

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
SIXTY-THREE DOGS

BETWEEN:

CHERRY LATOUR

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Dennis Lapierre, Presiding Member
Neil Turner, Member
Wendy Holm, Member

For the Appellant:

Tanya Maas, Counsel

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

March 1-2, 2023

Location of Hearing:

Zoom

Introduction

1. The Appellant, Cherry Roslyn Hagan, also known as Cherry Latour, is 74 years of age and retired. She operates Dogway Dog Rescue from her property in Mission, British Columbia (the **Property**). Started in 1993, she registered it as a Society in 2011.
2. On January 4, 2023, the British Columbia Society for the Prevention of Cruelty to Animals (the **Society**) seized 63 dogs (the **Animals**) from the Property. On January 27, 2023, the Society issued a Decision (the **Decision**) upholding the seizure of the Animals and declining to return them to the Appellant.
3. On January 31, 2023, the Appellant filed an appeal with the British Columbia Farm Industry Review Board (**BCFIRB**) of the Decision.
4. Section 20.6 of the Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c.372 (**PCAA**) permits BCFIRB, on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions, or to permit the Society, in its discretion to destroy, sell or otherwise dispose of the animal. Under the PCAA, appeals to BCFIRB are broad in nature, as set out in detail in *BC Society for the Prevention of Cruelty to Animals v. British Columbia Farm Industry Review Board*, 2013 BCSC 2331, at paragraph (24):

Courts of law are focused on the law and legal principles. BCFIRB appeals are broader than that. There are no limits on the grounds of appeal. BCFIRB has been given broad evidentiary and remedial powers on appeal. While the legislature could have created an appeal or review “on the record”, it has not done so here. Instead, the legislature has gone the other way in these reforms. It has given BCFIRB extensive evidence-gathering powers, some of them to be used proactively. It has made the Society “party” to appeals, and it requires the Society to provide BCFIRB “every bylaw and document in relation to the matter under appeal” (s.20.3(4)), which will in many cases be much broader than the record relied on by the reviewing officer. Included in BCFIRB’s powers is s.40 of the Administrative Tribunals Act: “The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.”

5. A three-person BCFIRB Panel heard the appeal via videoconference and telephone over two days, March 1 and 2, 2023. The hearing was recorded.
6. The Appellant was represented by counsel, gave evidence on her own behalf, and called four witnesses: John Fenwick, Rhett Nicholson, James Tsai, and Dr. Renu Sood.
7. The Society was represented by counsel and called six witnesses: Special Provincial Constable Cassandra Meyers (SPC Meyers), Special Provincial Constable Christine Carey (SPC Carey), Yuana Hexamer, Dr. Rebecca Ledger, Dr. Karen Harvey, and Dr. Emelia Gordon. The Panel

accepted Dr. Ledger, Dr. Harvey, and Dr. Gordon as experts qualified to give opinion evidence in their respective areas of expertise.

Decision Summary

8. For the reasons outlined in the following, the Panel has decided not to return the Animals to the Appellant and permits the Society, in its discretion to destroy, sell or otherwise dispose of the Animals.
9. The Panel has further decided that the Appellant is liable to the Society for the full amount of costs claimed by the Society, that being the amount of **\$75,392.71**.

Preliminary Matters

10. The Appellant has a long-documented history of interactions with the Society, the Fraser Valley Regional District, and the City of Mission, with respect to animals in her care. At a pre-hearing conference on February 2, 2023, the parties agreed to limit disclosure and the manner in which documents would be produced in order to ensure that the appeal record represented the relevant material and did not overburden the parties and the Panel with unnecessary and voluminous background materials.
11. In a subsequent pre-hearing conference dated February 22, 2023, the parties discussed the relevance and necessity of each witness with the Presiding Member. As a result of that review, the Appellant agreed to revise her witness list with the net result being that fewer witnesses were required to attend to give evidence at the hearing.
12. On February 28, 2023, the Society sought the late inclusion of e-mail correspondence dated February 27, 2023 between counsel for the Society and Mike Younie, Chief Administrative Officer for the City of Mission as well as scanned copies of the handwritten notes of SPC Carey. At the outset of the hearing, no objections were raised with respect to the inclusion of these materials by the Appellant and the Panel allowed them to be entered as exhibits in the appeal record.

Material Admitted on this Appeal

13. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1 to 21 and is attached as Appendix A to this Decision.

History and Events Leading to the Seizure and the day of the Seizure

14. The Information to Obtain a Search Warrant (**ITO**) prepared by SPC Meyers includes a history of complaints and Society interactions with the Appellant and her Dogway Rescue Society operation dating from December 2012. In that time there were twenty-six complaints related to concerns of neglect or abuse. Fourteen of the complaints concerned a lack of veterinary care, flea infestations, and insufficient feeding for the dogs in her care. The remaining 12 reports concerned the large number of dogs being housed in Ms. Latour's two rural properties in Mission (referred to collectively as "the Property" and individually as the "30919 Property" and the "30925 Property"), where the number of dogs reportedly ranged from 25-100 at any given time.
15. The complaints noted in the ITO also included concerns with respect to dogs living under poor, unsanitary conditions, the build-up of urine and feces on the premises, dogs with matted fur coats, excessive use of dog crates for confinement, the lack of adequate space, incompatible pairings, high ammonia levels and general neglect.
16. Over multiple attendances, the Society issued thirteen notices of distress to the Appellant. The notices provided various recommendations including:
 - providing the dogs clean potable drinking water at all times,
 - ensuring the cleanliness of the food and water containers provided to the dogs,
 - providing coat and nail care for the dogs,
 - providing veterinary care for the dogs when required,
 - ensuring adequate ventilation while the dogs are confined,
 - providing adequate shelter to ensure protection from heat and cold, and shade to protect from them from sun exposure,
 - providing sufficient space for the dogs to turn freely,
 - providing the opportunity for periodic exercise,
 - providing adequate human contact, and
 - providing a clean and regularly sanitized living space.
17. The ITO outlines that, on October 1, 2021, SPC Carey, along with SPC Jarett Marleau visited the 30919 and 30925 Properties, accompanied by Animal Control Officers Mary Dyck (Fraser Valley Regional District), and Diane Merenick (Supervisor, City of Mission Bylaw Department). There, they found numerous dogs housed in various unsanitary, dark or poorly ventilated enclosures including the garage, exterior pens, car tents, modular structures and trailers. The Appellant did not allow them access into the dwellings, where it was apparent there were more dogs.

18. The ITO further outlines that on November 2, 2021 SPC Carey, SPC Brittney Collins, Ms. Merenick, two officers from the City of Mission Bylaw Department and a member of the RCMP entered the 30925 Property under the authority of a Bylaw Enforcement Search Warrant and on both properties found over 100 dogs in various sorts of confinement. Twenty of the dogs were housed in a garage, most of which were in wire crates. The garage windows were covered and closed and provided no ventilation with the result that the dogs were being exposed to high levels of ammonia. Some of the dogs had overgrown toenails and none of the dogs had access to water. Barking in the garage was extremely loud and several dogs appeared to be shivering and fearful. The dogs become calmer as the inspection proceeded however some of the dogs appeared to be in medical distress. Three dogs were being contained in the Appellant's automobile. According to the ITO, the Appellant was, at the time, renovating the inside of the property dwelling.

