

IN THE MATTER OF THE PREVENTION OF CRUELTY TO ANIMALS ACT, R.S.B.C.  
1996, c. 372  
ON APPEAL FROM A REVIEW OF THE  
BC SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS  
CONCERNING THE SEIZURE OF ONE DOG AND ONE CAT

BETWEEN

NICHOLAS CHANDLER

APPELLANT

AND

BC SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

## **DECISION**

### APPEARANCES:

For the BC Farm Industry Review Board

David Zirnhelt, Presiding Member  
Wendy Holm, Panel Member

For the Appellant

Nicholas Chandler

For the Respondent

Christopher Rhone, Counsel

Date of Hearing

October 5, 2021

Location of Hearing

Video conference

## **I. INTRODUCTION**

1. On August 10, 2021, the BC Society for the Prevention of Cruelty to Animals (“the Society”) seized two animals – a dog, Zaccheaus and a cat, Willow (the “Animals”) - under Section 2 (1) of the Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372 (the *PCAA*) from the owner of the Animals, Mr. Nicholas Chandler (the “Appellant”).
2. On August 24, 2021, the Appellant requested that the Society return the Animals to his care.
3. On September 4, 2021, the Appellant’s request was denied by Marcie Moriarty, Chief Investigation and Enforcement Officer of the Society under s. 20.2(4)(b) of the *PCAA*.
4. On September 4, 2021, the Appellant appealed this decision to British Columbia Farm Industry Review Board (BCFIRB) pursuant to s. 20.3 of the *PCAA*.
5. The Appeal was heard by video conference on October 5, 2021. The Appellant represented himself, testified, and called no other witnesses. The Respondent was represented by counsel, who called one expert witness and two Society officers as witnesses.

## **II. PRELIMINARY MATTERS**

6. The Appellant was unavailable when the hearing convened on October 5, 2021 at 8:30 am due to work conflicts. He advised that he would be available at 10:30 am and upon agreement of the parties the hearing was adjourned until 10:30 am.

## **III. MATERIAL ADMITED IN THIS APPEAL**

7. The Panel identified the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1-15 and is attached as Appendix A.

## **IV. ISSUES ON APPEAL**

8. There are two issues to be decided in this Appeal:
  - a. Were the Animals in distress at the time of seizure such that that the seizure was justified in all of the circumstances?
  - b. Is it in the best interest of the Animals to be returned to the care of the Appellant?

## EVIDENCE AND FACTS

### V. BACKGROUND

9. The Appellant resides at a property that is approximately 20 minutes driving time outside of Quesnel.
10. On August 10, 2021, when the Animals were seized from the Appellant as described above, Zaccheaus (Zach) was an elderly (16+ year old) Chihuahua dog with an age-related heart disease, cataracts, hearing loss and dental disease. Willow was an eight-year-old Munchkin cat with dental disease.
11. This was the second seizure of the Animals by the Society in a nine-month period. On November 27, 2020, Zach and Willow were seized along with three younger Boston Terrier-type dogs and two goats. The Appellant appealed that seizure to BCFIRB. The Appeal was heard on January 20, 2021, with BCFIRB Member Dennis Lapierre presiding.
12. In a Decision dated February 1, 2021, the two goats were found not to have been in distress at the time of seizure and were returned with no conditions. With respect to the household animals (4 dogs and one cat), evidence presented to the Panel confirmed that the animals were kept in conditions that were unsafe and unsanitary and that the two elder animals (Zach and Willow) had dental conditions requiring treatment by a veterinarian. The Panel found that it was in the interest of the three young dogs to remain under the care and jurisdiction of the Society and that Zach and Willow were to be returned to the Appellant conditional on a signed agreement for care. In the agreement for care, the Appellant agreed to seek veterinary dental care for Zach and Willow by March 1, 2021 and May 1, 2021, respectively, and to cooperate with the Society Agent who would follow up to ensure compliance.
13. To prepare Zach for dental surgery to extract his five remaining teeth, two heart medications were prescribed to be taken in combination leading up to the veterinary procedure; the first to strengthen his heart and the second to reduce fluid buildup in his lungs.
14. The Appellant failed to follow through on the agreed-upon veterinary dental care for either animal. The Appellant made two appointments for Zach at the Animal Care Hospital (ACH) in Quesnel. The first was April 14, 2021. The Appellant testified that he missed this first appointment because he had mixed up the dates and believed the appointment was for the April 17. Animal Protection Officer Steeves learned of this when she contacted the ACH on April 14 to verify whether Mr. Chandler had kept his appointment for Zach.

15. After attempting to contact the Appellant by phone and email, Officer Steeves attended at the Appellant's home on April 20, 2021, to speak with him personally. The Appellant told Officer Steeves he had mixed up the days and committed to rebooking appointments for both Zach and Willow that afternoon. Two days later, Officer Steeves contacted the ACH and was told no appointment had been booked for either animal and that the 2-month supply of heart medication the Appellant had picked up for Zach on March 4 would soon run out.
16. On May 3, 2021, Officer Steeves again contacted the ACH to see if another appointment had been booked. She was told that the Appellant had come in on April 28, rebooked Zach's appointment for June 22, 2021, and picked up a renewal of Zach's heart medication.
17. On June 21, 2021, one day prior to the second appointment, Officer Steeves gave the Appellant a "courtesy call" to remind him of the appointment and to offer transport assistance if needed.
18. Officer Steeves called the ACH on June 22, 2021, to confirm whether this appointment had been kept and was told it had not. In her testimony, Steeves testified that within days she determined with her supervisor that the Animals remained in distress and a warrant should be procured for their return to the care of the Society. She also testified that because she had not yet been appointed as a Special Provincial Constable (SPC), it was decided that the application for a warrant be delayed until she received this appointment in early August 2021.
19. In his testimony, the Appellant asserted that when changes to his work schedule made the June 22 veterinary appointment impossible, he called the ACH the day prior to cancel the appointment, explaining he had to work the next morning. He testified that he also told ACH that his work shift made an 8:30 am drop off impossible for him and asked whether Zach could be brought in later in the day. He was told that an early morning drop off was the only option for surgery appointments.
20. On August 7, 2021 Officer Steeves – who had in early August been appointed a Special Provincial Constable - contacted the ACH to see if the veterinary appointments had been rebooked, and when advised they had not, applied on August 9, 2021 for a warrant to search the Appellant's home.
21. In documents filed with the court on August 9, 2021, the Society asserted that "...it is the opinion and belief of SPC Steeves that the animals... are in distress as a result of being deprived of necessary veterinary care..." Justice JA Davenport found that "...As Mr. Chandler has not obtained the directed dental care, I find they are in distress..." and authorized a warrant for the Society to search the Appellant's home.

