

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 FOUR
DOGS, TWO GOATS AND ONE CAT

BETWEEN:

NICHOLAS CHANDLER

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Dennis Lapierre, Presiding Member

For the Appellant:

Nicholas Chandler

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

January 20, 2021

Location of Hearing:

Teleconference

I. Introduction

1. Nicholas Chandler resides as the sole tenant in a trailer on an approximately ten-acre property in Quesnel, British Columbia (the property). He has resided in one of the two residences on the property for about four years. There, he keeps two goats, one housecat, and five dogs.
2. On November 27, 2020, the BC Society for the Prevention of Cruelty to Animals (Society) executed a warrant on the property and seized two goats (Ajax and Bisquit), one cat (Willow), and four dogs (Zaccheus, a Chihuahua, and three Boston Terrier-type dogs) (the animals). The fifth dog, an Anatolian Shepherd-type named Mya, was not seized.
3. Mr. Chandler disputed the seizure, and the Society issued its review decision on December 16, 2020, outlining its reasons for the seizure and for its decision not to return the animals.
4. Mr. Chandler filed an appeal of the Society's review decision with the British Columbia Farm Industry Review Board (BCFIRB) on December 21, 2020, pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (*PCAA*).
5. This appeal was held by teleconference on January 20, 2021; it was recorded.
6. Section 20.6 of the *PCAA* permits the 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. Appeals to BCFIRB under the *PCAA* are broad in nature, as set out in detail in the *BC Society for the Prevention of Cruelty to Animals v. British Columbia Farm Industry Review Board* 2013 BCSC 2331.
7. The appellant represented himself and testified, calling no additional witnesses. The Society called one expert witness, veterinarian Dr. Bianca Scheidt, and two SPCA officers, Special Provincial Constable (SPC) Kent Kokoska and Animal Welfare Officer (AWO) Sarah Steeves.
8. For the reasons outlined below, I have decided to return four of the animals; the goats, the cat and the Chihuahua and leave the three Boston Terrier-type dogs with the Society to, in its discretion, destroy, sell, or otherwise dispose of. I further find the appellant liable to the Society for costs of care of the animals in the amount of \$2,646.31, this being part of the veterinary costs incurred by the Society as well as part of the costs associated with their seizure, housing, care and feeding.

II. Materials submitted on this appeal

9. All affidavits and witness statements, e-mails, photographs, videos, and materials submitted in accordance with the required timelines were entered as evidence. Additionally, and with the appellant's consent, I allowed previously undisclosed prior SPCA file histories which came to light through the appellant's testimony. This additional information was e-mailed to BCFIRB and the appellant during the course of the hearing. I consider the information relevant and have considered it, where appropriate, in my decision.

III. Events leading up to the seizures

10. According to the Information to Obtain a Search Warrant (ITO) outlined by SPC Kokoska upon whose oath/affirmation the warrant was authorized, the involvement of the Society was initiated by a complaint received November 3, 2020 regarding goats and dogs in distress at the property. Specifically, the complainant alleged the goats were locked in a shed without food or water and were living in their own feces and mud. One of the goats had a broken leg, left untreated for several months. The owner had three small breed dogs inside the home, which was covered in urine and feces from wall to wall. A similar complaint was received November 6, 2020.
11. SPCA officers AWO Steeves and SPC Matt Affleck visited the property the morning of November 7, 2020 and met the appellant at his door. The officers noted a strong odor of urine and feces coming from inside the home and an Anatolian Shepherd-type dog on the property outside of the home.
12. Responding to the officer's request, the appellant led them to a 100'x100' fenced pen containing a partially enclosed shed with two goats locked inside. Examining the goats, AWO Steeves noted one of the goats had an injured front leg which was bent out to one side and was bleeding. There were remnants of a bandage loose on the bottom of this goat's leg. The other goat appeared normal. Both appeared to need hoof trimming.
13. The appellant explained that the goat had broken its leg in July and he had splinted it himself. The bleeding was fresh and the cause was unknown.
14. Responding to the officer's request to see the trailer, the officers learned the appellant had four dogs in the trailer, one of which was cradled in the appellant's arms, and one cat.
15. From what the officers could see, the mostly plywood floor throughout the trailer was soaked in urine spots and littered with feces, as was the deck outside the trailer.
16. AWO Steeves, noting the unacceptable living conditions for the animals and after hearing the appellant's explanation of his personal situation, issued a Notice giving

him until November 13, 2020, to clean the home, keep it free from urine and feces and have the injured goat examined by a veterinarian.

17. When the officers returned on November 16, 2020, there was nobody home. The officers saw no apparent changes to the feces accumulation on the deck outside the home and no evidence of activity around the goat pen. After telephoning area veterinary clinics, AWO Steeves could not confirm that the goat had been examined.
18. The officers returned November 26, 2020, and spoke with the appellant who, while claiming he had been cleaning up the house, would not let the officers inside due to Covid-19 provincial orders. He stated he had not taken the goat to a veterinarian due to the snow and said it was not worth having a vet come out to the property.
19. On these bases, SPC Kokoska sought and obtained a warrant, which he executed November 27, 2020.

