

IN THE MATTER OF THE *PREVENTION OF CRUELTY TO ANIMALS ACT*,
R.S.B.C. 1996, c. 372
ON APPEAL FROM A REVIEW DECISION OF THE BC SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS CONCERNING
THE SEIZURE OF TWO DOGS

BETWEEN:

MICKY ZHANG

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Wendy Holm, Presiding Member

For the Appellant:

Micky Zhang
Zena Zuo

For the Respondent:

Andrea Greenwood, Counsel

Interpreter Services

MCIS Language Solutions
Mandarin Interpreter, Vincent Ho

Date of Hearing:

April 18, 2024

Location of Hearing:

Zoom Video Conference

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 two dogs, Cooper and Fendi (the Animals) from the Appellant, Micky Zhang at her residence located in Vancouver, BC (the Property).
2. The Appellant is appealing the March 15, 2024, 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 Appellant in this case is seeking the return of the Animals.
4. On April 18, 2024, a BCFIRB hearing panel (the Panel) held a hearing via Zoom videoconference. The hearing was recorded.
5. The Appellant was not represented by counsel. The Appellant was supported at the hearing by a friend, Zena Zuo. The Appellant gave evidence on her own behalf and called two witnesses, A.W. and L.Z.
6. The Society was represented by counsel and called two witnesses, Special Provincial Constable (SPC) Felix Cheung and M.H.

B. Administrative Matters and Preliminary Issues

7. Prior to the hearing, the Appellant communicated to BCFIRB staff that she lacked the language skills to confidently express herself in English. To ensure the Appellant was able to participate fully in the hearing, a Mandarin Chinese translator (the Translator) was provided by BCFIRB.
8. At the outset of the hearing, the Panel confirmed that the Appellant and the Translator had not previously met. The Panel gave the Appellant and the Translator a brief opportunity to converse in Mandarin to ensure they understood one another. Both confirmed that they had no difficulty communicating.
9. Based on a discussion with the Appellant regarding her ability to participate at the hearing in English, the Panel determined that the hearing's "morning session" (meaning the Appellant's case) except for the testimony of her witnesses would be fully translated and, in the afternoon, when the Society presented its case, the Appellant would listen to the spoken English, request translation when needed,

and respond in Mandarin. The Panel directed all parties to speak slowly, clearly and in simple sentences.

10. The Appellant explained that Ms. Zuo was attending the hearing to provide support, to assist in the process and to take notes. The Appellant confirmed that she personally prepared the initial materials to be submitted for the appeal and Ms. Zuo then translated those materials into English. She confirmed that she had received both electronic and hard copies of the Society's submissions and had read them or had them interpreted for her.

C. Material Admitted on this Appeal

11. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1-20.

D. History Leading to Seizure of the Dogs and the Day of Surrender

12. The Appellant moved into the Property in June 2023 with her three children and three dogs (Mocha, also known as Mochu, a 6-month-old female German Shepherd puppy; Pearl an 18-month-old female Bichon Frieze; and Cooper, a 2 - month-old male Golden Retriever puppy). Mocha and Pearl were allegedly stolen from the Appellant's home in November 2023 and have not been returned. The Appellant acquired a new dog (Fendi) in January 2024.
13. On July 26, 2023, the Society received a complaint from the Appellant's neighbour concerning two dogs that had been barking loudly for several weeks. The dogs were described as a small white dog and a German Shepherd. The dogs were initially kept in enclosures in the Appellant's garage, but they had recently been moved outdoors. The complainant was concerned that the dogs did not appear to have water and did not have shelter from the elements. The complainant provided the Society with photos of crates in the garage used to house the dogs.
14. On July 27, 2023, the Society received a second complaint from a neighbour regarding the German Shepherd (Mocha). The complainant noted that in the four weeks since the family had moved to the Property, multiple neighbours had spoken to the Appellant about the dog's mistreatment. The complainant said the dog was being kept in a 6 by 3-foot cage without bedding, food or water and without any protection from the elements for up to 8 hours. The complainant further noted that in response to the concern expressed by the neighbours, the complainant had taken it upon herself to give the dog water.
15. The complainant told the Society that during rainy weather Mocha had been seen outside, in the cage, soaked and barking wildly. The complainant said she removed the dog from its cage for a few hours on July 26, 2023 while the Appellant was not home to allow it some freedom. The complainant noted that the dog was caged for long periods of time - most recently from 8:30 pm on

July 25, 2023 until 9:30 am on July 26, 2023 - and that she never saw the Appellant, nor her children, remove the dog from the cage.

16. A third complaint was received by the Society on July 27, 2023. The complainant in that instance repeated the assertions in the prior two complaints. The complainant stated that there were three dogs being kept at the Property predominantly in outside kennels and that no water appeared to be available in any of the kennels.
17. On July 30, 2023, SPC Sandra Windover visited the Property, however the Appellant was not home. SPC Windover spoke with "Anderson", an adult male who identified himself as the Appellant's son (in the hearing it was clarified that Anderson was the Appellant's godson visiting for the summer).
18. SPC Windover was allowed to enter the back yard to inspect the Animals. Pearl and Cooper were brought out from inside the house, and both appeared to be in good health. Mocha was initially missing from the property however a neighbour approached the back gate with Mocha on a leash during the visit and advised that Mocha had dug under their shared fence into his yard to play with his dogs. The neighbour said that the family was neglecting Mocha and told Anderson "you have to do better for this dog". When the neighbour left, Anderson told SPC Windover that Pearl and Cooper lived indoors, and that Mocha lived outside in her cage but was walked daily. He could not explain to SPC Windover why Mocha was treated differently from the other dogs.
19. SPC Windover explained to Anderson that keeping dogs in crates for long periods of time was inhumane and that Mocha's housing was unacceptable as it did not protect her from the elements. She also explained that a lack of human contact and enrichment would lead to behaviour changes and possible aggression and that Mocha would continue to escape if not provided with enrichment, contact, and exercise. SPC Windover explained the definition of distress under the *PCAA* and provided Anderson with a copy of the "Five Freedoms of Animal Welfare" in Chinese. SPC Windover told Anderson that she would like to speak directly with the Appellant about ways to improve Mocha's welfare and relieve the dog's distress. Anderson suggested that SPC Windover should return either at noon or 3 pm the following day.
20. SPC Windover visited the home the following day, but the Appellant was not home. The Appellant's 18-year-old son approached her and said his mother had asked him to speak with her because her "English was not good". Since he was a minor, SPC Windover said that she preferred to wait for the Appellant to return home. The Appellant returned around 5 pm and the Appellant's son provided translation support for their conversation.
21. The Appellant confirmed to SPC Windover that Cooper and Pearl lived inside and that, since Windover's visit the previous day, Mocha had been staying indoors.

