

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  
TWO CATS AND ONE DOG

**BETWEEN:**

T.B.

**APPELLANT**

**AND:**

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

**RESPONDENT**

## **DECISION**

**APPEARANCES:**

For the British Columbia Farm Industry  
Review Board:

Wendy Holm, Presiding Member

For the Appellants:

T.B.

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

October 18, 2022

Location of Hearing:

Held via Zoom

## **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 the seizure of two cats (Bracken and Pippin) and one dog (PNut) (collectively, the Animals) from the Appellant T.B. at her residence located in [REDACTED], BC (the Property).
2. The Appellant is appealing the September 14, 2022, review decision issued under s. 20.2(4)(b) of the *PCAA* 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 *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal with respect to animals, to require the Society to return the animals to their owner with or without conditions or to permit the Society, in its discretion to destroy, sell or otherwise dispose of the animals. The Appellant in this case is seeking the return of the Animals.
4. On October 18, 2022, a BCFIRB hearing panel (the Panel) held a hearing via Zoom. The hearing was recorded.
5. The Appellant was not represented by counsel and called one witness: W. F. K.
6. The Society was represented by counsel and called two witnesses: Special Provincial Constable (SPC) Isabel Menzel, and Animal Welfare Officer (AWO) Adriana Snashall.

## **II. Material Admitted on this Appeal**

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

## **III. Key Facts**

8. On July 26, 2022 the Society received a complaint from the City of [REDACTED] By-Law Enforcement Officer regarding animals in distress at the Appellant's address. The City had been contacted earlier in the day by someone complaining of a dead dog on the property (odour), another dog lying in feces and cats who appeared healthy but were observed eating garbage, all in unsanitary conditions. In the complaint, the caller referred to the Appellant's residence as a "known drug house" with people currently passed out on the lawn.
9. On the afternoon of July 26, 2022 Special Provincial Constable (SPC) Menzel and Animal Protection Officer (AWO) Snashall attended at the Appellant's residence with [REDACTED] RCMP Constable Zilkie. Several individuals standing near the door of the

house brought the officers to the back of the house to where the dead dog lay. They identified the dog as having belonged to the Appellant, noting it had been “riddled with fleas and howling in pain for days before it died”.

10. The Appellant arrived and told SPC Menzel that her dog, a nine-year old lab cross named Shredder, had died on July 19, 2022. The Appellant told SPC Menzel that the dog had fleas and several tumours, but they did not seem to bother him, and she suspected that he had died from drinking water from a bucket that ivy vines had been soaking in. The Appellant said she’d had a flea infestation in the house for the past year, and despite regular flea treatments all her pets – one dog and four cats - still had fleas. SPC Menzel inspected “PNut”, the Appellant’s 13-year-old Bouvier de Flandres cross, and found him to be “infested with fleas” and suffering from dental problems (missing incisors and broken canines with the pulp exposed on several teeth). The Appellant refused to allow SPC Menzel to enter her home to inspect the four cats.
11. SPC Menzel asked the Appellant when she noticed that her dog Shredder’s condition was deteriorating, and the Appellant said one day before his death. SPC Menzel asked if the Appellant had sought veterinary care for Shredder when she noticed he was suffering, or for her other animals’ flea problems, and the Appellant said she had not.
12. SPC Menzel told the Appellant that PNut was not in good shape, that his dental problems were likely causing him pain, and that he required veterinary care as soon as possible, explaining it was an offense to not provide veterinary care when an animal is in need. The Appellant told SPC Menzel she would hide the dog, bring it to her parents, or report SPC Menzel to her superior if she tried to seize the animals.
13. Before she left, SPC Menzel issued a Notice to provide necessary veterinary care to ensure PNut’s dental problems were addressed and to keep the animals free of infestation by fleas. The Notice required that all the Appellant’s animals – one dog and four cats - should be examined by a licensed veterinarian within 24 hours and recommendations should be followed. SPC Menzel advised of several veterinary clinics that the Appellant could contact in the area.
14. The following afternoon, when SPC Menzel spoke with her over the phone, the Appellant said she had not yet taken the animals to a veterinarian because none of them could see her that fast; the first appointment available was the following week with Cottonwood Falls Animal Clinic. The Appellant informed SPC Menzel that she would not be bringing in the four cats because SPC Menzel had not seen them and, in the Appellant’s opinion, they did not need veterinary care. SPC Menzel advised the Appellant that they had been included on the Notice because the Appellant told her they all had fleas and she was having trouble controlling them. Noting again PNut’s dental issues, SPC Menzel reiterated the need for all the animals to see a veterinarian as soon as possible. She advised

that she would give the Appellant more time to book the appointments and requested that the Appellant confirm her earliest appointment date with Cottonwood Falls Animal Clinic, whom she said she had contacted.

15. On August 1, 2022 SPC Menzel and AWO Snashall were called by an AWO from West Kootenay SPCA Animal Centre advising that the Appellant had called to say she had missed her appointment with Selkirk Animal Hospital but had rescheduled to August 9, 2022 (she was going to Chilliwack and had an appointment with Cheam View veterinary clinic). The West Kootenay SPCA Branch Manager, who also spoke to the Appellant, told SPC Menzel and AWO Snashall that the Appellant had been screening their calls and that she was going to bring the dog into the West Kootenay branch the following day for them to observe the flea situation.
16. On August 2, 2022 AWO Snashall spoke with the West Kootenay Branch Manager who advised that the Appellant had made an appointment to come in that day but had not shown up and she had heard nothing further. That afternoon, SPC Menzel and AWO Snashall attended at the Appellant's residence. She was not home. They left a door hanger requesting the Appellant contact them no later than 9 am the following day - August 3, 2022.
17. On August 3, SPC Menzel spoke with the Appellant, who advised that she was going to visit her parents in Chilliwack and had an August 6, 2022 appointment with Cheam View Veterinary Clinic for PNut and one of the two cats that had a more severe flea problem. SPC Menzel scheduled a re-check for August 19, 2022 the day the Appellant was to return to [REDACTED].
18. On August 18, 2022 SPC Menzel called the Appellant to confirm their meeting the following day. There was no answer and no option to leave a message. SPC Menzel then texted the Appellant to find out if she had returned home. There was no response.
19. On August 22, 2022 AWO Snashall attempted to contact the Appellant but there was no answer and no option to leave a message. She then attended at the Appellant's residence, explaining to the Appellant that they had been unable to reach her. The Appellant said that she had lost her cell phone and that her land line voicemail was full.
20. AWO Snashall asked the Appellant if she had gone to Chilliwack to see a veterinarian. The Appellant said she had not because of car troubles (it had been impounded and then the tires slashed) but intended to go the following week. AWO Snashall asked if she had a veterinary appointment booked and the Appellant said the Cheam View Veterinary Clinic would not allow her to book more than one day ahead due to her large number of "no shows". The Appellant said she had treated all the animals nine days ago and things were much better.

