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 ONE DOG

BETWEEN:

TARMO VIITRE

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry Review Board:	Corey Van't Haaff, Vice Chair and Presiding Member
For the Appellant:	Daniel Barker, Counsel
For the Respondent:	Christopher Rhone, Counsel
Date of Hearing:	December 22, 2016
Location of Hearing:	Teleconference

I. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*).

2. The Appellant appeals the November 22, 2016 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Prevention and Enforcement Officer for the British Columbia Society for the Prevention of Cruelty to Animals ("the Society" or "BC SPCA") of the October 23, 2016 seizure of the dog, Pauka, a six-month-old German Shepherd puppy.

3. Section 20.6 of the PCAA permits the BC Farm Industry Review Board ("BCFIRB" or the "Board"), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society in its discretion to destroy, sell or otherwise dispose of the animals.

4. For reasons that will be explained in detail later, I have decided to order that the Society return the dog, Pauka, to the Appellant, with conditions as I will set out below.

5. There was no appeal of the costs of care and as such I make no such determination however I will say here that the return of Pauka is obviously a stand-alone decision and is not dependent on the payment of any debt of the Appellant to the Society.

II. Brief Summary of the Decision Under Appeal

6. The Appellant and his mother own the dog, Pauka, which was seized on October 23, 2016. The November 22, 2016 written reasons of the Society concluded that it was not in the best interests of the dog to be returned to the Appellant as the Society is of the view the dog would not remain distress-free if it was returned. The Society asserts that the Appellant is aware of this requirement, having had another dog seized earlier in 2016. The Society asserted that when stressors were added to the Appellant's situation, he reverted to the same behaviour that resulted in the earlier dog (Kello) being seized. This, as I will discuss more fully, appears to be one of the key factors in the seizure of Pauka. The Society also argued that the Appellant harshly trains or disciplines his dog as he sees fit. The Society asserted that the dog Pauka was living in unsanitary conditions but refused to re-visit the Appellant's home to assess his cleaning of his home as the Society said even if the living conditions improved, it would still not be in the best interests of the dog to be returned.

III. The Society's Powers and Duties

7. The Society under the *PCAA* is mandated to prevent and relieve animals from situations of cruelty, neglect and distress. The Society can seize animals from the care and custody of their owners or take custody of abandoned animals, as authorized by the *PCAA*. The Society's investigation and seizure powers are set out in Part 3 of the *PCAA*, entitled "Relieving Distress in Animals".

8. The March 20, 2013 legislative reforms, set out in Part 3.1 of the *PCAA*, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: *PCAA*, s. 20.2(1), (2). If a review is requested, the Society must review the decision and must not destroy, sell or dispose of the animal during the review period unless it is returning the animal: *PCAA*, ss. 20.2(3).

9. The *PCAA* does not set out any specific process for the review. Administratively, the Society's current process where a review is requested is to prepare a disclosure package and then to invite submissions from the owner concerning the return of the animals and to consider these submissions in light of the investigation results to determine whether it is in the animals' best interests to be returned to their owners.

10. Sections 20.2(4) and (5) of the *PCAA* set out the Society's options following a review:

> 20.2 (4) The society, following a review, must
>
> (a) return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
>
> (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
>
> (ii) any matter that the society considers necessary to maintain the well- being of that animal, or
>
> (b) affirm the notice that the animal will be destroyed, sold or otherwise disposed of.
>
> (5) The society must provide to the person who requested the review
>
> (a) written reasons for an action taken under subsection (4), and
>
> (b) notice that an appeal may be made under section 20.3.

IV. The Appeal Provisions

11. I am guided by the approach to appeals under the *PCAA* which is set out in detail in *A.B. v British Columbia Society for the Prevention of Cruelty to Animals*, (August 9, 2013), which decision was upheld by the Supreme Court on judicial review[1]. In summary, the right of appeal to BCFIRB gives persons adversely affected by certain decisions of the Society an alternative to a more formal judicial review or judicial appeal. The reforms give BCFIRB broad evidentiary, investigation, inquiry and remedial powers upon hearing an appeal: ss. 20.5 and 20.6. The *A.B.* decision reads in part:

> Appeals under Part 3.1 of the PCAA are not required to be conducted as true appeals, and BCFIRB is not required to defer to decisions of the Society. In my view, the appellant has the onus to show that, based on the Society's decision or based on new circumstances, the decision under appeal should be changed so as to justify a remedy. Where, as here, the Society has made a reasoned review decision, BCFIRB will consider and give respectful regard to those reasons.
>
> However, that consideration and respect does not mean the Society has a "right to be wrong" where BCFIRB believes the decision should be changed because of a material error of fact, law or policy, or where circumstances have materially changed during the appeal period. BCFIRB can give respect to Society decisions without abdicating its statutory responsibility to provide effective appeals.
>
> The clear intent of this reform legislation was to give BCFIRB, as the specialized appeal body, full authority to operate in a way that is flexible and accessible to lay persons, and to use its expertise to ensure that decisions are made in the best interests of animals. The procedure followed by BCFIRB is a flexible approach specifically crafted to accomplish the intent of the legislation in the context of animal welfare and lay participation. This includes taking into account developments occurring since the Society's decision was made. This is entirely in

[1] *BC Society for Prevention to Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331

accord with the inevitably fluid nature of the situation, and well within the powers granted by section 20.5 of the PCAA.

V. Material Admitted on this Appeal

12. All affidavits and witness statements, emails, photographs, and materials submitted were entered into evidence. Parties were sworn before giving oral testimony.

13. The following materials were admitted into evidence:

Appellant:

a) Appellant's November 25, 2016 Notice of Appeal (**Exhibit 1**)
b) Appellant's December 9, 2016 Submission (14 pages) includes: (**Exhibit 2**)
c) Unsigned Helen Morrell report (December 14, 2016 email) (**Exhibit 3**)
d) Helen Morrell signed report and CV (December 15, 2016) (**Exhibit 5**)
e) Jane Potter email unsigned report (December 14, 2016) – (**Exhibit 6**)
f) Jane Potter email signed report (December 21, 2016) – (**Exhibit 13**)

Respondent:

a) BCSPCA Binder (Tabs 1-17) (December 2, 2016 via email and courier) (**Exhibit 7**)
b) Updated Photos (pg 79 of initial disclosure) (**Exhibit 8**)
c) Affidavit #1 of Marcie Moriarty (December 16, 2016 via email) (**Exhibit 9**)
d) Expert Witness Contact Form (Dr. Adrian Walton) (December 16, 2016) (**Exhibit 10**)
e) Witness Contact Form (SPC Isenor and Connor Ollive) (December 16, 2016 via courier) (**Exhibit 11**)
f) BCSPCA Written Submission (December 16, 2016 via email) (**Exhibit 12**)

BCFIRB:

a) BCFIRB December 15, 2016 email requesting Expert Reports be signed **(Exhibit 4)**

VI. Matters Which Arose During the Hearing

14. One issue arising during the hearing arose from the fact that Dr. Janne Potter, a veterinarian, could not be called as a witness due to an injury. Dr. Potter had provided a report regarding her opinion of the use of thermal imaging and the photographs of Pauka using thermal imaging. Counsel for the Appellant tendered Dr. Potter's report as an expert report; counsel for the Society opposed this but ultimately conceded that Dr. Potter was a veterinarian and duly qualified but asserted that little weight should be given to the report as there was no opportunity to cross-examine. As a result, I considered Dr. Potter's evidence, but necessarily gave that evidence less weight taking into account the fact that the Society did not have the opportunity to cross examine her.

15. Counsel for the Appellant took exception to my questioning of the Board's own witness/knowledgeable person (L.A.) and of my being the first to question this witness; and objected to what he characterized as my leading and improper questions. Counsel for the Society asserted that I was entitled to call witnesses and this hearing was not like a Court and that in his

opinion, my questions were far from leading and were in fact attached to the statement this particular witness already provided and my questions were entirely proper.

16. I agree with the Society. An appeal under the *PCAA* is not a court hearing or civil trial. It is a highly specialized appeal process that is designed to operate efficiently, promptly and in the best interests of animals. That purpose would be undermined if BCFIRB confined itself to a merely passive assessment of the information the parties choose to provide, or if BCFIRB was forced into the adversarial mould in which civil litigation lawyers operate. The *PCAA* makes clear that BCFIRB is entitled to be proactive. As it has done since the inception of this mandate, BCFIRB is entitled to engage in active adjudication, which includes inquiring into matters relevant to the appeal, obtaining the advice of knowledgeable persons and calling witnesses necessary to enable it to make proper factual determinations: see *BC Society for Prevention to Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331; *PCAA* s. 20.5, *ATA*, ss. 34(3), (4).

17. In this case, I am satisfied that I required the testimony of L.A., that I was entitled to pose questions to the witness first, that following my questions the parties had a full and fair opportunity to ask their own questions, and that my questions were appropriate. As such, I dismissed the objections of counsel for the Appellant.

18. Counsel for the Appellant also took exception with the fact I stopped him from questioning one of the witnesses about their alleged drug use. In my view that line of questioning was not of assistance. These are specialized, focused and time-limited proceedings. I am entitled to control the proceedings to ensure that parties are focusing on key information.

19. This counsel also objected to my initial ruling that, after he made his closing submissions and was followed by counsel for the Society's closing remarks, he was not permitted to respond again. When he pressed the matter and after counsel for the Society did not object, counsel for the Appellant was permitted a second opportunity at closing remarks.

20. In all the circumstances of this appeal, I am satisfied that both parties were permitted equal opportunity to mount robust arguments and to question witnesses adequately to fairly and objectively present each of their cases.

VII. The Appeal

Brief History

21. The Appellant owns a young German Shepherd dog, Pauka, with his mother. Prior to owning this German Shepherd, the Appellant owned a different German Shepherd, Kello, which was seized by the Society. In the *Kello case*, the decision of the Society was appealed and as a result of that appeal, the dog, Kello, was not returned to the Appellant.[2]

[2] The Society submitted that prior to Kello, the Appellant had a dog named Kali and was ordered to cease harsh and inhumane training or disciplinary techniques against Kali, following a complaint from a witness to the harsh training including whipping and yelling. That witness (a Ms. M) was a witness in the *Kello appeal* but not in this appeal.

