

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:**

TAMARA CURRALL

**APPELLANT**

**AND:**

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

**RESPONDENT**

## **DECISION**

**APPEARANCES:**

For the British Columbia Farm Industry  
Review Board:

Pawan Joshi, Presiding Member

For the Appellant:

Tamara Currall

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

January 26, 2021

Location of Hearing:

Teleconference

## Introduction

1. The Appellant, Tamara Currall resides at Manca Place in Ladysmith, British Columbia (the "Property"). The dog that is the subject of this appeal is a 9-year-old Husky Malamute/Pyrenes type male ("Hector").
2. The Appellant resides with her four children. The Appellant recently separated from her husband Dan Currall, who is no longer living at the Property.
3. On November 24, 2020 the BC Society for the Prevention of Cruelty to Animals (the "Society") executed a warrant and seized Hector from the Property.
4. The Appellant disputed the seizure and the Society issued its review decision on December 17, 2020, outlining its reasons for the seizure and for its decision not to return the animal (the "Review Decision").
5. The Appellant is appealing the Review Decision which upheld the seizure and the decision not to return Hector pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (PCAA).
6. Section 20.6 of the PCAA permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society, in its discretion to destroy, sell or otherwise dispose of the animals. Under the PCAA, appeals to BCFIRB 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 at paragraph (24):

*"Courts of law are focused on the law and legal principles. BCFIRB appeals are broader than that. There are no limits on the grounds of appeal. BCFIRB has been given broad evidentiary and remedial powers on appeal. While the legislature could have created an appeal or review "on the record", it has not done so here. Instead, the legislature has gone the other way in these reforms. It has given BCFIRB extensive evidence-gathering powers, some of them to be used proactively. It has made the Society "party" to appeals, and it requires the Society to provide BCFIRB "every bylaw and document in relation to the matter under appeal" (s. 20.3(4)), which will in many cases be much broader than the record relied on by the reviewing officer. Included in BCFIRB's powers is s. 40 of the Administrative Tribunals Act: "The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law."*
7. This appeal was held by teleconference on January 26, 2021 and was recorded.
8. The Appellant represented herself, testified, and called Eric Masse, James Tyler Cowell, Lynn Cowell and Sherry Conly as witnesses.

9. The Society was represented by counsel and called two witnesses, a veterinarian Dr. Ken Langelier and Special Provincial Constable (SPC) Toni Morrison. The Panel accepted Dr. Langelier as an expert witness.
10. For reasons outlined below, the Panel orders that Hector be returned to the Appellant on conditions. The Panel finds the Appellant liable to the Society for costs of care of Hector, in the amount **\$1,909.10**, this being part of the veterinary costs incurred by the Society as well as part of the costs associated with the seizure, housing, care and feeding of Hector.

**I. Preliminary Matters**

11. The Society requested that the dispatch notes from ShelterBuddy be included in its disclosure. These notes were not included in the Society’s disclosure package, but were provided to BCFIRB and the Appellant via email dated January 22, 2021. The Appellant objected to admission of these documents, but did not provide any basis for the objections. The Society submitted that almost all of the information contained in these notes was either:
  - (a) previously provided in another form (e.g., the notes contain copies of emails provided separately);
  - (b) contained in the ITO; or
  - (c) was correspondence between the Appellant and SPC Morrison.
12. The Panel considered the position of the parties and made a ruling to include the dispatch notes from ShelterBuddy as part of the Society’s disclosure. These notes and the email from the Society’s counsel dated January 22, 2021, were collectively marked as Exhibit 20.

**II. Materials submitted on this appeal**

13. The following documents were accepted as Exhibits:

<b>Exhibit #</b>	<b>Date (Received)</b>	<b>Received From</b>	<b>Document</b>
Exhibit 01	Dec 17, 2020	BCSPCA	BCSPCA Decision
Exhibit 02	Dec 21, 2020	Appellant	Notice of Appeal (NOA)
Exhibit 03	Dec 23, 2020	BCFIRB	Filing fee Receipt
Exhibit 04	Dec 24, 2020	BCFIRB	NOA Process Letter
Exhibit 05	Jan 7, 2021	BCSPCA	BCSPCA Initial Doc Disclosure Cover Letter
Exhibit 06	Jan 7, 2021	BCSPCA	BCSPCA Initial Doc Disclosure Tabs 1 - 26
Exhibit 07	Jan 7, 2021	BCSPCA	BCSPCA Tab 24 (2 videos)

Exhibit #	Date (Received)	Received From	Document
Exhibit 08	Jan 11, 2021	Appellant	Appellant – Reference Statement -Chase River Vet Hospital
Exhibit 09	Jan 18, 2021	Appellant	Appellant Written Statement #1
Exhibit 10	Jan 18, 2021	BCSPCA	BCSPCA Written Submissions
Exhibit 11	Jan 18, 2021	BCSPCA	BCSPCA Affidavit of Marcie Moriarty
Exhibit 12	Jan 18, 2021	BCSPCA	BCSPCA Expert Witness Form
Exhibit 13	Jan 18, 2021	BCSPCA	BCSPCA Witness Contact Form
Exhibit 14	Jan 18, 2021	BCSPCA	BCSPCA Reply Submissions Cover Letter
Exhibit 15	Jan 18, 2021	BCSPCA	BCSPCA Doc Disclosure Tab 27
Exhibit 16	Jan 18, 2021	BCSPCA	BCSPCA Updated Document Disclosure Index
Exhibit 17	Jan 19, 2021	Appellant	Appellant – Reference Statements (8)
Exhibit 18	Jan 20, 2021	Appellant	Appellant – Photographs (22)
Exhibit 19	Jan 20, 2021	Appellant	Appellant Written Statement #2
Exhibit 20	Jan 22, 2021	BCSPCA	Dispatch notes from ShelterBuddy

