

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 16 DOGS

**BETWEEN:**

ROBYN SEDDON

**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, Member

For the Appellant:

Sara Hilliard, Counsel

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

July 12, 2021

Location of Hearing:

Teleconference

## I. INTRODUCTION

1. The Appellant, Robyn Seddon, resides on an acreage at Pinantan Lake, BC (the Property). Her daughter does not currently reside on the Property but lived there for brief periods prior to the seizures that are the subject of this appeal. One of the dogs seized, a Labrador puppy, was hers.
2. On May 20, 2021, officers for the Society for the Prevention of Cruelty to Animals (the Society) executed a warrant on the Property and seized 17 dogs one Labrador retriever puppy, four Pomeranian puppies, seven Pomeranian cross puppies, four Yorkie puppies, one Yorkie cross puppy} and seven chicks which were all determined to be in distress.
3. The Appellant disputed the decision to seize the animals and on June 11, 2021, Marcie Moriarty, Chief Prevention and Enforcement Officer for the Society issued her review decision. In her review decision, Ms. Moriarty upheld the decision to seize the animals. She agreed to return five chicks to the Appellant on conditions and to return the Labrador puppy on conditions to the Appellant's daughter. She concluded it was not in the best interests of the remaining 16 dogs to be returned to the Appellant.
4. On June 15 and 16, 2021, the Appellant filed a Notice of Appeal and filing fee, respectively, to the British Columbia Farm Industry Review Board (BCFIRB), disputing the Society's review decision to uphold the seizure and to not return the balance of her animals as well as the associated costs of care.
5. The appeal hearing was held July 12, 2021, via teleconference and was recorded.
6. The Appellant was represented. The Appellant testified and did not call any further witnesses.
7. The Society was represented and called two witnesses: Animal Protection Officer (APO) Leah Dodd and veterinarian, Dr. Emilia Gordon. Dr. Ann Flemming was to be called as an expert witness but she was unavailable to testify at the hearing. Her written report of her findings and opinions forms part of the record of proceedings. Counsel for the Appellant did not object to Dr. Flemming's report being received in evidence despite her not attending for cross examination.
8. Section 20.6 of the *Prevention of Cruelty to Animals Act (PCAA)* permits BCFIRB, on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or 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*.

9. For the reasons outlined below, this Panel has decided not to return any of the 16 dogs that are the subject of this appeal to the Appellant and permits the Society, in its discretion to destroy, sell, or otherwise dispose of the dogs remaining in its custody pursuant to s. 20.6 (b) of the *PCAA*.

## **II. PRE-HEARING MATTERS**

10. Counsel for the Society objected to the late introduction of certain documents by the Appellant, specifically photographs of a premises and yard area that, according to counsel for the Appellant were intended to offer an alternative, temporary site to house seized dogs if the Panel returned her dogs. After hearing from the parties, the Panel admitted the photographs into the record.

## **III. MATERIALS SUBMITTED ON THIS APPEAL**

11. All affidavits and witness statements, emails, photographs, records, and materials submitted up to the start of the hearing as well as those late submitted were entered into evidence. The record is comprised of Exhibits 1-22 and is attached as Appendix A to this decision.

## **IV. THE REVIEW DECISION**

12. In her review decision, emailed to both the Appellant and her daughter, Ms. Moriarty explained the oversight role of the Society's Cruelty and Investigations Department to review the evidence, and make a decision about whether the animals seized should be returned applying the relevant statutory test as described in *Brown v BCSPCA*, [1999] B.C.J. No. 1464 (S.C.).
13. After reviewing the material relied in in making her decision, Ms. Moriarty concluded the following:
  - Special Provincial Constable (SPC) Kent Kokoska having been appointed under s. 9 of the *Police Act* was a duly authorized agent of the Society under s. 10 of the *PCAA*.
  - The Appellant was the person responsible for the seized animals.
  - SPC Kokoska reasonably formed the opinion that the animals were in distress as defined by s. 1(2) of the *PCAA*.
  - The Notice of Disposition with respect to the animals was served in accordance with ss. 18 and 19 of the *PCAA*.
  - The seizure took place in accordance with the *PCAA* and SPC Kokoska acted in good faith acting on the warrants given the information he had before him.
14. In considering whether to return any of the animals, Ms. Moriarty reviewed the history of events beginning on January 11, 2021, with the receipt of a complaint of a large number of dogs and cats living in poor environmental conditions on the Appellant's property. This complaint was followed-up by APO Dodd the next day

and resulted in two Notices being issued along with verbal instructions to the Appellant to clean and sanitize the Property. Specific concerns included the level of ammonia recorded, urine-soaked floors, the overall unsanitary conditions and lack of space for the dogs to move.