IV. Review Decision

20. On December 16, 2020, the Society's Chief Prevention and Enforcement Officer, Marcie Moriarty, e-mailed her review decision to the appellant. In it, she identified her role to review evidence respecting the seizure of the four dogs, two goats and one cat and to decide whether it would be in the best of the animals to be returned.
21. Ms. Moriarty referenced the following file history:
 - a) Signed Warrant and ITO,
 - b) BCSPCA Notice #18863,
 - c) Various veterinary records including Dr. Scheidt's report,
 - d) Historical documents,
 - e) Various invoices, and
 - f) Various e-mail and photo submissions from the appellant.
22. Ms. Moriarty further noted that SPC Kokoska was an authorized agent of the Society, duly appointed under the *Police Act*, and confirmed that the appellant was the person responsible for the animals seized, that she was satisfied that SPC Kokoska reasonably formed the opinion that the animals were in distress as defined by s. 1(2) of the *PCAA*, and that the Notice of Disposition with respect to the animals was properly served.
23. Ms. Moriarty reviewed the dates and the course of events leading up the seizure, noting that the appellant had advised SPC Kokoska that the goat, Ajax, had broken his leg in July 2020. Instead of seeking veterinary care, the appellant opted to splint the leg himself. Both goats needed their hooves trimmed. Inside the residence were bare plywood floors and piles of feces and urine throughout, accompanied by a strong ammonia smell. Zach, an older Chihuahua, was missing

teeth and had overgrown toenails. The appellant was issued a Notice on November 13, 2020 and failed to address the Notice demands by November 26, 2020; the appellant did not feel it was worth having a veterinarian examine the injured goat.

24. SPC Kokoska sought, obtained and executed a warrant on the property November 27, 2020. Referring to photographs taken while the warrant was being executed, Ms. Moriarty noted the home was deemed unsafe and unsanitary for the animals; it had bare plywood floors, chewed-up walls, a lack of proper window fixtures and insulation, and decaying linoleum flooring throughout. She concluded it was an inadequate living environment for both the animals and for the appellant. She further stated the animals were seized due to the lack of response to the Notice issued on November 13, 2020.
25. In considering whether to return the animals, Ms. Moriarty acknowledged the appellant's recent personal circumstances, his marriage breakup, and the emotional toll it caused him. In acknowledging his admission that though the housework and cleanliness were neglected, the pets never were, she nonetheless found it troubling that he had not sought veterinary care for Ajax and had left the goats' hooves untrimmed. As well, he had not had the elderly Chihuahua's dental needs addressed. While acknowledging the appellant's claim that he had no wish to abdicate his responsibility for his animals, she also noted that he felt it entirely appropriate to circumvent their veterinary care. For these reasons, Ms. Moriarty decided not to return the animals to the appellant.

V. Key Findings of Fact and Evidence

26. The Society's disclosure contained a Notice issued July 8, 2019 (Tab 30, exhibit #4) to the appellant's wife, KH, by an SPC Goodine concerning unsanitary living conditions and ventilation issues for various dogs, cats, mini goats and parrots. The file does not show any follow up by the SPCA.
27. In response to my questions, the appellant said the Notice had in fact been given to him. This exchange prompted the Society to do a further search of its records in KH's name and as a result, the Society disclosed further records beyond the July 2019 incident. While I note that this late production of documents is an unusual circumstance given the statutory requirement for the Society to disclose all relevant documents to BCFIRB and the appellant in advance of the appeal hearing (s. 20.3(4)), the appellant did not oppose the documents being received into evidence and I accepted them on that basis. Given I have found this evidence relevant to my decision, I review that history first.
28. The Society received a complaint on December 5, 2013, about several animals including emus, turkeys, ducks, goats, lambs and a horse without shelter or water access at a Langley address. The attending officer spoke to KH who had a horse in need of care and which she was addressing. She also had a second, younger horse, a guardian-type dog, turkeys in an adequate pen, and sheep and goats in a pen, all active, alert, with appropriate weights and with hooves and coats in good

condition. There were also snakes (king, corn, and ball pythons). KH worked at the Vancouver Zoo. The file shows no further follow-up action taken by the SPCA.

29. Another complaint was received July 21, 2014 concerning animals at the same Langley address including 30+ geese, goats, a horse, 30 ducks, a number of chickens, and some emus, one of which was staggering and falling down. The complaint was that the animals looked “pretty good,” but they were trying to get into the complainant’s yard. A follow up by telephone on July 24, 2014, indicates the emu had tripped and cut its leg, and had been treated by a veterinarian KH knew through her employment at the Vancouver Zoo. A subsequent visual check from the edge of the property later that day by the investigating officer confirmed all the emus seemed active and alert, “no emus observed staggering, falling over.”
30. There was a complaint on December 7, 2014 about 12+ goats, a number of sheep, geese, ducks, chickens and five emus. The complaint alleged that one sheep was limping, all the animals were living in muddy conditions without shelter. Follow-up confirmed the investigating officer had no concerns with the living conditions of the animals, nor of the care they were given based upon prior interactions with KH. The officer confirmed the sheep with the minor limp was being monitored, a goat with minor foot rot was being treated, all animals had shelter and all fowl were being kept enclosed as requested because of avian influenza. The file noted an ongoing dispute between KH and her neighbor.
31. Another complaint was received on May 11, 2015 about animals on an Aldergrove property, where three goats were described as limping, and living conditions were described as “disgusting”. There were llamas, ducks, peacocks, geese, turkeys, and an unknown number of sheep and lambs. Follow-up efforts found a locked gate to the property with a biosecurity sign. The investigating officer posted a contact notice. Later that day the investigating officer was willingly shown the animals, their environment, and their living conditions. The officer issued a Notice allowing two weeks to have the goats’ hooves trimmed and the facility cleaned, and to have the limping goats and sheep examined by a veterinarian, and to improve the weight of the horse. Further follow-up conducted by the SPCA investigator noted the animal shelter had been completely scraped out and was dry, the doghouse had bedding, and the horse appeared shiny and healthy. The goats and sheep diagnosed with foot rot had been treated and the Langley Animal Clinic has provided oxytetracycline for future needs. The file noted all other aspects of the Notice had been complied with.
32. On May 12, 2016, the SPCA received a complaint from a person who shared the Aldergrove property that the animals were “not fed enough.” The animals included one horse, a cow, an unknown number of geese and turkeys, and six emus. The investigating officer noted the property appeared unsightly and some fences were in disrepair but as the appellant and KH were knowledgeable about biosecurity and common diseases and used the Langley Animal Clinic, no Notice was issued.

