

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 TWO DOGS

BETWEEN:

LOUISE MCANERIN

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Dennis Lapierre, Presiding Member
David Zirnhelt, Member

For the Appellant:

Louise McAnerin

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

April 13, 2021

Location of Hearing:

Teleconference

I. Introduction

1. Louise McAnerin (the Appellant), is a 67 year old pensioner who currently resides in Baker Creek, British Columbia (the Property) where she rents a small cabin.
2. On February 4, 2021, officers for the Society for the Prevention of Cruelty to Animals (the “Society”) executed a warrant to remove certain animals from the Appellant’s property which had been determined to be in distress. With the assistance of an RCMP officer, the Society seized three dogs, six cats and one rabbit.
3. The Appellant disputed the seizure and requested the return of two dogs, Woofy and Sassy (the “Dogs”). Under the terms of an updated probation order (#90966-1, dated Jan. 12, 2021) which allowed the Appellant to own two companion dogs and no other animals, all of the other seized animals were surrendered to the Society. On March, 5, 2021 Ms. Marcie Moriarty, Chief Prevention and Enforcement officer of the Society, issued her review decision in which she determined that the Dogs would not be returned to the Appellant (the “Review Decision”).
4. The Appellant submitted a Notice of Appeal to the British Columbia Farm Industry Review Board (BCFIRB) by email on March 12, 2021 requesting the return of the Dogs.
5. The appeal to BCFIRB was heard on April 13th, 2021, by teleconference, and was recorded.
6. Section 20.6 of the *Prevention of Cruelty to Animals Act*, (the Act) permits BCFIRB, on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner, with or without conditions, or permit the Society, in its discretion, to destroy, sell or otherwise dispose of the animals. Appeals to BCFIRB under the Act are broad in nature as set out in detail in *BC Society for the Prevention of Cruelty to Animals v. British Columbia Farm Industry Review Board*, 2013 BCSC 2331.
7. The Appellant represented herself at the hearing and called Kristine Eyer, Ede McCalister, and Alex Schare as witnesses. The Society was represented by counsel and called Special Provincial Constable (SPC) Isabel Menzel, Animal Welfare Officer (AWO) Sarah Steeves and Alex Schare as witnesses. The Society also called Dr. Marina Mann to testify and Dr. Mann was qualified by the Panel as an expert witness.
8. This Panel has decided, for the reasons set out below not to return the Dogs to the Appellant, and to permit the Society in its discretion to destroy, sell, or otherwise dispose of the Dogs, pursuant to s. 20.6 (b) of the Act.

II. Prehearing and Posthearing matters

9. The Appellant was unable to call two witnesses, her probation officer (Rebecca LaBlanc) and Dr. Bianca Scheidt (a veterinarian), to give testimony at the hearing as she had intended. The Society agreed, however, to allow into evidence as an exhibit a letter dated April 12, 2021 from Dr. Scheidt addressed To Whom it May Concern.
10. Mr. Schare was included on the witness lists of both the Appellant and the Society, and the Panel decided that to simplify the proceedings Mr. Schare would be cross-examined by both parties.
11. After the hearing completed, on April 15, 2021 and April 16, 2021 the Appellant sent a series of e-mails to BCFIRB outlining her procedural concerns about the hearing process and offering further comments about the evidence that she and others had provided at the hearing.
12. After providing the Society the opportunity to respond to the Appellant's further submissions, the Panel determined that the Appellant had not provided any new evidence which could not have been submitted during the course of the hearing, nor were the allegations and unsubstantiated claims in fact evidence which could have been properly considered by the Panel or included in the record of the proceeding. The hearing was conducted pursuant to the Act and was procedurally fair to all of the parties. While the Panel recognizes that lay persons bringing appeals under the Act can struggle with the process, BCFIRB staff, as acknowledged by the Appellant, make every effort to guide appellants through the procedural steps to ensure that they have the opportunity to have their appeal fairly and properly heard. Such was the case in this instance and as such the Appellant's post hearing email submissions were not considered by the Panel as part of this appeal.

III. Materials submitted on this appeal

13. All affidavits and witness statements, emails, photographs, records, and materials submitted up to the start of the hearing were entered into evidence. The record comprises Exhibits 1-21.