15. Ms. Moriarty notes that between January 12 and 20, 2021, the Appellant boarded 21 dogs at Fortune Creek Kennels to allow her to begin cleaning and renovating the Property. On January 20, APO Dodd was only able to examine three dogs due to their fearful nature but as health concerns were noted, she issued three Notices to the kennel to have the dogs assessed by a veterinarian. The dogs were examined between January 20 and May 12, 2021. Four of the dogs required veterinarian follow up. One had a mammary mass, another exhibited signs of a mammary tumour and a third and fourth dog required dental care. Four dogs have been rehomed by the kennel and 17 remain.
16. On May 11, 2021, APO Dodd and SPC Kokoska visited the Property for follow-up and observed different dogs in the front yard pen. There were bags of garbage and piles of feces around the Property. The Appellant was not home so they left a posting on the door. Having not heard from the Appellant, officers returned May 19 and saw the same dogs as on May 11, with the same build-up of garbage and debris, with the same strong smell of urine coming from the front yard pens which were largely in the same derelict condition. As a result of the Appellant's lack of follow-up to the postings and telephone messages, SPC Kokoska applied for and was granted a warrant, which was executed May 20, 2021.
17. All of the puppies seized were examined at the Central Animal Hospital on May 20, 2021 and were found to be in ideal body condition but with overgrown toenails; most had feces stuck to their paws and hair. On further examination, veterinarian Dr. Flemming assessed the puppies to be in distress based on lack of grooming, lack of hygiene and unsanitary housing conditions.
18. The review decision notes the Appellant's overall poor breeding practices and references a prior 2005 conviction under the *PCAA* in similar circumstances which resulted in a one-year sentence of community probation and conditions to not own any more dogs, other than the one she had at the time of conviction.
19. The review decision attributes the Appellant's poor breeding practices to her failure to provide timely veterinary care. Eight puppies were born on March 3 and three were born March 7, along with her daughter's Labrador puppy. According to the Appellant's counsel, all puppies were due to receive their second vaccinations on June 4. The review decision characterizes this as negligent veterinary practice since puppies need to be vaccinated every 2-4 weeks, meaning a single dosage in March was not acceptable or protective. This, the review decision concluded, coupled with the inappropriate sanitation and unperformed renovations to the Property, meant contamination remained a serious issue and risked illness for any dog in her care.

20. One of the seized puppies later became critically distressed and had to be euthanized, likely as a result of distemper.
21. The decision reviews the photographs and video from the initial warrant depicting an overwhelming state of clutter. The unsanitary environment included piles of debris, garbage, personal items engulfing much of the floor space with narrow walkways between spaces. The decision acknowledges the reason the Property fell into such disarray was due to the Appellant being in a motor vehicle accident in September 2020 which required two months of hospitalization after which she struggled to keep up with the housework. However, after being discharged from hospital, the decision notes that the Appellant quickly resumed breeding dogs which Ms. Moriarty found entirely careless given her limited capacity. In response to the Appellant's assertions that given her injuries, she had not been given enough time to address the Society's concerns, Ms. Moriarty concluded the Appellant did not raise these concerns with the attending officers. In any event, she concluded five months was adequate to rectify the concerns or enlist help as the welfare of her animals was at stake.

## **V. KEY FINDINGS OF FACT AND EVIDENCE**

22. Having carefully read all of the submitted materials and heard the testimony of witnesses, the following are the Panel's key findings of fact and evidence.

### **Events leading up to the seizure**

23. APO Dodd's record of the events is found in the SPCA's Shelter Buddy recording system. The chronology outlines the history of the investigation and interactions of SPC Kokoska, APO Dodd and the Appellant.
24. The record indicates a telephone complaint was received by the SPCA Call Centre on January 11, 2021 of 20 dogs and eight cats living in what was described in the complaint as a hoarding-type house, covered in urine and feces.
25. APO Dodd visited the Property January 12, 2021 and observed debris and an outside area smelling of urine and feces and spoke with the Appellant who acknowledged being the owner of the dogs. As the Appellant was leaving, APO Dodd returned later, accompanied by an RCMP officer, and inspected the animals but was not allowed to take photographs.
26. As a result of the inspection, APO Dodd issued a Notice giving 24 hours to meet the Notice cleaning demands.
27. Subsequent telephone conversations confirmed the Appellant removed 21 dogs from the Property to Fortune Creek Kennels so she could renovate her house. APO Dodd visited the kennel January 20, 2021 and spoke with its owner.

28. On May 11, 2021, SPC Kokoska and APO Dodd visited the Property, noting different small breed Pomeranian-type dogs in the front yard pens than those seen previously. They observed an accumulation of bags of garbage with one containing cat litter and an empty dog pen with a build up of feces. There was no answer and APO Dodd left a posting notice.
29. On returning the next day, the officers found the posting was gone and except for two cats, there were no animals in the yard or heard in the house.
30. On May 19, 2021, APO Dodd returned to the Property and saw the 12 small breed Pomeranian-type dogs previously seen and a chocolate-coloured Labrador puppy. She observed the same build-up of debris and garbage in the yard walkway and the pens were in the same condition. There was a strong smell of urine in the front yard pen and some feces.
31. Based on the opinion and belief of SPC Kokoska that the animals at the Property were in distress, suffering from neglect, were being kept in unsanitary conditions, and were lacking adequate ventilation, he sought and obtained a warrant via telecommunications, which was executed May 20, 2021 by SPC Kokoska and APO Dodd.