Appellant's Evidence

33. The appellant's evidence for this hearing comes from his written submissions and e-mails, photographs, and sworn testimony.
34. The appellant has a biology degree from the University of Western Ontario and an interest in animal physiology. He worked for five and a half years at the Vancouver Zoo, feeding, cleaning enclosures, monitoring animal behaviour and health, and assisting the zoo veterinarian when necessary. During his employment, he did a 3-month internship, which included additional training in animal behaviour and diet and how to administer treatments. He left his employment for financial reasons.
35. Following this employment, he did odd-jobs and had a hobby farm. He is currently employed full-time in sales at Walmart for \$15/hr. He works approximately 35 hours per week with varying hours and days of the week, sometimes starting at 4:00 am and sometimes at 2:00 pm. His travel time to work is 30-40 minutes.
36. While he is at work, the goats are kept in a pen, but Ajax sometimes escapes. Except for the Anatolian shepherd, which stays mostly outside, the rest of the dogs and the cat are kept primarily inside. The cat avoids the dogs by hiding or staying on a shelf coming down to feed or sit on the couch. The cat has a litter box but the dogs defecate and urinate inside the home; there are no pads or a specific place "to go". He pays \$700/month rent for his residence and has lived there for four years.
37. His wife left him in the summer of 2019 in what was described as a long, drawn out process, and she was unable to take her animals with her. He was entrusted with the care of some of her animals including two cats, four dogs, cows, sheep, birds, and goats until the summer of 2020. He describes their relationship as "off and on" towards the end. They divided some of the puppies between them and he kept the cat. He has had the goat, Ajax, since it was three days old and the goat, Bisquit, was acquired by his wife three and half years ago when it was rehomed. Zach, was his wife's dog; she bought him as a pup nine years ago. His wife took the mother of the two Boston Terrier puppies he kept.
38. In response to questions related to the July 2019 Notice issued to him and his wife, he did not recall any follow-up contact from the Society.
39. In his December 10, 2020 e-mail written as part of the Society's review process, the appellant spoke of his wish to have the animals returned. He spoke to the recent difficulties that came first with the loss of his wife and then the loss of his employment at the airport and how these events affected not only his financial circumstances but his psychological well-being. He wrote that he essentially "shut down" when his wife contacted him about divorce proceedings. The seizure of his animals snapped him out of his stupor.
40. In response to questions about the way he treated the goat, Ajax, when it broke its leg, the appellant explained that this break occurred last July on the Sunday of the

Canada Day weekend. It was a clean break with no laceration or displacement so he felt it was best to splint it immediately because he needed to go to work and could not wait for a veterinarian to come out. He also administered a dose of oxytetracycline to prevent infection. The splint consisted of a 5/8" wooden dowel extending from the knee to the foot, three layers of cotton batten cloth and a veterinary wrap (tape). He removed the splint after two months but did not remove the wrapping tape. It stayed loose on the leg. He administered phenylbutazone (pain medication) and oxytetracycline daily.

41. Concerning his ability to treat the goat's broken leg, he stated that while he should have perhaps sought the opinion of a veterinarian, he had some prior successful experience treating a goat's broken leg. Bisquit had also suffered a broken leg and was now showing no ill effects from its healing. Ajax is jumping and both goats can now do everything they did before.
42. In responding to questions about why he had not followed up on the direction in the Notice to have the goat examined by a veterinarian, he felt it was not worth it. His goats have never been seen by a veterinarian.
43. The appellant described the goat pen as being surrounded by a four and half foot page wire fence with one strand of barbed wire on top. The goats do manage to escape occasionally by finding ways to go under it. He says a determined goat is hard to contain.
44. Concerning the dog, Zach, the appellant described him as a very senior dog. He knew about the dog's heart murmur and that his teeth were not in good shape but says the dog could still eat kibble. The dog is mostly blind and deaf and is uncomfortable with strangers. He stated he was concerned about this dog surviving sedation for dental work but would be willing to discuss that with a veterinarian. He just wanted to bring this dog home to live out its days where it is most comfortable.
45. The two male Boston Terrier-type puppies and their sister are from different litters and were all born on the property. They are in good health. The males had been scheduled for neutering December 30, 2020.
46. In support of his wishes to have all his animals returned, the appellant submitted photographs of two floor areas in his home showing the significant clean-up efforts he had made. His house is now much cleaner and will remain so. He will be resealing and painting the floor when the weather improves in the spring.
47. In response to questions about why he had not cleaned up his house as he had been initially directed, he admitted that he was having trouble keeping up and that cleaning up was not the first thing he wanted to do at the end of the day. He acknowledges that prior to the SPCA coming, the smell of urine and feces had bothered him at times. After the seizure, he started to clean up as it was easier with the dogs out of the house. He felt urgency to get the job done as he wanted to get the dogs back. He agrees his place still smelled a little but not as much as it

did. He understands wood is porous and he needs to change the flooring but he has not done that yet.