IV. Events leading to the seizures

14. The Appeal Record includes the Information to Obtain a Search Warrant (ITO) dated February 3, 2021 created by AWO Steeves which contains a lengthy background history of the Appellant's involvement with the Society.
15. The ITO states that on February 2, 2021, AWO Steeves received a call from the Quesnel SPCA branch manager, Colby O'Flynn. Mr. Flynn informed AWO Steeves that RCMP Constable Hundial had called to report an animal cruelty complaint

against the Appellant. As part of her investigation AWO Steeves searched the Society's files with respect to the Appellant and determined as follows:

- between 2005 and 2018, the Society had received 31 animal cruelty complains against the Appellant;
 - over 150 animals had been previously removed from the Appellant's custody because they were in distress;
 - in 2009, the Appellant was convicted of animal cruelty contrary to section 24(1) of the Act and was sentenced to 18 months probation;
 - in 2017, the Appellant was again convicted of animal cruelty under section 24(1) of the Act and received a five year probation order, including a prohibition on owning or having custody or control of any animals except two companion dogs;
 - in 2018, the Appellant was again convicted of animal cruelty and received 2 year probation order, including a prohibition on owning or having custody or control of any animals other than 2 companion dogs;
 - on January 12, 2021, the Appellant was convicted of an offense of failing to comply with an order restricting animal control, contrary to section 24(5) of the Act and was given a 2 year probation order, including a condition prohibiting her from owning animals other than 2 companion dogs, and that she must surrender any additional animals to the Society within 30 days of the order (on or about February 12, 2021). Animals removed from the Appellant's care at that time were found to be living in unsanitary conditions, with lack of adequate space, light, ventilation, food and water. Furthermore many animals were confined to crates in large numbers and living in their own feces and urine.
 - the Appellant has been known to hide animals from the Society's investigators and to otherwise interfere when the Society's officers attended at her property to investigate.
16. AWO Steeves drove to the property on February 2, 2021 to investigate after receiving and filing the above noted complaint from Constable Hundial.
17. Upon attending at the property, AWO Steeves was approached by two further complainants, Eliza Schule and Jesse Gardner. AWO Steeves documented these further complaints and subsequent interactions as follows:
- At 2:40pm, AWO Steeves drove past the Property noting no signs of dogs outside the property nor signs of there being anyone home. She then drove down the road in order to get better cell phone reception at which time she was approached by Jesse Gardner, the complainant who had contacted the Quesnel RCMP. From him she understood that nobody had been at the

property for 3 days, that the animals were locked inside without food or water, and that the dogs were “bone racks”.

- Approximately 15 minutes later, while at the Property, AWO Steeves was approached by Eliza Schule, who identified herself as the property owner. Ms. Schule reported not seeing the Appellant at the Property since January 29, 2021, but was not certain whether the Appellant had been home in the interim. She further reported that the Appellant had not paid rent for February, so Ms. Schule had issued a 10-day eviction notice, which AWO Steeves noted was posted on the door to the Appellant’s cabin.
- AWO Steeves knocked on the door of the Appellant’s cabin. There was no answer, but she could hear dogs barking inside. She noted there were no tire tracks or footprints in the fresh snow around the Property except for a set of footprints to where the eviction notice had been posted.
- As described by Ms. Schule, the Appellant had been living in the Property for several months and she had noticed that the Appellant had been leaving her animals for several days at a time. She reported having one conversation with the Appellant about what the Appellant does to provide food and water for the animals and was advised by the Appellant that “she feeds them bones so they don’t poop much”.
- Ms. Schule reported to AWO Steeves that when she last looked inside the home, approximately 2 weeks prior, there were 6 cats together in a crate, one cat was loose, two dogs were in crates, and a third dog was usually chained either outside or inside. Ms. Schule reported there was also a rabbit in the Appellant’s cabin.
- Following this interaction, AWO Steeves posted a SPCA Notice on the door of the Appellant’s cabin giving the Appellant four hours to respond. AWO Steeves also requested for both Ms. Schule and Mr. Gardner to provide written statements.
- Shortly after 4:00 pm AWO Steeves received a voicemail from Mr. Gardner, reporting that the Appellant had returned home and was being aggressive towards him and Ms. Schule. AWO Steeves telephoned back suggesting that they contact the RCMP to report this behavior. During this call, Mr. Gardner reported watching one of the dogs that had been let outside defecating several times.
- At approximately 8:30 pm, AWO Steeves received a telephone call from the Appellant, which she documented as follows:
 - The Appellant stated that she had only been gone since that morning (February 2) and had just gone to town;
 - The Appellant stated that she had not yet had a chance to read her probation court order as she had just received it that day;