22. On August 10, 2021, SPC Steeves executed the search warrant and both animals were seized for the second time. Photographs were taken of the conditions in the home and those photos have been entered into evidence in this Appeal.
23. On August 24th the Appellant sent a Notice of Dispute to the Society stating that he would like the Animals returned to him. In her reply of the same date, BCSPCA Chief Prevention and Enforcement Officer Marcie Moriarty advised the Appellant of the dispute process, began the process of document disclosure, and asked the Appellant to submit his documents to the Society by August 31, 2021.
24. The Appellant sent an email to the Society on August 28, 2021. In it, he expressed his lack of faith in the Society's dispute resolution process, his concern regarding the way the Animals were seized, reaffirmed his request that they be returned and advised that he would be at the Quesnel SPCA to pick the Animals up at noon on August 31, 2021.
25. On August 30, 2021, Aliz Horvath, BCSPCA Seized Animal Liaison Administrator, advised the Appellant that he was not welcome to attend at the Quesnel SPCA or any other SPCA location, and that Society staff had been advised to contact the RCMP if he did.
26. On August 31, 2021, the Appellant advised Ms. Horvath by email to "have them ready for transport at noon". In the afternoon of the August 31, the Appellant was advised by email and voicemail that Willow had been transferred to foster care on August 24, 2021 and Zach transferred to foster care on the August 30.
27. On September 2nd, Ms. Moriarty, advised the Appellant of her reasons for not returning the Animals to him. Her Review Decision (Exhibit 1) stated that she was satisfied, based on the evidence, that SPC Steeves had reasonably formed the opinion that the Animals were in distress, as defined in section 1(2) of the PCAA, and that her action to take custody of the Animals to relieve them of distress was appropriate. Ms. Moriarty referenced the following:
  - Notice of Disposition issued,
  - the Quesnel SPCA Exam,
  - the Animal Care Hospital Exam,
  - BCFIRB's decision on *Chandler v. BCSPCA* 01 Feb 2,
  - the signed Agreement of Return 06 Feb 21,
  - the Information to Obtain the Warrant with Attachments,
  - the signed Warrant itself,
  - SPCA's Animals Status List and Update,
  - the Animal Care Hospital Invoice #143274,
  - Shelterbuddy Photos, and
  - Willow's Animal Care Hospital Dental Record.

Ms. Moriarty noted she felt it was in the best interest of the Animals to remain under the care of the Society because despite the support offered by the Society, the Appellant was unable or unwilling to follow through with Zach's veterinary appointments and unmotivated to book Willow's dental treatments.

28. On September 4, 2021 the Appellant filed a formal notice of appeal with BCFIRB.

## **VI. APPELLANT TESTIMONY**

29. The Appellant represented himself and called no witnesses.

30. After being sworn in, the Appellant testified to the following:

- a. Until June 2021, his sole employer was Walmart. His schedule varied and his days began at 5 am. His days off were Sunday and Monday, the same days that the Animal Care Hospital was closed. This made it impossible, when called in to work, to drop off Zach at the requisite surgery intake time of 8:00 to 8:30 am.
- b. The Appellant testified that he left a voice mail for the ACH explaining that his only free time was in the afternoon and asked if he could bring Zach in for his surgery appointment later in the day. He said that his call was never returned. He testified he asked ACH staff the same question when he went in on April 28, 2021 to pick up Zach's heart medication and book the second appointment and was told only morning drop offs were permitted. At the time he booked the June 22 appointment, he was not scheduled to work but was subsequently called in.
- c. The Appellant testified he called other veterinary hospitals in the area to try to find one that would allow an afternoon intake, but his calls were not returned. He stated that because his car is not air conditioned, he was very reluctant to transport his elderly dog during July's extreme heat. He added "as soon as I can make a veterinary appointment, I will."
- d. Referring to Society notes that said Zach's vision and hearing loss make navigating in new spaces difficult causing him to bump into things, the Appellant said "At my home - his home - he never bumps into anything. He knows where everything is, he navigates his way from the bedroom at one end of the house to sleep to his heating pad in the living room. He finds his food and water with no issues. They have a happy, easy little life and as soon as I can make a scheduled appointment that works for my work schedule I intend follow through with the previous conditions.

