

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
43 DOGS

BETWEEN:

MONICA MARCU

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:

Monica Marcu

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

October 1 & 2, 2024

Location of Hearing:

Zoom

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 43 dogs (and one puppy born after the seizure) (the Animals) from the Appellant Monica Marcu at her residence located in McBride, BC (the Property).
2. The Appellant is appealing the August 30, 2024, review decision (the 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 October 1 and 2, 2024, a BCFIRB hearing panel (the Panel) held a hearing via tele-conference (Zoom) and the hearing was recorded.
5. The Appellant was not represented by counsel. The Appellant gave evidence on her own behalf and called six witnesses: R. A., M. D., M. R., J. S. and I. F.
6. The Society was represented by counsel and called five witnesses: Special Provincial Constable (SPC) Sarah Steeves, SPC Jamie Wiltse, Doctor of Veterinary Medicine (DVM) Dr. Sarah Pihowich, Dr. Kyla Townsend (DVM) and Dr. Petra Warnock (DVM).

B. Decision Summary

7. This decision presents the findings of the Panel with respect to whether the Animals apprehended by the Society on August 30, 2024, were in distress on the day of seizure and, if so, whether it is in their best interest to be returned to the Appellant. It also presents the Panel's ruling with respect to the costs claimed by the Society for care and veterinary services.
8. The Appellant asserted that none of the Animals were in distress at the time of the seizure and presented letters from 51 of her neighbours, former clients and workers in support of her character and the care she gave to the Animals. The Appellant alleged that the Society's inspection of the Property and subsequent seizure of the Animals constituted trespass and theft. She accused Society staff of perjury and challenged the veterinary evidence of the Society's three expert witnesses, arguing that German Shepherd dogs cannot be evaluated based on standard body conditioning scores (BCR) used for other breeds.

9. The Appellant further asserted that her rights under the Canadian Charter of Rights and Freedoms have been violated. The Appellant demanded the unconditional return of all of her dogs and claimed damages from the Society in the amount of \$69,402,000 for armed extortion, armed robbery, armed theft, armed fraud, mail fraud, armed perjury, armed racketeering, armed kidnapping, criminal extortion and coercion, oppression, emotional distress, mental anguish, trespass, unlawful seizure, physical and mental abuse, issuance and execution of a warrant without jurisdiction, terrorism, property damage, detention and forced hospitalization.
10. The Society relied on the testimony of the SPC's who attended the Property and the expert evidence of three veterinarians, two of whom examined the Animals on intake and one who accompanied the Society on the day of the seizure. All three veterinarians confirmed that all the Animals were in distress on July 30, 2024, when apprehended by the Society, citing low body condition scores, malnutrition, emaciation, unsanitary conditions, hip and joint pain, dental disease, gastro-intestinal disease, parasites, sores, wounds and masses. The Society has claimed \$85,706.20 in costs for the Animals' care and veterinary treatment, which includes \$27,219.71 in veterinary costs.
11. The Panel advised the Appellant at the outset of the hearing that her Charter claims could not be adjudicated at a PCAA appeal (see *Zhou v BCSPCA* (May 10, 2016) at paragraphs 114-115). Similarly, the Panel further advised the Appellant that her complaints with respect to the warrant issued by the provincial court could not be addressed at a PCAA hearing. (see *Binnarsley v. BCSPCA*, 2016 BCCA 259 (CanLII) at paragraphs 16-19). The Panel encouraged the Appellant to focus on the matters to be considered at the appeal.
12. With respect to the issue of distress, after consideration of written and oral submissions of both parties, the Panel found the expert evidence provided by the three veterinarians determinative that the Animals were in distress at the time of seizure and that the seizure was valid under the PCAA.
13. With respect to the return of the dogs, the Panel found the Appellant's denial that the Animals' were in distress, her failure to recognize the conditions that caused her Animals to be in distress and her failure to present any sort of plan or take any actions to alleviate those conditions meant the Animals would most likely return to a situation of distress if they were returned to the Appellant. With exception of the conditional return of Dog #3 – a companion animal – the Panel found that it is in the best interests of the remaining 42 dogs and puppies to remain in the care of the Society. The Panel further found that the Appellant is responsible to the Society for \$85,706.20 in costs.

C. Preliminary Matters

14. As noted above, forty-three dogs were initially seized from the Appellant by the Society. While the Animals were in the Society's care, one dog fell ill and had to be euthanized. Furthermore, one of the dogs was pregnant at the time of the seizure and one puppy was born while in the Society's care. As a result, at the time of the hearing, forty-three dogs remain in the care of the Society and are the subject of this appeal.

D. Material Admitted on this Appeal

15. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1-27.

E. History Leading to Seizure of the Animals and the Day of Seizure

16. On July 10, 2024, the Society received a complaint concerning thin, emaciated dogs living in unsanitary conditions at the Property without adequate shelter and lacking proper veterinary care. The complainant noted she had rescued six young dogs from the Appellant. The complainant provided veterinary records which confirmed her concerns regarding the health of the animals. The complainant said that the Appellant had told her that she had too many dogs and that, following the death of her husband, she had become overwhelmed and unable to care for them. The complainant lodged a similar complaint with the local RCMP.
17. On July 16, 2024, SPC Sarah Steeves, SPC Jamie Wiltse and RCMP Constable Barrie visited the Property in response to the complaint. The Appellant told SPC Steeves that she owned 18 dogs, and brought some of the dogs out to show SPC Steeves but did not allow her to touch any of the animals. SPC Steeves counted 31 dogs on the Property, including puppies. The Appellant had to leave for an appointment and cut the visit short.
18. On July 18, 2024, SPC Steeves followed up on her visit with an email that outlined her concerns for the animals and provided the Appellant with information on what constituted distress under the PCAA. SPC Steeves provided a copy of the code of practice for commercial kennels, a formal notice outlining the specific situations causing the animals distress and gave the Appellant 7 days to respond. Specific directions were issued to provide veterinary care to Dog 11 (Yoel) and Dog 3 (Kodiak). A Notice was also issued to relieve the distress of the cats, chickens and pigeons.
19. In the email, SPC Steeves further noted that during her visit, multiple animals were considered to be in distress under the PCAA for various reasons including unsanitary conditions, lack of exercise and enrichment, anxiety, mobility concerns, and associated behavioral issues.

20. SPC Steeves' email provided the Appellant with specific directions to alleviate the distress of her animals as follows:
 - Ensure kennels are cleaned and sanitized regularly, flooring must be made of a material that can provide a sanitary environment. Plywood is not appropriate.
 - Ensure the dogs are provided with enrichment in their kennels, adequate exercise and mental stimulation. In hot weather, additional enrichment in their kennels may need to be provided.
 - Ensure any dogs exhibiting stereotypical behaviors or signs of psychological distress are being addressed and provided with additional stimulation/enrichment/exercise as needed.
 - Ensure dogs are housed in a manner that does not create stress such as appropriately matched/housed dogs that do not react to each other, ensure that turning dogs out in the play yard is not creating stress/frustration for the dogs that remain in their kennels in that area, and they are not reacting/fighting through the fences on a regular basis.
 - Provide veterinary care (or proof of veterinary care if already providing) for the male dog, third kennel down in the first section, for his hind legs, and the male dog that was in the house upon arrival with the hot spot or other wound on his hind leg.
21. A notice attached to the email reiterated the directions and referred to the body of the email for full details. The notice stated that failure to address the issues within 7 days may result in legal action including an application for a search warrant, the removal of the animals and/or charges under the Criminal Code and the PCAA.
22. The email further stated that the Society's goal was to work with animal owners to help them relieve distress, and that while all the work did not need to be completed within 7 days, the Appellant needed to present to SPC Steeves a plan within that time to address the issues identified in the notice. SPC Steeves noted in the email that she would like to visit the Property on Thursday or Friday of the following week for a recheck, at which time she would also like to observe the Appellant handling each dog to observe her relationship with them. SPC Steeves concluded:

"I do want to make it clear that while these things do need to be addressed, this is not required to be fully completed by next week, and our goal is to work with animal owners to relieve distress. As long as improvements are being made and you are willing to work with us, then we are happy to work with you and provide more time to complete the direction and assist where we can."
23. On July 19, 2024, the Appellant responded to SPC Steeves email and denied that any of her animals were in distress.
24. On July 23, 2024, SPC Steeves sent another email to the Appellant in which she again listed the conditions causing the animals to be in distress. She reiterated that all of the problems did not need to be corrected in 7 days and that she was

instead looking for a plan from the Appellant outlining how she would address the Society's concerns. SPC Steeves offered to help the Appellant implement the changes and suggested a recheck the following week. SPC Steeves requested that the Appellant reply by 5:00 pm on July 25, 2024.

