

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 THREE  
DOGS

**BETWEEN:**

KIMBERLY KRUG & MARK KRUG

**APPELLANTS**

**AND:**

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

**RESPONDENT**

## **DECISION**

**APPEARANCES:**

For the British Columbia Farm Industry  
Review Board:

Gunta Vitins, Presiding Member

For the Appellants:

Kimberly Krug

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

January 23, 2024

Location of Hearing:

Teleconference

## **A. 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 three dogs (the Animals) from the Appellants, Kimberly Krug and Mark Krug, at their residence located in Kamloops, BC (the Property).
2. The Appellants are appealing the December 21, 2023, review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief of Protection and Outreach Services, 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 Appellants in this case are seeking the return of the Animals.
4. On January 23, 2024, a BCFIRB hearing panel (the Panel) held a hearing via Teleconference. The hearing was recorded.
5. The Appellants were not represented by counsel. The Appellants called three witnesses, J.D., E.K., & B.C. Ms. Krug also gave evidence in support of the appeal.
6. The Society was represented by counsel and called two witnesses, Special Provincial Constable (SPC) Jamie Wiltse, and Doctor of Veterinary Medicine (DVM), Megan Broschak.

## **B. Decision Summary**

7. Upon a comprehensive review of the evidence and submissions, the Panel has determined that the Animals were in distress at the time of seizure and that the Animals would continue to be in distress and in danger of potentially significant injury if returned to the Appellants. As a result, the Panel has ordered the Animals to remain with the Society.
8. 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 hope that the Animals will be adopted unless circumstances preclude that possibility.
9. The Panel has determined that the costs incurred by the Society are reasonable in the circumstances, however due to the issues noted with the provision of the Society's disclosure as set out below, the Panel has decided to waive the Society's costs.

## C. Preliminary Matters

10. Five preliminary matters were raised by the parties and considered by the Panel:
  - The request by the Appellants to have two of their children who are minors, aged 12 years old and 14 years old, testify as witnesses for the Appellants.
  - The request by the Society to clarify whether Mr. Krug would testify as a witness for the Appellants.
  - The admissibility of a hand-drawn map of the Appellants' home and Property which was submitted by the Appellants after the submission deadline previously set by the Panel.
  - The admissibility of a video from a security camera that depicted abuse of one of the Animals at the Property and which triggered the seizure of the Animals but had not been viewed by the Appellants.
  - The clarification of the names of the Animals seized by the Society and the identification numbers assigned to each dog by the Society.

### Minor Children as Witnesses for the Appellant

11. On January 22, 2024, Ms. Krug, representing the Appellants, emailed BCFIRB and the Society requesting that two of the Appellants' children, who are minors aged 12 years old and 14 years old, be called as witnesses for the Appellants.
12. The Panel allowed the parties to make submissions at the outset of the hearing on whether the two minor children of the Appellants should be able to give evidence at the hearing.
13. The Society submitted that they were concerned that the children were quite young and that it was unusual to have young children testify in an administrative tribunal hearing. The Society further submitted that it was not clear whether the children would have evidence that was relevant to the matters to be addressed at the hearing.
14. Ms. Krug stated that the two minor children were present at the time of the seizure and each would testify to the incidents that occurred when the Animals were seized.
15. The Panel explained that the evidence of young children is inherently unreliable since children are highly vulnerable to the influence of parents and other individuals. Due to these factors, evidence provided by the young children would likely be given very little weight when considered by the Panel in deliberations. The Panel further explained that it could be highly stressful to the children to be cross examined.
16. Ms. Krug responded that she didn't consider her two minor children to be too young to testify.

17. The Panel determined that it would accept the 14 year old child as a witness for the Appellants, time permitting, and only if there was evidence that had not been presented by the Appellants and their other three adult witnesses. The child's evidence would need to be specific to the issues of whether the Animals were in distress at the time of seizure and whether the Animals should be returned to the Appellants.
18. Ms. Krug ultimately decided not to call her 14 year old child as a witness after the three adult witnesses for the Appellants completed their evidence.

Mr. Krug as Witness for the Appellants

19. The Society requested clarification of whether Mr. Krug would be testifying for the Appellants.
20. Ms. Krug explained that Mr. Krug was not available to testify since he was taking care of the children in the home that were being homeschooled.

Admissibility of Map

21. At 6:33pm on January 22, 2024, the Appellants emailed BCFIRB and the Society a hand-drawn map depicting the layout of the Property and the interior rooms of the dwelling, and requested the map to be included as an exhibit in the record of this appeal.
22. The Panel allowed the parties to make submissions at the outset of the hearing on the acceptance of the map as an exhibit.
23. The Society objected to including the map, which was not drawn to scale, if the purpose was to prove that someone should have seen something from somewhere on the Property. The Society further explained that they did not have an opportunity to properly review the map since the Appellants only provided it to the Society the night before the hearing.
24. The Appellant responded that she wasn't sure if the map was needed but that it might be used as a visual aid when she gave her evidence and when she asked questions of the witnesses.
25. The Panel determined to not accept the map as an exhibit in this appeal as it was submitted late and was a poor, and possibly confusing, representation of the Property. The Panel directed the Appellant to provide verbal descriptions of the layout of the Property and dwelling if relevant to the Appellant's testimony or when questioning witnesses.