Mocha was approximately three months old at that time. The Appellant told SPC Windover that Cooper had been adopted by her boyfriend and was going home with him that day.

22. SPC Windover explained to the Appellant that crating outdoors was unacceptable. She told the Appellant that she must provide shade, human contact and shelter that provides protection from the elements. She further explained that if dogs are outside for extended periods of time, they must have access to adequate shelter and water at all times.
23. SPC Windover issued the Appellant violation Notice B14389 and advised that failure to immediately address the cited breaches of the *PCAA* could result in legal action including an application for a search warrant and the removal of the Animals. The notice included the hand-written comment "Do not confine to cage outside. Must have access to doghouse and space if outside. Always have water."
24. SPC Windover explained the notice to the Appellant and informed the Appellant that if the Society received any additional reports or evidence of Mocha or other dogs confined to crates outdoors and in distress, further legal action could include the removal of the Animals. The Appellant's son translated SPC Windover's comments. SPC Windover provided the Appellant with a copy of the Notice. The Appellant said that she understood that the Animals would be indoor dogs, and that a contractor was coming to erect a fence so the dogs could be loose in the yard.
25. On October 20, 2023, the Society received a call from a complainant reporting that since the Society's last visit, Mocha had been moved into the Appellant's garage and was still being kept in a cage. The complainant said the dog was emaciated, with visible ribs and hip bones, and was not being walked or provided with food or water. The complainant said the Appellant kept the dog in the cage at all times during the day, adding that the complainant would walk the dog whenever she was allowed to by the Appellant. The complainant told the Society that she was walking past the Property on October 20, 2023 at 3:00 pm and saw the Appellant's garage side door open. She stated that she could hear Mocha in the cage thrashing around to get out. The complainant noted the Appellant had another dog that was sometimes kept in a cage but was allowed out of the cage to enter the home.
26. On October 22, 2023, the complainant called back to report that she had heard Mocha whining and barking from the garage all morning starting at 9 am. At 1 pm, the complainant entered the dark garage and found Mocha in a cage with feces and without food or water. The complainant took Mocha for a walk and gave her food and water, returning her around 2:30 pm.
27. That same day, SPC Windover and SPC Cheung attempted unsuccessfully to contact the Appellant at her home. They saw no dogs in the rear yard and heard

no sounds coming from the garage. SPC Windover posted a contact Notice to the Appellant to get in touch with the Society within 24 hours.

28. On October 23, 2023, the complainant approached the Appellant asking if she could bring Mocha to her home for a play date with her dog. The Appellant agreed but insisted the complainant not give the dog any water as Mocha had diarrhea. The complainant took Mocha from 1:30 pm until 2:30 pm that day.
29. On October 24, 2023, SPC Cheung attempted unsuccessfully to contact the Appellant and Animal Protection Officer (APO) Sarah Turner interviewed the complainant living adjacent to the Appellant.
30. On the morning of October 25, 2023, SPC Cheung went to the Appellant's home to speak with her, but she was not there. The contact Notice that SPC Windover had left at the Property on October 22, 2023 was gone. SPC Cheung posted another contact Notice, then went around the side of the house to the back, where he heard a "large dog" barking and whining in one of the two garages. He additionally noted that there was a sound akin to "scratching against the side of a metal cage". An elderly couple walking down the laneway stopped and told SPC Cheung that they had heard the dog barking and whining inside the garage all summer.
31. After unsuccessful attempts to contact the Appellant by phone, SPC Cheung called the recent complainant, and they met in the alley. The complainant lived next to the Appellant and had a direct view of the Property from her home. The complainant told SPC Cheung that Mocha had been in the garage since 4 pm the previous day, that the Appellant had returned home at 10:45 pm that evening but had not gone to the garage check on Mocha. The complainant showed SPC Cheung two photos she had taken October 22, 2023 of Mocha in the cage in the garage. Mocha's two bowls were upside down and she had no bedding. The floor of the cage was hard plastic with holes. Both photos had been submitted to the Animal Helpline. SPC Cheung asked the complainant to call him if there were any updates.
32. Just before noon on October 25, 2023, SPC Cheung went back to the Appellant's residence to speak with her however the Appellant had left again moments before SPC Cheung arrived. SPC Cheung could hear Mocha barking in the garage. He placed a second contact Notice on the Appellant's back door.
33. Later that afternoon SPC Cheung returned to the Property and spoke with the Appellant at the front door. Mocha and Pearl were inside. SPC Cheung told the Appellant he was concerned that Mocha was being kept in a crate for long periods of time. The Appellant said she never kept Mocha in a crate in her garage. SPC Cheung asked the Appellant not to lie to him because he had been to the home twice earlier that day and both times he heard a dog barking inside in the garage, adding that many people in the neighborhood had come forward saying that they had heard a dog barking in the garage.

34. SPC Cheung asked the Appellant if she wanted to surrender Mocha. The Appellant said that she did not and asserted that all of the neighbours were lying. The Appellant showed SPC Cheung a photo of her walking Mocha at 10:42 am that morning and claimed that it proved that SPC Cheung was lying. SPC Cheung told the Appellant that she had obviously taken Mocha out between his first visit at 9:46 am and his second visit at 11:10 am, at which point the Appellant became agitated. She said that she was too busy to talk and closed the door.
35. As SPC Cheung was standing on the steps writing up a violation Notice, the Appellant opened the door to leave with Mocha on a leash. SPC Cheung told her that he needed to continue to speak with her about his concerns, otherwise she could face removal of her dog if she continued to violate animal cruelty legislation by keeping the dog confined in a crate in a garage for long periods of time with no access to food or water. The Appellant walked past him, saying her son would call him at 4 pm that day. SPC Cheung again asked her to wait to speak with him and she repeatedly replied “no English”.
36. SPC Cheung completed violation Notice B38288 and left it on the Appellant’s door. The notice cited 9 infractions of the Act and included the comments “Do not keep dog in crate in garage. Ensure water always provided. Ensure daily exercise/walks provided – always”.
37. Neither the Appellant nor her son followed up with SPC Cheung. The Appellant’s neighbors subsequently reported to the Society that Mocha had not been seen on the property since SPC Cheung’s visit.
38. On March 3, 2024, the Society was again contacted by a complainant (M. H.), who told the Society that the Appellant was keeping dogs at the Property in a concrete backyard with no shelter or bedding of any kind. She further noted that the Animals were walked “maybe once a month”, and that they were left outside for up to 22 hours at a time. M.H. stated that she witnessed the Appellant’s daughter kicking one of the dogs (Cooper) a week earlier, and on February 28, 2024 witnessed the Appellant kicking another dog (Fendi) in the head 4 times with force. M.H. stated that the Animals had been digging out from under the fence in the backyard out of frustration and that Cooper was showing repetitive behaviors which were indicative of stress.
39. On March 4, 2024, SPC Cheung called M.H. back for an update on events since her complaint the previous day and was provided with the following observations:
 - March 3, 2024 at 6:05 pm – Both dogs were still huddled outside against the backdoor while it was pouring rain.
 - March 3, 2024 at 6:34pm – A window opened near the dogs and an arm reached out and poured what appeared to be a cup of dog kibble onto the floor outside for the dogs to eat. No further interaction with the dogs was observed.