### **Appellant Evidence**

#### Robyn Seddon

32. The Appellant described being hit by a motor vehicle in September 2020, sustaining injuries which resulted in a two-month hospitalization. She suffered fractured facial bones, lost teeth, loss of part of her jawbone, her shoulder was damaged, and her wrist fractured. Her injuries have impacted her daily life; she has limited motion in her shoulder and her upper body abilities for such things as sweeping and mopping are limited. She is slowly improving. She is attending physio-therapy sessions weekly and is being treated for dizziness. Her physiotherapist has recommended that she see a family doctor and a psychiatrist.
33. After being released from the hospital, she could not care for the animals though she always tried to keep them clean. Her abilities have improved over time. The occupational therapist recommended she get some cleaning help, which resulted in ICBC hiring a cleaning team. The SPCA showed up the next day, unannounced, and because she was unable to visit, she arranged for the officer to return later that day.
34. She explained that there was some misunderstanding about how she spelled her name to SPC Dodd because she was wearing a covid mask and had difficulties speaking. She informed APO Dodd about her injuries and both her physical and mental state. She conceded that lots of dogs make a big mess.

35. She understood the Notices that were issued, and their contents. She also offered that some of the dogs seemed terrified of APO Dodd. With respect to whether APO Dodd offered any assistance, she stated APO Dodd sent her an email referring to mental health and substance abuse and that was the extent of her assistance. With respect to any advice offered, she said APO Dodd told her the floors needed to be torn up. She was issued a Notice giving her 24 hours to tear up the floors.
36. She explained that following the SPCA's attendance she moved 21 dogs to the Fortune Creek Kennel in Armstrong. She told APO Dodd that they were being moved. These dogs were examined by Dr. Ringness at the kennel upon the demand of APO Dodd, which indicated the dogs were mostly healthy with the exception of one exhibiting a hernia, one with a broken tooth, and another with a back leg issue which she says is common in the breed.
37. With respect to her intentions to re-home the dogs currently at the kennel, she stated that she intended to sell some, but not all, naming four (Dexter, Huxley, Lorna, and Sadie) and maybe one or two more that she wished to keep.
38. The Appellant described the accident as a life-changing event and that she had to make changes. Her life had degraded as a result of the accident and she "didn't care". The accident changed her perspective and she felt the dogs could get better care elsewhere.
39. She has spent \$21,000 to care for the dogs at the kennel since January. As the kennel was unable to handle the two litters of puppies that were born there, she took 11 Pomeranian puppies home. She describes these puppies as a product of accidental breeding.
40. Concerning the five Yorkie dogs that were seized, she testified that initially, she had offered to look after them for two weeks for a friend who had surgery. The seizure created a rift between her and her friend, so she bought the puppies and says she might try to sell them back to her friend later.
41. In describing her daily routine, she lets the dogs in and out of the house, cleans up their feces, and provides them clean bedding and water dishes. The males and females are separated, and the dogs are given fresh food and water daily, At the end of the day, she cleans up their poop again.
42. On the day of the seizure, the SPCA showed up before she had a chance to clean for the day. While the ammonia strip test conducted by SPC Kokoska indicated a reading of 10 ppm, digital readings she conducted the next and subsequent days showed much lower readings, decreasing from 3.3 ppm on May 21 to 0 ppm on May 31.

43. She started cleaning her place right after the seizure; she hired a group to help her clean up and has taken a lot of stuff to the dump. The house has been totally cleaned, the carpets have been torn out, there is new linoleum, the floors have been bleached, and rooms have been emptied. She researched distemper online and learned that a 30:1 bleach solution would help control it and repeated use would help control parvovirus. She has replaced fence wire outside and put down a new surface of mulch and pine-shaving wood chips. The yard has had three bleachings. The rooms have been scrubbed and the kennels have been removed.
44. In her view, all of the puppies were healthy while in her care. They were showing no signs of illness or diarrhea. With newborn pups, she waits until they are eight weeks old before getting their first shots and when they are sold, buyers are advised to get the second shot. Given the puppies received shots in May (not March), they were not due for their second shot until June 4, after the seizure.
45. She sells puppies for \$2,000 by advertising on Kijiji, and that she interviews potential owners to ensure their suitability.
46. If the dogs are returned to her, she says she would keep the place in condition as required, and if not at her place, then she would keep them temporarily at her daughter's until they are sold. She provided photographs of her daughter's place.
47. In summarizing her testimony, the Appellant stated that the January circumstances were unique, the May seizure was uncalled for and her home has now been cleaned and is being maintained. She expects to own only three or four dogs and continues to work with the owner of the kennel to rehome more of the dogs still there. She has no objection to being further monitored or inspected. In her view, only one puppy was sick, and that sickness was contracted while in SPCA custody.
48. On cross-examination, the Appellant confirmed she is currently attending two physio-therapy sessions per week and is not working. She has received one wage loss subsidy cheque from ICBC so far and has savings. She confirmed she does not keep treatment records and instead relies on the veterinarian to keep records. She agreed that as the dogs that went to the kennel were pregnant, her measures and abilities to manage their breeding were not sufficient.
49. In response to a question on cross-examination about whether, at the time of seizure conditions were acceptable, the Appellant felt that the environment was adequate for the animals but not for herself. She added that she did tear out the carpets and has put down new flooring afterwards. The Property became that way as a result of the accident. Her daughter looked after her house while she was in the hospital and she moved out mid-December. The Appellant acknowledges still having physical issues but says she will get help to clean the house. It was not until she came home from the hospital that she realized how bad things were.



50. Responding to questions about her hoarding issues, the Appellant admitted that this issue has been suggested to her but that she has yet to take any steps to address it. She does plan to take steps to address her mental health.
51. The Appellant confirmed that she is currently paying \$840/week to kennel her other dogs. She says she will be selling these dogs when they are returned. She has the means to separate them and has been given advice about cleaning and disinfection and intends to install ventilation fans once she is certain the dogs will be returned.