### Admissibility of Video

26. On January 4, 2024, the Society emailed submissions in electronic format to BCFIRB and to the Appellants that included a video showing Mr. Krug throwing one of the Appellants' dogs over a fence on the Property. The video was recorded by a neighbour's security camera on November 18, 2023. The video had been authenticated by the Society and Mr. Krug had been positively identified by the complainant and a Society officer.
27. The Appellants claimed that they were unable to open and view the video.
28. The Panel allowed the parties to make submissions at the outset of the hearing on the admissibility of the video as an exhibit in this appeal.
29. The Society claimed that they did not receive any indication from the Appellants that they were having difficulty opening and viewing the video file until the Society received a written submission from Ms. Krug stating that the video file was corrupt.
30. The Society received confirmation from BCFIRB staff by email on January 15, 2024, that BCFIRB staff were able to view the video.
31. The Society stated that they followed up with the Appellants by email on January 15 and then again on January 17, 2024, to assist the Appellants to open the video file.
32. The Society further explained that the video of the incident was a critical piece of the Society's evidence and, despite the Society's efforts to assist the Appellants to open and view the video, the Society did not receive any response from the Appellants to the Society's January 15 or January 17 emails to the Appellants prior to the hearing.
33. The Panel accepted the video as an exhibit. The video included relevant evidence of animal abuse and was the triggering event that resulted in the Society's seizure of the Animals. The Appellants had ample opportunity from the date they received the video from the Society on January 4, 2024 to obtain assistance and find a means to view the video prior to the hearing.

### Identification of the Dogs

34. The Panel requested clarification on the identification of the Animals, who are all small Bichon-Frise mixed breed dogs.
35. The Animals were identified as follows:
  - Jericho is the older female dog known as Dog #1 in the Society's files and # 583646 in Shelter Buddy and the veterinarian's reports, respectively.
  - Mokka is the young male dog known as Dog #2 and # 583647.

- Dolly is young female dog known as Dog #3 and # 583648.

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

36. Except as otherwise set out above, the Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1-13.
37. Ms. Krug stated that she received the Society's submissions by email but was unable to review all of the documents using her electronic device (cell phone) prior to the hearing. Ms. Krug stated that she had not received hard copies of the documents.
38. The Society stated that Ms. Krug never informed the Society that she wasn't able to access the documents prior to the hearing, except for the video.
39. Pursuant to Part III, Rule 4(5) of the *Rules of Practice and Procedure for Appeals under the Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372* (the Rules of Practice) the Society is obliged to provide disclosure of the documents and bylaws on which it intends to rely at the Appeal as follows:

The Society must provide BCFIRB with every bylaw and document in relation to the matter under appeal (the record) and a list of witnesses. The Society must provide the record and list of witnesses to the appellant at the same time it is given to BCFIRB unless the Society applies for a non-disclosure order under s. 42 of the ATA.
40. BCFIRB's Practice Directive issued May 8, 2020 titled "*Appeals Under the PCAA – Document Disclosure*" (the Practice Directive) further provides as follows:
  1. Given the time constraints associated with the hearing of an appeal under the PCAA, and the volume of documents that may be disclosed, where the Society for Prevention to Cruelty to Animals (Society) makes its initial disclosure to BCFIRB and the Appellant, the Society may disclose these documents electronically in one of the following approved methods of disclosure:
    - a) Documents or pages in PDF, JPG (or equivalent) format, consecutively numbered and attached to an email; or,
    - b) Documents or pages in PDF, JPG (or equivalent) format, consecutively numbered and downloaded on a USB stick or computer disc and delivered by hand, mail or courier.
    - c) Documents transferred to BCFIRB via the browser-based file transfer system, SOFT (Simple Obfuscated File Transfer). This method of transfer is only available for the transfer of documents between the Government and the public. Files can be zipped together or transferred individually, but the file size cannot exceed 2GB per transfer.
  2. In addition to the initial electronic disclosure, the Society must provide the appellant with complete sets of hard copy documents for each disclosure made, delivered by hand, mail, or courier.(emphasis added)