- March 3, 2024 at 7:20pm – Both dogs were standing outside looking at the backdoor.
 - March 3, 2024 at 8:00pm – Both dogs were still standing by the back door and barking while the rain was still pouring.
 - March 3, 2024 at 10:00pm – Both dogs were still outside standing by the backdoor (photo of the dogs taken as evidence).
 - March 3, 2024 at 10:55pm – Both dogs were still outside and pressed up together against the backdoor.
 - March 4, 2024 at 5:53am – Both dogs were still outside (photo of the dogs taken as evidence).
 - March 4, 2024 at 8:00am – Appellant was seen leaving the house and both dogs were still outside standing by the backdoor.
40. SPC Cheung applied for and received a warrant on March 4, 2024 based on the ongoing neglect of the Animals which was causing them to be in distress. The Animals were seized at the Property that afternoon.

E. Review Decision

41. On March 15, 2024, Ms. Moriarty issued her review decision (the Review Decision) based on her review of the following documents:
- File #375845 Inspection Follow-up Details (IFD) – March 4, 2024
 - Information to Obtain Warrant (ITO) and Signed Search Warrant – March 4, 2024
 - Photos of Property from SPC Cheung – March 4, 2024
 - Photo of Notice of Disposition and Search Warrant – March 4, 2024
 - Current Status List of the Dogs
42. In her Decision, Ms. Moriarty said she was satisfied, based on the evidence, that SPC Cheung reasonably formed the opinion that the Animals were in distress in accordance with the *PCAA*, and that his action to take custody of the Animals to relieve the Animals of distress was appropriate.
43. Ms. Moriarty further decided not to return the Animals to the Appellant based on the Appellant's demonstrated inability or unwillingness to comply with the Society's directions and her obligations as a pet owner under the *PCAA*. Noting that the Appellant's submissions minimized the extent of her neglect and contradicted the Society's evidence, Ms. Moriarty concluded that the return of the Animals would only prolong the Animals' distress.

F. Key Facts and Evidence

44. 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 materials facts and evidence based on the parties' written submissions and evidence presented during the hearing. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

Appellant's Evidence

45. Before the Appellant gave her evidence, her friend Ms. Zuo asked to address the Panel to clarify her role in the proceedings. Ms. Zuo said that she was there to make sure the Appellant understood the process and to ensure that the translation was correct. The Panel directed Ms. Zuo to raise her hand or come on screen during the hearing if she noted any issues.
46. In her notice of appeal, the Appellant states that she is a single mom with 3 kids. She notes that the Animals are like family members and that if they are returned, she will take good care of them. She further states that she will keep them indoors and, if necessary, hire a professional to train and walk them.
47. In her written submissions, the Appellant disagrees that any of her dogs were in distress. She states that she walks her dogs daily, has scars on her knees from walking Mocha, and sometimes takes Cooper along when she volunteers for school crossing duty. She notes that she has many photos on her phone of her walking the dogs and has receipts for their vaccinations and for premium food and toys. She notes that her home is for sale and, at the request of her realtor, the dogs were left outside during showings because they pee and poop in the house (leaving a residual smell in the home) and gnaw on the baseboards. The Appellant notes that the dogs have a "dog door" through which they can freely enter the basement from the yard and that she has "already withdrawn from selling the house" so showings will no longer be a problem. The Appellant further notes "I have numerous photos showing the extent of the damage to the wall corners, evidence that contradicts the notion of distress...". The Appellant states that she needs to "seek help from professionals to train the dog not to bite and to prevent it from peeing and pooping everywhere" and asserts that she did nothing wrong and that the Society is "full of bias and discrimination" and is a waste of taxpayer's money.
48. In her final written submission, the Appellant accuses the Society of "confirmation bias" and "selectively using information to reinforce their preconceived narrative". She alleges that the Society was confrontational and intrusive and questions their "approach to accessing private property". She refutes the statement provided by her neighbor J.M. in the Society's submissions, saying that she too demonstrated

confirmation bias and was motivated by her frustration with the dogs' barking. The Appellant defends the use of a cage for Mocha as a common practice and notes that the cage was also used as a precaution to make apprehensive workers feel secure during renovations. The Appellant concludes her submissions with a "strong request" that the Society, if they consider the use of cages distressing, provide photos of Cooper and Fendi while in the care of the Society to demonstrate their living conditions. "I require the Society to produce photos or videos that show the care and love, as well as the mental comfort, provided to both dogs from March 7 to April 15..."

49. In support of her written submissions, the Appellant submitted numerous photos of Mocha, Cooper and Fendi inside her home, at the vet, at the dog grooming parlour and being walked outside.
50. In her sworn evidence, the Appellant repeated the assertions made in her written submissions. She testified that the Animals were not in distress, that the complaints of the neighbours were "all lies" and that she had been "under surveillance". She reiterated that she was a single mom with three kids and three jobs and was very busy.
51. The Appellant stated that it was her children who wanted the Animals and, although she told her children she did not have time to take good care of the Animals, she relented because she wanted to make them happy. She said the Animals would sometimes come into her home but that they would bark and scream and pee and poop everywhere when "not in good constraint".
52. The Appellant claimed that she tried to walk the Animals herself every day if she was home. She said that the Animals were not allowed in her Rolls Royce, so she bought a Toyota Sienna to transport them. The Appellant stated, "saying I abuse my dogs is totally unfounded" and again claimed that the neighbours were lying. She testified that she prepares the Animals healthy meals, takes them to the vet when ill and generally takes good care of them.
53. The Appellant testified that the events in October of 2023 described by SPC Cheung were "made up" and that it was not true that he heard sounds coming from the garage. The Appellant stated that she had photos to prove she had taken the Animals to the park that morning to play. The Appellant stated that since SPC Cheung could not prove the sounds that he heard were coming from the Animals, he could not provide any solid evidence of abuse. The Appellant said she could not handle the stress of the complaints anymore.
54. The Appellant testified that the Animals were a part of her family and there was no way she would abuse them. She stated that the Animals could freely go out to the back yard from her basement, where they have dog beds and food. She testified that she began caging the Animals when she began home renovations to give

workers peace of mind and that the Animals are “not locked in the cage forever, they come out every so often”.