The Appellant stated that she had returned home that evening and that the landlord and other complainant started an argument with her and that she was upset that they had called the SPCA;

- The Appellant stated that the complainant and landlord had not been inside the house;
- The Appellant claimed that she only had three dogs inside the residence and they were in good condition and that she had spoken to a veterinarian a couple of months prior about one dog that was a little thin;
- The Appellant stated that she had a home for the third dog and would not be surrendering it to the SPCA;
- The Appellant stated that she had no means of transportation and had been paying someone to drive her into town as needed;
- The Appellant noted that she did crate her dogs when she left them alone;

18. In the ensuing discussion AWO Steeves explained her animal welfare concerns to the Appellant and that she would need to conduct an inspection to determine if the animals were in distress. The Appellant was unwilling to allow the inspection which led to a discussion about the existing probation order and the provision which required the Appellant to surrender all but her two companion dogs and to allow an inspection, upon notice from the Society. As documented by AWO Steeves, the conversation with the Appellant was over an hour in duration.

19. After meeting with AWO Steeves and at her request, Jesse Gardner provided a written statement which has been reproduced in its entirety as follows:

“Hello and good evening. I am writing this letter dealing with cruelty towards animals. I have been a witness to, on a number of occasions, animals being confined with no food or water for days at a time, locked in canals (sic) in cold weather or chained up staving (sic) at -20 below weather.

The dogs are bone racks and one time one dog broke free looking for food coming to my place at least half a km away. I fed him and he ate like he didn't know what food was. At that time I witnessed the dog had malnutrition, could see its ribs and back bone showing.

I have seen another dog on chain so scared and hungry and it shaking barely able to move. There are a few cats and a rabbit, too.

As far as I witnessed they are locked up for days at a time living in their own feces with low or no fresh water or food at days at a time while the owner has been gone.

This all occurred at 1291 Tibbles Road, Baker Creek, BC. V2J3H9. I today witnessed when the owner showed up home finally and let the dogs out one at a time tied on a chain the

popped 3 or 4 times back to back. I feel for the dogs, imagine holding yourself for days, I bet the pain and discomfort they were in was unbelievable and torturing.

I hope and pray that the cruelty towards these animals gets dealt with in a swift fashion. The longer these animals stay were (sic) are the more of a chance is that these animals will die a very cruel devastating death. Please I beg you and anyone that will help please don't wait, I fear the worst, these animals need love, food and a warm bed."

20. After meeting with AWO Steeves and at her request, Eliza Schoule provided a written statement which has been reproduced in its entirety as follows:

She has left her animals (3 dogs, 7 cats, and now 1 rabbit) alone, 4 times (Dec 23-26, Dec 31-Jan 3, Jan 15-17, Jan 30-Feb 2) in kennels/cages for up to three nights/days at a time with no food so they "don't poop while I'm (she) a, gone.

Only gives dogs bones during the time she is gone for days
The dogs cower when coming to her, overly submissive.

I could beat him all day and he would still love me, he doesn't have a mean bone in his body!" as she is smacking the dogs rump with a chain to make him sit.

Jethro, white and brown Anatolian: looks skinnier than the breed should be, too many ribs showing.

Sassy, Shepard, mastiff, and other breeds: underweight, too many ribs showing.

Woofy, can't quite tell his condition, thick fur.

V. The Review Decision

21. On March 5, 2021, Marcie Moriarty, Chief Prevention and Enforcement Officer for the Society e-mailed her Review Decision to the Appellant. In the Review Decision Ms. Moriarty explained that her role was to review the evidence respecting the seizure of the Appellant's two dogs, Woofy and Sassy and to decide whether it would be in the Dogs' best interests to be returned. She further noted that the additional animals that were seized due to the probation order were thereby surrendered, and therefore the circumstances in which they were found was a factor to be considered but that the other animals were not the subject of the Review Decision.