25. On July 23, 2024, the Appellant sent the Society and the RCMP a notice of trespass and liability in which she claimed that neither organization had the jurisdiction to enter her Property. She further threatened that any person who trespassed without a warrant would be issued a \$100,000 fine.
26. On July 25, 2024, SPC Steeves sent the Appellant an email and also left her a voicemail requesting a call back or email by 4:00 pm the following day.
27. On July 26, 2024, at 5:14 pm, having received no reply from the Appellant, SPC Steeves applied for a search warrant to enter the Property on July 30, 2024, to inspect the Animals. The warrant was granted at 8:48 pm that evening.
28. On July 30, 2024, SPC Steeves attended the Property with RCMP Corporal Barrie, RCMP Constable Cook, SPC Jamie Wiltse, Victims Services Worker Sarah Olofsson, and veterinarian Dr. Pihowich to execute the warrant. The Appellant was provided with the warrant and initially stated that she understood. However, she subsequently stated that she did not understand the purpose for the warrant and that would not cooperate with the inspection.
29. The Appellant took video footage of the seizure and became progressively more emotional, insisting that her dogs were fine. She contacted friends and neighbours by phone and text to come witness her "last day on earth". In response to her pleas, a small crowd gathered at the end of her driveway, where they were met by Corporal Barrie.
30. At one point during the seizure the Appellant announced, "now you have to kill me," ran into her kitchen, grabbed a knife from the dishwasher and motioned towards her throat. The Appellant was subdued by law enforcement officers and apprehended under the Mental Health Act. She was placed in a patrol car before being transported to the hospital for observation.
31. Based on her inspection of the Animals, and on the advice of the attending veterinarian, SPC Steeves determined that all of the Animals were in distress under the PCAA. The Animals were taken into protective custody by the Society.

F. Review Decision

32. On August 30, 2024, Ms. Moriarty issued the Review Decision in which she outlined the reasons for not returning the Animals to the Appellant.
33. Ms. Moriarty was satisfied, based on the evidence, that SPC Steeves had 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 them of distress was appropriate. Based on the Appellants denial that any of the Animals were in distress, her dismissal of all veterinary evidence of that distress and her failure to present any plan to remedy the conditions causing them distress, Ms. Moriarty believed the Animals would return to a situation of distress if returned to the Appellant, and that it was in the Animals' best interest to remain with the Society.

G. Key Facts and Evidence

34. 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.
35. Below is a summary of the relevant and material 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

36. In both her written submissions and oral evidence, the Appellant repeatedly claimed that all of the Animals were in good condition at the time of the seizure and denied any distress. The Appellant stated that she and her husband (who passed away in July 2023) have raised German Shepherd Dogs for 18 years and that their 165-acre Property in McBride is idyllic. She noted that the Animals received home cooked meals (meat, pasta, eggs, raw milk, kibble) prepared in an outdoor kitchen, lived in comfortable kennels, and are exercised regularly and have sheep to guard. She explained that her husband was the primary caregiver and looked after the Animals until his death.
37. The Appellant submitted 51 support letters that described her as a good caregiver for the Animals and described the dogs as healthy and having good living conditions. The letters were provided by neighbours, clients who had adopted puppies as far back as 2015, and workers. Some of the writers had been to the Property recently (the Appellant invited neighbours to a 2-day Open House a few days before the seizure), others had not been to the Property for some time, others had never visited the Property. Some did not have dates; and most were dated August 2024. Many letters were also unsigned, possibly as a result of

having been received electronically. The Appellant submitted numerous photos and videos of the Animals as well.

38. The Appellant denied that her kennels were unsanitary, saying they were cleaned out regularly. She noted that in the few weeks prior to the seizure she had been trying to conserve water due to drought conditions, but that she did her best to keep them very clean.
39. The Appellant noted that her background in pharmacology and nutrition allowed her to administer routine vaccinations (except Rabies) to the Animals and to provide medical care on the advice of her veterinarian. The Appellant provided a file of veterinary receipts. The majority of the receipts related to three dogs: Ursa, Viva and Yoel. In some receipts, the name of the dog and the date of the record were not part of the photocopied document.
40. The Appellant submitted that the Society's assessment that her dogs were underweight is incorrect because German Shepherd dogs cannot be accurately evaluated by body conditioning scoring systems used for other breeds.
41. The Appellant stated that one of the dogs apprehended by the Society (Dog #3, Kodiak) was a medical service dog that slept by her bed at night and that she felt unsafe without it.
42. In cross examination, the Appellant said she could not identify her dogs from the Society's intake photos, nor connect her submitted veterinary records to specific dogs in care, nor confirm that all submitted veterinary records related to the Animals. She confirmed that the Animals had been the responsibility of her late husband, and since his death she had one full time worker who came to help with the Animals 4 to 5 days a week. She also occasionally had part time help.
43. The Appellant was examined in depth on two veterinary records that she submitted concerning a dog named Yoel, who was observed to having difficulty standing on the day of seizure and on intake was diagnosed with a transitional vertebrae, elbow and hip dysplasia, fractures, a soft tissue injury and osteoarthritis.
44. When initially asked if any of the Animals had been seen by a veterinarian in the past year, the Appellant said yes, one of her dogs (subsequently identified as Yoel, Dog #11) had been seen by a Seattle veterinarian "sometime this spring, for a problem with walking".
45. The Appellant identified a purported veterinary record she had submitted in evidence from a Seattle clinic dated April 18, 2024. The Appellant agreed the dog had been taken to the veterinarian recently but claimed she did not remember the date, saying "...it was April, May, February, January. Whatever it's written in the documents." The Appellant was then referred to an earlier veterinary record she

had submitted from the same Seattle clinic dated April 11, 2017, which is virtually identical (word for word) in all respects except for the dog's weight and age.

46. Counsel for the Society advised that in their investigation they had contacted the Seattle clinic which had confirmed the dog Yoel had not been seen at the clinic since April 11, 2017, that the April 18, 2024 document did not originate from them, and that they had changed their name (and letterhead) a number of years ago.
47. The Appellant denied any knowledge of the origination of the April 18, 2024, veterinary record. She insisted she and her lawyer had simply submitted veterinary records from her files. When it was put to her that she had drafted the letter to create the impression that the dog was receiving continued medical care (as explicitly required by the Society's notice of July 16, 2024), the Appellant replied: "I did not. If I would do that, why would I provide both documents? How would that be?" When questioned by the Panel, the Appellant continued to deny any knowledge nor give any explanation as to how the seemingly fraudulent veterinary record came to be submitted in evidence.
48. The Appellant testified she had sought help in preparing her documents from her lawyer and from an individual named Christopher James Pritchard. She noted that said she had organized the medical evidence and had reviewed most but not all material submitted by others. The Appellant testified that Christopher James Pritchard had helped to draft some of the documents submitted to the Society. The Appellant denied having had asked the RCMP on the day of the seizure to contact her lawyer, Christopher James Pritchard, noting that he was not in fact a lawyer.
49. The Appellant stated that she had shown all the kennels on her Property to the visitors who attended her open house prior to the seizure. When presented with the photographs taken of the kennels on the day of seizure showing urine stains and a piled up of feces, the Appellant said her kennels were cleaned daily by her workers and denied any unsanitary conditions. When presented with the intake photographs of the Animals, she was unable to identify most of them and suggested one severely emaciated dog was not hers.