21. AWO Snashall asked to inspect all the animals. The dog PNut had dirty, waxy ears, still had fleas, had a scab on its back where the Appellant had allegedly tried to remove a tick, a scab wound on top of his head, and a crusty discharge around his eyes. The cat Pippin had fleas, significant hair loss over his eyes and both back legs, a scabbed wound on its head and crusty discharge around its eyes. The two Siamese cats had visible fleas, dirty ears and "Bracken" was missing patches of fur over his hips, which he was repeatedly chewing and scratching. A fourth cat had fleas and dirty ears.
22. While the flea condition appeared not quite as bad as when first checked, the flea issue remained, and all had dirty ears and various skin wounds. AWO Snashall told the Appellant the Notice to obtain veterinary care was still in place and urged her to contact SPC Menzel that day or first thing the next morning. The Appellant would not commit to making a veterinary appointment; saying she might bring them to Chilliwack on Thursday and have them seen there on Friday or Saturday.
23. Believing the animals to be in distress (kept in conditions that are unsanitary and deprived of regular veterinary care), SPC Menzel filed an Information to Obtain a Search Warrant pursuant to section 11 of the Prevention of Cruelty to Animals Act, R.S.B.C. 1992, c372 on August 23, 2022.
24. On August 24, 2022 SPC Menzel and AWO Snashall attended at the Appellant's residence with RCMP Constables Fowler and Fitzgerald to execute the Warrant. SPC Menzel advised the Appellant that she had been given significant time to provide her animals with the necessary veterinary care, but failed to do so, and as a result the Society had obtained a warrant to seize the animals and take them into care.
25. After initially refusing entry, the Appellant did allow the officers into her home, which SPC Menzel described as "extremely unsanitary" and hard to walk through due to clutter. The dog PNut was observed by SPC Menzel to be drooling from the mouth and her lower jaw was shaking, which SPC Menzel assumed was from dental pain.
26. The dog PNut and two cats (Pippin and Bracken) were taken into the custody of the Society. The Appellant's two remaining cats (Bramble and Zazzle) eluded capture and remain in the care of the Appellant. SPC Menzel's Follow Up Details (August 24, 2022) note that the Appellant was argumentative and uncooperative throughout the visit. The Appellant was issued a Notice of Disposition that she had 14 days to dispute the seizure. This was also explained to her by SPC Menzel.
27. On August 27, 2022, the Appellant requested the Society return her Animals. On August 28, 2022, Ms. Moriarity wrote to the Appellant providing her with a copy of the warrant and asked that the Appellant submit to her in writing by September 6 the reasons why she felt it was in the best interest of the Animals to be returned to her.

28. On August 31, 2022 the Society provided the Appellant with the physical intake forms and medical examination records for the Animals as well as the Information to Obtain Warrant and Inspection Follow Up Details.
29. On September 4, 2022 the Appellant contacted the Society to request more time to prepare her dispute submission, noting that her laptop and cell phone had been stolen. She said she was travelling to Chilliwack the following day to bring her remaining two cats in for a 2 pm September 6, 2022, appointment with Cheam View Veterinary Clinic and wished to include a record of this visit in her submission. The Society granted her an extension to September 8, 2022.
30. On September 8, 2022 the Appellant again contacted the Society to advise that she had missed the September 6, 2022 appointment because she needed to replace the tires on her car that she had previously reported had been slashed. She said she had rescheduled the appointment for 5 pm that afternoon, but her keys “went missing” and she was unable to make that appointment as well. Because of this, she requested the Society grant her a further extension to Monday September 12, 2022.
31. In her email, she also noted that she and the [REDACTED] By Law Officer who’d filed the July 26, 2022 complaint with the Society had been “feuding” for some time concerning tarps the Appellant had erected outside her residence. She further noted that his statements describing her home as a drug house that was littered with garbage were untrue and that she worried that she was the target of a “witch hunt”. She noted she had called the By Law Officer, that he had apologized for calling her house a “drug house” and said his comments had been taken out of context. The Society granted her request to extend the submission deadline to September 12, 2022.
32. On September 9, 2022, the Appellant advised the Society that the Cheam Veterinary Clinic had agreed to see her two remaining cats over the weekend.
33. On September 12, 2022, the Appellant contacted the Society for a further extension, advising that the veterinarian in Chilliwack had refused to schedule an appointment until the Appellant was in Chilliwack (due to past no-shows) and that she was still in [REDACTED]. She said she had been in touch with Selkirk Veterinary Hospital in Nelson who advised her that they would be able to see her the following day if she called and booked an appointment first thing in the morning.
34. On September 13, 2022, the Appellant left a voice mail with the Society noting she was driving to Chilliwack that day and was sure that once she arrived she could secure an appointment with Cheam View Veterinary Clinic. She said that she was having difficulty preparing her submissions without her laptop and that she was becoming upset when reading some of the material contained in the Society’s submissions, claiming that both Society’s officers had lied or twisted the truth. The Appellant further claimed that the search warrant had been issued on false

information - based on second and third hand hearsay – and she questioned its legality. Noting she suffered from an anxiety disorder, she also said that the loss of her dog and two cats had turned her into a “basket case” and left her feeling bereft and helpless. In a second email of that date, the Appellant sent photos of the Property including the inside of her home which she noted had been cleaned up.

35. On September 14, 2022 the Appellant contacted the Society to say she had not driven to Chilliwack the previous day as she had intended, instead staying home to do more cleaning of her residence. Additional photographs of the interior of her home were attached to her email. She also provided a further explanation of why what SPC Menzel and AWO Snashall had observed was merely “clutter” and not unsanitary conditions. She further advised that she would be driving to Chilliwack that day to seek a veterinary appointment for her two cats.

#### **IV. Review Decision**

36. On September 14, 2022, Ms. Moriarty issued her review decision in which she outlined her reasons for not returning the Animals to the Appellant (the “Review Decision”). She reviewed the Signed Warrant & Information to Obtain Warrant (ITO), Inspection Follow-up Details (IFD), Veterinary Records and various photographs and various email submissions from the Appellant.
37. Ms. Moriarty was satisfied, based on the evidence, that the SPC reasonably formed the opinion that the Animals were in distress, as defined in section 1(2) of the *PCAA*, and that her action to take custody of the Animals to relieve them of distress was appropriate.
38. In her Review Decision Ms. Moriarty noted that:
  - the Appellant had not sought veterinary care for her Animals suffering from a flea infestation for over a year;
  - the Appellant had not sought veterinary care for the dog Shredder who became ill and passed away;
  - the Appellant had neither noticed nor sought treatment for dental disease in the dog PNut;
  - the Appellant had failed to address these concerns when they were brought to her attention by SPC Menzel on July 26, 2022; and,
  - after the seizure, the Appellant had failed to provide a submission as to why the Animals should be returned to her.
39. Ms. Moriarty’s decision to not return the Animals was based on her findings that the Appellant was unable to provide timely and consistent veterinary care and a sanitary environment for the Animals.