22. In the *Kello appeal*, BCFIRB found that the Appellant had used physical force and harsh training techniques which had caused that dog to be fearful and suffer the effects of prolonged abuse and require extensive rehabilitation. The panel in that case concluded:

> Given that the decision of whether or not to return Kello involves understanding the long term psychological implications of abuse, the panel has placed a great deal of reliance on the opinion of Dr. Ledger, an expert in psychological effects of abuse on animals. Her qualifications and opinion were not meaningfully challenged on cross-examination and we accept her opinion in its totality. Her conclusion is that Kello is suffering from the effects of prolonged mistreatment and abuse. He is extremely fearful and suspicious and in need of extensive rehabilitation. Perhaps most significantly with the respect to the issue of returning Kello, Dr. Ledger states: "KELLO is a very fearful dog that requires extensive rehabilitations. In addition, Mr. VIITRE's abuse of KELLO, the lack of trust that will have resulted from Mr. VIITRE's previous harsh treatment of KELLO will seriously impede any progress that KELLO needs to make. If returned to his owner, KELLO is likely to experience high levels of stress in Mr. VIITRE's charge, as a result of his previous poor treatment." As a result, despite the conditions that have been suggested by the Appellant as a means to monitor and enforce better behavior on his end of the leash, this panel finds that no such conditions would suffice to ensure that the Appellant's frustration and lack of emotional control, would not be further physically inflicted on Kello in some form of abuse in the future. Even if Mr. Viitre was absolutely committed to adopting the list of conditions set out in his affidavit (see paragraph 63 above), which we do not find likely, we accept Dr. Ledger's opinion that as a result of Mr. Viitre's previous harsh treatment, Kello will experience high levels of stress if he is returned.

23. In the present case, and in response to the removal of Pauka, the Appellant asserts that Ms. Moriarty, the Society's Chief Prevention and Enforcement Officer attempted to dissuade a particular witness (Lori Mason) from supporting the Appellant by advising the witness that the Society was recommending criminal charges against the Appellant, Ms. Moriarty's affidavit states that she was merely stating fact and not trying to threaten, insinuate or warn Ms. Mason.

24. The Appellant has also argued that the Society did not, after Kello's seizure, seek an order under s. 24(3) of the Act to prohibit him from owning animals in future. The Appellant asserts that the Soceity is now effectively attempting to prevent him from owning any animal by seizing Pauka, when it lacks a sufficient basis for finding that this particular animal was in distress.

25. On this issue, the Society responds that it has no authority to issue an order under s. 24(3) of the Act. Section 24(3) of the *Act* can only be invoked on application to the Court after a person has been convicted by the Court of certain offences under various sections of the *Act*. The Appellant has not been convicted of offences under the *Act*. Therefore, no orders could be issued against him under s. 24(3) of the *Act*.

26. Ms. Moriarty stands by her decision not to return Pauka as she concluded that Pauka was in distress and, if returned, Pauka faces a grave risk of being returned to a situation of distress.

VIII. The Society's Review Decision

27. Ms. Moriarty issued written reasons dated November 22, 2016 on her review of this matter. After concluding that the dog seized had been taken into custody to relieve its distress, the written reasons stated, in part:

> I turn now to the question as to whether or not it would be in the best interest of Pauka to be returned to you. In making any determination regarding the best interest of Pauka, I consider

whether you would be able to ensure Pauka remained distress-free if he was returned. This is a duty owed by an owner pursuant to section 9.1 of the Act. It is also something you are acutely aware of as this is not the first time this year that we have seized a dog from you. I have included the BCFIRB Decision regarding your dog Kello in my considerations in this case as I feel it is important to informing the ultimate question highlighted above.

Harsh Training

You have provided me with two heartfelt submissions on why you feel that Pauka should be returned to you. As with Kello, I have no doubt that you love Pauka. I also acknowledge that you have taken an important step in hiring a trainer for Pauka and have read the statement of Ms. Mason regarding her working relationship with yourself and Pauka. However, while you did make some changes and movement to practice positive reinforcement techniques when training Pauka, I find it of particular importance that when stressors were added to the situation you again reverted to the same behaviour towards Pauka that resulted in Kello being seized.

The first such instance is outlined in Ms. Mason's statement where in paragraph 3 she describes how you would "become frustrated and loud" with Pauka and how in the fourth class you "gave Pauka a smack on the nose, at a time where it appeared that [you] were frustrated with Pauka's inability to follow commands ... " Ms. Mason explained to you that this was not appropriate treatment or training of Pauka. This is not the first time that you have been told that hitting your dog is not acceptable. In fact, this has been a theme that has arisen during your history with the BC SPCA and was highlighted in the recent seizure and dispute pertaining to Kello.

While Ms. Mason notes that she never saw you strike Pauka again in her presence, other people did observe you either yelling or physically being abusive towards Pauka. Specifically, a complainant as outlined in the ITO observed you "yelling at [Pauka] aggressively" and was concerned enough about this behaviour to contact the BC SPCA on October 18. Of great concern was again your behaviour in front of SPC Isenor. On October 23, 2016, when confronted with SPC Isenor during the execution of the warrant, you proceeded to "yank aggressively on [Pauka's] collar, lifting all four legs off the ground and throwing the dog into the kitchen in a spin." Pauka was observed to yelp and run back into his room. You then raised your fist at SPC Isenor and threatened to hit him. While I appreciate that in your submissions you apologize for this behaviour, this again is not an isolated incident. I have only to look back at the execution of the warrant to remove Kello to see you react violently towards animals during these times of stress.

In your previous submissions to me requesting the return of Kello, you made the following relevant promises:

a) Not to use ANY (emphasis from your submission) kind of choke collar on Kello...
b) ...not use physical force at ANY time in the future as a training method or in any interaction with the dog Kello

While these promises were specific to Kello, I would argue that they equally should be applicable for any dog in your possession. In your submissions to BCFIRB involving the dispute over Kello, you again make multiple promises to only use positive training methods in the future. In this current case, you again promise you will comply with any reasonable conditions that the BC SPCA may have for your care of Pauka. I am not convinced that this will happen. While you were not given the opportunity to make good on past promises with Kello, as the ultimate decision was that it was not in the best interest for Kello to be returned, you were given an opportunity with your new puppy, Pauka, and it is evident that you broke those promises. Not only did you break your promise not to use any kind of choke collar (as Pauka was observed to be wearing a choke collar at the time of the seizure), but you used physical force on more than one occasion. On both observed occasions, this

force was used in front of arguably both people of authority. I find this interesting to consider, especially in light of the panel in the BCFIRB Decision commenting at paragraph 77 on the "fact that [you] felt no compunction to restrain [your] aggressive behaviour in public or in front of the Society's special constable, speaks volumes about [your] sense of entitlement to discipline [your] dog in the manner [you] see fit." I do not see that much has changed since that decision.

I appreciate that you don't always use physical force or harsh training with Pauka and have taken steps in working with Ms. Mason. I also appreciate that Pauka does not currently exhibit the same times of behavioural effects of abuse that Kello did when assessed by Dr. Ledger. However, Pauka is a puppy and has only been in your custody for a relatively short time. Given your history and current behaviour, I am not willing to return Pauka to your custody and hope that you will keep your promises this time around. Kello was permanently damaged as a result of your behaviour and I am not willing to gamble with Pauka.

You have a pattern of loosing (sic) your temper and acting out physically in times of stress and I have no doubt that there will be more stressful situations in your life. I feel that unfortunately, the predictions made by the panel in the BCFIRB Decision at paragraph 79 where they conclude:

> As a result, despite the conditions that have been suggested by the Appellant as a means to monitor and enforce better behaviour on his end of the leash, this panel finds that no such conditions would suffice to ensure that the Appellant's frustration and lack of emotional control, would not be further physically inflicted on Kello in some form of abuse in the future.(sic)

have come true...just not with Kello but on your new puppy Pauka.

Unsanitary Conditions

As was noted in the ITO and in the observations of the constables during the execution of the warrant, there were significant concerns regarding the living environment provided for Pauka, (sic) In your submissions, you acknowledge these concerns and submit that you have been working hard to clean and repair your home to improve those conditions and offer the option of an inspection by the BC SPCA to support these submissions. I do not find it necessary to send out a constable to determine if these improvements have been made as I feel that even if the physical conditions have improved for Pauka, it would still not be in his best interest to be returned based on the mental and physical abuse potential as highlighted above.

IX. Witness called by the Board

L.A.

28. L.A. lives next door to the Appellant, in a basement suite with a distance between his home and the Appellant’s of about ten feet.

29. L.A. testified that he heard the Appellant savagely yell, very aggressive sounding yell, yelling as loud as he could at his dog, shouting “No No or Stop That”, “Bad” or “That’s Not Funny”. This was a daily occurrence but it did not happen more than five times a day. The dog seemed underfed and seemed thin and it would eat its own feces so, L.A. said, it was not getting enough nutrients. The dog ate garbage when it was left outside. It seems like the dog was not bathed that often. L.A. felt that the dog seemed more friendly with L.A. than with its owner. The dog did not seem that comfortable there at all. L.A. patted the dog when it would hop up against the fence but then the dog got skittish and now runs away more recently when it sees L.A.

30. L.A. said he had never seen the Appellant hit the dog but what made him and his roommate call the Society was that the dog was outside when it was raining and the dog was cold and shivering under an awning which was not enough to cover it. It was whimpering and he and his roommate would yell at the Appellant to let the dog in but nothing happened. He and his roommate called the VPD non-emergency line who responded that they would pass along the complaint to the Society but there was not a lot the police could do about it. L.A.'s roommate contacted the SPCA. L.A. heard the dog yelping inside the house, sometimes multiple times, sometimes once.