Appellant Witnesses

R.A.

50. R.A. testified that she had worked for the Appellant and her husband for two years. She was responsible for cleaning out the kennels and helping with the feeding and worked 4 to 5 days a week. She also helped in the orchard and fixed fences. She said the Appellant prepared the food for the Animals from fresh and frozen meat, organic pasta, rice, fat, milk, eggs and kibble, after which R.A. would bring the food in bowls to the Animals in their kennels and let them out in groups. She stated that the feeding process would take approximately one hour in total.

51. R.A. stated that she was only able to thoroughly clean three kennels a day but that she removed feces daily from all of the kennels. She said that she had never seen an emaciated dog on the Property and testified that the Appellant took good care of her dogs. She confirmed that the Appellant's husband looked after the dogs until his death, after which the Appellant took on this responsibility. R.A. testified she did not help with the dogs while the Appellant's husband was alive. She also said she was unaware of the puppies that were being kept in the toolshed at the time of the seizure.

M.D.

52. M.D. testified that she was the Appellant's neighbour and had walked her dogs with the Appellant on approximately six occasions over the past two years. She stated that she had only observed dogs in the kennels near the Appellant's house and had not visited the kennels in the woods. M.D. testified that based on what she had observed the Appellant's dogs were healthy, happy and robust.

I.F.

53. I.F. is the Appellant's neighbor and attended her open house several days before the day of seizure. She was at the open house for approximately three hours and saw approximately 25 dogs. She testified that the Appellant was a responsible dog owner and provided an important service to families in the north who lived with wildlife and depended on protection dogs.

M.R.

54. M.R. operates a local on-farm slaughter service. He testified that he provided the Appellant with roughly 200 pounds of raw frozen meat scraps per month. He also custom slaughtered her sheep. He said that he had never seen emaciated dogs on her Property and that all of her dogs seemed healthy and happy.
55. M.R. testified that the Appellant invited him and others to the open house on July 26, 2024, because she knew the Society "was coming" and wanted neighbours to take photos and give her feedback on the Animals' condition. When presented with the Society's photos of unsanitary kennels, he said that he had not observed those conditions when he visited but that he was not looking into each kennel. He agreed that the photos reflected unsanitary living conditions.

J.S.

56. J.S. is an Alberta resident. She testified that she had purchased a dog from the Appellant in 2023 and was very happy with the dog. She testified with respect to her observations of the Property in December 2023 and stated that based on her observations the Appellant was a responsible dog owner. She noted that she had intended to purchase a second puppy in August 2024 and that after the seizure

she had still visited the Property to provide some emotional support to the Appellant.

Respondent Witnesses

SPC Steeves

57. SPC Steeves added further details to the events leading up to the day of seizure, as otherwise set out in paragraphs (16) to (31) above.
58. During her first visit to the Property at 2:44 pm on July 16, 2024, SPC Steeves was asked by the Appellant to return another time as the next day was the one-year anniversary of the Appellant's husband's death and she had an appointment at 4:00 pm that day relating to the placing of a marker on her husband's grave.
59. SPC Steeves explained that they had come a long way and hoped she could allow them to see her Animals, the Appellant agreed. SPC Steeves was not allowed access to all the kennel areas. The Appellant stated that she fed her dogs meat, fruit, vegetables and some kibble, prepared in an outdoor kitchen. SPC Steeves observed water in the kennels but no food bowls. She observed multiple dogs wall bouncing and circling. The floors of their kennels were plywood with some pallets stacked underneath. The flooring in the kennels appeared to be saturated with urine and feces staining, and there were visible piles of feces, with diarrhea in some of the kennels.
60. The Appellant told SPC Steeves that she had 18 dogs. SPC Steeves observed 27 dogs outside and was told there was a dog with 3 puppies inside the home. SPC Steeves said from a distance the dogs "appeared okay", noting they were not allowed to touch any of the dogs and that their dense coats made it hard to assess without handling.
61. SPC Steeves testified that one dog, Yoel, appeared to have difficulty standing. Another dog had a "hot spot". SPC Steeves also observed cats and chickens penned together with a few dead chickens on the ground (which the cats appeared to be eating), and doves in a very unsanitary enclosure with high mounds of droppings.
62. SPC Steeves testified that she told the Appellant that she had concerns with respect to the unsanitary living conditions of the Animals; noting their kennels – which had plywood floors - were littered with feces and urine. The Appellant was highly argumentative during this visit. Since the Appellant had to leave at 4:00 pm, SPC Steeves cut their visit short and promised to send her directions and recommendations by email.

63. Over a period of two weeks, the Society attempted to work with the Appellant to address the conditions causing the Animals' distress ultimately without success.
64. SPC Steeves testified that, during the execution of the warrant, the Appellant was very loud and at times hysterical. She called a number of people to the Property to witness the actions of the Society and yelled and berated the officers as they walked through the kennels. She refused to provide any information on the Animals when asked and made a video recording of the seizure. As noted above, at one point, the Appellant ran into the house, grabbed a kitchen knife and began waving it around shouting "now you have to kill me". The Appellant was subdued, arrested under the Mental Health Act, handcuffed and placed in a patrol car while the Society continued its work.
65. SPC Steeves testified that once they were able to handle/touch the Animals, many were found to be quite thin, much thinner than initially assumed. The Animals exhibited a variety of symptoms indicative of distress. Dog #11 (Yoel) had difficulty standing. Dog #1 was observed straining for several minutes, back hunched and defecating rocks and diarrhea across the porch and driveway. This dog also had a bleeding wound on her throat, worn and fractured teeth and was also underweight. Dog #3 (Kodiak) had a weak and stiff hind end and very worn and fractured teeth.
66. The kennels had feces piled up, some of which was so old it had turned white with mold. The plywood on the bottom of the kennels was soaked in urine and chewed in some spots. In one area containing a dog and her puppies, SPC Steeves noted that the urine smell was overpowering. Another dog and her puppies were found in a toolshed containing hazardous materials and a chain saw, with a large pool of diarrhea located nearby. The puppies had managed to get outside their plastic pool, and it was not clear that they could get back in. There was no food or water available, and the shed smelled strongly of ammonia. Another dog and her puppies were in the basement of the house in a plastic pool lined with paper towels. They had no food or water.
67. Some dogs exhibited stereotypical behaviour of circling and wall bouncing indicative of a lack of mental and/or physical stimulation. Many of the dogs were extremely fearful. There was no food in any of the kennels and the water in their bowls was dirty. There were intact male and female dogs inappropriately housed together. Many of the dogs had fractured and worn teeth, many had gait and hind end issues. All dogs appeared very hungry, but none were aggressive; they were just very fearful.
68. SPC Steeves confirmed that all 43 dogs were found to be in distress on the day of the seizure and were taken into protective custody by the Society.

