

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
2 DOGS

BETWEEN:

KRISTOPHER NICHOLS

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Tamara Leigh, Presiding Member

For the Appellant:

Self-represented

For the Respondent:

Rylee Hunter, Counsel

Date of Hearing:

January 14, 2022

Location of Hearing:

Teleconference

I. Overview

- 1) This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372* (the *PCAA*) related to 2 dogs (the *Dogs*).
- 2) The Appellant, Kristopher Nichols, is appealing the December 9, 2021 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Dogs (the *Society*).
- 3) Section 20.6 of the *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the *Society* to return the animal to its owner with or without conditions or to permit the *Society*, in its discretion to destroy, sell or otherwise dispose of the animal. The Appellant in this case is seeking the return of all of the *Dogs*.
- 4) On January 14, 2022 a BCFIRB hearing panel (the *Panel*) held a hearing via teleconference. The hearing was recorded.
- 5) The Appellant was self-represented and provided direct evidence himself. He called no other witnesses.
- 6) The *Society* was represented by counsel and called three witnesses: the veterinarian who conducted the intake exams for the *Dogs*, the third-party who surrendered the *Dogs*, and a third witness who had previously visited the *Dogs* on the property and helped coordinate their surrender to the *Society* in 2019.

II. Decision Summary

- 7) In brief, this appeal involves the seizure of 2 dogs from the Appellant's property in a remote part of coastal British Columbia. For reasons explained in detail later, the *Panel* has decided to return the *Dogs* to the Appellant with the following conditions:
 - a) The Appellant will immediately consult with a veterinarian to establish a pain management plan for the dog, Cash, and establish a care plan to be shared with the *Society* and BCFIRB. All conditions of this care plan must be followed by the Appellant.
 - b) The Appellant must consult with a veterinarian about Fender's condition and diagnostics testing options immediately upon the return of the dog and establish a care plan to be shared with the *Society* and BCFIRB. All conditions of this care plan must be followed by the Appellant.
 - c) Under no circumstances is the dog, Fender, to be left without a person available to monitor him and provide food and care.

- d) Under no circumstances will Cash be left unattended at the oyster lease property for more than 12 hours without a local point of contact who can attend to feeding, supervision and care in case of an emergency.
- 8) The Society sought to cover costs in the amount of **\$3,102.57**. The Panel has decided that the Appellant is liable to the Society for costs in the amount incurred by the Society with respect to care of the Dogs while in custody. These costs must be paid in full before the Dogs are returned.

III. Material Admitted on this Appeal

- 9) The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1-17 and attached as Appendix A to this decision.

IV. Circumstances of the Seizure

- 10) The Dogs were surrendered to the BCSPCA in Sechelt, BC, by a third-party on November 21, 2021. They were found on a remote, boat access-only property identified as an oyster lease on Granville Bay. The person who found them assumed they had been abandoned and took them into care after observing them at the property for a few days. Concerned that one of the dogs, later identified as Fender, was sick and needed veterinary care, the individual transported the Dogs to Sechelt and after failing to find an open veterinary clinic, surrendered the Dogs to the BCSPCA.
- 11) A Notice of Disposition with respect to the Dogs was served to the Appellant in accordance with Sections 10.1 of the PCAA as the Dogs were found to be abandoned and straying as defined by the Act.

VI. Review Decision

- 12) On December 9, 2021, Ms. Moriarty issued her review decision in which she outlined her reasons for not returning the Dogs to the Appellant after they were surrendered by a third-party. She reviewed the veterinary records from Sechelt Animal Hospital, the witness statement from the person who surrendered the dogs, various photographs and the Appellant's email submissions.
- 13) In deciding whether it was in the best interest of the Dogs to be returned, Ms. Moriarty considered the recommendations from the veterinarian that Cash's care include a secure home environment, and that Fender be kept in a supervised environment, as he might suffer if left unattended. With Fender she also noted that "it's likely that further diagnostics would lead to discovering a terminal illness, in which case they recommend humane euthanasia."

- 14) Ms. Moriarty noted that the Appellant was communicative and eager to have the Dogs returned but expressed concern that he was not able to assess the veterinary needs of the Dogs, particularly Fender. “You make several conflicting statements regarding Fender’s condition, ranging from “bad”, “health is declining,” and “seems to be in pain” to “still has quality of life and is not in pain.” She questioned his willingness and ability to follow the directions of veterinarians regarding Fender’s care, and referenced a veterinary report from 2018, where the veterinarian recommended surgery or humane euthanasia following a bear attack.
- 15) Regarding the conditions of the Dogs’ care, Ms. Moriarty raised concerns about the length of time that the Dogs were left alone on the property. She rejected the Appellant’s submission that his extended absence was the result of flooding, and questioned his commitment to changing, noting “...your submission does not merely speak to an instance of being stuck away from them but a persistent issue of intentionally leaving your Dogs which you do not intend to change.”
- 16) She concludes:

You share that you care for the Dogs and I deeply appreciate the love you have for them and what they mean to you. This is a difficult decision to make as we strive to honour the human-companion animal bond. However, given the condition of the Dogs, their poor prognosis, and your lack of responsibility for their circumstances, at this time I do not believe that should the Dogs be returned to your care that they would receive the necessary attention and veterinary care they need, which based on their conditions is only likely to increase. I do not find it in their best interests to be returned.
- 17) The Appellant filed his appeal with BCFIRB and paid the filing fee, respectively, on December 13 and 15, 2021.

