

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 1 DOG

BETWEEN:

DIANA ANDRUSEK

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Harveen Thauli, Presiding Member

For the Appellant:

Diana Andrusek

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

February 2, 2021

Location of Hearing:

Teleconference

I. Overview

1. This is an appeal pursuant to section 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the **Act**) related to the seizure of five dogs, five birds and one cat.
2. The Appellant, Diana Andrusek, appeals the December 31, 2020 review decision (the **Review Decision**) under section 20.2(4)(b) of the *Act* by Marcie Moriarty, Chief Prevention and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the **Society**).
3. Section 20.6 of the *Act* permits the British Columbia Farm Industry Review Board (**BCFIRB**), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or permit the Society, in its discretion, to destroy, sell or otherwise dispose of the animals. Before the hearing, the Appellant sought the return of the five dogs, one cat, and five birds.
4. On February 2, 2021, a BCFIRB hearing panel (the **Panel**) held a hearing via teleconference. The hearing was recorded.
5. The Appellant was self-represented and did not call any witnesses.
6. The Society was represented by counsel and called two witnesses: a veterinarian who had examined the clinical records, and the special provincial constable (**SPC**) who had contact with the Appellant before, during, and after the seizure.

II. Decision Summary

7. During the hearing, the Appellant surrendered the cat. Therefore, this appeal is about the Society's seizure of the five dogs (the **dogs**) and five birds (the **birds** and collectively, the **seized animals**) from the Appellant's property on December 1, 2020.
8. For the reasons explained in this decision, the Panel has decided not to return the seized animals to the Appellant. Pursuant to section 20.6(b) of the *Act*, the Society is permitted, in its discretion, to destroy, sell or otherwise dispose of the seized animals.
9. The Panel has further decided that the Appellant is liable to the Society for the full amount of costs claimed by the Society for the care of the seized animals while in custody of \$9,563.

III. Preliminary Matter

10. The Society's deadline for submitting disclosure in this appeal was January 27, 2021. The Society submitted additional veterinary records on February 1, 2021 (the **additional disclosure**).
11. At the hearing, the Appellant did not object to the additional disclosure being allowed and entered as an exhibit.

IV. Materials Admitted on this Appeal

12. The Panel identified all of the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1 to 25 and is attached as Appendix A to this decision.

V. Brief History

13. The Appellant has an extensive complaint history with the Society that began in October 2006. In two previous cases, the Appellant and the Society appeared before a BCFIRB hearing panel.
14. In the decision, *Andrusek v. BCSPCA*, October 14, 2014 (the **2014 Decision**), that panel ordered the Society was permitted, at its discretion, to destroy, sell or otherwise dispose of the Appellant's four dogs, of which one had to be euthanized by the time of the hearing, and a cat. The panel also ordered that the Society was entitled to its costs.
15. The decision, *Andrusek v. BCSPCA*, January 8, 2016 (the **2016 Decision**) had similar orders as the 2014 Decision, except that the 2016 Decision dealt with the seizure of five dogs and one cat.
16. The Appellant recognized past conflicts with the Society in the 2014 Decision and the 2016 Decision (together, the **Historical Decisions**), made statements to the effect that she did not want a repeat of previous seizures, was willing to improve her situation and make changes, and cooperate with the Society. The Appellant made similar statements in emails to the Society, her submissions to BCFIRB, and during the hearing of this appeal, which the Panel will address in this decision.
17. The Panel has not allowed the Appellant's history with the Society to impact the assessment of the facts about the seized animals in this appeal. However, having found (without regard to the history) that the seized animals were in distress, the Appellant's history is relevant to the question of whether the seized animals should be returned to the Appellant, a question to which the Panel has answered "no".

VI. Events Leading Up to the Seizures

18. SPC Christine Carey is very familiar with the Appellant's complaint history. She was also involved in the seizures resulting in the Historical Decisions.
19. According to the Information to Obtain a Search Warrant (**ITO**)¹ prepared by SPC Carey upon whose oath/affirmation the warrant was authorized, the Society's animal protection officer (**APO**) Cassandra Meyers received a call of concern on November 28, 2020 from RCMP Constable Luke Tomkinson about the physical and environmental conditions of animals on the Appellant's property.
20. Constable Tomkinson and his partner had initially attended the Appellant's property to conduct a welfare check because of a report that the house was left unsecured, with the door open. On entering the house, Constable Tomkinson observed that the interior had a large buildup of urine, feces, garbage and rotted food. He saw five dogs with physical concerns, including overgrown nails and matted fur coats. The Appellant was not present.
21. When APO Meyers arrived at the Appellant's property, she could smell rotting garbage, feces and urine from the sidewalk, which was approximately eight feet from the front door. She noted that the front porch was cluttered with belongings and all windows appeared covered.
22. Constable Tomkinson advised APO Meyers that officers from the Community Animal Response and Education (**CARE**) Centre impounded the five dogs at its facility. He also stated that he had tried to contact the Appellant but was unable to reach her.
23. Constable Tomkinson described the conditions as the "worst hoarding situation he had ever seen". He also told APO Meyers that one room had budgie/parakeet type birds.
24. APO Meyers left a Society notice, requesting the Appellant to contact the Society by 10:00am on November 29, 2020 to avoid possible legal action, on the door of the Appellant's house.
25. Later, on the same day of November 28, 2020, SPC Meyers received phone calls and emails from each of the two CARE animal control officers (**ACO**), who had seized the dogs.