69. At the request of the Appellant, an employee - R.A. - agreed to separate the cats and the chickens, remove dead chickens, clean the chickens' area and the doves' enclosure and ensure all had food and water. R.A. reported having removed seven wheelbarrows of feces from the dove coop.
70. SPC Steeves stated that the Society had obtained a second warrant to seize veterinary records from the Valemont Veterinary Clinic, an affiliate of the Jasper Veterinary Clinic, both of which the Appellant said she used. The records obtained on the Appellant's dogs dated back to 2013. SPC Steeves noted that the clinic switched to digital records in 2022 and, since then, their files include records from both clinics. The records showed that the last time any of the Appellant's dogs were seen by either clinic was in 2023. SPC Steeves testified that there were files on 21 individual dogs, mostly in 2015 and 2016 and mostly for vaccinations. She was surprised that, as a breeder, the Appellant's file contained no euthanasia records.
71. SPC Steeves provided further evidence concerning Dog #11 (Yoel). Yoel appeared on the pedigree data base website and was sire to two of the dogs the complainant received from the Appellant. She further testified that the Appellant submitted two veterinary records for Yoel, both from a veterinary clinic in Seattle. One dated April 11, 2017, and a second dated April 18, 2024. Because the two records were virtually identical except for the date, the dog's weight and age, SPC Steeves contacted the clinic to ask if Yoel had been seen in 2024. The clinic confirmed that the April 18, 2024, report was not a record produced by their system and that the last time they had seen the dog was as a puppy in 2017. SPC Steeves also testified that the Seattle clinic told her they had changed names in 2017 so the letterhead would not have been the same on a record from 2024.
72. SPC Steeves testified that the address in Redmond, Washington where the Appellant said she planned to take the dogs if they were returned appears to be a residential home on a residential street with only a yard.
73. Under cross examination by the Appellant, SPC Steeves agreed that on July 16, 2024, the Appellant had mentioned that Kodiak was her medical services dog. SPC Steeves testified that Kodiak was outside at the time of the seizure and their principal concerns were his very worn and fractured teeth and his weak hind end.
74. The Appellant's submitted materials were focused to a significant extent on the complainant's background and her conflictual relationship with the Appellant, which she also sought to present to SPC Steeves in cross examination. Most of that evidence was not material or relevant to this proceeding.

SPC Jamie Wiltse

75. SPC Wiltse testified with respect to the July 16, 2024, visit that from the outset she had tried to have positive conversations with the Appellant and to let her know that the Society wanted to work with her to resolve the issues that were placing the Animals in distress, however the Appellant was argumentative and defensive from the beginning. She assured the Appellant that the Society had nothing against breeders - she had a purebred dog from a breeder herself - and that if the Appellant was experiencing difficulty placing puppies post-Covid, the Society was there to support her whether through its free surrender program or by giving her resources to help with her rehoming. SPC Wiltse said the Appellant told her she was not having any difficulty rehoming dogs.
76. SPC Wiltse stated that the Appellant told her that the Animals were working guardian dogs, not pets, and that she normally had three litters a year, one litter per female per year. On the first visit, the Appellant advised that she had one female with puppies inside the house. SPC Wiltse also saw another dog with older puppies that day. However, on the day of seizure they discovered five females with litters of puppies under one year of age.
77. During her first visit, Wiltse noticed one dog - later identified as Yoel - lying down in his kennel. He did not get up despite the other dogs jumping and barking excitedly. She asked the Appellant if the dog was having mobility issues. The Appellant said that he was an older dog, she had him on glucosamine, and that he was fine.
78. SPC Wiltse testified that her first visit was very rushed – about an hour in length – and that the Appellant was very defensive and would escalate quickly. SPC Wiltse asked the Appellant specifically about the dental care the Animals received. The Appellant replied that she gave them bones. The Appellant told SPC Wiltse that she performed her own vaccinations and deworming for the Animals. SPC Wiltse asked if she kept separate records for each dog including vaccination dates and the products used. The Appellant said that she did not have any such records.
79. SPC Wiltse’s responsibilities on the day of seizure were to video record and to assist where needed. She testified that the food preparation area consisted of an outdoor stove with a couple of big steel pots and lots of empty bags of food. The area was very unkempt and dirty and there was a tote containing putrid, rotting meat. Lifting the lids of the pots you could see fat and rotting meat with live maggots. There was one 6 or 8 kg bag of puppy chow and cans of Kirkland wet dog food. In an outbuilding, she found “tons and tons” of pasta and cartons of eggs. In the residence basement there was also a lot of pasta. The smell of ammonia was so high “it burned your eyes and nose”.

80. SPC Wiltse testified that the kennels were very unsanitary and had floors of wet plywood covered in feces and urine. Much of the plywood was chewed and the tarps covering the kennels were in poor repair, sagging and hanging down, which made the kennels very dark.
81. SPC Wiltse testified that the toolshed containing the female dog and her puppies was stacked from floor to ceiling with “stuff” and the smell of urine was so strong that it burnt your eyes and nose. The puppies were outside of the plastic pool that was meant to contain them, and they were crying and vocalizing. The mother was very fearful and cowered at the back of the shed. There were boxes of chemicals, and a chain saw on the floor that the dogs could easily have accessed.
82. SPC Wiltse testified that she assisted in loading the Animals into crates for transport and felt very good about how low stress the procedure was. A behaviorist for the Society was part of the seizure team as they did not know if the Animals would be frightened or aggressive. One dog growled once, but other than that they did not encounter any aggressive dogs. The transport crates were brought into the kennels and most dogs loaded themselves directly into the crates. Initially they tried to use slip leads, but the dogs were unfamiliar with leads, so they used a lot of treats. SPC Wiltse testified that it went very smoothly and was very low stress for the Animals.
83. SPC Wiltse said she was surprised when handling the Animals at how thin they were, noting poor body conditioning is not always obvious with double coated dogs like German Shepherds and that you really need to get your hands on them to tell.
84. On cross-examination, SPC Wiltse noted that she had not searched the Appellant’s entire 165-acre property for dog food and that she had not sought out the Appellant’s neighbours’ opinions as to whether she was a good dog owner.
85. SPC Wiltse noted that they had expended significant personnel and material resources to undertake the seizure due to the number of animals potentially involved were they found in distress.
86. SPC Wiltse further noted the disinfection difficulties posed by the plywood floors and dirt areas in the kennels that contained feces and urine build-up.
87. SPC Wiltse testified that the Appellant had not mentioned a medical service dog on either July 16 or July 30, 2024. She recalled that the Appellant said she had travelled with a dog named Grizzly, who was her protection dog.

Dr. Sarah Pihowich (DVM)

88. Dr. Pihowich was qualified by the Panel as an expert witness. She is a qualified veterinarian licensed to practice within British Columbia. Dr. Pihowich graduated from the University of Melbourne in 2020 and has been practicing small animal medicine and surgery at Central Animal Hospital for the past three and a half years. She has worked with the Society in multiple capacities including intake exams on seized and surrendered animals and postmortem procedures. She has testified as an expert witness for the Society in previous appeals.
89. Dr. Pihowich attended the Property with the Society on the day of seizure to assist with the determination of distress and the loading of the Animals which included the administration of medication to reduce the Animals' stress.
90. Dr. Pihowich testified that two of the Animals, one of which had been euthanized, had intussusception as a result of hypermobility of the gut likely caused by internal parasitism. She testified that, in her opinion, the intussusception in these two dogs was most likely caused by the infectious diseases the dogs tested positive for (see below). Poor diet may also have played a role in predisposing the dogs to the condition. Intussusception is preventable through good animal husbandry, including deworming, ensuring sanitary living conditions and good nutrition.
91. Dr. Pihowich testified that the Animals tested positive for roundworms, tapeworms, coccidia, giardia, and clostridium perfringens alpha toxin. All of these diseases are transmitted through the fecal to oral mechanism and have resulted in clinical diseases in the Animals. All are preventable through deworming, ectoparasite prevention medications and ensuring sanitary living conditions including non-porous materials in kennels. Dr. Pihowich noted that diet can also be a contributing factor, for example eating bacteria-laden meat that had "gone off" could well be the cause of the illness and diarrhea the Animals were exhibiting. Even if cooked, the toxins produced by bacteria killed off in the cooking process would remain in the meat and be transmitted to the Animals. She testified that roundworm would be particularly difficult to eradicate from the kennel areas of the Property because while one can remove the feces, the eggs will persist in soil for years. New kennels with non-porous, sealed concrete flooring with bedding would be required to properly address the issue.
92. Dr. Pihowich testified the urine and feces buildup in the kennels was staggering, noting that new plywood was simply stacked on top of old plywood without first removing the buildup of old, caked feces. She noted that the smell of feces and urine was overpowering, with recorded ammonia readings of between 10 and 20 parts per million in the kennels. This would be particularly damaging for younger and older animals as well as any whose immune systems were compromised, leading to coughing and pulmonary airway issues.