31. In response to the Society's questions, L.A. said the yelping sounded like screaming in shock, potentially in pain. Every dog the Appellant has had was yelled at and yelped. The sounds of yelping were random throughout the day.

32. In the backyard of the house was garbage everywhere with no room to run around and no shelter for the dog. There was a ripped computer chair, empty containers, a round-up bottle that the dog was playing with like it was a toy. After L.A. yelled at the Appellant to let the dog in, the Appellant did let the dog in about 20 minutes later but not right away. The dog was outside a lot; more than it was inside.

33. L.A. said he had not spoken to the Appellant in "any large capacity" just hello. The reason L.A. called the Society was his concern for the well-being of the dog as it was a very uncomfortable living situation.

34. In response to the questions from Appellant's counsel, L.A. said the dog was clearly suffering in the cold and wet weather. He noticed the backyard has been cleaned up but a raccoon tore up a garbage bag yesterday. The yard is a lot cleaner than in the past.

35. L.A. said he was concerned before about the dog but had a lot on his plate and when he saw the dog out in the rain yelping and whimpering (saying the distinction was thin between the two terms) he knew the dog was pretty uncomfortable. When he heard the dog yelping inside, the sound was more one of shock and pain, from all this, L.A. concluded that the dog was uncomfortable and not in a good environment and seemed scared all the time. When he said scared, he meant the dog did not want to be there. Inside the house, the noise from the dog was more in shock; outside it was more of a cry to let it in as it was freezing.

36. L.A. can see over the fence and saw Pauka many times, mostly alone but sometimes with the Appellant who would tell the dog No Don't Do That and It's Not Funny but he never saw him strike the dog.

37. Pauka did not look happy and when asked if he would be surprised to hear that a veterinarian said the dog showed no sign of abuse, L.A. said he would be surprised but maybe the dog was just happy to be away from the Appellant.

38. L.A. said the SPC asked him for an emailed statement the day after the seizure. His own work schedule varied. He heard yelping in the house which was a different yelp than outside the house but L.A. said he does not "speak dog" and he believed the dog was being abused even though he did not see it, it sounded like abuse. L.A. agreed he thought the dog was being abused earlier but did not call the Society, but once he saw with his own eyes the dog out in the rain in October, he

called. He had an inclination before that but never saw the Appellant hit the dog. He was certain the dog was unhappy but did nothing about it until October.

IX. The Society's Evidence

Dr. Adrian Walton

39. Dr. Walton is a veterinarian licensed to practice in BC. His primary area is small animals with 10 – 15% exotics.

40. The Society provided a copy of the October 23, 2016 report written by Dr. Walton, as follows:

> At the request of the BCSPCA I examined Pauka, a 6 month old male German Shepherd. History: Special Constable Eisnor witnessed the animal being thrown across the room by the collar. Physical Examination: The dog was very timid, and did attempt to bite when restrained. I noted that the dog was not particularly aggressive and I associated the attempt to bite as fear aggression, a response to the situation rather than a dog lacking bite inhibition. The dog was in good body condition with a normal body conditioning score of 5/9 (ideal). Oral examination showed all adult dentition and no evidence of dental disease or fractures. Eyes, ears nose throat were all normal. Heart and lungs normal, no sensitivity on the rib cage. Neurologically normal, with no back or neck pain. Radiographs were taken as per our normal protocol to see if any old rib fractures could be noted and none were found. Flea dirt (flea feces) was found on the animal. No bruising was noted around the collar area. Using thermal imaging, did see significant heat around the neck, brightest on the ventral side. Assessed the area to see if the hair was thinner in this area secondary to collar rubbing, but the coat appeared quite normal. These results are consistent with increased blood flow to the area. Due to the history, recommended that the animal be started on three days of pain control, as well as topical insecticide to remove any existing fleas.

41. Dr. Walton testified that he saw Pauka at the end of the day October 23, 2016. He confirmed the information quoted in his report including a normal BCS (body condition score). The dog's temperature was normal and there was no evidence of damage including from examining x-rays of the neck. There was "not much in the way of pain" in the dog. Dr. Walton had to work slowly as if he handled Pauka strongly or tried to restrain him, the dog, being fearful would try to nip.

42. Dr. Walton performed a thermal imaging of the dog's neck. Other than some flea dirt and an increase in temperature around the dog's neck, there was nothing wrong with the dog.

43. The thermal imaging was done for the "usual" search for abscesses or areas of infection and the thermal camera did show increases in heat from the muzzle and from where the collar was. He did look to see if the fur around the dog's neck had worn down which could account for an increased temperature, but found none. There was no evidence of bruising. All he can say is there was increased blood flow to the dog's neck but cannot say the cause. Given the history he was given, the increased heat was not indicative but was corroborative of the observations made to him by SPC Isenor.

44. Under cross-examination, Dr. Walton said he did touch all parts of the dog during the physical examination and did shave the dog's neck after he did thermal imaging. There was no indication of bruising but bruising could take three days to show up. His own touch showed no heat differences. The increased heat was only known from thermal imaging and was not apparent from any other observation.

45. Dr. Walton said Pauka was a normal puppy of that age and nothing stood out for him indicating the dog was subject to abuse. He found no evidence of neck pain or bruising and although the dog was timid, he saw nothing consistent with regular abuse.

46. Dr. Walton read the Dr. Janne Potter letter and said he had no issue with its contents. Dr. Walton testified that he agreed with what she wrote.

47. Regarding picture 3 and 4, Dr. Walton said he had moved the dog's collar aside for several minutes, not 24 hours. He did what he could to minimize an increase in thermal grading and in and of itself the imaging would not be used as evidence, he said. It just corroborated that there was an increase in blood flow to the area. He agrees there could be other causes and he cannot, he said, tell this Board that the thermal image has anything to do with the alleged assault. What he sees is consistent with increased blood flow but could be due to a thin coat or to inflammation due to the collar as those are valid explanations for increased heat. All he can say is that there is increased heat around the dog's neck, he cannot say it is due to what SPC Isenor told him he witnessed.

48. In response to my question about whether or not he had seen the timid "spooky" behaviour in other dogs, Dr. Walton said "oh God yes" he sees it quite regularly especially with German Shepherds. German Shepherds around 4 – 8 months old can be extremely timid. He sees this quite regularly. It is normal behavior that does not alert him to anything else. The timidness simply upsets clients, he said. Dr. Walton said that SPC Isenor told him that the SPC witnessed the dog being thrown across the room by its collar and Dr. Walton's own assumption was that the dog was grabbed by the collar up off its feet with the collar being the focal point to launch the animal across the room, with all four feet off the ground.

C.O.

49. C.O. testified that he lives next door to the Appellant, a late to middle aged white man who owned the dog. He contacted the Society after hearing late one night loud aggressive yelling and he heard the dog yelp. He had concerns before about this dog's welfare based on the Appellants treatment of the previous dog and this was the straw that broke the camel's back. He had heard yelping from inside in a few instances in the back yard – a high-pitched "very, very quick" yelp; a fast sound like a reaction. Outside was similar – a yelp preceded by very aggressive yelling by a man. C.O. cannot recall what was said; just the sound being fast and aggressive. It did not sound like someone yelling at a dog to get inside. It may have started like that but it grew into a verbal violent reaction. The Appellant could have been speaking in another language.

50. C.O. testified he heard sounds and yelling mostly at night. In October, he saw the dog outside at night when it was "very, very cold" and raining heavily and the dog was whimpering.

51. The fence between their houses was chest high so he could see into the entire back yard. He did interact with the dog and could pat it over the fence.

52. When asked the complaint that caused him to contact the Society, C.O. said it was the rain.

53. C.O. moved in at the start of the summer and the Appellant got the dog in the beginning of August. C.O. did not have any problems initially so he did not take action off the bat. At the seizure, he spoke to the SPCs and confirmed his email address and was asked if he had any more information.

54. On cross examination, C.O. said he did not hear yelling every day but consistently heard it 3-4 days or 2-3 days a week. He never saw any physical harm to the dog. He did see the Appellant drag the dog by the collar once to get the dog into the house. C.O. confirmed his opinion that the sounds he heard from inside the house sounded like a dog in distress, but he is not a scientist, he said. The yelping was always preceded by violent yelling. He took notice of the yelps.

55. C.O. confirmed that it was October 18, 2016 that he made his second call to the Society to complain. From August to October he heard yelling a few times a week and he did discuss this with L.A. C.O. gave a statement at the request of the SPC and repeated what he had said on the phone in an email.

56. C.O. testified that the dog looked skinny. His friend L.A. called the Society because the dog was left out in the rain, the same night as he made his call.

57. C.O. once saw the Appellant trying to get the dog back inside and he was very close to the dog yelling aggressively. He saw the dog's rib cage and the dog looked emaciated. C.O. said that based on an assumption from the last dog looking skinny, he saw Pauka looking skinny, and over the course of that week, he saw the rib cage of the dog. The dog appeared cowering and skinny and by the looks of this dog, he thought it had been abused so he called the Society. C.O. said he does not believe he is exaggerating but that the dog did look like it was cowering the majority of the time.

58. C.O. did not recall the words the Appellant was speaking as he was yelling or mumbling or speaking another language, and added "I can barely understand what the man says when he speaks." He is either yelling at the dog to go out or come in.

59. C.O. confirmed he had discussed his written statement with L.A. but had not talked to him the day of his testimony.

60. In response to my questions, when I asked for certainty why C.O. called the Society to complain, he said because the dog was outside in the rain and it wanted to go back inside. He confirmed his initial first call to the Society was in response to hearing yelling and yelping and in that complaint, he left a message on the Society's voice mail. That was about two weeks before the seizure on the 23 of October. It was on October 18 that he called about the dog being in the rain. Seeing the dog in the rain prompted him to call the Society again on October 18, 2016 and he wanted someone else to make a judgment on the dog.

61. C.O. described an event in the evening where he peeked through his door and heard someone shouting and he saw the Appellant lean out of his door and grab the dog with his right hand and yank the dog inside from about a foot and a half away. The dog's feet were on the ground and the dog was powering away from the Appellant and it took a few tries for the Appellant to get the dog in the house. This entire encounter took "ten seconds maximum" in its entirety.