¹ SPC Carey prepared her initial ITO on November 30, 2020 but this ITO was denied for lack of clarity on the definition of "Property". Once SPC Meyers rectified the errors, the ITO was granted on December 1, 2020.

26. One ACO who transported a Labrador and labradoodle type dogs described them in an email to APO Meyers as follows:

[...] Black/white (intact) male Labrador X. He has long nails, no other concerns for his welfare. He stiffens and licks his lips if handled too much around his head and neck.

Brown NM (neutered male) Poodle X, he was wearing a collar. This dog is extremely dirty and matted from head to toe. The most substantial matting is around his chin and his tail. He is sensitive to touch on or around his tail and has mats dangling from several spots on his body.

Both dogs are smelly and dirty, the Poodle's collar has a layer of dirt/grime on the inside which presumably came off his fur as the collar is quite clean otherwise. We suspect that both dogs have fleas, but it is unconfirmed due to the Lab X's behavior and the fact that it is difficult to see down to the skin of the Poodle X. The photo that I've attached shows the mats around the Poodle's nose and chin.

27. The other ACO who transported three Great Pyrenees type dogs described them in an email to APO Meyers as follows:

[...] Nov 28/20 3:335pm [sic] I attended [...] Williams St were [sic] three Great Pyrenees type dogs were impounded. All three dogs are dirty with two (both NM) being extremely matted. One of the dogs (oldest of the three, NM) had some difficulty walking and getting into and out of my vehicle. The dog is in some discomfort both due to matting and suspected sore hips. The youngest of the three (IM white Great Pyrenees type) is visibly thin. The other NM white Great Pyrenees is matted with a missing fur patch. When examining all three dogs all have poor body condition. Ribs can be felt through the matts. All three dogs smell and have dirty ears.

In regards to the outside of the property it is very "junky". Two dogs were wondering [sic] at large and the third was laying on the porch. There is a fenced backyard but no visible shelter was noted. No food or water was observed.

28. On November 29, 2020, SPC Carey, on reviewing the file, went to the CARE facility to observe the dogs. Her observations were similar to the ACOs. She noted the dogs were heavily matted with dirty fur coats and overgrown nails and they emitted foul odors.
29. SPC Carey then went to see the Appellant at her property. While walking up to the house, she detected the smell of animal urine and feces. She observed the yard was poorly maintained with garbage and debris piled around and on the house's porch.
30. SPC Carey advised the Appellant that she was under investigation for causing or permitting her animals to be in distress. The Appellant invited SPC Carey inside her house so that she could see the "clean area" where she kept her dogs. When SPC Carey stepped through the door, she:
- observed debris, household furnishings, garbage, clothing, hair and dirt;

- saw that all surfaces and fixtures were covered in filth, dust and animal hair. The fixtures were unrecognizable;
 - detected the smell of bleach, urine and ammonia from animal excrements; and
 - noticed a young cat crawl out from under a pile of soiled boxes, clothing and garbage.
31. SPC Carey noted the kitchen, which the Appellant stated was the cleanest room in the house, had a heavier smell of bleach. Although SPC Carey suspected that the Appellant had recently applied bleach to the floor, the white tile was still heavily darkened by filth. Her eyes burned from the ammonia and recent bleaching.
 32. SPC Carey saw the birdcages and birds in one room. She did not do a physical inspection of the birds for her own safety because of the potential air toxins and piled debris.
 33. The Appellant told SPC Carey that she was behind on having her dogs groomed but she had booked appointments for them. The Appellant also stated she was in the process of moving to a house in Chilliwack and this was the reason for her house's current condition.
 34. SPC Carey told the Appellant that she believed history was repeating itself and the condition of the Appellant's house as well as of the seized animals resembled previous complaint investigations involving the Appellant.
 35. SPC Carey sought and obtained a warrant, which she executed on December 1, 2020.
 36. After the warrant was executed, SPC Carey arranged for the Appellant to receive help from Dr. Christiana Bratiotis, an expert in hoarding who leads a hoarding task force.

VII. Review Decision

37. On December 31, 2020, Ms. Moriarty emailed her Review Decision to the Appellant. In this decision, she identified that her role was to review the evidence and decide whether it would be in the best interests of the seized animals to be returned to the Appellant.
38. Ms. Moriarty reviewed the following evidence:
 - warrant, ITOs dated November 30, 2020 and December 1, 2020, and the Notice of Disposition;
 - various veterinary records;
 - invoices;

