
89. The Veterinary Health Inspection report prepared by Dr. Langelier is unequivocal in its condemnation of the living conditions of the dogs. In his introductory letter, he states: "This property represents the worst hoarding and puppy mill situation that I have ever dealt with." He continues to say that: "The exposed electrical wires, chewed walls, unclean environment and poor air quality as well as the lack of proper nutrition, adequate exercise and enrichment is not only of serious concern but also completely unacceptable for any animal, including humans."
90. It is important to note in these considerations 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."
91. 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.

92. In many ways, the facts of this case hang on the prevention of distress. The Panel must weigh whether the circumstances that the dogs were in created a significant risk of harm, and if it was possible for these risks to be avoided.
93. The Panel has reviewed the photo and video submissions in detail, and this evidence corroborates the expert evidence of Dr. Langelier that the conditions in and around the home are not merely dirty or unsightly; they are unsafe. The outdoor images show a yard stacked with recycled building supplies and debris, and a maze of improvised pens and alleyways.
94. Despite the Appellant's testimony that the dogs have two to three acres to run around on, the photos do not support this, and the Appellant failed to offer any objective evidence to support or corroborate his testimony.
95. Images and video of the interior of the house show an extreme state of clutter and a house that has been neglected to the point of decay, including bare strand board floors, chewed walls, bare electrical wires and exposed outlets, and a ceiling that is collapsing in areas.
96. The Appellant says that Great Danes are an energetic breed that retains puppy-like energy and behaviour. For those reasons, an unfinished house is the perfect place to raise them.
97. Dr. Langelier offers another explanation for the destruction, one that makes more sense to the Panel, when he says that dogs exhibit behavioural issues like chewing because they have no outlet for their energy. He said dogs need to have enrichment or toys, adequate exercise and proper socialization to stop this kind of behaviour. Based on the destruction Dr. Langelier observed in the home, chewed drywall up to six feet, he said it was evident that the dogs were not getting their needs met. "It was almost an act of desperation."
98. The Panel finds that while Great Danes may be a high-energy breed when they are young, the Appellant still has an obligation to attend to his dogs needs for enrichment, exercise and training as part of their overall care and welfare. Regardless of how much the Appellant loves and cares about his dogs, the Panel finds that he was neglecting their basic needs and the consequences were evident in their destruction of his house.
99. The Appellant maintains that these issues do not pose a risk to the dogs because none of his dogs have ever had a serious injury.

100. The Panel finds that the ongoing deterioration of the house and property, and the Appellant's reluctance to make repairs or maintain it, increased the risk of accident or injury to the dogs over time. The *PCAA* is clear that just because an accident has not happened yet does not relieve the Panel of its responsibility to limit the foreseeable risk of one happening in the future.
101. With regards to light and ventilation, the Panel has seen pictures and videos of banana boxes and clutter stacked to the ceiling in some places, and over the windowsills in the living room. The stacks are tall enough that they would definitely affect air movement and, depending on the contents of the boxes, air quality as well. Flooring is covered in mud and dirt in many of the photos, and in others, wet newspaper lays on the floor of one of the dog areas.
102. The Appellant insists that the windows can be opened to help with air circulation but given his ongoing denial that there is an issue with the air quality or ventilation, the Panel questions whether it is adequate to have windows that open if there is no one there willing to open them – the dogs cannot do it for themselves.
103. Most importantly, APO Morrison testified that she did not expect the immediate completion of the work identified in the Notices, but that she was looking for an honest start on the work and some recognition of the concerns they discussed about the living conditions. Over two weeks, the Appellant was either unwilling or unable to make meaningful changes to the dogs' living environment and he was unable to acknowledge the severity of the situation as it might impact his dogs.
104. Based on the totality of evidence, we find the dogs were in distress under s. 1(2) of the *PCAA* and were appropriately and reasonably seized by the Society.

Return of the Animals

105. Having determined the seizure of the Animals was justified, the Panel now considers whether it is in the best interest of the Animals to be returned. The courts have considered the legislative framework in the *PCAA*. In *Eliason v SPCA*, 2004 BCSC 1773 Mr. Justice Groberman (as he then was) stated:
- The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of.
106. 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.

107. The question for this Panel 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 Animals from returning to a state of distress. The Panel has applied this analysis to the facts of this case.