55. The Appellant testified the only reason the Animals were outside was that she has listed her home for sale and for this reason could not keep the Animals inside. She claimed that the Animals were walked every morning and that she usually does not leave them out over-night. She testified that even after her Property was broken into and her jewelry and pearls and diamonds were stolen, she still got another dog.
56. Under cross examination, the Appellant testified that she came to Canada 16 years ago, is a permanent resident and has owned four dogs in her lifetime – Pearl, Mocha, Cooper and Fendi. When asked by the Society if she had taken steps to familiarize herself with how to care for a dog, the Appellant replied that she had. The Appellant testified that Mocha and Pearl were stolen during a home invasion in November 2023.
57. The Appellant stated that she is the sole owner of a local children’s clothing store, a local nightclub and a children’s clothing factory in Shanghai. The Appellant stated that her home is worth \$5 million and that her car is worth \$800,000, and that she had the financial means to care for the Animals. The Appellant was unable to say how many hours a day that she was away from the home at work. The Appellant purchased the Property in May 2023 and moved in June 2023. She listed the Property for sale in early January 2024 because she felt her privacy had been invaded by voyeuristic neighbours who were constantly spying on her.
58. The Appellant testified the Property was no longer listed for sale and that she would no longer need to leave the Animals outside during viewings. The Appellant said that she had told her realtor verbally that she no longer intended to sell the Property. When asked by the Society why there was still an active listing for the Property, the Appellant replied that she still intended to sell her home and look for a place to move, but also that she had verbally told the realtor she may not sell and/or may use the Property for another purpose.
59. The Appellant testified that the Animals were vaccinated, although Fendi was overdue for a booster at the time of seizure. The Appellant noted that a vet appointment was pending at the time of seizure for that purpose. The Appellant testified that Fendi was born on December 16, 2023 and was given first puppy shots by the breeder. She stated that she had brought Fendi home in mid-January 2024. The Appellant testified that Cooper was born in April 2023, was taken for his vaccination by the Appellant’s boyfriend, and went to live with the boyfriend in August or September of 2023. Cooper then returned to the Appellant’s home “around Christmas time, 2023”.
60. The Appellant testified that the family was away from the Property in November and December 2023 and returned in January 2024. She testified that

the Animals were never kept outside for more than 5 hours at a time, and always had access to the finished basement with dog beds and food through a sliding patio door that was always kept open.

61. The Appellant agreed that the only way to access the open patio door was through a white metal gate at the top of the stairs leading down to the basement patio. The Society pointed out to the Appellant that, according to witness and photographic evidence, this white gate was always closed. The Appellant replied that the gate was usually kept open and suggested that Cooper must have accidentally closed it at the time the photographs were taken.
62. The Appellant admitted that it would be inappropriate to leave the Animals outside for long periods of time without access through the white gate to the basement. When asked why the gate was not kept propped open, the Appellant said that Cooper had learned to open the white gate by himself so the fact that it was closed did not prevent the dogs from accessing shelter inside the basement of the home.
63. When the Society suggested to the Appellant that keeping the dogs outside with the patio door open did not address the Realtor's alleged concerns, since potential buyers would want to view both the finished basement and the yard during a showing, the Appellant said that she did not leave the dogs in the yard during viewings but took them away from the Property.
64. The Appellant confirmed that she saw nothing wrong with her use of a cage to house her dogs. The Appellant said she first began using the cage when workers or others came into the home. The Appellant acknowledged that she occasionally kept Mocha in a cage to accommodate workers who were nervous, but claimed that she never left Mocha locked in the cage and unattended for long periods of time.
65. The Appellant reasserted her belief that the Society was acting out of bias and discrimination, that the SPCA was a waste of taxpayer money, that SPC Cheung was lying, and that the Society should have provided a translator in their interactions with her.
66. The Appellant clarified that Anderson, who spoke with SPC Windover on July 30, 2023, was her godson visiting for the summer from Taiwan. She acknowledged that she spoke with SPC Windover on July 31, 2023, with translation support from her oldest son. The Appellant remembered seeing the Five Freedoms brochure in Chinese that SPC Windover had left with Anderson however the Appellant denied receiving any notices from the Society. The Appellant subsequently recalled receiving a "blue ticket" (contact Notice) but not a yellow ticket (violation Notice) and claimed that she did not understand the purpose of the blue ticket. The Appellant said that she did not recall whether she noted the Chinese writing at the top of the contact notice which stated that it was a legal notice that needed to be translated. The Appellant acknowledged that

SPC Cheung spoke to her in October about Mocha, adding that his “attitude was very bad”.

67. The Appellant testified that she was considering tearing down the current house on the Property and rebuilding as the Property had not sold yet. The Appellant noted that she continued to keep her basement door unlocked despite the alleged home invasion in November and that the Animals were normally kept in the basement when she was not home but were allowed upstairs when she was home. She admitted that she was having problems training the Animals.

Appellant Witnesses:

A.W.

68. A.W. is the mother of a classmate of one of the Appellant’s children. She testified that the Appellant would often bring her dog when volunteering for school crosswalk duty but could not say how frequently she observed the Appellant with the dog.

L.Z.

69. L.Z. is a dog groomer and has previously provided services for the Appellant’s dogs. She is also the breeder who sold Fendi to the Appellant. L.Z. testified that the Appellant is a dog lover who brought her dogs in for grooming once or twice a month and provided them with chewing and playing toys and breed appropriate food. L.Z. took Fendi for his first vaccinations on January 14, 2024, at 8 weeks of age.

Respondent Witnesses:

M.H.

70. M.H. testified that she previously practiced law and is now a stay-at-home mom. She lives adjacent to the Appellant on the west side with an unobstructed view of the Appellant’s Property from her kitchen and her upstairs bedroom. Her husband is retired and is also home during the day.
71. In her testimony, M.H. confirmed the statements regarding the Appellant’s treatment of the Animals made in her July and October complaints to the Society. She further elaborated on those statements as set out below.
72. In July 2023, the three dogs living at the Property (Mocha, Pearl and Cooper) were kept in cages in the yard and on the back deck and were constantly barking and crying “all day and all night”. M.H. stated that several neighbours shared her concerns for the welfare of the Animals.