### **Respondent Evidence**

#### Dr. Anne Flemming

52. Dr. Flemming, a veterinarian with the Central Animal Hospital in Kamloops, prepared a report following her examination on May 20, 2021 of 17 dogs brought to her by APO Dodd and SPC Kokoska following the seizure. She performed brief examinations on each animal to assess their health and well-being and to determine if any of them required immediate care. She reviewed photographs and videos of the condition of the Property from which they were seized. All dogs appeared to be less than six months old, in ideal body condition, and all had dirt/feces stuck to their hair and paws and overgrown toenails.
53. She reports the following individual concerns:
  - Puppy #1- small spot of blood on thermometer probe after taking temperature
  - Puppy #2- has inducible cough. DDX: collapsing trachea, kennel cough, URTI, FB, environmental allergens. Recommend monitoring.
  - Puppy #4- Nails quite long and in need of trimming
  - Puppy #6- Nails quite long and in need of trimming. Fearful.
  - Puppy #8- Nails quite long and nail trim recommended.
  - Puppy #9- Mucous discharge at medial canthus of right eye. Recommend monitoring. Nails quite long and a trim is recommended.
  - Puppy #11- Has hind dewclaws bilaterally. Hyperemic sclera and mucoid discharge- suspect conjunctivitis (bacterial vs allergenic/environmental).
  - Puppy #12- has slight underbite.
  - Puppy #14- Has feces or food crusted along caudal nasal planum (at mucocutaneous junction) was able to clean it off using damp cloth.
  - Puppy #17- Tooth 804 contacting the gums rostral to tooth 504. Recommend extraction. Nails are quite long and require trimming. Fearful.
54. Her report notes that all areas shown in photographs and videos (inside and out) of the Property showed marked amounts of refuse and debris, but despite the significant deficiencies, there were bowls of food and water in all areas where the dogs were obviously kept.

55. She concluded that while all of these dogs appeared to be receiving adequate nutrition and water, they were in distress due to deficits in their grooming, hygiene and housing requirements because of unsanitary conditions. The conditions inside the house were hazardous due to the risk of ingesting garbage, chemicals, inappropriate food or cat feces. The level of ammonia indicated inadequate ventilation.
56. Lastly, she reported learning that puppy #1 was eventually diagnosed with distemper and euthanized. Distemper is a contagious disease requiring significant disinfection protocols to prevent its spread. She concluded it would be very difficult if not impossible to adequately disinfect these premises enough to prevent further spread of this disease.

Dr. Emilia Gordon

57. Dr. Gordon was qualified by the Panel as an expert in the field of veterinary medicine. She provided both oral testimony and a written report dated July 6, 2021. She has a specialty certification that involves advanced study and casework in canine infectious disease, including interactions between the host, agent causing disease, and the environment.
58. The purpose of her report was to detail the findings and interpretations related to infectious disease in the group of puppies seized. The puppies showing signs of illness in Dr. Flemming's examinations were subsequently examined by other veterinarians. Prefacing her detailed analysis, Dr. Gordon noted the photographs from the Property depicted both clutter and squalor, visible piles of feces, some of which was consistent with diarrhea in the living area, and noted the bare floors, wood, dirt, and bark chips.
59. She noted there were scant records relating to the puppies, limited to a single veterinary visit to vaccinate one litter of Pomeranian puppies at 8.5 weeks of age and of another litter at 9.5 weeks of age. There are no records of parasite control, fecal testing or other treatments, or records of vaccinations of the Yorkie puppies or their Yorkie parents.
60. Her report outlines her diagnostic test results: A total of five intake fecal samples from five dogs or pooled from groups of two or three dogs were submitted and tested for giardia and roundworm, with additional testing for other infectious diseases conducted on others where clinical signs showed concerns. Her results are as follows:
  - Of five dogs tested for giardia, all tested positive
  - Of five dogs tested for roundworm, one tested positive
  - Of five dogs tested for whipworm, none tested positive
  - Of five dogs tested for Hookworm, none tested positive

61. All 16 puppies tested at intake had diarrhea, which took between one and nine days to resolve.
  - Puppy #1 developed a fever the day after intake, tested positive for canine distemper virus (CDV) May 27, 2021 and was euthanized May 31, 2021. Necropsy tests confirmed it had CDV, Bordetella bronchiseptica, and cryptosporidium as well as possibly CPV (canine parvovirus).
  - Puppy #2's cough may be linked to a common small dog condition, or to an infection. Tests were negative beyond showing giardia in one fecal sample.
  - Puppies #15 and #16 developed diarrhea beyond baseline for the group. It was resolved with giardia treatment.
62. Summarizing her opinion, Dr. Gordon reported that the living conditions on the originating property did not support good health and welfare and did not meet the Canadian Veterinary Medical Association Kennel Code. Porous substrates cannot be effectively cleaned and disinfected and the multiple microscopic pathogens that were present are not susceptible to routine household disinfectants. With there being essentially two primary housing rooms (male and female) for the puppies and an outdoor common area, suitable housing for the puppies did not exist on the Property.
63. In her view, this case met the some of the components of the definition for animal hoarding, a circumstance, she said, is frequently encountered by the Society:
  - accumulation of more animals than "typical",
  - failing to provide minimal standards of care, often with resulting illness and death,
  - denial of inability to provide care and impact on animals and people, and
  - persistence in accumulating animals.
64. Finally, Dr. Gordon concluded that the 16 puppies seized were kept in conditions that were unsanitary, deprived of veterinary treatment meeting generally accepted practices, and were sick with infection. While physical modifications to the environment may partially alleviate some of the reasons the animals were in distress, they will not address the persistence of durable microscopic pathogens, or the root issue which is a lack of care capacity and lack of perspective on the part of the Appellant.
65. Dr. Gordon's testimony mirrored her more extensive written report. With respect to dog breeding practices, she made the point that greater animal density increases the risk of disease.
66. On cross examination, Dr. Gordon reviewed photographs of the home's interior showing significant clean-up efforts. In responding to questions, she did not agree that removing topsoil in the outside area or replacing the interior subflooring would reduce risk. The steps taken to clean up the Property were not adequate as