The special constables were then joined by SPC Christie Steele, and visited the 30919 Property (adjacent to 30925) where the group subsequently discovered four fearful Formosan Mountain dogs housed in the basement of a dwelling on the Property. The house was described as dilapidated and unkempt. It was dark in the basement, which had a strong odour of urine and a build-up of feces. An employee of the Appellant, John Fenwick, reportedly expressed an unwillingness to enter this house. Upon entering the house via the main entrance, the ITO notes that the Society's officers found the ammonia odours to be overpowering, the wooden floors appeared to be warped, damp and grimy, there were holes in the walls leaving exposed wiring and pipes, and there were holes in the floor. The ITO states that multiple dogs were contained in each room and feces were found throughout.

19. On November 7, 2021 SPC Carey, along with SPC Collins and SPC Steele returned to the Property to conduct an arranged inspection. The Appellant was again issued a notice of distress identifying 16 breaches, which the Appellant was given 72 hours to remedy and that the Appellant "ensure animals are kept in conditions that are sanitary, free of hazards including ammonia odours. She was advised at that time that due to the ammonia levels and other bio-hazard concerns, no dogs could be housed in the 30919 Property.
20. SPC Collins expressed her concerns regarding the psychological welfare of the dogs to the Appellant at that time, and discussed the possibility of having Dr. Rebecca Ledger attend the Property for an inspection to assess the dogs. The Appellant agreed.
21. On November 16, 2021 SPC Collins and SPC Steele accompanied Dr. Rebecca Ledger to the 30925 property where all the dogs had been relocated. The ITO notes that, in her report, Dr. Ledger identified many dogs believed to be in a poor psychological state as a result of their poor living conditions.

22. On November 23, 2021, the Appellant was sent a letter from the Fraser Valley Regional District (FVRD) Animal Control outlining bylaw requirements, which limited the number of dogs that she was allowed to have at the Property. The letter noted that she could have no more than 3 dogs at the 30925 premises and no more than 8 dogs at the 30919 Property (under a 2021 Hobby Kennel license). The Appellant was advised that unless she complied with all of the by-law requirements by December 3, 2021, the FVRD Animal Control would recommend to the City of Mission that her Hobby Kennel license for the 30919 Property not be renewed for 2022.
23. On January 5, 2022, SPC Collins delivered Dr. Ledger's report to the Appellant via e-mail. The report contained behavioural and welfare recommendations which included:
- providing the Appellant's staff with adequate animal behaviour and welfare training,
 - improving housing and other spaces for the dogs,
 - improving cleanliness and ensuring that the housing is free of hazards,
 - providing resting areas, access to clean air, appropriate lighting, exercise, and enrichment,
 - improving social interactions,
 - training that avoids eliciting anxiety, fear, discomfort, and pain,
 - obtaining personal behavioural assessments and a veterinary examination for each dog,
 - developing individual management plans for each dog, that would include proper record keeping for each dog.
24. The ITO outlines a series of interactions and communications between SPC Collins and an unidentified complainant which occurred between October 23, 2021 and November 12, 2021. The complainant reported that the Appellant had surrendered a number of dogs to the complainant who also operated a dog rescue service. The complainant noted that the surrendered dogs were fearful, smelled of urine and feces, in medical distress due to neglect, and infested with fleas and parasites.
25. The complainant reportedly took sixteen of the Appellant's dogs on November 9, 2021, and was asked by the Appellant to take eight additional dogs on November 10 and 11, 2021. At that time, the Appellant asked the complainant to take more dogs on a short-term basis however the complainant reportedly declined this request. The complainant took sixteen more dogs from the Appellant on November 12, 2021 and also declined an offer of \$5,000 to not post about the surrendered dogs on social media for fundraising as the Appellant was concerned that the Society would then be able to identify where the surrendered dogs came from. During a November 13, 2021 contact between the complainant and the Appellant, the complainant advised that she would not be untruthful if she was contacted by the Society.

26. On March 18, 2022 SPC Carey and SPC Steele conducted an unannounced visit to the Property to investigate a new complaint that had been made to the Society. No dogs were found to be housed in the 30919 Property, however the Appellant did not grant them access to the 30925 Property without having first made an appointment.
27. On March 30, 2022, SPC Carey and SPC Steele attended the Property after having arranged an appointment with the Appellant. On this visit SPC Carey saw forty-four dogs and noted her concerns with respect to the recommendations set out in Dr. Ledger's report for the care of the dogs. Several of the dogs continued to display signs of psychological distress; cowering, hiding, trembling, excessively barking, chewing, and grooming. SPC Carey also noted the lack of sanitation, incompatible pairings, confinement, and dogs still in need of verified veterinary behavioural direction and compliance. During this visit the Appellant was advised that she would no longer be issued notices and that the special constables would review the Appellant's previous files with the Society and consult with their supervisor.
28. On April 2, 2022 SPC Steele provided the Appellant further instructions, explanations and recommendations via e-mail referencing the Canadian Code of Practice for Kennel Operations and Dr. Ledger's report. She provided the Appellant a digital copy of the Code of Practice for her reference.
29. In the summary assessment in the ITO, SPC Carey noted that in each instance where the Society had responded to a complaint, the Appellant had complied to a "moderately adequate standard". However, when there were new complaints, the living conditions and welfare of the Appellant's animals had again declined, returning them (or 'the animals') to a state of distress for unaddressed medical and environmental reasons. With consistent follow-up until July 2022, the Appellant partially addressed the Society's sanitary concerns, removed hazards, hired a dog trainer, and partially completed veterinary examinations and treatments for the most urgent dogs in her care. The Appellant provided records showing dogs, which had been in the Appellant's care for up to 10 years, that needed extensive dental work and extractions.
30. On December 27, 2022, the Society received an anonymous complaint of there being sixty-two dogs on the Property, twenty of which were being housed indoors, twenty in the garage, and two in the Appellant's automobile. The complainant reported that some of the dogs appeared to be sick; coughing, sneezing, exhibiting eye discharge, and that some had rotten teeth and overgrown toenails. The complainant reported that some of the dogs had been injured from fighting. The complainant expressed an awareness of the Society's history with the Property but reported that the animal welfare issues had persisted.
31. On December 30, 2022, SPC Carey and SPC Steele visited the Property unannounced. Following some discussion, the Appellant agreed to allow a limited inspection, asking the constables to keep in mind that she was low on staff for that day. The constables noted ten dogs housed in the garage area and an odour of

ammonia, but no urine or feces was apparent. Three of the dogs seemed extremely afraid, another had staining on its abdomen and hind leg consistent with overgrooming. The overgroomed dog was in a worse condition than when they had previously observed it and they noted that the dog was reluctant to bear weight on a back leg.