41. In this appeal, the Society provided the Appellants with their document disclosure electronically and in accordance with the Rules of Practice and Procedure but did not comply with the additional requirement under BCFIRB's Document Disclosure Practice Directive to provide the Appellants with hard copies of their materials.
42. Rule 17 of the Rules of Practice and Procedure contemplates instances in which a party has failed to comply with the Rules of Practice and Procedure or a Practice Directive. Rule 17 grants the Panel the ability to assess the reasons for the non-compliance and determine the effect that the non-compliance has had or will have on the conduct of the appeal.
43. The Appellants did not inform BCFIRB staff of their difficulties in accessing the materials sent to them electronically by the Society prior to the hearing. The Appellants did not raise the issue as a preliminary matter and in fact did not object to the Society's disclosure being included in the appeal record. Ms. Krug simply noted that they had not been able to access some of the documents that had been provided on her phone. There was no suggestion that the disclosure had not been provided and no explanation as to why the Appellants hadn't attempted to review the disclosure on some other device.
44. While the Panel appreciates that the Appellants are self represented, their inability to access and review the Society's disclosure is a matter that could have been addressed prior to the hearing. The appeal is the Appellants' opportunity to seek relief from BCFIRB with respect to the Animals and it is incumbent on them to be proactive in ensuring that they have everything that they need to effectively make their case.
45. However, the Panel also notes that the Rules of Practice and Procedure and the Practice Directive are clear with respect to the Society's disclosure obligations and the Society has complied with those obligations as a matter of course in previous appeals. No excuse was given as to why hard copies of the Society's disclosure materials were not provided to the Appellants in this instance. While the obligation to provide both electronic copies and hard copies may seem onerous, the Practice Directive was made exactly for the purpose of addressing instances like those that occurred in this appeal. Rule 17 also allows the Panel to consider any non-compliance with the rules or a practice directive when making an order for costs, and the Panel in this case has taken that opportunity as set out in the Costs section below.
46. The Panel accepted Exhibits 1 – 13 in the record of this appeal.

## **E. History Leading to Seizure of the Animals and the Day of Surrender**

47. The following background information was provided in the disclosure materials provided by the Society and confirmed in detail by SPC Wiltse in her oral evidence given at the hearing.
48. The Appellants and their children reside with the Animals at the Property. The Appellants have resided at the Property for over 15 years.
49. The Society has a lengthy history of complaints involving the Appellants beginning in 2008, which generated 24 separate files and resulted in several attendances by Society officers. The concerns reported were for dogs and cats with inadequate shelter, lack of adequate food, insufficient grooming, untreated medical issues, and harsh discipline and treatment by the adults and children in the home. Many of the complaints from various sources were found to be valid and multiple BCSPCA Notices of Distress were issued with minimal compliance by the Appellants.
50. On November 10, 2023, the Society's Animal Helpline received a complaint concerning three small breed dogs that were matted, dirty, and underweight, and an adult German Shepherd that appeared to walk oddly as though it had medical issues with its back and hips. The German Shepherd was tethered outdoors all day at the Property. BCSPCA Animal Protection Officers were unable to attend at the time of the complaint as they were prioritizing more urgent calls.
51. On November 19, 2023, the Society's Animal Helpline received a complaint regarding one of the Appellants' small breed dogs that was on the street and was picked up by the neck and carried into the house. The complaint included that the dog appeared to be screaming in pain.
52. On November 20, 2023, the Society's Animal Helpline received a complaint that Mr. Krug had picked up a small dog by the scruff of its neck and thrown it over the fence into the Appellants' yard, like a football.
53. On November 20, 2023, SPC Wiltse visited the Property and spoke to Ms. Krug about the serious concern for the small breed dog being handled very harshly by Mr. Krug. Mr. Krug was not at home at the time to speak with SPC Wiltse about the incident. Ms. Krug denied that the dog was thrown and said she was unable to show the dog to SPC Wiltse since her children had taken the dog for a walk but that she would send photos later.
54. SPC Wiltse told Ms. Krug there were complaints about four dogs (three small breed dogs and one large dog) at the Property that were underweight and needed grooming, and that the German Shepherd was tethered outside all day with no shelter. SPC Wiltse viewed the German Shepherd, called "Siska", and determined the dog appeared in good body condition and that a shelter was visible, but also noted that the dog was tethered to a choke collar. SPC Wiltse informed Ms. Krug



that tethering with a choke collar was extremely dangerous as it posed a risk of strangulation. SPC Wiltse issued a notice to Ms. Krug to cease tethering Siska with a choke collar and to cease harsh and inhumane treatment, including any harsh discipline, handling techniques or other physical abuse of the Appellants' dogs.