- various photographs and videos;
 - historical documents; and
 - various email submissions from the Appellant.
39. Ms. Moriarty confirmed that SPC Carey was acting as the Society's authorized agent as a duly appointed SPC and confirmed that the Appellant was the owner and person responsible for the seized animals. She was satisfied that SPC Carey reasonably formed her opinion that the seized animals were in distress, as defined in the *Act*, and that the Notice of Disposition for the seized animals was properly served in accordance with the *Act*.
40. Ms. Moriarty discussed the Appellant's complaint history in her Review Decision. She wrote:
- This is the third decision I am issuing regarding animals that have been seized from you. Since 2006 and up until now, 22 cruelty investigation files have been opened under your name regarding animals in various degrees of neglect and serious issues surrounding your lack of animal husbandry, unsanitary and unsafe living environment, object and animal hoarding, overcrowding/breeding, lack of veterinary care as well as multiple large breed dogs kept in vehicles. The pattern that has formed over the years is one of general neglect informed by a lacking care philosophy. [...]
41. On viewing photos and videos, Ms. Moriarty commented on the Appellant's house and living conditions as follows:
- [...] As they say, a picture is worth a thousand words and I am very disappointed to once again see the absolutely dismal living conditions these Animals were found in. It is an overwhelming state and it is difficult to comprehend how you or your Animals could ever contend with such an unsanitary environment. The deluge of debris, garbage, and decay is staggering with barely a clear path between the areas of your home. The bathroom overrun with items and debris rendering it useless for hygienic purposes. While I appreciate that you have been able to keep an area of the kitchen floors clear for the dogs, as you shared in your submission letter, the surrounding clutter, garbage, cob webs and debris allow for unsanitary and unsafe conditions to persist. I am not convinced that you cleaning with bleach accounts for the smell of ammonia give the amount of feces littering the home. [...]
42. Ms. Moriarty expressed concern for the Appellant's health and wellbeing and commended her for being open to receiving help from Dr. Bratiotis.
43. Ms. Moriarty provided her initial assessment of the seized animals as follows:
- [...] On initial assessment, all of the dogs suffered from matted fur, with feces and urine staining, pressure soars on their abdomens, as well as flea infestations and prominent flea allergy dermatitis. The distress and discomfort this must have caused them is heartbreaking. They all require

dental care, as some have worn teeth, tartar build up, receding gums and show signs of dental disease. They all require grooming and nail trimming. Of note, Bear has been found to have a mass on his dorsal-mid lumbar and Atticus has low muscle mass in his hind legs, showing signs of weakness. [...] Several of the birds were found to be underweight. The physical condition of the Animals clearly speak to the conditions they had to endure.

44. Ms. Moriarty concluded that it would not be in the best interests of the seized animals to return them to the Appellant.

VIII. Key Findings of Fact and Evidence

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

The Appellant's Evidence

46. The Appellant requested the return of the seized animals in an email dated December 18, 2020 to Ms. Moriarty. The Appellant acknowledged her previous history with the Society. She wrote:

I realize that this 'situation' is a 'repeat' of prior ones by me, as Constable Carey and I discussed. However, with the help of a Clutter Expert that Constable Carey kindly helped me get an appointment with, I am hoping things will be different this time round.

47. In the same email, the Appellant believes that since there has been a "...much, much, much longer time period between 'situations'" (approximately five years), she "deserves some credit" for having her seized animals returned to her. The Appellant also stated she welcomed help and inspections from the Society.
48. In her submissions dated December 29, 2020 (the **submissions**), the Appellant advised she is 70 years old. She began her submissions as follows:

This is not the way I thought my life would be. I wanted to live in a beautiful house surrounded by things I cherish AND TO HAVE MY PETS AROUND ME, HAPPY, CONTENT AND KNOWING THAT THEY ARE LOVED AND WANTED.

I look back on my life to date and I don't know how I got to this point, AGAIN. I know intellectually, but 'feeling wise'?? A lot of times it feels like I am in a daze. Sometimes, it's just being able to get up each morning and take one step at a time... What has been most important to me has been my pets. They give me a reason to get up and going, as their needs are more important than mine. They rely on me, and I rely on them. It might not

seem a lot to some people but when you feel you have 'nothing' they are 'everything' to me.

49. The Appellant also wrote the following in her submissions:

The dogs had a huge (10,000 square foot) property was totally fenced in. A huge kitchen area that I swept and washed at least 2X daily in the case of 'accidents'. My dishes didn't necessarily get done daily and by the end of my time living on Williams Street, the kitchen near the sink area was very cluttered. The house once again was in profound disarray but I felt that if the SPCA came by to 'inspect' that *they would see that I had 'learned' and had kept the area where my dogs were, clean, sanitized, etc.*

50. The Appellant further claimed in her submissions and testimony at the hearing that when she was concerned about one of her seized animals, she "rushed" the animal to the veterinarian and listened to the veterinarian's advice. For example, she took Sam, the youngest of the Great Pyrenees, to Gladys Pet Hospital when she noticed two large lumps on his side. The lumps were removed. A few days later, he had a large lump near his stomach, so she returned to the animal hospital and learned Sam was hemorrhaging and blood was 'migrating' into that lump. After Sam spent time at the animal hospital while receiving multiple tests, Sam was given a compound of medicines and recovered.

51. At the hearing, the Appellant acknowledged in her own words and in cross-examination that: she understood why the seized animals were taken from her; confirmed her living conditions were deplorable; and agreed that historical seizures were similar to this one and the result of unsanitary and unhealthy living conditions.