32. There was an accumulation of feces outside the premises that the Appellant claimed she would clean when the snow cleared. Another dog familiar to the constables from their previous investigations, a Formosan Mountain dog, seemed to have improved behaviourally but it had a hanging mass from the inside of a hind leg. There were several soiled blankets on the porch of the premises.
33. The constables were then let into the dwelling via the front door, which contained eleven dogs and had a strong odour of ammonia. No urine or feces was apparent. They recognized a German Shorthaired Pointer being housed with three smaller dogs. The pointer appeared fearful and was shaking. Next to this dog was an area of damaged drywall, which appeared to have been chewed or scratched. In all, the constables saw thirty-four dogs and heard additional barking from other parts of the house.
34. On January 3, 2023, SPC Carey was granted a warrant authorizing her to relieve the Animals of distress including, without limitation, taking custody of the Animals.
35. On January 4, 2023 SPC Carey attended the Property with SPC Meyers, SPC Steele, SPC Christine Carey, SPC Marisa Snel, SPC Felix Cheung, SPC Sandra Windover, ACO Erik Kellog, DVM Karen Harvey, Dr. Ledger, BC SPCA operations staff, and an RCMP Constable, and seized the Animals to relieve their distress arising from their hazardous and unsanitary living conditions,

Review Decision

36. On January 27, 2023, Marcie Moriarty, the Chief of Protection and Outreach for the Society issued her Decision in which she outlined her reasons for not returning the Animals to the Appellant. In the Decision she identified the following materials that she reviewed in deciding the relevant issues:
 - File 356046 Inspection Follow-up Details (IFD) – January 9, 2023;
 - Information to Obtain Warrant (ITO) – January 4, 2023;
 - Notice of Disposition – January 4, 2023;
 - Warrant Photos - January 4, 2023;
 - BC SPCA Notices – January 9, 2023;
 - Mission Dogs LSAI Health Summary – January 11, 2023;
 - Status List of the Dogs; and
 - Email submissions from yourself and from your legal counsel.

37. Ms. Moriarty outlined the test for the return of the Animals as set out in *Brown v. BCSPCA*. [1999] B.C.J. No. 1464 (S.C.) where the judge states:

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

38. In her Decision, Ms. Moriarty outlined the history of the SPCA's interactions with the Appellant, referencing the efforts made by the Society to work with the Appellant to address the areas of concern. She further noted the ongoing complaints about the animals in the Appellant's care, which resulted in only in a degree of compliance that continually needed to be re-addressed. She stated:

Each time the officers worked with you and concluded their files, they unfortunately came back to see the conditions of the dogs and property had once again deteriorated.

39. Ms. Moriarty was satisfied, based on the evidence, that SPC Meyers had reasonably formed the opinion that the Animals were in distress as defined in Section 1(2) of the PCAA and her action to take custody of the Animals to relieve them of distress was appropriate. Ms. Moriarty further determined that it would not be in the Animals best interests to be returned to the Appellant.

Key Findings of Fact and Evidence

40. In an appeal under the PCAA, the Panel must determine whether the Animals were in distress when seized and if they should be returned to the Appellant. Below is a summary of the relevant and material facts and evidence based on the Parties' written submissions and testimony presented during the hearing. Although the Panel has fully considered all the facts and evidence in this appeal, we refer only to the facts and evidence we have considered necessary to explain our reasoning in this decision.

Appellant Testimony

41. The Appellant is 74 years old and retired. She stated that it was her life goal to buy a country property and to rescue dogs. She began rescuing dogs in 1993 and formed the Dogway Dog Rescue Society in 2011. She noted that she has adopted out over 4000 dogs and that because of the Covid pandemic, people had just dropped dogs off at her Property, leaving them in her driveway.
42. She testified that she had originally lived at the 30919 Property, 10-acre parcel, but because the property was going to be developed, she bought the property next door (30925 Property) and had applied for a business license. She spoke of her plans to develop a kennel and that she had had the Property measured and cleared for that purpose. She noted that she was keeping the dogs in her house

until the kennel was built. She commented that she was being visited by the bylaw officer weekly and that the city had given her lots of leeway.

43. With respect to the dogs and whether she lives with them, she stated that she was not there every day but that she had people there 24/7 and that a trainer lived on the Property with the dogs. She said she did not own all of the sixty-three dogs seized.
44. She stated that since the seizure she has had a ventilation system and ammonia detectors installed in the premises where she housed the dogs. She has also hired someone who comes weekly to control the rodents and she is using hospital grade cleaners to clean the premises. She stated that the dogs are comfortable and that they are on raised pallets with big blankets. She stated that she buys bottled water for the dogs and keeps the temperature at 73 degrees (Fahrenheit). The ventilation system, she stated, changes the air 2.5 times/hour. She stated that she is not a hoarder and that Covid is the reason that she ended up in a position in which the Society seized the dogs in her care.
45. The Appellant stated that after Dr. Ledger provided her report in 2021 the Appellant had called her to hire her to help her with the dogs but that she hadn't seen her again until she attended at the Property at the time of the seizure. She stated that she took no issue with Dr. Ledger's report and had worked with her team to follow Dr. Ledger's recommendations. She stated that she was working towards providing more training for her staff and that she had followed the recommendation to provide the dogs with blankets, quilts, and pallets, which kept the dogs off the floor. She asserted that the dogs were not neglected. She noted that she had staff and volunteers and has since hired three more people since the seizure.
46. She stated that every dog that is brought to her Property is seen by a veterinarian and that she uses three or four different veterinarians. She stated that she treats dogs herself for such things as kennel cough, skin issues and fleas. She noted that she buys vaccinations from a facility in Cloverdale and treats the dogs herself. With respect to diseases in the Animals identified by the Society after the seizure she stated that she does the best that she can and treats conditions as she is able to identify them through standard testing.
47. She stated that feces are not allowed to accumulate on the Property and that she cleaned the dogs' water bowls twice per day. She also washed the floors twice daily at the premises where the dogs were housed. She denied that dogs were being stacked in crates but agreed that sometimes empty crates were stacked.
48. The Appellant noted that her long-term plans are to build a kennel and she provided her plans in that regard which she claimed have been approved by the Fraser Valley Regional District and which she will modify as required.
49. With respect to the high ammonia readings and drywall damage at the premises, the Appellant stated that the drywall damage was due to renovation efforts. With

respect to concerns about parasites persisting in soils, she stated that she used bleach on the soil and that with respect to damaged surfaces, stated she uses linoleum and tiles, which are scrubbed and cleaned.

50. With respect to her previously surrendering dogs to other rescue operations, stated that she needed some help and had offered money to cover the cost of food for them. She noted that she did not believe in euthanasia for dogs except as a last resort, and in particular does not believe in it with respect to behavioural problems.
51. She stated that the Animals had been in her care for various timeframes and that some had been in her care for years.
52. Under cross examination the Appellant stated that she started renovating the 30925 Property before moving the dogs from the 30919 Property and that it was still in the process of being renovated when she moved them in. She had reviewed the Canadian Kennel Code and she acknowledged that some things needed to be rectified. She noted that housing the dogs in the 30925 property is intended to be a temporary situation.
53. Concerning her staff, both those paid and those who volunteer, she stated that she has six people on staff, she has lots of volunteers and she has hired another three people. She noted that not all of her staff work every day. Volunteers come every day, but the number of days each comes varies and there are three that work at night to 6:00 or 6:30 am.
54. With respect to veterinary records relating to dogs that were left on the Property and not seized by the Society the Appellant stated that there could be additional records available for those dogs.

Testimony of John Fenwick

55. Mr. Fenwick testified that he lives in Mission, BC and has been associated with Dogway Dog Rescue Society for 10 years. He trains and walks the dogs and cleans up at the Property. He works there 4-5 hours/day.
56. Under cross examination, Mr. Fenwick stated that he learned his training skills mostly from watching You-Tube videos, from his experience working directly with dogs and from working with James Tsai. He noted that he trains other dogs in addition to the work that he does for the Appellant. He conducts basic dog training; leash and basic obedience and is paid for this work.
57. He took outdoor photos of the Property prior to the seizure that show the status of the Property at that time. The outdoor photos were included in the appeal record.