55. On November 21, 2023, Ms. Krug texted photos of two small breed dogs to SPC Wiltse and stated that the matting had been shaved from the dogs. She further stated that the dogs were not underweight and that the yard had a six-foot fence so Siska couldn't get tangled or hung up in any way.
56. On November 22, 2023, the Society Animal Helpline received a video from a complainant which depicted animal abuse at the Property. SPC Wiltse reviewed the video of a small dog on the road in front of the Property. A man approached the dog and the dog initially ran away. The dog returned and the man then grabbed the dog by the scruff, lifted it off the ground, and threw the dog over the fence into the yard. The dog vocalized in pain upon impact with the ground. The video was recorded on November 18, 2023, by the complainant's security camera and the complainant identified the man in the video to be Mr. Krug. SPC Wiltse also recognized and identified Mr. Krug, having met Mr. Krug previously when attending the Property.
57. SPC Wiltse reviewed the photos of the two dogs provided by Ms. Krug on November 21, 2023 and noted the dog involved in the November 18, 2023 incident depicted in the video was not in the photos.
58. On November 23, 2023, SPC Wiltse executed a search warrant at the Property. In attendance were SPC Wiltse, SPC Steeves and four RCMP officers. SPC Wiltse presented the search warrant to Mr. and Ms. Krug, and advised them that new video evidence had been received that showed Mr. Krug violently throwing a small dog over the front fence and the dog vocalizing in pain. She further explained that she was extremely concerned for the wellbeing of all of the animals on the Property.
59. When SPC Wiltse, SPC Steeves and the RCMP officers entered the house, SPC Wiltse and SPC Steeves examined two small dogs and found them to be friendly, bright and alert but both appeared to be underweight with low body condition scores (BCS) and had dirty, poorly groomed coats. SPC Wiltse asked to see the dog from the video, possibly named Jericho, but Ms. Krug said they no longer had that dog, that it had been rehomed, and that she didn't have contact information for the new owner.
60. SPC Wiltse cautioned Ms. Krug about obstructing the investigation by intentionally misleading officers and repeated her concern that the dog could be injured and needed to be examined. Ms. Krug continued to deny there was a fourth dog.

61. SPC Wiltse then saw the German Shepherd, Siska, tethered to a line in the back yard and a teenage girl holding the leash of a small dog with tan and white patches, whom SPC Wiltse asked to see. The girl allowed SPC Wiltse to see the dog but would not provide the dog's name.
62. Upon examining the dog, SPC Wiltse found that it cowered at her touch and appeared to be in pain around its lower back, tail and back legs. SPC Wiltse made note of the dog's approximate age, low BCS, overgrown nails, dirty coat, and that it was possibly in heat due to an enlarged and bleeding vulva. The dog was wearing a shock collar and had ears that were dirty and greasy with an odorous oily substance.
63. SPC Wiltse also observed that Siska, the German Shepherd, was on a leash and a choke collar and was attached to a line which ran the length of the back yard. The dog was acting aggressively so SPC Wiltse was unable to do a physical examination but observed that the dog was at risk of getting hurt or tangled in the debris, tools and other items in the back yard. The dog had a small wooden uninsulated doghouse with a blanket inside. A water bowl and food bowl were available. The ground of the backyard was bare dirt and mud with an accumulation of feces.
64. SPC Wiltse determined that the three small dogs were in distress and shared with the Krugs several concerns for the dogs' welfare with the most concerning being the risk of abuse. SPC Wiltse seized the three small dogs and stated to the Krugs that she would have taken Siska but that the dog was acting too aggressively to remove safely. SPC Wiltse provided a nylon collar to replace the choke collar on Siska which Mr. Krug placed on Siska. He then moved the dog to the front yard.
65. Before SPC Wiltse exited the Property, she asked Mr. Krug if he would like to provide a statement regarding the incident depicted in the video where he threw the dog over the fence and he stated "no".

#### **E. Review Decision**

66. On December 21, 2023, Ms. Moriarty issued her review decision in which she outlined her reasons for not returning the Animals to the Appellants (the "Review Decision"). She reviewed:
  - File #371810 Inspection Follow-up Details (IFD) – November 23, 2023
  - Information to Obtain Warrant (ITO) and Attachments – November 23, 2023
  - DVM Broschak Veterinary Report – November 24, 2023
  - Current Status List of the Dogs – November 29, 2023
  - Various email submissions from the Appellants
67. Ms. Moriarty was satisfied, based on the evidence, that SPC Wiltse reasonably formed the opinion that the Animals were in distress, in accordance with the

*PCAA*, and that her action to take custody of the Animals to relieve the Animals of distress was appropriate.

68. Ms. Moriarty further considered whether the Animals should be returned to the Appellants. Ms. Moriarty noted that the Appellants never admitted any wrongdoing despite the fact that the Society's officers had video evidence and the veterinarian found that the dog shown in the video was injured as a result of being thrown. She noted that all of the dogs were found to be underweight and unkempt, and that the Appellants continued to defend the use of scruffing, shock collars and tethering with a choke collar. Ms. Moriarty further noted the efforts of the Society's officers that had attended the Property over the years to improve the Appellants' treatment of their animals.
69. Ms. Moriarty concluded that despite those efforts, the Appellants continued to fail to properly care for their animals and relieve their distress and that as a result she could not order the return of the Animals to their care.

## **F. Key Facts and Evidence**

70. 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 Appellants' care. Below is a summary of the relevant facts and evidence based on the parties' written submissions and evidence presented during the hearing. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

### Appellant Testimony

#### Kimberley Krug

71. Ms. Krug is a homemaker and mother of eight children. She homeschools the five children that live on the Property, ages 8, 10, 12, 14 and 19 years old. Ms. Krug generates a modest income sewing diapers and rehoming puppies from Jericho's litter. Mr. Krug is a welder but is currently at home recovering from injuries and is not working. The Appellants and their five children all participate in taking care of the Animals.
72. Ms. Krug stated that she deeply enjoys her job as a homemaker and caring for her puppies. She further stated that she tries to use natural products and methods as much as possible.
73. Ms. Krug stated that she bred Jericho to have puppies as a home school event for her children. Jericho's puppies were born on April 14, 2023 and all were adopted except for Dolly. The Krugs acquired Mokka in August of 2023 since they wanted a male dog.