VII. Key Facts and Evidence

- 18) In an appeal under the *PCAA*, the Panel must determine whether the Dogs were abandoned (as defined by the *PCAA*) and if they should be returned to the Appellant. Below is a summary of the relevant and materials facts and evidence based on the parties’ written submissions and evidence presented during the hearing. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

The Hearing of this Appeal

The Appellant – Kristopher Nichols

- 19) The Appellant began his testimony by expressing concern that his statements to the Society over the course of the process have been misinterpreted and mis-characterized. He said he was trying to be truthful and accurate in his statements by describing every possibility to them but feels they have taken the worst case from his statements and presented them as the norm.

- 20) The Appellant lives between two properties, the oyster lease where the Dogs were found and his family home in Pender Harbour. The oyster lease is only accessible by boat. The closest community is Egmont, which is a 15-minute boat ride from the property. The trip to Pender Harbour can be made in 30 minutes in a fast boat or 2 to 2.5 hours in a fishing boat.
- 21) The Appellant's family has held the oyster lease for 10 years and he started taking the Dogs out there 8 years ago. For several years there was a caretaker living on the property who provided full-time care for the Dogs. The caretaker died 3 years ago, but the Dogs have stayed on the lease while the Appellant has travelled back and forth between the two properties.
- 22) The oyster lease includes some land, a house and workshop, an area where the Appellant keeps chickens, and some gardens. The Appellant describes the house as in "not very good condition", it has a leaky roof and is closed off to the Dogs. The Appellant's plan is to live in a boat that he has brought ashore and to rebuild the house.
- 23) The Dogs have access to several options for shelter on the property. The primary shelter is an enclosed shed attached to the house that has a roof, sliding doors, plywood floors and mattresses for bedding. The second area is a space under the house which is protected from the elements and has straw for insulative bedding. The Dogs are free to roam the property and to choose their own shelter and sleeping space. Photos of the Dogs' housing were provided.
- 24) The Dogs are fed in the enclosed space between the house and the workshop. The Appellant specified that he buys good quality dry food for the Dogs. They have free access to the food from large containers. When the Appellant leaves the property for an extended period, he divides a 35 to 40-pound bag of dry food between the Dogs, which he estimates should last them up to five days.
- 25) In addition to dry commercial dog food, the Appellant occasionally cooks deer or fish for the Dogs or gives them access to raw deer that he has hunted. Before he left the Animals in November, he left a deer carcass out for them to feed on. He had read that it was good for the Dogs and their teeth to have raw food.
- 26) With regards to financial resources, the Appellant gave evidence that he is supported by members of his family, particularly his brother. He pointed to the historical veterinary records to demonstrate that his brother has paid the vet bills in the past and indicated that his brother has also committed to pay for whatever care is required for the Dogs.
- 27) The Appellant objected to the Society's submissions and insistence that he could not afford the tests and care required for the Dogs, saying "The thought that my family wasn't going to step in because we couldn't afford it isn't correct."

- 28) He provided anecdotal evidence supported by photographs of the care given to his brother's dog, Thor, who was treated for cancer earlier this year and cared for by the family. "In the past, when any dog is sick it comes into care in our house until its well enough to go out to the farm." He added that the same kind of care was given to Fender when he was nursed back to health after being injured in 2018.
- 29) The Appellant is a member of the Pender Harbour Indian Band. He is a fisherman by trade but is not currently fishing because of legal issues. He is the hunter and fisher for his family and provides food for the elders in his community. He also does chores, errands and maintenance for his mother-in-law. In exchange for these services, his family helps him financially. "I trade my time for help with living and supplies that I need."
- 30) To do this work, the Appellant often travels to Pender Harbour and is away from the oyster lease. In the past he has left the Dogs on the property for 3 to 5 days at a time while he attends court, works, and gathers supplies. The Appellant says that when he had his fast boat, he could get out to the property to visit the Dogs daily, but since the fast boat was seized, he now uses his fishing boat to travel back and forth, which takes a lot longer.
- 31) The Appellant told the Panel that he did a lot of research before choosing the Kangol breed. He got both Dogs as puppies from the same breeder and kept them in Pender Harbour for the first couple of years of their lives. He says he chose the breed because they are excellent livestock guardians, and his family had plans to get a farm and livestock.
- 32) According to the Appellant, kayakers and other people from the area use the oyster lease property and the Dogs are accustomed to visiting with people who come ashore.
- 33) The Dogs occasionally travel back and forth with the Appellant, but he says they do best when they are loose on the property with a job – in this case, protecting the chickens. The Dogs are not accustomed to confinement and get anxious when they are fenced in. The breed is also known for barking, which is useful for guardian livestock and property, but has been the source of complaints from neighbours when they have been kept in Pender Harbour.
- 34) The Appellant described Fender's previous medical history in his own evidence and under cross-examination from the Society. He said Fender has been injured twice in conflicts with a bear. He was not present for either incident. The first injury occurred when a bear charged into the yard shortly after the Dogs were first brought to the oyster lease. Fender was hit resulting in a broken canine tooth and jaw injury that was treated with surgery at Eagle Ridge Veterinary Clinic. The records from Eagle Ridge Veterinary were provided in submissions.