### III. Events leading up to the seizure

14. The Information to Obtain a Search Warrant prepared by SPC Toni Morrison outlines the Society's involvement with the Appellant, which appears under Tab 6 of Exhibit 6.
15. As per Exhibit 20, the ShelterBuddy dispatch notes, the Society's history with the Appellant dates back to 2013 as follows:
  - (a) **Complaint #1:** On July 29, 2013, the Society received a complaint. On July 30, 2013, SPC Morrison issued an Order 019806, which required the Appellant to provide appropriate shelter and a dog house large enough for Hector. After investigation, the Order 019806 was concluded by SPC Morrison on August 9, 2013 with the comments that the Appellant complied with the Order.
  - (b) **Complaint #2:** On October 3, 2013, the Society received another complaint. On October 4, 2013 SPC Morrison issued an Order (Tab 14 of Exhibit 6), the order number is not clear. The Appellant was ordered to provide a separate running line for Hector, where he could not get tangled and to move the dog house. It was also recommended that the Appellant should put straw bedding in the dog house. After investigation, the Order dated October 4, 2013 was concluded by SPC Morrison on December 2, 2013 with the comments that the Appellant complied and moved the dog house to where it was accessible for Hector on his tether.

- (c) **Complaint #3:** On September 27, 2019, the Society received a complaint that Hector was tied on a chain for the past several years, that he did not have access to consistent food or water, and that he looked extremely thin, dirty and wet. Hector was found laying down and could barely lift his head when called. On October 16, 2019, SPC Morrison issued distress notice B23265, in which the Appellant was asked to provide a sufficient quality of suitable food, the necessary veterinarian care, and to take Hector to the vet and to follow all recommendations. She was also advised again to provide straw bedding for the dog house. SPC Morrison worked with the Appellant and her husband Dan Currall to address the concerns outlined in the distress notice. SPC Morrison further investigated, and the distress notice B23265 was concluded on January 7, 2020.
- (d) **Complaint #4:** On August 29, 2020, the Society received another complaint that there was no food for Hector, that he was neglected and that he was shackled to a tree 24/7 by a thick collar. Hector was described as shedding a lot and was very skinny. The Society received two concerning pictures of Hector. On September 1, 2020 SPC Morrison commenced an investigation. That same day SPC Morrison issued a distress notice B23348, asking the Appellant to provide sufficient quantity of suitable food, to ensure that Hector's coat was free of matting and/or debris, to provide necessary veterinary care and to follow all veterinary recommendations.
16. In following up on Complaint #4, SPC Morrison called the Chase River Veterinary Hospital (the "Hospital") and talked to Dr. Rogers, who confirmed that Hector was last seen at the Hospital on November 15, 2019. The Appellant took Hector to the Hospital on September 11, 2020. SPC Morrison talked to Dr. Rogers on September 14, 2020, who advised that Hector was lean, but that he had been dewormed and vaccinated, and that a further exam was booked for October 5, 2020.
17. On October 5, 2020, Dr Rogers rechecked Hector and noted he had lost a small amount of weight since his last exam of September 11, 2020. Dr. Rogers recommended that lab work should be done to determine the cause of Hector's weight loss and explained to the Appellant that if the issue was a primary gastrointestinal then further tests including an ultrasound may need to be done. Dr. Rogers wrote a letter dated January 7, 2021, for this hearing, which was marked as Exhibit 8. In that letter Dr. Rogers states:

*"Unfortunately the owner was not in a position to be able to afford the labwork or other diagnostics at that point. At no point was I concerned about Hector's quality of life or in any way considered him to be in any type of distress. I realize that I am only seeing a small piece of the puzzle when I see Hector at our hospital, but wanted to pass along my view."*

18. On October 26, 2020, SPC Morrison talked to Dr. Rogers, as per the ShelterBuddy notes from that date:

*“Call from Dr. ROGERS, Chase river vet, who stated Hector had lost weight when he returned for recheck and dr is concerned there may be something underlying going on with the dog. Would like to start with doing blood work next and possibly x-rays. Stated dog’s heart is quiet for a large skinny dog. Dog is too skinny and O had only given dewormer just before recheck app, which should have been given when dispensed at first appointment. 37.7 kg. Stated hair is now growing back and no evidence of fleas. I advised I would contact O and advised to follow dr. recommendations. TM”*

19. On October 26, 2020, SPC Morrison issued another distress notice B29642, which requested that the Appellant take Hector to the veterinarian and provide the necessary veterinary care including following all recommendations regarding blood work, x-rays and other diagnostic testing to relieve his distress. SPC Morrison gave the Appellant two weeks to address the concerns.
20. On November 3, 2020, SPC Morrison called the Hospital and she was advised that no appointment for Hector had been booked after the October 5, 2020 appointment. On November 9, 2020 SPC Morrison sent a text to the Appellant with the distress notice B29642. On November 18, 2020, SPC Morrison again called the Hospital, and she was advised that no appointment for Hector had been booked.
21. On November 23, 2020, SPC Morrison talked to the Appellant and asked the Appellant to provide an update on veterinary treatment for Hector. The Appellant stated that she had not undertaken the recommended treatment, because she was saving money for the blood work. At that time, the Appellant had no follow up appointment booked for Hector at the Hospital.
22. On November 24, 2020, SPC Morrison obtained a warrant for the seizure of Hector and executed it on the same day with the assistance of an RCMP officer. At the time of seizure, SPC Morrison took pictures of Hector and his living conditions. The Appellant was not present at the Property when Hector was seized.