22. In the Review Decision, Ms. Moriarty noted that she had reviewed the following file history and documentation:

- a. Signed Information to Obtain (ITO);
- b. Signed Warrant;
- c. Probation Order #90966-1;
- d. Three Ospika Animal Hospital Physical Exams;
- e. Two Patient Histories;
- f. Various photos;
- g. One invoice;
- h. BC SPCA Dispute Decision issued 2012 and 2015;
- i. Inspection Follow-up Details;

- j. Statement letters from Mr. Gardner and Ms. Schoule; and
 - k. Various e-mail submissions sent by the Appellant.
23. Ms. Moriarty confirmed that Isabel Menzel was acting as an authorized agent of the Society as a duly appointed Special Constable (SPC) at the time of the seizure and confirmed that the Appellant was the owner and person responsible for the Dogs. She was satisfied that SPC Menzel reasonably formed the opinion that the appropriate course of action was to take custody of the Dogs in order to relieve their distress, and that a Notice of Disposition with respect to the Dogs was served in accordance with Section 18 and 19 of the Act. She concluded that the seizure took place in accordance with the Act.
24. In considering whether it was in the best interests of the Dogs to be returned, Ms. Moriarty reviewed the circumstances following the complaint received by Constable Hundial. She noted that the Dogs were described as living in unsanitary conditions, being tethered for prolonged periods of time and being generally neglected. She noted the Appellant's lack of cooperation with AWO Steeves, despite the conditions of her probation order #90966-1. She further noted that the Appellant had claimed to be unaware of the terms of her probation order while at the same time stating that she was appealing the conditions of the order.
25. She noted that the Appellant had added to the difficulties of the officers executing the warrant by turning two of the dogs loose and blocking access to a room containing two cats.
26. She noted that upon entry, officers found:
- Five cats crated together, with fecal matter and litter in their water.
 - A rabbit in an unsanitary cage.
 - The Anatolian Shepherd, (Jethro) being crated in a crate barely big enough for him. This dog had overgrown nails and appeared to be underweight.
 - The Husky (Woofy) was also in a crate that was too small. Woofy was overweight and had overgrown nails.
 - The German Shepherd (Sassy) was tethered outside in the snow, was underweight, and was without shelter or access to water.
 - The premises lacked proper ventilation and had a strong smell of ammonia.
 - There was a lack of natural light in the premises.
27. Photos taken by the officers at the time of the seizure showed water containers mostly dirty and contaminated with debris and the litter boxes that were full of feces. Sassy's dog crate was shown to be without padding and both Dogs had fleas.
28. In reviewing the Appellant's history with the Society, Ms. Moriarty noted that the Appellant had been involved with the Society dating back to 1998 with over 150 animals having been removed from her care. She noted that the Appellant had been convicted of animal cruelty offences in 2009, 2017, 2018, and in 2021,

including a conviction for failing to comply with a court order. In 2017 the court ordered that she be banned from owning any animals for five years, with the only exception being that she was allowed, with conditions, to keep two companion dogs. Those conditions included allowing the Society (and others) to enter and inspect her residence after providing the Appellant with proper notice.

29. Ms. Moriarty concluded her Review Decision noting the Appellant's disregard for the conditions imposed on her by the courts. She determined that the Appellant would not abide by any agreement to return the Dogs that would impose on her any obligation that the Dogs needed to remain in good condition as she had refused to abide by such conditions in the past.

VI. Key Findings of Fact and Evidence

30. Dr. Marina Mann was qualified by the Panel as an expert in the field of veterinary medicine. She provided both oral evidence and a written report dated February 24/2021. Dr. Mann has been a practicing veterinarian for 5 ½ years. She conducted examinations on the three dogs seized from the Appellant (Sassy, Woofy, and Jethro) at her Prince George, BC animal clinic on February 5/2021. Her written report includes the following observations and statements:
- Sassy was underweight, with a body condition score of 2/5. She had enamel wear on the caudal aspect of both maxillary molars and a tip fracture on a premolar.
 - Fleas were noted throughout Sassy's coat.
 - Sassy had overgrown nails.
 - Woofy was overweight, with a body condition score of 4/5.
 - Woofy had discolored incisors.
 - Woofy was extremely itchy, had dandruff and erythema throughout his coat and had developed a sore over his right hip.
 - Woofy's nails were overgrown.
 - Woofy had a mild mucous discharge from both eyes.
 - Jethro was underweight, with a body condition score of 2/5 and displayed a small healing sore over his left front shoulder. Jethro had evidence of a scar over his shoulder blades.
31. Dr. Mann testified that Sassy showed a lack of muscle and fat over her spine. She further noted that Sassy's tooth damage was likely a result of what she described as kennel frustration, commonly a result of chewing on the metal cage bars. She stated that Sassy's thinness was likely a result of a low caloric intake, but that the dog was otherwise friendly and happy and in good condition. Dr. Mann stated that both the dog and the environment in which the dog lived needed to be treated for fleas.
32. Dr. Mann testified that Woofy, was a little overweight, but that it was not a significant problem. With respect to Woofy's itchiness, she noted that it was very obvious and could have been caused by a flea infestation or an allergy. Dr. Mann

identified no specific cause of the eye discharge and also noted that Woofy's overgrown nails were not yet acute.