73. On July 25, 2023, M.H. and another neighbor (J.M.) went together to talk to the Appellant but no one was home at the Appellant's Property. M.H. noted that Mocha was being kept in a cage with no water or food. They left a plate of cookies, a letter of concern and a note advising the Appellant that M.H. had taken Mocha next door to her home. When the Appellant's two older boys and her daughter came to retrieve Mocha, M.H. explained her concerns about keeping the dog caged. The children replied that their mother "insisted the dogs stay in cages" and that "she will never change".
74. On July 27, 2023, M.H. called the Society regarding the Appellant's treatment of the Animals and learned that other neighbors had already called and reported the situation.
75. On July 30, 2023, M.H. was sitting on her back deck when she overheard an officer from the Society spend a considerable amount of time talking to the kids and the Appellant about how to properly care for the Animals. She heard the officer explain that the Society had received numerous complaints from the neighbours about the Animals. The officer further explained that keeping dogs in cages for long periods of time was "not okay", and that dogs needed daily walks and interaction. Shortly thereafter, M.H. noted that the cages were removed from the deck.
76. Once the school year commenced, M.H. began to hear dogs constantly barking and whining in the Appellant's garage. M.H. noted that at that time Cooper was gone and Mocha and Pearl remained at the Property.
77. On October 20, 2023, after hearing Mocha barking all day, M.H. knocked on the Appellant's door to ask if she could walk the dog. No one was home. Finding Mocha caged in a dark garage without food, water, bedding or toys, M.H. took photos and provided them to the Society.
78. On October 22, 2023, Mocha was again crying and barking non-stop from the Appellant's garage. M.H. took photos and a video for submission to the Society, left a note for the family, removed Mocha from her cage and took her to her home to provide her food and water. She testified that Mocha appeared emaciated, adding that gardeners, who had seen the dog when she dug under the fence, noted that Mocha appeared extremely underweight. M.H. took Mocha for a short walk, then returned her to the garage, but left her uncaged with the lights on. The family did not come home until 7 pm.
79. Following SPC Cheung's visits on October 25, 2023, M.H. testified that Mocha disappeared from the Property and was not seen again.
80. In late December 2023, M.H. saw Cooper again at the Property. Another German Shepherd puppy (Fendi) appeared in January 2024, about the time the Property was listed for sale. During February 2024, the Animals continued to try to escape

into the Appellant's yard. M. H. testified that because the experience with Mocha had been so emotionally draining, she tried initially to stay uninvolved regarding her concerns for the Animals.

81. On February 17, 2024, her neighbour J.M. called M.H. to discuss the situation. In late February, M.H. began taking notes regarding the Appellant's treatment of the Animals after weeks of observing the Animals being kept outside without food, water, attention or stimulation.
82. M.H. testified that on February 28, 2024 it was "slushing" (freezing rain). After yelling at the dogs outside and kicking Fendi in the head to get him to go where she wanted, the Appellant left the Property. The Animals were outside all day without shelter and huddled together at the door. When the Appellant returned home in late afternoon, the Animals barked at the door. Receiving no acknowledgement, they finally huddled together under a garage eavestrough. At 10 pm that evening, they were still outside in the rain. M.H. took photographs which she later provided to the Society and continued to document the conditions of the Animals.
83. M.H. was away the next day. On March 1, 2024, the Animals were left outside the entire day. M.H. called friend C.A. to discuss the situation, and her friend drove down the lane took a video of the dogs which was included as an exhibit in this appeal. The video shows it was pouring rain; the dogs were barking and running back and forth along the back gate separating them from the person taking the video.
84. On March 2, 2024, Cooper again dug under the fence into M.H.'s yard. The Appellant's daughter came to pick him up, saying to Cooper "come on, I'll take you for a walk". She then proceeded to walk back through her gate, leaving Cooper in the yard while she went into the house with no further interaction.
85. On March 3, 2024, M.H. notified the Society that the Animals were cold and huddled together outside at the Property. They had apparently been left out all night, and had been thrown a cup of kibble from the window. SPC Cheung attended and visited M.H.'s home to speak with her. SPC Cheung told her that he was worried because the temperature was forecast to drop below zero. SPC Cheung asked her to keep an eye on the Animals and to let him know if they were brought into the house that night. M.H. testified that she kept notes of the Animal's situation for the rest of the day and evening and briefed SPC Cheung the next morning. She reported that the Animals were outside all day up until she went to bed at 11 and were outside before 6 am again the next morning. SPC Cheung applied for and obtained a warrant and took the Animals into protective custody that afternoon.
86. M.H. testified that the only time the Animals were not in the back yard was during the Appellant's two open houses. She testified that she did not speak again to the

Appellant because she was afraid that the Animals would once more be put in the garage. When asked if it was not simply the barking that upset her, M.H. said that the barking was not an issue. She stated that she had wanted good relations with her neighbour but that she could not handle the way that the Appellant treated her Animals.

87. M.H. testified that the white gate that controlled access to the basement patio door was always shut and that she did not believe the Appellant's statement that Cooper could open the gate himself. She testified that she had never seen the Animals go down to the lower patio.
88. M.H. testified that Cooper was hyperactive and became excited around people, repeatedly mouthing them, which she said she took as a sign that the dog was craving attention.
89. In her cross-examination of M.H., the Appellant challenged a number of the dates and times which M.H. had cited as incidents in which the Appellant was neglecting the Animals. The Appellant provided photographs which included time stamps of her walking or playing with the Animals at the times noted in M.H.'s evidence and the Society's submissions. M.H. clarified some of the alleged contradictions, noting discrepancies in the dates between the Applicant's photographs and her evidence. In other instances where the photographic evidence seemingly contradicted her evidence, M.H. simply affirmed her original statements.
90. M.H. testified that the white iron gate that separated the upper and lower patio at the Appellant's residence was always closed to the best of her knowledge and observation, and that she had never seen Cooper open the gate.

SPC Cheung

91. SPC Cheung confirmed that on July 30, 2023, SPC Windover visited the Appellant's Property, met with her godson Anderson and left a Chinese version of the Five Freedoms brochure with Anderson for the Appellant. SPC Windover followed up with a visit the next day and had a lengthy discussion with the Appellant, which was translated by her son, reviewing the Society's concerns and the legal importance of the violation Notice requiring shelter, water, stimulation and exercise.
92. SPC Cheung noted that there was a statement in Chinese at the top of the Notice advising of its importance and recommending translation if necessary. SPC Cheung also testified that SPC Windover told him that she had informed the Appellant that if she was going to keep her dogs outdoors, then they had to have dog houses to protect them from all weather conditions. SPC Cheung testified that SPC Windover told him that the Appellant seemed annoyed at SPC Windover's presence and didn't seem to want to speak with her, pushing her children to speak with SPC Windover instead.