- e. The Appellant raised several concerns about the seizure itself.
    - i. Describing the seizure as a “kidnapping”, the Appellant questioned the right of the Society to enter his home while he was at work, without his permission, and seize his animals. He claimed he had no contact with the Society since the Animals previous release, and therefore questioned on what basis they were able to determine the Animals were in distress.
    - ii. He was further concerned that the way the seizure was carried out would have been very stressful and confusing to both animals, who wouldn’t have known what was going on. With his limited vision, Zach can navigate within the house between his heating pad and food and water but with his poor hearing and eyesight he would have been very alarmed by strangers in the house.
    - iii. The Appellant further questioned why the Society had left his home unlocked.
  - f. The Appellant stated that it is in the best interest of his elderly pets to be returned home where they are most comfortable.
31. The Society’s counsel, Mr. Rhone, reviewed with the Appellant the Society’s August 10, 2021 search warrant and the February 6, 2021, BCFIRB Decision, asking questions that drew additional testimony:
- a. The Appellant acknowledged that the agreement he signed on release of the Animals on February 6, 2021, required him to bring both Zach and Willow to ACH for veterinary dental care by March 1 and May 1st, 2021, respectively.
  - b. The Appellant did not recall receiving Officer Steeves’ email and voicemail sent the afternoon of April 14, 2021, after learning of the missed appointment but did recall her visit to his home on August 20, 2021.
  - c. When asked why he missed the April 14 appointment, the Appellant explained that his work schedule was erratic and that when called in to work that day had believed the vet appointment was on the April 17.
  - d. The Appellant testified that in the end of June 2021 he was called back as a passenger screening agent at the Quesnel airport. This is a second job for him – he works 7 days a week - but due to recent rescheduling of a morning flight he now starts his screening work at 8:30 and can comply with the 8:00 -8:30 am surgery drop off window at ACH.
  - e. The Appellant recalled receiving a reminder email from Officer Steeves on June 21, the day before the rescheduled appointment. He testified that left a voice mail with the ACH that same day to rebook the appointment, explaining

that he had a work conflict and asking for an appointment in the afternoon. He claimed the ACH never returned his call.

- f. Mr. Rhone then asked about Zach's medications. The Appellant recalled picking up both of Zach's medications on April 28, 2021 (one for heart health and one to prepare him for surgery) and while he "may have missed a day or two", he said he still had some pills left. The Appellant said he administers  $\frac{1}{4}$  tablet daily of one medication and the other is 1 pill twice a day with feeding.
- g. When asked if he had refilled the prescriptions elsewhere, the Appellant said he had not. Mr. Rhone asked the Appellant how it could be that he still had pills when, as Dr. Scheidt will testify, "... she only gave you 30 at the end of April." The Appellant said he had picked up both prescriptions, believes there was more than one month supply, and in any event, he still had some left. Mr. Rhone asked for a photograph of the pill bottle. The Appellant said he would return to his home to take one, and would provide it after lunch, but the issue was not further raised in the hearing proceedings.
- h. In response to Mr. Rhone's question as to why he did not pursue an appointment in July, the Appellant said the temperatures were too hot to transport an elderly dog and keep him in a vehicle with no air conditioning for several hours (from his 5 am work start when the dog could be dropped at the ACH at 8:30).
- i. When asked why he didn't arrange his work schedule to accommodate the vet appointments agreed to in the pre-return Agreement, the Appellant said veterinary appointments required very long lead times and in the interim work schedules would change, creating a conflict.
- j. Mr. Rhone asked the Appellant "...wouldn't it be fairer for the animals" to be with someone who could give them constant care and attention? The Appellant replied it was fairer for the animals to be with the person they know.
- k. When asked how he could assure the Society that the necessary veterinary care would be provided to Zach and Willow, the Appellant said his schedule has now stabilized considerably and he has more free time. While he now works seven days a week, his afternoons are free and on two mornings a week he doesn't start work till 8:30 so could now make an 8 am drop off. All he needs, he said, is an appointment that will fit his schedule.
- l. The Appellant said that he had tried to clip Zach's overgrown toenails when he was asleep, but it was difficult. He agreed that Zach's teeth were in bad condition and admitted there was urine and feces in the home but only when he was away in the day and that he cleaned it up on his return home.



- m. When questioned about his failure to pay the amount outstanding to the Society for the first seizure, the Appellant said when his debit card would not work on their machine, Society staff told him "...don't worry - take them and you can pay later." This was not done.
  - n. When asked whether a friend could not have transported Zach to his appointment the Appellant said no, he did not have many friends and that he lived a fair distance out of town.
32. In response to questions from the Panel, the Appellant testified as follows:
- a. The Appellant works seven days a week at his two jobs (Walmart and passenger screening at the Quesnel airport). He lives 20 minutes out of town and has a monthly income sufficient to afford the requisite dental veterinary care for his animals.
  - b. Prior to being re-called as an airport screener (a second job), the Appellant's days off were Sunday and Monday which coincided with the days the ACH was closed. He currently works 5 days a week at Walmart (5 am till 1:30 pm shift) and two days a week at the airport. Tied to the departure schedule of a morning flight, the Appellant was initially required to be at the airport at 7:45 am each morning. This moved to 8:15 am and more recently to 8:30 am. This new schedule will now – for the first time - accommodate a morning veterinary drop off at 8 am.
  - c. During the first seizure, there were 4 dogs in the home, 3 of which were pups that were not house trained. Zach is now the only dog in the home during the day, and because the Appellant cleans up any feces and urine when he gets home, their environment has been improved.
  - d. The Appellant, who graduated with a biology degree from the University of Western Ontario, spent 5.5 years working at the Vancouver Zoo and has taken formal training in animal behaviour, diet and administering treatments to animals.