52. The Appellant also stated in her testimony that:

- She tried to keep her dogs in the kitchen, which was the cleanest part of her house on Williams Street.
- She moved from her house on Williams Street to another house in Chilliwack because it was more spacious and had a big backyard for the dogs. She has been in the Chilliwack house since the end of November 2020.
- Her animals are her family, so she needs to "*pull up her bootstraps*" and take steps to keep her house clean. She stated she is washing dishes, sweeping floors, cleaning the toilet and tub, and sorting through and getting rid of clutter.
- She was receptive to meeting Dr. Bratiotis but had not yet met her at the time of the hearing. Although she had an appointment with Dr. Bratiotis on December 23, 2020, Dr. Bratiotis had to cancel it for personal reasons.
- She has been suffering from post-traumatic stress disorder (**PTSD**) since 1997 and is now seeking help for it. She renewed her medication in the fall of 2020 and filled out a form for depression, which was sent to the Chilliwack Mental Health Centre at the Chilliwack Hospital. She had an appointment on January

29, 2021, which she cancelled to prepare for this hearing.

- She has been working more because of the increased rent at the Chilliwack house and estimated working 35 hours/week. She would take care of the seized animals if they are returned to her by waking up early to take the dogs for a walk and then again after work.
 - She plans to address all of the medical issues and grooming needs of the seized animals if they are returned to her. She would also attempt to remove the burrs and matts from the dogs' coats.
53. During cross-examination, the Society's counsel reviewed photos of the Williams Street house with the Appellant. The photos included the kitchen, the bathroom, living room, bedrooms, among others. The bathroom was clearly unusable from the photo because of all the garbage and clutter on the toilet and in the bathtub.
54. The Appellant confirmed the following in cross-examination about the William Street house:
- She moved there in August 2018 and at that time, the house was empty.
 - She acknowledged the living conditions were "*pretty disgusting*" and she was disgusted herself. She also agreed that the living conditions were unsafe, unsanitary, and unsuitable for animals.
 - She agreed the house had only one bathroom.
 - She cleaned the kitchen floor, where she apparently kept her dogs, with disinfectant and bleach twice per day.
 - She struggles to "*get up and do things*" because of her PTSD. She finds some days "hard".
 - She is looking for someone to help her keep the Chilliwack house clean but has not yet found anyone.
55. The Society's counsel reviewed the veterinarian records with the Appellant. During cross-examination, the Appellant responded as follows:
- She noticed the inflammation in Tucker's (the labradoodle) left and right ear and tried to clean them but Tucker would run away. Despite noticing Tucker shaking his head and the matting in his ears, she did not take Tucker to a veterinarian to have him examined.
 - She purchased flea medication from a veterinarian in Mission and apparently applied it monthly on her dogs. She questioned whether her dogs had fleas when seized despite the intake forms stating the dogs had flea dirt and live fleas on them. She later responded "*if that's what they say*" in answer to whether she had any reason to doubt the medical records.
 - She has owned Tucker for about a year and never had him groomed. She has owned Sam and Scout since they were puppies and never had them groomed

because they apparently have short hair. Sam and Scout are Great Pyrenees from the same litter. She has had Atticus, another Great Pyrenees, and Bear, the Labrador, groomed every two to three months.

- She made an appointment to have four dogs groomed on November 29, 2020, the day after the dogs were seized.
 - She noticed the large fluid pouch under Sam's chin and claimed she was going to have him groomed and take him to the veterinarian.
 - She agreed that some dogs never had their nails trimmed.
 - She did not notice Atticus showing signs of pain or limping. She did, however, notice he was slow getting up when he was lying on the floor. She did not take him to a veterinarian to have his mobility issues examined. She treated his stiffness with diet.
 - She did not notice the fleas on Sam, nor did she notice his wiggly tooth. She confirmed Sam has never had work done on his teeth.
 - She noticed Bear scratching himself and that he had a hotspot near his rump. She also noticed that Bear had calluses and growths, which she treated with witch hazel and Burt's bees. She never took Bear to a veterinarian to be examined.
 - The dogs did not have access to the dog door. She closed the access about six to seven months after she started living at the Williams Street house.
 - She did not handle the birds on a daily basis. The birds would sometimes escape when she gave them water and food.
 - She understood that birds require enrichment such as bells, toys and whistles. She cleaned the bird cages two to three days before the seizure and forgot to return the enrichments to the cages.
56. The Society's counsel asked the Appellant specific questions about the smell of ammonia. The Appellant responded:
- She could smell the ammonia "a bit" after she washed the floor.
 - She was aware that high ammonia levels could affect an animal's breathing but she was not aware that it could cause upper respiratory infections.