## V. Appeal of Review Decision

40. On September 14, 2022 the Appellant advised the Society that she would appeal the Review Decision to BCFIRB. In her email she noted that she was a low income disabled person reliant on government benefits. She also expressed concern regarding the ethics of the Society's staff.
41. On September 20<sup>th</sup>, the Appellant filed an appeal of the Review Decision with BCFIRB based on the following grounds (categories added by Panel):

### Bias and discrimination, willful misrepresentation, deception and collusion

- Unfair process from the outset; the Animals should never have been seized.
- Significant bias was demonstrated by municipal bylaw officer who made erroneous statements to the SPCA Animal Cruelty Hotline based on hearsay reports. The Appellant further claimed that the bylaw officer willfully misinterpreted what he saw and what he thought to be true and repeated these misinterpretations, arguably based on discrimination, to representatives of the Society.
- Members of the RCMP also made biased and discriminatory remarks to the Society, which were accepted as fact under oath and used as a part of the rationale for a search warrant which was executed against Appellant's Property.
- SPC Menzel and AWO Snashall demonstrated bias in their interpretations of what they observed and, in their disregard/disbelief of statements made by the Appellant. Furthermore, the Appellant claimed that the officers misrepresented facts to further their own agenda.
- Discrepancies between shelter intake forms, the Appellant's observations of the Animals and veterinary reports which suggested collusion between the Animal Cruelty Investigators and the shelter staff.

### Unnecessary Veterinary Procedures

- The Appellant claimed that unnecessary veterinary procedures have been requested by the Society.

### Insufficient time to respond, communication issues

- For a person with disabilities, the deadlines for responding to the various documents and statements from the Society was insufficient, especially considering the extremely biased and deceptive nature of the content of the Society's materials and the requirement to respond appropriately to secure the return of the Animals.
- Miscommunication of contact information and clerical errors led to delays, complications and confusion as well as a large gap in the timeline with little contact between Appellant and the Society.
- The sudden and unexpected seizing of the Animals was shocking, inappropriate, unfair, unjust and needlessly stressful for the Animals.



42. On October 17, 2022, the Appellant submitted the following documents in support of her appeal:
- A six-page document titled “some thoughts about this whole process” alleging bias and discrimination against her on the part of the Society, the RCMP and the municipal by-law official (whom she claims harbours a grudge against her and homeless people in general); process concerns leading up to and following the seizure; the impact of her anxiety disorder on her ability to prepare submissions; the nature of her tenants and the presence of clutter versus garbage; why the pets were healthy and not in distress; difficulties faced in obtaining veterinary appointments and reasons for missed appointments; allegations of possible collusion between SPC Menzel and AWO Snashall, Society shelter staff and the veterinarians; miscommunications; willful misrepresentation and deception on the part of the Society; and harassment by municipal officials.
  - A fifteen-page biography of the Appellant, including a history of pet ownership and further comments on the nature of the Appellant’s tenants.
  - A medical statement from Dr. Kerby Monashee Medical Clinic confirming Appellant’s diagnosis of anxiety and agoraphobia.
  - A five-page discussion of Shredder’s death, alleged to be from drinking from a pail that ivy branches had been soaking in and alleging he was ill for only one day.
  - A September 10, 2022, invoice for replacement of two tires.
  - An August 12, 2022 towing receipt.
  - A poster of a missing cat.
  - Telephone records.

## **VI. Oral Evidence**

43. The foregoing presents a summary of relevant and material facts based on the parties’ written submissions. Below is a summary of evidence presented during the October 18, 2022 oral hearing. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers below only to the facts and evidence it considers necessary to explain its reasoning in this decision and in particular with respect to the key issues of whether the Animals were in distress when seized and whether they should be returned to the Appellant.

### Appellant Testimony

44. The Appellant testified that she ran out of time to provide a written response to Society and that she felt discriminated against by the process.

45. She noted that she is the primary resident at the house and that she sometimes has to kick people out of her house and they become enemies. Because of this, she feels revenge may have been a motive for the animal cruelty reports that were made against her. Furthermore, she claimed that the by-law officer who called in the complaint knows her well as they have been “feuding” for a year over tarps she has erected around her home. She feels that he harbours a grudge against her specifically and against all homeless people in general.
46. The Appellant noted that the alleged garbage on her Property was in fact an accumulation of laundry – she did not have a clothes dryer and it had built up - but that there was no garbage. She stated that her cats were well fed and did not eat garbage. She acknowledged that the conditions at her Property were cluttered, but not unhygienic. She noted that she has a busy household with lots of tenants, some of whom are struggling with addiction.
47. She stated that she was not uncooperative during the course of the investigation and seizure of her animals and that the by-law officer later apologized to her and said that his words had been taken out of context.
48. She claimed that her animals were not in distress, despite the assertions that had been made about her residence. She noted that she had been dealing with a flea problem for some time, and that it became worse in the Spring. She stated that she knew that she had a problem when her houseguests got fleas. She noted that her residence is much cleaner now.
49. The Appellant testified that Shredder’s death was sudden and unrelated to fleas. He was 9 years old and had growing tumours in his armpit and on his stomach. She stated that he had not been howling in pain for days before he died as had been reported to SPC Menzel. She noted that Shredder howled at ambulances for fun. The Appellant stated that her strong emotional reaction to his death (disassociation) prevented her from burying him right away, and because it was so hot, the smell became a problem.
50. The Appellant testified that there were a lot of complications going on in her life at the time of the investigation and seizure of the Animals. She was dealing with plumbing problems, a car accident, recovering from cancer in 2020 and the effects of Covid-19. She noted that she now has memory problems and suffers from fatigue and that her car accident was as a result of her falling asleep at the wheel. She stated that her anxiety disorder can be disabling and that her agoraphobia keeps her at home a lot.
51. The Appellant testified that the first time that she realized there were problems with her 13-year-old dog PNut’s teeth was when SPC Menzel came to the Property on July 26, 2022. Prior to that she had not noticed PNut showing any issues or distress.