## **VII. RESPONDENT WITNESSES**

33. The Society was represented by Mr. Rhone who called three witnesses: Dr. Bianca Scheidt, SPC Sarah Steeves and Quesnel SPCA Shelter Manager Colby O'Flynn. Dr. Scheidt was qualified by the Panel as an expert witness in veterinary medicine. Dr. Scheidt graduated with a degree from the University of Veterinary Medicine in Leipzig, holds a license to practice veterinary medicine in the Province of BC and works at the Quesnel Animal Care Hospital. Dr. Schiedt is the veterinarian who examined Zach and Willow following both seizures.
34. SPC Sarah Steeves testified to the events leading up to the seizure, the procurement of the warrant and the seizure itself. Her evidence included

photographs, documents and emails as summarized in paragraphs 9 to 28 of Background. In her testimony and subsequent cross examination, the following additional evidence was presented:

- a. Ms. Steeves was appointed as an SPC (Special Provincial Constable) on August 4, 2021, which allowed her to apply for the search warrant.
- b. SPC Steeves said she applied for the search warrant because the Appellant failed to follow up with veterinary dental care appointments for both animals and only picked up one of Zach's medications – a 30-day supply - on April 28 2021.
- c. SPC Steeves testified that when she executed the search warrant on August 10, 2021, she was accompanied by an RCMP Constable who entered the residence to secure the premises then advised SPC Steeves that he preferred to wait outside due to the strong smell of urine in the home. Zach was in his dog bed in the hallway and did not get up nor bark. Mr. Rhone took SPC Steeves through the photographs she had taken while inside the home which evidenced feces and urine on the floors. After observing the tartar on Willow's teeth and Zach's teeth and overgrown toenails, SPC Steeves said she made the determination that both animals were in distress and removed them from the home. A second cat was present in the home and was not seized.
- d. The Appellant asked SPC Steeves how she determined the Animals were in distress without seeing them prior to entering the home. SPC Steeves referred to the definition in the PCAA. The Appellant asked if she knew how many veterinary clinics there were in Quesnel and Prince George and if she had called them all. SPC Steeves replied that the conditions of their release were that the Appellant was to bring the Animals to ACH and that is the only vet clinic she checked with, adding that she had called ACH on August 7, 2021, and was told there had been no appointments for either animal and no further medications dispensed.
- e. The Appellant asked SPC Steeves why there had been no further attempts to contact him in July. SPC Steeves replied that after the June 22, 2021, appointment was missed, she told her supervisor that in her opinion another warrant would be needed, and the decision was made to wait till she was appointed as a SPC in early August to apply for one since Society SPCs were "tied up dealing with wildfires in the interior."
- f. The Panel asked SPC Steeves if the environment she observed in the Appellant's home during the second seizure was as bad as when the Animals were first seized, and she said it was not, adding there were four dogs the first seizure and this time it was only Zach.

35. Ms. Colby O’Flynn, Manager of the Quesnel Shelter, testified to the events that followed the seizure, including the examination of Zach and Willow by Society staff. In her testimony and subsequent cross examination, the following additional evidence was presented:
- a. Ms. O’Flynn testified that on inspection by Society staff, Willow was dirty but in good condition and friendly. Staff felt she was experiencing too much dental pain to inspect her mouth. She was drooling excessively. They moved her to soft food. Ms. O’Flynn testified that Willow always uses her litter box and grooms herself frequently. Staff proceeded with the dental procedure and fostered her out for one month. Ms. O’Flynn said their assessment of Zach was very similar to that of Dr. Scheidt (as set out below). Ms. O’Flynn said medicating Zach was a challenge, but his appetite was good, he used the puppy pads and it was easy to trim his nails. She testified that Zach was placed in a foster home on August 30, one week after Willow’s placement.
  - b. Ms. O’Flynn testified that while in foster care Zach’s appetite had decreased and he was sleeping for longer periods of the day. A third medication was added, and since that addition was made his activity levels and appetite have both improved.
  - c. In cross examination, the Appellant asked the witness why, if Zach was also in distress, did the Society only provide veterinary dental care for Willow? Ms. O’Flynn replied that Willow’s needs were more urgent because of nerve pain, adding that it was her understanding from the Veterinarian that Zach’s teeth had deteriorated so badly they were “completely dead” and “would not be causing significant pain anymore”.
  - d. In response to a question from the Panel, Ms. O’Flynn said the Society adopts one of three treatment strategies based on their classifications for animals that come into their care as follows: a) those animals that can be rehabilitated, b) those animals that can be treated/managed and c) those animals that are too unhealthy to be treated.
36. Dr. Bianca Scheidt, a Veterinarian at the Quesnel Animal Care Hospital, examined Willow and Zach on August 10, 2021, the day of the seizure, and provided expert testimony and a written report dated August 12th summarizing her observations during examination of the Animals:
- a. In her examination of Zach and Willow, Dr. Scheidt concluded ‘...both animals seem overall healthy and have a normal body condition score and weight. They appear to be clean and were not in any distress on arrival. They displayed their normal behaviour...’.
  - b. Dr. Scheidt’s noted Zach’s heart murmur, dental disease (five teeth left with severe tartar and increased mobility), cataracts (“though his vision appears ok”) and overgrown toenails (“some were curled into the foot pads”). She

noted Willow had severe dental tartar with lesions on her premolars and gingivitis grade IV (out of V).