#### **IV. Review Decision**

23. On December 17, 2020, Marcie Moriarty, Chief Prevention and Enforcement Officer for the Society issued the Review Decision. In that decision, she identified that her role was to review the evidence respecting the seizure of Hector and to decide whether it would be in Hector’s best interests to be returned to the Appellant.
24. Ms. Moriarty reviewed the following file history:
- Warrant and ITO,
  - Notice of Disposition,
  - Notice B29642,
  - Island Animal Hospital invoice,

- Various photos,
- Historical Documents,
- Support Letters of Teresa Bagshaw and Liz Hankey, and
- Various email submissions.

25. Ms. Moriarty concluded that SPC Morrison, an authorized agent of the Society, reasonably formed the opinion that Hector was in distress, that the appropriate course of action was to take custody of Hector in order to relieve his distress, and that Hector's seizure took place in accordance with the PCAA.

26. Ms. Moriarty further noted that the Appellant had two other dogs and strongly recommended that the Appellant should direct her attention and funds to the remaining animals left in the Appellant's care. Ms. Moriarty concluded:

*"I appreciate your heartfelt submissions and am sorry that you have recently gone through a difficult time with your partner. I am happy to hear that your personal situation seems to be improving. I also read each of your submissions about how much you care for Hector. However, I do struggle with the picture you paint of Hector's life with him and the one I observed in the photos and is evidenced by the history of complaints. I simply do not feel that you are equipped right now to provide what Hector needs. I understand that you have two other dogs and I strongly recommend that you direct your attention and funds to the remaining animals that have been left in your care. These dogs apparently live in the house with you and the children and so I hope that all of the love and attention can be focused on these dogs. I would encourage you to use this as a learning opportunity around what a dog, be he large or small, requires to have even his basic minimum needs met – which was not consistently the case for Hector."*

27. The Appellant filed her appeal with BCFIRB on December 21, 2020.

## **V. Key Findings of Fact and Evidence**

### ***Appellant's Evidence***

28. The Appellant testified on her own behalf and called four witnesses; Eric Masse, James Tyler Cowell, Lynn Cowell and Sherry Conly.

### **The Appellant's Direct Examination:**

29. The Appellant stated that Hector should be returned to her care and that Hector was not in distress at the time of the seizure. She stated that Hector is an inside/outside dog and that they did not have any knowledge regarding his breed before they got him. She noted that Hector was an "escape artist" and that he had escaped from the Property several times and that they had put up fences to try and keep him from escaping. The Appellant stated that she regularly took Hector for walks without a leash for many hours and that she had spent hundreds of dollars on Hector.

30. The Appellant noted that she is going through divorce proceedings and that she has spent close to \$15,000 on lawyer's fees which has affected her ability to pay for Hector's care. She noted that she still has debts associated with her divorce proceedings but that she is putting aside money specifically for Hector's care.
31. The Appellant stated that Hector was loved by the Appellant's children, her friends and the dog walker. She described Hector as a loving, loyal and gentle dog.
32. The Appellant claimed repeatedly that Hector was not in distress at the time of seizure. She noted that Hector was very much loved and that he was always with the Appellant. She stated that when he escaped, he would always return home by dinner time. She also described her efforts to find him at shelters after he was seized.
33. The Appellant noted that she gave Hector deworming medicine the night before he was taken and that she had fed him as well. The Appellant argued that her willingness to take Hector to the veterinarian demonstrated her ability to care for him and that she had followed the veterinarian's recommendations on food for Hector.
34. The Appellant noted that she has a good relationship with her veterinarian and that the vet has stayed many times after hours to update her on Hector. She stated that her veterinarian has no concerns with respect to Hector's care and that she is prepared to continue feeding him the type of food that he is currently receiving in the Society's care.
35. The Appellant gave evidence that she is no longer a shift worker and as a result she will be at home more regularly and will be better able to care for Hector. She stated that in the event she cannot care for Hector then she will make arrangements with her mother.

The Appellant's Cross Examination:

36. Under cross examination the Appellant testified that Hector was eight weeks old when she got him and that he is now nine years old.
37. She stated that Hector's mother was a husky and his father was a pyrenees. The Appellant did not research Hector's breeds before she took him in. She later discovered that Hector's father was very well behaved, but his mother had lived on a 25-acre farm and would often escape. She also noted that Hector had not initially tried to leave the Property but had later started escaping at which time they fenced the Property.
38. The Appellant acknowledged that her neighbors complained about Hector and that she had a difficult time keeping him in the yard. She had tried keeping him on a chain but he would still escape if he managed to get free of the chain. He began escaping when he was approximately three years old and the last time that he had



escaped prior to the seizure was approximately six months earlier. She noted that in November of 2020 he had not escaped but that she had in fact let him off the Property. She stated that he had likely escaped more than 20 times and that in some cases he had ended up on the highway nearby the Property.

39. The Appellant stated that approximately a year before the seizure she had fenced her property to control Hector from escaping. She also kept Hector on a chain when she was not home and that he sometimes became entangled in the chain. She suggested that some of her neighbors may have cut Hector's chain in the past.
40. The Appellant noted that she had tried multiple times to protect him from running away and that she had even tried to rehome him once when another female dog was killed when they had both escaped and were caught in traffic on the highway. However, the Appellant was now confident that she had taken the steps necessary to protect him against further escapes from the Property.
41. The Appellant stated that she is working at the Procter Mill and her shift is on Monday to Thursday from 5:00 am to 3:00 pm. She has stopped working shift work as of October 2020 and her employer has told her that she does not have to do any further shift work. She noted that she is now working for CUPE, and that her salary is \$30 per hour. She stated that during her work hours her mother or her dog walker, Katie Saam would be able to care for Hector as needed.
42. The Appellant was asked about havanese puppies in her care and she stated that she does not have any other dogs currently in her care. She stated that the puppies witnessed by SPC Morrison and her neighbors at the Property were being shared with another person and that they were now entirely in that person's care.
43. The Appellant stated that her dog walker Katie Saam would come in the mornings to pick up Hector for walks but that she did not come after September or October of 2020 as the focus at that time was on trying to get Hector to gain weight.
44. The Appellant was asked to explain the neighbors' statements to the effect that Hector was chained outside almost all day. She said that she was a shift worker, but a lot of things have changed now. She also blamed her ex-husband for keeping Hector outside. When they were together it was their joint responsibility to look after Hector.
45. The Appellant was asked whether it was alright to keep Hector outside at night, and her response was that Hector liked to be outside. She also stated that she would have liked to have kept Hector inside but that her husband did not like Hector and was not bonded to him. She noted that her Husband is no longer allowed to attend at the Property and that he no longer has any role in caring for Hector.