diseases can persist in cracks in floor tiles, wood is not “disinfectable” and there is not adequate space on the Property if all the dogs were returned.

67. In both her report and on cross-examination, Dr. Gordon addressed the issues with puppy #1 that resulted in it being euthanized. It started showing illness the day after it was seized and, despite care, deteriorated steadily. With respect to a question about why only one puppy got sick and whether the puppy that was euthanized could have contracted distemper while in custody, her response was that distemper has a long incubation period where illness may not be apparent. There was little or no likelihood the puppy contracted the disease while in custody.
68. In response to a question about why none of the seized dogs were sent to foster homes while in custody, Dr. Gordon stated that they could not find willing foster homes because of the disease concerns.
69. In response to a question whether, any/some/or all of the dogs could be returned, Dr. Gordon’s response was that given the absence of the Appellant’s ability to recognize and realize the dogs’ needs, likely the cycle would repeat itself. She did however acknowledge that adult dogs would do better than juveniles, as would fewer dogs that were spayed or neutered.

#### APO Leah Dodd

70. APO Dodd’s testimony is consistent with notes she entered in the SPCA Shelter Buddy database, recording dates and times and summaries of her interactions, and summaries of her conversations in person, via telephone or e-mail with the Appellant, her daughter, the owner of Fortune Creek Kennels, principals of other kennels with which she made inquiries, and examining veterinarians. Details are further described in her follow-up reports.
71. APO Dodd initially visited the Appellant’s property on January 12, 2021 and returned later that day when the Appellant allowed her inside to conduct an inspection. She made a hoarding assessment, noting ten female dogs in one room, eleven males in another, and dogs with rubber bands around their necks. She was unable to assess them because they exhibited fearful behaviour. She noted the ground outside was covered in feces, the floor inside was soaked in urine, there was condensation and smell inside she determined was from inadequate ventilation. Despite the conditions of the Property, her report notes seeing the female dogs were alert, hydrated and social, their ears and teeth were clean and their nails were good, and they had water and food access.
72. She was not offered an explanation by the Appellant about her injuries or abilities to care for the animals. She issued two Notices that afternoon, giving the Appellant 24 hours to address the many environmental and management directions the Notice contained. She re-attended the following day, accompanied by an RCMP

officer to follow-up, noting some clean-up, some dogs had been brushed and their nails trimmed.

73. She outlined her change expectations regarding spacing and ventilation to the Appellant. In subsequent conversations, she understood the dogs were going to be boarded while the Appellant made renovations to the Property.
74. According to her notes, there were several voicemails, texts and telephone conversations between APO Dodd and the Appellant between January 14 and January 21, 2021 addressing issues about the number of puppies noted on the Notice, where the Appellant planned to board the puppies, how many dogs she might want back, comments of the Appellant about the bad condition of her Property, and whether the Appellant considered receiving assistance from a social worker which she responded to negatively.
75. Her notes confirm several further interactions between January 14 and May 11, which indicates the level of monitoring by APO Dodd during this time.
76. On January 15, she learned the Appellant planned to board the dogs at the Fortune Creek kennels in Armstrong, BC. She sent an e-mail to the Appellant on January 15, 2021, in furtherance to a conversation with the Appellant about a resource the Appellant could contact for assistance and a telephone number the Appellant could call should she be interested.
77. APO Dodd visited the Property again on May 11, 2021 with SPC Kokoska and left a posting on the door when there was no answer. She saw no change to the condition of the Property. She saw around 12 dogs and the same build-up of garbage, feces. She returned with SPC Kokoska the next day. Both the posting and dogs were gone. They left another door posting. Later that day she had a conversation with the Appellant and learned that the renovations had not been done and that some of the dogs not previously seen belonged to a friend.
78. Returning to the Property May 19, she saw approximately 12 dogs, appearing to be the same as those seen on May 11 and a Labrador puppy. She saw no changes to the condition of the Property.
79. Based on her observations and inspections, and the additional observations of SPC Kokoska from his visits to the Property, they concluded that the animals were suffering from neglect, were being kept in unsanitary conditions, and were lacking adequate ventilation. SPC Kokoska sought and obtained a search warrant, which was executed May 20.
80. APO Dodd described the Property on the day the warrant was executed and the dogs seized. There was garbage, clutter and debris, and feces on the floor in the female room. The floors were urine-soaked and the ventilation was described as poor. She testified that she saw no appreciable changes to the Property from her

first visit in January. A second warrant was executed on the Property on May 27, 2021 looking for more dogs that reportedly were there and she saw no appreciable changes apart from some clutter having been removed from the living room.