93. SPC Cheung clarified that on October 22, 2023, when he attended the Property to follow up on the October 20, 2023 complaint, he did not hear a dog in the garage because his visit coincided with M.H. having taken Mocha out of the garage for a walk. At that time, he posted a contact Notice door hanger for the Appellant to contact him within 24 hours to discuss the complaint.
94. SPC Cheung confirmed that he visited the Property three times on October 25, 2023. No one was home during his first visit, and he heard what sounded like a large dog in one of the Appellant's two garages barking and pawing at metal. He testified that he put his ear against the garage door and it was clear that the sound was coming from the garage. Since the contact Notice door hanger he had left on the front door on October 22, 2023 was gone, he posted another contact Notice door hanger at 9:46 am then left.
95. SPC Cheung returned to the Property at 11:10 am that morning. Again, no one was home, and he still heard the dog barking and scratching in the garage. He left a second contact Notice on the back door as well and left, returning three hours later.
96. On his third visit, at 2:10 pm, the Appellant was home and spoke with her at the door. When SPC Cheung began to discuss with her his concerns, she became agitated, insisted that she "never kept any dogs in her garage" and showed him – as proof – a photo of her walking the dog at 10:42 am that morning. SPC Cheung told her she may have taken the dog for a brief walk that morning in between his first and second visit, but that the dog was in the garage and barking at 9:46 am and again at 11:10 am. He further noted that an elderly couple had stopped during his second visit to tell him the dog had been confined to the garage and barking "all summer". The Appellant said she was busy and closed the door on SPC Cheung.
97. As he was writing up a violation Notice on the steps, the Appellant opened the door to leave with Mocha. SPC Cheung told her that he needed to continue to speak with her about Mocha's living conditions. The Appellant brushed past him, repeatedly saying "no English" and that her son would call him at 4 pm. SPC Cheung left a violation Notice on the door citing 9 infractions. The Notice included a hand-written note directing the Appellant not to crate the Animals in the garage and to provide water and exercise to the Animals. The notice stated that any failure to comply could result in a warrant for seizure. The son never called SPC Cheung.
98. SPC Cheung noted that he was in full uniform when he spoke with the Appellant. The file was ultimately concluded because, after his October 25, 2023 visit, Mocha was not seen on the Property again.
99. SPC Cheung testified that on March 3, 2024, it was cold and raining. He attended the Property in response to a complaint of the Animals being kept in the concrete

back yard with no shelter and were huddled together to stay warm. The wooden platform they were on was soaking wet. SPC Cheung spoke with neighbour M.H., who advised that she had begun taking notes when Cooper escaped under the fence into her yard in February. He visited her home and observed that she had good sightlines of the Property. He asked M.H. to continue to observe the situation that day and during the evening and that he would contact her the next morning.

100. When he attended the Property on March 4, 2024, M.H. reported that she had observed the dogs out in the rain all day the day before. She noted that they were still outside when she retired to bed at 10:55 and were outside when she awoke at before 6 am that morning.
101. SPC Cheung testified that normally he would speak with an owner to give them instructions on how to care for their animals and how to alleviate their distress, but as two violation Notices had already been given to the Appellant for similar infractions, he determined that the Society had exhausted their efforts.
102. SPC Cheung testified that when both he and SPC Windover tried to educate the Appellant, she was dismissive and combative and failed to get back in touch when requested to do so. SPC Cheung noted that around the time of the seizure the temperature was forecast to drop below freezing and, given the Appellant's history of neglect, he determined that any further attempts to try to contact the Appellant would only prolong the Animals' suffering.
103. When he executed the warrant that same day, SPC Cheung testified that there was a strong smell of feces and urine in the back yard near the wooden platform despite the heavy rainfall the day before. He counted 15 piles of feces in the yard. The Animals were dirty and smelly, and Cooper was hyperactive, but they appeared to be in good health. SPC Cheung noted that the white iron gate allowing access to the basement patio area was closed when he executed the warrant.
104. SPC Cheung testified that, following their apprehension, the Animals were taken to the vet where their body scores were judged to be good. Cooper was hyperactive and wanting social attention, jumping up on the vet while he was being examined.
105. SPC Cheung stated that the Society had tried to educate the Appellant multiple times about their concerns. Each time, the Appellant was dismissive and combative and unwilling to get back in touch with the Society in response to posted notices. He noted that the Appellant claimed that the only time the Animals were outside was when there were real estate viewings or workman on the Property. However, he had never seen anyone else at the property during his visits.

106. SPC Cheung noted that keeping a young pup (Fendi) that hadn't been fully vaccinated outside in an unsanitary yard during a heavy rainstorm created a significant health hazard for that puppy.
107. In her cross examination of SPC Cheung, the Appellant again presented photographs to SPC Cheung with time stamps which she claimed contradicted SPC Cheung's evidence. SPC Cheung did not amend his evidence with respect to his visits to the Appellant's Property.

J.M.

108. J.M. is the Appellant's neighbor and is employed as Chief Development and Legal Officer for an international company. She provided a three-page signed (unsworn) statement which was included in the Society's submissions. J.M. did not attend at the hearing and was not subject to cross examination. J.M.'s statement corroborates the sworn evidence of M.H. and concludes that apart from her concerns about the Animals, J.M. has no issues with the Appellant and her family as neighbours.
109. The Appellant, in her evidence, noted that J.M.'s statement demonstrated what she described as confirmation bias and that the statement was motivated by J.M.'s frustration with the Animals' barking.

G. Legislation

110. 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.

111. 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.

112. The first issue to consider is whether the Animals were in distress at the time they were taken into protective custody by the Society. 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. The Appellant has an onus to show that the remedy they seek (return of the Animals) is justified.

H. Analysis and Decision

113. In coming to this Decision, the Panel considered carefully all evidence presented at the hearing and all of the submissions made by the parties. The hearing was somewhat complicated by the use of a translator for the benefit of the Appellant, however the Panel is confident that the proceeding was both fair and complete to all of the parties.

I. Finding of Distress

114. In coming to a decision as to whether the Animals were in distress at the time of the seizure, the Panel is guided by the following passage from *McIntosh v BCSPCA* November 12, 2021 where at paragraph (104) that Panel held:

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

115. Not every animal need be in distress for a seizure to be valid. The Panel in *Foulds v. BCSPCA*, December 9, 2020 held at paragraph (209), *“It is important to note that it is not necessary to find every animal to be in immediate physical distress to justify seizure.”*

116. The evidence is clear, and essentially uncontested, that the Animals were in reasonably good physical health at the time they were taken into custody. This appeal turns on allegations of neglect and deprivation which fall within the definition of distress in the *PCAA* as set out above.

117. Given the disparities in the evidence presented by the parties, the Panel must weigh the evidence, including the evidence regarding the dogs previously in the Appellant's care, to make findings as to the following issues:
- the length of time the Animals spent confined to the rear yard of the Property;
 - whether the Animals had access to water, food and shelter when confined in the rear yard of the Property;
 - whether the Appellant crated her Animals in the garage for long periods of time;
 - the regularity with which the Animals were walked;
 - the amount of social interaction the Animals had with the Appellant and her family.