46. The Appellant acknowledged that in September of 2019 Hector was sick and that she agreed with the veterinarian's concerns, but she could not recall when he became thin. She said that the reason she did not take him to veterinarian was because she was feeding him. Later on, when asked by SPC Morrison to take Hector to the veterinarian she complied. The veterinarian asked her to bring Hector back in in a week but she could not recall the dates. She also could not recall when SPC Morrison had issued the distress notice.
47. The Appellant recalled that Hector was examined by Dr. Gunther in November 2019 and was dewormed, but she could not recall whether blood work had been done at that time. She was questioned regarding Dr. Gunther's observations regarding Hectors' weight and muscle loss, but she could not recall discussing those issues.
48. The Appellant stated that she did not reattend at Dr. Gunther's clinic three weeks after the visit noted above as requested as she had been laid off and could not afford treatment.
49. The Appellant was asked whether Hector was sick, and she said yes and that she was worried after his last visit to the veterinarian, but she could not recall the date of that visit. She acknowledged that in November 2020, the vet was concerned that Hector might have cancer and asked for blood work to be done to determine if that was the case. The Appellant stated that she did not refuse blood work and that she was going to get it done but that the cost was \$280 and she was saving the money to pay for the tests.
50. The Appellant stated that she was previously paying \$30 per day to Katie Saam 3-4 days a week for taking Hector for walks. It was suggested to her that once Ms. Saam stopped taking Hector for walks in September 2020 she could have saved \$280 for the blood tests for Hector, but her response was that she was spending money on other things such as food.
51. The Appellant agreed that she was aware that she was ordered to take Hector to the vet by SPC Morrison, but she could not recall whether she had an appointment scheduled or not in September 2020. She agreed that in October 2020, Hector lost more weight.
52. The Appellant agreed that in November 2020, Hector was found thin. She stated that she was not sure whether Hector had any underlying health issues at that time. She stated that she does not doubt Dr. Langelier's report, but she found it surreal how he gained weight so fast. In any case, the Appellant stated that she is happy for Hector.
53. The Appellant was shown Hector's pictures from August 2020 and she agreed that Hector looked clumpy. She recognized that he was not brushed and she found these pictures concerning. She was shown recent pictures of Hector from the shelter and

she agreed that his coat looked fuller, that his body condition looked improved, but that he still looked thin.

54. The Appellant was asked whether she had a plan to deal with Hector's weight loss issues prior to the seizure. Her response was that he was not under distress, that she was giving him milk and that he always had food. She was also addressing the issue by providing him with puppy food which is higher in calories. She agreed that her efforts were not sufficient and she noted that she was also trying to control Hector's flea issue.
55. The Appellant was asked why she did not immediately book an appointment for Hector with the veterinarian when ordered to do so by SPC Morrison and she stated that difficulties in her personal life were taking priority at that time, but that she now has a protection order against her ex-husband and as such she would be able to ensure that Hector was properly cared for.
56. Given her difficulty in saving \$280 for Hector's blood work she was asked how she will attend to Hector's dental treatment, which could cost between \$1,000 to \$2,000. She stated that she will have a lot of money coming from Canada Child Tax Benefits and that she can borrow money. She was asked why she did not borrow \$280 when she needed it for Hector's blood work, and she said that at that time people were already helping her with her lawyer's fees.
57. The Appellant was asked what work she will need to do to her yard if Hector is returned to her care. She responded that she has already dug up a lot of things, that she needs to put down grass seed, but that she does not need additional funds to fix it.
58. The Appellant was asked about the dog house that she has for Hector. She stated that she has not built a new dog house yet but that she has bought bedding for Hector from Costco. She noted that Hector does not like bedding in his dog house and he would likely tear it up.
59. The Appellant was shown pictures of her yard, which were taken by SPC Morrison at the time of Hector's seizure. She said she has removed the hazardous items. She did not agree that she had a hard time keeping Hector outside and stated that she would have cleaned up his yard earlier but that she was in an abusive relationship at the time of the seizure.
60. The Appellant did not agree that she had failed to take proper care of Hector. She stated that Hector is an outside dog, and that he had food and water, and he was taken out for walks. She reiterated her belief that Hector was not in distress at the time of seizure and that she will do 'everything for him' if he is returned to her care.

James Cowell's Direct Examination:

61. Mr. Cowell stated that the Appellant is his sister, but that he does not see her on a regular basis. He noted that a lot of statements that he considers to be untrue have been made with respect to his sister's care for Hector.
62. Mr. Cowell noted that the Appellant loves Hector and hired a dog walker as she was busy with her four children. He described Hector as an affectionate and loving dog who is getting old and probably only has a few years left to live.
63. Mr. Cowell stated that the Appellant's circumstances have changed as a result of her divorce and that if anything needs to be built or done in the Appellant's yard, he will be happy to do it.
64. Mr. Cowell stated that the Appellant and her family need Hector as much as he needs the family and that he is confident that the Appellant will make the changes to Hector's diet and living circumstances that are necessary
65. He was not cross examined.