93. Dr. Pihowich noted that the Animals were very fearful, and it took approximately 15 minutes to load each dog into a kennel. She stated that if the Animals had been allowed out of their kennels and socialized, they would have been a lot easier to handle.
94. Dr. Pihowich testified that the Animals were very hungry and the food she observed in the outdoor kitchen area – a bag of puppy kibble, half a pallet of wet dog food, the rotting meat – was not sufficient to feed the number of dogs on the Property. While there may have been more food elsewhere as suggested by the Appellant, the fact that the Animals were underweight suggested that they were not getting enough nutrition. Dr. Pihowich said she did not recommend feeding dogs raw curdled milk because it exposed them to E. Coli salmonella, campylobacter and other zoonotic diseases. She also did not recommend feeding dogs pasta as a nutrition staple because as a simple carbohydrate it can lead to gastrointestinal upsets and diarrhea.
95. Dr. Pihowich testified that the standard canine body conditioning scores applies in the same manner to German Shepherds as it does to other dog breeds. While German Shepherds are meant to be lean, the Animals were quite underweight at the time of seizure and when palpating them, their bony prominences were evident. Dr. Pihowich noted that she could palpate the individual vertebrae, the points of their hips, their sagittal crest, the spine, and their scapula and that this showed that there was not only a lack of fat cover, but also a loss of muscle mass. She noted that lean breeds should still have good muscle mass.
96. Dr. Pihowich stated that body condition is not based solely on weight. The photos the Appellant submitted of emaciated dogs were all short-coated breeds and emaciation is not as visually apparent in long-coated dogs. She added that they knew the Animals were underweight before “getting our hands on them” but that they were shocked to realize the Animals’ condition when they did get a chance to properly examine them.
97. Dr. Pihowich was concerned with the amount of abnormal behaviour she observed in the Animals. They were repetitively circling and bouncing off the walls. Dog #7 who was housed near the chickens was particularly bad – he would repetitively circle and bite at the kennel cage door next to the chickens. He was doing this so frequently that he was wearing a hole in the tarp between them. These stereotypical behaviours, she testified, are a maladaptive practice an animal can develop to help them cope with an environment that is not stimulating their mental and physical needs.
98. Dr. Pihowich noted that the number of Animals with extremely worn teeth suggested that the Animals were cage and rock biting which may be attributed to a lack of stimulation and toys. In many of the Animals, their teeth were worn down almost to the gum line. This is not normal, even in senior dogs, and it is very painful.

99. Dr. Pihowich said she saw no evidence that the Animals were trained as protection dogs and that the only real behavioural concern was fear and not aggression.
100. Dr. Pihowich noted that the paraphimosis (extruded penis) observed in two of the dogs (and also in one of the dogs adopted by the complainant) can be either genetic or acquired. In either case, it is abnormal and if left untreated can result in serious health problems. Dr. Pihowich noted that the Appellant's inappropriate pairing of intact male and female dogs can contribute to inbreeding and hereditary congenital problems.
101. Dr. Pihowich testified that at the time of the seizure she had witnessed a dog defecating on the porch and that she did not believe the other stains on the deck were coffee or other similar stains. Dr. Pihowich noted that in the kennels with windows the ammonia levels could be reduced by opening the windows, but that the windows were not opened at the time of the seizure.
102. In response to questions from the Panel, Dr. Pihowich elaborated on the medical condition of Yoel. Dr. Pihowich explained that a transitional vertebra is a vertebra that's not fused to the sacrum. This abnormality can result in the development of intervertebral disc disease and would contribute to the neurological deficits that Yoel was exhibiting. Yoel's legs were a little bit crossed, which indicated he might not have proper proprioception – for example knowledge of where his limbs are in space. Although not completely paralyzed, there are still some deficits that might be noticeable on closer inspection.
103. Dr. Pihowich testified that if a dog is not getting enough to eat, they may try to eat rocks simply to feel full. If they are not getting a nutritionally balanced diet that is lacking in essential minerals, they may also eat rocks to try to fill that gap. Dr. Pihowich further noted that parasites like roundworms and tapeworms absorb nutrients meant for the dog.
104. Dr. Pihowich confirmed that she saw no overt aggression in the Animals and that they were good candidates for rehoming to the right person.

Dr. Petra Warnock (DVM)

105. Dr. Warnock was qualified by the Panel as an expert witness. She is a registered veterinarian in the province of British Columbia. She graduated from the University of Sydney in 2011. Dr. Warnock is a small animal veterinarian who has practiced veterinary medicine and surgery in Alberta and British Columbia since 2012. She has been an owner and lead veterinarian at the Elk Lake Veterinary Hospital in Victoria BC since 2016.
106. In her written submission, Dr. Warnock noted that she examined 26 of the Animals apprehended by the Society. Sixteen were adult dogs and ten were puppies 3

months of age and younger. Fifteen were females and eleven were males. Of the Animals Dr. Warnock examined, eleven were emaciated with a body score between 1 and 3.5. One was so severely emaciated that he may have died if not taken into the Society's care. Sixteen were unkempt, dirty and ungroomed with long nails. Ten had broken/fractured teeth with pulp exposure. Nine had skin wounds. Seven had skin infections depicted by pustules, ulcers in the mouth, redness and/or heat that required veterinary care. Fourteen of the Animals had musculoskeletal abnormalities and pain including arthritis and degenerative joint disease; a very high number considering ten of the dogs were three months or under in age. Fourteen of the sixteen dogs between one and eight years of age suffered from painful hips, knees, shoulders and elbows. Four of the Animals had masses or tumors, six had pressure sores, eleven were fearful and one had a reducible hernia requiring veterinary care. One was cryptorchid. One had severe malocclusion causing upper canine to penetrate the hard palate. One had a swollen, exposed and dry penis requiring veterinary care. One had an eye lesion. Several had dried feces stuck to their paws. Dog #3 (Kodiak) had multiple abnormalities with a tennis ball sized mass palpitated in his mid-abdomen, likely a tumor. He also had a swollen penis which stuck out of the prepuce. There was 3.5 inches of dried, red tissue at the distal end of his penis. Fourteen of the 26 Animals that she examined were suffering from severe neglect as a result of not being provided with the basic needs of food and appropriate housing. Ten of the Animals not yet suffering severe neglect were three months or less in age and receiving nourishment from their mother.