- c. Dr. Scheidt noted the Appellant's failure to refill Zach's heart medications, but added that an owner has the right to refuse treatment if the dog is not in distress. In this case, Zach's heart condition is not the cause of his distress but is an ailment that needs to be managed for him to have necessary dental work undertaken.
  - d. In her opinion, Dr. Scheidt said both animals presented much the same as when she examined them in November 2020 following the first seizure, but with more advanced dental disease. She recommended that both animals receive dental procedures as soon as possible and in any event within 4 weeks, that Willow's dental care should take precedence and that Willow should be given pain medication.
  - e. Dr. Scheidt's August 12, 2021 report recommended Zach commence his cardiac medication prior to undergoing extractions, with Vetmedin administered ½ capsule twice daily and Fortekor administered ¼ tablet per day.
37. In direct testimony and in response to cross examination, Dr. Scheidt provided the following additional details:
- a. Both animals were in similar condition on August 10, 2021, as when she'd examined them in November 2020. Zach's heart disease was a little bit worse, a few more teeth had gone, the tartar buildup would be causing discomfort and making his heart condition worse, and his nails were long.
  - b. Two medications had been prescribed – one to strengthen his heart health and another to help push blood through his system and avoid buildup in his lungs.
  - c. In Dr. Scheidt's opinion, the Appellant would have run out of the medication he picked up on April 28, 2021.
  - d. When asked by the Appellant why he was unable to book Zach for an afternoon appointment, Dr. Scheidt replied that all surgery appointments are early morning to allow the animals to be prepped for morning procedures, but other arrangements could have been made – e.g., dropping him off the previous evening. The Appellant asked why this had never been explained to him. Dr. Scheidt said because it was not the normal procedure, and the Appellant would have had to ask for that exception to be made. The Appellant said he left a message asking for an appointment that fit his work schedule. Dr. Scheidt replied that he would have had to actually speak with someone. The Appellant asked how he could do that when his call was never returned, Dr. Scheidt said staff tries to return calls.

- e. When asked if Zach's dental disease would have caused him pain, Dr. Scheidt said dental disease can cause some pain, particularly when the tartar goes to the tooth root. She added that clean teeth are important to canine health.
  - f. Dr. Scheidt testified that Willow had a different type of dental disease that caused nerve pain. Because of this, she recommended that a priority be placed on veterinary dental treatment for Willow.
38. In response to questions from the Panel, Dr. Scheidt provided the following additional information:
- a. In her November 27th, 2020, report, Dr. Scheidt noted that Zach was "healthy for his age". When asked if she still felt this was true, Dr. Scheidt said yes; that his heart was getting a bit worse, but he was still perky and happy.
  - b. When asked about Zach's heart disease, Dr. Scheidt said Zach's heart condition is not causing him any pain or distress. Referring to the medications, Dr. Scheidt added not treating the heart disease is fine; the Appellant doesn't have to pick up all the medication - it is just prolonging life, it is not going to hurt him not to have the treatment. But eventually, Zach's lungs would get worse, his heart would get worse, he would be coughing, and then he would be in distress and we would have to make a decision to potentially euthanize if the heart is giving out and there is no comfort anymore.
  - c. When asked if Zach's heart condition, along with his advanced age, may preclude dental surgery as an option, Dr. Scheidt replied yes.
  - d. When asked the implications of not providing veterinary care to treat Zach's dental disease, Dr. Scheidt said the infection in his mouth would begin to impact other organs – kidneys, liver, heart – and cause him more grief because he would become more sick internally. At the end of the day, if we don't do the teeth, and if we leave him like that, a euthanasia decision may have to be made when he becomes worse. But, Dr. Scheidt added, "at this stage, he's not there yet by any means."
  - e. When asked how much his advanced age and heart condition impeding is needed dental surgery, Dr. Scheidt said when she saw him August 10, 2021, he would still be fine but he is getting a bit worse now so she would want to clean out the lungs to make sure there is no fluid first and do some bloodwork to make sure he could undergo the surgery, then potentially proceed – taking out all remaining teeth.
  - f. When asked if the fact that Zach's weight was normal suggested that his dental problems were not having an adverse impact on his nutrition, Dr. Scheidt replied that dogs often mask their pain, particularly if it is something that has gone on for a long time, which may mean that he was able to continue to eat despite his dental disease.

- g. When asked if the lack of sanitation in the home has had an impact on the health of either animal, Dr. Scheidt said it had not. This is consistent with her November 27 statement following Zach and Willow's first seizure: "...the environment they were living in didn't have an effect in their overall health so far...."
- h. When asked about the impact of Covid on lag time for booking appointments, Dr. Scheidt said it had doubled their waiting queue, but for animals needing dental surgery she would often rebook a spay or neuter to get an animal with teeth problems in faster. Dr. Scheidt added that requests from the SPCA get special attention from ACH.
- i. When asked what she meant when she said the animals were not in distress at the time of seizure, she replied that she was referring to her own distress criteria - they were not in pain, they were not panting - adding that when it comes to pain, "animals deal with it". She acknowledged PCAA definition of distress was different than her own,
- j. Mr. Rhone directed Dr. Scheidt to the definition of distress found in the Act, asking her if this was the definition she was using. Dr. Scheidt acknowledged that the PCAA definition of distress was different than her own. Mr. Rhone then categorized Dr. Scheidt's definition as colloquial.

## **SUBMISSIONS OF THE PARTIES**

### **VIII. THE APPELLANT**

- 39. The Appellant submitted that he is very aware that his senior dog is close to the end of his life. He did not book Willow in for veterinary care because he felt – as was confirmed by the Society when the Animals were returned to him in February - that Zach's care was more urgent.
- 40. The Appellant said that he understands the cost of the veterinary care and is prepared to pay for Zach's treatment.
- 41. The Appellant stated that the only issue standing in the way of Zach's veterinary dental treatment was his inability to get an appointment that fit his work schedule. He noted that he had only learned at the hearing from Dr. Scheidt that alternate arrangements could have been made and he wondered why that option was not presented to him earlier as he "... certainly would have taken advantage of it".
- 42. In an emotional closing, the Appellant said he knows Zach is at the end of his life and that he just wants Zach to be at home where he can wander around and do what he wants, living out the rest of his life at home. The Appellant said he just wants to say goodbye to Zach when he passes and that he also would like his former wife to have a chance to say goodbye, as Zach was her dog.