48. In response to questioning about furthering his clean-up efforts, he described the type of paint he would use, its price, and the material costs relating to replacing the linoleum.
49. With respect to whether he could afford his cost of living and the additional costs of animal care, he stated that he would have to make some budget adjustments which would take six months to arrange, but he could afford it.

Respondent Witnesses

50. **Dr. Bianca Scheidt** is a veterinarian with the Williams Lake Animal Care hospital and was qualified as an expert witness in the area of veterinary medicine. She provided both sworn testimony and a written report dated November 30, 2020 summarizing her examination of each of the seized animals.
51. Dr. Scheidt concluded none of the seized animals appeared to be in any distress at the time of examination. They displayed normal behaviour. None displayed any systemic or obvious signs of disease in general. All were in acceptable body condition.

Goats:

52. Ajax, a castrated Nubian male, approximately eight years of age with a Body Condition Score (BCS) of 4/9 had suffered a fractured left front leg and showed significant scarring. He appeared to be lame on the left front leg but could walk on it without pain. The left front leg, now shorter, caused a functional lameness as opposed to painful lameness. He required immediate hoof trimming and was showing arthritic changes that may require pain medication. Intake notes confirm Ajax “will have a chronic painless limp. No further treatment.”
53. Bisquit, a castrated Nubian male, approximately four years of age was normal on the physical examination with a BCS of 4-5/9. Intake notes (Tab #5, Exhibit 6) describe this goat as looking healthy overall, “a very nice goat”. He appeared normal and healthy and his hooves were of adequate length.
54. She recommended vaccinating the goats with Covex 8 and deworming with Ivomec.
55. Addressing the adequacy of the appellant’s treatment of Ajax’s broken leg, Dr. Scheidt agreed it was probably a workable approach, but the splint should have been changed more often. While the break healed well, it had not healed properly straight and, at some point, the leg should have been reset. The goat should have been kept quiet and not been allowed to move around, and the splint should have been changed more often to avoid development of sores. She stated that dealing with a break is often an issue because it is difficult to keep animals quiet enough.

Cat:

56. She found Willow, the cat, normal with the exception of severe tartar on the teeth and gingivitis which required cleaning.

Dogs:

57. As for the three Boston Terrier-type dogs, one black and tan male, approximately 12 months of age was found to be essentially normal with a slight underbite and toenails a bit long, "but OK." The other black and tan male, approximately 12 months of age, was essentially normal. The black and tan female, about six months of age, was overall normal. The environment the dogs were living in had not affected their overall health.
58. The Chihuahua, male (Zach), approximately 16 years of age, was missing teeth, had severe tartar on others, rotten roots and mobile (loose) teeth. He had very long toenails and a grade 4/6 bilateral systolic heart murmur. Otherwise, he seemed healthy for his age. On December 2, 2020, this dog had in-depth examinations for heart disease and dental treatment. Dr. Scheidt testified there is a link between teeth and heart problems. The heart murmur is a result of aging but is also a result of the condition of the teeth. Further, teeth in that condition will result in pain, despite the dog being able to eat.
59. Dr. Scheidt estimated dog veterinary care costs for annual check-ups, initial and booster shots for parasites and treatment of Zach's dental issues as soon as possible (within one month) in the range of \$800 and \$1,000. The medications for Zach's other conditions would be in the range of \$150/month. With respect to Willow, the cat, she recommended dental treatment in the next three months at a cost of \$500-\$800.
60. Dr. Scheidt testified about the animals' living conditions. She testified that garbage and feces can result in infections for both animals and humans. With respect to the air quality, she testified that while humans can get used to strong ammonia smells, dogs cannot. It can result in burns in the trachea area, signs of which were showing in the dogs. Wooden flooring is a problem and, if feeding areas are not clean, puppies can ingest problem materials. Bathroom chemicals, she noted, can be toxic. Responding to a question about the goat pen, she thought the bedding looked "OK".

Society's Investigators

61. **SPC Kokoska's** testimony was consistent with that outlined in his ITO. He testified that he had not been to the property prior to the date on which he executed the warrant in company with AWO Steeves. He offered the following in his testimony.
62. He has 30 plus years of experience with the SPCA, but this is the first time he has testified in a hearing. Because the investigating officer, AWO Steeves, is not yet qualified to seek a warrant, he sought it on her behalf, using her information.