107. Dr. Warnock testified that all the Animals seemed very fearful of humans and their environment. All of the Animals over the age of twelve weeks lacked socialization and showed signs of fear and stress. Numerous dogs could not walk down a hallway on a cement floor and had to be carried in their crates. They were cowering in the corners, and this was far beyond just not knowing the people around them. They were under socialized and lacked confidence. She saw nothing to suggest the Animals were trained protection dogs.
108. Dr. Warnock identified the Animals as being underweight by referring to the body conditioning scoring (BCS) system where 1 is severely emaciated and 9 is obese. Recognizing German Shepherds are working dogs and meant to be lean, she said a BCS of 4 out of 9 would be ideal. In determining the body conditioning score, one looks at how easily the ribs can be felt, the musculature in the back end, the appearance over the abdomen; she likes to see a waist and a tucked abdomen but not a gaunt looking abdomen with no subcutaneous fat. Some of the young puppies under 12 weeks that were largely being fed by their mothers were in reasonable body condition, but many Animals were a 3/9 or a 2.5/9 and one dog had a body score of 1/9. There were ulcers in the dog's mouth, he had a painful left hip and would have been at risk of death if not refed appropriately. Dr. Warnock described the medical complexities this dog faced – gastrointestinal concerns, abnormal blood work and liver values - attributable to emaciation and explained the medical importance of a graduated refeeding program.

109. Dr. Warnock has taken additional training in veterinary dentistry and spent considerable time discussing what she described as the atrocious amount of severe dental disease the Animals suffered from. She said fractured, broken and worn-down teeth with exposed pulp resulted in exceptionally intense pain and that many of the Animals had 10 or more such teeth. She showed photos of many of the Animals with exposed pulp. Kodiak for example, with severely worn-down teeth, would have been biting down on what were essentially open sores every time he closed his mouth.
110. Describing these examples as horrific, Dr. Warnock said not only were the Animals living in extreme pain, but they were also at high risk of infection and that the amount of damage she observed was not normal. "...Whether these dogs are bar biting, eating rocks, there could be a whole myriad of things... they're choosing to show stereotypic behaviors ... because they are having absolutely no enrichment...".
111. Dr. Warnock testified that the only option to alleviate a dog's dental distress is a root canal or extraction of the tooth. Dr. Warnock also showed numerous photographs of dogs with severe malocclusions that were also extremely painful. In some cases, the lower canines were puncturing the upper hard palate causing severe pain. She testified that malocclusion is "incredibly heritable", and good breeders would not allow a dog with malocclusion to breed and pass this on to future generations. Dr. Warnock testified that she saw no evidence that the dogs she treated had received any previous dental care.
112. Dr Warnock showed photographs of dogs with extreme and debilitating musculoskeletal issues and a lack of musculature in their back ends. In one dog, this was so severe he was forced to walk on his hawks (the lower portion of the hind leg) as a result of abnormality in the tendons and limb deformity. These conditions are extremely painful and require extensive rehabilitation and perhaps surgery. Dr. Warnock noted that this condition was not a trait of the breed and that well-bred German Shepherd dogs do not have these severe issues. She testified that the musculoskeletal issues were a result of poor breeding and poor nutrition compounded by a lack of exercise.
113. Dr. Warnock testified that when Yoel was six months of age, his veterinary record showed that he was suffering from significant neurological defects caused by a malformed vertebra towards his tail. German Shepherds, Shih Tsuzs and Lassos are more susceptible to this condition. It is highly heritable and "without a doubt" results in a life of pain and suffering because they are predisposed to disc diseases. It results in instability, degeneration of the body and in some cases paralysis of the hind legs. Dr. Warnock noted that it is inappropriate to use a dog with this condition in a breeding program.
114. Under cross examination, Dr. Warnock reiterated how she evaluated the Animals, noting the photos from the Appellant's website from years ago did not reflect the

condition that the Animals were in when she examined them. Dr. Warnock noted that the symptoms she observed were of a chronic nature, citing the fractured teeth with pulp exposure, lesions on the skin, penises that were hanging out and swollen, masses that were hanging off the body with debris coming from them, and that the symptoms could not be attributed to the stress arising from the seizure.

115. Dr. Warnock testified that dental disease would not cause the Animals to eat less food.

Dr Kyla Townsend (DVM)

116. Dr. Townsend was qualified by the Panel as an expert witness. She is an employee of the Society and a member of the College of Veterinarians of British Columbia. Dr. Townsend graduated from the Ontario Veterinary College at the University of Guelph in 2012. She is a small animal veterinarian and has been practicing veterinary medicine in both Ontario and British Columbia since 2012.
117. Dr. Townsend examined 16 of the Animals that were the subject of the July 30, 2024, seizure. Three were intact males and the rest were females. All but one were adults. In her written submission, Dr. Townsend noted that almost all the Animals were underweight, three of the females had umbilical hernias, and two had mammary masses.
118. Based on the BCS, three dogs had body conditioning scores of 2/9, one had a score of 2.5/9 six had scored of 3/9 and three had scored of 3.5/9. Only two dogs had body conditioning scores of 4/9. Multiple dogs had dental disease including fractured teeth, missing teeth and teeth that were worn down ranging from mild to severe. One dog had a non-healing tail wound with bone exposure that required veterinary treatment. All of the Animals were ravenous and actively exploring the examination room for food. Many showed fearful behaviour and eight required anti-anxiety medication. One was so fearful that he could not be examined without sedation.
119. In her report, Dr. Townsend stated that her primary medical concerns were the Animals' underweight status and the presence of dental disease. She suspected a lack of access to food was the primary cause. Internal parasites (roundworm, tapeworm, coccidia, giardia) were a contributing factor. Observing that fractured and worn teeth can cause pain and lead to infection, she noted chronic chewing of hard materials such as rocks or metal bars often indicates either a lack of access to food and/or chronic stress behaviour. She further noted that fractured and worn teeth can cause pain and lead to infection.
120. Dr. Townsend said it was her professional opinion that the Animals were in a state of neglect as evidenced by their poor body condition scores, ravenous appetites, untreated medical issues including dental disease, mammary masses and chronic open wounds. She added that several would have died if left untreated.

121. In her oral testimony, Dr. Townsend stated that all of the adult dogs were incredibly fearful and “shut down.” She noted that she had considerable experience dealing with fearful and nervous dogs but that these Animals were at “another level.” Their eyes were blank, and they were terrified and cowering. When they were examined, they made no attempt to bite or move away, “...it’s as if they just kind of shut down.” She noted that for German Shepherds, this was very abnormal behaviour.
122. Dr. Townsend testified that the Animals demonstrated an extreme level of hunger. Although they had been fed the previous evening on intake and again in the morning, they remained ravenous. To make exams easier, they use high value treats and the Animals were constantly seeking any crumbs that might have fallen to the floor. She noted that if a non-food item was dropped – for example a pen – the Animals would try to eat that as well. According to Dr. Townsend their level of treat-seeking was “above and beyond” what she expected from normal dogs.
123. Dr. Townsend testified that German Shepherds are meant to be lean, with a body conditioning score of 4 out of 9. However, the Animals that she examined were very skinny with their ribs visible, and the tops of their spines and hip bones visible and palpable. Dr. Townsend testified that the Animals were not getting sufficient nutrition. Quite a few of the Animals had gastrointestinal problems attributable to malabsorption. This is caused by not ingesting adequate nutrients, which results in the intestine becoming unable to absorb nutrients properly. When fed calorically and nutritionally appropriate food, many of the Animals experienced vomiting and diarrhea because their stomachs could not initially handle a proper diet. Dr. Townsend testified that many animals coming into the shelter are fed a diet different from what they experienced at home, but that she does not normally see this level of gastrointestinal issues. This finding in this group was abnormal.
124. Dr. Townsend testified generally with respect to the Animals. She noted that the dog with the tail wound would have been in a lot of pain and there was no indication that the dog was being treated for this wound. The mammary glands in the dog with mastitis had become so engorged with infection that one gland had ruptured, and she was in considerable pain and very stressed. She was treated with antibiotics, separated from her puppies who were old enough to be weaned and was doing well. She noted that since the seizure, the Animals have increased their body weight by 5 to 25 percent. All of the Animals Dr. Townsend has assessed now have body condition scores of either 4 out of 9 or 5 out of 9.
125. Dr. Townsend reviewed the medical complications of Dog #9, which began to do poorly in care, experiencing vomiting and diarrhea. Dog #9 was seen by several veterinarians and subsequently operated on for a rectal prolapse. During that surgery, it was noted that her intestines were in various stages of dying and a decision was made to euthanize her as her prognosis was very poor. A necropsy diagnosed intussusception, likely caused by her body’s failure to absorb nutrients. A second dog was diagnosed with intussusception but responded well to

treatment. Another dog was diagnosed with paralytic ileus, a condition where nothing moves in the intestines. Both problems are a result of gastrointestinal disease which likely resulted from poor nutrition, insufficient caloric intake and the presence of bacteria which could have arisen from being fed tainted meat.