52. The Appellant felt that SPC Menzel did not believe her when she explained the reasons why she had been unable to honour commitments and needed more time. She stated that because she suffers from social anxiety, she has issues with checking messages, which complicated communications between herself and the Society.
53. The Appellant testified that she had sent Ms. Moriarty photos of her clean-up of the yard and house. At the time of the seizure, a person who had overdosed and was treated with Narcan had been brought upstairs in her home to sleep and fell into the piles of clean laundry on the couch, creating what looked like a mess. Furthermore, at the time, the living room was blocked off and Appellant was sleeping with PNut on a camping mat on the kitchen floor due to the fleas and clutter. She stated that this is not how she normally lives.
54. She testified her animals were not in distress at the time of seizure and that if they were returned to her, they will not experience any unhygienic conditions in her home. She claimed that the cats' litter boxes were cleaned every day and that the veterinary reports show they were in good health, which speaks to the fact that they have had a good life with the Appellant. She stated that since the seizure and her clean up of her home there is "lots of clear floor space". She further stated that she takes her Animals to the veterinarian when needed and they have all had vaccinations and been "fixed".
55. The Appellant was unaware of the August 2, 2022 visit by SPC Menzel and AWO Snashall and stated that she thought that things had been resolved. When she was told on August 22, 2022 to get in touch with SPB Menzel, she was not aware how urgent it was as she was under the impression that she was no longer under investigation.
56. Referring to Ms. Moriarty's affidavit, the Appellant noted that she is at times prone to saying things on the spur of the moment but that she certainly would not have run away with her animals.

#### Society Cross-Examination

57. The Appellant did not agree when counsel for the Society put it to her on cross examination that PNut was "absolutely infested" with fleas at the time of seizure. The Appellant acknowledges that the dog had some fleas, but that it was not an infestation. She stated that she had not noticed PNut's dental problems until SPC Menzel had pointed them out and stated that the dog had not exhibited any pain and it was not affecting her life. The Appellant did not recall SPC Menzel mentioning anything about exposed pulp nor telling her PNut was in "poor condition". She felt Menzel was "playing a power game" with her because Appellant was resisting her authority and that SPC Menzel had a personal issue with her.

58. The Appellant stated that she understood that SPC Menzel was asking her to bring her Animals to a veterinarian within 24 hours and that she had to provide the Animals with the necessary dental care. She testified that the last time that PNut saw a veterinarian was in 2021 when she had been brought in to the veterinarian by the Appellant's parents for hip issues. At the time, the dog was staying with her parents, but she had returned to the Appellant's care last winter.
59. The Appellant testified that she knew after SPC Menzel's first visit that she needed to take PNut to a veterinarian for her dental issues but that she did not feel that it was an emergency. Nor did she feel the cats required emergency care. She noted that she tried to make veterinary appointments, but various issues arose. She stated that she made had an August 9, 2022 appointment in Nelson that she then advanced to July 28, 2022 but that she could not make it because she had to bury Shredder. She still had an appointment for August 9, 2022 but was hoping to get to Chilliwack for earlier one. She testified that she repeatedly called SPC Menzel as she didn't want to seem uncooperative but was unable to connect as she had the wrong number.
60. Asked about her economic situation, the Appellant said that she was a low-income person with disabilities that receives government benefits but that her Animals have always received veterinary care when they needed it. She again stated that at the time of seizure there was just no urgency. She noted that fleas are not a non-issue, but they are also not an emergency issue.

#### Panel Questions

61. When asked by the Panel when the Appellant last brought PNut dog to a veterinarian, she said that the last appointment had been when the dog was younger for her vaccinations and spaying. She further noted that her cats last saw a veterinarian for their vaccinations and that neither cat had seen a veterinarian for 5 years.

#### Appellant Witnesses:

62. The Appellant called one witness, W. F. K., a former tenant who returns from time to time to help the Appellant with the yard and the dogs and was there on the day of seizure. W. F. K. testified the Appellant has a deep love for her Animals and takes good care of them. On the day the animals were seized, W. F. K. noted the officers did not even know the names of the Appellant's Animals and felt that the officers were "cruel and disrespectful", to the Appellant, making her out to "be the bad guy".

#### Society Cross-Examination

63. W. F. K. testified that she did not observe any fleas nor P-Nut's dental problems prior to the seizure. The Appellant offered that this was because W. F. K. was not at the residence when the flea infestation was bad.

Respondent Witnesses:

64. The Society called two witnesses, SPC Isabel Menzel and AWO Adriana Snashall.

SPC Isabel Menzel

65. SPC Menzel is an employee of the Society and has been a special constable since 2020. She was working with AWO Snashall when they received a report on July 26, 2022 of a dead dog on the Appellant's Property and of animals living in unsanitary conditions.
66. SPC Menzel testified that when they attended at the Appellant's Property, she and AWO Snashall were told by a person on the Property that the dog had been riddled with fleas and howling in pain for days before he died and that "something should be done". The Appellant said the dead dog – Shredder – had been sick for only one day before passing and had died from drinking from a pail of water that contained ivy vines. The Appellant also said that she had enemies in town who could have poisoned the dog.
67. While the officers were at the Property, PNut returned and was observed by them to be "infested with fleas". After inspecting her mouth, SPC Menzel also noticed that her lower canine was broken and the pulp exposed, which would have caused her significant discomfort.
68. SPC Menzel stated that she saw one cat on the porch that was missing large patches of its fur. She asked the Appellant if she could go in the house to inspect the Appellant's four cats but was denied access. The Appellant told her that the Animals had not been seen by a veterinarian, but that she had been planning to take them.
69. SPC Menzel described the Property as very cluttered with lots of dirt and grime and the Appellant as argumentative. Based on her examination of PNut, she felt all the animals were in significant distress in their living conditions and needed veterinary care to address their fleas and teeth. She issued a 24-hour notice to the Appellant to provide for this veterinary care.
70. SPC Menzel testified that when she called the Appellant the next day, the Appellant was argumentative and that it was hard to "get a word in". The Appellant claimed that she had been unable to find a veterinarian within 24 hours but that the Cottonwood clinic could see the Animals "down the road". The Appellant told SPC Menzel that she would not be bringing the cats in because SPC Menzel had not seen the cats. SPC Menzel again explained to the Appellant that veterinary care for all of the animals was necessary as the Appellant had not been able to solve the flea problem for over a year and the medication (Advantage) was not working.

71. SPC Menzel testified that she tried to call and text the Appellant several times after their phone discussion, but her calls were not answered and the Appellant's voice mail was always full. SPC Menzel decided to give the Appellant more time and asked her to confirm whether the Cottonwood veterinary would see her Animals. She heard nothing back from the Appellant. The West Kootenay shelter subsequently contacted SPC Menzel to say that the Appellant had missed an appointment with them and was screening their calls as well.
72. The Appellant advised SPC Menzel that she had arranged for an August 19, 2022 appointment with a Chilliwack veterinarian (Cheam View) to see PNut and one cat. On August 22, 2022 AWO Snashall called to confirm the appointment had been kept. Not receiving a call back, AWO Snashall attended at the Appellant's property and was told that she had been unable to secure an appointment because of a history of no-shows at the Chilliwack clinic. AWO Snashall advised SPC Menzel of the information that had been provided by the Appellant and SPC Menzel proceeded to apply for a warrant based on the Appellant's unwillingness or inability to take the necessary steps to alleviate the distress of the Animals.
73. SPC Menzel testified that on the day the Animals were seized, they were given an intake exam at the shelter, were seen by a veterinarian within 24 hours, and the dog PNut was put on pain medication until he could receive the necessary dental surgery to alleviate his suffering.