81. During cross-examination, APO Dodd explained the Shelter Buddy reporting system, confirming that all of the input entries were done by her. She also admitted that she had used dog bowl water to wet the litmus paper when she did her ammonia test, and that the feces and urine apparent in the snow in the outside dog area could have been melted snow but, that it still smelled. She explained that while she was unable to do a hands-on assessment of the dogs, she was able to see them well enough by bending over for a closer look. It was easy to see nail growth. She agreed that it was possible that her wearing black boots, pants, shirt and vest could have been intimidating and frightening to the dogs. In response to questions about the feces she had observed in the female room, referring to photographs taken the day of the seizure, she stated that there was a mix of fresh and dried feces, but it was mostly fresh, with some appearing to be either diarrhea or soft feces.

## VI. ANALYSIS AND DECISION

82. The Appellant seeks to have the Society's review decision set aside due to what she describes as factual errors and incorrect assumptions. She also argues that the Society failed to take into consideration the Appellant's major improvements to her property, unfairly concluded the Appellant would not maintain her property and failed to take into account that the Appellant has always ensured her animals' living space is cleaned and cared for regularly.
83. As to the factual errors made by the Society and identified by the Appellant, it is important to point out that an appeal to BCFIRB is a broad appeal from one specialized body to another. BCFIRB does not confine itself to considering errors in the review decision or to "the record". Instead, BCFIRB is a specialized administrative tribunal with broad evidence gathering and remedial powers. As was stated in *A.B. v. British Columbia Society for Prevention of Cruelty to Animals*, (August 9, 2013, at paragraph 93):

In my view, the Appellant in a case like this has the onus to show that, based on the Society's decision or based on new circumstances, the decision under appeal should be changed so as to justify a remedy. Where, as here, the Society has made a reasoned review decision, BCFIRB will consider and give respectful regard to those reasons. However, that consideration and respect does not mean the Society has a "right to be wrong" where BCFIRB believes that the decision should be changed because of a material error of fact, law or policy, or where circumstances have materially changed during the appeal period. BCFIRB can give respect to Society decisions without abdicating its statutory role to provide effective appeals [emphasis added]

84. I have considered the errors identified by the Appellant and whether any errors are material to this appeal.

- a) The review decision states Fortune Creek Kennels will be selling the remaining 17 dogs to cover boarding costs. The Appellant asserts this is false as she has been paying her boarding costs.

The Panel has heard the evidence and agrees that Ms. Moriarty's understanding is incorrect. The Panel has heard and taken into account the Appellant's evidence.

- b) The review decision states that "all of the puppies had overgrown nails". However, the Appellant argues Dr. Flemming's report states that only the Yorkies had overgrown nails.

The Panel does not find this a material error. Further, Dr. Flemming's report of May 20, 2021 twice mentions that all dogs had overgrown nails, some more than others and likely to the point of discomfort.

- c) The review decision states puppies received their first vaccine on March 7, 2021 which the Appellant states is incorrect. The Twin Rivers veterinary records show the Pomeranians received their vaccines May 7, 2021.

The Panel agrees that this was an error. The Panel has heard and taken into account the Appellant's evidence.

- d) The review decision states the Appellant quickly resumed breeding dogs after being discharged from the hospital which she argues is an incorrect assumption.

The Panel has taken into account the Appellant's evidence that this was an accidental breeding as discussed below.

- e) The review decision states the Appellant failed to advise the attending officers of her injuries. The Appellant says she did advise the officers of her accident.

The Panel accepts that this is correct. The APO's handwritten notes do reference a question and answer about the accident in September. However, this does not appear to be a material error.

- f) The review decision references Dr. Flemming's report and her conclusions based on a review of photographs that the conditions of the dog pens pose a hazard and risk of injury to the dogs. The Appellant says it is an incorrect assumption that both outdoor dog pens were used by the dogs. One pen was used by the chickens.

The Panel does not find this a material error.

85. The Panel turns now to consider whether some, any, or all of the animals were in distress at the time they were taken into custody, following which, I address whether it is in the best interests of some, any, or all of the animals to be returned.

**Were the animals in distress?**

86. Section 9.1 of the *PCAA* outlines the duties of persons responsible for animals. It reads as follows:
- 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.
87. Section 1 (2) of the *PCAA* defines distress as follows:
- 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.
88. Section 11 of the *PCAA* provides:
- 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.
89. The evidence of APO Dodd recounts poor environmental conditions observed at the Appellant's property from the initial visit in January which conditions remained largely unchanged through to the seizure in May. Her initial observations were that the Property smelled of feces and ammonia, had cat food bags scattered and debris/items throughout the driveway and walkway. On being let into the house, the floor was soaked with urine and smelled strongly of ammonia. She testified that these conditions did not appreciably change even after the warrant was executed where she observed some clutter had been removed from the living room. The animals were being deprived of adequate space and, inside the premises, ventilation, and were being kept in conditions that were hazardous and unsanitary.