The Society's Evidence

Dr. Karen van Haaften

57. Dr. van Haaften was accepted as an expert witness for the Society. She is a certified Veterinary Behaviourist. She reviewed all of the clinical records of the dogs and birds and also examined their behaviour.
58. Dr. van Haaften expressed concern about the living conditions of the Williams

Street house. She talked about the impact of the unhygienic conditions on the dogs. During her direct examination, she stated:

- It was hard to determine whether the dogs' skin infections resulted from the dirt and feces in the Williams Street house or the fleas.
- Regular exposure to dirt and feces can cause bacteria to breed on a dog's skin producing infections and inflammation such as hot spots, puss, itchiness and bleeding. The dogs were smelly and had stained fur with matts all over their bodies when seized. Matting creates a closed and moist environment, which is a breeding ground for bacteria. Basic hygiene, that is, a clean, habitable environment with no piles of unclean material such as feces and rotted food prevent bacteria from growing on a dog's skin.
- It is rare to see five dogs with hot spots since they are readily visible and treatable. Hot spots are treated by shaving the entire area, cleaning it with disinfectant and then putting ointment on the area. Antibiotics are sometimes necessary.
- Atticus, Sam and Tucker showed signs of chronic inflammation. Atticus, in particular, had to be shaved completely. He has abnormally red skin, dried pus weeping from his inflamed skin, and hyperpigmentation from the chronic inflammation.
- The dogs had heavy flea infestations. The Society treated the dogs for the fleas. Normally, it takes a week for the itching to cease but these dogs had other skin issues, so they took longer to feel comfortable, especially Atticus. It took two to three weeks for his wounds to heal.
- Fleas are uncommon in BC and rare to see in well groomed dogs. The fleas could have become part of the environment in the Williams Street house and may have been transferred into the Chilliwack house. It is difficult to decontaminate an environment with a heavy flea infestation. This involves washing exposed material and drying it at high temperatures.
- The dogs had dirty ears. Atticus and Tucker also had ear infections, which are readily detectable because dogs scratch their ears and shake their heads.
- Surgical procedures are not generally allowed while animals are in custody unless it is an emergency. Sam required an extraction for a bifurcated tooth, which could not wait until the conclusion of this matter. All of the dogs, except for Scout need dental work. Atticus had significant tartar and gingivitis.
- Atticus has been diagnosed with arthritis and needs daily treatments, including medications for the remainder of his life. He has muscle wasting in his hind and chronic pain where his bone atrophies. His arthritis will become progressively worse and he will likely need treatment for long term pain control such as physiotherapy and water therapy.
- The dogs had overgrown nails. Some were overweight and others, underweight, which suggests that they ate food from the same pile.

- Hoarding environments are dangerous for dogs because they can be crushed or injured. The Williams Street house had piles of items that were not secured and broken glass on the ground.
 - There are large gaps in the fence and extensive digging in the yard, which indicates the dogs were not receiving enough enrichment or interaction with the Appellant.
59. Dr. van Haaften provided general comments on the dogs' behaviour. She stated:
- The dogs were abnormally fearful on intake and all had to be muzzled. It is unusual to see five dogs display this behaviour. She believes this was the result of a lack of socialization. While in Society care, the dogs have all warmed up significantly with new people.
 - If a dog is chronically uncomfortable, the dog will anticipate pain. Therefore, if someone pets the dog, the dog may associate touch with pain even after the pain has been alleviated. It can take a long time to remove this behavioural association.
 - Chronic stress and fear negatively impact a dog's welfare and can lead to chronic skin conditions and cardiovascular issues.
60. Dr. van Haaften again expressed grave concerns about the impact of the living conditions on the birds and stated:
- The birds were underweight. Some had overgrown beaks, which suggested they were fed an inappropriate diet. When birds eat an appropriate diet, their beaks wear down naturally.
 - The birds lacked enrichment.
 - The birds lived in stressful conditions. Some bird cages were sitting on top of precarious piles and could easily fall to the ground. Other bird cages were almost buried in the piles of garbage and clutter. Birds do not like to live in a cave-like environment.
 - Birds are very sensitive to poor air quality.
61. Dr. van Haaften stated there is no acceptable level of ammonia and at most, ammonia levels should not exceed 2 parts per million (**ppm**). According to the ammonia test strips, the ammonia levels ranged from 10 to 20 ppm in the Williams Street house. Dr. van Haaften stated that high ammonia levels can impact the overall welfare of animals, including the eyes, nose and air passages.
62. Dr. van Haaften concluded by stating, "Past behaviour is a predictor of future behaviour." She stated that most people would have noticed the dogs' medical issues.

63. The Appellant did not ask any meaningful questions in cross-examination to Dr. van Haften. Instead, the Appellant treated her testimony as an opportunity to take notes.