33. Dr. Mann testified that Jethro exhibited a body condition score of 2/5, and looked skinny, but displayed no underlying health issues.
34. Referencing photographs taken by AWO Steeves (Tab #15, pp. 70-80, Exhibit #7), Dr. Mann offered the opinion that the bare wire floor of the crate in which Jethro was found was not appropriate nor was the crate generally appropriate. With respect to the photograph of two crates, a dog being in the lower crate and cats in the upper, she noted that mixing species in a crowded environment can be stressful to the animals. Similarly, keeping 5 cats in one crate for even a short period of time can be stressful for them. With respect to the photographs of the dog on a chain on the outside of the property, she stated that dogs kept outside are in need of shelter and water.
35. When asked by the Panel whether, when she examined the dogs on February 5, 2021, she felt the dogs were showing signs of distress, her answer was "yes".
36. Dr. Mann further elaborated on her answer in response to questioning by counsel for the Society. She gave her professional opinion that the dogs' weight issues, dental problems and improper crating met the definition of distress, qualifying that the matter of crating only led to distress to when it was extended over an unreasonable period of time.
37. Dr. Mann also gave evidence with reference to a report (Tab#33, pp.496-498, exhibit #7) by her co-worker, Dr. Kaitlyn Liukaitis, who examined the 6 seized cats and the rabbit. The report indicated that all of the cats exhibited evidence of minor issues, ear mites, upper respiratory issues and body condition scores ranging from lean to ideal. The report further indicated that none of the cats had received recent veterinary care. However, there was no evidence in Dr. Liukaitis's report that the rabbit was kept in poor or inappropriate conditions.
38. Kristine Eyer, a counselling and psychotherapy student provided character evidence in support of the Appellant. She stated that she had first met the Appellant in Grand Forks, BC and that she had a 4-year client-worker relationship with the Appellant. She testified that the Appellant had described her animals as service animals that they were there to provide her comfort and safety. Ms. Eyer had previously given evidence in court on the Appellant's behalf in favor of the Appellant being able to own support animals.
39. Edith McCalister, a friend of the Appellant since 1990-1993, also provided character evidence in support of the Appellant. In Ms. McCalister's view, the Appellant was big hearted and was doing the best she could with the animals.

40. Ms. McCalister further stated that she had seen animals kept in much worse conditions than those experienced by the animals in the care of the Appellant. She stated that she had seen the Appellant with her dogs and that she treated them like they were her children. She stated that she knows when dogs are being mistreated, and that the dogs in the Appellant's care weren't. She stated that the Appellant is often testy with people, but that this behavior didn't apply to her animals. However, she also stated that she had last seen the Appellant when she had left Grand Forks, around 2011. Ms. McCalister acknowledged that she has never seen Sassy or Woofy. She also commented that she holds a different opinion on what constitutes cruelty than does the Society.
41. Alex Schare is the manager of the Prince George SPCA shelter. He provided oral testimony at the hearing and referred to a written report (Tab #42, pp 547-548 , Exhibit #7) sent to him by the BC SPCA North Cariboo District Branch. The report outlines incidents involving the Appellant and the shelter. The first incident occurred when Jethro was brought in as a stray on April 19, 2020. Jethro was claimed by the Appellant, using the name Sylvia Henry. The Appellant had posted a Facebook plea under that name for help in finding Jethro (Tab #41, Exhibit #7). Staff contacted the Appellant, who was initially evasive about providing identification, but then identified herself as Louise McAnerin. Staff subsequently returned the dog to her.
42. The second incident occurred on July 23, 2020 when the shelter picked up Jethro, Woofy and Sassy for emergency boarding from the Appellant as she had no means to transport them herself. The Appellant later picked the dogs back up from the shelter on August 4, 2020. Admission examinations completed on all three dogs on July 23, 2020 by shelter staff describe the dogs as friendly, generally normal and healthy, with some exceptions, including those described by Dr. Mann in her testimony.
43. The Appellant gave oral evidence and provided a written statement (Exhibit #21), dated April 8/2021. In her written statement, she describes herself as having post-traumatic stress disorder and experiencing problems with the Society beginning in 1992 in Grand Forks. In essence, she blames the Society, for all of her ongoing difficulties. With respect to the current proceeding, she self identifies the Dogs as therapeutic companions.
44. In her oral testimony, speaking about the day of the seizure, she stated that the cabin where she lives with the Dogs is their doghouse and that they are only in their kennels while she eats. With respect to the bare crates, she stated that the dogs had wrecked the padding that was previously on the floor of the crates.
45. She stated that she had obtained Woofy approximately four years prior, but she was unclear as to whether the year was 2016, 2017, or 2018. She stated that she got Sassy later, on December 11, 2018 and that she obtained Jethro a year after Sassy in December of 2019.