90. The photographs and videos of the Property support the evidence of APO Dodd and depict an exceptionally crowded premises offering little room to walk, with floor, kitchen counter, bedroom and other room areas crowded with fabrics, crates, kitchen materials and garbage. There are visible piles of feces and staining in the living area. The exterior of the Property was similarly overcrowded with garbage and other hazardous materials and disorganized.
91. The testimony of APO Dodd, coupled with her record of interactions with the Appellant and the photographic and video evidence from the day of the seizure depict a property which continued to be sufficiently hazardous and unsanitary so as to be distressful to the animals and demonstrated the Appellant's apparent inability or unwillingness to rectify the concerns. The dogs were still being kept in overcrowded, unsanitary rooms and their outdoor conditions were similarly crowded and unsanitary.
92. The Appellant acknowledged in her testimony that she was not a commercial breeder now, but she once was. As a result, the Panel finds that the Appellant should be aware of industry standards as outlined in the Canadian Veterinary Medical Association Code of Practice for kennel operation and should follow those practices to ensure the well-being and health of the animals in her care. She has not done so, and her practices were clearly inadequate.
93. As to the hazardous and unsanitary nature of the animals' environment, the Panel finds the evidence of Dr. Gordon compelling. While she did not have the benefit of attending the Property, her comments about the condition of the Property, after viewing photographs and videos and her review of Dr. Flemming's report were corroborated by her diagnostic analysis of the puppies and her test results. Dr. Gordon found evidence of distemper, Bordetella bronchiseptica, and cryptosporidium and possible parvo in the euthanized puppy. In the balance of the puppy population, she found evidence of giardia and roundworm infestation. Significantly, all the puppies seized had diarrhea and there was evidence of diarrhea at the Property at the time of seizure.
94. Dr. Gordon's evidence is that population density increases disease risk and once present, disease can persist in a premises. She concluded that the dogs were kept in conditions that were unsanitary, that did not meet generally accepted practices, they were deprived of adequate veterinary treatment, and were sick with infection.
95. The report of Dr. Flemming is similar, though less grave. She reported that while the puppies were in ideal body condition, there were concerns with 10 of the puppies examined. While all dogs appeared to be receiving adequate nutrition and water, she too concluded they were in distress due to deficits in their grooming, hygiene, and housing requirements because of unsanitary conditions.
96. In response to the Society's evidence, the Appellant maintains her puppies were healthy. She argues that the puppy that was euthanized got sick in the Society's

care. She says that while she did not take care of herself, she always ensured that her animals' living space was cleaned and cared for and describes their environment as adequate. She disputes that all her puppies had overgrown nails but agrees some did. She notes errors in the review decision on the dates of vaccinations and disputes the timing of vaccinations is evidence of poor breeding practices. While she also disputes intentionally breeding her dogs, she does acknowledge her practices allowed for accidental breeding. She points out incorrect assumptions made by Dr. Flemming related to two pens described as hazardous for the dogs. The Appellant says the dogs did not use one pen, the chickens did.

97. These minor inconsistencies or errors do nothing to dissuade the Panel from concluding that all the Appellant's animals were in distress at the time of seizure. While I acknowledge Ms. Moriarty's error in reporting vaccination dates and the puppies were not overdue for their second shot, the records show that these puppies received limited veterinary care.
98. The testimony of the witnesses for the Society, their reports, the photographs and the videos taken the day of the seizure are evidence of the fact that all these puppies were in distress primarily due to the unsanitary nature of their environment exacerbated by the number of puppies being housed and the limited veterinary treatment received. Accordingly, the Panel finds that the seizure was justified to relieve the animals' distress.

## VII. RETURN OF THE ANIMALS

99. Having determined that the seizure of the animals was justified, I now turn to the question of whether it would be in the best interests of any or all of the dogs to be returned to the Appellant. The Panel is guided by the decision of *Ellison v. BCSPCA*, 2004 BCSC 1773, where 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...

100. Further, and as referenced in the Society's review decision, in *Brown v BCSPCA* [1999] B.C.J. No. 1464 (S.C.) the court explained:

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

101. The Appellant seeks the return of the seized puppies. Should they be returned, her intention is to sell them. She says she does not intend to breed dogs again until

she has recovered. She argues that the Society failed to take into account the major improvements she has made and the continued work that she is planning to do should the dogs be returned. She introduced photographs demonstrating how ammonia levels have now dropped to 0 ppm. She also introduced 41 before and after photographs of both the inside and outside of her home to show significant cleanup and removal of clutter.