#### Appellant Cross-Examination

74. Asked by the Appellant to describe her home, SPC Menzel noted she had observed the interior to be cluttered with dirty surfaces and unsanitary conditions. She noted that the unsanitary conditions were not bad enough to issue a warrant and that the main issue leading to the seizure was the lack of veterinary care for the Animals. When asked why SPC Menzel believed the statements of "random people", SPC Menzel replied that she was required to log all comments received but it was what she had observed, not the comments of others, that had dictated her decision.
75. The Appellant said she did not feel SPC Menzel looked at PNut long enough to observe exposed pulp and suggested that she only added that observation following the veterinary report. Referring to her notes on the day of seizure, SPC Menzel confirmed that she had observed exposed pulp in PNut's mouth on August 24, 2022.

#### AWO Adriana Snashall

76. AWO Adriana Snashall has been employed as an animal welfare officer by the Society for one year. Prior to her current employment she was a by-law enforcement officer responsible for property inspection and animal control.

77. AWO Snashall met the Appellant for the first time when she attended at her Property on July 26, 2022, with SPC Menzel. AWO Snashall had come along mainly to witness and observe. When they first arrived, there were a number of people there who brought them around to the back of the Property to show them the deceased dog.
78. AWO Snashall testified that she observed a lot of clutter and garbage bags of items around the house. She recalled seeing a Siamese cat on the porch that was scratching continuously and that when SPC Menzel asked the Appellant to see the four cats inside the home the Appellant had refused to allow her access.
79. AWO Snashall testified that she had returned on August 2, 2022, but the Appellant was not home. AWO Snashall stated that she left a door hanger notice on the front door of the residence stressing the importance of the Appellant contacting SPC Menzel.
80. When the Appellant failed to contact SPC Menzel to confirm the Chilliwack veterinary appointment, AWO Snashall returned to the Appellant's Property on August 22, 2022. The Appellant confirmed that none of the Animals had been seen by a veterinarian. AWO Snashall inspected all the Animals and noted that there were signs of fleas on all the cats, and all of which also had missing patches of fur and dirty ears. AWO Snashall looked at PNut and was able to see pulp exposure on her teeth and fleas.
81. AWO Snashall testified that the Appellant remained adamant that the cats did not need to be seen by a veterinarian because SPC Menzel had not seen them when she had issued the July 26, 2022 Notice. AWO Snashall advised the Appellant that the Notice for veterinary care still stood and that the Appellant needed to seek veterinary care for all the Animals. She urged the Appellant to call SPC Menzel that same day or first thing the next morning.

#### Cross-Examination

82. The Appellant noted that she'd heard SPC Menzel calling her cat Zazzle "Carl" and asked AWO Snashall why they were calling her cats by the wrong name. AWO Snashall said it was not SPC Menzel but one of the RCMP officers who had called her cat by the wrong name, and added that she had not used any names when calling the cats.

#### Closing Arguments

##### The Appellant

83. In her closing summation, the Appellant made the following submissions:
  - She had planned on taking both PNut and Shredder to the veterinarian prior to Shredder's death but a perfect storm of events had prevented her from doing so. The issue with PNut's teeth would have been found if she had been

able to get him to see the veterinarian as she had planned. The issue with respect to the flea infestation in her home also would have been resolved.

- She has made changes to her home and it is now more sanitary. People believe her home is a drug house, but it is not – it is just that people come and go. The smell that was noted in her home was from Shredder.
- She has never taken an animal in to see the veterinarian for fleas before. Fleas are a natural part of owning a pet and this is the first time that an infestation has gotten away from her. The fleas were resistant to Advantage flea shampoo but she was finally able to get the fleas off of the animals and out of the house, so they were treated without a veterinarian.
- With respect to the veterinarian appointments, the Appellant noted that PNut would have been brought in within a short period of time if she hadn't been seized by the Society. She stated that veterinarians were unhappy with her repeatedly cancelling appointments but because she has had people thrown out of her home, she has made herself a target and has enemies who have slashed her tires and vandalized her car which caused her to miss appointments. She asserted that the veterinary issue has been resolved.
- The Appellant noted that she has owned PNut since she was a pup. The Appellant wants PNut and the two seized cats to be returned to her care. As she doesn't have children, her Animals are her family. Alternatively, if it is decided that the Animals should not be returned, the Appellant stated that her parents would adopt them, which would be a better outcome for the Animals than to go to strangers.
- The Appellant did not know that vaccinations were needed for the Animals every three years and noted that she will have to take this under advisement.
- With respect to costs, the Appellant stated that she doesn't feel she should be responsible for care costs since the Animals should not have been seized but conceded that the argument could be made that she should be responsible for the veterinary care PNut received for her teeth, although this would be hard if she were not returned. She noted that she could potentially borrow money from her parents to cover those costs.

### The Society

84. In their closing summation, the Society made the following submissions:
- Counsel for the Society reviewed the veterinary reports for the three Animals, noting that all had fleas and that two had teeth issues and that that this case falls within the *PCAA* definition of distress under 1(2)(c) of the Act.
  - With respect to Shredder's death, Mr. Rhone noted that it was relevant that the dog may have suffered in pain for up to one week, may have died over a 2 day time frame from drinking ivy water or possibly died from the lumps the Appellant referred to that were not looked at by a veterinarian. He noted that any reasonable and careful owner would have taken Shredder to a



veterinarian with respect to any of these issues. He noted that this was of significance because it goes to what will happen to the Animals if they are returned to the Appellant's care. The Appellant's treatment of Shredder was consistent with her treatment of the Animals who remained in her care from July 26, 2022 to August 24, 2022.

- Counsel submitted that the Appellant had a litany of excuses for not taking the Animals to a veterinarian, but anyone who accepted the Animals were in distress would have done all that they could to seek treatment. While she may not have known that PNut had teeth issues until SPC Menzel pointed it out, after she knew she didn't effectively seek treatment to alleviate his pain. The persistent flea problem was also an issue - causing pain and discomfort to the Animals – but the Appellant did not seek treatment for them. In the Appellant's view, a flea infestation wasn't an urgent matter, so she didn't take the Animals to see a veterinarian when she knew she had to.
- Evidence shows that the Animals were in clearly in discomfort. Following the seizure, the Appellant did take the remaining two cats to see a veterinarian, but that is not enough to justify a return of the Animals to her care as she only took those steps on the cusp of having to come to the hearing of this Appeal.
- If returned to her care, the Society submits that the Animals will not receive proper veterinary care. This lack of proper veterinary care is a real risk with older animals. PNut is 13, so there will only be more and more veterinary visits that the Appellant will need to manage over time.
- In closing, counsel for the Society reviewed the costs of care detailed in Ms. Moriarty's Affidavit (Exhibit 15).