SPC Isenor

62. Special Provincial Constable Brandon Isenor confirmed he was an employee of the Society appointed under the *Police Act* and he was involved with the current (Pauka) and the previous (Kello) seizure.

63. SPC Isenor testified he knew who the Appellant was and had heard the Appellant speak to Kello and to Pauka in a different language than English. In response to the complaint received, SPC Isenor asked SPC Mackay to look into the file, following which SPC Isneor drafted the ITO, obtained C.O.'s statement and the warrant was approved. He confirmed the information in the ITO was accurate.

64. When asked why he sought the warrant, SPC Isenor stated that he believed the Appellant would not allow him into his residence voluntarily. SPC Isenor said he wanted to see the living conditions at the residence, and see the backyard and inspect the dog with his hands. He attended the Appellant's house to execute the warrant on October 23, 2016.

65. SPC Isenor was accompanied by SPC Mackay and two Vancouver Police Department officers. When the Appellant answered the door, he "politely" told the SPC to f**k off and tried to close the door. SPC Isenor put his foot in the door and since no permission was needed to enter, he told the Appellant it was in his best interests to let them in or he would be restrained or arrested. SPC Isenor told the Appellant that he was going to break the SPC's foot to which the Appellant replied that he did not "give a f**k." After a few attempts the officers were all allowed in.

66. Upon entry, the Appellant had the dog with one hand in the dog's collar. SPC Isenor advised the Appellant that he needed to see the dog. The Appellant said he was not taking the dog and grabbed the dog by the collar and threw the dog by picking it up in "one swoop" at the front of the Appellant and arcing to his left side and then behind him, sending the dog into the kitchen by letting go during the swoop. SPC Isenor said that the Appellant was trying to prevent the Society from making contact with his dog and that the Appellant was "rightfully so" protecting his family. SPC Isenor said the dog landed and yelped and scurried away and it was the sheer force of the swoop that lifted and threw the dog. The Appellant was very irate and did not strike the dog but had stuck Kello, the previously seized dog. The Appellant seemed like a "loose cannon" to the SPC.

67. SPC Isenor described an altercation between the Appellant and himself where the Appellant grabbed his hand and tried to bend it backward and was swearing. The VPD then took over and the Appellant raised his fist so the police tackled the Appellant and handcuffed him.

68. SPC Isenor went past the Appellant and into the kitchen and grabbed the dog by the collar and led it out of the residence. SPC Isenor said the Appellant was "very spunky" for a 72-year old man. SPC Isenor said he had seen other people try to run or hide or pick up their animals during search warrants, but this was the first time he had seen someone throw their dog.

69. SPC Mackay took Pauka to the Society's truck. SPC Isenor spoke to two individuals beside the Appellants house who were C.O. and L.A.

70. SPC Isenor confirmed that his intent in attending at the Appellant's house was to see the living conditions, and that the throwing of the dog led to its removal. SPC Isenor said he would have written orders for the living conditions as the conditions were not sufficient for removal and there was nothing on the previous seizure about living conditions. Throwing the dog was the reason for the seizure as there had been previous orders for another dog about the matter of physical abuse. SPC Isenor then took the dog to the veterinarian.

71. Under cross-examination, SPC Isenor said he wanted a chance to inspect the dog and the back yard. When asked to define "distress", SPC Isenor said if living conditions were poor enough, they could constitute distress if something would imminently fall on the dog or cause it to suffer unduly. There had been no previous orders issued to the Appellant about conditions. SPC Isenor said when the Appellant put the dog into the kitchen the way he did, it was not to discipline the dog or to teach the dog, it was just to remove it. SPC Isenor then said that throwing an animal is harsh discipline to him, and it could be considered abuse. It is improperly handling a dog and there had been previous warnings with a previous dog about physical abuse and harsh handling or improper handling.

72. There were no alarming issues with the dog when examined by the veterinarian but Dr. Walton did not say the dog was perfect. SPC Isenor agreed that the veterinarian did not find evidence of abuse other than what happened in front of SPC Isenor during the seizure. The dog was fine at the veterinarian's, he said, and the Appellant had a bad attitude at what the Appellant must have seen as an intrusion. In addition to the questionable activities at the seizure, the dog was in distress due to its living conditions, said SPC Isenor.

73. SPC Isenor gave notice that the Appellant had to clean his residence and yard if the dog was going to come back and he is not aware if it has now been done and he was not aware the Society had been invited back to inspect the premises.

74. SPC Isenor said when he executed the search warrant, he was expecting trouble judging from his previous experience and he got trouble.

75. SPC Isenor confirmed he would not have seized the dog based solely on the condition of the house and yard but the dog would continue to be in distress if the living conditions did not change and would ultimately be seized but would not have otherwise been taken during this search warrant. If the premises had then been cleaned, he would not have seized the dog.

76. During the seizure, Pauka was very stressed but SPC Isenor was not sure if that was due to neglect or being thrown or having strange people in the house.

77. In response to my questions, SPC Isenor said that he led the dog out by placing 2-3 fingers in the collar. The dog did not pull and was happy to leave the residence. The collar was a Martingale collar and was loose until pressed.

78. SPC Isenor testified that the Appellant did not lift the dog off the floor but the dog left the floor due more to centrifugal force when the dog was swung outside of the Appellant's side. SPC Isenor said the dog was airborne for two seconds and he could see floor beneath the dog's feet and he was positive the dog was airborne. SPC Isenor thought the Appellant was holding the chain part of the collar when he flung the dog, and the flat part of the collar was at the front of the dog, but could not recall whether the collar was blue or black.

79. SPC Isenor told me the living conditions were the reason for his visit to the Appellant's home. I asked what SPC Isenor meant by his sworn statement in the ITO that said *"Due to previous history, the Informant believes that [the Appellant] will not allow the [Society] entry to the premises willingly. The Informant also believes that ongoing abuse is taking place regardless of past notice*

provided by the [Society].” I asked what was the ongoing abuse he referenced. SPC Isenor told me it was the aggressive yelling and yelping and that he need to do a hands-on examination, with which he found nothing. He said a hands-on exam was protocol and he was checking for injured or hot spots or sensitive spots, or fleas, or ongoing medical needs, and he was not aware of any previous abuse for this dog. There was no abuse physically observed, he said, just reports of aggressive yelling and yelping.

80. SPC Isenor said that there was the past history with the other dog. SPC Isenor said that the Society has, in other cases, received yelping complaints before [not with this Appellant] and if there is no history, there would be no ITO unless the complaint was strong; but in this case, due to the fact there had been a notice before, and the fact that the Appellant was not interested in speaking with him, and given that there had been complaints of multiple yelping, not just a single incident, meant, in his opinion, ongoing abuse. SPC Isenor said it is hard to prove abuse.

81. When asked to further explain living conditions and distress, SPC Isenor said his understanding is the Society issues orders the first time, unless there is critical distress, and provides the owner with some time to promptly rectify the situation. If living conditions, for example, had included broken glass and needles [not an issue suggested here in this appeal] he would have requested a search warrant. SPC Isenor said he did not believe the Appellant would open the door so he got a search warrant.

82. SPC Isenor said to the best of his knowledge, there was no reason for Pauka to see a veterinarian again since its seizure.

83. In response to further questions from counsel for the Appellant, SPC Isenor said he could not have simply left an order as he had not first seen the living conditions.

X. The Appellant’s Evidence

Dr. Janne Potter Report

84. The following unsigned report of Dr. Potter was provided by the Appellant, and a signature later affixed to the report. Dr. Potter was prevented from testifying due to an accident and injury. The report reads:

> In response to your query regarding thermal imaging and the photos provided.
>
> Thermal imaging is an image of temperature values. It shows hot/warm areas and cold/cool areas and the gradients in between. It is not a tool that is routinely used in small animal veterinary medicine. It used mainly for locating warm/cool areas in equines. This gives a practitioner added information as to where an abnormality may be located. Variation in colour is a normal thing. It can vary with ambient temperature, coat density, external clothing, pressure points when lying down etc.
>
> The images attached show the temperature gradient on a dog and attending human at the time the image was taken. No more can be read into the image of the dog than that of the human. There does not appear to be any discordant area(s) of excess heat or cold.
>
> In my opinion no theory, or conclusion, could be made as to the condition of the dog, or human, in the image provided.

> If you have need of clarification, or further questions please do not hesitate to contact us.
>
> Regards,
>
> Janne Potter, DVM

Helen Morrell

85. Ms. Morrell provided a written report dated December 14, 2016 which sets out her qualifications including running the largest veterinary thermography company imaging animals within the United Kingdom, and her six years' experience, having qualified in Veterinary Thermal Imaging at the University of Florida Veterinary School in 2010. Her report states that the furnished set of thermal images for Pauka which were provided to her did not contain thermal scales to allow the interpreter to ascertain whether or not there were clinically significant differences in pixels, no normalization information on the imaging environment, a non-recommended thermal palette, no information on the camera mode, and a dog being restrained by a handler will confound images. She ends the report thus:

> I have been asked to specifically comment on the issue of thermal imaging as a determinant of abuse on canines. I am unaware of any peer reviewed, published papers purporting the use of thermal imagine in this area. Thermal imaging has been used in assessing the soundness of equine cases competing under FEO rules (specifically relating the third metacarpal) where certain abusive practices can be identified. It has also been used to identify "soring" in Tennessee Walking Horses. I am unaware of any evidence to back the use of thermal imaging in identifying cervical issues relating to abuse in any species. I do not believe that the images presented alone provide sufficient information to definitely conclude whether or not abuse has taken place.

86. Ms. Morrell testified that she authored the report.

87. Under cross-examination, Ms. Morrell agreed that increased blood flow will result in higher temperatures being reported. Increased blood flow could be due to trauma depending on the timing of the trauma, as the inflammatory process takes 30-60 minutes or more. She said it was important to state that conducting thermal imaging had to be done in highly controlled environment and that you cannot sue thermal imaging alone to rule in or out abuse. Thermal imaging highlights an area of interest and further examination is needed such as physical exam, x-ray, ultrasounds, pain response. Thermal imaging shows an area of increased blood flow, not the reason for an increased blood flow.