43. The Appellant made no submission with respect to costs.

## **IX. THE RESPONDENT**

44. Referring to Exhibit 10, the submission of the Society, Mr. Rhone noted it is the Society's responsibility to protect animals, and that the focus in this case should be on the best interests of the Animals.
45. Mr. Rhone submitted that the Appellant was the one who needed to make the appointments and take the necessary time off to get his Animals into the vet in accordance with the agreement that he signed after the previous seizure less than a year ago.
46. Mr. Rhone submitted that the Appellant's failure to obtain the necessary veterinary dental treatment for his animals is not acceptable. Nor is it acceptable for a dog like Zach, in his elderly years, to be home alone all day. He noted that Willow had "horrible" teeth issues - which have worsened substantially since the last seizure - and that she was living in pain. He noted that the floors were not repaired, the house was unsanitary and two veterinary appointments had not been kept.
47. Mr. Rhone submitted that there was no question that the animals were in distress at the time of seizure and that they will inevitably slip back into distress if they are returned.
48. When offered the opportunity to make any final comments on Mr. Rhone's summary, the Appellant referred to Rhone's question of what proof he could offer that things would change if the animals were returned to him. Testifying he does not want to go through this again, the Appellant said "I will get the appointments as soon as possible, I'll get them monthly appointments if I need to..." As far as costs, he said his two jobs made it possible for him to afford veterinary care and pay costs, adding that "...a big reason why I do the two jobs" is being able to afford their care and handle any emergency that might happen.

## **ANALYSIS AND DECISION**

49. Part 2.1 of the *PCAA* establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:
- 9.1 (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.
- (2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.

50. Part 3 of the *PCAA* sets out the role for the Society in the event that an animal is determined to be in distress:

11. If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal

(a) does not promptly take steps that will relieve its distress, or

(b) cannot be found immediately and informed of the animal's distress,

the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

51. The definition of "distress" in Part 1 the *PCAA* provides:

1 (2) For the purposes of this Act, an animal is in distress if it is

(a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,

(a.1) kept in conditions that are unsanitary,

(a.2) not protected from excessive heat or cold,

(b) injured, sick, in pain or suffering,

(c) or abused or neglected.

52. The Appellant has an onus to show that the remedy they seek (return of Zach and Willow) is justified. As noted by Justice Groberman (as he was then) in *Eliason v BCSPCA*, 2004 BCSC 1773:

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.

53. With respect to the issue of costs Part 3, Section 20 of the *PCAA* states:

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

(2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.

(3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.

(4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.

(5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.



54. Section 20.6(c) of the PCAA provides that on hearing an appeal the board may “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)”.

55. The Society is seeking costs as follows:

a. Veterinary costs	\$932.43
b. SPCA time to attend seizure	\$136.95
c. Housing, feeding and caring for the Animals	<u>\$564.60</u>
d. <b>Total:</b>	<b>\$1,633.98</b>

56. On the matter of costs, the Society’s submissions provide detailed cost accounting, including invoices for veterinary care and detailed estimates on the daily operating costs associated with the care the Animal. The calculation of these estimates has been reviewed and supported in previous appeals.

57. The first issue for the Panel to consider is whether Zach and/or Willow were in distress at the time of seizure.

58. If the seizure of Zach and Willow on August 10th was as a result of the Animals being in distress, the next issue the Panel must decide is whether to grant the Appellant’s request for their return. Governing our thinking in this stage of the analysis must be whether allowing Zach and/or Willow to return to the Appellant’s home would return them to a situation of distress. In *Brown v BC SPCA*, [1999] B.C.J.No. 1464 (S.C.) the court explained:

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

59. In deciding whether the Animals were in distress at the time of the seizure, the Panel notes as follows:

a. The Society’s expert witness, a veterinarian upon whose opinion the Panel would normally comfortably rely on to identify conditions of medical distress, provided conflicting evidence as to whether the animals were in distress at the time of seizure. In her August 12 report and subsequent testimony before this Panel, Dr. Scheidt stated that in her professional opinion neither Zach nor Willow was in distress when she examined them on August 10th within hours of their removal from the Appellant’s home. In their first seizure, Dr. Scheidt similarly testified she found no evidence of distress in either animal. She also testified that the environment in which the animals were kept had not had any impact on their health.