#### The Appellant's Reply

85. In her reply comments, the Appellant made the following submissions:

- There were inconsistencies in the Society Intake forms and the veterinary reports.
- At the time of seizure, she was managing to take care of the fleas, it just took some time. In retrospect, she should have made the call much sooner to go to a veterinarian.
- PNut had no fleas when she was taken to the veterinarian. PNut's teeth issues were from playing with sticks and branches. By now, if the investigation and seizure had not occurred, she would have been seen by a veterinarian where these problems would have been discovered and taken care of.
- The "litany of excuses" were all true – this happened at a bad time and prevented the Appellant from meeting deadlines. She feels as though she has been painted in the worst possible light.

- The Appellant submitted that there may have been personal issues with her that led people to make comments that would cause her trouble because they objected to her assertive attitude to her home.
- The Appellant submitted that the Animals would not be better off with the Society. She stated that she was familiar with the shelter life and that elderly animals including her Animals would not do well in that environment.
- She stated that her Animals love her and she loves them and that she is afraid that PNut will suffer if she is not returned to the Appellant's care.

## VII. Analysis and Decision

86. 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.

87. 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

88. The Appellant has an onus to show that the remedy they seek (return of the Animals) is justified. The first issue before this Panel is whether the Animals were in distress at the time of seizure. Depending on the answer to that question, the next issue the Panel must decide is whether the Appellant's requested return of the Animals would return them to a situation of distress.

### Finding of Distress

89. In coming to a decision as to whether the Animals were in distress at the time of the seizure, the Panel is guided by the following passage from *McIntosh v BCSPCA* November 12, 2021 where at paragraph (104) that Panel held:
- ...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.*
90. Not every animal need be in distress for a seizure to be valid. The Panel in *Foulds v. BCSPCA*, December 9, 2020 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*”
91. The Tribunal in *Foulds* quoted from [Simans v BCSPCA](#) (Dec 2, 2016):
- [180] In approaching this question, I note that “distress” in s. 1(2) of the PCAA is a specialized term. It does not require the Society to make a finding of pain and suffering as a precondition to removing an animal. While pain and suffering were present here for many of the animals, that is not necessary for the definition of “distress” to be met. Rather, in accord with the purposes of this protective statute, the definition extends beyond that. The first three criteria listed in s. 1(2) – any one of which is sufficient to satisfy the definition – also constitute “distress”, and make clear that the Society is not required to find “pain” and “suffering” before it may move to protect an animal. Those factors reflect serious risk factors that would foreseeably give rise to suffering and harm if protective action is not taken. While they must not be trivialized in their application, they also do not require the Society to wait until the worst happens.*
92. Before turning to the finding of distress, the Panel wishes to respond to allegations by the Appellant that the seizure was improper due to bias, discrimination, misrepresentation, deception and collusion.
93. The Appellant testified she was the victim of a “witch-hunt,” and that this is what triggered the seizure. She based this statement on the fact that the initial complaint that precipitated the Society’s involvement was made by a by-law officer with whom she has been “feuding” for over a year concerning tarps on her Property. She asserted that he harbours a grudge against her specifically and homeless people in general, and that his description of her and her living quarters were prejudicial. In the Appellant’s own words:
- “As a low-income person, as a disabled person, and as a person who uses tarps for privacy and will associate with street people and people struggling with addictions, while being neither of those myself, I feel that I have been discriminated against by the bylaw officer and by the police. I feel that this discrimination and bias led those agencies toward influencing SPC Menzel and*

*AWO Snashall BCSPCA into sharing their bias and into misrepresenting me and my home in order to justify their own position.”*

94. The Panel found no evidence of bias or discrimination against the Appellant in the evidence presented in this Hearing. The complaint that precipitated this process was related to the smell from the decomposing body of the Appellant’s dog Shredder who had died a week earlier and not been buried. When the community complained, the Society attended because they were concerned for the welfare of the one dog and four cats residing with the Appellant.
95. The Appellant also suggested that the ITO (Information to Obtain) the warrant that led to the seizure of the Animals was based on false information relating to the conditions of her residence and the health of her Animals. The Appellant asserts that her home is not a “drug house” – her basement tenants use drugs for pain management and parties on “check day” can result in people sleeping on the lawn. She further asserts that her home and yard may be cluttered but are not unsanitary, that there was no garbage outside her home and that no animals were lying in feces nor eating garbage. The Appellant testified that when she confronted the by-law officer who made the initial complaint, he said his remarks had been taken out of context.
96. The evidence presented to this Panel indicates the unsanitary conditions noted by the Society during the July 26, 2022 visit showed some improvement on the day of seizure. This is not to say unsanitary conditions did not persist but that the Appellant took steps to clean up her premises after the July 26, 2022 visit. On cross examination, SPC Menzel said that if lack of sanitation was the only issue, she likely would not have issued a Notice, noting the principal reason for the seizure was that the Animals were found to be in distress caused by lack of proper veterinary care. The Panel accepts the evidence of the Society that the warrant was properly obtained. In *Binnersley v BCSPCA* (April 15, 2014) the Panel found:

*25. I have reviewed the ITO and the circumstances under which the search warrant was obtained and executed. However, I do not see my role as a decision maker tasked with hearing appeals under section 20. 3 of the PCAA as giving me the authority to review the decisions of a provincial court judge or justice of the peace as to whether circumstances justify the issuance of a warrant. A party who believes that a warrant has been improperly issued or executed can challenge that decision through judicial review and ask by way of remedy that the warrant be quashed. Until such time as a warrant has been set aside, I am entitled to rely on its validity and I choose to do so in these circumstances.*
97. The Appellant further claimed that the seizure was invalid because SPC Menzel and AWO Snashall lied or twisted the truth with respect to their observations and that discrepancies between their reports, the SPCA Intake exam and the Steeples Veterinary Clinic documentation suggest collusion between the parties.

