

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 19
DOGS

BETWEEN:

MONIKA McINTOSH

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Harveen Thauli, Presiding Member

For the Appellant:

Shane Dugas, Counsel

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

November 1, 2021

Location of Hearing:

Teleconference

I. Overview

1. This is an appeal pursuant to section 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the **Act**) related to the seizure of 15 dogs and four puppies.
2. The Appellant, Monika McIntosh, appeals the September 29, 2021 review decision (the **Review Decision**) issued under section 20.2(4)(b) of the *Act* by Marcie Moriarty, Chief Prevention and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the **Society**).
3. Section 20.6 of the *Act* permits the British Columbia Farm Industry Review Board (**BCFIRB**), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or permit the Society, in its discretion, to destroy, sell or otherwise dispose of the animals. The Appellant is seeking the return most of the dogs and puppies.
4. On November 1, 2021, a BCFIRB hearing panel (the **Panel**) held a hearing via teleconference. The hearing was recorded.
5. The Appellant was represented by counsel and called five witnesses.
6. The Society was represented by counsel and called the two veterinarians who had examined the dogs, the special provincial constable (**SPC**) who had contact with the Appellant before and during the seizure and one other witness.

II. Decision Summary

7. After the 15 dogs and four puppies were seized from the Appellant's property on September 10, 2021, a dog named Wooky with Shelter Buddy identification number (**SBI**) 535438 died later that day and a puppy (**SBI** 535445) died on September 22, 2021. Both deaths were unassisted. Another dog gave birth to four puppies on October 26, 2021. One puppy (**SBI** 538018) had to be euthanized two days later on October 28, 2021. Before the hearing, the Society had a total of 14 dogs and six puppies in protective custody.
8. During the hearing, the Appellant surrendered two dogs, Kobe (**SBI** 535441) and Mini Mousie (**SBI** 535456).¹ Therefore, this appeal is about the Society's seizure, and/or protective custody, of 12 dogs and six puppies (together, the **seized dogs**).
9. For the reasons explained in this decision, the Panel has decided not to return the seized dogs to the Appellant. Pursuant to section 20.6(b) of the *Act*, the Society is

¹ At the Panel's request, BCFIRB staff asked the Appellant to clarify which dog is Mini Mousie. By email dated November 4, 2021, the Appellant's counsel clarified that Mini Mousie is an older dog that is blind from having her eyes removed. The dog with **SBI** 535456 is the only dog that corresponds with this description.

permitted, in its discretion, to destroy, sell or otherwise dispose of the seized dogs.

10. The Panel has further decided that the Appellant is liable to the Society for the full amount of costs claimed by the Society for the care of the seized dogs, while in custody, of \$17,951.59.

III. Preliminary Matters

11. The Society submitted “Revised 2nd Supplemental Cost Submissions of the BCSPCA”, the morning of the hearing on November 1, 2021. At start of the hearing, the Panel marked the foregoing submissions as Exhibit 31.
12. After marking Exhibit 31, the Panel clarified the number of dogs and puppies that were the subject of this appeal, which this decision has already set out in the previous section, “Decision Summary”. The Panel also confirmed whether there were any issues of ownership of the seized dogs. There were none.

IV. Materials Admitted on this Appeal

13. The Panel identified all of the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1 to 31 and is attached as Appendix A to this decision.

V. Events Leading Up to the Seizures

14. According to the Information to Obtain a Search Warrant (ITO)² prepared by SPC Daniel Chapman upon whose oath/affirmation the warrant was authorized, the Society’s call centre received a call of concern from Heather Dunbar on September 1, 2021 about the “*horrible and deplorable*” living conditions of the dogs on the Appellant’s property. Ms. Dunbar worked for the Appellant and lived on her property.
15. On September 2, 2021, SPC Chapman attended the Appellant’s property to follow-up on the call of concern. When he arrived, the Appellant was sitting on a chair at the top of the driveway. She informed SPC Chapman that she had fired Ms. Dunbar and her husband, Shawn Dunbar but they would not leave her property, so she called the police and was waiting for them to arrive.
16. The Appellant assumed Ms. Dunbar made the complaint to the Society. She was very emotional and advised SPC Chapman that she did not have time for him to inspect her property but he could take a look at her kennel. He observed seven dogs, four of which were Chihuahuas and according to the Appellant, they were all being boarded. Each kennel had water and indoor and outdoor access.

² The ITO discussed other animals that were on the Appellant’s property. This decision deals solely with the seized dogs.

17. SPC Chapman asked whether the Appellant had any dogs inside her house to which she responded she had four. The Appellant stated she would show him her four dogs when he returned the following week for the full inspection. SPC Chapman offered to wait with the Appellant until the police arrived but she stated she would be fine and was okay.
18. On September 4, 2021, the Society's call centre received another call of concern about the "unsanitary living conditions" of the dogs on the Appellant's property.
19. On September 8, 2021 at 9:12am, SPC Chapman spoke with Ms. Dunbar. She informed SPC Chapman that on August 31, 2021, she observed feces and urine inside the house and smelled a strong odour. Ms. Dunbar saw dogs, including sick dogs and a litter of puppies, and believed the Appellant had over 35 dogs in her house. Some of the dogs were confined in crates and others were not.
20. Ms. Dunbar told SPC Chapman that she worked for the Appellant for four weeks. She was hired to help re-open the Appellant's dog boarding kennel and do other farm work. She stated the Appellant "*kicked her and her husband off the property*" and she was not paid for her work.
21. On September 8, 2021 at 10:56am, SPC Chapman and the Society's Regional Manager of Cruelty Investigations (**RMCI**), Matthew Affleck returned to the Appellant's property. There was now a chain blocking the top of the driveway with two signs stating, "No trespassing". SPC Chapman called the Appellant who stated she would unlock the chain as soon as she showered and dressed. While waiting for the Appellant, he noticed the garage attached to the house had windows that were "blacked out".
22. The Appellant came to the top of the driveway and unlocked the chain. She had her iPad with her because she wanted to show Constable Chapman her complaint to the RCMP about Ms. Dunbar. He detected a strong odour of ammonia from the iPad and the Appellant.
23. SPC Chapman explained to the Appellant that the Society received another complaint where the complainant alleged that over 30 dogs were living in unsanitary conditions in the Appellant's house. The Appellant denied this allegation and stated she did not have any dogs inside her house. SPC Chapman asked if she would allow him and RMCI Affleck inside the house but she denied them entry. SPC Chapman explained to her that she had the right to refuse an inspection but he could not close the file without conducting a full investigation, which required obtaining a search warrant. The Appellant stated she preferred he obtained a "*court order*".
24. The Appellant showed SPC Chapman and RMCI Affleck the same kennel that SPC Chapman saw on September 2, 2021. The kennel had four small dogs that the Appellant confirmed were hers. They had not been fed or given water, which

SPC Chapman told the Appellant concerned him. He noted one of the dogs named Stormy (SBI 535440) required a dental exam. They were previously in the house when SPC Chapman last attended. SPC Chapman asked the Appellant what happened to the other dogs he saw on September 2. She advised that they were now with their owners.