88. Ms. Morrell said that if there was a history of trauma, one could say potentially there was an increase of blood flow due to trauma *only* if you could carefully manage the environment and properly prepare the dog.

89. In response to my questions, Ms. Morrell confirmed that any increase in temperature is always a result of an increase of blood flow, it is just hard to determine the cause of the increase of blood flow.

Lori Mason

90. Ms. Lori Mason provided a written report as follows:

I, Lori Mason, Certified Master Dog Trainer, make this report in relation to the matter of Tamo Viitre vs British Columbia Society for the Prevention of Cruelty to Animals.

I was telephoned by Mr. Tarmo Vlitre ("Mr. Viitre") in July of 2016 regarding group puppy training classes that I conduct on a regular basis. I had never met or spoken with Mr. Viitre prior to that telephone call.

Mr. Viitre and his puppy, Pauka, came to four of my group puppy training classes from July 26 to August 16, 2016.

During those classes I observed that Pauka was an anxious, untrained German Shepherd puppy. I further observed that Mr. Viitre would become frustrated and loud with Pauka, giving Pauka too many commands at once. I did not observe any indication that Pauka had been abused prior to those classes, as Pauka, while anxious and excitable, was not hand shy, nor was he fearful of people. At the fourth class I observed Mr. Viitre give Pauka a smack on the nose, at a time when it appeared that Mr. Viitre was frustrated with Pauka's inability to follow commands and Mr. Viitre's physical inability to crouch to the ground due to knee pain. When I observed the contact with Pauka, I took Mr. Viitre aside and discussed his frustration with training Pauka and that he was being inconsistent with giving commands, which was confusing the puppy. I never again saw Mr. Viitre strike Pauka.

After the fourth group class I asked Mr. Viitre to stay late and we booked a private lesson (the following day, August 17) to discuss me walking and training Pauka on an ongoing basis. When I suggested to Mr. Viitre that Pauka needed private training classes, he readily agreed to that suggestion. I started working with Pauka for 26 private lessons from August 29, 2016 to October 22, 2016, when he was seized by the SPCA.

During the numerous private walks, I observed Pauka to be evolving in his training in a progressive manner. On the early private walks, for example, Pauka was very excitable and would become stressed and anxious once he realized that Mr. Viitre was not present. During the initial private walks, which each lasted approximately 60 minutes, Pauka did not urinate.

Over the course of the next few weeks of walks, I observed Pauka to act in a progressively better manner. For example, he seemed less anxious, he started to urinate and defecate, and started interacting more appropriately with other dogs. As his anxiety decreased, our walks became 90 minutes to 2 hours. During the last week he was initiating play, and exhibited a very relaxed and happy demeanour. His body language was beautiful... he was loose and bouncy, very playful, and maintained eye contact and was eager to learn. He fully engaged with his nose, was curious and had bright eyes. He was checking in constantly and he did not try to run away. He came for every recall. At no time during these private classes did I notice any sign of Pauka having been abused. He was engaged with his nose and he was not hand shy, nor was he fearful of being approached by strangers. He is a very biddable and affectionate puppy. At the end of each private walk, Pauka was always very happy to return home and see Mr. Viitre.

It is my opinion that Pauka and Mr. Viitre can be trained to have a good, happy and safe life together. I have observed Mr. Viitre to be very determined to have Pauka trained properly and give what is best for his dog, and to understand how his own behaviour can affect Pauka. I have agreed to continue private classes for Pauka and to continue training sessions with Mr. Viitre and Pauka.

Pauka loves the Viitres and I believe that his proper home is with them. In my opinion, based on my regular involvement with Mr. Viitre and Pauka, Pauka will remain in good condition if he is returned to Mr. Viitre and returning home would be in Pauka's best interest.

91. Ms. Mason testified that Pauka was a nervous excitable puppy and she suggested the Appellant start in training outside of class. Pauka was a typical German Shepherd puppy - she has two German Shepherds of her own. They go through a timid, spooky phase. Pauka demonstrated this very behaviour on his first walks, engaging with his nose after 15 minutes, and wanting to go back to his "person". The puppy progressed during his walks and training and was eager to learn and she was able to walk him farther from home. Initially Pauka was very excited to go home to his "person" and in time he changed to become more relaxed and enjoying being outside.

92. Pauka never exhibited any abused behavior. He was very vocal and excited when she picked him up. He was not hand-shy, was not underweight. He was bright eyed with a shiny coat. He was insecure which was normal puppy behavior.

93. Ms. Mason spoke to the Appellant in class and said the dog needed further training and since the Appellant had knee problems she suggested private training and walking. Ms. Mason said the Appellant asked her to be Pauka's trainer and bring him to where he needed to be.

94. Ms. Mason said at one point in the class training when the Appellant got frustrated trying to get Pauka to go into a "down" he smacked Pauka on the nose and she told him it was inappropriate and she never saw him do that again.

95. She has not noticed anything negative since; she said the Appellant has a loud voice but Pauka was always very content to go home and sit on the porch with the Appellant and when she would pull up after a walk, the dog couldn't wait to get back in the house. There was no evidence of nervousness or fear in the dog of the Appellant. In fact, the dog had no fear of people at all. He was careful but very engaged. He was more cautious with other dogs.

96. Ms. Mason said she would continue to work with Pauka and train the Appellant. All puppies are challenging she said especially as they enter adolescence. She was and would continue to teach the Appellant the proper way of dealing with the dog – to stay calm and relaxed and not to over-command the dog. She would let him know what to expect and guide him so he can make better choices. If Pauka was returned and the Appellant abused him, she would report it to the Society.

97. Ms. Mason testified that she had a conversation with Ms. Moriarty from the Society after the seizure, and learned then about a previous seizure from the Appellant and read the decision about the treatment of that dog [Kello]. She stated that she was very disturbed by it and if the Appellant treated Pauka like that, she would call the Society.

98. Ms. Mason said she had animal welfare experience and is on the Board of *Paws for Hope* which supports rescue organizations and educates the public on animal welfare and breed specific legislation.

99. In response to the Society's questions, Ms. Mason agreed that loudly berating a dog is not acceptable behavior nor is whipping. She confirmed she knows of Dr. Ledger, the animal behaviourist. Ms. Mason agreed that over time, loudly berating a dog could cause emotional suffering and that striking a dog with your hand is abuse as is throwing a dog across the room by the collar. Ms. Mason said that a "choke" or chain collar with a single chain when worn properly is a training collar and won't choke the dog. The mechanism is to tighten when tugged, then loosen

right away; this is how the collar works when worn properly. Pauka, she said, does not wear a choke chain. She recommends a flat or a martingale collar for puppies.

100. Ms. Mason said that in training, it is important for the owner to remain calm to keep training positive. If the owner loses their temper, nothing positive comes from training. Then the dog shuts off and stops being trained, so if a handler becomes frustrated, it is best to end the session. Ms. Mason agreed she had no training in human psychology.

101. Other than the smack on Pauka's nose once in training, Ms. Mason has not seen the Appellant go to hit the dog, though he does use a loud voice. She said the Appellant does say "No" loudly when the dog jumps. She said she cannot say whether the Appellant would at some point in the future lose his temper and engage in inappropriate physical contact with the dog, but has never seen it and has never been in his house.

102. The Appellant has asked about further training for Pauka, and the dog is very excited to see the Appellant. Puppy training ended in August and she was walking Pauka as Pauka was not ready for the next class as its focus was too short. Ms. Mason is excited to do more work with Pauka to relax him and expose Pauka to different environments.

103. Ms. Mason said Pauka is the type of dog that needs a calm environment especially when he acted "spooky" as all German Shepherds do; it's a phase they usually outgrow. Pauka has made great progression walks and has fantastic recall and is a very, very fun dog to work with.

104. When asked if a dog subjected to occasional temper outbursts such as shouting or whipping, would be content to go back to its owner, Ms. Mason said shouting and whipping are two very different things. A dog would be more cautious and on guard if the whipping was frequent, but may relax if it was infrequent with months between whippings. The dog, if whipped, would go back but would be more cowering; she has seen this in her work in shelters where a dog was not excited to go back. Dogs she has worked with which were abused are skittish around hands and feet and act differently in their approach to a handler. Pauka, she said, is not like that.

105. In response to my questions, Ms. Mason said Pauka's excitement is not as a result of the Appellant's actions but was due to the fact the dog was going for a walk. She was building Pauka's confidence when the dog was out on walks as the dog had no exposure due to the Appellant's inability to walk the dog due to the Appellant's knee.

106. Ms. Mason has seen other people smack their dogs on the nose during training, all older men who tend to get frustrated with their dogs. She has seen very classic smacks on noses or bottoms. Each time, she said, she addresses these, and some men quit coming, and one, in addition to Pauka, she works with still.

107. If the Appellant had Pauka returned, she would definitely be on the lookout for any signs of abuse.

108. In response to further questions from the Appellant, Ms. Mason said she intended to integrate the Appellant into the training once Pauka could first do the command. She would show the Appellant what the dog was capable of. She would recommend an adolescent class and keep focusing in the handler. She would want the Appellant to be successful with the dog. A lot of dogs do not do what

they are asked. Ms. Mason said that Pauka was making great progress when she worked with him, and the next class is in January.

109. When asked about the Appellant's reaction to her when he smacked Pauka on the nose, Ms. Mason said the Appellant seemed to hear her clearly and was sorry he hit the dog and acknowledged he needed help.

110. In response to final questions from the Society, Ms. Mason agreed that one of the reasons she recommended training would be to get Pauka to a level of training to minimize the Appellant's frustration.

Tamro Viitre

111. The Appellant testified he is 72-years-old and a retired computer consultant who retired at 65. He said he has had the outside of his home completely cleared and has had the inside of his home cleaned and that he had offered the opportunity to the Society to come and inspect his home.