98. After examining the three sets of documentation on each Animal (observations on the day of seizure, the intake and the veterinary reports), the Panel agrees unexplained discrepancies do exist (see table below) and would have preferred that the Society’s Expert Witness, Dr. Bryony Scott, would have been available to give evidence. Discrepancies in observations of each animal within a 24-hour period are concerning, but the Panel does not find this suggestive of collusion. In assessing the condition of the Animals on seizure, the Panel relies on the report of Steeples Veterinary Clinic which notes all three Animals had fleas (although no live fleas were found on PNut), and that both PNut and Pippin had dental problems that required treatment and, in the case of PNut, medication to alleviate pain until surgery could be arranged.

Comparison of Reports on the Condition of the Seized Animals				
	At Time of Seizure	SPCA Intake	VETERINARY CLINIC	Veterinary Notes
<b>P-NUT</b>				
BCS			"6/9"	
fleas	√		√	
dental problems	√		√	<i>Multiple worn /broken incisors, pulp visible, lower R canine severely damaged with pulp exposed, COHAT*Level 3 with Metacam</i>
dirty ears/discharge	√	√		
eye discharge	√			
nasal discharge		√		
hair loss				
scars and scabs	√			
de-hydrated		√		
<b>PIPPIN</b>				
BCS			"5/9"	
fleas	√		√	
dental problems		√	√	<i>FORL* 107, COHAT Level 2</i>
dirty ears				
eye discharge	√	√		
nose discharge				
hair loss	√	√	√	
scars and scabs	√			
de-hydrated		√		
<b>BRACKEN</b>				
BCS			"4/9"	
fleas	√	√	√	
dental problems		√		
dirty ears	√	√		
eye discharge				
nose discharge				
hair loss	√	√	√	
scars and scabs				
de-hydrated				

COHAT Comprehensive Oral Assessment and Treatment  
FORL Feline Odontoclastic Resorptive Lesion

99. The Appellant stated that the cats should not have been seized nor included in the Notice because they did not require veterinary care and because SPC Menzel did not examine them on July 26, 2022.

100. The Panel accepts SPC Menzel’s testimony that the cats were properly included in the July 26, 2022 Notice. SPC Menzel testified she included the four cats in the Notice because, after finding PNut “infested” with fleas and after hearing from the

Appellant that all the Animals had fleas and she had been fighting an infestation of fleas for over a year, SPC Menzel was concerned for the cats' welfare.

101. The Appellant further claimed that the Society Intake records, and subsequent veterinary exams showed her Animals were healthy and should not have been seized.
102. The Panel finds that the veterinary examinations conducted at Steeples Veterinary Clinic on August 25, 2022 (see preceding table) confirm all the Appellant's Animals were diagnosed with fleas (although no live fleas were found on PNut). Pippin had a dry coat with balding over ventrum and flanks, a raw skin patch over his left flank and a FORL (feline odontoclastic resorptive lesion) in his mouth. Bracken had hair loss over his back end and ventrum with live fleas present. PNut had multiple worn/broken incisors with pulp exposure, a severely damaged lower canine with pulp exposure and dental surgery was warranted. He was placed on Metacam for pain until the surgery could be undertaken.
103. The Appellant also claimed that the seizure should not have occurred because of errors in the process. She stated that she was given insufficient time to respond to the conditions imposed by the July 26, 2022 Notice to obtain veterinary care and, following the seizure, to provide Ms. Moriarity with written reasons why it was in the Animals' best interest to be returned to her care. She further argues that her explanations for why she was unable to comply were not believed by the Society. Her reported difficulties included SPC Menzel's alleged poor handwriting on the Notice (which caused the Appellant to leave messages on the wrong voice mail), slashed tires, lost keys, impoundment of her car (lent to a friend who received a DUI), burying Shredder, theft of her laptop and cell phone, searching for a lost cat, and difficulty booking veterinary appointments because clinics refused to book more than one day in advance due to the Appellants history of no-shows.
104. The Panel has no substantive evidentiary basis to support or dispute the Appellant's explanations of why she repeatedly missed veterinary appointments, meetings and filing deadlines, but finds no flaw in the Society's process. The Panel notes that the Society granted the Appellant numerous extensions to their deadlines in recognition of the difficulties she claimed she was facing. On July 26, she was given notice to seek veterinary treatment for the Animals within 24 hours. At the Appellant's request, this time frame was extended numerous times by the Society. In the end, the Appellant was given almost a month to bring her Animals into a veterinarian to be treated for fleas, consult with the veterinarian to develop a plan to rid her home and Property of fleas, and to have PNut's dental issues addressed. Had the Appellant followed through, the seizure likely would not have occurred and this Hearing would not have taken place. Following the seizure, the Society deadline to provide reasons why the Animals should be returned was extended twice, from September 6<sup>th</sup> to September 8<sup>th</sup> and again to September 12<sup>th</sup>. The Panel finds that the Society was more than reasonable in providing time extensions to the Appellant.

105. The Appellant also alleges that her ability to communicate with the Society during the period of July 26, 2022 to August 24, 2022 was frustrated by communication issues, alleging that SPC Menzel's contact number on the hanger card left at her home on July 26, 2022 was incorrect. She later clarified that she had misinterpreted the number due to SPC Menzel's poor handwriting. As a result, some of the calls made by the Appellant to the Society were made to an incorrect number. Also, because her cellular phone was allegedly stolen (later referred to as missing) the Society was unable to reach her by text message.
106. The Panel notes that the number on the July 26, 2022 hanger card, a copy of which was entered into evidence, is very clear. Further, the Appellant also had SPC Menzel's business card with the same (correct) number as appeared on the hanger card. The Appellant notes that she had left messages on both numbers and noted that the outgoing messages were different on each. Since the Appellant claims she lost the hanger card, and since she noted there was "something funny" about the outgoing message on one number she was trying, she should have simply relied on the number appearing on SPC Menzel's business card, which she had been given.
107. The Appellant also stated that she did not anticipate the gravity of the situation, nor the consequences of her failure to comply with AWO Snashall's explicit August 22, 2022 directive to urgently get in touch with SPC Mendel that afternoon or first thing the next morning.
108. The Panel finds that the Society was sufficiently clear in their instructions to the Appellant. The Appellant chose to disregard those instructions. Having been a volunteer for the Society in the past, the Appellant was or should have been aware of the *Prevention of Cruelty to Animals Act* and the consequences of her failure to act on the directions of the Society. Rather than act in the interests of her Animals, the Appellant chose to resist the authority of the Society, placing her Animals at risk.
109. Based on the written and oral evidence and veterinary records presented in this Hearing, the Panel finds that the Animals were in distress at the time of seizure and properly taken into the care of the Society.