- 35) Fender's second bear-related injury happened in June 2018 when the Dogs were off the property running in the bush and was struck by a bear. Fender was not taken to the vet until six weeks following the injury. The Appellant's father and girlfriend took Fender to the vet because he was not available.
- 36) On cross-examination, the Appellant said Fender was not taken in right away because they did not notice signs of injury until later. He said he believes the impact of the bear strike strained Fender's ligaments. He said he was taken to the vet because he was losing physical condition and was having trouble moving. When asked by the Society if he would say that Fender was in pain, he replied "I don't consider it pain, but it's uncomfortable. It took more effort for him to get up and he didn't seem to be acting normal." He also stated, "The vet might consider him being in pain, but for any normal person without any whining or crying, they would probably not consider him being in pain."
- 37) After visiting the vet for Fender's injury in 2018, the Appellant says, "Fender stayed with me at the house for a long time as he healed with me. I went through an expensive process of medicines and therapy. Recommendations were that if he didn't get better, it was either surgery or getting put down. He stayed with me until he was absolutely and completely recovered."
- 38) Fender was taken to the Sechelt Animal Hospital in 2019 for a skin issue brought on by a flea allergy. He was treated with flea medication and a therapeutic shampoo. At that time, the Appellant refused antibiotics or additional treatment because he wanted to see if the medication and shampoo worked first.
- 39) The Appellant said he noticed Fender's condition deteriorating prior to the Dogs being taken from the property. In August 2021, one of his neighbours mentioned that Fender looked like he was getting old. The Appellant said in the weeks before the Dogs were taken, he noticed Fender "puke" a few times. He noticed the dog's swollen stomach and initially dismissed it as age-related weight gain as his activity level changed with age. He said "I considered it natural aging when I first saw it, but when I noticed him puke I was concerned and was reading about it. It's not something that I was neglecting. I was actively preparing to take him in." The last time the Appellant visited the oyster lease before the Dogs were taken, he took a large skiff to transport Fender to the vet when he returned.
- 40) Evidence was also provided on the health of the dog, Cash, including veterinary records for when he was taken in with a laceration of his ear. The ear had been bit by the Appellant's younger dog, Chinook, after she tried to take Cash's food. When asked what was done to prevent it from happening again, the Appellant replied that the issue has been resolved because they know the order of the pack. It has never happened again. Cash's last visit to the vet was for a regular check-up.

- 41) The Appellant left the dogs at the oyster lease on November 13, 2021 to get supplies for the Dogs. He left the dogs with a deer carcass and five day's worth of dry food. While he was in Pender Harbour the South Coast was hit by an extreme weather system that flooded much of the community, including the Appellant's brother's house and his parents' basement, as well as filling a number of boats at the dock. The Appellant's return to the property was delayed while he helped his family and community deal with the impact of the flooding.
- 42) When pushed by the Society about why he chose to stay in Pender Harbour rather than go to the oyster lease and attend to the Dogs, he replied that the issues he was dealing with were serious. He said it was a catastrophic natural disaster and that thousands of people on the South Coast had lost their animals and everything they had. "I couldn't just allow all these boats to sink at the dock and my parents to lose all their belongings." He admitted that he did not call a neighbour to help with the Dogs. He said he had neighbours who stop by every week and use the property, but they did not get to the property until after the Dogs were gone.
- 43) The Appellant returned to the oyster lease with dog food and supplies on November 21, 2021, and the Dogs were gone.
- 44) The Society questioned with respect to an incident in August 2019 where another person removed the same Dogs from the oyster lease without the Appellant's knowledge and took them to the Society. At that time the Dogs were 8 years old. At that time the Society reviewed the Appellant's photos and practices and found it appropriate to return the dogs. The Appellant added that he has submitted many of the same documents in this case, and that he does not understand why they were fine before but being questioned now.
- 45) The Society asked the Appellant about his resistance to having Cash on pain medication while he was in their care. He responded that he had expressed concern because he read in one of the veterinary reports that the same medicine Cash was being giving could harm the GI tract for Fender. He questioned whether Cash needed pain medication for stiffness as he believed much of the stiffness likely came from being confined in transportation to the Society and while he has been in their care.
- 46) The Appellant gave evidence that when he got the call from SPC Morrison and the report from Sechelt Animal Hospital with recommendations to do further testing for Fender, he wanted the tests done. Instead, SPC Morrison suggested that he put Fender down. "We're talking about the dog's life and finding out what was going on with him. I needed to know that, and that's what really hurts me about the whole thing. Not being allowed to do that and being suggested that I have to put him down. What's concerning is that Toni was making suggestions about me not being able to afford it. That's not anybody's business." He said that his brother had offered to pay for the tests, and that the tests would have helped determine if

Fender should have been put down or not. "I want to see if I can give him more time. I understand that if he has to go, he has to go," he said.