112. The Appellant said, in response to LA's testimony, that he yelled at Pauka outside when Pauka wouldn't come inside to sleep and when he could not chase after the dog outside. He recalls Pauka failing to come to sleep in maybe three times. When he asked Ms. Mason about this, she told him it was normal for adolescent dogs. He denies yelling at the dog on a daily basis.

113. The Appellant said he had no warning about the Society coming to seize his dog and if memory served him, four police and one SPC came and he tried to prevent them from entering his house and admits he was mistaken to do that.

114. At this point in the Appellant's testimony, counsel for the Appellant advised that the Appellant was compelled to give evidence at this hearing and counsel asserted this as there was some talk that the Appellant might be charged and, under the *Canada Evidence Act*, the Appellant was obviously compelled and his evidence cannot be used in another proceeding. Counsel for the Society agreed.

115. The Appellant said he was trying to move Pauka out of harm's way so it would not be seized and the police tackled him. He had taken the dog by the collar to put it into the kitchen. He thinks Pauka was expecting to see Ms. Mason at the door and was nosing around so the Appellant "chucked" the dog into the kitchen. It was wrong and he wouldn't do it again and had not done it before and always told both his Mom and Ms. Mason that no one other than Ms. Mason is to train the dog at all, adding that only Ms. Mason trains. The Appellant said he heard Ms. Mason testify she would report him if he abused Pauka and he said he would insist upon it. He was confident Ms. Mason could train Pauka and he will absolutely listen to her advice.

116. Pauka is very affectionate toward him and sleeps on his pillow above his head and is never left out at night and never wakes him up to go out at night. It was untrue he left Pauka outside in the rain.

117. He is agreeable to Ms. Mason continuing to train Pauka and he will participate in classes as she says. His mom is 98 and loves Pauka and, said the Appellant, "Oh God Pauka is very, very close to mother."

118. In response to cross-examination for the Society, the Appellant said he did not read the prior decision about Kello in detail as it was irrelevant as he had already lost that faithful puppy. He understood the decision was not to return Kello to a situation of distress and the Appellant said he does not abuse animals and in his opinion Kello was not abused.

119. The Appellant said he cleaned up his back yard as it was dirty but there was nothing that could have injured his dog, only garbage and apples. He has not seen Pauka open garbage, just raccoons doing so. He acknowledged that Pauka could have accessed the strewn about garbage but said he does not throw rotting food in the garbage. He had a man come in and clean the yard partly due to the concerns of the Society.

120. The Appellant said he had nothing to say about his neighbours who testified. They never introduced themselves, they just hang off the fence and watch him. They keep away and drink. He agreed that he yelled at Pauka to get him inside but does not think a harsh voice causes stress especially when the dog is playing with him. He does not discipline his dog as that is Ms. Mason's job to train Pauka. The Appellant said using a harsh voice is sometimes acceptable and if the dog is farther away, he uses a bigger volume.

121. Pauka does not yelp as he never hits the dog. When Pauka went to the bathroom in the living room his mother said to punish the dog but the Appellant refused, and now Pauka has outgrown that behaviour. The Appellant did not catch the dog doing it, so he said nothing.

122. The Appellant said he was hazy about the seizure details as he was excited and angry and used bad language. The VPD threatened to handcuff him if they couldn't enter and they did come in and it sounds correct that he did swear at them all. He was trying to keep the dog away from them and the Appellant does not believe he lifted the dog off of all four feet as the dog weighs 50 pounds and the Appellant is not that strong. He did not see the dog spin. He did apologize as it was wrong what he did to the police and the SPC, but he never hit or disciplined his dog and he does not believe that getting the dog out of the way was abuse as it was done to protect Pauka. He knows now that he should not have done it. He does not feel it was lashing out at the dog and was not the same as when he struck Kello in front of the Society before. Before, with Kello, he was telling the Society to go to hell; with Pauka he was protecting the dog.

123. When the Society came to the door to take Pauka or discuss taking Pauka, he acted as he did as Pauka was a member of his family and he was trying to protect his family and he believes that is what most people would do – try to protect their family.

124. The Appellant said, again, that he does not think shouting out for the dog when it is far away is abuse; instead, abuse is when you cause injury to a dog. Using a harsh voice doesn't equal shouting at a dog to come inside.

125. Pauka does not wear a choke collar, it is a Martingale collar that Ms. Mason recommended. Ms. Mason walks the dog three-to-four times a week as there are some days when he or she is unavailable.

126. When I asked about why the Appellant smacked Pauka on the nose during training, the Appellant explained the dog was not following commands to walk in a circular fashion and he was falling behind, so he smacked the dog's nose for not following commands. He knows now he cannot do

that, period. Training methods change, he said. When he was cleaning his house recently, he found a training book about training Samoyeds and the book said that of a dog bites you, you bite it back, and he did that once as the book told him to [this was not about his recent dogs, the Appellant was speaking historically]. This type of training is now unacceptable, he said. Another book said when teaching your dog to walk on a leash and it balked, you were to drag the dog so its feet got warmed. He admitted that he had done that a long time ago, and is sorry he did it. In retrospect, it obviously hurt the animal.

127. In response to my questions, the Appellant testified that his attitude toward training a dog has changed and only Ms. Mason will train Pauka and he will not interfere with her methods in any way, shape, or form including when he is home with the dog at night. He now thinks it is wrong to smack a dog. He does not think that smacking and striking are the same thing but he now knows that in both cases, the dog feels hitting. If Pauka were to not come inside, he would not hit Pauka but he would yell at Pauka to come inside. He said he would use self-discipline just like he never interferes with Ms. Mason's training.

128. He has a veterinarian for Pauka at West Boulevard and he took Pauka there for its physical and has taken Pauka there three-or-four times including once for getting the dog's nails clipped. Pauka hates having his nails clipped and it took two staff to hold the dog and one to clip.

129. The Appellant will continue to get training for as long as Ms. Mason says to get training.

130. The Appellant cannot rely totally on his memory of what happened at the time of seizure but he recalls the dog pulling to go outside and he took it by the collar into the kitchen. He absolutely does not want to hurt Pauka.

131. The Appellant explained that he found Ms. Mason on the Internet as he was looking for a place to get Pauka trained because he felt that his own methods for training a German Shepherd were out of date, so he needed someone more knowledgeable and capable than he was. He thought he would take a stab at Ms. Mason and phoned her and told her of his situation and she suggested puppy training and he took that.

Laine Viitre

132. Ms. Viitre testified that Pauka was her second son, a four-legged son, and she loves him and wouldn't punish him.

XI. Submissions

The Appellant's Position

133. The Appellant submits that the dog must be in distress to be seized. He cannot criticize the SPC as the state of his premises was an important concern, but the SPC should have issued a notice to correct. Except for the Appellant's unreasonable approach at the time of the SPC's visit, there was no evidence to justify the seizure of the dog. Given that what occurred was brought about by the actions of the Society, and but for that and the Appellant's unfortunate reaction, the dog was not in distress. The property was not in a state to justify seizure. The Appellant's age and attitude toward authority caused him to act inappropriately but even the SPC's evidence fairly suggested that the

Appellant was not trying to hurt the dog, whereas with the previous dog Kello, the Appellant did hit the dog. The Appellant acted inappropriately in an effort to keep the dog from being taken. No one is trying to justify the flinging of the dog. There was not proper communication with the Appellant regarding the purpose of the visit being for two SPCs and two Vancouver Police Department officers to force their way into the Appellant's home just to see the living conditions. The Appellant concluded they were going to seize the dog and reacted. The Society ought to have known this reaction or something negative could happen.

134. The Appellant had hired a trainer for the dog. The SPC could not have known of the Appellant's engagement with the trainer and if the SPC had of known, through communication, he may have been satisfied with how the dog was living. The dog was perfectly healthy and showed no sign of abuse.

135. The Society has no right to be wrong and the process must be flexible and decisions made in the best interests of the animal. There is no good argument that the dog would deteriorate since arguably it was not in distress. If the dog was returned to the Appellant, he would continue with the training as he has already sought help and deferred to a competent person who thinks she can train the dog and the Appellant. The trainer would report them if she saw any issue.

136. The lay witnesses were inconsistent.

137. The Appellant is prepared to agree to any conditions and it is the Appellant's view that it is in the best interests of the dog to be returned.

138. In his reply, counsel said the reference of the Society to child welfare had no relevance; plus this is a new dog and the Society had no authority. Finally, regarding Dr. Ledger's comments about the previous dog Kello that appeared in the previous decision, there was not a single opinion or spot of evidence from Dr. Ledger or anyone regarding any risk to this dog.

The Society's Position

139. The Society relies on its written submissions as well as its oral submissions.

140. Throwing a dog as a reaction to stress is out of the ordinary and is not acceptable conduct but instead is pure and simple abuse.

141. The rationale a previous Panel of this Board used for not returning Kello, namely that the Appellant's claim of disciplining that dog was actually a show of force, was not accepted as discipline by that Panel. Both Kello and Pauka were subject to abuse by the Appellant as a result of the Appellant's temper. At the end of the day the dog bears the brunt of the Appellant's temper and this reaction is not isolated.

142. SPC Isenor had been involved with viewing the abuse of both Kello and Pauka. The neighbour described the Pauka being yanked by the collar into the house, which is somewhat consistent with SPC Isenor's testimony. The neighbour describes Pauka being yelled at and the dog yelping inside the home and being yelled at in a foreign language. This is consistent with SPC Isenor's testimony.

143. The trainer wants to work with the dog to minimize the Appellant's frustration as he clearly reacts inappropriately when frustrated. At the last hearing, that dog was subject to prolonged shouting and it wore the dog down. The Appellant said there is nothing wrong with shouting at a dog. It is emotional suffering and it is abuse and it is not okay. Clearly, the dog was in distress and to say yelling is not abuse is quite telling.