#### Return of the Animals

110. Having decided that the Animals were in distress at the time of the seizure, the next issue the Panel must decide is whether to return the Animals to their owner. Governing our thinking in this stage of the analysis must be whether allowing any or all of the Animals to return to the Appellant's care would return them to a situation of distress. In *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.) the court explained:

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

111. Throughout the Appeal, the Appellant focused her energy on invalidating the process, denying her Animals were in distress and challenging the authority of the Society to carry out its mandate under the PCAA. The Panel saw little understanding on the part of the Appellant of her role in perpetuating the distress nor what steps she would take to ensure her Animals would not continue to be in a situation of distress were they returned to her,
112. The Panel finds that the Society's process provided the Appellant with ample opportunity to prevent this seizure. All she needed to do was bring her Animals to a veterinary clinic, get them on an effective flea treatment, learn from veterinary staff how to de-flea her home and grounds, and look after her dog's teeth. She was given numerous extensions by the Society to do this – from the initial 24 hours posted on the Notice to Obtain card left on July 26, 2022 to just over four weeks until the date of seizure.
113. Rather than take this opportunity on behalf of her pets, the Appellant became combative, questioning both the process and authority of the Society. She claimed that her cats did not need to see a veterinarian, that her dog PNut was not in any pain, that she was the subject of a witch hunt, and that Society and by-law officers were lying and had questionable ethics. Despite many extensions granted by the Society and almost a month to do so, the Appellant was unable to follow through on plans that would have not only saved her Animals from the distress of persistent flea infestations and dental pain, but also ensured that they stayed at her side. Despite the stakes, every veterinary appointment made was broken. Promised trips to a Chilliwack veterinarian never occurred. Submissions to Ms. Moriarty offering reasons why the Animals would be better off in the Appellant's care - were never made. Many reasons were given for this lack of follow through including slashed tires, lost car keys, stolen laptop and cell phone, impounded car, parent's COVID, burying Shredder, and searching for a lost cat. The failure to follow through on promised veterinary attention was never the Appellant's fault.
114. The conflicting information presented on Shredder's death was also of concern to the Panel. Persons at the property on July 26, 2022 told SPC Menzel that the dog had been howling for days before he died. The Appellant said the dog was ill for only one day and regularly howled at sirens. In her submissions and oral evidence, the Appellant noted several times that she felt the dog could have been poisoned by "enemies" who slashed her tires and vandalized her car. All of this is of concern to the Panel - despite the lack of clarity on what exactly led to Shredder's death, the Appellant's premises do not currently sound like a very safe place for an



Animal and at no point, regardless of the cause of Shredder's pain and eventual death, did the Appellant seek out any care for the dog.

115. Information provided to the Society by veterinary clinics suggest the Appellant's flea infestation at her home has been an ongoing problem. The Appellant advised SPC Menzel on July 26, 2022 that the problem had persisted for over a year.
116. The dog PNut is 13 years old, the cat Pippin is 6. As animals age, their veterinary care needs often increase. As expressed by Ms. Moriarty in her reasons for denying return of the animals, the Appellant "failed to address these concerns when they were brought to her attention by SPC Menzel on July 26 and, after the seizure, failed to provide a submission as to why the animals should be returned to her." The Panel finds that the Appellant, despite strong encouragement from the Society, was unable to organize herself in her pet's best interest and secure necessary veterinary care to avoid this seizure and is unlikely to be able to do so in the future.
117. Based on the facts and evidence before it, the Panel agrees with the Society and finds that it is not in the best interest of the Animals to return them to the Appellant.

### **VIII. Costs**

118. 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.

119. 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)".
120. The Society is seeking costs as follows:

(a) Veterinary costs: \$1,368.24

(b) SPCA time to attend seizure:	\$ 273.90
(c) Housing, feeding and caring for the Animal:	<u>\$2,468.25</u>
(d) Total:	\$4,110.39

121. 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 the Animal. The calculation of these estimates has been reviewed and supported in previous appeals.
122. It is the position of the Appellant that while an argument could be made that it was fair for her to be held responsible for the Society's medical costs (veterinary bills for PNut's oral surgery), she did not feel responsible to the Society for costs associated with housing, feeding, caring for the Animals and their time to attend the seizure because, in her opinion, the animals should not have been seized in the first place. As the Panel found the seizure to be valid, it supports the Society's claim for costs in the amount of \$4,110.39.

## IX. Order

123. After careful consideration of the written and oral evidence presented in this hearing, the Panel makes the following determination of the issues and attendant orders.
- The Panel finds the dog P-Nut and the cats Pippin and Bracken were in distress at the time of the seizure and that it is in the interests of these animals to remain in the care of the Society.
  - The Panel orders pursuant to section 20.6 of the PCAA that the Society is permitted in its discretion to destroy, sell or otherwise dispose of the animals, with the obvious hope and expectation that most will be adopted unless circumstances somehow preclude that possibility.
  - The Panel further orders, pursuant to s. 20.6(c) of the PCAA, that the Appellant is liable to the Society for the amount of \$4,110.39 as the reasonable costs incurred by the Society with respect to caring for the dog PNut and the cats Pippin and Bracken.

Dated at Victoria, British Columbia this 2<sup>nd</sup> day of November 2022.

### BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:




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Wendy Holm, Presiding Member

## Appendix “A”

Exhibit #	Date (Received)	Received from	Document
Exhibit #1	September 14, 2022	BCSPCA	T.B. Decision Letter – September 14, 2022
Exhibit #2	September 20, 2022	Appellant	T.B. NOA
Exhibit #3	September 20, 2022	BCFIRB	T.B. v BCSPCA P2212 - NOA Process letter
Exhibit #4	September 28, 2022	BCSPCA	LT all enclosing document disclosure
Exhibit #5	September 28, 2022	BCSPCA	BCSPCA Document Disclosure Tabs 1 to 48
Exhibit #6	September 28, 2022	BCSPCA	Tab 23 - 2022.09.13 921 VMF 1 from T.B. – DOHNAL
Exhibit #7	September 28, 2022	BCSPCA	Tab 30 - 2022.09.15 VM from T.B. - SNASHALL
Exhibit #8	October 11, 2022	Appellant	Witness Contact Form
Exhibit #9	October 13, 2022	BCSPCA	LT all
Exhibit #10	October 13, 2022	BCSPCA	Written Submissions of the BCSPCA
Exhibit #11	October 13, 2022	BCSPCA	BCSPCA Expert Witness Contact Form
Exhibit #12	October 13, 2022	BCSPCA	BCSPCA Witness Contact Form
Exhibit #13	October 13, 2022	BCSPCA	Updated BC SPCA Document Disclosure Index – Tab 1-54
Exhibit #14	October 13, 2022	BCSPCA	Tab 49-Tab 54 (bookmarked)
Exhibit #15	October 14, 2022	BCSPCA	Affidavit 1 of Marcie Moriarty
Exhibit #16	October 17, 2022	BCSPCA	Tab 50 – complete
Exhibit #17	October 17, 2022	Appellant	T.B. v BCSPCA - Enclosed: Appellant Final Submission (Parts 1-4)