63. He conducted an ammonia test at the property, which showed changes on the indicating colour strips representing ammonia levels of 10-20 ppm, his evidence was that an acceptable level is below 1 ppm.
64. He took the photographs of the inside of the house and the goat pen (Tab #8, Exhibit 6).
65. He had no concerns about the body weight of the animals but was concerned about the level of "filth" and contamination in the home. There was exposed wood on the floor which was absorbent and uncleanable, and the entire residence was filled with feces.
66. Concerning the goats and the conditions in which he saw them, he expressed concern about their hooves as they had not been trimmed. He was also concerned about a build-up of bedding in their shed and whether there was hay over manure which could raise a concern for bacteria. He was unable to say whether the bedding was dry or wet.
67. In response to a question about whether he thought the goats were in distress, he referred only to the definition contained in the *PCAA*. He did not offer any additional observational descriptions consistent with distress.
68. In response to a question about whether he was concerned about the animals being returned to the appellant, he expressed concern about the appellant's ability to clean, his ability to pay for medical treatment for a lot of animals on a limited income and his appreciation of the level of care the animals required without assistance or extra hands.
69. SPC Kokoska testified that Mya, the Anatolian shepherd-type dog was not seized as aside from smelling a bit, it seemed to be in good condition and was primarily an outside dog, and he thought it would be safe.
70. Tab #6, Exhibit 6 shows that SPC Kokoska issued a Notice to the appellant on the day of the seizure, which required general environmental improvement, specifically referencing the dog, Mya, and directing changes to be made within 48 hours.
71. **AWO Steeves'** testimony with respect to her investigation is consistent with that outlined in the ITO and her very readable handwritten notes contained in Tab #24 of Exhibit 6. The following are key aspects of her testimony and her notes.
72. She is in training to become a Special Provincial Constable and is not yet qualified to seek a warrant. She has been employed by the SPCA since 2010, having started as a care attendant.
73. With respect to the July 2019 Notice, she testified that several animals were removed from the property as an outcome of the Notice but she has had no direct contact with the appellant since that day and the file had been closed. The

information she provided to SPC Kokoska for the ITO reflects that the majority of the animals involved were removed by KH and taken to Williams Lake.

74. With respect to her November 7, 2020 visit to the property following up on the complaint, she learned that the appellant had treated the goat, Ajax, himself. She looked at the goat and could not decide whether it was in pain. She noted there was no bedding in the goat shed. She then went into the boot room of the house and onto the deck but could see into the kitchen. She saw feces throughout, and stained floors.
75. She raised the idea of surrendering animals to the SPCA, but the appellant declined the offer as he felt he could handle the issue. She explained the Notice and the legal action that could result, and the appellant stated he understood and signed the Notice.
76. She did not conduct a hands-on examination of the Chihuahua, Zach.
77. When she conducted a follow-up visit November 26, 2020, she learned from the appellant that he had not made a vet appointment for the goat, Ajax. He cited icy roads and that "it was not worth it." He claimed he had been cleaning the residence but would not allow the officers in to see for themselves because of Covid directives. Not being able to see if compliance to the Notice had been met, she asked SPC Kokoska to apply for a warrant.
78. With respect to how she defined distress, she referred to the *Act* and added that the reason for the seizure was the unsanitary conditions inside the house, the odour, and the presence of urine and feces on the floor throughout. She was also concerned about the goat, Ajax, but not about the other goat, Bisquit.
79. Her notes show that she thought Mya should be seized but SPC Kokoska held a different opinion which resulted in Mya being allowed to remain with the appellant.
80. With respect to her seizure of the goat, Bisquit, she stated it was seized out of a concern expressed by SPC Kokoska that, because goats are social animals, Bisquit would be distressed if left alone.
81. AWO Steeves testified that when she returned to the property on December 2, 2020, to follow up on the Notice issued by SPC Kokoska on November 27, 2020, she saw that the home had been cleaned up quite a bit.
82. In response to the appellant's question about further contact, she testified that in a telephone call with him on December 15, 2020, she discussed returning the dog, Zach, if the SPCA was comfortable with the idea. She stated the appellant was not agreeable as he wanted all of his animals back.

VI. Analysis and Decision

83. As outlined at the outset of this hearing, I am tasked with addressing two primary issues:
- (1) Were the animals seized, in this case four dogs, two goats and one cat, in distress, and was the seizure justified; and
 - (2) Is it in the best interests of the animals for the Society to return them to the owner's care.
84. Section 9.1 of the *PCAA* outlines the duties of persons responsible for animals. It says:
- (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.
85. Section 1(2) states:
- For the purposes of this Act an animal is in distress if it is
- (a) Deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment
 - i. kept in conditions that are unsanitary
 - ii. not protected from excessive heat or cold
 - (b) Injured, sick, in pain or suffering, or
 - (c) Abused or neglected
86. Section 11 of the *PCAA* states:
- If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal
- (a) Does not promptly take steps that will relieve its distress, or
 - (b) Cannot be found immediately and informed of the animal's distress,
- The authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

Household Animals

87. With respect to the seizure of the four dogs and the cat, there is strong evidence that these animals were being kept in conditions inside the appellant's home that were both unsafe and unsanitary. The floor was covered in feces and the floors were stained with urine, as evidenced by the testimony of SPC Kokoska and AWO Steeves, and as confirmed in the Society's photographs. The floor, primarily bare

plywood, added to that unsanitary condition as plywood absorbs urine and cannot be properly cleaned. Animal food dishes were observed to be in close proximity to feces which created a strong risk of disease due to contamination, as noted by Dr. Scheidt. Similarly, the cat's food and water dishes were at risk of contamination as they were found on the bathroom counter amongst the appellant's potentially harmful and toxic toiletries. There is also evidence of an overwhelming presence of ammonia in the appellant's home which indicates the animals were likely deprived of adequate ventilation.