SPC Christine Carey

64. SPC Carey has had an extensive history with the Appellant. She has responded to numerous animal cruelty complaints against the Appellant in multiple municipalities since 2005. She stated that previous complaints had a “*common theme*”. The animals were living in extremely hazardous, dangerous, and unsanitary conditions. The animals lacked basic care and always needed grooming, flea treatment, nail trimming and treatment for other serious issues. Each complaint usually involved about five dogs, multiple birds and some cats.
65. In a previous complaint, the Appellant’s house had a mass of insects. Although the Appellant was not bothered by it, the dogs had to be moved very carefully. In other complaints, dead animals were found among the living. In the Williams Street house, Constable Tomkinson thought there were human remains because of the foul smell but this was not the case.
66. SPC Carey’s testimony about this seizure was consistent with that outlined in her ITO. Since this information is already set out above in the section, “Events Leading Up to the Seizures”, it is not necessary to repeat it here. Her observations and action taken are described in paragraphs 18 to 36 above.
67. SPC Carey testified about her visit with the Appellant on November 29, 2020 at the Williams Street house. She provided the following additional observations, which supplement her ITO, on that day:
- Given her prior experience with the Appellant, she knew immediately that she was at the Appellant’s house.
 - She saw and smelled human feces. There was no access to the only toilet and shower because it was necessary to navigate through debris.
 - She smelled rotting food. The kitchen sink was not usable and the bucket of water for the dogs was unacceptable.
 - She was surprised the Appellant was only in the Williams Street house for two years because the house was vacant before she moved in. It now looked like a landfill and there was no suggestion that the Appellant was moving.
 - The Appellant was very sad and wanted her dogs returned to her.
68. The Society stopped issuing notices to the Appellant in 2014 because notices alert owners that their animals are in distress and must take certain steps to alleviate that distress but given the Appellant’s pattern, the Society did not consider her capable of taking the necessary steps to relieve distress.

69. When SPC Carey arrived to execute the warrant on December 1, 2020, she observed the following:
- The Appellant was not home when the execution of the warrant began.
 - The kitchen fixtures were covered in cobwebs. The fridge was not in use and there were broken dishes and rotting food. The ammonia reading in the kitchen was 10 to 20 ppm.
 - In the dining area next to the kitchen, there were three bird cages on the floor, in and around garbage. One cage was almost completely on its side. Her biggest concern was that the cages were in the path of predator animals.² The ammonia reading in the dining area was 10 to 20 ppm.
 - The bathroom was filthy and had feces around and on top of the toilet. The ammonia reading was 10+ ppm.
 - The living room floor was covered with rotting food, feces, empty cat food containers and debris. There was a rolled-up rug, which the cat was using as a litter box. The ammonia reading in the living room was 10 to 20 ppm.
 - There were two bedrooms on the upstairs floor. The first bedroom had an unusual number of Benadryl boxes, a broken window, garbage, a bare mattress on the floor, cat feces and urine. She also found a cat that was later dropped off at the animal hospital. The ammonia reading in the bedroom was 10+ ppm.
 - The other bedroom was clean and had a few suitcases.
70. The Appellant arrived while the warrant was being executed. SPC Carey talked to the Appellant about her health and well-being. SPC Carey obtained funding from the Society so that the Appellant could meet with Dr. Bratiotis.
71. SPC Carey stated that the Appellant loves her animals, but the Appellant's pattern of behaviour has not changed – the animals are in distress and living in an unsanitary and unhealthy environment. Each time, the Appellant makes plans to change but only after the intervention. SPC Carey did not think it would be in the best interests of the seized animals to return them to the Appellant.
72. The Appellant acknowledged to SPC Carey that she needs help and wants SPC Carey to conduct *ad hoc* visits should the seized animals be returned to her. The Appellant was emotional at this point of the hearing.

² The Appellant had at least one cat, which she surrendered during the hearing.

IX. Analysis and Decision

73. Part 2.1 of the *Act* establishes the standards of care for animals and establishes a duty on those responsible for animals to ensure those standards are met:
- 9.1** (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.
- (2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.
- 11** If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal
- (a) does not promptly take steps that will relieve its distress, or
- (b) cannot be found immediately and informed of the animal's distress, the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.
74. 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.
75. 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 animals before determining the animals are in distress. A medical finding that animals are injured or in pain is not required to conclude the animals are in distress. The definition of distress is intended to be protective and preventative. It does not require proof of actual harm; rather, it describes those circumstances that create a significant risk of harm to animals and should be avoided. When these circumstances are not avoided and conditions place animals at sufficient risk, the *Act* provides they can be protected.
76. Once the panel determines the animals were in distress at the time of seizure, the panel must then decide whether it is in the best interests of any or all of the animals to be returned to the owner’s care.

Seized Animals

77. The evidence is overwhelming that the seized animals were being kept in conditions that were unsanitary and unsafe. They were exposed to feces, dirt, garbage, rotting food, clutter, broken glass, fleas, to name a few. They were also exposed to unhealthy levels of ammonia, which indicates the seized animals were likely deprived of adequate ventilation. In fact, the Appellant closed access to the dog door a few months after she moved into the Williams Street house. The seized animals were further deprived of adequate care and veterinary treatment as well as neglected.
78. The photographs and video provide proof of the unhygienic living conditions. The testimony of the Appellant and SPC Carey as well as the statements in the ITO of APO Meyers, the two CARE ACOs and Constable Tomkinson paint a picture that the seized animals were not only living in conditions that would generally cause distress but were in fact in actual distress at the time their seizure.
79. The Appellant herself described her living conditions as “*pretty disgusting*” and that she understood why the seized animals were taken from her.
80. Dr. van Haaften testified about how the living conditions negatively impacted the health and welfare of the seized animals as noted in paragraphs 58 to 61 above.
81. Some of the medical issues of the seized animals at the time of seizure are summarized as follows:
 - The dogs were all infested with fleas with visible flea dirt in their fur as well as severe pruritus causing discomfort and requiring immediate treatment.
 - The dogs all had matted fur that smelled of feces and urine and had overgrown nails.
 - The dogs had hot spots and skin infections requiring antibiotic treatment. Some had growths on their bodies.
 - Two dogs had ear infections.
 - Four dogs had various degrees of dental disease. One dog required emergency dental treatment to alleviate his pain.
 - One dog has arthritis and requires ongoing treatment.
 - The birds were underweight, with some having overgrown beaks and claws.
 - All of the seized animals were exposed to dangerous levels of ammonia.
 - Most of the seized animals were shy, fearful, or both. One dog displayed aggressive behaviour when initially seized.
82. The Panel concludes that the seized animals were all in distress at the time they were seized and it was appropriate for them to be taken into custody.