25. SPC Chapman asked the Appellant whether she owned four dogs for any specific reason. The Appellant stated she breeds and shows dogs but did not have any puppies at that time. SPC Chapman stated that he had received information that she had new litters but the Appellant denied this.
26. RMCi Affleck told the Appellant that he was concerned about the strong smell of ammonia coming from her and her iPad because the two complaints were about unsanitary living conditions inside her house. The Appellant stated she smelled of ammonia because she had not yet taken a shower and had a bladder problem. The Appellant denied having any dogs inside her house but she did not permit RMCi Affleck to look through the windows. He explained that the kennel did not smell of ammonia, so the source of the smell had to be from the inside of her house given the same smell was on her clothes and iPad.
27. SPC Chapman and RMCi Affleck complied when the Appellant asked them to leave her property. SPC Chapman told the Appellant that he would leave a Society notice at the top of the driveway. In the notice, he checked the following issues³ that the Appellant was required to address:
 1. Provide access to clean potable drinking water at all times (timeline to be completed within 12 hours)
 2. Provide sufficient quantity of suitable food to allow for normal growth and the maintenance of normal bodyweight (timeline to be completed within 12 hours)
 5. Provide necessary dental care (as per vet recommendations for Stormy)
 7. Provide necessary veterinary care when the animal exhibits signs of injury, pain, illness or suffering that require medical attention (timeline to be completed within 7 days for Stormy)
 11. Ensure the shelter, pen, living area is cleaned and sanitized regularly (timeline to be completed is 12 hours)

SPC Chapman wrote the following comment: "*Have Stormy teeth seen by a registered vet and follow all vet recommendations.*"

28. SPC Chapman read the Society notice to the Appellant and she confirmed she understood it.

³ Since this decision deals with the seized dogs only, the issues in the Society notice that related to other animals have been excluded.

29. On September 8, 2021 at 3:19pm, SPC Chapman spoke to Ms. Dunbar again because he wanted to request a statement from her and ask further questions. Ms. Dunbar agreed to provide a statement, which she sent to him the following day. SPC Chapman asked Ms. Dunbar to explain how she met the Appellant. Ms. Dunbar saw an advertisement for puppies for sale that the Appellant had posted on KIJJI. Ms. Dunbar was interested in purchasing one. The Appellant noticed that Ms. Dunbar also had a KIJJI advertisement where she was looking for a place to park her RV. The Appellant told Ms. Dunbar to sell her RV and move onto her property where she could live in one of the Appellant's newer RVs. They agreed that Ms. Dunbar would manage the Appellant's kennel.
30. Ms. Dunbar started working for the Appellant on August 5, 2021. Her duties included cleaning the kennels, feeding and giving water to the animals and booking appointments. Ms. Dunbar saw the inside of the Appellant's house once from just inside the doorway on August 30 or 31, 2021. During this call with Constable Chapman, she stated she saw over 25 Chihuahuas and that they were vicious and not friendly. She confirmed seeing and smelling feces and urine. The Appellant would not allow Ms. Dunbar to proceed any further into the house.
31. Ms. Dunbar stated that she observed the Appellant hold down one of the female Chihuahuas on her lap in the backyard so that a male dog belonging to a boarder could impregnate her.
32. On September 8, 2021 at 3:50pm, RMCI Affleck contacted Vernon Dog Control⁴ to find out if there were any recent complaints about the Appellant. He was told that Dog Control officers would be attending the Appellant's property that day and he would be contacted with an update.
33. On September 8, 2021 at 6:40pm, SPC Chapman and RMCI Affleck drove by the Appellant's property and saw that a Dog Control vehicle was still present. At 7:05pm, they spoke with the Dog Control officers, Daryl Riva and his son, Christopher Riva. The Appellant refused them entry into her house but they spent about two hours talking to her outside on her property. They stated the Appellant had six dogs on her property and she agreed to let them see her house the following day.
34. On September 9, 2021 at 5:10pm, SPC Chapman spoke with Daryl Riva, who had returned to the Appellant's house on his own. Mr. Riva saw 12 dogs that were now being housed in the kennel. He confirmed the Appellant allowed him inside of her house. He stated that the house was dirty and the floors had stains from feces and urine but he did not see any feces or urine. Mr. Riva also stated that there was no smell but he was arranging for someone to give the Appellant an estimate on how much it would cost to rip out all of the floors. SPC Chapman questioned Mr. Riva

⁴ Vernon Dog Control employees are not appointed as Special Provincial Constables or Peace Officers. They are not authorized agents of the Society and therefore, they do not have the authority to enforce the Act.

about why the floors would have to be removed and replaced if there was no smell. Mr. Riva then stated "*it did smell inside the property.*" Mr. Riva saw the downstairs and noted feces and urine stains. He did not see any urine or feces upstairs. He saw one dog inside the house.

35. On September 9, 2021 at 6:56pm, SPC Chapman contacted Daryl Riva to ask further questions. He asked if Mr. Riva examined all 12 dogs. Mr. Riva advised that one dog bit him in the leg but he carried out a hands-on examination of eight dogs, which included running his hands over the dog to check for bumps, lumps and rashes. He also checked their ears. Mr. Riva stated that a dog named Buffy (SBI 535455) had plaque buildup but the Appellant was planning to have someone (not a veterinarian) examine and clean them. SPC Chapman explained that the Appellant was advised by RMCI Affleck the previous day that only a licenced veterinarian could examine the dogs' teeth. Mr. Riva also saw a dog with a limp on its rear leg but the dog was apparently deprived of oxygen at birth.
36. Mr. Riva believed the definition of distress meant unsanitary living conditions. After SPC Chapman read him the definition of distress in the *Act*, Mr. Riva still did not think any of the dogs were in distress. When SPC Chapman again asked about whether Mr. Riva smelled any odour inside the house, particularly given he saw feces and urine stains on the floors and was arranging for someone to possibly replace them, Mr. Riva conceded that it was a "*wet dog smell*". SPC Chapman further asked Mr. Riva whether the living conditions of the house were adequate for the dogs. Mr. Riva responded that if they were living downstairs, that would be a problem and advised there was lots of garbage in the main room downstairs.
37. SPC Chapman was concerned that the Appellant was not being truthful to him and was possibly hiding and moving dogs. She apparently pleaded being truthful when she told him that she had only four dogs on his first of September 8, 2021. She denied SPC Chapman and RMCI Affleck entry into her house. On the same day, Daryl Riva of Vernon Dog Control told SPC Chapman that she actually had six dogs. The following day, Mr. Riva saw 12 dogs on the Appellant's property.
38. SPC Chapman sought and obtained a warrant, which he executed with the assistance of RMCI Affleck on September 10, 2021.

VI. Review Decision

39. On September 29, 2021, Ms. Moriarty emailed her Review Decision to the Appellant. In this decision, she identified that her role was to review the evidence and decide whether it would be in the best interests of the seized dogs to be returned to the Appellant.