- 47) The Society questioned the Appellant's statement that his brother would help pay for the tests that Fender would need, and if he had shared how much the tests would cost. The Appellant responded that he didn't know the cost of the tests until he heard them in the veterinarian's evidence. He added, "I do things that are important to him and in return he helps me out with things that are important to me. If it's to do with Fender's life on the line, then he was prepared to get the tests done at the time that vet recommended them." He said he was willing to take Fender to the mainland for an abdominal ultrasound, and that the other dogs can stay with his parents while he takes him in.
- 48) If the dogs are returned, the Appellant says his plan is to live in his boat on the beach at the oyster lease with his animals. He said he would keep them with him if he was going to leave the property for a day or two and would only leave them for the time needed to take his boat to gather supplies and come back, a trip he estimates at 6 hours. If Fender's health is bad, he will not leave him at all. On the occasions when he has to leave the Dogs on the property, he would have a couple of people standing by to look in on the Dogs and provide care. He stated, "I've changed my attitude now. The only exception would be to leave to get my supplies if there was internet surveillance to watch the dogs. I'm afraid of having to go through a process like this. It has been hard on me. I don't socialize with people much and these dogs are my family. I'm pretty protective about them. Now that this has happened, I don't plan on leaving them like that." When asked by the Society if he planned to get a speed boat again, he replied that he expects the fast boat that was seized will be returned, but that he had other opportunities to get a fast boat with a little work.
- 49) The Appellant told the Panel that he does not drink, smoke or do drugs. He was assaulted in 2013 and hit in the back of the head with a baseball bat. He told the Panel, "I'm really anti-social, I have PTSD, my life is about spending time with my dogs, my kids and my girlfriend."
- 50) The Appellant said that he took action to improve housing for the chickens as soon as he spoke with SPC Morrison to demonstrate his willingness to comply with and follow through on the Society's recommendations.

VIII. Respondent's Evidence

Respondent's Witness – Dr. Rachael Spence

- 51) Dr. Rachael Spence is a veterinarian licensed to practise in British Columbia. She currently practices at Sechelt Animal Hospital on the Sunshine Coast. She was qualified by the Panel as an expert in the field of veterinary medicine.

- 52) Dr. Spence conducted the intake examinations and treatments for Fender and Cash. The first exam took place on November 23, 2021. Dr. Spence referred to her reports included in the Society's submissions and provided a summary of her medical findings.
- 53) She found Cash to be in very good body condition and stated that he appeared healthy for a geriatric dog. She found some arthritis and muscle atrophy in the hind end. He also had multiple broken teeth, though no signs of abscessing or gingivitis, and a moderately enlarged prostate that she characterized as typical of intact males.
- 54) Dr. Spence noted that the way Cash moved appeared very uncomfortable, and that he seemed very stiff and sore to rise or sit. She indicated it was likely in a dog of this age to suspect arthritis issues. When bloodwork came back normal, she prescribed the anti-inflammatory, Medicam, for Cash to make him more comfortable.
- 55) Fender presented very differently. He had a very distended abdomen, increased respiratory effort and abdominal effort to breathe, a significant arrhythmia, a heart murmur over the left side of the heart, loss of fat around his eyes and a left testical that was bigger than the right. Fender also had muscle atrophy and arthritis similar to Cash.
- 56) Dr. Spence's biggest concern was the fluid in the abdomen, a condition called ascites. Ascites is often a symptom of another issue – either heart issues or something else that is causing the build-up of fluid. She said the fluid pulled from the abdomen during abdominocentesis looked like fluid that's leaking from blood vessels into the abdomen. She suggested a number of possible causes including a back-up of the heart, liver failure, extensive intestinal disease or a cancerous process.
- 57) Determining the exact cause of the ascites would require more diagnostics. She suggested an abdominal ultrasound, chest x-rays, and echocardiogram as well as blood work. She suggested that it would be an intense work-up and some of the tests are quite specialized.
- 58) An abdominal ultrasound ranges from \$700-900. An echocardiogram would require referral to a cardiologist and would cost about \$1500. Chest x-rays can be done at the Sechelt Animal Hospital and would require sedation. With sedation the x-rays would cost \$200-250, plus about \$155 for the radiologist to interpret them.
- 59) She said vomiting up food and a swollen or distended stomach are symptoms of ascites. The fluid puts pressure on internal organs and pushes up on the diaphragm. The vomiting could also be the result of whatever is causing the ascites.