88. The appellant does not dispute the unsanitary conditions of his home. He admitted that after his wife left, he "fell behind in keeping a clean home; for both myself and for my animals."
89. There was also evidence that the appellant left the three Boston Terrier-type puppies, the elderly dog and the cat alone in his home for hours at a time while he was away at work. The dogs were not contained. The puppies were not trained to use pee pads, had free run of the house and could defecate and urinate wherever they wanted. While the cat had a litter box, it was afraid of the dogs and hid. When asked why he had not cleaned up after his animals, the appellant indicated that he works long hours and the dogs often had a head start by the time he got home; cleaning up their mess was not necessarily the first thing he wanted to do.
90. I conclude that in light of the unsafe and unsanitary living conditions and the resulting poor air quality associated with excessive ammonia, the four dogs and the cat were living in conditions which caused them distress.
91. There was also evidence that while the elderly dog Zach and the cat were generally healthy, the appellant had failed to obtain timely and adequate veterinary treatment for them with the result that both required dental care. Zach also required monitoring and medication for his heart condition.
92. I note that Dr. Scheidt concluded that these animals were in relatively healthy condition despite their living environment. However, I am not required to wait until the animals' condition worsens to find them in distress. Instead, as here, an animal can be found to be in distress when an animal is (a) deprived of adequate ventilation, care or veterinary treatment or (a.1) kept in conditions that are unsanitary. The definition of distress is intended to be protective and preventative. It does not require proof of actual harm; rather it describes those circumstances that create a significant risk of harm to animals and should be avoided. When these circumstances are not avoided and conditions place animals at sufficient risk, the *PCAA* provides that they can be protected.
93. I conclude that these animals were all in distress at the time they were seized and it was appropriate for them to be taken into custody to relieve their distress.

Goats

94. With respect to the goats, Ajax and Bisquit, I find the evidence of distress at the time of seizure to be weak and inconsistent, both insofar as whether the conditions in which the goats were kept were unsanitary, whether there was adequate bedding in the shed, or whether either was injured, in pain or suffering, or abused or neglected. I will address their environmental conditions first.
95. The goats were kept in a 100' x 100' enclosure within a four and a half foot chain link fence with a strand of barbed wire overtop. There is a shed inside the enclosure that provided the goats' shelter.
96. AWO Steeves testified that on the November 7, 2020 visit, there was no bedding in the shed for the goats. The photographs of the inside of the shed taken at the time of seizure shows it contained bedding; SPC Kokaska described a build-up of materials. He could not recall if the bedding was wet or dry or if it was covered in an accumulation of manure.
97. In my view, the photograph is the best evidence before me and it does not show an inordinate build-up of bedding. In fact, photographs of the inside of the pen taken on the date of the seizure show snow-covered ground, water in buckets, and feed in feeders. The environment, in my view, appears adequate and appropriate for livestock.
98. With respect to whether the goats were injured, in pain or suffering, the evidence is that Ajax suffered a broken leg in July of 2020, and there would have been pain associated with that injury. On her initial visit of November 7, 2020, AWO Steeves observed the goat limping but was uncertain whether it was in pain when she examined him. Other than the limp, she did not testify to any other issues of concern (i.e. low body condition score, matting, sores etc.) AWO Steeves did not identify any concerns with the second goat. Her evidence is that she issued the Notice to get the appellant to take the goat to a veterinarian for assessment. The appellant failed to comply with the Notice.
99. Dr. Scheidt assessed the goat following the seizure. Her evidence is that, while it was clear that the goat had broken its leg, it was no longer in pain. According to her notes, she diagnosed Ajax as having a chronic painless limp, off and on; he needed hoof trimming and may require pain medication for arthritis.
100. I have also considered whether the evidence supports a finding of distress on other grounds, specifically whether Ajax had been abused or neglected.
101. The evidence from the appellant is that the break occurred on the Canada Day long weekend in July 2020. He needed to get to work and veterinary clinics were normally closed on Sundays. He was not willing to wait for a vet to attend his property so instead he relied on his prior experience with basic animal husbandry and treated the break himself. He fashioned a splint from a 5/8" dowel, secured it with layers of cotton to provide padding and wrapped it with veterinary tape. He

also gave the goat a dose of anti-biotics and pain medication. Although the leg set crookedly, it was held in place by the splint for two months and healed with little functional limitations.