Testimony of James Tsai

58. Mr. Tsai identified himself as having expertise at handling difficult dogs. He had been at the Property between April and June 2022 six times in total. He had been asked to work with some difficult dogs and stated that he takes a direct approach when dealing with clients.
59. Mr. Tsai described the Dogway premises as being clean and that the people working there were more attentive than he would have expected. He described the Property as being better than other rescue operations that he has dealt with. He stated that he will work with dog rescue organizations based on his assessment of their standards of operations.
60. With respect to the Animals, he described one dog "Lena" as having socialization issues. The Formosans, he said, had beds. His view was that the staff actually wanted to help, they followed his direction and he saw positive transformations in the dogs he worked with.
61. Mr. Tsai claimed that he is usually able to stabilize difficult dogs and that his normal retainer fee is \$140.00 for a 2-hour session.
62. Mr. Tsai stated that he saw only one page of Dr. Ledger's report following his 4th visit and that he disagreed with her recommendation for euthanizing five of the dogs. Counsel for the SPCA pointed out that the report contained no euthanasia recommendations.

Testimony of Rhett Nicholson

63. Mr. Nicholson testified that he lives in Mission and his family has had a business there for 28 years. He is also a member of City Council. He stated that his printshop donates printing to the Dogway Dog Rescue Society and that he helps the organization where he can. He adopted one of the dogs rescued by Dogway and his daughter, 13 years of age, also volunteers at Dogway. She volunteered there weekly last year, mostly cleaning up after the dogs, and washing and folding blankets. Mr. Nicholson generally waited outside while his daughter worked and he helped her once in a while. Her shifts lasted around two hours. He has known the Appellant for five years.
64. Mr. Nicholson noted that he had not seen any dog feces outside at the Property, and that he had only seen feces inside the pens that his daughter was tasked with cleaning up.

Letters of support

65. Mr. Nicholson had also submitted a letter of support January 26, 2023 in which, having described how his daughter sat with the dogs as a way of socializing them, he described the facility as being clean when he visited it, and stated that the animals were well loved and cared for given their previous circumstances.

66. A further letter of support was sent January 23, 2023 by Mr. Ken Herar, also a City of Mission Councillor and who had also adopted a rescued dog from Dogway in November 2022. In the letter Mr. Herar described the Dogway facility as being neat and tidy. He further described the helpfulness of the Appellant and expressed his belief in the Appellants good intentions. Mr. Herar did not attend to give oral evidence and was not subject to cross examination by the Society with respect to the statements made in his letter of support.

Testimony of Dr. Renu Sood

67. Dr. Sood testified that she has done veterinary work for the Appellant since 2021. She has sometimes vaccinated the Appellant's dogs with the standard shots as well as with anti-parasitic medications. She has also administered dental care to some of the Appellant's dogs.
68. Under cross examination, she stated that she is aware of her duty to report that an animal is being neglected or abused (as per the PCAA) should the need arise. In her opinion, no dog that she saw had met that threshold. She mentioned treating one dog for a venereal tumour and that dog is still under treatment. Since August 2021, Dr. Sood has examined twenty-one of the Appellant's dogs. She only became aware of the Society's seizure of the Animals by searching the internet.

Testimony of SPC Cassandra Meyers

69. SPC Meyers testified that prior to attending the Property she reviewed the Society's files on the Appellant including notices which were issued that predated her employment with the Society. She attended the Property on November 3, 2021 to provide City of Mission Bylaw Officers support and consultation assistance on a City of Mission bylaw warrant. The objective was to create a reference document.
70. She reviewed the entire Property and determined that the conditions at the 30919 Property where the Appellant was housing some of the dogs that she had in her care at that time were odorous and not suitable for animals. The Appellant was issued a notice that day to get dogs out of the 30919 Property. What animals that were in there, the Appellant explained to SPC Meyers, shouldn't have been there.
71. SPC Meyers testified that on November 16, 2021, as a result of observing behavioural issues in the dogs, the Society arranged for a visit to the Property by Dr. Ledger, to which the Appellant agreed. Dr. Ledger saw thirty to forty dogs. Her report was provided the Appellant on January 5, 2022.
72. SPC Meyers testified that she again visited the Property in March 2022 as a result of a complaint of a dog being on the roof of the 30919 Property, which was generally dilapidated and filthy. The complainant noted that there were approximately sixty dogs on the Property at that time. SPC Meyers observed no dogs in the 30919 Property and approximately forty dogs in the 30925 Property. She noted that some improvements had been made to the 30925 Property, but she still was concerned about the dogs' physical and environmental conditions.

She chose then not to issue further notices but kept the file open. The Appellant agreed to providing better veterinary care for the dogs in her care.

73. SPC Meyers visited the Property on May 19, 2022 for the purposes of keeping up the relationship with the Appellant in order to check on the Appellant's compliance with the directions from the Society. She noted that the Appellant had made some efforts towards compliance with the previous notices and as such she closed the file.
74. SPC Meyers next visited the Property for an unscheduled visit on December 27, 2022 as a result of an anonymous complaint that the Society had received of sixty-two dogs kept by the Appellant in the area of the Property that was subject to the previous notices. The complainant described seeing dogs sneezing and appearing sick, having rotten teeth, having overgrown toenails, and being exposed to a dog with distemper.
75. SPC Meyers described seeing approximately thirty-five to forty dogs in pens that were in a similar state as during the previous investigations. She observed no kennel cough and was allowed by the Appellant to walk through the Property and was shown both outdoor and indoor pens. She saw that some of the dogs had access to outside areas via open doors. She noted that a couple of the dogs had skin issues and that one had mobility issues. She also noted two dogs, both of which had been assessed previously as being aggressive.
76. Upon inspecting the premises, SPC Meyers found that there was a strong smell of ammonia, and she noted an area where the drywall had been damaged. She determined that the Appellant was either unable or unwilling to comply with the Society's directions with respect to the care of the dogs at the Property and decided that it was necessary to apply for a warrant to protect the animals from distress.
77. She testified that, having executed the warrant on January 4, 2023, her decision to seize the dogs was based on the high ammonia readings throughout the premises and the generally unsanitary and unsafe living conditions. Both the poor living conditions and the Appellant's failure to follow through on veterinary care recommendations resulted in the seizure of the Animals.
78. SPC Meyers noted that she had conducted follow-up visits with some of the Animals in custody and found that some had come around "tremendously" and that she was seeing a world of difference in them.
79. Under cross examination, SPC Meyers testified that she had received no complaints from a veterinarian with respect to the Animals prior to the seizure. She agreed that she had seen improvements in two dogs during her visits to the Property. She further agreed that the Appellant had been co-operative with the Society.

80. She noted that she had seen instances of incompatible pairings at the Property including dogs growling and attacking each other. She stated that the dogs were not being properly sheltered in the outdoor pens, but also agreed that it was possible that she had overstated the unsanitary condition of the premises.
81. SPC Meyers stated at the time of the seizure of the Animals, she had left 19 dogs in the care of the Appellant as those dogs were not being kept in the problematic areas of the Property. However, in retrospect she noted that they likely should have removed all of the dogs at the Property given the history and the general conditions of the Property.