- 60) Dr. Spence conducted three abdominocentesis procedures, one every two weeks, to remove fluid from Fender's abdomen. The procedure involves fasting and sedating the dog, placing them on their side, clipping and disinfecting the abdomen and using ultrasound to find an area to introduce a needle to drain the fluid. The first drew 6.2L of fluid, the second drew 5L and the third drew 2L of fluid. She recommended that the Society stretch it out and do the procedure again every few weeks to relieve pain and keep the pressure off his diaphragm so he can breathe comfortably.
- 61) She suggested that further diagnostics may find the cause of the ascites and would likely lead to a diagnosis of cancer, heart or liver failure – conditions that require invasive treatment or palliative care. She argued that it may not be in Fender's best interest to pursue aggressive or invasive treatment.
- 62) When asked about what kind of feeding schedule would be appropriate, Dr. Spence indicated that free-feeding and fasting would not be appropriate. She said Fender needs more regimented, frequent, small meals through the day to keep food down and get adequate nourishment. She expressed concern about feeding the dogs from a deer carcass because of the build-up of bacteria as the carcass ages.
- 63) On cross-examination, Dr. Spence said that when she examined Fender, he was in distress and suffering, but she could not say how it came to be or how quickly it may have come on. It was possible that the deterioration could have happened quickly. "I have seen a lot of diseases in dogs where they have the disease process for a long period of time and then they tip off a ledge," she said. Regardless of what is causing the ascites or how long it took to develop, Fender now needs special care, and the ascites needs to be taken care of.
- 64) When asked if getting the tests done at the time they were first recommended could have put Fender on a path to healing, Dr. Spence replied that it would depend on the diagnosis. Most of the things that could be causing the ascites are terminal conditions. "You are looking at a palliative situation and palliative care. Draining the fluid is important to keep him comfortable until such time as you need to make an active decision for his sake."
- 65) Dr. Spence is familiar with the Kangol breed. She said they are bred for being outdoors and being working dogs as guardians for livestock. She said they can handle being outdoors and are more inclined to stay outside, but they need access to shelter.
- 66) The average life expectancy for a Kangol is 11-12 years. They are typically big boned, but not bulky dogs. She used Cash as an example of what she would expect to see in a Kangol of his age barring major illness – cloudy eyes, heart murmurs, loss of muscle mass and weakness in the hind end. She said Cash

looked fairly good for a dog of his age and breed size. Fender definitely had an internal process on top of aging that was affecting his overall condition.

- 67) In the future, Dr. Spence recommended that Cash have a good, warm shelter. She said it's important that he gets regular food, regular water and has good bedding available. She emphasized the need to get out and exercise him regularly. She also suggested that he receive pain control for his arthritis.
- 68) For Fender, she said he needs a consistently monitored safe area with someone there all the time. She emphasized the importance of a good senior diet, saying raw food is not appropriate for him anymore. Pain control is also going to be required. Dr. Spence was very concerned about Fender's quality of life and the invasiveness of testing and treatment and questioned whether they will be able to get him to a point that his quality of life is good enough to continue.

Respondent's Witness – Tom May

- 69) Tom May lives near the Appellant's oyster lease property in Granville Bay, about 15 minutes away by boat. He passes by the property regularly on his way through the area, usually about 0.5 to 1 mile offshore.
- 70) Mr. May first became aware of the Animals when he passed the oyster lease by boat on the Thursday before he surrendered them to the Society. He was passing the oyster lease and saw a boat that had been anchored there for a while was suddenly up on the beach. He went closer to shore to check the boat and as he was leaving, he was startled to see a dog on the beach. He had an impression that the dog was skinny, but he did not see it clearly.
- 71) The following day (Friday) he went past the property in the afternoon and verified that he had seen a dog. He proceeded on to Egmont and came back to the property that night. He didn't see any smoke or lights and was concerned that no one was there.
- 72) On Saturday morning at first light, Mr. May and his wife took a small boat that they could load a dog into. They found two dogs and the beached boat. One of dogs appeared in really bad shape, the other was thin but healthy.
- 73) Mr. May's primary concern was that there was a squatter who passed away and left the dogs, so he looked around the buildings and property. It appeared that the boat hadn't been lived in for a while. The outbuildings had some valuable equipment, including chainsaws, a quad, a dirt bike and the dogs. He also discovered a bunch of empty dog food bags. He also found the chickens.
- 74) The blond dog (Fender) was in rough shape – it was weak and needed to be lifted into the skiff. He tried to feed at the oyster lease and the blond one vomited. When he got them home, he fed them teeny bits for a while and got them holding food

down. They put them in a warm bedroom for the night. On Sunday morning they concluded that the blond dog was too sick for them to care for, and they needed to take it to the vet.

- 75) "I was convinced that nobody was living there. I came to the conclusion that the owner had been incapacitated or that the dogs had wandered on the property from a distant place. The chickens were confusing because they weren't dead, so I knew someone had to be feeding them."
- 76) On Sunday morning he took a bag of birdseed down to the chicken coop and then took the dogs to Sechelt. Mr. May called the emergency number for the animal hospital and couldn't get anybody. At that point they decided to take the Dogs to the Society.
- 77) Shortly after getting home, Mr. May received an email from a friend that included the names and photos of the dogs and contact information. He contacted one of the people on the list and told him the dogs had been taken into the Society several hours before.