The length of time the Animals spent confined to the rear yard of the Property

118. The Appellant was adamant that her dogs were never confined to the back yard for more than 5 hours. The Society submits the Animals were frequently confined to the back yard for long periods of time, all day and at times overnight. The Society supports their assertion with photograph and video evidence and the testimony and statements of M.H. and J.M., who live on either side of the Property.
119. The Panel found both M.H. and J.M. to be credible witnesses and their evidence consistent with complaints received by the Society regarding the Appellant in July 2023, October 2023 and March 2024. The Appellant's neighbors did not present as vindictive and were clearly motivated by the concerns for the Animals. The Panel found the March 1, 2024 video submitted by the Society in this appeal supportive of the Society's assertion that the Animals were confined for long periods of time in the back yard.
120. The Panel finds that the Appellant often left her dogs, including the Animals that are the subject of this appeal, outdoors for long periods of time, and that those extended periods were likely to lead to distress in the Animals.

Whether the Animals had access to water, food and shelter when confined in the rear yard of the Property

121. The Appellant insisted that the Animals always had water, food and shelter when confined in the rear yard of the Property because her basement patio door was always left open, giving them free access to her finished basement containing dog beds, food and water. The Appellant testified that the Animals had access the basement patio by going through a white iron gate that was always left open and down a set of steps.

122. The Society submitted that whether the basement patio door was left open or not, the Animals could not access shelter because the white iron gate at the top of the stairs was always closed. The Society provided photographs of the back yard; in each, the white gate was closed. The Animals did not have other shelter, food or bedding in the back yard if they could not access the Appellant's basement.
123. Under cross-examination, the Appellant insisted she always left this gate open. When presented with photos of the closed gate and asked why she had not thought to prop it open, the Appellant testified that Cooper had learned to open that gate himself, so she was never worried about having to prop it open. The Appellant also testified that she continued to leave her patio door open for the Animals after having suffered a home invasion in November of 2023.
124. M.H. testified that she had never seen the gate in an open position during the time that she had been observing the Animals on the Property. The Panel also finds it unlikely that Animals would have huddled together outside in the pouring rain for long periods of time if both the gate and the patio door had been left open and they had free access to the warmth and shelter of the basement.
125. The Animals access to water is also uncertain. The evidence shows that on the day the Animals were seized, there was a bowl sitting under a dripping tap in the back yard which would have provided some access to water for the Animals. However, the historic evidence with respect to Mocha, provided by M.H.'s testimony and related photographs, shows that dog was kept crated for prolonged periods of time without access to water including in the summer months.
126. The Panel finds that the Animals were confined to the back yard without access to shelter from the elements, food and the comfort of bedding. The Appellant's evidence with respect to both the white iron gate and the basement patio door was inconsistent, illogical and frankly unbelievable in the face of the evidence to the contrary. The Panel finds that in addition to the length of time that the Animals were kept outdoors, the lack of shelter, food and bedding was likely to cause them distress.

Whether the Appellant crated her Animals in the garage for long periods of time

127. The Appellant told SPC Cheung on October 25, 2023 that she never kept her dog in a crate in the garage. SPC Cheung testified he heard Mocha barking and scratching inside the garage on his two earlier visits to the Property that same day. The Appellant accused him of lying, showing him a photo of Mocha on a leash being walked at 10:42 am that morning and arguing that Mocha could not have been caged in the garage at that time.
128. In this hearing, in both her evidence and in her cross examination of SPC Cheung, the Appellant continued to accuse SPC Cheung of lying on October 25, 2023

based on her photograph. SPC Cheung responded that the Appellant must have taken Mocha out for a quick walk between his 9:46 am and 11:10 am visits.

129. The Appellant submitted 140 photos in support of this appeal. When photos of documents and duplicates are removed, there are 113 individual photographs which the Appellant has provided in support of various aspects of this appeal, including to impeach the credibility of SPC Cheung and M.H.
130. In reviewing the photos, the Panel found at least 3 instances which appear as though the date and time stamp appearing on the photograph have been changed. In one instance, the same photo of the Appellant walking Mocha was submitted to this hearing as having been taken on both August 25, 2023 at 12:31pm (the original) and also on October 1, 2023 at 6:39 pm (duplicated then filtered, with the date and time altered). In another case, it appears that two photos entered into evidence by the Appellant purporting to show Mocha on the sidewalk on a leash at 4:32 on October 25, 2023 were actually taken at the same time as two photos entered into evidence and time stamped 10:40 and 10:41 that morning. Both sets of photos show the same light and shadows from the sun and the same tracks of moisture from tires on the street and are interspersed with one another in the photo array appearing below the photos.
131. The Society's submission that the dog Mocha was kept in a crate in the garage for long periods of time without food or water is supported by the testimony and photographic evidence of M.H., the signed written statement of J.M. and the firsthand testimony of SPC Cheung. The Appellant's photographs, even if they are unaltered, do not refute that evidence. While the Appellant's photographs purport to disprove evidence of M.H. with respect to Mocha's confinement to the garage on October 23 and 24, 2023, they do not seriously undermine the crating evidence as a whole. Furthermore, given the concerns noted above with respect to the authenticity of some of the photographs, the Panel is not moved to disregard the Society's evidence.
132. The crating issue is relevant to the seizure of the Animals insofar as it demonstrates a history of investigations and interventions by the Society with the Appellant, and the Appellant's unwillingness to genuinely engage with the Society to ameliorate those concerns. Mocha is not a subject of this appeal and the Society closed its file with respect to Mocha when that dog left the Appellant's care. The Appellant's predominant focus on asserting that the Society's officers and her neighbors were lying regarding specific instances of Mocha's care did not assist her in this appeal.
133. The Panel finds that the Appellant did crate her Animals in the garage for long periods of time.

The regularity with which the Animals were walked

134. The Appellant testified that she or someone in her family walked the Animals daily. She provided 113 photographs that the Panel reviewed of her and her children with various dogs inside and outside her home.
135. The Appellant's neighbour's (M.H. and J.M.) evidence was that the Animals were rarely walked.
136. The Appellants photographic evidence shows the Animals being walked on fourteen days from June 8 2023 to October 25, 2023 and on twelve days from January 1, 2024 to February 23, 2024. The Panel recognizes that the Animals could very well have been walked more frequently than this, but the photos submitted by the Appellant do not evidence that.
137. The Panel believes the Animals were walked more than once a month as alleged by M.H., however the Panel cannot come to any further definitive conclusion with respect to the frequency with which the Animals were walked.