Testimony of SPC Christine Carey

82. SPC Carey stated that she was first at the 30919 Property in 2012 and at that time she had issued 7 Notices to the Appellant with respect to the number of dogs on the Property. She had found the Appellant to be evasive however she later received the veterinary records that she had requested from the Appellant and as a result had closed the file.
83. In 2021, she accompanied bylaw officers as they sought to enforce a warrant at the Property, and she observed dogs in a utility trailer and a dog in a crate in a tent. She was unable to stay to assist further that day and was not at the Property again until January 4, 2023 when the Society executed its warrant.
84. She noted at the time that they executed the warrant she could smell dog feces from twenty steps away and that she saw dogs with dramatically overgrown toenails and rotting teeth. She noted seeing rat feces in the house. She observed fearful and evasive dogs with weepy eyes struggling in a loud and chaotic environment. She noted a high ammonia level in the house and that the smell of ammonia coming off the dogs was prominent.
85. With respect to the 19 dogs that were not seized, she stated that she remained concerned about those dogs and so on January 9, 2023 she issued the Appellant a Notice which included contacting pest control, having the nineteen dogs examined by a veterinarian, having a fecal examination done, and developing a plan to address their issues. The appellant was also instructed not to bring any more dogs onto the Property.
86. With respect to her views on whether the Animals could be returned, she stated that the 30925 Property was not a suitable environment for them, and the Appellant was not capable of recognizing the conditions of the dogs.

Testimony and written statement evidence of Yuana Hexamer

87. Yuana Hexamer was called as a witness by the Society and identified as the complainant that had previously contacted the Society to inform the Society of the animals that had been surrendered into her care by the Appellant.

88. Ms. Hexamer is associated with the Dhana Metter/Lower Mainland Humane Society and is a certified animal trainer whose former employment included being a veterinary assistant.
89. Ms. Hexamer stated at the outset that it would have been a gross injustice to the Animals had she not made a report to the Society with respect to the care being provided to them by the Appellant. She described the Property as being old and not well kept.
90. She stated she first met with the Appellant in June of 2021 when she picked up two dogs from the Appellant. She next interacted with the Appellant in October 2021 when she was asked by the Appellant if she'd take another paralyzed dog that needed veterinary care. The dog's name was Rex and was foul smelling and bearing a raw foot wound.
91. Ms. Hexamer confirmed she visited the Property on November 9, 2021 and the Appellant surrendered 16 more dogs to her.
92. She described the dogs as being terrified, smelly, and flea ridden. The majority of the dogs had worms and the Appellant did not know the names of a lot of them nor did she correctly know the genders of them all. On both November 10 and 11, 2021 the Appellant asked her to take 8 more dogs. She took 32 dogs in total over two dates, November 9, 2021 and November 12, 2021.
93. She noted that a dog named Pappi, which was muzzled and had fleas, was also very sick. It had bronchitis, worms, rotten teeth, severe ear infections, eye discharge, and a grade 4 heart murmur. She stated that the vet bill for this dog was \$4,317.00. Based on her Google search of its microchip implant, it had been with the Appellant since 2017, and was a rescue from California.
94. Other named dogs, she testified, had microchips showing that the Appellant had the dog Tanner since 2015, Marvin since 2019, Rory since 2018, Izzy since 2011, and Alvin since 2021. The dog named Schroeder had several fractures and a tick-borne illness. All have since been adopted out by her except for Pappi, who is still with her, and Tanner. A dog named Sam was euthanized. So far, she stated, she has spent \$50,000.00 on veterinary bills for the dogs that were surrendered to her by the Appellant.
95. Ms. Hexamer stated there was never an issue identifying dogs when she took in dogs from other shelters as she always got the dog's records and shelter forms. She got none from the Appellant. She testified that it was her understanding that the Appellant was hiding dogs from the Society. She said she took no money from the Appellant for taking in the surrendered dogs.
96. She acknowledged that she had been reported to the Society in two previous instances and the Society, having been given a tour of her facility, took no issue with it. She advised that she has twenty to twenty-five dogs in her shelter and another ten in foster homes. She has a 4,000 sq.ft. home with areas separated for

dog size, personalities and the like. She testified that she is not a competitor to the Dogway Dog Rescue Society.

Testimony and report evidence provided by Dr. Rebecca Ledger

97. Following an outline of her qualifications as an animal behaviourist and animal behaviour and welfare scientist, the Panel accepted Dr. Ledger as an expert witness.
98. Two reports authored by Dr. Ledger were included in the appeal record. The first is a welfare assessment and recommendations for dogs under the care of Dogway Dog Rescue Society from her November 16, 2021 visit to the Appellant's property. The second is a welfare assessment for dogs seized by the Society from Dogway Dog Rescue Society on January 4, 2023.
99. Dr. Ledger based her November 16, 2021 report on her personal observations, the information the Appellant had provided, and the length of time the various dogs had been on the Property. She had understood that there were thirty-five dogs however she saw forty-four and assessed forty-two. Her understanding was that the dogs had come to the Appellant's rescue facility because they would otherwise have been euthanized. As she understood it, the goal of the facility was to rehome dogs.
100. In her report, she made recommendations about staff training, dog housing and exercise, and humane handling. Veterinary care, she testified, is not her area of expertise. She recommended that the Appellant employ a behaviourist to assist with the care of the dogs.
101. She testified that normally she sees files when she visits kennels and shelters however none were made available to her by the Appellant.
102. Dr Ledger note that she did get a second hand query passed along to her by the Society for her to assist with facility improvement at the Property but had not received any direct correspondence from the Appellant.
103. She testified that she sometimes felt unsafe while onsite at the Property. She stated that she saw staff get bit by a dog. She stated that it's not always possible to rehabilitate an aggressive dog. She noted that each dog has to be assessed on a case-by-case basis and based on a number of factors including the size of the dog, the strategy employed, their handlers, etc. She stated that behavioural problems are not the same as training problems. In such cases, while dogs can be managed, there can be no assurance of rehabilitation.
104. With respect to her second report, having examined approximately sixty dogs in the custody of the Society, she stated that she made her assessments using the same approach method as she had used in her first report. She said she saw some remarkable differences, in positive ways. For example, the dogs were voiding outside, and she saw a reduction of fear. Contrasting what she was seeing

in their improving behaviour while in custody of the Society, she felt, it was the environment at the Property that was the cause of their previous negative behaviour. Some of the dogs she saw remained anxious and afraid. Recovery for some, she said, would take years.

105. Dr. Ledger noted that she had grave concerns with respect to the possible return of the Animals to the Appellant's care. She noted that the Property was not suitable and stated that the Animals "absolutely should not get sent back there." She added that the Appellant did act on instructions but never in a consistent manner and that is a pattern that needs to be considered.
106. Dr. Ledger stated that all of the Animals were suffering from something. Sixteen tested as having parasites. She noted that some were very aggressive and should not be rehomed.
107. Dr. Ledger agreed that dogs sometimes behave differently to strangers and that certain triggers, including people in uniforms, can lead to negative behavior where there is a precedent for that behavior that has led to a behavioural scar.
108. Dr. Ledger noted that the efforts being made by the Appellant to properly socialize the Animals were not adequate.