144. The pattern is repeating itself: the dog is at great risk if it is returned as the dog is the focal point of the Appellant's rage. True, steps have been taken, but there are no assurances that the Appellant will keep up with these steps. The trainer will not be with Pauka 24/7 and abuse may not be readily apparent to the trainer.

145. Relevance of past abuse is also a factor to consider when assessing the risk of future abuse. In assessing the risk of future abuse, the question is whether that future risk would occur, on a balance of probabilities. Even a low risk of abuse materializing (for example 10%) will suffice in appropriate circumstances.

146. In the child welfare context, in *B.S. v British Columbia (Director of Child, Family and Community Services)* (1998), 160 DLR (4th) 264 the B.C. Court of Appeal explained the issue as follows (emphasis in original):

> When the assertion being made is about a past event then the actual occurrence of that event must be shown by the weight of the evidence to have been more probable than not. But where the assertion being made is that there is a risk that an event will occur in the future, then it is the risk of the future event and not the future event itself that must be shown by the weight of the evidence to be more probable than not.
>
> The result is that in considering past abuse the degree of certainty that it has occurred will be more than is required in considering whether abuse will occur in the future. A ten percent risk of future abuse may meet the test of the risk being shown to exist on the balance of probabilities, whereas a ten percent assignment of the probability that the abuse had occurred in the past would not meet the balance of probability test.
>
> In assessing the risk of future harm, (which is called the threat of future harm in s.2), there is room for a variable assessment depending on the nature of the threatened harm which is in contemplation. A threat of harm through neglect of the child's hygiene might well have to be much more probable in order to meet the balance of probability test than a threat of serious permanent injury through physical or sexual abuse. Generally speaking, a risk sufficient to meet the test might well be described as a risk that constitutes "a real possibility".

147. In these circumstances, Ms. Moriarty's decision was entirely reasonable and correct: Pauka should not be returned to the Appellant because doing so will probably cause him to experience distress as defined in the Act. Pauka would face a probable risk of physical and emotional abuse in future. He would also suffer unreasonably owing to stress exerted upon him by the Appellant. "Abuse" and "suffering" both constitute "distress" pursuant to the Act.

148. The Appellant has shouted, used harsh training, verbally abused and physically abused his dogs and a degree of certainty exists that there is a threat of future harm. If Pauka goes back to the Appellant, there are very grave concerns that the dog will live in misery and be abused and the abuse will become more regular.

149. It seems that the Appellant hopes to claim his past conduct is irrelevant. But his past conduct bleeds into his conduct with Pauka. His temper with animals and with people is consistent. While he can sometimes control his temper, he seems incapable of doing so at all times. Witnesses heard Pauka yelp and they describe the Appellant shouting at and berating Pauka. The Appellant also assaulted Pauka physically in front of SPC Isenor. He engaged in the very same sort of conduct in front of SPC Isenor when the Society took Kello. The Appellant's claim that he only did so due to the stress of the situation must be rejected out-of-hand. Many people have had animals taken by the Society and have not acted aggressively towards their animals in the course of seizures.

150. The Appellant appears to lack appropriate control of his temper such that he engages in instances of abuse and causes his dogs to suffer, which is contrary to the Act.

151. The Society is therefore concerned that the Appellant will contravene the Act, s. 9.1, if Pauka is returned to his custody:

> Duties of persons responsible for animals
>
> 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.

XII. Analysis and Decision

152. The *PCAA* sets out the following definition of "distress" in section 1(2):

> 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.

The decision to take custody of the animal

153. Section 1(2) must be read with s. 11 of the PCAA, which states:

> 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.

154. As stated in previous BCFIRB decisions under the *PCAA*, I do not see my role as a decision maker tasked with hearing appeals under section 20. 3 as giving me the authority to review the decisions of a judge or justice of the peace as to whether circumstances justify the issuance of a warrant. A

party who believes that a warrant has been improperly issued or executed can challenge that decision through judicial review and ask by way of remedy that the warrant be quashed (which does not necessarily mean that the evidence collected would be inadmissible on this appeal: Administrative Tribunals Act, s. 40(1)). Until such time as a warrant has been set aside, I am entitled to rely on its validity.

155. While I am entitled to rely on the warrant, and while the information sworn in support of the warrant is admissible as evidence before me, I am of course not bound by that evidence, which is not tested under cross examination. In this case, wherever the information provided in support of the warrant conflicts with or differs in emphasis from the oral testimony of SPC Isenor, I prefer the evidence he provided at this hearing, which I accept and believe to be true and forthright. The evidence of SPC Isenor made clear on this appeal that the basis for the Society's concern in this case arose from reports of yelling and yelping and that SPC Isenor was not aware of any physical abuse. SPC Isenor also made it clear that the living conditions were not of a level of concern to cause him to seize Pauka. Further, SPC Isenor requested a warrant based on his concern that Appellant would not let him in. While there may be a question whether the Society should have at least attempted to obtain permission to enter before applying for the warrant, that is a question for the judicial official who issues a warrant to decide.

156. What is clear is that, as matters unfolded in this case, SPC Isenor expected a confrontation and got one. One may wonder whether the seizure would even have happened had a less confrontational method of contacting the Appellant been tried. Be that as it may, it is equally true, as implicitly recognized in Ms. Moriarty's review decision, that the stress of a Society warrant does not justify inappropriate conduct toward an animal.

157. On this appeal, my first task is to determine whether the Society justifiably formed the opinion that the animal, Pauka, was in distress when the dog was removed.

158. In approaching this question, I note that "distress" in s. 1(2) of the *PCAA* is a specialized term. The *PCAA* includes "abuse" as distress, but it also lists factors such as neglect, and various other deprivations which present serious risks that would foreseeably give rise to suffering and harm if protective action is not taken. While these factors must not be trivialized in their application, they also do not require the Society to wait until the worst happens.

159. In my view, in the circumstances of this case and even when weighing the Appellant's previous history with Kello, I do not find that the dog Pauka was in distress, except for the incident at the moment of seizure, which I will deal with separately below.

160. I do not find that Pauka was deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment. While I accept that L.A. and C.O. contacted the Society because they saw that the dog was cold and shivering outside under an awning which was not enough to cover it, and while this phone call (combined with their concerns about the sounds being made by the dog) were certainly sufficient for the Society to investigate, I do not find that this single event was a deprivation sufficient satisfy the definition of "distress".

161. According to Dr. Walton, the dog was in good body condition with a normal body conditioning score of 5/9 (ideal). Oral examination showed all adult dentition and no evidence of dental disease or fractures. Eyes, ears nose throat were all normal. Heart and lungs normal, no sensitivity on the

rib cage. Neurologically normal, with no back or neck pain. Radiographs were taken as per his normal protocol to see if any old rib fractures could be noted and none were found. Flea dirt (flea feces) was found on the animal. No bruising was noted around the collar area. According to the Appellant's testimony, and not disputed by the Society, the Appellant regularly took his dog to his veterinarian including for a nail trim.

162. I do not find that the dog was not protected from excessive heat or cold, injured, sick, in pain or suffering. There is no veterinary evidence of any physical injury or adverse condition caused by any of these factors. I also found no evidence to convince me this healthy young dog was suffering from neglect.

163. Two factors of distress remain: keeping the dog in conditions that were unsanitary and abusing the dog.

164. Regarding unsanitary conditions, SPC Isenor already testified that the conditions were not serious enough to warrant seizing the dog for that reason. Since then, the Appellant testified that he has cleaned up inside and outside of his home. His neighbor testified that the yard appeared cleaner and he had seen a "man" cleaning the yard. The Appellant testified that he offered the opportunity to the Society to check the cleaning of his home, but the Society, in its written reasons, did not take advantage of this opportunity as even if the premises had been cleaned, Ms. Moriarty was of the view that it was not in Pauka's best interests to be returned based on the mental and physical abuse potential she highlighted in her written reasons.

165. That leaves me with the Society's assertion that the dog had been abused and ran the risk of continuing to be abused. With regard to physical abuse, there is simply no evidence of that with Pauka, with the exception of the event at the moment of seizure, noted below, and the single instance at the training session. With regard to "emotional abuse" caused by yelling, I am not satisfied in the circumstances here that it was correct or reasonable to conclude that yelling caused any demonstrable harm to this animal sufficient to constitute "distress". While loudly yelling at an animal may reflect poor animal management, it is not by itself "abuse" or "distress" for the purposes of the *PCAA*. In my opinion, that view would venture too far in the direction of trivializing the definition of distress. The conduct complained of here, yelling, is qualitatively different from the conduct that was demonstrated in the previous appeal, and qualitatively different from the demonstrable impacts on the previous animal.

166. This all brings me to the moment of seizure, when the Appellant flung the dog out of the way to prevent the dog from being seized. The Appellant testifies he did not lift the dog off the ground but was instead trying to protect his family. SPC Isenor called the Appellant's action "rightfully so" and I place much weight on this assessment as I can see how that conclusion was arrived at. I find that this instance of flinging the dog was not intended to hurt the dog, as was confirmed by SPC Isenor's testimony. This was not similar at all to what happened at the seizure of a previous dog, Kello, where the Appellant was found to have hit the dog in an attempt to show that that type of hitting was not abuse but instead was his right. Clearly these two situations are different and the Appellant in the circumstances of the current seizure did not fall back to defiantly and wrongly hitting the dog to make a point that is beyond my comprehension. Nonetheless, the Appellant's actions were totally inappropriate for him and were abusive to his dog, particularly given the history with the previous dog, also witnessed by SPC Isenor.

167. In all the circumstances, it was therefore justifiable for the Society to seize the dog. It was a perfect opportunity to have a veterinarian determine whether the Appellant's action had injured the dog's neck and whether the dog showed any signs of physical or mental abuse given the history of which SPC Isenor was aware.

168. Other than a higher temperature around the neck, there was no evidence of any harm or injury to this dog. Dr. Walton testified that he could not determine the cause of the increased blood flow; Ms. Morrell and Dr. Potter came to the same conclusions. Although there were arguments about the temperature and conditions under which the thermal imaging was collected, I find that it matters not as I accept all veterinary and imaging advice that there is no cause identified for the increased temperature around Pauka's neck, and in any event, there was no injury as well.