40. Ms. Moriarty reviewed the following evidence:
- warrant, ITOs dated September 10, 2021, and the Notice of Disposition;
 - various veterinary records;
 - invoices;
 - various photographs and videos; and
 - various emails and submissions from the Appellant.
41. Ms. Moriarty confirmed that SPC Chapman was acting as the Society's authorized agent as a duly appointed SPC and confirmed that the Appellant was the owner and person responsible for the seized dogs. She was satisfied that SPC Chapman reasonably formed his opinion that the seized dogs were in distress, as defined in the *Act*, and that the Notice of Disposition for the seized animals was properly served in accordance with the *Act*.
42. On viewing photos, Ms. Moriarty commented on the Appellant's house and living conditions as follows:
- [...] Turning to the photos taken on the day of the warrant, I am saddened to see such unsanitary and hazardous conditions which you yourself and these small Dogs had to contend with. I am deeply concerned by the volume of feces and urine throughout as well as the buildup of garbage in various areas of the house. The garbage and general clutter pose a significant risk to these small Dogs in particular. The conditions are simply dismal and perhaps at one time you were able to manage the kennels, your home and the animals in your care but currently it is simply unsafe. It appears that all animals in your care, whether boarded or otherwise, seemed to have suffered a general lack of care, whether that was an access to clean drinking water, suitable food or adequate shelter. [...]
43. Ms. Moriarty commented on the veterinary reports and records as follows:
- [...] On the 19 Dogs, 10 suffered from either Grade 2, Grade 3 or Grade 4 dental disease, with the worst case being that of Kobe (Dog #4). His dental disease and tartar build up was so severe that the crowns of his teeth were not visible. Along with Kobe, a couple of other dogs will also require teeth extractions to alleviate the pain and discomfort of their dental disease. A majority of the Dogs also had overgrown nails and many had dirty coats which speaks to a lack of basic care. Tragically, shortly upon coming into our care Wookie (Dog #1) suddenly passed away. As per the necropsy report, the cause of his death was determined to be due to severe hydrocephalus, where there was a buildup of fluid due to an enlarged brain cavity. Unfortunately, there are signs of hydrocephalus among two other Dogs and they are being monitored for neurologic issues, enlarged domed skulls, eye deviation or other abnormalities. As there are other cases of hydrocephalus in the population it is recommended that these Dogs not be bred. In addition to the sudden passing of Wookie, Puppy C also passed away and a necropsy report is pending to determine the cause of his death.

44. Ms. Moriarty addressed the Appellant's allegation that the seized dogs were unjustly taken from her property, her failure to provide any veterinary records or vaccine information and her questionable breeding practices, as follows:

[...] While you make many references to keeping the kennels clean as they were in the public eye, you do not address the state of your home and where Dogs had also been removed from, including the mother dog and her 4 puppies (which were being housed in a cardboard box with soiled blankets). You state that the Dogs do not live in your house, however the photos from the day of the warrant prove otherwise. This continued misrepresentation of the living situation on the Property does not inspire confidence in any type of cooperation going forward. Furthermore, you have not provided any veterinary records or vaccine information as requested, other than providing the website of the various veterinary clinics you have attended in the past. You rather blame your former employees, SPC Chapman and COVID-19 for the situation you find yourself in. You claim to have knowledge on the needs of the Dogs in your care and had believed Wookie was hypoglycemic. As it turns out from his necropsy report, Wookie was in fact suffering from an enlarged brain cavity due to fluid buildup. Being that we are observing this condition in a couple of other dogs, it also calls into question your breeding practices, as this condition is congenital and continued breeding would not be recommended. In keeping with concerns around breeding, I also note that if you were feeling overwhelmed due to your health or the COVID-19 pandemic, I wonder why you would choose to breed your dogs thereby increasing the demands on you.

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

VII. Key Findings of Fact and Evidence

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

The Appellant's Evidence

47. The Society received written submissions dated October 20, 2021 from the Appellant (the **submissions**). The Appellant provided the following information about herself and her kennel business in her submissions:
- She is 72 years old and occasionally incontinent. She is not suffering from any ongoing medical issues except that she broke her leg many months ago, which has impacted her mobility.

- Her husband suffers from chronic diabetes and is in a care home.
 - She had a house cleaner who cleaned her house regularly. Since the pandemic, she no longer has anyone cleaning her house and she has not been able to keep up with the housekeeping on her own.
 - She operates a kennel under the business name of “All My Children”. She normally spends all of her time at home with her dogs and has her groceries and animal care products delivered.
 - The travel ban ended any revenue she earned from her dog boarding business. Only her “*elite breeding program*” continued and accounted for 25% of her revenue, which barely covered on-going expenses. If the seized dogs are not returned to her, the kennel would likely have to declare bankruptcy.
 - She hired Ms. Dunbar and Mr. Dunbar to assist with cleaning the kennel and caring for the animals. She alleges they stole from her, so she had to contact the RCMP to have them removed from her property.
 - She no longer resides in her house. Her plan if the seized dogs are returned to her is to keep them in the kennel under the constant care of two employees. She retains contact with multiple veterinarians who are available to assist.
48. The Appellant described the general care she gives to her dogs and the kennel’s condition in her submissions as follows:
- She performs all vaccinations except for vaccinating a one-pound dog. This dog was vaccinated at Sunridge Veterinarian Clinic.
 - She normally uses the veterinarian clinic called Vernon Veterinarian Clinic. During weekend emergencies, she uses Burtch Animal Hospital in Kelowna.
 - The dogs always received veterinarian attention when needed. For example, one dog received x-rays a week before the seizure for whelping and other female dogs had c-sections, when necessary.
 - The dogs are fed once daily and water is checked three times daily.
 - The kennel never had any buildup of feces or urine.
49. In specific reference to the pup that gave birth to four puppies, the Appellant stated as follows: “...*The Appellant hid the pups from Daryl because the mom and pups could not be at the kennel because one of the pups was under critical care. The pup only weighed 1 ounce at birth, should have died and is only living because the Appellant’s dedication and knowledge, as it had to be held up to eat every 2 hours 24/7.*”
50. The Appellant further acknowledged in her submissions that she moved the dogs between the kennel and her house. She stated: “...*All but the mom and pups had been at the kennel before, but the Appellant had brought them into her house for various reasons.*”

51. The Appellant described the Society's first visit to her property in her submissions as follows:

14. *There were 6 dogs in kennel at the time of the SPCA's very first visit. The Appellant showed the SPCA all the dogs and their teeth. The SPCA gave the Appellant a ticket for 12-year-old Stormy because she had some plaque. She had plaque because the Appellant did not want to subject a 3.5 lb, old dog to anesthesia for teeth cleaning. It could have probably killed her. She had no teeth missing and no gingivitis and no pain.*

52. The Appellant then described the Society's seizure, which she believed was unjustified, as follows:

18. *All the dogs at the kennel were confiscated unjustly. The ones at the Appellant's house would have been back by the time Kendrah Castro⁵ got to work. The SPCA would not allow the employee Kendrah to enter and do her job that morning.*

19. *The SPCA should not have taken the dogs that were at the kennel. The kennel was always clean, even before Kendrah, because that's where the Appellant had to concentrate her efforts because it was a public space. The SPCA took the kennel dogs, not because they were in distress or had bad living conditions.*

53. The Society received written reply submissions dated October 29, 2021 from the Appellant (the **reply submissions**). The Appellant acknowledged the house was unsanitary at the time of the seizure and warranted significant action to remedy the situation. She is not disputing the seized dogs taken from her house. She is, however, disputing the seized dogs taken from the kennel for the following reasons:

- a. *An employee [Kendrah Castro] charged with the responsibility of care of the animals in the kennel was attending at the premises as scheduled on the morning of the seizure and was not permitted entry. As such, the timing of the seizure was premature and the failure to take into account her attendance affects the seizure of the kennel animals;*
- b. *There was no evidence of any malnourishment or mistreatment of the animals in the kennel which would be evidence of distress;*
- c. *The evidence of animals who may be unclean in the kennel can simply be indicative of normal animal play;*
- d. *The predominant purpose of the kennel is boarding and not as a breeding operation or "puppy mill";*
- e. *Approximately 20% of the kennel space is occupied by animals owned by the Appellant and are not all part of any breeding operation;*
- f. *At the time of the seizure the Respondent provided no reasons whatsoever for the finding of distress in the Kennel area and refused repeated requests for clarification of the reasons or issues of distress in the Kennel area.*

⁵ Daryl Riva arranged for his former colleague and Christopher Riva's fiancée, Kendrah Castro to clean the Appellant's house and assist with the kennel. Her first day was supposed to be September 10, 2021, but SPC Chapman was exercising the warrant to take custody of the seized dogs.