74. At the time of seizure, Jericho was 2 years old, Dolly was 7 months old, and Mokka was 6 months old.
75. Ms. Krug claimed that one particular neighbour has been generating allegations about her family for many years resulting in multiple visits from the Society and municipal bylaw officers. Ms. Krug described remedies she undertook in response to some of the complaints including putting a shock collar on Jericho to prevent complaints about barking, and tethering Siska on a leash in response to complaints about the dog being at large. Ms. Krug further stated that these remedies often resulted in further complaints to the Society for animal cruelty.
76. Ms. Krug stated that she personally grooms the dogs with her oldest daughter's help. They had groomed Dolly and Mokka two weeks before the seizure, and had groomed Jericho on November 19, 2023, the day after the alleged incident was captured on video. Ms. Krug claimed that Jericho did not exhibit any pain during the grooming and that her daughter walked Jericho afterwards with no signs of pain.
77. Ms. Krug also stated that she was treating the infection in Jericho's ears using essential oils recommended by several sources including a natural veterinarian from "naturalpetdoctor.com". Ms. Krug did not have any records from the on-line appointment that she claimed she attended with the natural veterinarian.
78. Ms. Krug further explained that she was checking Jericho's ears daily and that she was seeing improvement in the condition of Jericho's ears after four to five days of treatment but was unable to complete the 10 day treatment cycle before Jericho was seized by the Society. Ms. Krug stated that she would have taken Jericho to the veterinarian if Jericho's ears did not improve after the 10 day treatment with essential oils.
79. Ms. Krug stated that she did not believe that the Animals were underweight and stated that the Animals had full access to their food. Ms. Krug further explained that she was told by a veterinarian that it would take Jericho a year to return to her normal weight after having puppies. Ms. Krug also stated that since Dolly and Mokka were a few months younger than recorded in the Society's files, they did not meet the Society's expected weights.
80. Ms. Krug believed that she was doing everything possible to ensure a healthy weight for the Animals.
81. Ms. Krug stated that she did not have veterinarian records of the Animals indicating body condition scores (BCS) and that she was basing her assessment of her dogs' body conditions on their weights.

82. Ms. Krug stated that she didn't know that there was anything wrong with picking up a small dog by its scruff since that is how mother dogs carry their puppies. She never intended to harm the Animals and only picked them up by their scruff to keep them out of danger such as removing a dog from on-coming traffic if the dog was on the street.
83. Ms. Krug stated that she had no plans to neuter Mokka but might consider it when he was older and that she had no plans to spay Jericho. Ms. Krug further stated that she will not spay Dolly since she was planning to rehome the dog and that it was the new owner's decision.
84. When questioned about separating the male dog Mokka from the female dogs, Ms. Krug stated that it wasn't an issue since Mokka was too young and not ready to breed, in addition to being smaller than the female dogs making it logistically harder to breed with the females.
85. When cross examined about the video which showed Mr. Krug picking up Jericho by the scruff and throwing the dog over the fence, Ms. Krug doubted the incident had happened since Jericho had not exhibited any signs of pain in the days after the alleged incident. Ms. Krug further explained that Mr. Krug did not say anything to her about throwing Jericho over the fence or Jericho being injured, so she had no concerns about Jericho being in pain or needing veterinary care.
86. Ms. Krug stated that she did ask Mr. Krug about the incident after the Animals were seized and Mr. Krug responded saying that he had already spoken to SPC Wiltse and would get a lawyer if needed but would not speak further about the incident with Ms. Krug. Ms. Krug further stated that she and Mr. Krug have not had further conversations about the incident.
87. Ms. Krug stated that she had not viewed the video of Mr. Krug throwing Jericho but that it was not in Mr. Krug's character to do such a thing, and the injuries on Mr. Krug's right side would have made it difficult for him to throw the dog in the manner described. Ms. Krug further stated that it's very difficult for her to believe that Mr. Krug would do such a thing since he knows better than to throw a dog over a fence.
88. Ms. Krug stated that she did not believe that the Animals were in distress at time of seizure. She further stated that SPC Wiltse recorded in her notes at the time of seizure that the dogs were happy, bright and alert.
89. When asked about the Appellants' plan for the return of the Animals, Ms. Krug stated she would watch over the Animals all of the time, take them out for walks herself, and wouldn't let anyone else walk them. Ms. Krug also stated that she would follow the Society's directives not to hold the Animals by their scruff, not to use a shock collar, and not to use a choke collar when tethering.

90. Ms. Krug stated that they had fixed fences, gates, and areas around the yard to prevent the Animals from escaping from the Property and being at large.
91. Ms. Krug further stated that she will take the Animals to a veterinarian for a second opinion on their weight since she seriously disagreed with the Society's finding that the Animals were underweight. Ms. Krug stated that she will use prescription medicines as treatment for the dogs unless her veterinarian writes a report stating that they are not in opposition to the use of essential oils.