Lynn Cowell's Direct Examination:

66. Lynn Cowell is the mother of the Appellant. She testified that Hector was well loved and that the Appellant had changed his diet when vet asked her to change it. She noted that Hector got a lot of scraps from the dinner table and that he was getting a lot of exercise. She stated that Hector was the Appellant's running partner and hiking partner and that he appears to be a happy dog.
67. Ms. Cowell stated that the Appellant would have taken Hector to the vet if funding was available and that the Appellant had followed SPC Morrison's recommendations. As an example, Ms. Cowell noted that the Appellant had followed the recommendations with respect to providing different bedding for Hector, but that Hector did not like the bedding. She also noted that the Appellant is going through a divorce, and that as a result was not able to properly care for Hector.
68. Ms. Cowell reiterated that Hector is an inside and outside dog and that the Appellant had obtained a dog crate for Hector, so that she could put him in the back of her truck, to transport him when she went camping and day hiking.
69. Ms. Cowell noted that Hector often cuddled with the Appellant's kids, and that the Appellant kept him happy. She stated that as an older dog Hector should be able to come back to the home where he is happy and that the Appellant should not be found responsible for the Society's costs as she will be unable to pay as a result of her divorce.
70. Ms. Cowell was not cross examined.

Eric Masse Direct Examination:

71. Mr. Masse is a friend of the Appellant. He stated that Hector was well cared for and that he should be returned to the Appellant's care. He acknowledged that Hector had some health issues but that the Appellant would be able to address those issues if Hector was returned to her care, and that she had done her best to attend to Hector's health issues in the past.
72. Mr. Masse further stated that if he had to leave his dog with anyone, he would leave it with the Appellant and that it sometimes takes time for owners to follow all veterinary recommendations due to costs.
73. Mr. Masse was not cross examined.

Sherry Conly's Direct Examination:

74. Ms. Conly is a friend of the Appellant. She noted that the last time she went for a walk with the Appellant around the river, Hector was with them and that he was very energetic and happy. She stated that there were very loving people around Hector and that he was a dog that would prefer to spend a lot of time outdoors.
75. Ms. Conly stated that given Hector's age he should be returned home to the family that loves him. She noted that Hector was never mistreated and that he was never left alone or yelled at. She claimed that there were lots of animals in the neighborhood that ran around but that she never saw Hector running around the neighborhood. She acknowledged that he was skinny but she stated that he always had food.
76. Ms. Conly was not cross examined.

***The Society's Evidence***

77. The Society called called two witnesses, a veterinarian Dr. Ken Langelier and Special Provincial Constable (SPC) Toni Morrison.

Dr. Langelier:

78. Dr. Langelier was qualified by the Panel as an expert witness in veterinary medicine. Dr. Langelier has been practicing veterinary medicine for the last 39 years. He has worked extensively with the Society and has received an Order of British Columbia for initiatives that he has started concerning animal welfare.
79. Dr. Langelier examined Hector after the seizure and prepared a written report dated July 27, 2020 that appears at Exhibit 15. He confirmed that, inadvertently, there was a wrong date put on his report and that the report was prepared in January 2021.

80. Dr. Langelier confirmed that on a 1 to 9 scale, Hector's weight is now at a ranking of 5, which is ideal. Dr. Langelier noted that Hector had initially needed blood work and that he was quite concerned about Hector's weight and whether Hector had been given proper nutrition.
81. Dr. Langelier testified that there was no real indication after the physical exam as to why Hector was underweight. Several weeks after the seizure upon re-examination it was noted that Hector had gained significant weight by simply receiving improved nutrition. In fact, Dr. Langelier had not suggested any special diet, and just a normal, regular feeding schedule with standard food had resulted in the weight gain. Dr. Langelier stated that it was surprising to see such significant weight gain in just over a month where no underlying condition was the cause of the initial weight loss. Dr. Langelier stated that the main concerns were that Hector was not getting proper food, and that he was kept outside without proper shelter.
82. Dr. Langelier confirmed that Hector had lost weight over a considerable period of time. He noted that it is more concerning if a dog is underweight rather than overweight and that the amount of food varies after taking into account the temperature outside.
83. Dr. Langelier stated that in circumstances like these, blood work is beneficial to a veterinarian to determine the proper course of care, in addition to monitoring an animal's weight. Dr. Langelier further stated that blood work should have been done in this case, but at very least the Appellant should have provided Hector with the right type and amount of food which was apparently not the case. Hector immediately put on weight at the shelter with normal food on a normal schedule which demonstrated that no underlying health issues existed other than neglect.
84. Dr. Langelier testified regarding a greasy odor that emanated from Hector at the time of the seizure. Dr. Langelier stated that he was unsure as to the cause of the odor but that it, could have been something related to Hector's environment. He noted that Hector was generally exposed to things that were unhealthy for him but during the course of his stay at the shelter the odor had gone away and seemed to have no significant effect on Hector's overall health.
85. Dr. Langelier was further asked about Hector's coat. He testified that Hector's coat was not as bad as he had seen with other dogs that were kept outside and there was no indication of skin disease but that there certainly could have been better grooming and brushing.
86. Dr. Langelier was asked about Hector's dental disease. Dr. Langelier stated that Hector's back teeth were in good condition but that his front incisors and part of his canines were worn with most of the enamel gone. He noted that the cause of the damage could be excessive chewing either due to poor parasite control or boredom. This type of dental disease allows bacteria to get inside the teeth and as such Hector's teeth would be very sensitive. Dr. Langelier stated that he has seen many

dental reports like Hector's and that the right treatment would be either root canal or to remove the affected teeth. He stated that Hector's dental issues seemed to be long standing and that while medicine would reduce Hector's pain, he should receive proper dental treatment sooner rather than later. Dr. Langelier suggested that the cheapest option would be extraction under general anesthesia which could cost close to \$1,000. However, if a root canal is required then the cost could go up to \$1,900. Dr. Langelier further stated that Hector should have consistent parasite control that will limit his chewing due to itchiness. He also noted that bacterial infections in Hector's teeth could spread and damage other organs and undermine Hector's health generally.