- b. Society Counsel Rhone characterized Dr. Scheidt's definition of distress as "a colloquial, not legal" interpretation. According to Merriam Webster, colloquial refers to something "used in or characteristic of familiar and informal conversation... unacceptably informal." It is unclear whether the expert evidence of a veterinarian can be so easily framed when it relates to the central issue of whether an animal is in distress or not at the time of seizure.
- c. Conflicting findings of distress notwithstanding, this Panel is bound by the four corners of the governing legislation and particularly the definition of distress found in the PCAA. In the Appellant's Appeal of the previous seizure, the Panel in that case found that the first seizure of Zach and Willow met the terms of distress defined in Section 1 (2) of the Act. In response to promises made by the Appellant to improve Zach and Willow's home environment and seek required veterinary treatment, the February 1, 2021 Decision ordered the animals be returned on conditions intended to alleviate their distress. Specifically, the Panel ordered prompt veterinary care and prescribed medication.
- d. This Panel believes that the Appellant understood the obligations placed on him when he signed the agreement and that he attempted to comply with them. He believed – and this was confirmed by February 1 2021 Order - that Zach's care was more pressing and made two appointments with Dr. Scheidt at the Animal Care Hospital in Quesnel for his dental procedures. He also picked up two courses of Zach's medicine. The Panel believes the Appellant when he says he was unable to make these appointments because of work conflicts, and that the long lead time for rebooking (2 months) meant it was difficult to predict his work schedule requirements at the time of booking an appointment. The Appellant's testimony that he requested an afternoon intake time at ACH to fit his work schedule is credible, but the onus was on him to follow up on this request as surgical intake at ACH is always in the morning and so special arrangements would have been required (e.g., afternoon drop off the day before). The Panel is sympathetic with the Appellant's frustration that this request was not responded to in a positive way, but it is also evident that he failed to vigorously pursue this option when the ACH failed to respond. It is also evident that he never sought the assistance of the Society with respect to the transportation of the animals to their appointments despite the offer made by SPC Steeves.
- e. The Panel heard conflicting testimony on the matter of Zach's heart medication. There were two prescriptions issued by ACH – one to improve heart health and one to prepare him for surgery. The Society argues the Appellant picked up the last refill of Zach's prescription on April 28, 2021, that it was for only one of the two prescribed medications, and that it would have run out after 30 days (e.g., beginning of June). SPC Steeves alleges the Appellant's failure to renew Zach's medication over the summer months was

material and included it as a factor when applying for the August 10, 2021, seizure warrant. This raises the following issue:

- i. Did the Appellant fail to medicate Zach since the return of Zach to his care? The Appellant testified that he had not run out of medication. He said he had administered the medication to Zach daily – “may have missed a day or two” – and that he still had medication left at the time of the hearing. In her August 10 prescription, Dr. Scheidt notes a dosage of ¼ tablet per day (paragraph 36 (e)). In the testimony, the supply picked up on April 28, 2021, was described as a 30-day supply, but if it were instead 30 *pills*, this could result in a 120-day supply. Counsel for the Society asked the Appellant if he could drive home during the lunch break to take a photograph of the bottle showing the label and contents, to which the Appellant agreed, but the matter did not arise again. With respect to whether Zach’s pills had run out, the Panel finds, based on the evidence presented and absent any evidence to the contrary (number of actual pills prescribed in the last refill), that the Society’s evidence is preferred based on the balance of probability.
  - f. According to testimony from SPC Steeves, the Animals were seized on August 10, 2021, because the Appellant had not lived up to the return conditions imposed by BCFIRB in their February 1, 2021 decision requiring him to seek veterinary care for the Animals within a three-month time frame. These conditions were part of an agreement signed by the Appellant that stipulated a Society Agent would follow up with each animal to determine compliance with the conditions of their return, and that the Society would be allowed reasonable access for inspection. In the Agreement, the Appellant also acknowledged that any failure to comply with the Animal’s conditions of release “...will enable the Society to take additional steps as required to ensure the health and well-being of the Animals, including seizure...”
  - g. Given all of the circumstances, including the definition of distress embodied in Section 1(2) of the Act, the February 1, 2021, BCFIRB Decision and the agreement entered into by the Appellant governing their conditional release intended to alleviate that distress, the Panel finds that the Animals were in distress at the time of removal and that the August 10, 2021, seizure of the Animals was justified under the PCAA.
60. In deciding as to whether the either or both Animals should be returned to the Appellant, the Panel must be guided by what is in the best interest of the Animals, and whether a return of either or both could place them at risk of further distress. In coming to a determination, the Panel considered the following:
- a. Both Animals are presently in foster care placements pending this decision. In the case of Willow, this 8-year-old Munchkin cat underwent the required veterinary dental surgery while in the care of the Society and is now healthy and a good candidate for adoption. In the case of Zach, although described by Dr. Scheidt as healthy for his age, this 16-year-old Chihuahua still requires

veterinary dental procedures, needs special care because of his age, and is likely a poor candidate for adoption.

- b. Central to the decision is whether the Panel feels the Appellant is credible in his assertion that if both Willow and Zach were returned to him, he would immediately seek veterinary care for Zach (Willow has already undergone the procedure) and would make improvements to their environment to ensure neither animal slips back into a state of distress as defined under the PCAA should they be permitted to return to the Appellant's home.
- c. Based on the evidence before us, the Panel finds that the Appellant is sincere in his intent to follow through on his commitments to the health of both animals and, because he has received formal training in animal care, medication and treatment, has the skills to do so. However, there is nothing in the evidence to suggest the Panel can rely on the Appellant's good intentions. The same promises were made on Zach and Willow's return last February following the first Appeal, but the Appellant never took the reasonable steps necessary to follow through on his commitments.
- d. The Panel notes there were some extenuating circumstances that stood in the way of the Appellant successfully booking veterinary treatment for the Animals.
  - i. Until the Appellant's schedule changed when he was re-called as an airport passenger screener, he worked five days a week and his days off were Sunday and Monday – the same days that the Quesnel ACH is closed. The Appellant lives 20 minutes outside of Quesnel. Because his shift at Walmart began at 5 am, the Appellant said the only option he had was to bring Zach to work, keep him in his car, and drop him off at the requisite 8:30 ACH intake time.
  - ii. When work interfered with his ability to drop Zach off for his June 22nd veterinary appointment, the Appellant testified that he left a message the day before with ACH asking to rebook an afternoon appointment but was not called back.
  - iii. On June 25, 2021, a heat dome settled over the province, resulting in record breaking temperatures. According to the Appellant, extreme heat during the month of July made bringing Zach into town and leaving him in a vehicle for 3 hours impossible.
  - iv. Given the above circumstances, the Panel finds the Appellant credible when he says the extreme heat the province experienced in July made him unwilling to book a veterinary appointment for Zach in July. July's heat wave, the wildfires that were raging throughout the province and omnipresent COVID-19 concerns contributed to extenuating circumstances

that made the Appellant's ability to pursue Zach's veterinary dental care difficult.