Return of the Dogs

108. The Appellant clearly cares about his animals and has advocated strongly to have them returned. He gave evidence that they received veterinary care and has explained in detail how he attends to their needs.
109. In support of his case, the Appellant called one witness who has seen him with his dogs for nearly ten years and who spoke to the Appellant's deep attachment to the dogs. The witness gave evidence that the dogs looked well, seemed happy, and had access to the outdoors when they were with the Appellant, but he was not familiar with how the dogs were cared for, housed or trained. In fact, the witness was not aware of the number of adult dogs on the property or that there was a litter of puppies present.
110. The witness raised an important point, however, in acknowledging that the Appellant was overwhelmed by the number of animals in his care, and that he could not maintain the upkeep of the property. This is a critical point in our consideration for returning the dogs.
111. While this appeal focuses on six adult dogs, it is important to remember that there were nine adult dogs, six puppies and roughly 75 pigs in the Appellant's care when the investigation began on February 6, 2020. Over the course of the investigation, he surrendered three adult dogs and one puppy before the seizure took place. Following the seizure, the Appellant surrendered the remaining puppies. He is, in this way, and in reducing his pig herd to 35, taking steps to reduce the number of animals and the associated burden of caring for them.
112. The Appellant gave evidence that he has recently hired help to assist with clearing the clutter from the yard and addressing some of the issues in the house, but he did not put forward a plan or list of priorities. He did not provide pictures of the progress made to date. He did not call these helpers as witnesses. The Panel was concerned by the Appellant's evidence that, "Each thing is a decision that really only I can make, but I tell them what I'm after and what not to throw out. I take

some to the dump, but I don't bring garbage in." In a situation where the Appellant appears to have a compulsion to collect things, which compulsion has created many of the problems observed, his insistence on holding on to every decision to release his accumulation of things does not inspire confidence that the accumulation will be addressed in any kind of timely manner.

113. Furthermore, the Appellant was unable or unwilling to admit that there was any issue relating to adequate ventilation, light, space, exercise or care of the animals, or that the unsanitary environment may put the dogs at risk. It is consistent with the experience reported by both APO Morrison and Dr. Langelier who have spoken with the Appellant only to be told that everything is fine and there is nothing wrong. That same message is repeated in the Appellant's correspondence with the Society and in his submissions to the Panel.
114. The essence of the matter is that there is something very wrong. The Appellant is clearly overwhelmed by what is required to deal with the state of his home and his property, stating several times that the Society was asking for too much considering the time they gave. In his view, what they were asking for was impossible.
115. The situation is made worse with the dogs because the Appellant chooses to attribute their destruction and behaviour to breed traits rather than reflecting on whether or not he is meeting their needs for exercise, enrichment or socialization. The Society makes the case that, regardless of how much he cares about the dogs, this is still essentially a situation of neglect.
116. In his submissions and correspondence, the Appellant focused mainly on the matter of the 2001 seizure involving pigs and his prior history with the Society, when those issues were of limited relevance to the issues before the Panel on this appeal. Where issues mattered – calling the witnesses to support his claim to the dogs, documenting improvements to the house and yard, providing photos of areas that the dogs had access to exercise or enrichment – the Appellant countered the Society's documented experience with his oral testimony which the Panel found difficult to verify or give weight to.
117. While the Appellant clearly cares for animals, the full body of evidence indicates that he is unable or unwilling to recognize the unsanitary and hazardous conditions he lives in with his animals and the risks that these conditions pose. As long as the Appellant cannot acknowledge or understand that problems exist, he will be unable to address them properly. As a result, any decision to return these dogs to the Appellant would most likely result in them returning to the same conditions and risk of distress.

118. In this case, the Panel finds that the Appellant has failed in his duty under s. 9.1(1) of the *PCAA* to responsibly care for his animals, including protecting the animals from circumstances that are likely to cause distress.
119. It is the decision of this Panel 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.

X. Costs

120. 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.

121. 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)”.

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

Costs for Dogs = 77 days (Feb 20 - May 6) x \$17.35/dog x 6 dogs = **\$8,015.70**

Costs for Puppies = 23 days (Feb 20 - Mar 13) x \$9.78/dog x 5 dogs = **\$1,124.70**

123. The Society has submitted costs associated with the seizure: **\$821.70**. There is no portion of this cost associated with the puppies.

124. The Society has provided submissions on veterinary costs totaling: **\$617.83**. This amount includes \$232.40 of veterinary costs associated with the puppies.

125. In Ms. Moriarty’s Affidavit, she submits costs for both the adult dogs and puppies that were seized on February 20, 2020. The costs for the puppies are only included until the date they were surrendered.