Testimony and report evidence of Dr. Emilia Gordon

109. Following an outline of her qualifications as a qualified veterinarian holding a specialty certification in Shelter Medicine Practice, which involves advanced study and casework in canine infectious disease, the Panel accepted Dr. Gordon as an expert witness.
110. Dr. Gordon testified that she was not at the seizure of the Animals, nor did she physically examine any of the Animals. She did review the warrant photos as well as the veterinary records provided by the Appellant. Her role was to provide advisory support, focussing on disease host/environment/animal linkages. She explained she has worked on other animal cruelty files, particularly those where there were lots of animals in small spaces. There are increased risks of disease in large animal population cases.
111. Dr. Gordon's report, based on her examination of a number of photographs of the Animals' living conditions at the time of the seizure detailed what she described in her testimony as depicting both squalor and clutter.
112. Her report also included her review of a document titled "Veterinary Records from December 2021 to January 2023 which demonstrated that prior to the dogs being seized, the Appellant had been diligently providing adequate care for the dogs." It indicated that approximately 100 dogs in the care of the Appellant had received vaccinations.

113. Most of the named dogs did not match the names of the Animals. None of the Animals seized received the standard kennel cough (CIRDC) vaccination. Only seven of the dogs in the transaction history had received the CIRDC vaccination in the record history. None of the Animals received vaccinations from this clinic in 2021. Five of the seized dogs received a DA2PP (Distemper, Adenovirus, Parvo, Parainfluenza) vaccination in 2022. The remaining had no history of being vaccinated.
114. Dr. Gordon's report showed that several different medications were dispensed on an apparently one-off basis in September 2022. None of the Animals were prescribed anti-parasitic medication from this clinic in 2021 with the exception of perhaps one dog. In summary, her report states, that while some veterinary care was provided for the Appellant's dogs during 2021 and 2022, there is no evidence that any of the Animals were provided with preventative veterinary care for protection against CIRDC, DA2PP pathogens (with the exception of five dogs), biannual preventative parasite treatment, or annual fecal testing, all of which is either recommended or required by the Canadian Veterinary Medical Association (CMVA) Code.
115. Concerning her findings in this case, she testified that her most significant findings were that 59% of the dogs tested positive for intestinal disease, thirty-four of the dogs had fecal pathogens and 28% had shown signs of it. Some had roundworms. She stated this proportion was unusual.
116. Dr. Gordon's report additionally indicated that sixteen of the seized dogs had diarrhea, soft stool or other signs of GI (gastro-intestinal) distress. Fourteen of the seized dogs met the case definition for CIRDC. One puppy was diagnosed with pneumonia 24 hours after intake.
117. Concerning the respiratory issues, she stated that 22% of the dogs developed Kennel cough within the first two weeks of their seizure. She stated that Kennel cough doesn't necessarily develop right away. Six of the dogs tested for pathogens that are rare in British Columbia. Her findings provided her clues about the dog's population management and control.
118. In terms of diagnostic results, Dr. Gordon stated that she paid attention to a pattern, noting that some dogs came and went and some were in residence for longer periods (years). Infection rates exceeded expectations and so therefore some of the dogs were likely infected at the Property. Multiple caregivers, mingling amongst the new dogs, and the Appellant and staff practices all could have contributed to pathogen transmission among the dogs.
119. In contrast, and because of the Society's daily handling protocols, there was no evidence of the Animals being infected while in the care of the Society. With respect to the Appellant's excuse of being short-staffed, Dr. Gordon didn't think that was the reason for what she saw. In her opinion, it appeared it was instead a long-standing problem of overcapacity and a chronic absence of sanitary

practices. She testified that she did see some treatment evidence of the Appellant, then added that while you can't prevent disease, you can prevent its transmission.

120. Following her outline of what kind of training is required of a typical rescue operation (prevention, recognition, biosecurity, response, and seeing the body language of the dogs), Dr. Gordon stated that the 30925 Property was not suitable for dogs. Whipworm, for example, she stated, can last a long time on surfaces. Nor did she think a new facility would make much difference. The Appellant's patterns of neglect were too apparent. Further, she suggested that a return would undermine public trust in shelters and rescues.
121. Under cross examination, Dr. Gordon agreed that she is not a dog behaviour expert and that she did not see the dogs. She only saw their records. She only saw photos of cleaning materials, and photos of readings on ammonia strips. She acknowledged that she wasn't part of the testing, so couldn't confirm their results, but added that no ammonia should be detected.

Testimony and evidence of Dr. Karen Harvey

122. Following an outline of her qualifications as a practicing veterinarian, the Panel accepted Dr. Harvey as an expert witness.
123. Dr. Harvey testified that she attended the Property at the time of the seizure. Her report shows that the following day she examined the Animals at the Vancouver SPCA Shelter. Dr. Harvey provided a written report with respect to her findings which was included in the appeal record.
124. Under cross-examination, Dr. Harvey stated the ammonia readings were highest in the bathroom, the room with the chewed-out walls. The readings were between 50-100 ppm (parts per million). The Kennel Code, she noted, states there should be no detectable level of ammonia.
125. She stated that her comments in her report regarding hoarding were not meant to be accusatory, rather they were statements consistent with conditions observed at the Property which exhibited the features typical of animal hoarding situations.
126. Dr. Harvey described her onsite findings in her report. They include seeing signs of stereotypical stress behaviours in the Animals including barking, chewing and circling. She described being overwhelmed by the smell of ammonia as she entered the premises from the garage and that it was difficult to manoeuvre because of the number of cages. She described seeing one dog that was exhibiting a textbook example of mange, and described a washroom where a dog was housed where the floor had been torn up, drywall chewed through, and which showed an ammonia reading of 50 ppm.
127. She described the house as a public health hazard because of the clutter, the exposed live wires and the poor ventilation. Her report contains her opinion that it was no surprise given the inappropriate housing, that the dogs tested positive for

carrying an impressive parasite burden. Her report states that she administered trazadone to many of the dogs onsite in order to make transporting them as low stress as possible given the circumstances. In her report, Dr. Gordon notes:

“The dwelling overall presents a state of extensive clutter and squalor consistent with published animal hoarding cases. When a rescuer or other caregiver chronically and repeatedly assumes care for more animals than they have capacity to support, significant animal suffering can result even if it is not intentional. This is a hallmark of animal hoarding...”

Closing Submissions

128. In her closing submissions, counsel for the Appellant noted as follows:

- There were only two photos showing the presence of fecal matter.
- The Appellant has full-time employees who dispose of the fecal matter.
- The Appellant was in the process of cleaning up when the Society arrived.
- The Society wanted to find the opportunity to seize the Animals.
- The Appellant wants nothing but the best for the Animals.
- The Appellant has plans for and is building a new kennel.
- The Appellant has treated the soil and is prepared to ensure the Animals needs are kept.
- There was no actual evidence that there were dehydrated dogs.
- Medical problems in dogs are to be expected in a rescue operation. Dogs often come that way.
- The Appellant loves dogs.
- The Appellant has addressed the deficiencies that were apparent when the warrant was executed. She has had a ventilation system installed.
- The Appellant has treated her soil and is prepared to repair her home. Her current facility would suffice until she has had a new one built.
- The number of visits that had been conducted by the Society were unreasonable. The Society has been trying to build a case against the Appellant.
- With respect to the high ammonia readings, those were taken next to the laundry room. Readings from other parts of the house were not at a critical level.
- The parasites that were brought into the facility could have come from anywhere.
- Dr. Gordon is biased and an advocate for the Society.
- The Appellant treats the Animals for medical issues regularly.
- The Animals were not untreated. The Appellant is not a veterinarian but can identify problems. Dogs coming into the shelter can bring parasites.
- This was a learning opportunity for the Appellant. She has plans for a new facility.