#### Appellant Witnesses

##### J.D.

92. J.D. was not present at the Property on November 23, 2023 and therefore could not provide any evidence with respect to the seizure of the Animals on that day.
93. J.D. is the Appellants' son and has not lived with his parents for approximately 11 years.
94. He stated that when he visited his parents in October of 2023 at Thanksgiving and in mid-November 2023, the Animals were acting normally. The Animals were friendly and welcoming, wagging their tails and seeking attention. They did not cower or act fearfully. The Animals wanted to be close to him and to be petted.

##### B.C.

95. B.C. was not present at the Property on November 23, 2023 and therefore could not provide any evidence with respect to the seizure of the Animals that day.
96. B.C. is Ms. Krug's mother. She stated that Ms. Krug takes very good care of the Animals and seeks veterinary care when needed. B.C. further stated that she has never witnessed anybody in the household being harsh or cruel with any of the Animals.
97. When asked about the last time she saw the Animals, B.C. checked her calendar and stated that it was at Christmas of 2023, however the Animals were seized on November 23, 2023 which suggested that there was some confusion in her evidence.

E.K.

98. E.K. is the Appellants' 19 year old daughter. She lives at the Property and was present on the day of the seizure of the Animals.
99. E.K. stated that she was not hiding Jericho in the back yard when the Society and RCMP officers arrived to seize the Animals, nor was she told by her parents to hide Jericho. E.K. explained that she was visiting with a friend at the back gate with Jericho on a leash before the Society and RCMP officers arrived.
100. When E.K. was questioned about being barefoot in the back yard with Jericho, she explained that she was on a health journey and was "earthing" which is the practice of walking around barefoot. E.K. further explained that she had been "earthing" for close to two years.
101. E.K. stated that she and her mother do a good job when they groom and trim the dogs' nails together. E.K. further stated that she and her mother groomed Dolly and Mokka on November 2, 2023, and that they groomed Jericho on November 19, 2023. E.K. claimed that Jericho did not exhibit any pain during the grooming or when she took him for walks.

Society Witnesses:

SPC Jamie Wiltse

102. SPC Wiltse's investigation began when the Society received three separate complaints from different sources in November of 2023 regarding the treatment of animals on the Property (as set out in Part E above).
103. On November 20, 2023, SPC Wiltse visited the Property and spoke to Ms. Krug about the serious concern for the small breed dog that was picked up by its scruff and thrown over the fence by Mr. Krug. Mr. Krug was not at home at the time to speak with SPC Wiltse about the incident.
104. SPC Wiltse testified that Ms. Krug denied that the dog had been thrown but had stated that it was acceptable to pick a dog up by its scruff since it was natural and mother dogs do it to their pups. SPC Wiltse explained that it was not safe to pick up dogs by the scruff as the dogs get heavier and that scruffing could cause pain and injury to the dogs.
105. Before leaving the Property on November 20, 2023, SPC Wiltse issued a Notice to Ms. Krug to cease tethering their dog with a choke collar and to cease harsh and inhumane treatment including any harsh discipline, handling techniques or other physical abuse of the Animals.

106. SPC Wiltse testified that she had investigated previous complaints at the Property regarding tethering and had cautioned Mr. Krug and Ms. Krug several times before about the risks of tethering and using a choke collar on their dog.
107. On November 22, 2023, the Society Animal Helpline received a video of animal abuse that was recorded on November 18, 2023 by a neighbour's security camera. The complainant identified the man in the video to be Mr. Krug. SPC Wiltse reviewed the video and noted the following:
- A man, who SPC Wiltse recognized as Mr. Krug, exited the side door of the residence on the Property with a flashlight in his left hand, walked into the front street and approached a small dog.
  - The small dog came towards Mr. Krug, then cowered and ran off in the other direction.
  - The dog slowly came back towards Mr. Krug, cowering.
  - Mr. Krug walked over and grabbed the dog by the scruff with his right hand and threw the dog in a side throw over his head and over the fence in the front yard. The dog is heard vocalizing in pain when it hit the ground.
  - Mr. Krug then casually walked away towards the residence.
108. On November 23, 2023, the Society executed a search warrant at the Property. In attendance were SPC Wiltse, SPC Steeves and four RCMP officers. SPC Wiltse presented the search warrant and read a charter warning to Mr. and Ms. Krug at the door of the home, and stated that new video evidence had been received that showed Mr. Krug violently throwing a small dog over the front fence and the dog vocalizing in pain. SPC Wiltse further stated that she was extremely concerned for the wellbeing of the animals in the home based on the video evidence and was also concerned that the dog in the video could be injured. When SPC Wiltse asked Mr. Krug if he had anything to say about the incident, he replied "no" and then told Ms. Krug to not say anything.
109. SPC Wiltse determined the dogs were in distress and explained to the Krug family that there were several concerns for the dogs' welfare but the most concerning was the risk for abuse of the dogs. SPC Wiltse seized the three small dogs and stated to the Krugs that she would have taken Siska as well, but the German Shepherd was acting too aggressively to be removed safely.
110. SPC Wiltse issued a Notice to the Appellants to immediately cease tethering Siska using a choke collar, to ensure that Siska had adequate shelter for the winter, to ensure the shelter, water and food containers were cleaned and sanitized, and to ensure that feces were picked up daily from the tethered area.
111. SPC Wiltse stated that the Society had received complaints from several different sources over the years. The complaints included concerns that the Appellants' children were abusing their pets. SPC Wiltse further stated that she and other Society officers had made dedicated efforts to collaborate and work with the Appellants through verbal and written recommendations and education and had