Respondent's Witness – Cheyenne Ramsay

- 78) Cheyenne Ramsay lives in Egmont and is familiar with the Appellant's property and the Dogs.
- 79) She first became aware of the Dogs in the summer of 2019 when one of her employees told her about them. When she took a boat out to see them herself, she found them thin, hungry and alone. "They weren't just starving from hunger but starving from human interaction. I observed them to be very thin and very hungry."
- 80) Ms. Ramsay described the Dogs condition at the time to be "totally emaciated, sunken flanks, hip bones protruding. They weren't shiny at all."
- 81) Over a period of 6 to 8 weeks, she took her boat out to feed the Dogs and chickens. She said the Dogs would come running with excitement when they heard the boat.
- 82) During her visits to the property, she never saw anyone there. She described the house as an abandoned old shack with broken windows. She also found fishing equipment, the marijuana plants that had been left to mold and lots of empty dog food bags laying around. She said, "it was obvious that somebody did come."
- 83) She eventually decided to take the Dogs to the Society facility in Sechelt because she couldn't bear them being hungry, lonely and starving. She did not return to the property after she found out that the Dogs were returned to the owner but said that she knows other people in the community who fished in the area, knew the Dogs and would go there to give them food.

IX. Analysis and Decision

- 84) Given that the Dogs were taken into custody under S. 10.1 of the PCAA, the first test of this appeal is to determine whether the Dogs were “abandoned” at the time that they were surrendered to the Society by Mr. May.
- 85) The definition of abandonment is found in section 10.1 of the PCAA:
- 10.1** (1) In this section, "abandoned animal" includes an animal that:
- (a) is apparently ownerless,
 - (b) is found straying,
 - (c) is found in a rental unit after expiry of the tenancy agreement in respect of the rental unit, or
 - (d) if a person agreed to care for the animal, is not retrieved from that person within 4 days following the end of that agreement.
- (2) If an authorized agent is of the opinion that an animal is an abandoned animal, the authorized agent may take custody of the animal and arrange for food, water, shelter, care and veterinary treatment for it.
- 86) The Panel heard the evidence of Mr. May who visited the property several times and searched the buildings for signs of occupation or use. On the third day, after doing an extensive search of the property, he concluded that it didn't appear that anyone had lived there for a long time and assumed that there wasn't anyone there to care for the Dogs.
- 87) While the Panel acknowledges that the Appellant had not intended to leave the Dogs for such a long time, the fact is still that they were without care or supervision for 9 days, and no one knew where he was or when he would be back. The Appellant acknowledged in his evidence that in the circumstances Mr. May's actions in rescuing the Dogs and providing them to the Society were appropriate.
- 88) The Panel finds that, at the time the Dogs were surrendered to the Society it was reasonable to believe they were abandoned.
- 89) Having found that the Dogs were properly taken into custody by the Society, the Panel turns now to whether it is in the best interests of the Dogs to be returned to the Appellant.

Return of the Animals

- 90) Part 2.1 of the PCAA establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:
- 9.1** (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.

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

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

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

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

91) 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.

92) Having determined that the Dogs were abandoned, I now consider whether it is in their best interest to be returned. The courts have considered the legislative framework in the *PCAA*. In *Eliason v SPCA*, 2004 BCSC 1773, Mr. Justice Groberman (as he then was) stated:

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

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

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

94) The question at this stage is whether the Appellant is capable of providing adequate care for the Dogs. The onus is on the Appellant to prove the return of the Dogs is in their best interests and to explain what, if any, changes have been made or will be made to prevent them from again being abandoned or otherwise ending up in a state of distress.

- 95) The Appellant acknowledges that he believes Mr. May took appropriate action under the circumstances in taking the Dogs to the Society. He acknowledges that Fender was in poor and declining condition, and that he needed care. He also acknowledged that, in the same situation, he would have taken both dogs rather than leaving one alone.
- 96) There is no dispute that the Dogs were left for a long time without food in November, or that Fender's condition on arrival at the Sechelt Animal Hospital was one of medical distress. Regardless of how long the period of decline was, Fender needed care and at the time he was found by Tom May, there was no one available to provide it. In the absence of a better solution, Mr. May surrendered the Dogs to the Society.
- 97) The Appellant challenges the Society's decision not to return the Dogs to his care and their assertion that he is not able to provide adequate care. The fundamentals of his argument are as follows:
- a) The veterinarian gave evidence that Fender's disease process was not the result of owner neglect, and that his condition could have deteriorated quite quickly. He says if he had known how serious the stomach bloating was, he would have taken Fender in sooner. As it was, he was preparing to take him in.
 - b) He points to the good condition of Cash and his other dog, Chinook, as evidence that his dogs are well cared for and generally kept in good condition. He says Fender's condition is a result of something internal. He wanted Fender to have tests done as soon as he saw the initial report, and that the Society denied him that ability despite saying that he would pay for them.
 - c) The Appellant refers to a case with the Society in 2019, where he submitted the same materials about the Dog's care, conditions and feeding, and that they were returned at that time.
 - d) He realizes that the Dogs are old and need more care now, and he is prepared to provide it. He is willing to comply with any conditions set by BCFIRB or the Society and has demonstrated that by taking immediate action to improve the chicken area when he received the Notice in November.
- 98) The Society submits that should Fender and Cash be returned that they would be returned to a condition of distress. They were left alone for 9 days with insufficient food and were too weak to get into the boat when they were found. The fundamentals of their argument are as follows:
- a) Fender and Cash suffered distress in the Appellant's care due to lack of consistent access to food and shelter. That they were deprived of care and veterinary treatment, and that the conditions in which they were kept, and length of time that they were left alone for was a form of neglect.