102. Dr. Scheidt was specifically asked whether the appellant's approach was adequate. Significantly, she was not critical. Her response was that it was probably a workable approach but the splint should have been changed more often. As mentioned above, the goat has been left with a chronic painless limp.
103. There are previous appeals before BCFIRB where evidence of untreated past injuries supports a finding that an animal is in distress (see for example *Binnersley v. BCSPCA*, April 15, 2014). However, in the circumstances here, and while the appellant agreed he probably should have consulted a veterinarian, I do not find that the appellant's conduct constitutes either abuse or neglect. The appellant did not seek veterinary services due to the time factor, his desire to get to work and, likely, the cost. Significantly however, the appellant did not leave the goat to suffer; he treated the injury the best way he could think of given his past experience. He took steps to splint the break and treat the risk of infection and manage any associated pain. While the leg did not heal perfectly and the goat now has a limp, Dr. Scheidt did not find the goat to be in distress.
104. In my view, the appellant's actions are consistent with the statutory obligation in s.9.1 of the *PCAA* to not permit an animal to continue to be in distress.
105. Section 11 of the *PCAA* allows the Society's authorized agent, after forming the opinion that an animal is in distress and the owner has failed to relieve that distress, the authority to take the steps necessary to relieve the distress. In my view, the finding of distress must be connected in time to the action taken, such that the authorized agent has the authority to address a more or less immediate circumstance or need. It is not enough for an authorized agent to point to some past event in time (in this case, an injury which occurred four months prior) as the basis of a finding of distress, in the absence of any evidence that the distress, in fact, continues.
106. In light of my finding that Ajax was not in distress at the time of the seizure, I conclude that his seizure was unwarranted and order his return to the appellant. I do note, however, that the appellant now has the benefit of Dr. Scheidt's advice and he will need to monitor the goat for signs of arthritis at the break site and manage any pain should it arise, like any responsible owner.
107. With respect to the other goat, Bisquit, there is no evidence of it being in distress. To the contrary, the testimony of AWO Steeves was that she was not concerned about Bisquit. It was seized, according to the testimony of SPC Kokoska, because of the social nature of goats and the belief that leaving it alone could cause it distress. The statutory test for distress does not include distress arising out of loss of companionship. As such, I conclude that the seizure of the goat, Bisquit, was unwarranted and order its return to the appellant.

108. I note here that it was open to the attending officers to issue a Notice requiring the appellant to take steps to address their concerns related to the goats in much the same way they addressed Mya, the Anatolian Shepherd.

VII. Return of the Animals

109. I have already found that the goats were not in distress at the time of seizure and ordered their return to the appellant. The cost implications of that decision are addressed below.

110. Having determined that the seizure of the balance of the animals was justified, I now turn to the question of whether it would be in the best interests of any of the animals to be returned to the appellant. In doing so, I am guided by the courts, which considered this question in *Eliason v BCSPCA*, 2004 BCSC 1773. In it, 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.

111. Further, in *Brown v BCSPCA* [1999] B.C.J. No. 1464 (S.C.) the court explained:

The goal and purpose of the act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as the Plaintiff's counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in the distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain [in] the good condition in which it was released into its owner's care.

112. In her review decision not to return the animals, Chief Prevention and Enforcement Officer Moriarty was not confident that the appellant would be willing to provide care for the animals going forward or that he would seek veterinary care should anything else befall them. She concluded he had not demonstrated willingness to seek veterinary care, or, as she put it, had felt it was entirely appropriate to circumvent veterinary care for his animals.

113. In considering this position, I found the historical files involving the appellant from 2013 to 2016 helpful. These records show that the appellant and his wife owned a varying and substantial number of animals and that, despite the five occasions on which complaints were made, the follow-up investigation did not lead to the identification of any serious issues. If anything, it appears that it was the number of animals being kept, as opposed to deficiencies in treatment, that was the issue for the neighbours. These records support the appellant's evidence of his historical interactions with SPCA officers and his understanding that these matters were largely put to rest through follow-up telephone conversations. The records show that, at least then, the appellant and his wife were capable animal owners, though perhaps annoyingly so, to their neighbors. The animals received treatments as required and the appellant's wife, also a Vancouver Zoo employee, had a good and supportive relationship with zoo veterinary staff.

114. This history not only speaks to the appellant's ability and capacity to care for his animals, but also, in some respects and, in addition to his personal issues, helps explain the lack of attention he gave to the 2020 Notice.
115. I make a couple of observations. A notice should not be confused with an order. An authorized agent of the Society can issue a notice to a person responsible for an animal outlining the steps necessary to relieve an animal's distress. The authorized agent, as a courtesy to an animal owner, issues a notice to advise an owner of his or her statutory obligation under s. 9.1 of the *PCAA* to protect an animal from circumstances that are likely to cause distress. The notice contains a list of potential issues which may lead to distress and the authorized agent selects those issues which apply in the circumstances. The notice provides a warning that should the owner fail to take the necessary steps to relieve distress, legal action (including the obtaining of a search warrant, removal of animals and or charges under the Criminal Code or the *PCAA*) may result. While it is not an order, there are potential consequences, as the appellant has now learned, for failing to comply with a notice.
116. The Society argues that the animals have suffered due to the appellant's inattention and inability to properly care for them, and his failure to seek adequate veterinary treatment. While I can agree that the appellant was not being properly attentive to his animals, I have considered the condition of the animals at the time of seizure, the appellant's insight into how his conduct caused his animals' distress (related to unsanitary living conditions and adequate veterinary care), and his plan and ability to rectify those circumstances.
117. Dr. Scheidt found the dogs to be in good condition. Even Zach, the elderly dog with heart and teeth conditions, was found to be in good health given his age. The appellant was aware of Zach's heart and dental conditions and was concerned about Zach's ability to withstand anesthetic. The cat was in good condition but needed dental attention, not urgently but in the next three to four months.
118. Section 20.6 of the *PCAA* states:
- On hearing an appeal in respect of an animal, the board may do one or more of the following:
- (1) 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;
 - (2) Permit the society, in the society's discretion to destroy, sell or otherwise dispose of the animal;
 - (3) Confirm or vary the amount of the costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2).