126. In cross examination, Dr. Townsend noted that she could only comment on the condition of the Animals when they were taken into the care of the Society and not with respect to the Appellant's historic care of the Animals at her Property. Dr. Townsend asserted that the Animal's gastrointestinal issues would not have arisen as a result of a change of diet while being in the Society's care.
127. Dr. Townsend testified that the dog with the injured tail had suffered that injury prior to the seizure and in her earlier statement concluded that the amount of granulation present indicated the wound was at least a week old.
128. Dr. Townsend testified that the rehoming prospects for the Animals were good. She noted that a lot of the Animals were "making really great strides" and that many of the Animals were placed on anti-anxiety medications on intake but have been weaned off over time as they adjusted. Some of the Animals that remain on anti-anxiety medications will require experienced owners to take on their care. Overall, she concluded, that she was really happy with the Animals' progression and that they will be very adoptable dogs.

The Hearing of this Appeal

H. Analysis and Decision

129. 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.

130. 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.

131. The Panel has also proceeded on the basis that the Appellant has 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.

I. Distress

132. On the question of whether the Animals were in distress, the evidence presented to the Panel could not have been more contradictory.

133. The Appellant argued she was a respected breeder of trained protection animals with eighteen years of experience. She submitted that all her dogs were fit, healthy, well-loved and well nourished, that they lived in clean and comfortable kennels and were fed nutritious home-cooked meals. She described the Animals playing in the fields with her sheep on her idyllic 165-acre home.

134. The Society presented a very different picture of underweight, fearful, cowering and emaciated dogs living in unsanitary conditions with painful joints, open sores, wounds, mammary infections and stomach masses. The Animals had fractured teeth with exposed pulp, musculoskeletal problems, and muscle atrophy (one dog was unable to stand, another walked on his back hocks), parasites and gastrointestinal problems. They suffered from poor nutrition and a lack of proper veterinary care, mental stimulation, socialization, and exercise.

135. The Appellant’s case was based on her testimony, undated photographs, videos, some receipts (for food and plywood), 51 letters of support from former clients, neighbours and workers and the direct evidence of several character witnesses.

136. The Society’s case was based on the written submissions and oral evidence of two of the Society’s SPC’s on the day of the warrant execution and their visit two weeks prior, photos of the living conditions of the Animals on the day of seizure, photos taken by Society staff on intake, and the written submissions and oral evidence of three veterinarians who examined and treated the Animals— one of whom was also present on the day of seizure.

137. In the face of such contradictory submissions, the Panel's finding on the matter of distress rests on its ability to evaluate the credibility of the Parties. In that regard the Panel is guided by *Bradshaw v. Stenner*, 2010 BCSC 1398, wherein Justice Dillon writes at para. 186:

"Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. [354] (B.C.C.A.); *R. v. S.* (R.D.), 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para. 128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at p. 356)."

138. In this appeal, the Appellant's credibility was particularly impacted by her submission of a veterinary report that was clearly fabricated by either her or someone acting on her behalf (see paragraphs 44 to 48 above). When presented with evidence of the document's forgery, the Appellant denied any knowledge of the matter, saying she had simply submitted the documents in her file without having reviewed what was being submitted. The Appellant offered no explanation of how the fabricated record came to be included in her files.

139. It is of significance that the dog for which the fabricated record was submitted is the same dog referred to in the Society's Notice of July 16, 2024. In this Notice and in the July 18, 2024, email from SPC Steeves to which the Notice was attached, the Appellant was required, within seven days "To provide veterinary care (or proof of veterinary care if already providing) for the male dog, 3rd kennel down in the first section, for his hind legs."

140. It is clear that the fabricated record was meant to impact this proceeding by purporting to show that the Appellant had provided veterinary care for the dog that was the particular subject of the July 16, 2024 notice. In introducing fabricated evidence, the Appellant was seemingly attempting to subvert the proper administration of justice in this appeal, and having been caught in that attempt the Appellant offered a mere blank denial. The negative impact on the Panel's ability to regard the Appellant's other evidence as being credible in instances where it contradicts the evidence presented by the Society is significant.

141. With respect to the letters of support submitted by the Appellant, some of these letters were undated, some were dated back to 2015, and others were as recent as three days prior to the execution of the warrant. Most of the letters were not

signed. Some were from clients who had never visited the property, others were from people who had visited the property but were only allowed to see the kennels adjacent to the home. Others were from neighbours who had visited the Property during an Open House held several days before the warrant execution. The majority date back to when the Appellant's husband, Mike Podina, was in charge of day-to-day operations of the kennel and are not reflective of the conditions at the time of seizure. Given the noted defects in the support letters, the Panel was not able to give much weight to the opinions expressed by the writers in those documents.

142. In support of her animal husbandry background, the Appellant frequently referred to her 18 years of experience raising and breeding dogs, but it appears on the evidence that the Appellant had only one year of experience looking after the dogs, and this was thrust upon her when her husband died suddenly in July 2023. The Panel was told that, prior to her husband's death, the Appellant worked full time professionally, was away an average of 2 weeks of every month, and only "helped out" with the dogs "when she was able to". In August of 2023, the Appellant suddenly found herself responsible for looking after all of the Animals. The Society introduced evidence that the Appellant told the Complainant, in the fall of 2023, that she was overwhelmed and needed to downsize; whereupon the Complainant "rescued" six of her dogs.
143. The Appellant submitted some veterinary records, but she could not connect any records to the Animals, and many were missing both the date and the name of the dog. As noted, one record purporting to show compliance with the Society's Order for continued veterinary care for the dog Yoel was fabricated, directly impugning the credibility of the Appellant.
144. With respect to the open house staged by the Appellant a few days prior to the seizure it was apparent, as acknowledged by one of the Appellant's witnesses on cross examination, that the attendees only saw the areas of the Property that the Appellant wanted them to see. The Panel does not put weight on the casual observances of the open house attendees, particularly when it is contradicted by the Society's photographic and direct evidence of unsanitary conditions on the day of seizure.
145. The Appellant frequently referenced photographs to demonstrate that the Animals were not in distress, however these photographs were undated and appeared to be promotional in nature. Other photos and videos submitted by the Appellant were also undated.
146. With respect to the food provided by the Appellant to the Animals, many of the support letters referred to the "healthy, home-cooked meals" that the Appellant prepared for the Animals based on raw meat, eggs, pasta, raw/curdled milk, vegetables, fruit and some kibble. The Panel heard expert testimony that human and canine nutrition are very different, and that raw milk and meat, for example,

can be a vector for parasites. The Panel was also presented with photographic evidence of totes and cooking pots filled with rotting meat and maggots. The underweight and emaciated condition of the Animals, the presence of harmful gut bacteria and parasites, and the malnutrition-related diseases and the frantic hunger of the dogs on intake is further evidence of the failure of the Appellant's feeding program.