- b) Fender's medical records show that he was progressively losing weight and body condition, and that his decline likely took place over months than rapidly. They assert that the Appellant is unable to detect when the dog is suffering or in pain and should have sought medical advice instead of relying on Internet research. They submit that the Appellant has no evidence that the tests are curative, and that they likely would reveal a terminal condition that would not change Fender's prognosis.
 - c) The Appellant's decision to delay his return to the Dogs in November demonstrates that he is unable to manage his obligations in a way that ensures the needs of his pets are met. They say that the flooding was a factor, but that the Appellant created the issues that allowed it to become a problem.
 - d) The Appellant's plan has holes in it and is not adequate for the level of care that Fender and Cash need. His evidence and submissions say that he still intends to leave the Dogs alone for periods of time. Fender needs constant supervision and Cash needs to live in a supportive home environment, and fundamentally "a remote property is not compatible with keeping a high needs animal."
- 99) A Notice was provided to the Appellant the afternoon that the Dogs were taken into care by SPC Morrison, instructing the Appellant to address specific issues in the care and housing of the Dogs and chickens. It is important to note that these directions were given after the Dogs had been taken into the Society's care and the Appellant was given no opportunity to respond to those elements of the Notice.
- 100) Due to the remoteness of the property in question, correspondence was by phone and email and the only evidence gathered by the Society was that provided by a third-party who, by his own evidence, was more concerned about looking for a dead body than documenting the details of housing and care for the Dogs on the property.
- 101) The Appellant's photos and videos provide a more complete context for the shelter and bedding provided for the Dogs. While the conditions at the property may not meet conventional standards of housing for humans, that is not the question before this Panel. The photos show a clean, enclosed, and insulated space that provides protection from the elements and insulative bedding. The conditions may be improved, but the fundamentals of suitable shelter are there.
- 102) On the matter of availability of food, the Panel acknowledges the Society's point and the evidence of Dr. Spence, that leaving the Dogs without food for extended periods of time is not ideal and that regular fasting of dogs is not appropriate. I balance this against the Appellant's evidence that the information he provided to the Society was comprehensive and included the worst-case situations for the sake of accuracy, not the norm for care. The Society's witnesses gave evidence that they found piles of dog food bags on the property when they visited, which is consistent with the Appellant's evidence that he provided a regular diet of dry dog

food supplemented by fish and wild meat. The Panel accepts the Appellant's evidence that he intended to return with food for the Dogs sooner but was delayed by an extreme weather event.

- 103) The same can be applied to the question of the amount of time that the Dogs were left unattended. The Society is concerned that the Dogs have been left unattended persistently through their lives, and that as guardian animals on a remote property, they are vulnerable to attack by predators. The Appellant maintains that the breed is suited to livestock guardian work, and that their presence is what allows him to keep chickens on the property safe from predators. He says that there has only been one incident with a bear on the property (the second occurred on a hike off the property), and that the bears now stay away because the Dogs are there. The veterinarian confirmed that Kangol dogs are well-suited to outdoor living and are often used as guardian dogs in harsh environments. Her primary concern was the continuous access to food, suitable shelter, and the future care of the Dogs as they age.
- 104) More salient to this matter is the Appellant's argument that he has not changed his practices since the last time they were reviewed by the Society in 2019. Regardless of what has worked in the past, time and age have changed the needs of the Dogs. It is clear from the evidence of the veterinarian, that the free-feeding and free-run lifestyle that worked for these guardian dogs when they were young is not meeting their needs as they age. The standard of care they require is higher and the Appellant needs to make changes to accommodate their evolving needs.
- 105) The return of the Dogs hangs in many ways on the Appellant's ability to attend to their needs – both in terms of recognizing their needs and having the financial capacity to provide care. The Society's submits that the Appellant is unable to see the changes in his animals or determine when they are in pain. Where the veterinarian and Society use the word pain, the Appellant's evidence speaks to the behaviours and outcomes associated with pain such as discomfort, increased effort to get up, skin condition or behaviour change. While the Appellant's statements argue the use of the word pain, he demonstrates that he is not just able to detect changes in the health of the Dogs, he is actively looking for it through body checks, observing behaviour and a documented history of taking the Dogs to the vet for care when he sees changes.
- 106) With regards to resources, the Appellant is supported by his family and has demonstrated his ability to provide veterinary care for the Dogs in the past. It's not a question of whether the Appellant can afford to do expensive veterinary testing for Fender, but how he wants to prioritize it given the body of evidence provided by the veterinarian about the likely prognosis. It strikes the Panel as disingenuous that the Society would suggest that Fender be euthanized on one hand and argue that the Appellant's financial ability for testing and treatment as a reason not to return him. It is understandable and reasonable from the perspective of the Society to make a financially prudent decision in this situation, but as Fender's lifelong

owner, it's also understandable that the Appellant calculates the value of testing differently. The exercise of this judgement nearing the end of a pet's life is entirely reasonable as long as it does not increase or prolong the suffering of the animal.