46. Under cross-examination by counsel for the Society, she stated that the Dogs were healthy when she had obtained them and that Sassy had no teeth issues at that point. She acknowledged that they have not been examined by a veterinarian since obtaining them.
47. The Appellant referred to a letter provided by Dr. Bianca Scheidt, dated April 12, 2021, and testified that she had sought veterinary advice for maintaining the Dog's health. The letter notes that the Appellant had a telephone conversation with Dr. Scheidt on October 14/2020 with respect to the Dogs' weight loss and the Appellant's request to start the Dogs on de-worming medication. The conversation concluded with Dr. Scheidt agreeing to examine the dogs on a regular basis as needed.
48. In response to questions about the other seized animals, the Appellant stated that none of the cats had ever been seen by a veterinarian, that she had not noticed Sassy's teeth issues, that she hadn't seen evidence of flea issues and that Woofy's scratching and itching only started a week or two before the seizure. She stated she changed the cat's litter every morning.
49. The testimony of AWO Steeves was consistent with the statements made in the ITO which she drafted, and her handwritten notes of February 2/2021. In addition, she reiterated that her involvement in this matter began with the telephone complaint she received from the Quesnel RCMP, which resulted in her reviewing the Appellant's history, including the probation order on file with the Society. She noted that she had no prior knowledge or experience with the Appellant until receiving the complaint made by RCMP.
50. AWO Steeves stated that in discussing the probation order with the Appellant, the Appellant told her that she had only just received a copy of the order and hadn't read it, but that she was going to appeal it. The Appellant did not agree to an inspection which necessitated AWO Steeves obtaining a warrant to compel the inspection.
51. AWO Steeves described the cabin as being dimly lit and approximately 500 square feet in size. She noted that when she attended for the inspection Woofy was in a kennel atop of which was a crate containing 5 cats. When AWO Steeves asked why the animals were in crates, the Appellant replied that it was because she was eating lunch and because the SPCA was there. AWO Steeves testified seeing no evidence of anyone eating lunch.
52. AWO Steeves noted in referring to a photo of a dog crate (Tab#20, p.99, exhibit #7), that she had observed what appeared to be scratch marks on the wooden floor under the wire bottom of the crate. She described the air quality in the cabin as poor and having a strong smell of ammonia.

53. AWO Steeves handwritten notes (Tab#34 pp. 499-504, Exhibit #7) include a description of her observations: “A tri-coloured dog in a crate in which it could not fully stand, a white and grey Anatolian dog in a crate slightly too small. Crates with wire bottoms, without bedding. A dog, which felt thin and bony with hips and spine visible. She further included in her notes her determination that “all animals met the definition of distress for lack of space, light, ventilation, exercise, and were living in unsanitary conditions.”
54. In response to a question as to why she hadn’t issued a notice rather than seizing the animals, she stated that the seizure was necessary due to the poor air quality of the cabin, the unsanitary conditions, the inappropriate crating of the animals, and the Appellant’s history of being uncooperative and non-compliant.
55. The testimony of SPC Menzel was consistent with the evidence provided at the hearing by AWO Steeves in her description of the conditions in which the seized animals were found. In response to a similar question as to why the Appellant wasn’t issued a notice rather than seizing the animals, SPC Menzel stated that it was because of the animal’s lack of space, the cluttered, crowded environment, which she felt was hazardous, the ammonia smell in the air and the Society’s history with the Appellant. SPC Menzel stated that, if the animals were returned, they would be inappropriately crated and neglected again and the Appellant’s pattern of behavior would continue.
56. SPC Menzel’s handwritten notes (Tab #35, pp.505-516) include references to her interactions with the Appellant, the Appellant’s reactions to the search, and the Appellant’s apparent threats of self-harm.