147. The Appellant blamed any problems with kennel cleanliness on the need to conserve water during a summer drought at the time of the seizure. The Appellant did not present any evidence of the severity of drought conditions in McBride in July 2024 nor of the source of her water (municipal or well), nor the extent to which the drought impacted her water supply. It stands to reason that even if water conservation measures were in effect, daily cleaning of the kennels with a broom and a scoop could remove feces before they built up and if the Animals were regularly exercised, urine build-up could be minimized.
148. The Appellant stated that she did not allow people on her Property, or to touch her dogs, because they had been trained as protection animals and were aggressive. However, the Society's evidence was that they found the Animals expressed no aggression – one dog growled once on the day of seizure - but instead most were incredibly fearful. The Panel is unclear whether the Appellant's assertion that the dogs were aggressive was because she did not want visitors roaming over her Property or whether she did not want them to see the conditions the Animals were kept in.
149. The Appellant insisted the Animals got plenty of exercise - running free and protecting sheep on her 165-acre property. This is also the theme in what appear to be promotional photographs and in a lot of the support letters. However, there was no evidence that this was the case since she took over the operation of the kennel. The Panel heard from R.A., who came daily to help the Appellant with the Animals, that her job was to feed them and let them out, and this took about an hour for all 43 dogs. Contrary to this, expert witnesses for the Society testified that the Animals lacked stimulation and exercise as demonstrated by their abnormal and destructive behaviours.
150. The Appellant frequently referred to weight as the dog's primary health indicator, insisting that low weight is a breed characteristic for German Shepherds, and that the Society's veterinarians did not know how to properly assign body conditioning scores to a German Shepherd. The Society responded that German Shepherds, being somewhat leaner, may score a bit lower on a BCS (ideal would be 4/9) but also that BCS depended on many more considerations than simply the weight of the dog, asserting the majority of her dogs were underweight. In their evidence, the Society also documented a myriad of other health issues including painful joints, open sores, wounds, mammary and stomach masses, fractured teeth with exposed pulp, musculoskeletal problems, muscle atrophy, parasites and

gastrointestinal disease. With respect to the health of the Animals, the Panel overwhelmingly prefers the evidence of the Society over that of the Appellant.

151. Based on the evidence presented in this hearing and submitted as documents prior to the hearing, the Panel is satisfied that the Animals were in distress at the time of the seizure on July 30, 2024, as defined by Section 1(2) of the PCAA.

J. Return of the Animals

152. Having found that the Animals were in distress at the time of the seizure, the Panel must consider whether they can be safely returned to the Appellant.
153. Throughout her submissions and in the hearing itself, the Appellant was adamant - in the face of overwhelming evidence to the contrary – that none of the Animals were in distress at the time of the seizure. She dismissed the concerns of the Society with respect to the unsanitary conditions in which they were living, the inadequacy of their diet, their very serious health conditions, and their emotional and physical needs.
154. The Appellant has had ample opportunity to present to the Society and to the Panel in this hearing a plan for the return of her Animals that included modifications to her kennels (for example, non-porous flooring), canine-appropriate nutrition, a commitment to regular veterinary care (including dental) and ongoing stimulation and exercise. She did not. Instead, the Appellant continued to berate the Society, its officers and the three veterinarians, accusing them of falsifying evidence, lying to this Panel, and lacking the qualifications to accurately assess the Animals.
155. The Panel noted in particular, that instead of recognizing and accepting the Society's offer to work with her and support her in making the changes necessary to alleviate the Animals' distress the Appellant chose conflict and conspiracy. Throughout this appeal, in both her written submissions and her evidence at the hearing, the Appellant has focused on her grievances, over which this Panel has no jurisdiction, rather than on the Animals.
156. The Appellant claims that the Society is responsible to her for \$69,402,000 for damages suffered as a result of the seizure. When asked by the Panel what she intended by including this in her final submission, the Appellant said it had been prepared by her lawyer, not her. The continued assertion of these outlandish and untethered claims reflects badly not only on the Appellant's credibility but also on her ability to understand the nature of this process and to address the issues that led to the seizure in the first instance.
157. Based on the evidence, the Panel finds that the Animals would soon return to a situation of distress if returned to the Appellant, and consequently finds that it is in their best interest to remain with the Society.

158. Notwithstanding this finding, the Panel is prepared to make an exception with respect to the dog Kodiak, which the Panel understands to be the Appellant's companion dog. Kodiak was described by the Appellant as her medical service dog, however the only evidence provided to support this was an "Official Service Dog" wallet card with Kodiak's name and photo. Such cards are obtained through a commercial website in the business of providing such cards to the public and require no evidence of training nor of any records of a medical condition of the dog's owner.
159. The Appellant has not submitted any evidence of any specialized training this dog has received, nor any evidence with respect to the medical condition that caused her to seek a medical services dog. The Panel does not recognize Kodiak as a medical services dog, but it does recognize him as a companion dog that developed a close relationship with the Appellant after sleeping at her bedside for the past 12 years. In this one instance, the Appellant's evidence was consistent and credible, and the Panel believes the Appellant has the ability to care for one pet dog in a manner that will not result in that dog falling into distress.
160. In consideration of this, and under the very specific conditions set out below with respect to costs and veterinary care, the Panel finds that the Appellant has the skills to look after this one dog, and that it is in Kodiak's best interest - having bonded with the Appellant all his life and given his advanced age - to be returned to her care.

K. **Costs**

161. 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.
162. 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)".

163. The Society is seeking costs as follows:	
(a) Veterinary costs:	\$27,219.71
(b) Society time attending to seizure:	\$2,081.64
(c) Housing, feeding and caring for the Dogs:	\$56,404.85
(d) Total:	<u>\$85,706.20</u>

164. 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. This Panel upholds the Society's submission on costs payable by the Appellant for the care of the Animals.

L. Order

165. 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.

166. The Panel finds that the Animals were in distress at the time of the seizure and – except for the conditional return of Kodiak; see below - that it is in the interests of the Animals to remain in the care of the Society.

167. 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 the Animals (with the exception of Kodiak), with the obvious hope that they will be adopted unless circumstances somehow preclude that possibility.

168. The Panel further orders, pursuant to s. 20.6 of the PCAA, that the Appellant is liable to the Society for the cost of the veterinary services rendered at seizure and for the care and feeding of the Animals while in custody in the amount of **\$85,706.20**.

169. The dog Kodiak, will be returned to the Appellant under the following conditions:
- i) The Appellant pays costs ordered and owing to the Society in full within two weeks of the date of this decision, or on such other timeline as agreed to with the Society;
 - ii) The Appellant pre-pays to the Society the cost of any veterinary treatment which the Society reasonably deems necessary to address any current health conditions of Kodiak with such treatments to be completed prior to Kodiak's return to the Appellant;
 - iii) If the Appellant fails to pay the amounts set out in paragraphs (i) and (ii) within two weeks of the date of this decision, or on such other timeline as agreed with the Society, then Kodiak will remain with the Society and be subject to the order set out a paragraph (167) above; and
 - iv) If the Appellant meets the above conditions and Kodiak is returned to her, the Appellant will provide full, immediate, unfettered access to her property by the Society for wellness checks for Kodiak at such times as required by the Society and will ensure that Kodiak receives regular veterinarian check-ups and that she follows any recommendations made as a result of those check-ups.

Dated at Victoria, British Columbia this 17th day of October 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