- 107) The Appellant has put forward a plan where the Dogs will no longer be left unattended and will be given the care and veterinary attention appropriate for their age and condition. His plan to move to the lease seems reasonable, and his evidence reflects a change in his thinking about how the Dogs need to be cared for. Each of the items he speaks to in his plan is within his power and within his means to enact, and directly addresses the concerns of the Society.
- 108) The Panel is satisfied that Fender's condition is the result of a disease process that is driving his rapid decline and not the result of long-term neglect. There is no doubt that the Appellant is going to face a quick, if not immediate decision about the future of this dog. The comparatively good condition of Cash, a dog of the same breed, age and lifetime care as Fender positively influenced this decision.
- 109) Based on the totality of evidence, the Panel has determined that the Appellant is capable of providing adequate care for the Animals and is willing to follow conditions and guidance provided by the Panel and/or the Society. The Panel concludes that it is the best interest of the Dogs to be returned to the Appellant subject to conditions listed in the Order below.

X. Costs

110) 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.

- 111) 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)".

112) The Society is seeking costs as follows:

(a) Veterinary costs:	\$ 573.17
(b) Abdominocentesis procedure estimate	\$ 273.90
(c) Housing, feeding and caring for the Dogs:	<u>\$ 2,255.50</u>
(d) Total:	<u>\$ 3,102.57</u>

113) 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 of each animal. The calculation of these estimates has been reviewed and supported in previous appeals.

114) The Panel has adjusted the amount for housing, feeding and care of the Dogs to correspond with the decision release date.

115) The Appellant is not disputing the costs of care and does not want issues around the costs to be a reason to not return the Dogs.

116) The Panel finds that the Society's costs are reasonable, and confirm, pursuant to s. 20.6(c) of the *PCAA*, that the Appellant is liable to the Society for the amount of **\$3,102.57**

XI. Order

- 117) The Panel concludes that the Dogs are to be returned to the Appellant subject to the following conditions:
- a) The Appellant will immediately consult with a veterinarian to establish a pain management plan for the dog, Cash, and establish a care plan to be shared with the Society and BCFIRB. All conditions of this care plan must be followed by the Appellant.
 - b) The Appellant must consult with a veterinarian about Fender's condition and diagnostics testing options immediately upon the return of the Dog and establish a care plan to be shared with the BCSPCA and BCFIRB. All conditions of this care plan must be followed by the Appellant.
 - c) Under no circumstances is the dog, Fender, to be left without a person available to monitor him and provide immediate food and care.
 - d) Under no circumstances will Cash be left unattended at the oyster lease property for more than 12 hours without a local point of contact who can attend to feeding, supervision and care in case of an emergency.
 - e) All costs owed to the Society will be paid in full before the Dogs are returned.

Dated at Victoria, British Columbia this 24th day of January 2022.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Tamara Leigh, Presiding Member

APPENDIX A – Exhibits

Exhibit #	Date (Received)	Received from	Document
Exhibit 01	Dec 9, 2021	BCSPCA	BCSPCA No Return Decision, Nichols
Exhibit 02	Dec 13, 2021	Appellant	NOA Nichols (email with attachment)
Exhibit 03	Dec 16, 2021	BCFIRB	NOA process letter
Exhibit 04	Dec 24, 2021	BCSPCA	LT Appellant and FIRB encl document disclosure
Exhibit 05	Dec 24, 2021	BCSPCA	BCSPCA Document Disclosure, Tab 1-Tab 28
Exhibit 06	Dec 24, 2021	BCSPCA	BCSPCA Tab 16 , Photographs and Video from Appellant
Exhibit 07	Dec 24, 2021	BCSPCA	Tab 24, Photographs from Appellant
Exhibit 08	Jan 4, 2022	Appellant	Appellant Initial Submission
Exhibit 09	Jan 7, 2022	BCSPCA	LT all encl BC SPCA Submissions
Exhibit 10	Jan 7, 2022	BCSPCA	Updated – BC SPCA Document Disclosure (Tab 1-Tab 31)
Exhibit 11	Jan 7, 2022	BCSPCA	Written Submissions of the BC SPCA
Exhibit 12	Jan 7, 2022	BCSPCA	Affidavit 1 of Marcie Moriarty
Exhibit 13	Jan 7, 2022	BCSPCA	BC SPCA Witness Contact Form
Exhibit 14	Jan 7, 2022	BCSPCA	BC SPCA Expert Witness Contact Form
Exhibit 15	Jan 7, 2022	BCSPCA	BC SPCA Document Disclosure – Tab 29-31
Exhibit 16	Jan 7, 2022	BCSPCA	BC SPCA Document Disclosure Index
Exhibit 17	Jan 12-13, 2020	Appellant	Appellant Final Reply (39 emails including various attachments)