119. In considering whether to return any or all the animals, I have looked at the appellant's history and his recent past to try and understand how his personal circumstances could have become completely out of step with what normally has been the case for him, his abilities, and the animals in his care.
120. In his testimony, the appellant spoke about the slow breakdown of his marriage and how, when his wife left, she was unable to take all her animals. The appellant was entrusted with these animals until his wife was able to collect them. This may explain why the appellant had no knowledge of any follow-up action taken as a result of the July 2019 Notice issued to his wife, but which he admits receiving. He testified that while he had been depressed since then and had not been caring for himself, he had continued to take care of his animals. The seizure, he stated, has snapped him out of his stupor.
121. In my view, the appellant showed considerable insight into his role in allowing his animals to live in unsafe and unsanitary conditions. He wants his animals returned and says he is prepared to change.
122. In support of this change, the appellant entered photographs (Tab 9, Exhibit 6) which document significantly cleaner premises. The appellant also acknowledged the disrepair of his home and in support of the return of his animals, he outlined his plan to paint his floor, describing the type and price per gallon for the kind of paint he would need, and the cost to replace linoleum floor tiles. He anticipates doing this work as the weather warms up.
123. I note, however, that the appellant failed to provide any detail on how things would be different for his dogs during his long workdays and lengthy periods away from home. Specifically, I am very concerned that without a very definite plan to address the toileting needs of the three puppies, any plan for return of these animals is doomed to fail.
124. The appellant acknowledged his limited financial resources. He works approximately 35 hours per week in a minimum wage job. He has some difficulty making ends meet and he would need to modify his budget to pay for the dental expenses for the dog, Zach, and the cat, and it might take up to six months to pay for these treatments. He could pay for Zach's monthly medications of about \$150 per month. I observe that unexpected medical bills could prove to be a challenge for the appellant.
125. After a careful consideration of all the evidence, I accept the testimony of the appellant that he both acknowledges his role in placing his animals in distress and that he is prepared to take steps to improve their living conditions and seek veterinary care, as appropriate. In light of the foregoing, I am prepared to order the return of some but not all of the appellant's animals on conditions.
126. First, I am not prepared to return the three Boston Terrier-type dogs to the appellant and order them to remain in the custody of the Society. The Society may destroy, sell or otherwise dispose of the animals pursuant to s. 20.6 of the *PCAA*. I

make this order on the basis that the appellant has not been able to develop a clear plan for the care of these dogs. In my view, the primary cause of the unsafe and unsanitary living conditions was largely these three young dogs being allowed to roam freely in the appellant's home for long periods while he is at work. They are clearly not yet sufficiently trained nor housebroken. The appellant has failed to develop a plan to address the greater care burden of these three puppies and they have proven more than the appellant can handle as a sole owner. If these dogs remain with the appellant, I have no difficulty in concluding that the appellant will be unable to maintain a safe and sanitary home for either himself or any animal. These puppies are young and deserve a chance to find a home where they can be properly cared for. The appellant simply does not have the ability to give them adequate care given the demands of his employment and his limited financial resources.

127. With these three dogs removed from the appellant's home, I am satisfied that the remaining animals can be returned. As such, I am ordering the return of the elderly dog, Zach, on conditions outlined below. They have a close bond and I conclude that it is in Zach's best interest to be returned. Further, I doubt that at Zach's advanced age he would be a good candidate for rehoming. I do note here that the Society also offered to return Zach but on the condition that the other animals be surrendered which the appellant refused.

128. Finally, I am ordering the return of the cat, Willow, also on conditions.

VIII. Order

129. I have concluded that the goat, Bisquit, was not in distress and can be returned to the appellant as its removal was not justified.

130. I have concluded that the goat, Ajax, was not in distress and can be returned to the appellant as its removal was not justified.

131. I have concluded that the dog, Zach, was in distress and his removal was appropriate. However, it is in the best interests of Zach to be returned to the appellant on the condition that the appellant make and attend an appointment to have Dr. Scheidt address this dog's dental issues within one month of the date of this decision and follow all her ongoing care recommendations for this dog in accordance with the timing recommended by the veterinarian.

132. I have concluded that the cat, Willow, was in distress and its removal was appropriate. However, it is in the best interests of Willow to be returned to the appellant on the conditions that the appellant make and attend an appointment to have Dr. Scheidt address the cat's dental issues within three months of the date of this decision and follow all her ongoing care recommendations for this cat in accordance with the timing recommended by the veterinarian.

133. I have concluded that the three Boston Terrier-type dogs were in distress, that their removal was appropriate and that it is likely and foreseeable that their living conditions would not improve, and they would return to situations of distress if returned to the appellant. Consequently, and pursuant to s. 20.6(b) of the *PCAA*, the society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the animals.

IX. Costs

134. The Society is seeking to be awarded costs in the amount of \$3,294.47 as outlined below:

- (1) Veterinary costs: \$1,269.32;
- (2) SPCA time attending to the seizure: \$273.90; and
- (3) Housing, feeding and caring for the animals: \$1,751.25.

135. I am reducing the costs payable to the Society by \$350.00, this being the amount charged by the veterinarian to examine both goats, and a deduction to reflect the portion of the seizure and transport costs associated with the goats to reflect my decision above that their seizure was not appropriate in the circumstances.

136. I therefore find the Appellant liable to the Society for the amount of **\$2,996.31**.

Dated at Victoria, British Columbia this 1st day of February 2021

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Dennis Lapierre, Presiding Member