Return of the animal

169. If the removal was valid for the reason outlined above, the key question arises: should the animal be returned?

170. The onus is on the Appellant to demonstrate the Society's decision ought to be changed to justify a new remedy (i.e., to have Pauka returned to him). As this Tribunal has explained (emphasis added):

> . . . the Appellant in a case like this has the onus to show that, based on the Society's decision or based on new circumstances, the decision under appeal should be changed so as to justify a remedy. Where, as here, the Society has made a reasoned review decision, BCFIRB will consider and give respectful regard to those reasons. However, that consideration and respect does not mean the Society has a "right to be wrong" where BCFIRB believes that the decision should be changed because of a material error of fact, law or policy, or where circumstances have materially changed during the appeal period. BCFIRB can give respect to Society decisions without abdicating its statutory role to provide effective appeals.

171. The above passage was affirmed by the B.C. Supreme Court in *BC Society for the Prevention of Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331 (the above passage is quoted at para. 24 sub-paragraph 93 of the B.C. Supreme Court decision). These principles have been relied upon by BCFIRB in subsequent decisions, an in this decision.

172. The Society's position is that the dog bears the brunt of the Appellant's temper, that his reaction in this case was not an isolated one, that his past history is a legitimate indicator of future harm, and the Panel should have no confidence that the Appellant will keep his promises.

173. Let me say at the outset that I agree with the Society that, as a matter of principle in any risk assessment, past abuse is a relevant factor to consider when assessing the risk of future abuse. At the same time, the past does not simplistically determine the future. All the circumstances must be considered. People can and do learn, and change.

174. I will also say that the Panel is not and should not be naïve in its assessments, or assume that promises made will necessarily be kept. Once again, each case must be decided on its facts. The Panel must consider all the circumstances, including the potential for compliance with conditions, in assessing future conduct.

175. I understand and have read the *Kello decision*. The circumstances of this case bear little resemblance to the circumstances of the *Kello case.*

176. In fact, in this appeal, I see strong evidence of significant changes by the Appellant, the exact type of changes contemplated in the legislative framework as described in *Eliason v SPCA*, 2004 BCSC 1773 where Mr. Justice Groberman (as he then was) stated:

> The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of.

177. They are also the same changes as contemplated in this passage from *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.):

> 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 the good condition in which it was released into its owner's care.

178. Harsh training methods are not contrary to the *PCAA* as it is now written, nor is yelling. What is contrary to the *Act* is abuse and for certainty abuse or suffering could be brought on by harsh training methods or yelling - especially continual berating and harsh training methods such as those combined in the previous *Kello case*.

179. Based on all the evidence, however, I am convinced that things have changed.

180. The Appellant wanted another dog after the Society was permitted to keep Kello. I understand that the Appellant testified that he did not read the decision removing Kello as his friend Kello was gone, and that was final. I think the Appellant should have read the decision as he might have better understood the decision, but I also appreciate how painful the decision was for him. I am not swayed by his pain, and would have no difficulty finding against him if the evidence supported such a decision, but it does not.

181. The Appellant got a dog, Pauka, and despite not reading the decision, took it upon himself to use the Internet to search out a dog trainer as, in his words, he knows his methods are out of date and he needed someone knowledgeable. He said, and I believe him, that his attitude toward training a dog has changed and only Ms. Mason will train Pauka and he will not interfere with her methods in any way, shape, or form including when they (the dog and the Appellant) are home at night. He understands now that it is wrong to smack a dog as, regardless of whether it is a smack or a hit, the dog just knows it is being hit. I find it reassuring that the Appellant has come to this revelation.

182. I am bolstered immensely by the report and testimony of Ms. Mason. Ms. Mason described a dog, Pauka, that loved its owners and was loved by them (the Society also acknowledged the Appellant's love for his dog) and she testified that it was her belief that the Appellant and the dog could be trained to have a good, happy and safe life together. It was her observation that the Appellant was very determined to have Pauka trained properly and give what is best for his dog, and to understand how his own behaviour can affect Pauka. It was her belief that Pauka belonged with the Appellant and if returned, based on her regular involvement with the Appellant and the

dog, Pauka would remain in good condition. Ms. Mason said that Pauka was making great progress when she worked with him, and the next class is in January.

183. When asked about the Appellant's reaction to her when he smacked Pauka on the nose, Ms. Mason said the Appellant seemed to hear her clearly and was sorry he hit the dog and acknowledged he needed help. Ms. Mason has worked closely with the dog and the Appellant, and it seems to me she is in a good position to comment, and her comment was that Pauka did not show signs of abuse. Initially Pauka was very excited to go home to his "person" and in time the dog changed to become more relaxed and enjoying being outside.

184. She said Pauka never exhibited any abused behavior and was very vocal and excited when she picked the dog up; not hand-shy, not underweight. He was insecure which was normal puppy behavior. Dr. Walton also testified that some of the timid behavior, which Ms. Mason had seen in Pauka, was the type of behavior he had regularly seen, especially with German Shepherds, around 4 – 8 months old. Dr. Walton commented that upon examining Pauka and seeing some timidity and fear biting, he found it to be normal behaviour that did not alert him to anything else.

185. It is clear to me that, although the Appellant may not fully accept that yelling at a dog as part of its training is wrong, he does fully and completely understand that he cannot use such harsh training that causes abuse of his dog if he wishes to own a dog, and so he delegated, correctly in my view, the training and left it to someone qualified. I commend him for this.

186. Particularly moving to me was the story the Appellant told about finding an old training book which outlined training methods that are horrendous today but were socially acceptable at the time, and the Appellant's regretful admission that at the time, he followed those training methods. I find it very sad that there is still historical knowledge about outdated and cruel training methods that some people, even today, might continue to hold as acceptable. I find that the Appellant is not in that group, and he has moved beyond those historical and cruel beliefs. I sensed genuine regret in his voice.

187. I do not find that there was enough evidence, far from it in fact, to convince me that the Appellant was using harsh training methods that caused Pauka to be in distress. I do not find there was enough evidence, also far from it, to convince me that the Appellant used loud yelling or berating to the point of causing the dog to be in distress.

188. I heard the testimony of both L.A. and C.O. I commend individuals who perceive animal abuse and who report it to the Society. I was not particularly bothered by some of the inconsistencies from these witnesses on dates but I do not find that a dog whimpering in the rain in October to be distress.

189. However, their evidence could not be given much weight on certain key points. As against their evidence that Pauka was thin to the point of being described as emaciated, with its ribs becoming visible over the course of a week, the same dog was described as having an ideal body weight by the veterinarian who examined the dog shortly thereafter. Against testimony that the Appellant could barely be understood due to his accent, I found the Appellant to be quite well-spoken and easy to understand and I found his accent did not hinder my understanding of his testimony. Although I believe that these two witnesses may have heard yelling and may have heard related

dog noises which might have been yelps, maybe 2-3 times a week, that does not persuade me that this dog was being abused.

190. As noted above, it is apparent that an extremely significant factor in the Society's review decision regarding Pauka was the horrendous distress that Kello was found in. Ms. Moriarty's affidavit states that the Society still intends to recommend animal cruelty charges in the *Kello case*, and that is, of course, its prerogative.

191. The issue in this case, however, is whether Pauka should be returned to the Appellant. As noted above, the circumstances of this case bear little resemblance to the circumstances of the *Kello case*. And while it was not wrong for the Society to take the *Kello case* into account in assessing future risk respecting Pauka, the Appellant has satisfied me, based on all the evidence presented at this hearing, that the Society has placed a disproportionate emphasis on that factor to the exclusion or subordination of the significant changes that have taken place since the *Kello decision*.

192. In all the circumstances here, I find that, even taking the *Kello case* history into account, the circumstances of this case warrant Pauka being returned to the Appellant based on the conditions I will set out below. Those conditions will, in my view, readily address any potential for ongoing risks of past behavior materializing the future with this animal.

193. I note that the Appellant is agreeable to reasonable conditions. Due to the fact that the Appellant already testified that he regularly sees a veterinarian and intends to continue with Ms. Mason for as long as she deems necessary, my conditions should not cause any grief for the Appellant, should be easily met, and should provide to the Society adequate comfort that a professional trainer and a registered veterinarian will have ongoing involvement with this very special, well-loved German Shepherd puppy.

VIII. ORDER

194. Section 20.6 of the *PCAA* reads as follows:

> 20.6 On hearing an appeal in respect of an animal, the board may do one or more of the following:
>
> (a) require the society to return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
>
> (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
>
> (ii) any matter that the board considers necessary to maintain the well-being of that animal;
>
> (b) permit the society, in the society's discretion, to destroy, sell or otherwise dispose of the animal;

195. It is my order that pursuant to section 20.6(a) of the *PCAA*, the Society be required to return the animal, Pauka the German Shepherd, to the Appellant on these conditions:

a. The Appellant is directed to ensure that Pauka will continue to be regularly and professionally trained by Lori Mason (or, if Ms. Mason is not available, another professional dog trainer recommended by Ms. Mason) for as long as Pauka needs training, in the sole determination of the trainer;

b. That for so long as the Appellant owns or has care of Pauka, he is directed to ensure that Pauka is taken to the Appellant's veterinarian (or another veterinarian of the Appellant's choice) twice a year; and

c. The Appellant must, **within 30 days of the date of the delivery of this decision**:

   i. Take Pauka for its first appointment with his veterinarian;
   ii. Write to his veterinarian by letter or email, with a copy to Ms. Moriarty at the Society, enclosing a complete copy of this decision.

196. Condition (c) is written on the expectation that the veterinarian provided with this decision will, on each visit, examine the dog Pauka for any signs of distress the veterinarian reasonably perceives to have been caused by the Appellant's acts or omissions, and will immediately report such findings to the Society for investigation.

Dated at Victoria, British Columbia this 10th day of January, 2017

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
Per:

_____
Corey Van't Haaff, Vice Chair and Presiding Member