## **CONCLUSIONS AND ORDERS**

61. Section 20.6 of the PCAA permits this Panel 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 animal.
62. After careful consideration of the written and oral evidence presented in this hearing, the Panel makes the following determination of the issues and attendant orders.
63. In the case of Willow, a now healthy cat at mid stage in her life with good prospects for adoption to "her forever home", the Panel finds that she was in distress at the time of the seizure and that it is in her best interest to remain in the care of the Society and be placed for adoption. The Panel orders pursuant to section 20.6 of the PCAA that the Society is permitted in its discretion to destroy, sell or otherwise dispose of Willow, with the obvious hope and expectation that she will be adopted unless circumstances somehow preclude that possibility.
64. The decision with respect to Zach is a more difficult one. While in foster care, Zach has been taking both medications to prepare him for dental surgery, but given Zach's age, medical complications and the cost of further veterinary dentistry, a new adoptive home for this little dog is unlikely.
65. It is obvious that the Appellant cares for Zach. The elderly dog sleeps with a heating pad under his bed. As supported by the testimony of Dr. Scheidt, Zach is in good condition for a dog of his advanced age. He is "overall healthy", while his coat had a slight odor, she describes him as clean, with a normal body weight and displaying normal behaviour. Despite his cataracts, Zach's vision "appears to be okay." Dr. Scheidt noted that his environment had so far had no detrimental impact on his health.
66. The Appellant's grief at the loss of his elderly dog is palpable. The Appellant testified that his finances have improved substantially since he was recalled as an airport screener and he asserts that he now has both the time (he is off every day in the afternoon) and the resources (with two jobs) to attend to Zach's veterinary dental needs. Given this, and given Zach's familiarity with his home and owner, it is possible under veterinary care that his interests will be better served by returning home to live out his final days. However, the Panel is not convinced, given the evidence before it, that the Appellant will provide Zach with the veterinary dentistry attention he requires.

67. In light of the above, and pursuant to section 20.6 of the PCAA, the Panel orders that Zach will be returned to the care of the Appellant on the following conditions:
- a. The Appellant will pay the ACH in advance for Zach to be treated for his dental disease on a quick-intake (first appointment available) basis. This payment is to be made while Zach remains in foster care. It is up to the Appellant to book the appointment with ACH.
  - b. The Appellant will, concurrent with the payment noted at (a) above, pay the Society the amount of **\$1,633.98** representing the costs incurred by the Society associated with this seizure.
  - c. The Appellant will confirm with the Society in writing within one week of the date of this decision (on or before Wednesday October 27th) whether he accepts the terms set out a sub-paragraphs (a) and (b) above.
  - d. If the Appellant provides the confirmation noted at (c) above, he then will provide the payments noted above directly to ACH and the Society by no later than two weeks from the date of this decision (on or before Wednesday, November 3rd), and will provide confirmation of payment to ACH to the Society.
  - e. On or before Wednesday, November 3, 2021, the Appellant will advise the Society, in writing, the date of Zach's confirmed intake appointment with ACH. Zach will remain in the care of the Society until he is transferred to the ACH for his dental procedures, after which he will be released to the Appellant's care.
  - f. In the event that the Appellant fails to provide the confirmation noted at (c) above, or the payments noted at (a) and (b) above within the timeframes set out therein (on or before Wednesday October 27th and Wednesday November 3rd, respectively), then Zach will remain in the care of the Society and may be placed for adoption or otherwise dealt with as set out at section 20.6 of the PCAA.

- g. In the event that Zach remains in the care of the Society as noted at paragraph (e) above, the Appellant will remain liable to the Society for the costs set out at (b) above.

Dated at Victoria, British Columbia this 19<sup>th</sup> day of October 2021.

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**



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David Zirnhelt, Presiding Member



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Wendy Holm, Panel Member

## Appendix A

Exhibit #	Date (Received)	Received from	Document
Exhibit 01	Sept 2, 2021	BCSPCA	BCSPCA no return decision
Exhibit 02	Sept 7, 2021	Appellant	Notice of Appeal (NOA)
Exhibit 03	Sept 7, 2021	BCFIRB	Notice of Appeal process letter
Exhibit 04	Sept 15, 2021	BCSPCA	PDF copy LT all encl doc disclosure
Exhibit 05	Sept 15, 2021	BCSPCA	BCSPCA Document Disclosure (Tab 1-Tab 53)
Exhibit 06	Sept 15, 2021	BCSPCA	Tab 42 (P2015 Tab 26) - exam records
Exhibit 07	Sept 23, 2021	Appellant	Email from Appellant – confirming no submission
Exhibit 08	Sept 27, 2021	BCSPCA	PDF Copy LT all encl submissions
Exhibit 09	Sept 27, 2021	BCSPCA	PDF copy Document Disclosure Index
Exhibit 10	Sept 27, 2021	BCSPCA	Submissions of the BCSPCA
Exhibit 11	Sept 27, 2021	BCSPCA	Affidavit 1 of Marcie Moriarty
Exhibit 12	Sept 27, 2021	BCSPCA	Tab 54
Exhibit 13	Sept 27, 2021	BCSPCA	BCSPCA Witness Form
Exhibit 14	Sept 27, 2021	BCSPCA	BCSPCA Expert Witness Form
Exhibit 15	Oct 4, 2021	BCFIRB	Email confirming no appellant final reply received