The amount of social interaction the Animals had with the Appellant and her family

138. Based on the evidence presented in this hearing, the Panel is left with the impression that the Appellant's inability to train her dogs has reduced the time they spend indoors and that this in turn has reduced their social interaction with family members.
139. The photographic evidence submitted by the Appellant shows that four days after a June 15, 2023 walk with Mocha which resulted in bloody knees for the Appellant, a large cage appeared in the photos to which Mocha was confined without shelter, water or food. Many photos were submitted by the Appellant of the damage done to her home from her dogs chewing on the wooden baseboards and she testified she has been unable to stop the Animals from and "peeing and pooping everywhere" in the house. The fact that the Property is listed for sale would exacerbate the seriousness of this training failure.
140. M.H. testified that even after being left outside for many hours, the family would ignore the Animals upon returning home even though they would be barking at the back door.
141. The testimony of M.H. that on the rainy morning of March 3 2024, she witnessed a hand reaching out the window and dropping a cup of kibble onto the wet pallet below confirms to the Panel that the Animals spent more time alone in the back yard than engaging with family members.

Findings regarding distress

142. The Panel finds that the Animals were in distress at the time of the seizure. In particular the Panel finds that the Animals were left outdoors for an extended period of time in the rain without access to shelter, food or bedding. The Panel finds that given that immediate distress and the Appellant's history of disregarding the directions provided by the Society, and the general neglect shown by the Appellant to the Animals, SPC Cheung reasonably formed the opinion that the Animals needed to be taken into protective custody by the Society to alleviate their distress.

J. Return of the Animals

143. The Panel's analysis at this stage is governed by considering whether allowing the Animals to return to the Appellant's care would return them to a situation of distress. In *Brown v BC SPCA*, [1999] B.C.J.No. 1464 (S.C.) the court explained:

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

144. The onus lies with the Appellant to provide the Panel with evidence on which to determine that a return is appropriate. That evidence needs to show both that the living conditions that led to the seizure have been improved and that the Appellant appreciates the issues that led to the seizure and is committed to ensuring that those issues will not arise in the future.
145. The evidence shows that the Society went to considerable efforts, on multiple occasions, to explain to the Appellant why her dogs were in distress and to educate her as to what steps she needed to take to improve their living conditions. Prior to the final complaint on March 3, 2024, SPC Windover and SPC Cheung visited the Property on five separate occasions – once on July 30, July 31 and October 22, 2023 and 3 times on October 25, 2023. They spoke with the Appellant and her family members at length, provided her essential care information in Chinese (Five Freedoms brochure) and issued 2 violation Notices, one July 31, 2023 citing 3 violations under the Act and the second October 23, 2023 citing 9 violations under the Act. Both violation Notices contained handwritten directions and warned that failure to address the violations placed the Animals at risk of apprehension.
146. Despite all of the attempts by the Society to educate her on the way the Animals should be treated, the Appellant insisted the Animals were not in distress and responded with hostility to any and all suggestions that they were in distress.

147. With the exception of a brief comment on her Notice to Appeal, the Appellant did not explain to the Panel, despite direct encouragement to do so, what steps she would take to make sure that the conditions that caused the Animals to be in distress would not be perpetuated should they be returned.
148. While the Panel recognizes that the Appellant is a single mother and a business owner with many obligations on her time, that does not grant the Appellant the ability to neglect the animals in her care. The *PCAA* obliges pet owners in the province to determine their capacity to provide proper care and if a person's life circumstances are such that they cannot provide that care then they should not jeopardize the health and well being of an animal.
149. The Appellant bridled when she was cross examined as to her annual income. As her response suggested, the Appellant can clearly financially afford to care for the Animals. However, having the financial ability to care for an animal is only part of the role of a responsible pet owner.
150. The Appellant could have responded differently to the information that was given her by the Society, and could have committed to real steps to ameliorate the Animals' distress such as building outdoor dog houses, hiring a dog walker and installing an actual, canine "dog door" that allowed the Animals unfettered access to her home. Instead, the Appellant's response was to deny that her Animals were in any distress, to accuse all who suggested otherwise of lying, and to bitterly complain of the stress this process was causing her and her children.
151. The Appellant included in her notice of appeal the steps that she would take to relieve the Animals' distress. However, those steps were not referenced in the Appellant's submissions at the appeal and no evidence was led in support of those steps. In any event, the Panel does not find any basis in the evidence to support the Appellant's ability to follow through with those steps. When told by SPC Windover in July 2023 that Mocha could not be kept in a crate for long periods of time, the Appellant simply moved Mocha and her crate to inside the garage. When it was discovered that she had moved Mocha to the garage, and she was questioned by SPC Cheung, the Appellant simply denied that the dog was ever crated in the garage. When SPC Cheung told her he had heard the dog in the garage, the Appellant called SPC Cheung a liar. At no point did the Appellant make any substantive efforts to actually address the core issue of the animal's distress.
152. The Panel finds that the Animals would be at serious risk of continued distress should they be returned to the Appellant. She has shown no appreciation of the circumstances that led to the seizure and has predominantly focused her efforts at this appeal on discrediting the Society and her neighbors rather than addressing the living conditions that would support a return. The Panel orders that the Animals will remain in the care of the Society as set out in detail below.

K. 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 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.

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:	\$0.00
(b) SPCA time attending to seizure:	\$219.12
(c) Housing, feeding and caring for the Dogs:	<u>\$2,082.00</u>
(d) Total:	<u>\$2,301.12</u>

156. On the matter of costs, the Society’s submissions provide detailed cost accounting, including invoices for veterinary care and detailed estimates on the daily operating costs associated with the care of the Animals. The calculation of these estimates has been reviewed and supported in previous appeals.

157. In her closing argument, the Appellant said she would pay the Society’s costs only if the Animals were returned to her.

158. The Panel finds the Society’s costs are reasonable and payable by the Appellant.

L. Order

159. After careful consideration of the written and oral evidence presented in this hearing, the Panel makes the following determination of the issues and attendant orders.

- The Panel finds that the Animals were in distress at the time of the seizure and that it is in the interests of the Animals to remain in the care of the Society.

- The Panel orders pursuant to section 20.6 of the *PCAA* that the Society is permitted in its discretion to destroy, sell or otherwise dispose of the Animals, with the obvious hope and expectation that the Animals will be adopted unless circumstances somehow preclude that possibility.
- The Panel further orders, pursuant to s. 20.6(c) of the *PCAA*, that the Appellant is liable to the Society for the amount of \$2,301.12 as the reasonable costs incurred by the Society with respect to caring for the Animals.

Dated at Victoria, British Columbia this 2nd day of May, 2024.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read "Wendy Holm". The signature is written in a cursive, flowing style.

Wendy Holm, Presiding Member