observed only minimal compliance by the Appellants.

Dr. Megan Broschak (DVM)

112. Dr. Broschak testified that she has been practicing veterinary medicine in Kamloops since 2015 as a small animal veterinarian and is also trained to interpret and understand animal behavior. The Panel accepted Dr. Broschak as an expert witness qualified to give opinion evidence on matters of veterinary medicine.
113. Dr. Broschak examined the Animals shortly after being seized from the Property on November 23, 2023. All of the Animals were underweight with body condition scores of 3/9 (ideal BCS is between 4 and 5), and had dirty coats and mildly overgrown nails. The two females, Jericho and Dolly, appeared to be in heat.
114. Dr. Broschak's examinations also revealed the following findings on each dog:
  - Dog #1 Jericho
    - Jericho was nervous and timid, displaying submissive behaviours. She was wearing a shock collar which was removed immediately since it was tight and such collars have been known to cause dogs anxiety and stress.
    - Jericho's ears had a yeast infection; the ear canals were red and inflamed most likely from the owner's essential oil treatment.
    - Jericho was very painful on palpation of her lumbosacral spine and pelvis. Suspected soft tissue trauma was the cause of her pain since no obvious fractures were revealed on X-rays. Jericho was mildly constipated most likely due to the pain around her spine and pelvis preventing her from posturing normally to defecate.
    - Jericho was treated for the yeast infection in both ears with clotrimazole 2x per day for 7 days and with Metacam for the pain for 4 days.
    - After viewing the video of Mr. Krug throwing Jericho over the fence, Dr. Broschak stated that Jericho could have sustained serious fractures, broken teeth, internal bleeding and even death from the violent act.
  - Dog #2 Mokka
    - Mokka was nervous and timid, but interactive. His retained baby teeth were already causing tartar and gingivitis. There was a moderate amount of inflammation and debris around his penis and prepuce.
    - Mokka was painful on thoracolumbar palpation most likely due to soft tissue trauma. No fractures were noted on X-rays. Mokka was treated with Metacam for pain for 4 days.

- Dog # 3
    - Dolly was a little nervous, but curious and interactive, probably due to her young age. No pain was noted on palpation.
115. Dr. Broschak recommended that the Animals should be spayed or neutered to decrease the chances of pregnancies and of future illnesses, especially in Mokka's case, as a cryptorchid male, since he's at risk of developing testicular cancer if left untreated. Mokka is also unfit to breed since he could pass on unfavourable genetic traits such as retained deciduous teeth and cryptorchidism, and for these reasons he should be neutered as soon as possible.
116. Dr. Broschak stated that using essential oils or other home remedies to treat ear infections is not recommended since it can cause further damage and harm to ears, and possibly ototoxicity.
117. When asked whether it was possible to groom an injured dog and not elicit a pain response, Dr. Broschak responded that it was possible if the grooming was simply brushing the dog's hair. Dr. Broschak further explained that an abused dog might be hesitant to show normal behaviour such as indicating pain.
118. Ms. Krug challenged many of Dr. Broschak's findings and recommendations including the weight of the Animals, the use of body condition scores, the use of pain medication for two of the Animals, the use of prescription medications versus natural remedies, scruffing, the use of shock collars for training, and the spaying and neutering of young dogs.

## **G. Analysis and Decision**

119. 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.

120. 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.

121. We have also proceeded on the basis that the Appellants have an onus to show that the remedy they seek (return of the Animals) is justified. The first issue to consider is whether the Animals were in distress at the time of the seizure. Depending on the answer to that question, the next issue is to decide whether to return the Animals or whether doing so would return the Animals to a situation of distress.

122. The issue of distress was addressed by the panel in *Bagga v. BCSPCA*, February 5, 2019 at paragraph 104:

In considering the issue of distress, the panel starts with the proposition that the definition of distress is broad and the society does not have to establish an actual deprivation or harm to an animal before determining the animal is in distress. A medical finding that an animal is injured or in pain is not required in order to conclude that an animal is in distress. Instead, an animal can be found to be in distress when an animal 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. 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 *PCAA* provides that they can be protected

123. The Panel is satisfied that the Animals were in distress at the time of seizure, as defined by Section 1 (2) of the *PCAA*.