54. The Appellant objected to the Society's claim for costs, particularly those related to the seized dogs taken from the kennel, in her reply submissions.
55. At the hearing, the Appellant testified she is living with friends and has rented out her house. She is considering buying a condominium.
56. The Appellant testified that she has run the kennel and boarding business since 2011 and she has bred Chihuahuas for about eight years. She claimed she had a number of veterinarians who cared for her dogs and apparently took dogs to her veterinarians seven times this year. She did not produce any veterinarian records.
57. The Appellant described the state of the kennel at the time of seizure and the downstairs condition of her house as follows:
 - The kennel has 26 units and is "*state of the art*" with heated floors. The floors are also sloped so that any water or urine runs into the centre and down the drain. The dog doors always work. The kennel has ambient lighting and it is very well insulated. There is also a grassy area where they can run.
 - She has easy access to the kennel from the downstairs of her house. She keeps the garbage inside her house because when she left it outside, her dogs or coyotes ripped the garbage bags apart. She had difficulty cleaning her house after she broke her leg and finding a house cleaner because of COVID. She acknowledged the cleanliness of her house was a problem.
58. The Appellant agreed that she kept some dogs in her house if they were howling outside, had special needs or were puppies. She stated that Stormy (SBI 535440) and another dog howled at night and would cause the other dogs to howl, so she brought them inside. She also had Wooky (SBI 535438) inside of her house. She then testified, however, that she thought it was inappropriate for SPC Chapman to request to see the inside of her house since she did not have any dogs inside. When SPC Chapman asked her how many dogs she owned, she could not give him a concrete answer because she claimed she "*does not count the dogs that are spoken for*", that is, the dogs that have already been sold. She also testified that she could not remember their names and referred to them as "girlies".
59. The Appellant confirmed meeting with Daryl Riva and Christopher Riva and discussing leasing the kennel to Christopher Riva and his fiancée, Ms. Castro.
60. The Appellant alleged that SPC Chapman and RCMI Affleck became increasingly belligerent and considered reporting them to elder abuse. On the day of the seizure, the Appellant thought Daryl Riva was supposed to be her advocate but he was not allowed on her property. The Appellant offered to help put the dogs into crates but Society officers did not permit her to do so. She alleged they stated she would be arrested if she tried to help.

61. The Appellant commented on the veterinarian findings of hydrocephalus and luxating patellas as follows:
- She believed the veterinarian diagnosis of hydrocephalus was incorrect because this particular breed of Chihuahuas is known for its huge heads called “apple heads”.
 - She understood, as a lay person, that dogs skip occasionally but this does not necessarily mean they have problems with their patellas.
62. The Appellant discussed her future arrangements if the seized dogs are returned to her. She has hired a college student who would work four hours daily and take care of the dogs. She also has a friend who would fill in when the college student is not available. She also stated Christopher Riva and Ms. Castro would also help her.
63. The Appellant wants the seized dogs returned to her. She is willing to take care of them and would have contact with them daily. She is also willing to comply with any conditions that the Panel may impose provided she can afford them.
64. During cross-examination, the Society’s counsel questioned the Appellant about the dogs and their location. On September 8, 2021, there were only four dogs in the kennel. When the Society’s counsel asked her where the other dogs were located, the Appellant responded, “*I don’t know, sir*”. However, when then asked whether there were any dogs in the house on September 8, the Appellant confirmed there were eight dogs, which were the mother dog and her four puppies, two dogs that howled and one rescue dog. She agreed that the seized dogs are still her dogs until such time as they have moved on to other owners.
65. Society’s counsel referred to pages 16 to 17 of the Society’s written submissions (the **Society’s submissions**) listing physical issues of the seized dogs on examination. For ease of reference, the findings for dogs 1 to 15 of the seized dogs in the Society’s submissions are reproduced below:⁶
- (a) Dog 1, open fontanelles, long nails, congested upper airway.
 - (b) Dog 2, dental 3 to 4, significant tartar, aggression, open fontanelle mild, long nails.
 - (c) Dog 3, 3/9 Body Condition Score, severe tart buildup, long nails, lactating, dental disease, luxating patella.
 - (d) Dog 4, 3/9 Body Condition Score, Grade 4 dental, swollen mouth, broken teeth, ear discharge, dirty, missing fur, staining, low HR, swollen penis, lump on testicles.
 - (e) Dog 5, Periodontal grade, moderate gingivitis, plaque, lactating & nursing four puppies.
 - (f) Dog 6, long nails, dirty, weepy eyes, slightly distended abdomen.

⁶ The tab numbers and page numbers evidencing the findings themselves are not included in this list.

- (g) Dog 7, long nails, slightly distended abdomen.
 - (h) Dog 8, Grade II dental, luxating patella (joint problems), aggressive “could not get near”.
 - (i) Dog 9, gingivitis, nasal discharge, severe tartar build-up, missing two top canines / receding gums; eye discharge, inflamed redness left ear, ear discharge, long nails, dandruff, abnormal cardiovascular, breathing difficulty, lump lower abdomen, urine scald, bloody discharge swollen vagina, grade II heart murmur, grade 4 dental, reducible umbilical hernia, painful joints.
 - (j) Dog 10, loose teeth, severe tartar buildup, long nails, possibly pregnant, dirty, grade 4 dental, hydrocephalus, lux patella, red between toes, nervous and fearful.
 - (k) Dog 11, severe tartar buildup, long nails, fearful, grade IV dental disease, loose teeth, nails curling into pads.
 - (l) Dog 12, gingivitis (unable to examine back teeth), long nails, fearful.
 - (m) Dog 13, severe tartar buildup, dirty, distended hard/firm abdomen, fearful, open fontanelle, luxating patella.
 - (n) Dog 14 (white poodle), grade IV dental disease, right ear waxy debris, luxating patellas.
 - (o) Dog 15, severe tartar, no eyes, potentially deaf, long nails, dirty alopecia, enlarged lymph nodes, urine scald, hair loss, open fontanelles/hydrocephalus, pot belly, test for Cushings.
66. The Appellant responded in cross-examination to specific and general questions about the seized dogs as follows:
- She claimed to have taken Dog 1 named Wookie (SBI 535438) to the veterinarian two weeks earlier but she did not produce any veterinarian records.
 - She did not know why she did not take Dog 2 named Little One (SBI 535439) to the veterinarian to have her teeth examined and cleaned. She claimed that Dog 2 had been sold and the new owner would have Dog 2’s teeth cleaned at the same time she was spayed.
 - She acknowledged seeing the severe tartar buildup on the teeth of Dog 3 named Stormy (SBI 535440). She disagreed that Dog 3 skips. In response to when she last took Dog 3 to the veterinarian, the Appellant stated, “*I didn’t take them in to the vet.*” She claimed she fell into a depression.
 - In response to her treatment plan for the seized dogs’ long nails, the Appellant stated she clipped them regularly but she did “*sometimes overlook the dogs*”. She also required help with some dogs. Dog 11 (SBI 535452) had nails curling into her pads. She was asked how long it had been since she last clipped Dog 11’s nails. Her response was the same as already described in this bullet point. She was asked what she meant by “regularly”. Her response was they are on her lap all the time. She stated she keeps “*little records*” on her calendar but she did not produce any calendar records.