126. The Appellant did not challenge the reasonableness of the Society's claim for costs.
127. The Panel observes that the Society has claimed costs for the six dogs that were the subject of the seizure and its Review Decision. In the absence of any meaningful challenge by the Appellant, the Panel finds these costs to be reasonable. However, we observe that the Society has also claimed costs for the puppies which were seized and ultimately surrendered by the Appellant. These puppies did not form part of the Society's Review Decision which is the subject of this appeal.
128. Section 20(1) of the PCAA provides that an owner of an animal taken into custody is liable to the Society for the reasonable costs incurred by the Society with respect to the animal. While the Panel accepts that the Appellant may be liable to the Society for costs incurred in relation to the puppies prior to their surrender, it is less clear that this is an issue that this Panel can adjudicate on when it did not form part of the Appellant's request for review or his Notice of Appeal. The Panel is prepared to receive written submissions on this jurisdictional issue should the Society wish to pursue a claim for costs associated with the puppies. If the Society chooses to make submissions on this issue they are to advise BCFIRB's case manager and a submission schedule will be set to hear from the parties.
129. However, as the Panel finds that the Society's costs associated with the six dogs are reasonable, we confirm, pursuant to s. 20.6(c) of the PCAA, that the Appellant is liable to the Society for \$8,015.70 for the care of the six dogs while in custody. In addition, we find the costs associated with the seizure of \$821.70 reasonable and we do not feel it is necessary to adjust this cost on account of the puppies as these costs relate to entire investigation, seizure and transportation and it is unlikely that the puppies contributed appreciably to this overall cost. Finally, as the Society's claim for veterinary costs includes \$232.40 of veterinary costs associated with the puppies, the Panel reduces this aspect of the claim to \$385.43.
130. The Panel finds that the Society's costs related to the six dogs seized are reasonable, and confirm, pursuant to s. 20.6(c) of the PCAA, that the Appellant is liable to the Society for the amount of **\$9,222.83**.

XI. Order

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

Dated at Victoria, British Columbia this 6th day of May, 2020

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Tamara Leigh, Presiding Member



David Zirnhelt, Member

Exhibit "A"

Exhibit #	Date (Received)	Received from	Document
Exhibit 01	Mar 18, 2020	BCSPCA	BCSPCA Decision
Exhibit 02	Mar 23, 2020	Appellant	Notice of Appeal (NOA)
Exhibit 03	Mar 24, 2020	CSNR	Filing fee Receipt
Exhibit 04	Mar 25, 2020	BCFIRB	NOA Process Letter
Exhibit 05	Apr 1, 2020	BCSPCA	BCSPCA Initial Document Disclosure (Tabs 1-27)
Exhibit 06	Apr 1, 2020	BCSPCA	BCSPCA Tab 14 (Video Footage)
Exhibit 07	Apr 1, 2020	BCSPCA	BCSPCA Tab 16 (Video Footage)
Exhibit 08	Apr 1, 2020	BCSPCA	BCSPCA Tab 17 (Video Footage)
Exhibit 09	Apr 1, 2020	BCSPCA	BCSPCA Tab 19 (Audio Recording)
Exhibit 10	Apr 2, 2020	BCSPCA	Preliminary Issue - BCSPCA Email Confirms 6 Dogs
Exhibit 11	Apr 9, 2020	Appellant	Appellant - Letter from Mr. Eben (Apr 8, 2020)
Exhibit 12	Apr 9, 2020	Appellant	Appellant – Expert Witness Contact Form
Exhibit 13	April 9, 2020	Appellant	Appellant – Letter - Expert Witness (Art Baulne – Apr 3, 2020)
Exhibit 14	April 9, 2020	Appellant	Appellant – Witness Contact Form
Exhibit 15	April 9, 2020	Appellant	Appellant – Veterinary Clinic Receipts
Exhibit 16	April 9, 2020	Appellant	Appellant – Letter – Mill Bay Veterinary Hospital (Apr 6, 2020)
Exhibit 17	April 9, 2020	Appellant	Appellant - Letter from Jim Hunter
Exhibit 18	April 9, 2020	Appellant	Appellant - Letter from Margaret Thomson (Oct 17, 2011)
Exhibit 19	April 9, 2020	Appellant	Appellant - Letter from Snapdragon Dairy (Oct 21, 2011)
Exhibit 20	April 9, 2020	Appellant	Appellant – Farmers Stand Article (Oct 2011)
Exhibit 21	April 9, 2020	Appellant	Appellant – Newspaper Articles (Oct 2011)
Exhibit 22	April 9, 2020	Appellant	Appellant - Photo
Exhibit 23	April 14, 2020	BCSPCA	BCSPCA – Affidavit No. 1 of Marcie Moriarty
Exhibit 24	April 14, 2020	BCSPCA	BCSPCA – Expert Witness Contact Form
Exhibit 25	April 14, 2020	BCSPCA	BCSPCA –Witness Contact Form
Exhibit 26	April 14, 2020	BCSPCA	BCSPCA – Written Submissions
Exhibit 27	April 15	Appellant	Appellant – Veterinary Invoices
Exhibit 28	April 15	Appellant	Appellant – News Articles
Exhibit 29	April 17	BCFIRB	Preliminary Issue – Objection to Witness
Exhibit 30	April 17	Appellant	Appellant- Letter from William Eben
Exhibit 31	April 17	Appellant	Appellant – Mill Bay Veterinary Hospital Letter- Leo Hylkema