VII Analysis and Decision

57. As outlined at the outset of this hearing, this Panel is tasked with addressing two primary issues:
 1. Were the animals seized, in this case two dogs, Sassy and Woofy, in distress at the time of seizure such that the seizure was justified? and
 2. Is it in the best interests of the animals to return them to the Appellant’s care?

The Seizure

58. Section 9.1 of the Act outlines the duties of persons responsible for animals. It reads as follows:
 - (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.

59. Section 1 (2) of the Act states:

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

60. Section 11 of the Act states:

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.

61. AWO Steeves gave evidence that when she visited the Property on February 2, 2021, she was approached by two complainants, both of whom expressed concern about animals being locked inside the Appellant's cabin, unattended, for approximately three days. This type of neglect, according to one complainant, Eliza Schule, the property owner, had occurred several times. Similar information was provided to AWO Steeves by Jesse Gardner. Both complainants, over the ensuing two days, provided AWO Steeves written statements about their concerns.
62. In investigating the matter, AWO Steeves testified that she subsequently knocked on the door of the cabin and received no answer, but that she heard dogs barking inside. She further testified that she saw no foot tracks in the fresh snow around the cabin except for a set leading to and from an eviction notice posted on the door. She posted an SPCA Notice on the door, indicating the occupant had four hours in which to contact her.
63. AWO Steeves testified that she received a telephone call from the Appellant at 8:39 that evening, discussed the matter and the probation order with the Appellant, and on the basis of the Appellant's response, sought a warrant, which she, in the company of SPC Menzel and Constable Smith of the RCMP executed at 1:00 pm, on February 4, 2021.

64. In her testimony, AWO Steeves described the cabin as being dimly lit and smelling strongly of ammonia. She noted that the dogs were kept in bare, undersized crates atop of one of which was a crate containing 5 cats. She stated that she formed the opinion that the animals were in distress due to the poor air quality, the unsanitary conditions, the inappropriate crating, and the Appellant's refusals to cooperate.
65. In support of AWO Steeves decision to seize the animals, Dr. Mann repeatedly confirmed in her evidence the health issues suffered by the animals and her professional opinion that the animals were in a state of distress at the time of seizure.
66. The Panel accepts the evidence of AWO Steeves and the supportive evidence of Dr. Mann. The Panel finds that the Appellant had neglected the animals in her care, that she was not willing to undertake the steps to remedy the neglect, and that the seizure of the two dogs, Woofy and Sassy, was justified in the circumstances.

Return of the animals

67. Having determined that the seizure of the animals was justified, the Panel now turns to the question of whether it would be in the best interests of the Dogs to return any or all of them to the Appellant. In doing so, the Panel is guided by the courts, which considered this question in *Eliason v BCSPCA, 2004 BCSC 1773*. In that case, 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...

68. Further, 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 the its owner, it will remain [in] the good condition in which it was release into its owner's care.

69. In her Review Decision, Ms. Moriarty identified the Appellant's history with the Society dating from 1998, including the Appellant's convictions under the Act in 2009, 2017, 2018 and in 2021, in which she was convicted for the second time of failing to comply with a court order, as making it very unlikely that the Appellant would be willing or able to abide by an agreement for the return of the animals based on them remaining in good condition.

70. In Ms. Moriarty's view, there is a disconnect between the Appellant's understanding of her responsibilities and the conditions imposed on her by the courts.