- She stated that any dogs being boarded were kept in the kennel but she agreed that none of the seized dogs belonged to anyone else.
- She confirmed she vaccinated her own dogs. She again stated she took dogs to the veterinarian seven times this year. She then stated, "*The list is wrong*" in reference to the list produced in the Society's submissions in the previous paragraph.
- When asked whether part of her income is from selling the dogs she breeds, the Appellant responded, "*I don't breed dogs for income. I breed them for research.*" When asked again whether she sells her dogs, she stated that she did not make much money from these dogs.
- When she was asked whether she keeps records of which dog she bred with which dog and when she administered vaccination, the Appellant responded that she used to when she had time.
- When questioned about the veterinarian findings of hydrocephalus in some of the seized dogs, the Appellant responded that she believed the veterinarians are inexperienced with this breed of Chihuahua.
- She advised that she was formerly a teacher and taught from kindergarten to Grade 12. She stated she had a background in science and genetics and that she schooled veterinarians. When the Society's counsel and the Panel questioned her about schooling vets, the Appellant responded, "*I didn't say that.*"
- She claimed she had intended to take the seized dogs to the veterinarian when the Society seized them.

67. The Panel asked the Appellant to describe her sources of income. The Appellant stated she has a very good pension, savings of approximately \$50,000, monthly rental income of \$2400 from her house and any income derived from the kennel. She also does not have a mortgage on her house and property. She would have to mortgage her property if she bought a condominium.

The Appellant's Witnesses

Jeno Nemeth

68. Mr. Nemeth confirmed he lives in Vernon and previously worked for the Appellant and her husband. He began helping with odd jobs in October 2017. He worked for them for four years and worked four hours per day and six days per week. He helped clean the kennel and service the tractor and lawnmower. He stated the Appellant and her husband "*kept him going with his small pension*".
69. Mr. Nemeth stated that the Appellant and her husband took good care of their animals.

70. Mr. Nemeth confirmed in cross-examination and to the Panel that the last time he cleaned the kennel was at the end of 2019. He also confirmed that he was last in the Appellant's house in early 2020.

Daryl Riva

71. Mr. Riva confirmed he lives in Vernon and has been a Vernon Dog Control officer for two years. He first met the Appellant because of a complaint that two border collies, not belonging to the Appellant, killed two chickens on her property in June 2021.
72. Mr. Riva confirmed speaking RCMI Affleck and agreed to provide him with an update after he attended the Appellant's property.
73. Mr. Riva and his son, Christopher Riva attended the Appellant's property on September 8, 2021. He stated they spoke for about two to three hours outside on her property near the kennel. The kennel is about 100 metres from the house. He provided the following observations:
- He stated the Appellant's kennel was very clean and cleaner than most he sees in a day. He claimed the kennel was comparable to the Society's kennels if not better.
 - He thought the dogs were "*in good shape*". He saw one dog with a limp and an older dog with tartar. He claimed tartar is very common in small older dogs.
 - He did not think any of the dogs were in distress because they were running around and playing. He saw four dogs and the Appellant told him she had four dogs in the house.
 - After this first visit, he met with SPC Chapman and RCMI Affleck near the Appellant's property on the highway. He claimed they only asked about whether she smelled of urine to which he answered, no.
74. The following day, Mr. Riva returned to the Appellant's property without his son and saw the inside of her house. He observed the following:
- He stated the house was not very clean and observed lots of dust upstairs.
 - There were dogs running around inside the house. He stated that one of the male dogs lunged at him.
 - He confirmed the dogs had access to food and water.
 - The Appellant agreed to have Ms. Castro clean her house the next day. She was denied entry the following day because that was the day the warrant was executed.
75. During cross-examination, Mr. Riva responded as follows:
- He did not smell ammonia but a "*dog pee smell*". He stated there were urine stains on the wooden floors and that the urine would have soaked through to

the underlay. He confirmed he was obtaining an estimate to have the floors ripped up and replaced to get rid of the smell.

- He confirmed he is not trained to enforce animal cruelty complaints and has to contact the Society.
- He confirmed he did not have any knowledge of veterinarian medicine and did not see any of the veterinarian records of the seized dogs.
- He was shown the photos of the urine and feces in the house. When asked what he saw in the house, Mr. Riva could not recall but saw garbage bags that were not ripped open. He did not see anything that concerned him. He was in the house for about 20 minutes.
- He saw eight dogs, seven Chihuahuas and one poodle. He did not see the mother dog and the puppies in the house.
- He confirmed that his son discussed leasing the kennel for business purposes. When asked if he wanted to help his son with being able to rent the kennels, he responded, "*Absolutely, if I can get my son ahead of the game, I'll get him ahead of the game.*"

Christopher Riva

76. Christopher Riva confirmed he lives in Vernon and has been a dog control officer for about six months.
77. Mr. Riva met the Appellant once only on September 8, 2021 and shared his observations as follows:
 - He stated the kennel looked like a normal business but needed cleaning up.
 - He did not notice anything unusual about the dogs and did not think they were in distress.
 - Together with his father, Mr. Riva met with SPC Chapman and RCMI Affleck near the Appellant's property on the highway after this visit. He did not think they were very empathetic towards the Appellant. He stated they "*bombarded*" him and his father with questions and asked whether the Appellant smelled like urine. He claimed they were only interested in how she smelled.
 - Mr. Riva and Ms. Castro helped cleaned up the Appellant's house and property after the seized dogs were taken by the Society. He believed once they had completed cleaning the property, the kennel business would be operational. He stated he would be willing to help run the business if the Society was not involved.
78. In cross-examination, he confirmed that he only saw the dogs once on September 8, 2021 and saw only three or four dogs. He also confirmed that he did not have any experience with boarding and breeding dogs except for the experience boarding dogs through his work as Dog Control officer.

79. In response to Panel questions, Mr. Riva confirmed that Ms. Castro was paid for her work but he was not paid initially. They had discussed renting the house and kennel from the Appellant and running the kennel as a for profit business. When they did not enter into a rental agreement, the Appellant then paid Mr. Riva for his time.

Barbara Herring

80. Ms. Herring confirmed she lives in Vernon. She purchased a Chihuahua from the Appellant about five or six years ago and they then became friends.
81. Ms. Herring confirmed she had not been in the Appellant's house for a long time but they would meet outside on her property. The Appellant has a seating area with a picnic table and barbeque. She went inside the kennel to use the washroom.
82. Ms. Herring never noticed any issues with the Appellant's dogs. She stated they were not hungry or dirty. She recalled driving the Appellant and Wookie (SBI 535438) to the veterinarian once.
83. In cross-examination, Ms. Herring confirmed visiting the Appellant in May, June and July 2021 once per week or once every two weeks. She saw the Appellant for friendly visits and barbeques, drove the Appellant to her vaccination appointments and took her food. She claimed all of the Appellant's dogs lived in the kennel and saw about 15 dogs inside it. The Chihuahuas lived in groups of four or five in a kennel unit. She also stated she took dogs home from time to time to groom and socialize them. She confirmed she did not see any veterinarian reports.