87. Dr. Langelier testified that he did not attend at the property from where Hector was seized but that he had seen pictures. He noted that the dog house was not adequate as there was an opening in the back, which allows air to blow through the structure and means that it cannot remain heated. He further noted that the water arrangement was not adequate and that the area generally around Hector's dog house was not an appropriate environment. Dr. Langelier stated that it is fundamental for a pet owner to keep dishes clean and that a dog is provided with clean potable water.
88. Dr. Langelier was asked whether Hector's breed prefers to be kept outside. Dr. Langelier stated that if dogs like Hector have good food, proper shelter and their body weight is appropriate then there is nothing wrong in keeping them outside, however if they have low body weight and poor body condition like Hector then they should not be kept outside. Furthermore, Hector's lack of proper bedding and his inadequate shelter would have compounded his body weight issues as he would have been using a lot of energy in shivering to simply stay warm.
89. Dr. Langelier acknowledged that Hector's body condition had improved but that his shelter would still need to be rectified if he was going to be kept outside by the Appellant. He remained concerned that the dog house at the Property would not shelter Hector against the elements and that there may be other hazards around the Property for Hector. Dr. Langelier noted that in his experience dogs don't know that they are being neglected and that they are very forgiving even in instances of abuse.
90. In response to the comments made in support of the Appellant by Dr. Rogers, Dr. Langelier noted that Dr. Rogers is a good doctor but that she had a very limited view of the entirety of Hector's life and that if Dr. Rogers had seen Hector's living conditions then she would have seen that something was wrong and would have ordered blood work.
91. Dr. Langelier further noted that there were numerous complaints from the Appellant's neighbors and as such it appeared to him that the neglect of Hector had been going on for a long time. He observed that Hector was not provided good food, shelter, care, flea control etc. despite repeated instructions to do so from the Society

and that the failure to follow those instructions demonstrated an ongoing lack of care for Hector.

Dr. Langelier's Cross Examination:

92. The Appellant suggested to Dr. Langelier that Hector's teeth could have been damaged playing tug of war with another dog. Dr. Langelier responded that it might depend on how the dogs were playing but that he had never seen an instance where dental issues like Hector's were caused by playing of tug of war. He acknowledged that tug of war could impact the canine teeth, but that it would be rare for it to happen as dogs generally cannot pull with sufficient force to damage their teeth in that way. Dr. Langelier stated that his best estimation of the cause of Hector's dental issues was as a result of chewing to deal with the itchiness caused by fleas.
93. Dr. Langelier acknowledged that worm load could be responsible for some of Hector's weight loss.
94. With respect to Hector going out hiking for hours at a time, Dr. Langelier said Hector's movement was fine and that it is good to keep muscle mass in a dog. He noted that a dog will indicate to you if they cannot hike but that Hector seemed fine in that regard.
95. Dr. Langelier noted that the amount of food that a dog needs depends on a dog's activity level. Dr. Langelier could not give a number to monitor the weight but stated that the dog should not become over or under weight and that allowing a dog to become significantly overweight is also a form of cruelty.
96. As to why Hector's coat was greasy, Dr. Langelier stated that the odor was not from food, and the best cause in his estimation was some sort of exposure to grease or vehicle oil. He noted that it would be concerning if the source of the odor was on the Property and if some of the material had been ingested by Hector, but Dr. Langelier acknowledged that they did not determine the actual source of the smell.
97. The Appellant asked whether removing Hector's teeth would cause him to struggle eating food. Dr. Langelier testified that dogs have to eat to stay alive and that they manage the change even instances where they have multiple teeth removed.
98. The Appellant further suggested that Hector's weight loss could have been the result of the issues with his teeth insofar as he was afraid to eat hard food due to the pain that it caused. Dr. Langelier disagreed with that assertion.

Special Provincial Constable Toni Morrison's Direct Examination:

99. SPC Morrison stated that she has worked for the Society in her current role since 2013. Prior to being appointed as a special provincial constable she worked as a kennel manager with the Society from 2007. SPC Morrison relied on her notes which



were taken contemporaneously with the events concerning Hector and those notes were included in the appeal record as Exhibit 20.

100. SPC Morrison received the first complaint regarding Hector in 2013. In investigating the complaint, she attended at the Property and noticed that Hector was chained with no shelter. At that time the Appellant and her husband advised that they were having problems with Hector digging to get out of the yard. During the course of that investigation the Appellant and her husband provided a dog house to Hector and SPC Morrison explained that they would need to include proper bedding for Hector. The Appellant's husband took steps to provide shading for the dog house and SPC Morrison explained that they would need to ensure that Hector had access to and from the dog house and that his chain would not restrict his movement in that regard.
101. SPC Morrison noted that she attended at the property 4-5 times in 2013 but found it difficult to communicate with the Appellant and her husband or to get them to comply. The basic direction at that time was to improve Hector's living conditions.
102. In September 2019, the Society received a new complaint that Hector was being left without food and water, that he did not have access to his dog house, and that he was dirty. SPC Morrison followed up on the complaint and found that Hector was not in a critical situation however he was very thin. The Appellant explained Hector's body condition as being due to the fact that he was a picky eater.
103. SPC Morrison noted at that time that she could feel no padding around Hector's hip bones or spine and that he lacked muscle. SPC Morrison provided verbal direction for future care including ensuring that Hector was being properly fed and the proper manner to deal with fleas.
104. SPC Morrison attended at the Property on September 27, 2019 and gave the Appellant one week to take Hector to a veterinarian to review his body condition and overall health. In October 2019, SPC Morrison noted that Hector had not seen the vet since 2017.
105. On October 21, 2019, SPC Morrison called the vet to ask about Hector's treatment, but she found out there was no appointment booked for Hector, however the Appellant had booked an appointment for a dog named Ginger and her puppies. SPC Morrison issued a notice to the Appellant with respect to Hector.
106. On November 5, 2019, SPC Morrison called the vet clinic, however there was no appointment booked for Hector. She called again on November 14, 2019 and she was advised that there was an appointment booked for the next day. At that time there had been no improvement in Hector's condition and the Appellant advised that she did not have the financial resources to undertake any further veterinary care or tests for Hector.