- The dogs were not in distress.
- Yuana Hexamer is not a reliable witness.
- Dr. Ledger's evidence is not supported by facts.
- The Animals should be returned.
- Any dogs belonging to 3rd parties should be returned.

129. In her closing submission, counsel for the Respondent noted as follows:

- The Appellant's closing submissions were hyperbolic and indicative of an unwillingness to address the key issues around the distress experienced by the Animals.
- Instead of denying the evidence presented by the Society, the Appellant should be taking ownership for the problems identified with her shelter and presenting credible evidence of the steps that she has taken and will take to address those issues.
- Returning the Animals would inevitably return them to a situation of distress as they would be in the same environment and the Appellant's suggestion that she intends to build a kennel for the shelter is at this point not much more than wishful thinking.
- The dogs at the Appellant's shelter are not being rehabilitated and to a large extent are not being rehomed. They are remaining on the property in unhealthy living conditions and getting sick as a result.
- The Appellant's shelter, given its chronically unsanitary conditions, could be ground zero for an outbreak of rare diseases not currently found in BC.
- The Appellant has repeatedly failed to identify and treat medical issues in the dogs at her Property including dogs that have been with her for years and have suffered long term health issues.
- The Appellant's shelter creates additional distress for animals that potentially need rescue services. The Society has tried to inform and assist the Appellant for over 10 years.
- The Animals were clearly in distress when seized and should not be returned to the Appellant.
- With respect to costs, the costs of care set forth in the materials provided by the Society are reasonable and should be awarded.

Analysis and Decision

Distress

130. As outlined at the outset of this hearing, the Panel is tasked with addressing two primary issues:

1. Were the animals in distress at the time of the seizure?
2. Is it in the best interests of the animals to be returned to the Appellant's care?

131. The definition of “distress” is set out in s. 1(2) of the PCAA, which must be read together with s.11:

- s. 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.

s.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 or 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.

132. The Panel heard in testimony from two Society constables of an extensive history of interactions with the Society dating from 2012 and of several instances wherein the Appellant was issued Notices stemming from complaints the Society received relating to animals in the Appellant’s care. From November 2021, the Panel heard evidence of the Society attending the 30921 and 30925 Properties to assist City of Mission bylaw officers in conducting an inspection of the premises. A string of chronologically dated reports contained in the Society’s submissions show that the Appellant was in contravention of a bylaw which limited the number of dogs a hobby kennel could house.

133. SPC Carey’s testimony was consistent with her notes and other materials included in the written appeal record in describing her concerns for the animals at the Property. They included seeing dogs confined to unsanitary living conditions, the strong smell of ammonia, dogs appearing unwell, dogs inappropriately matched and up to 75 dogs living in the 30919 Property where there was structural damage due to dogs chewing walls, animal waste, and holes in the floor.

134. The Society’s dispatch history and follow-up details indicate that Society officers conducted follow-up visits with the Appellant on November 5, 7 and 10 and again on November 16, 2021 when Dr. Ledger conducted her assessment of dogs on the Property at the consent of the Appellant. On the November 7 visit the Appellant was issued a Notice giving her 72 hours to address sixteen breaches and to consult the Canadian Kennel Operations Code of Practice. The Society also told the Appellant at this time that no animals were to be housed in the unsanitary premises on the 30919 Property.

135. The report provided by Dr. Ledger stemming from her November 16, 2021 visit to the Property contains her observations of 44 dogs, 42 of which were under the care of the Appellant. It describes the facility, where and how various dogs were being contained and physical and apparent behavioural details on each dog she examined. The report notes she learned from the Appellant where many of the dogs had come from, and their background circumstances. The report also outlines the rehabilitation efforts the Appellant described as undertaking with the dogs, how long she initially keeps them and how she measured their progress.
136. Prefacing her recommendations, Dr. Ledger noted in this report that the shelter's staff were passionate about the welfare of the dogs, but that their understanding about how to meet dogs' emotional, physical and welfare needs was inadequate. Her list of recommendations relating to staff training, dog housing, exercise, social interaction, human handling, veterinary care, behavioural rehabilitation and record keeping, outlined in detail in this report, is consistent with her testimony in the hearing.
137. Dr. Ledger's report to the Society dated February 20, 2023 which provided her opinion on the welfare of the Animals outlines details of her analysis of the dogs she observed on January 4, 2023, following their seizure and the follow-up visits she subsequently made after two weeks with the dogs, some of which had been transferred to other Society facilities as well as to foster homes.
138. Dr. Ledger outlined her analysis and methodology based on a Five Domain Model, which covered: Nutrition, Environment, Health, Behavioural Interactions, and her Post-Seizure observations. She noted that:
- With respect to Nutrition, sixteen of the dogs were likely suffering from thirst due to a lack of access to clean and drinkable water. She was unable to determine the severity of this condition.
 - All of the Animals suffered in some form as a result of the environmental conditions in which they were found. The severity ranged from moderate to extremely severe.
 - Some of the Animals' suffering was attributed to noise levels from their barking with noise levels as high as 103 decibels.
 - Other environmental suffering stemmed from being in poorly ventilated areas with very high and unpleasant ammonia levels, as well as being kept in small pens, in cramped conditions, and living in soiled areas.
 - The Animals also suffered from living conditions that were drafty, inadequately heated, lacking in clean and comfortable rest areas, and dim lighting conditions.
 - Based in part on Dr. Harvey's findings, Dr. Ledger reported that all of the Animals were suffering in some way as a result of various physical health conditions.
 - With respect to their behavioural interactions, all of the Animals were suffering in some measure due to:
 - the lack of toys and reasonable stimulation;

- the lack of compatible social companions;
- being housed in a monotonous and unchanging environment; and
- being near to other aggressive dogs.
- These factors can cause dogs to suffer from anxiety, fear, frustration, depression, helplessness, boredom, loneliness and panic.
- With respect to the Animals' health post-seizure, Dr. Ledger noted that after two weeks in the Society's care the dogs that she observed showed significant positive changes in their physical health changes, their environment and their husbandry all of which greatly improved their demeanor and behavior. As a result, she concluded, that the Animals, while in the care of the Society had their suffering/distress alleviated in some significant ways.

139. Dr. Harvey concludes her report by stating:

“It is with absolute certainty that returning these dogs to this “rescue” and its inhumane conditions would be a collective failure of our duty to protect the wellbeing of all animals. It is that duty that demands this operation be shut down permanently.”

140. Given the preceding testimony and accompanying evidence and in particular the evidence provided by the three expert witnesses, the Panel finds that the Animals were in distress at the time of seizure and that the seizure was therefore warranted.

Return of the Animals

141. This hearing has proceeded on the basis that the Appellant has an onus to show that the remedy she seeks, the return of the Animals, is justified.

142. In *Eliason v SPCA, 2004 BCSC 1773*, Mr. Justice Groberman 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 the 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.”

143. In seeking the return of the Animals, the Appellant challenged the testimony and evidence provided at the hearing by the Society's officers and asserted that the Society had been trying to build a case against her. She claimed that the testimony of Dr. Gordon was biased, and that Yuana Hexamer was not a reliable witness.