Holly Rakos

84. Ms. Rakos met the Appellant when she adopted a puppy from her in 2018 and has since adopted three more puppies from her. She stated that the Appellant has a "*wealth of knowledge*" about Chihuahuas and helped with any questions or concerns she had.
85. Ms. Rakos' horses had to be evacuated because of the fires, so they have been at the Appellant's property since July 2021. The horses have to be fed twice daily. Ms. Rakos feeds her the horses in the morning and one of her daughters feeds them in the afternoon. A daughter has committed to working part-time for the Appellant.
86. Ms. Rakos has never seen any dogs in distress and claimed they are playful and loving dogs.
87. During cross-examination, Ms. Rakos responded as follows:
- She has not been inside the Appellant's house or the kennel. She has only

been in the grass kennel area, which she stated is about 20 yards from where her horses are pastured.

- She did not know how many dogs were in the kennel and only saw the dogs in grassy area. She saw four or five playing in that area and believed they belonged to the Appellant.
- She confirmed she did not see any veterinarian reports. She did not notice any dogs with long nails or severe dental disease. She claimed the last time she had a dog on her lap was the week before the Society took custody of the seized dogs. She did not know which dog she was holding.

88. In response to a Panel question, Ms. Rakos confirmed that the Appellant has two roosters, a hen and two chicks on her property and that they belong to the Appellant.

The Society's Evidence

Dr. Deanna Jenner

89. Dr. Jenner was qualified as a veterinary expert of small animals, including dogs and testified as an expert witness for the Society. She has been a licenced registered veterinarian since 2009. She examined five of the seized dogs. Before she was qualified, the Appellant's counsel asked if she was certified as a Chihuahua expert. She believed there was no such qualification but she owned Chihuahuas.

90. Dr. Jenner provided the following observations during her testimony:

- All of the dogs she examined had severe dental disease. There was inflammation and infection of the tissue and their gums and bones were being eaten away by infection. She stated this would have been painful.
- Four dogs had luxating patellas where their knee caps were on the inside of their legs and could not be put back into place. They had a very abnormal stance, arched backs and straight legs. She recommended that a specialist should examine their knees.
- Dr. Jenner stated that hydrocephalus impacts gait and believed these dogs had hydrocephalus. This disorder caused one dog (Wooky) to die. She did not recommend breeding these dogs because the traits are highly inheritable.
- Dr. Jenner agreed that dogs mask pain.
- Dr. Jenner stated that Dog 9 (SBI 535450) displayed a very sensitive back when touched. This dog also had a defect in her abdominal body wall and her abdominal contents had to be pushed back into a pocket under her skin. Dr. Jenner stated this is painful and recommended surgery to fix this problem.
- Dr. Jenner advised that only one dog was friendly. The others were fearful and withdrawn.

- Dr. Jenner stated that all dogs had redness on their feet and overgrown nails, which would have been very uncomfortable. She stated this was “*urine scald*” from living in dirty conditions and this could lead to disease.

91. During cross-examination, Dr. Jenner responded as follows:

- She had no knowledge of who owned the dogs but believed the dogs were related.
- She advised that the dogs may have been in a nervous state if they had been chased around by the Society but this would not have impacted her findings.
- She confirmed that as part of her examination of the dogs, she examined their gait and witnessed their limited mobility. She observed them moving around cautiously, which is not something she is used to seeing at all in small dogs.

Dr. Kai-Fong Ng

92. Dr. Ng was qualified as a veterinary expert of small animals, including dogs and testified as an expert witness for the Society. He has been a licenced registered veterinarian since 2008 and has further training in internal radiology medicine. He examined seven of the seized dogs.

93. Dr. Ng provided the following observations during his testimony:

- He stated Kobe (SBI 535441) had severe dental disease and a luxating patella. Kobe was quite thin and had claws so long that they were circling around themselves, which would have taken weeks to grow. Kobe had an untreated ear infection and a mass in his right inguinal region.
- Dr. Ng confirmed that he would expect a dog breeder to notice Kobe’s issues. He advised they are chronic painful issues that did not develop overnight. He stated that Kobe was born with a luxating patella, which is a congenital disorder. The mass was large for Kobe’s size and would have caused him discomfort. He stated this mass could be an infection or cancer.
- Dr. Ng advised that another dog had severe dental disease. He stated this should have been evident to a responsible dog owner because the smell of the infection is apparent.
- Dr. Ng advised that five out of seven dogs had luxating patellas, which meant that their knee caps (patellas) were not in the normal position and caused the knee to pop in and out. It is a genetic disorder, so if the dog is bred, this would pass down to its offspring. A luxating patella can cause instability in the knee and may develop into arthritis in older dogs or crucial ligament tears. Dr. Ng confirmed that a responsible dog owner would have this issue assessed. He mentioned that if the dog’s gait is choppy, this suggests the dog is in discomfort and requires pain medication. (In Dr. Ng’s report of September 17, 2021 at Tab 20 of Exhibit 5, he indicated their patellas were to the inside of their knees and he was unable to get their patellas in their normal anatomical

position. This is known as a grade 1 locating patella, the most severe grade of luxating patella.)

- Dr. Ng stated that Chihuahuas tend to be more fearful but almost all of them were fearful, which he thought was a disproportionate number and signified that they were not well socialized.
- Dr. Ng. advised that it is not healthy for dogs to live in their own excrement, which increases the risk of infections and disease. Ammonia may cause lung damage, rashes and infections. Overall, dogs do not want to be living in it, walking in it or eating near it.

94. In cross-examination, Dr. Ng confirmed that he only examined the dogs once on September 11, 2021. He agreed that the dogs would be less fearful of him if he had multiple interactions with him.

SPC Daniel Chapman

95. SPC Chapman's testimony about this seizure was consistent with that outlined in his ITO. Since this information is already set out above in the section, "Events Leading Up to the Seizures", it is not necessary to repeat it here. His observations and action taken are described in paragraphs 14 to 38 above.

96. The Society's counsel referred the parties to SPC Chapman's follow-up details dated September 10, 2021, the day the search warrant was executed, at Tab 4 of Exhibit 5. During his testimony, SPC Chapman described what happened and the living conditions he witnessed as follows:

- The Appellant was angry and upset. She stated she would not allow him and the other officers inside of her house. Another SPC explained to her that if she obstructed the investigation, she would be arrested.
- He asked the Appellant whether she had any dogs inside her house. She stated she did not. SPC Chapman then told her that he could hear barking dogs coming from the house but she continued to deny having any dogs inside of the house.
- He described the living conditions of the house as "*horrendous*" and stated there was feces and urine everywhere. (His follow-up details discuss the large amount of feces, urine and garbage he witnessed inside of the Appellant's house and the very strong smell.)
- He saw dog beds, empty dishes and feces inside of the garage. The Appellant claimed that no dogs lived inside of the garage but SPC Chapman observed the feces was recent and soft and the smell, overwhelming.
- Nine dogs, including the litter of puppies were seized from the downstairs of her house and ten from the kennel. He observed some feces and urine inside the kennel.
- He stated that the Appellant admitted to moving the dogs from the kennel to

the house. He therefore made the decision that the seized dogs were all in distress.