71. In reviewing the files contained in Tab #27, pp137-477 Exhibit #7, the Panel notes that there is frequent mention of elusive, deceiving, and overtly uncooperative behavior shown by the Appellant towards officers and investigators of the Society.
72. With respect to her history with the Society, the Appellant submitted a letter to BCFIRB dated April 8, 2021, which she titled "My FIRB summary" (Exhibit #21). In it she describes her history with the Society, which started in 1992, and explicitly blames the Society for causing her post traumatic stress which she claims has led to all of the other long-term problems in her life. The Panel has given very little weight to this document and to the Appellant's claims generally with respect to the Society's role in her life which the evidence shows has been precipitated by the Appellant's own behavior and would in any event not justify the mistreatment of the animals in her care or inform any decision with respect to the animals' best interests.
73. The Panel reviewed all of the photographs submitted into evidence which include pictures from the most recent seizure and from the Appellants previous involvement with the Society. The Panel notes as follows:
 - a. Photographs taken by AWO Steeves on the day of the seizure (Tab#15, pp.70-80 Exhibit #7). These photos include those of a dog in an undersized crate, a rabbit in a crate, a crate among bins, a crate containing cats and cat toys, another crate containing a cat with food in a tray and water in a pail, two stacked crates, the lower containing a dog, the upper a cat, three photos of the cabin interior, or parts thereof, three photos of a dog on a chain outside of the cabin, a bucket with water and some litter in it, and a crate containing a litterbox with some cat feces.
 - b. Photographs included among the past SPCA files (Tab 27, pp220-226, Exhibit #7) include some taken during an SPCA seizure in 2007, show a mould, or slime covered child's wading pool, dogs, one in each photo, one of which is tethered to a heavy chain inside an unkept, boarded enclosure, the other which is loose in a similarly boarded enclosure, a photo of a slime-filled tray, one of a very soiled floor space, with trash, a bathroom floor covered in soiled newspapers, and a bucket containing soiled water and feathers. Other photos in the same collection are from a dog in a crowded interior space, animals in stacked crates in an unkept surrounding, a room with no visible floor, it being covered completely by clothing and cloth materials, a crate entirely too small for the dog it contains, and the interior of a plastic crate covered by soiled newspaper.
 - c. Photographs included among past SPCA files (tab#27, pp.464-468, Exhibit #7) undated, but associated with a July 2018 SPCA file show a completely unkempt room, the floor of which is covered by trash and other materials, fecal deposits in various locations and what appears to be an outdoor animal enclosure surrounded by boards and boarding materials.

- d. Photographs, dates ranging from Feb 23, 2020-April 8, 2021 submitted by the Appellant (Exhibit #20 pp 1-29) include two of three dogs (taken Feb 23,2020) in an attentive pose, and the remaining 28 of the interior of the property, animal crates, bins, all similar to those taken by AWO Steeves, but in greater volume and without animals. The photos depict a clean, though somewhat crowded, and organized premises.
74. The contrast between the photos taken in 2007 and those taken in 2021 is significant and show that at least recently, the Appellant has been able to keep a cleaner environment in and around where her animals have been housed.
75. Despite these potential indications of improvement, there is, however, strong evidence of a pattern of behavior that the Appellant has demonstrated over the years which indicates that despite her caring for her animals and her wish to have her Dogs returned, the circumstances of distress which led to the Dogs seizure will re-emerge over time. The Appellant provided the Panel with no clear plan as to how she would remedy the Society's concerns with respect to the Dogs' living conditions and in fact, the Appellant's history demonstrates that the Appellant does not in fact recognize that she neglects or harms the animals in her care.
76. The Panel finds that in all of the circumstances noted above, and taking into account the Appellant's history with the Society, the return of the Dogs would only ensure that they would return to a state of distress in the near future. As such, it is not in the best interests of the animals to be returned to the Appellant. There are no conditions which could be imposed on any such return which the Appellant could be reasonably expected to follow, given her unwillingness to abide by the conditions imposed on her in the past. The Panel is not willing to risk the further suffering of the Dogs to grant yet another chance to the Appellant to demonstrate that she can care responsibly for animals when her entire history with the Society has been a refutation of the leniency which has been previously granted.

VIII Order

77. Section 20.6 of the PCAA reads as follows:

On hearing an appeal in respect of an animal, the board may do one or more of the following:

1. (a) require the Society to return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
 - (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
 - (ii) any matter that the board considers necessary to maintain the well-being of that animal;

(b) Permit the Society, in the Society's discretion, to destroy, sell or otherwise dispose of the animal;

(c) 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).

78. In this case, the Panel permits the Society, in its discretion, to destroy, sell or otherwise dispose of the Dogs, Sassy and Woofy.

IX Costs

79. With respect to responsibility for the costs of care of animals in custody, Section 20(1) of the PCAA states:

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.

80. The Panel finds that the Appellant is liable for costs to the Society in the amount of **\$3,314.77** as outlined in paragraphs 11 to 21 of Ms. Moriarity's affidavit. These costs include \$160.77 for veterinarian services, \$273.90 for SPCA time attending the seizure, \$2,880.10 for housing, feeding and caring for the dogs from February 4 to April 27, 2021 (being the anticipated date for the BCFIRB Decision.).

Dated at Victoria, British Columbia this 27th day of April 2021.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Dennis Lapierre, Presiding Member



David Zirnhelt, Member