124. The Panel finds that the video evidence of animal abuse submitted by the Society justifiably triggered the seizure of the Animals on November 23, 2023 to remove them from a situation of distress. The physical examination of the dog, Jericho, seen abused in the video clearly revealed that Jericho was injured and in pain, most likely caused by being scruffed and violently thrown by Mr. Krug on November 18, 2023. As stated by both SPC Wiltse and Dr. Broschak, Jericho could have sustained much more serious injuries, including fatal injuries, from being thrown in the manner depicted in the video. Removing the other two small dogs, Dolly and Mokka, as a protective and preventative measure to alleviate the risk of further abuse, was clearly appropriate in the circumstances.

125. The Panel's finding of distress is further supported by the veterinary evidence provided by Dr. Broschak in her written report and verbal testimony. Dr. Broschak's findings that two of the seized dogs, Jericho and Mokka, displayed signs of pain most likely caused by soft tissue injury, and Jericho's nervous and submissive behaviour clearly indicated past physical abuse. Furthermore, the shock collar found on Jericho is known to heighten a dog's level of anxiety and stress and is neither effective nor recommended as a training device.
126. The Animals also showed a lack of veterinary care and general neglect. The Animals were intact and the females were in heat, while being kept with the male who was not appropriate for breeding. The mistreatment of Jericho's ear infection with natural remedies exacerbated her suffering. The Animals were underweight and had low body condition scores. The Animals' dirty coats and inadequate grooming, while not as concerning as the other issues raised, increased the Animals' discomfort and could have resulted in skin infections. Underweight and unkempt dogs were on-going problems that led to continual complaints against the Appellants to the Society.

### **Return of the Animals**

127. Mr. Krug's conduct in throwing Jericho over the fence was as clear of an instance of animal abuse as could be imagined. The abuse was flagrant and egregious. However, the Appellants' apparent lack of interest in reviewing and responding to the video evidence indicated to the Panel that the Appellants did not accept any responsibility for that incident and their conduct generally, and were not taking the matter seriously.
128. Furthermore, the Panel found that Mr. Krug's violent act towards Jericho was not an isolated incident, but most likely represented one of many such incidents of abuse towards the Animals, as indicated by Jericho's submissive and fearful demeanor which was displayed in the video and further documented by Dr. Broschak in her post-seizure examination.
129. The Appellants have avoided taking responsibility for any wrongdoing and for causing distress to the Animals. All of the Animals are vulnerable, especially due to their small size, to having pain or injury caused by careless or rough handling, including scruffing. The Panel finds, based in part on the Appellants' refusal to accept and acknowledge the prior abuse inflicted on the Animals, that none of the Animals would be safe from harm in the Appellants' home.
130. The Panel does not consider Ms. Krug's stated commitment of constant vigilance whereby she would watch the Animals, walk the Animals and do everything for them in order to keep them safe, as a realistic plan for return of the Animals. All members of the Appellants' family that reside at the Property will interact with and thereby be involved with the Animals' care and in order to return the Animals the Panel would need to be confident that those interactions would be safe.

131. In addition, Ms. Krug’s insistence that the Animals were never in distress despite veterinary evidence to the contrary indicates a clear lack of understanding and acceptance. As a result, the Panel does not have confidence that anything will change should the Animals be returned to the Appellants.
132. The Panel finds that returning the Animals to the Appellants’ care would put the Animals back into a situation that would cause distress, including risk of significant injury. As such, the Panel orders that the Animals will remain in the care of the Society as set out further in the detail below.

## H. Costs

133. 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.

134. 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)”.

135. The Society is seeking costs as follows:

(a) Veterinary costs:	\$918.39
(b) SPCA time attending to seizure:	\$164.34
(c) Housing, feeding and caring for the Animals:	<u>\$3955.80</u>
(d) Total:	\$5038.53

136. As noted at Part D above, Rule 17 of the *Rules of Practice and Procedure for Appeals under the Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372* includes at Rule 17(4):

Where BCFIRB finds non-compliance with the Rules, it may consider that non-compliance in making any further orders it has the authority to make under the

PCAA, NPMA, the ATA or at common law. This includes but is not limited to the power to make awards for costs.

137. The Society did not provide hard copies of its disclosure to the Appellants. That failure complicated the hearing process and jeopardized the Appellants' right to appeal. Any prejudice could have reasonably been mitigated by the Appellants as the materials had been delivered electronically well before the hearing, and the Panel accepted the Society's disclosure materials into evidence, however the fact remains that the Society failed to meet a basic procedural obligation that it has otherwise met in other appeals.
138. In all of the circumstances, the Panel finds that the Society should not be entitled to its costs in this appeal.

**I. Order**

139. 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 hope that the Animals will be adopted unless circumstances preclude that possibility.
140. The Panel further orders, pursuant to s. 20.6(c) of the *PCAA*, that the costs claimed by the Society are varied such that no amount is payable by the Appellants.

Dated at Victoria, British Columbia this 6<sup>th</sup> day of February 2024.

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**  
**Per:**



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Gunta Vitins, Presiding Member