Return of the Seized Animals

83. Having determined the seizure was justified, the Panel must consider whether it is in the best interests of the seized animals to be returned to the Appellant.
84. The courts have considered the legislative framework of the *Act*. In *Eliason v SPCA*, 2004 BCSC 1773, Mr. Justice Groberman (as he then was) stated:
- The scheme of the Act clearly is designed to all the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of.
85. In *Brown v. BCSPCA*, [1999] B.C.J. No. 1464 (S.C.), the court explained:
- The goal and purpose of the act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as the Plaintiff's counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in distress in the first place, the court must be satisfied that if the animal is returned to the owner, it will remain [in] the good condition in which it was released into its owner's care.
86. The main matter in question is whether the Appellant is capable of providing adequate care for the seized animals. The onus is on the Appellant to show that their return is justified.
87. In considering this question, the Appellant's history is relevant. The Panel takes notice of the Appellant's glaring and repetitive pattern of behaviour with her animals. Her previous complaints, two of which led to the Historical Decisions, involved multiple animals found in deplorable, unhygienic and unsafe living conditions while lacking proper veterinary care. Then, as soon as the animals are seized, she makes promises to the Society that she would change her living conditions and make the medical needs of her animals a priority, but as history repeats, this change never happens for any sustained period of time.
88. The panel in the 2014 Decision commented on the Appellant's pattern of behaviour. At paragraph 93, she stated, in part:
- [... I should note that I do not find it necessary to provide the Appellant with an opportunity to improve her situation to allow any return of the Animals. **The Appellant has proven to me that she is unable to change the unsanitary condition of her home, as evident with her history, and is unable to recognize when to seek veterinary care**, as evident with her Mastiff and Kuvasz. [Emphasis added.]
89. In the 2016 Decision, the panel wrote the following in paragraph 24:
- The history is important to the Society. It takes the view that this Appellant has had animals removed on more than one occasion, and emphasized the statement in the October 14, 2014 decision that the Appellant seems

“unable to change the unsanitary condition of [your] home ...and unable to recognize when to seek veterinary care.” Ms. Moriarty states in her written reasons that she finds that she is repeating verbatim what she had written in her last decision in 2014, and that this is at least the 16th time that the Society has been involved with the Appellant’s animals and the Appellant has given her no reason to believe that somehow this time things would be different. Ms. Moriarty also states that she has significant concerns regarding the Appellant’s ability to limit the number of animals in her care to an appropriate number that she can adequately provide this proper level of care for. **“Again, within just over a year (she had) acquired 6 more Animals and again, there have been concerns with the living conditions and veterinary care provided to these Animals. This is a pattern that cannot be ignored.”** [Emphasis added.]

90. Indeed, this is a pattern that cannot be ignored. There is no doubt the Appellant loves the seized animals but the last sentence in the 2016 Decision summarizes her love best. It states: “Her love for her animals has thus far proven to be destructive to those animals.” The same rings true today. Loving animals requires taking action, including providing a clean and hygienic living environment, taking a dog to be examined by a veterinarian when the dog is scratching excessively, or when it is slow to get up when lying down, or when it is compulsively shaking his head and scratching his ears, or when it has hot spots or is developing a large fluid pouch under its chin. The Appellant acknowledged in her testimony that her living conditions were disgusting and she noticed her dogs displaying the behaviour described in this paragraph. Although she has sought veterinary treatment in isolated instances, as described in her submissions about Sam, that is not good enough and did not prevent her seized animals from being in pain and suffering. Sam, for example, needed emergency dental surgery, had a large fluid build-up under his chin and showed signs of chronic inflammation.
91. Given her complaint history and the evidence presented in this appeal, the Panel is not at all convinced that the Appellant is capable of providing the care the seized animals need at this time despite her testimony that she will make their medical needs a priority. Dr. van Haaften’s concluding statement that “past behaviour is a predictor of future behaviour” was impactful. SPC Carey’s testimony that the Society stopped giving distress notices to the Appellant in 2014 because the Appellant proved she was incapable of carrying out the necessary changes was also very telling. The Appellant, who is 70 years old, is only now taking positive steps to receive treatment for her hoarding, PTSD and depression. These are mental health issues that require time, often years to overcome. The Appellant acknowledged she struggles to “*get up and do things*” and finds some days “*hard*”.
92. The Appellant has only lived in the Chilliwack house since the end of November 2020 without the seized animals. The added fear is that the Appellant will transform the Chilliwack house from an empty house to one looking like a landfill, as history has shown. This happened in only two years at the Williams Street house.