97. During cross-examination, SPC Chapman responded as follows:
- He agreed that Ms. Dunbar overstated the number of dogs that the Appellant had on the day the warrant was executed.
 - He stated that the dogs were seized from the kennel because the Appellant was moving dogs back and forth from the kennel to her house. He mentioned the kennel was not clean that day.
 - He confirmed he did not see any dogs in the garage on the day the warrant was executed but this was the only time he entered the garage.
 - He indicated the garbage inside of the Appellant's house was hazardous to small dogs.
 - He agreed that he discussed the smell of urine on the Appellant with Daryl Riva and Christopher Riva. He was adamant that he did not make any offensive jokes about her odour.

Heather Dunbar

98. Ms. Dunbar's testimony about the seized dogs was consistent with that outlined in SPC Chapman's ITO. Since Ms. Dunbar's testimony is already set out above in the section, "Events Leading Up to the Seizures", at paragraphs 14, 19, 20, and 29 to 31, it is not necessary to repeat it here.
99. Ms. Dunbar stated she bought two puppies for \$2700 and still has them. She and her husband stayed in the Appellant's motorhome on her property.
100. Ms. Dunbar confirmed that she saw the inside of the Appellant's house once only from the front door. She observed blankets, sheets, clothes, urine and feces. She also stated that the Appellant had her dogs mostly in the house and sometimes in the kennel.
101. In cross-examination, Ms. Dunbar confirmed she was never invited into the Appellant's house and saw only the main living room area.

VIII. Analysis and Decision

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

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

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

(b) cannot be found immediately and informed of the animal's distress, the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

103. The definition of “distress” provides:

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

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

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

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

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

(c) abused or neglected.

104. In considering the issue of distress, the hearing panel starts with the proposition that the definition of distress is broad, and the Society does not have to establish an actual deprivation or harm to animals before determining the animals are in distress. A medical finding that animals are injured or in pain is not required to conclude the animals are in distress. The definition of distress is intended to be protective and preventative. It does not require proof of actual harm; rather, it describes those circumstances that create a significant risk of harm to animals and should be avoided. When these circumstances are not avoided and conditions place animals at sufficient risk, the *Act* provides they can be protected.⁷

105. The hearing panel in *Foulds v. BCSPCA*, December 9, 2020 (the **Foulds decision**) held at paragraph 209, “*It is important to note that it is not necessary to find every animal to be in immediate physical distress to justify seizure.*”

106. Once the hearing panel determines the animals were in distress at the time of seizure, the panel must then decide whether it is in the best interests of any or all of the animals to be returned to the owner’s care.

107. To be clear, the only two questions this Panel must decide are whether the seized dogs were in distress at the time of seizure and if it is in their best interests to return some or all of the seized dogs to the Appellant. The Appellant’s submissions state that the standard of review of the Society’s decision is reasonableness. On this point, this Panel wishes to emphasize that appeals to BCFIRB under the *Act* are distinct from judicial reviews and proceed by way of rehearing.⁸ The onus is on

⁷ See *Bagga v. BCSPCA*, February 5, 2019 at paragraph 104.

⁸ See *BC Society for the Prevention of Cruelty to Animals v. British Columbia (Farm Industry Review*

the Appellant to show that, based on the Society's decision or on new circumstances, the decision under appeal should be changed, and the Appellant may adduce any evidence she wishes to challenge the Society's decision for a material error of fact, law or policy, or to establish that her circumstances have materially changed during the appeal period.⁹

108. The hearing panel in *Havelock v. BCSPCA*, March 20, 2015 further stated that it does not sit in review of ITOs and emphasized that the hearing panel's role is to determine whether the Society was justified in removing an animal on the basis that it was in distress. At paragraph 25, the hearing panel stated:

I want to make it clear that in making this determination, **I am not assessing whether the ITO contained sufficient information to justify a search warrant.** Further, I will resist the temptation to get into questions about whether certain information should or should not have been included in the ITO. Assessing all that is a court's job. **My more specific function at this stage of the decision is focused on determining whether, based on the objective information before the Society, Ms. Moriarty was correct or reasonable in concluding that there was, in all the circumstances, sufficient information before the Society to justify removing the animal on the basis that it was in "distress"**, a definition that includes an animal being "deprived of adequate care or veterinary treatment". [Emphasis is added.]

Seized Dogs

109. The Appellant submits the Society was justified in seizing the dogs from her house but states that the seizure of the dogs from her kennel was not justified because they were not in distress and the kennel had acceptable living conditions.
110. The Appellant has a very narrow understanding of the definition of distress. Removing an animal on the basis of distress goes beyond whether that animal was living in unsanitary living conditions. The definition includes whether the animal was deprived of general care or veterinary treatment, or if it was injured, sick, in pain, suffering or neglected.
111. The Panel finds that the veterinary reports and physical examinations paint a clear picture that the seized dogs suffered from various medical issues, including dental disease, luxating patellas, hydrocephalus, severe tartar build-up, low body condition scores and other issues. They were also deprived of general care. For example, they had long nails and were dirty. One dog's nails were so long that they were curling into his pads. The Society listed the various issues of the seized dogs in the Society submissions and provided sufficient supporting evidence. The list itself is reproduced at paragraph 65 of this decision.

Board), 2013 BCSC 2331, paragraphs 38 to 41.

⁹ *Ibid*, paragraph 24, sub-paragraph 93.

112. The Society's veterinary experts testified about the various problems they observed. Dr. Jenner testified that the seized dogs she examined all had severe dental disease, which would have been painful. Four dogs had luxating patellas and moved around cautiously. She believed the dogs were related and had hydrocephalus, so she did not recommend breeding these dogs because the traits are highly inheritable. (According to the necropsy reports, one dog and one puppy died of hydrocephalus.) She stated the redness on their feet and overgrown nails would have been very uncomfortable. She also advised that only one dog was friendly and the others were fearful and withdrawn.
113. Dr. Ng confirmed that he would have expected a responsible dog owner to notice Kobe's (SBI 535441) chronic painful issues of which he had many, including severe dental disease, a luxating patella, claws so long they were circling around themselves, an untreated ear infection and a large mass. He advised that the smell of the infection caused by severe dental disease is apparent. He further testified that five out of seven dogs had luxating patellas, which is a genetic disorder that can be passed on to offspring. Almost all of them were fearful, which suggested they were not well socialized.
114. The Panel did not find the evidence of the Appellant's witnesses very helpful. Except for Daryl Riva, none of them had been inside the house recently or the kennel except to use the kennel washroom. They did not see the veterinary reports. Except for Daryl Riva, they did not spend any time examining the seized dogs nor did they notice any visible issues such as the long nails.
115. Although Daryl Riva thought the seized dogs were "*in good shape*" and did not think the dogs were in distress. Given the veterinary reports and records and the testimony of the veterinary experts, the Panel disagrees with Mr. Riva's assessment. Furthermore, the Panel did not find him particularly credible. When Mr. Riva spoke with SPC Chapman on September 9, 2021, he stated that the house was dirty and had feces and urine stains but he did not see any feces or urine. At the hearing, when he was shown the photos of the Appellant's house taken the following day, he could not recall what he saw except for garbage bags. The photos show a house in disarray with garbage and feces clearly visible in them. It appears that Mr. Riva may have been more focussed on helping his son and his fiancée secure a potential business opportunity. Christopher Riva testified discussing renting the house and running the kennel as a for profit business with the Appellant. He also stated he would be willing to run the kennel if the Society was not involved.
116. In response to the Appellant's submission that the kennel's living conditions were adequate, the *Foulds* decision clearly states that it is not necessary to find every animal to be in immediate physical distress to justify seizure. Despite this, the Appellant acknowledged in her own submissions that she moved the dogs between the kennel and her house. This was also confirmed by Ms. Dunbar's testimony. Therefore, it would seem that the majority of the seized dogs, if not all,

were exposed to the unsanitary living conditions of her house. On September 8, 2021, there were only four of seized dogs in the kennel. When asked in cross-examination where the other seized dogs were, she answered she did not know. It is most likely that at least some of them were inside of her house.