107. At that time, SPC Morrison asked the Appellant to surrender Hector to the Society as it would allow the Society to attend to his care. The Appellant did not agree.
108. On November 21, 2019, SPC Morrison called the clinic, and was told that Hector had been examined by Dr Gunther who had recommended blood work, a diet change, deworming and a weight re-check in 3 weeks.
109. On December 18, 2019, SPC Morrison followed up with the Appellant, however there was no improvement in Hector's condition. On January 7, 2020 SPC Morrison followed up with the Appellant again and determined that Hector had improved sufficiently that she could conclude the file.
110. In August 2020, SPC Morrison received pictures of Hector as part of a new complaint and she was quite concerned. SPC Morrison attended at the Property where she met with the Appellant's mother. She found Hector to be very dirty and very thin. When Hector came to her, she ran her hand over him and found him to be thinner than previous years. SPC Morrison provided her business card and a notice to the Appellant's mother.
111. In September 2020, SPC Morrison left a message for Dr. Rogers regarding Hector. She was advised by the clinic that Hector had an appointment on September 11, 2020 and was booked for a re-examination on October 5, 2020.
112. After the October 5, 2020 appointment, Dr. Rogers advised SPC Morrison that Hector had lost weight since his last appointment of September 11, 2020 and that his heart was quiet for such a large dog. Dr. Rogers recommended blood work.
113. SPC Morrison followed up with the Appellant and confirmed that the Appellant had not taken Hector for blood work. SPC Morrison gave the Appellant some extra time and also gave her different options to assist the Appellant in dealing with Hector.
114. SPC Morrison obtained statements from the Appellant's neighbors and they were consistently frustrated with what was happening with respect to the Appellant's care of Hector.
115. On Nov 24, 2020, SPC Morrison obtained a warrant. She attended at the Property, with a police officer for the seizure. Hector was on the right side of the house, his dog house was falling apart and the yard was muddy and strewn with feces. His water was dirty. Hector was seized, and SPC Morrison took pictures of his living conditions at the time of removal that have been included in the record of these proceedings.
116. SPC Morrison determined that Hector was in distress at the time of seizure due to his poor body condition and his inadequate living conditions.

117. SPC Morrison noted that Hector's care at the Shelter initially included three meals a day which was subsequently reduced to two meals per day as his body condition improved. She further noted that the Nanaimo SPCA is a brand-new facility, not open to the public yet, and that it has long run yards and everything else that Hector needs. Hector walks three times a day in the shelter with the staff and is doing well.
118. SPC Morrison noted that she had received numerous statements from neighbors and that many were adamant that their information should be shared. She noted that this was fairly unusual as typically neighbors do not want their information shared as part of animal protection proceedings, however in this case people were very concerned for Hector's well-being.
119. SPC Morrison testified that she was concerned with respect to the Appellant's historic refusal to comply with basic directions to improve Hector's quality of life and that it was difficult to see how the Appellant would be able to provide basic care going forward. She noted that the Appellant had every opportunity to make the required changes that could have resulted in a different outcome. She noted the drastic change in Hector's health since he was brought into the Society's care. She described Hector as a happy dog with no underlying health issues. He was not a picky eater, he was in fact a heavy eater and the only cause of his health issues was the Appellant's neglect.
120. SPC Morrison advised that the Society's future plans for Hector are to put him up for adoption.

SPC Toni Morrison's Cross Examination:

121. The Appellant suggested that when Hector was seized, there was straw and pieces of bedding in his house. SPC Morrison agreed that there were some changes in Hector's housing and bedding, and with respect to how he was tethered between 2013 and 2019.
122. The Appellant suggested that she always spent money on Hector to provide better care and to protect him. SPC Morrison responded that she could not confirm what money had been spent by the Appellant on Hector's care but that she did not see any improvement in his living conditions or his body condition.
123. The Appellant questioned why the Society had not undertaken dental work for Hector immediately if he was in fact in distress. SPC Morrison stated that she could not answer that question as it is up to the vet that works for the Society to decide when dental work will be done on seized animals.

**VI. Analysis and Decision**

124. As outlined at the outset of this hearing, the Panel is tasked with addressing two primary issues:

- i. Were the animals seized, in this case one dog, Hector, in distress, and was the seizure justified; and
  - ii. Is it in the best interests of Hector for the Society to return him to the owner's care.
125. Part 2.1 of the *PCAA* establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:
- 9.1** (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.
  - (2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.
- 11** If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal
- (a) does not promptly take steps that will relieve its distress, or
  - (b) cannot be found immediately and informed of the animal's distress, the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.
126. The definition of "distress" is broad and 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.

