

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:**

R.H. and L.H

**APPELLANTS**

**AND:**

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO  
ANIMALS

**RESPONDENT**

**DECISION**

**Appearances:**

For The British Columbia Farm Industry  
Review Board

Daphne Stancil, Presiding Member  
Dennis Lapierre, Member

For the Appellant

Self represented

For the Respondent

Chris Rhone, Counsel

Date of Hearing

June 20, 2019

Place of Hearing

Teleconference

## **I. Introduction**

1. The Appellant, R.H., is a 55 year old unemployed tradesman (painter) who resides in Surrey, British Columbia with his son, L.H.. The dog that is the subject of this appeal is a 6 year old Shih Tzu-type male. Both R.H. and L.H. claim ownership of the dog and, as such, both are considered Appellants in this appeal.
2. The Appellants are appealing the June 12, 2019 review decision of the British Columbia Society for the Prevention of Cruelty to Animals (Society) to uphold the seizure and not return the dog pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (*PCAA*).
3. Section 20.6 of the *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society, in its discretion to destroy, sell or otherwise dispose of the animals. Under the *PCAA*, appeals to BCFIRB are broad in nature, as set out in detail in *BC Society for the Prevention of Cruelty to Animals v. British Columbia Farm Industry Review Board*, 2013 BCSC 2331.
4. R.H. represented himself, testified, and called L.H. as a witness. Through its counsel, the Society called three witnesses: Ms Marshall, a member of the public who made a complaint to the Delta Police Department (DPD) about R.H., Special Provincial Constable (SPC) Brittney Collins, an employee of the Society; and Constable (Cst.) Jason Guest of the DPD. The panel held the hearing by teleconference June 20, 2019 and recorded the proceedings.
5. For reasons outlined below, the panel orders the dog returned to the Appellant L.H. on conditions. The panel finds both Appellants liable to the Society for costs in the amount **\$1653.67** incurred by the Society with respect to care of the dog while in custody.

## **II. Pre-hearing Matters**

6. BCFIRB was unclear upon the filing of the appeal by R.H. as to who owned the dog as the review decision was directed to L.H.. That confusion seems to have arisen as it was L.H. that contacted the Society (Marcie Moriarty, Chief Prevention and Enforcement Officer) via e-mail upon learning the dog was no longer in the care of the Delta Animal Shelter (shelter) and the shelter identified R.H. as the owner and required his approval before releasing the dog. R.H. also claimed ownership of the dog in his letter to the Society disputing the seizure. In her review decision, Ms Moriarty accepted that L.H. was the dog's owner and the person responsible for the animal.
7. In these proceedings, the panel accepted that both L.H. and R.H. have standing and treated both as Appellants.
8. Prior to the hearing, the Society made an *ex parte* application to BCFIRB pursuant to section 42 of the *Administrative Tribunals Act*, S.B.C 2004, c. 45 requesting that certain information with respect to identification be redacted from the disclosure documents to protect the identity of a complainant. In a decision dated June 3, 2019, the presiding member ordered that the Society's disclosure be redacted to the limited extent requested.

## **III. The Appellants**

9. R.H. and his son L.H. seek the return of the dog. L.H. had intended to fully participate in the appeal but was called into work on the day of the hearing. The panel was able to accommodate L.H. and he called in to provide evidence and answer questions. R.H. represented the Appellants for the balance of the hearing.
10. This was a procedurally difficult hearing. While R.H. did acknowledge receipt of all relevant materials including the Society's disclosure documents (Binder - 26 tabs), its submissions dated June 14, 2019, and Affidavit of Ms Moriarty dated June 12, 2019, it was not clear during the hearing that he had given these documents thorough attention. The hearing process represented a challenge for R.H.. It is unclear whether he paid little attention to the panel's direction, simply found the process confusing, or both.

Consequently, despite repeated attempts from the panel to assist him, he did not make the best use of his opportunities to provide information to the panel, to examine the Society's witnesses, or to respond to the Society's closing submission. Despite the panel's advice on telephone hearing protocol, he frequently interrupted and talked over others, making it difficult for the witnesses to give their evidence or answer his questions, and for the panel to receive his evidence and understand his questions. In addition, L.H. was unable to take full advantage of the hearing process due to his brief attendance but, nevertheless, he did provide useful and credible testimony to the panel in response to questions, clarifying some aspects of care of the dog.

11. The Appellants submitted no documents but the Society did include copies of all documents submitted by the Appellants in the review process with its disclosure materials.