117. The Panel found the ITO prepared by SPC Chapman and his follow-up details to be very thorough. The Panel also found him to be credible during the hearing. The Panel finds the seized dogs were in distress at the time of seizure and SPC Chapman was justified in taking custody of the seized dogs on the Society's behalf. The Panel further finds Ms. Moriarty was correct and reasonable in concluding that there was, in all the circumstances, sufficient information before the Society to justify removing the seized dogs on the basis that they were in "distress".

Return of the Seized Animals

118. Having determined the seizure was justified, the Panel must consider whether it is in the best interests of the seized animals to be returned to the Appellant.

119. The courts have considered the legislative framework of the *Act*. In *Eliason v SPCA*, 2004 BCSC 1773, Mr. Justice Groberman (as he then was) stated:

The scheme of the Act clearly is designed to all the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of.

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

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

121. The main matter in question is whether the Appellant is capable of providing adequate care for the seized animals. The onus is on the Appellant to show that their return is justified.

122. The Appellant stated in her reply submissions that she was ready, willing and able to care for the seized dogs but she did not provide a concrete plan of what she would do. She stated she would continue to oversee the kennel business but she did not explain what this means. What would be her specific duties? How often would she visit? Would she take dogs to a veterinarian? Who would be responsible for their general care like clipping nails and bathing? None of these questions were addressed.

123. The Appellant provided a video and photos of one level of her house that had been cleaned. This is now inconsequential given she has rented her house. There was no mention of the renters assisting with the kennel business. The Panel noticed, however, at the 40 second mark of her video, boxes and clutter on the outside deck or patio of her house.
124. The Appellant hired two new employees but she did not provide any information about them. For example, she did not advise whether they have any experience dealing with dogs or running a kennel business.
125. The Appellant stated she would permit access to the Society without restriction to ensure she is complying with any conditions this Panel imposes on her should the seized dogs be returned to her. The *Act* puts a positive obligation on owners to care for their dogs. It is not the Society's role to monitor dog owners such as the Appellant.
126. Finally, given the Appellant's testimony, the Panel is not convinced that if any of the seized dogs are returned to the Appellant that she would ensure they receive the proper veterinary attention when required. She claimed she took her dogs to veterinarians but she did not produce any veterinarian records. Her attitude towards the findings of the veterinary experts was cavalier. She stated that they are inexperienced in dealing with her breed of Chihuahuas and did not think the gait of the dogs with luxating patellas was a problem. She testified she schooled veterinarians and then denied saying this. She failed to have Stormy's (SBI 535440) teeth examined by a registered veterinarian as stipulated in the Society notice given to her by SPC Chapman. She believed the list at paragraph 65 indicating the problems with the seized dogs was incorrect. She did not keep records of the dogs she bred nor did she have any records of when she administered vaccinations. She also made an unusual statement that she breeds dogs for research.
127. Overall, the Appellant failed to provide any convincing evidence to establish that her circumstances have materially changed during the appeal period. Her sparse plan is not enough to convince this Panel that it would be in the best interests of the seized dogs to be returned to her and in the Panel's view, they would be at a very real risk of falling back into distress if they are.

IX. Order

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

X. Costs

129. Before the conclusion of the hearing, the Panel advised the parties that she may require additional submissions on costs should some or all of the seized dogs be returned to the Appellant. Since this is not the case, additional submissions are not necessary.

130. The Panel finds the Society's costs are reasonable, and confirms, pursuant to section 20(6)(c) of the Act, that the Appellant is liable to the Society for **\$17,951.59**. This includes the cost of care for the surrendered dogs since the Appellant only surrendered them at time of the hearing.

Dated at Victoria, British Columbia this 12th day of November, 2021.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Harveen Thauli, Presiding Member

APPENDIX “A” – Exhibits

Exhibit #	Date (Received)	Received from	Document
Exhibit 01	Sept 29, 2021	BCSPCA	BCSPCA no return decision
Exhibit 02	Oct 4, 2021	Appellant	Notice of Appeal (NOA)
Exhibit 03	Oct 4, 2021	BCFIRB	Notice of Appeal process letter
Exhibit 04	Oct 13, 2021	BCSPCA	PDF copy LT all encl doc disclosure
Exhibit 05	Oct 13, 2021	BCSPCA	BCSPCA Document Disclosure Tab 1-38
Exhibit 06	Oct 13, 2021	BCSPCA	Tab 5 – voicemail message
Exhibit 07	Oct 13, 2021	BCSPCA	Tab 10 – photos and 2 videos
Exhibit 08	Oct 13, 2021	BCSPCA	Tab 11 – Dodd Photos and 3 videos
Exhibit 09	Oct 20, 2021	Appellant	Letter to BC Farm Industry Review Board
Exhibit 10	Oct 20, 2021	Appellant	Submissions of Monica McIntosh
Exhibit 11	Oct 21, 2021	Appellant	Letter to BCFIRB and Rhone
Exhibit 12	Oct 21, 2021	Appellant	Photos of house clean Oct 20
Exhibit 13	Oct 21, 2021	Appellant	Video.mov
Exhibit 14	Oct 22, 2021	BCSPCA	Report of Dr. Reimer re. Dog 1
Exhibit 15	Oct 22, 2021	BCSPCA	Report of Dr. Reimer re. Dog 2
Exhibit 16	Oct 22, 2021	BCSPCA	Report of Dr. Neider re. Dog 3-5 and Puppy A-D
Exhibit 17	Oct 25, 2021	BCSPCA	PDF copy LT all encl submissions
Exhibit 18	Oct 25, 2021	BCSPCA	Submissions of the BCSPCA
Exhibit 19	Oct 25, 2021	BCSPCA	Supplemental Cost Submissions of the BCSPCA
Exhibit 20	Oct 25, 2021	BCSPCA	Affidavit #1 of Marcie Moriarty
Exhibit 21	Oct 25, 2021	BCSPCA	BCSPCA Expert Witness Contact Form
Exhibit 22	Oct 25, 2021	BCSPCA	BCSPCA Witness Contact Form
Exhibit 23	Oct 25, 2021	BCSPCA	BCSPCA Updated Document Disclosure Index

Exhibit #	Date (Received)	Received from	Document
Exhibit 24	Oct 25, 2021	BCSPCA	Tab 38-46
Exhibit 25	Oct 28, 2021	BCSPCA	Updated Document Disclosure Index of the BCSPCA
Exhibit 26	Oct 28, 2021	BCSPCA	Second Supplementary Cost Submissions of the BCSPCA
Exhibit 27	Oct 28, 2021	BCSPCA	BCSPCA Tab 47-48
Exhibit 28	Oct 28, 2021	BCSPCA	BCSPCA Email re. Dog 14 (535455) and Dog 15 (535456)
Exhibit 29	Oct 28, 2021	BCSPCA	Email containing 5 attachments (1 document and 4 photos)
Exhibit 30	Oct 29, 2021	Appellant	Reply Submissions of M McIntosh
Exhibit 31	Nov 1, 2021	BCSPCA	Revised 2 nd Supplemental Cost Submissions of the BCSPCA