102. The Panel acknowledges the significant efforts made by the Appellant to improve the conditions of her property. However, I am not satisfied that she has demonstrated the capacity to sustain those conditions should the dogs be returned.
103. I find that the Appellant was hoarding animals. She placed 21 dogs in the kennel in January. In May, 17 different dogs were seized. There were unexpected litters which means that the population of dogs she was housing had the potential to grow. Her home (both inside and outside) was observed to be unsanitary and littered with debris for several months. In the five months leading up to the seizure, she made little progress in cleaning up her home, even after removing 21 dogs to a kennel. The fact that the Appellant can now demonstrate significant improvements to her home and reduced ammonia levels is presumably due to there being few, if any, dogs in her home. The Appellant also acknowledges that her ability to clean up her home was limited by her injuries. While the Panel agrees her injuries have played a role, the fact that the Appellant had similar difficulties in 2005, when she was not injured, is indicative of a pattern that is long-standing and which may not be easily resolved despite the improvements seen in her photographs taken following the seizure.
104. The Panel is also mindful of the evidence of Dr. Gordon as to the persistence of microscopic pathogens. In her opinion, removing topsoil or replacing interior subflooring would not reduce the pathogenic risk as diseases persist in cracks and porous wood surfaces.
105. Having considered all the evidence, including the Appellant's history, the condition of the Property from January to the seizure, the fact that dogs remain at the kennel which could return to the Appellant, the testimony of Dr. Gordon about the transmission of pathogens increasing with animal crowding, the persistence of pathogens and the apparent lack of capacity of the Appellant to adequately care for her dogs, it is the decision of this Panel to not return any of the seized puppies. I am satisfied that the puppies would return to a state of distress if returned to the Appellant's custody.
106. I note that the Appellant indicated in argument that she wants five dogs currently housed at the Fortune Creek kennel to be returned. While I have grave concerns over the Appellant's ability to care for any animals and to implement responsible breeding practices, I have no jurisdiction to order the return of dogs which are not part of this appeal.

## VIII. ORDER

107. 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;

(c) confirm or vary the amount of costs for which the owner is liable under section 20(1) or that the owner must pay under section 20(2).

In this case, the Panel permits the Society, in its discretion, to destroy, sell or otherwise dispose of the remaining dogs in their care.

108. The Panel permits the Society, in the Society's discretion, to destroy, sell or otherwise dispose of the animals (16 puppies) that are the subject of this appeal.

## IX. COSTS

109. The Appellant argues that she should not be responsible for the costs of care associated with the puppy that was euthanized as her belief is that the puppy caught distemper while in the Society's care. Further, she argues the Society had the ability to foster out animals taken into custody and thereby lessen its costs of care but chose not to do so in this case. Finally, the Appellant says she should not be responsible for the costs of care associated with the Labrador puppy as it should not have been seized as it did not live on the property and was only visiting.

110. The Panel rejects the Appellant's argument related to the euthanized puppy. There is no evidence to suggest that the puppy caught distemper while in the Society's care. Rather, the preponderance of evidence supports that the puppy became sick in the care of the Appellant due to the unsanitary nature of its environment.

111. Further, having created the unsanitary environment that put her dogs' at risk, the Panel concludes it is unreasonable for the Appellant to now say that the Society should have found foster families to look after her dogs for free. Further, the evidence is that fostering was not an option given the risk of disease with these dogs.

112. Finally, the costs associated with the returned Labrador puppy and the chicks were calculated by the Society and paid prior to their return. The Panel does not see

any evidence that the Society has added the Labrador costs into their remaining cost claim.

113. The July 7, 2021 affidavit of Ms. Moriarty outlines the costs incurred by the Society, which include veterinary costs (\$3340.00), time attending to the seizure (\$273.90), and housing, feeding and caring costs for the dogs (\$18425.70). The total amount of costs claimed is **\$22,039.97**.
114. The Panel finds the Society's costs were reasonably incurred and accordingly, the Appellant is liable to the Society for **\$22,039.97**.

Dated at Victoria, British Columbia this 26<sup>th</sup> day of July 2021.

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**



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Dennis Lapierre, Presiding Member

**Appendix “A”**

<b>Exhibit #</b>	<b>Date (Received)</b>	<b>Received from</b>	<b>Document</b>
Exh_01	June 11, 2021	BCSPCA	BCSPCA June 11, 2021 Decision- Seddon
Exh_02	June 15, 2021	Appellant	Notice of Appeal (NOA) with proof of service
Exh_03	June 16, 2021	Appellant	Seddon Submissions Letter (File 319344)
Exh_04	June 16, 2021	BCFIRB	NOA Process letter
Exh_05	June 24, 2021	BCFIRB	Preliminary Decision
Exh_06	June 24, 2021	BCSPCA	PDF copy LT all encl doc disclosure
Exh_07	June 24, 2021	BCSPCA	SPCA Document Disclosure (Tab 1-36)
Exh_08	June 25, 2021	BCSPCA	BCSPCA Tab 10-Video Footage
Exh_09	June 25, 2021	BCSPCA	BCSPCA Tab 16
Exh_10	June 25, 2021	BCSPCA	BCSPCA Tab 25 – Exhibits to Seddon Submissions
Exh_11	July 2, 2021	Appellant	Appellant’s List of Documents index
Exh_12	July 2, 2021	Appellant	Appellant Tab 1 - 10
Exh_13	July 2, 2021	Appellant	Tab 11 - 21
Exh_14	July 2, 2021	Appellant	Appellant’s Written Submissions
Exh_15	July 2, 2021	Appellant	Witness Contact Form
Exh_16	July 7, 2021	BCSPCA	Updated BC SPCA Document Disclosure index
Exh_17	July 7, 2021	BCSPCA	BCSPCA Document Disclosure Tab 37-42
Exh_18	July 7, 2021	BCSPCA	Submissions of the BCSPCA
Exh_19	July 7, 2021	BCSPCA	BCSPCA Witness contact form
Exh_20	July 7, 2021	BCSPCA	BCSPCA Expert Witness form
Exh_21	July 7, 2021	BCSPCA	Affidavit 1 of Marcie Moriarty
Exh_22	July 9, 2021	Appellant	Appellant’s Final Response