### ***Distress***

127. The Panel has first considered whether Hector was in distress at the time of seizure.
128. The Appellant argues that Hector was not in distress. She describes Hector as happy, healthy and well fed. She suggests that he prefers to be kept outside and that she regularly goes on hikes with him or has a dog walker take him for walks. She notes that she had him dewormed the day before he was seized and that she took him to the vet and followed the vet's instructions as much as her finances would allow.

129. The Appellant's witnesses also confirmed that Hector was well loved and cared for by the Appellant and her family and that the Appellant has spent a lot of time and money on Hector's care.
130. Unfortunately, the Appellant's description of Hector does not align with the pictures that are part of this hearing record and the testimony of SPC Morrison and Dr. Langelier. The Appellant's witnesses, while obviously well intentioned, also do not provide an accurate description of Hector's health and his living conditions.
131. Hector's health improved almost immediately once he was properly fed and housed at the shelter without any other significant interventions in his care. The inevitable conclusion is that Hector was being neglected by the Appellant prior to the seizure and was clearly in distress at the time of seizure.
132. The Panel is satisfied that Hector was in distress at the time that he was seized. The Panel is also satisfied that the Appellant had been given every opportunity to relieve Hector's ongoing distress and that she had failed to do so. As such the Panel is satisfied that Hector's seizure by SPC Morrison was necessary and appropriate in the circumstances.

## **VII. Return of the Dog**

133. Having concluded that Hector was in distress at the time of seizure, the Panel now considers whether it is in Hector's best interests to be returned to the Appellant.
134. The courts have considered the legislative framework provided by the *PCAA*. In *Eliason v SPCA*, 2004 BCSC 1773 Mr. Justice Groberman (as he then was) stated:

*"The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of."*
135. In *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.) the court explained:

*"The goal and purpose of the act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as the Plaintiff's counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in the distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain [in] the good condition in which it was released into its owner's care."*
136. The *PCAA* (part 2.1) also establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:
  - 9.1 (1)** A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.

- (2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.

137. The Appellant seeks Hector's return. She acknowledges making changes to the dog's living space, she has provided pictures where it is visible that she has cleaned up the surroundings of the dog house. Furthermore, the Appellant's brother Mr. James Cowell has stated on the record of these proceedings that he will assist the Appellant with respect to any further work that needs to be done to her yard or to Hector's dog house to ensure that Hector is well care for.
138. The Appellant has demonstrated an earnest desire to do better with respect to Hector's care. She struggled historically with a partner who was not as committed to Hector and when that relationship ended, with the costs of addressing their legal issues through the Court. With that relationship and the attendant costs now behind her there should be no reason why the Appellant cannot meet her care obligations to Hector. While she was previously dealing with an abusive relationship and focusing on protecting and raising her four children, she now has the benefit of a protection order and a new job schedule that should bring some stability to her life and to those that depend on her.
139. Although the Society's involvement with the Appellant is from 2013, it should be noted that the Appellant has repeatedly been able to address the Society's concerns. It should also be noted that, with the exception of the dental work, Hector seems to be a healthy dog who will not need any exceptional care other than to ensure that he has proper food, shelter and attention.
140. The record suggests that but for the turmoil otherwise engulfing her life the Appellant wanted to take the necessary steps to address Hector's health issues. While the Appellant's personal life cannot justify leaving an animal in distress, it should be considered when making a determination as to whether Hector can be safely returned to the Appellant's care.
141. In this case, given the Appellant's clearly stated commitment to maintaining Hector's health and the significant changes that have occurred in her personal circumstances which should make that commitment possible, the Panel finds that Hector should be returned to the Appellant on the conditions as appear below.

## **Order**

142. Section 20.6 of the *PCAA* reads as follows:

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

- 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;

143. The Panel recognizes that despite her new job the Appellant will continue to face financial constraints that could impact the care that she provides to Hector. The Panel recommends that the Appellant investigate and take advantage of programs the Society and other institutions offer to low-income families to access discounted veterinary services in order to meet the conditions imposed below.

144. The Panel orders that pursuant to section 20.6(a) of the *PCAA*, the Society will return Hector to the care and custody of the Appellant on the following conditions:

- a) The Appellant must, within 45 days of the date of this decision, take Hector to a veterinarian of her choosing, provide a copy of this decision to the veterinarian and obtain written recommendations from the veterinarian outlining his/her ongoing care requirements for Hector.
- b) The Appellant will arrange appropriate shelter for Hector, as approved by the Society.
- c) The Appellant is to provide a copy of any written recommendations received from the veterinarian to the Society;
- d) The Appellant is to follow all veterinary recommendations on Hector's upcoming appointments and dental treatments for Hector, within the time period set by the veterinarian; and
- e) The Appellant must follow the Society's recommendation on Hector's food, shelter, health and other relevant recommendations in Hector's best interest.

145. Hector is in a healthy condition now and to maintain that condition the Appellant will have to be proactive and will have to follow the veterinarian's recommendations very seriously. Given the efforts that the Society has made to direct Hector's care in the past, there should be no doubt that this return is being made with the expectation that no such further involvement will be required in the future and that the Appellant will take this opportunity to truly provide Hector with the life that he deserves for his remaining years.

## VIII. Costs

146. Section 20 of the *PCAA* states:

20 (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.

147. The Society sought to recover **\$1,909.10** on account of all care costs incurred prior to the return of the dog. The Appellants did not dispute the Society's claim for costs. The Panel has reviewed the Affidavit of Ms. Moriarty and the claim for costs and finds the Society's costs reasonable. As such, we confirm, pursuant to s. 20.6(c) of the *PCAA*, that the Appellant is liable to the Society for the amount of **\$1,909.10**.

Dated at Victoria, British Columbia this 9th day of February 2021.

### BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



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Pawan Joshi, Presiding Member