93. The Appellant stated in her email of December 18, 2020 that there has been approximately five years between “*situations*” and that she “*deserves some credit*” for this longer stretch of time between complaints. The Panel wishes to emphasize that nobody deserves credit for allowing animals to fall into any type of distress.
94. The Appellant asked the Society to conduct *ad hoc* visits of her and the seized animals if they are returned to her. The *Act* puts a positive obligation on owners to care for their animals. It is not the Society’s role to monitor animal owners such as the Appellant.
95. At the close of the hearing, the Appellant asked at what point does she receive a second chance. It would appear that she has been given many chances. The Society has investigated her for 22 complaints as stated in the Review Decision. The Appellant also acknowledged in her submissions that she realized “*this ‘situation’ is a ‘repeat’ of prior ones by me...*”.
96. Overall, the Appellant failed to provide any convincing evidence that the seized animals should be returned to her. In her closing statement, she mentioned buying a couple of air purifiers to keep ammonia levels down and keeping the Chilliwack house cleaner. Although the Appellant told the Panel that she has been doing housework at the Chilliwack house, she responded in cross-examination that she has been looking for someone to help her but had not yet found anyone. Air purifiers and the hope of help with housework are not enough to convince the Panel that it would be in the best interests of the seized animals to be returned to the Appellant.
97. It seems apparent that the Appellant simply does not have the ability to provide the seized animals with adequate care given her own mental health issues and limitations at this time. In the Panel’s view, the seized animals are all at a very real risk of falling into distress if they are returned to the Appellant. Dr. van Haften also expressed grave concerns about returning them to the Appellant. Therefore, in the best interests of the seized animals, the Panel is not prepared to return them to the Appellant.
98. This decision is undoubtedly heartbreaking for the Appellant. However, the Panel encourages the Appellant to seek the treatment she needs to improve her own well-being and commends SPC Carey for making arrangements for the Appellant to see Dr. Bratitotis.

X. Order

99. Pursuant to section 20.6(b) of the *Act*, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the seized animals.

XI. Costs

100. The Appellant made no meaningful submissions about the reasonableness of the Society's costs. She only stated that the Society has the money to pay for them. The Presiding Member finds the Society's costs are reasonable, and confirms, pursuant to section 20(6)(c) of the *Act*, that the Appellant is liable to the Society for **\$9,563**. This includes the cost of care for the cat since the Appellant only surrendered the cat at time of the hearing.

Dated at Victoria, British Columbia this 17th day of February, 2021.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Harveen Thauli, Presiding Member

Appendix A

Exhibit #	Date (Received)	Received from	Document
Exhibit 01	2020-12-31	BCSPCA	BCSPCA Decision
Exhibit 02	2021-01-02	Appellant	Andrusek (NOA) Notice of Appeal
Exhibit 03	2021-01-05	Appellant	Appellant attachment to Appeal Form
Exhibit 04	2021-01-08	BCFIRB	Filing fee receipt
Exhibit 05	2021-01-06	BCFIRB	NOA Process Letter
Exhibit 06	2021-01-14	BCSPCA	BCSPCA LT all encl document disclosure
Exhibit 07	2021-01-14	BCSPCA	BCSPCA Initial Document Disclosure pg. 1 – 409
Exhibit 08	2021-01-14	BCSPCA	BCSPCA Initial Document Disclosure pg. 410 – 821
Exhibit 09	2021-01-14	BCSPCA	BCSPCA Tab 9 – 2020.12.01 Videos by JLM
Exhibit 10	2021-01-22	Appellant	Appellant's January 21, 2021 response
Exhibit 11	2021-01-22	Appellant	Appellant DOC
Exhibit 12	2021-01-22	Appellant	Appellant DOC000
Exhibit 13	2021-01-22	Appellant	Appellant DOC001
Exhibit 14	2021-01-22	Appellant	Appellant DOC002
Exhibit 15	2021-01-22	Appellant	Appellant DOC003
Exhibit 16	2021-01-26	BCSPCA	BCSPCA LT all encl submissions
Exhibit 17	2021-01-26	BCSPCA	BCSPCA Doc. Disclosure- updated index
Exhibit 18	2021-01-26	BCSPCA	BCSPCA Submissions
Exhibit 19	2021-01-26	BCSPCA	BCSPCA Document Disclosure, Tabs 33-38
Exhibit 20	2021-01-26	BCSPCA	BCSPCA Affidavit of Marcie Moriarty

Exhibit #	Date (Received)	Received from	Document
Exhibit 21	2021-01-26	BCSPCA	BCSPCA Expert Witness Form
Exhibit 22	2021-01-26	BCSPCA	BCSPCA Witness Contact Form
Exhibit 23	2021-01-29	Appellant	Appellant Jan 29, 2021 FIRB submission
Exhibit 24	2021-01-29	Appellant	Appellant Photos of 9456 Nowell Street, Chilliwack, BC.
Exhibit 25	2021-02-01	BCSPCA	Additional veterinary records