144. The Panel disagrees on all points. There is ample documentary evidence including the reports submitted by the Society's officers of their interactions with the Appellant, that support the testimony that they provided at the hearing of this Appeal. Furthermore, the evidence shows many visits made by the Society to the Property and the Notices that were issued to the Appellant were for the purpose of ensuring her compliance with their directions which were meant to give her the opportunity in good faith to improve and to change. The Appellant was clearly

given many opportunities to improve her operation. The Panel accepts the evidence that she did make efforts to improve for a time, each time after notices were issued to her. However, the evidence also shows that she then invariably returned to her familiar pattern of providing inadequate care.

145. Dr. Ledger included photographs in her report taken both at the Society's shelter and at the Appellant's facility for each dog, along with written descriptions based on her Domain Models.
146. Dr. Harvey's report dated February 17, 2023 similarly supports her testimony and as it relates to the environmental conditions she observed. Her report provides a detailed analysis of each of the Animals based on physical examinations. Her report also contains contextual photographs depicting the conditions at the Property including:
 - dogs in unsanitary and crowded conditions,
 - dogs in rusty cages and dogs apparently hiding,
 - injured dogs,
 - ammonia strips showing high readings for ammonia in the environment,
 - an accumulation of rodent feces,
 - apparently sick dogs, including close up photographs of significant dental and skin conditions, and
 - wall damage attributable to dogs.
147. The Panel considered the Appellant's evidence that she intends to construct a kennel on the Property to create appropriate housing for the Animals. However, in reviewing the evidence it is not clear whether such a facility would even be allowed on the Property under current by-laws. Emails included in the appeal record with the City of Mission note that this residentially zoned property would only be eligible for a kennel permit, not a rescue/shelter permit and that a kennel permit - where animals are kept for boarding, breeding, show or training - does not include operating a rescue/shelter facility.
148. The Panel further notes that the 30925 Property that the Appellant suggests would be used for the purposes of the new kennel is not owned by the Appellant and would require permission of current owners to develop. Even if all these obstacles were overcome, the construction of such a facility would take considerable time and, until such a facility were completed, returning the dogs would return them to a situation of distress. Weighing the evidence, the Appellant's expressed intent to build a kennel to resolve the distress of her dogs was not given any weight by the Panel in considering their return.
149. The fact that the Appellant has been pursuing the development of a Kennel and has spent time and money on pursuing this objective has little bearing on whether the seizure was justified or on whether the dogs should be returned. Similarly, the Appellant's submission that the seizure should be treated as a learning opportunity was not persuasive.

150. Given the consistency of the evidence and testimony of the three expert witnesses, the Panel finds no grounds to support the Appellant's assertion that Dr. Gordon was biased or to question the credibility of Yuana Hexamer.
151. The Appellant stated that she has made improvements to her facility, the main example being the ventilation system that she had installed after the seizure. Based on the photographic evidence she provided, the Panel accepts that she has made some improvements. Similarly, the Panel accepts that she used bleach in an attempt to treat her soils to suppress pathogens. We also accept her evidence, supported by materials that she submitted in this Appeal, that she has taken the dogs in her care to a veterinarian and has had some of them examined and treated for various issues. However, the Panel finds that her efforts have not been sufficient to warrant the return of the Animals. It is clear from the evidence, and in particular the evidence of the expert witnesses, that both medically and behaviourally, all of the Animals suffered to varying degrees behaviourally and many were in need of medical treatment at the time of the seizure.
152. Finally, the Appellant argued that at least five of the dogs should be returned to their owners who are not parties to this proceeding. The Panel has determined that seizure of all the Animals was warranted and that they should not be returned to the Appellant who was the person legally responsible for the Animals at the time of the seizure under the *PCAA*. Based on those findings, and in accordance with the orders set out below, any persons who claim ownership of the Animals should contact the Society to determine whether the Animals can and should be placed in their care.

Costs

153. 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 the 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.

154. 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).
155. The Society is seeking costs as follows:
- (a) Veterinary costs: \$14,787.76
 - (b) SPCA time to attend seizure: \$2,465.10
 - (c) Housing, feeding and caring for the Animal: \$58,139.85
 - (d) Total: \$75,392.71**
156. On the matter of costs, the Society's submissions provided detailed cost accounting, including invoices for veterinary care and detailed estimates on the daily operating costs associated with the care of the animals. The calculation of these estimates has been reviewed and supported in previous appeals. The Appellant made no submissions with respect to cost except to say they should not be assessed since the animals were not in distress at the time of seizure.
157. The Panel finds that the Society's costs are reasonable and confirms that the Appellant is liable to the Society for the sum of \$75,392.71.

Order

- 158. In accordance with s.20.6(b) of the *PCAA*, on hearing this appeal, the Panel permits the Society, in its discretion, to destroy, sell, or otherwise dispose of the Animals.
- 159. In accordance with s.20(1) of the *PCAA* the Panel orders the Appellant to pay costs to the Society in the amount of \$75,392.71

Dated at Victoria, British Columbia this 14th day of March 2023.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Dennis Lapierre, Presiding Member



Wendy Holm, Member



Neil Turner, Member

Appendix "A"

Exhibit #	Date (Received)	Received from	Document
Exhibit #1	Jan 27, 2023	BCSPCA	Latour & Dogway Decision Letter – January 27, 2023
Exhibit #2	Jan 31, 2023	Appellant	Latour – NOA
Exhibit #3	Jan 31, 2023	BCFIRB	2023 Jan 31 Latour v BCSPCA P2304 - NOA Process letter
Exhibit #4	Feb 3, 2023	BCFIRB	2023 Feb 3 - Latour v BCSPCA - PHC Report
Exhibit #5	Feb 8, 2023	BCSPCA	Latour v BCSPCA – Document Disclosure (Access via USB)
Exhibit #6	Feb 8, 2023	BCSPCA	Society List of Witnesses
Exhibit #7	Feb 15, 2023	Appellant	Combined and Bookmarked Appellant Initial Submission
Exhibit #8	Feb 15, 2023	Appellant	Photos of Property – Bookmarked
Exhibit #9	Feb 15, 2023	Appellant	Appellant List of Witnesses
Exhibit #10	Feb 15, 2023	Appellant	Video of dogs playing (00232189x106700)
Exhibit #11	Feb 16, 2023	Appellant	Appellant Submission (00242457x106700)
Exhibit #12	Feb 22, 2023	BCSPCA	BCSPCA Submissions - Latour
Exhibit #13	Feb 22, 2023	BCSPCA	Affidavit of Marcie Moriarty
Exhibit #14	Feb 22, 2023	BCSPCA	BCSPCA Witness Contact Form
Exhibit #15	Feb 22, 2023	BCSPCA	BCSPCA Expert Witness Handout and Form
Exhibit #16	Feb 22, 2023	BCSPCA	334768, Witness Statement, Yuana Hexamer, Nov 26, 2021
Exhibit #17	Feb 24, 2023	BCFIRB	2023 Feb 24 - Latour v BCSPCA - PHC Report
Exhibit #18	Feb 24, 2023	Appellant	Combined and Bookmarked Appellant Final Submission
Exhibit #19	Feb 24, 2023	Appellant	Appellant - PCAA Witness Contact Form

Exhibit #	Date (Received)	Received from	Document
Exhibit #20	Feb 28, 2023	BCSPCA	Email: Follow up regarding Ms. Latour and Kennel Permits – Time sensitive request
Exhibit #21	Feb 28, 2023	BCSPCA	SPC Carey Handwritten Notes – Jan 4, 2023_redacted