#### **IV. Material Submitted on this Appeal**

- a) BCSPCA May 21, 2019 Decision (**Exhibit 1**)
- b) Appellant May 24, 2019 Notice of Appeal (**Exhibit 2**)
- c) BCFIRB May 27, 2019 Notice of Appeal process letter (**Exhibit 3**)
- d) BCFIRB Section 42 Application Decision (**Exhibit 4**)
- e) BCSPCA initial disclosure (Tabs 1-25) (May 31, 2019) (**Exhibit 5**)
- f) BCSPCA Updated Document Disclosure Index (June 13, 2019) (**Exhibit 6**)
- g) Written Submissions of BCSPCA (June 13, 2019) (**Exhibit 7**)
- h) Affidavit #1 of Marcie Moriarty (June 13, 2019) (**Exhibit 8**)
- i) BCSPCA Witness contact form for SPC Collins, Cst. Guest, J. Marshall (June 13, 2019) (**Exhibit 9**)
- j) BCSPCA disclosure (Tab 26) (June 13, 2019) (**Exhibit 10**)
- k) BCSPCA update (Tab 26, p.101)(June 17, 2019)(**Exhibit 11**)

## **V. Events Leading up to Seizure**

12. The dog first came to the attention of the Society in a February 11, 2019 email where a complaint was made about a dog in a van with a homeless man. The dog was alleged to be coughing and “puking up bits of blood.” SPC Collins attended on February 12, 2019 and learned that R.H. had recently been evicted from his residence but would have a place to live by February 20, 2019. R.H. was not present but SPC Collins could see the dog through the window of the van to assess how it was. She observed blankets in the back seat, and water and food for the dog. Information provided then to SPC Collins by R.H.’s stepson was that the dog had a cold and had only coughed up blood once. He stated R.H. could not afford vet care but did have medication for the dog.
13. On February 13, 2019, SPC Collins again attended the property and spoke to R.H. and L.H. who were both in the van. The dog was in the back. R.H. was belligerent towards SPC Collins and then towards L.H.. She testified that L.H. was able to de-escalate his father’s behaviour and explained that the dog gets a cold once a year but quickly gets better. SPC Collins issued a Notice to R.H. directing him to get the dog examined by a veterinarian within two weeks to check on overall wellness. SPC Collins followed-up on March 10, 2019 but there was no response to her knocking at the door and she saw no dog in the van.
14. On the afternoon of April 17, 2019, Cst. Guest of the DPD responded to a telephone complaint from Ms Marshall of someone beating a dog. When he arrived, he saw R.H. sitting on a grassy area with a dog beside him. He recognized R.H. from an earlier incident where R.H. had a dispute with bank personnel over a bank machine not returning his bank card.
15. After speaking with the complainant, who described the beating, Cst. Guest approached R.H. who was speaking with another constable. After listening to that conversation, Cst. Guest decided that R.H. was delusional as he was saying there was a listening device inside the dog.

16. While discussing the situation with his fellow constables, Cst. Guest observed R.H. strike the dog on its back with his open hand. When told to stop, R.H. responded he could do what he wants with his dog. A struggle ensued and the constables apprehended R.H. and took him into custody under the emergency provisions in s. 28 of the *Mental Health Act*<sup>1</sup>. R.H. clung to the dog's leash, so one of the constables cut the leash to separate it from R.H.. Attending officers took R.H. to Surrey Memorial Hospital and the dog was taken to a Delta Animal Control officer who delivered it to the shelter and SPC Collins was contacted.
17. Based upon her earlier interactions with R.H. and subsequent discussions with the arresting constables and the complainant, Ms Marshall, and her concerns that the dog would be released back to R.H., SPC Collins sought and obtained a search warrant and took custody of the dog from the shelter on April 30, 2019.
18. The Notice of Disposition issued in these proceedings did not form part of the Society's disclosure. BCFIRB staff confirmed with the Society that the document could not be located. In the panel's view, nothing turns on the Society's failure to disclose this document as there is no dispute that the Notice of Disposition was issued and R.H. and L.H. sought a review of the decision to seize the dog.

## **VI. Review Decision**

19. Ms Moriarty issued her review decision on May 21, 2019 to L.H. in which she upheld the decision to seize the dog and not return it. The decision reviews the Warrant and Information to Obtain (ITO) of SPC Collins, related veterinary records, witness statements, and the submissions from L.H.. She concludes that SPC Collins, an

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<sup>1</sup> **Mental Health Act, R.S.B.C. 1996, c. 288**

**s. 28** (1) A police officer or constable may apprehend and immediately take a person to a physician for examination if satisfied from personal observations, or information received, that the person

(a) is acting in a manner likely to endanger that person's own safety or the safety of others, and

(b) is apparently a person with a mental disorder....

authorized agent of the Society, reasonably formed the opinion that the dog was in distress, that the appropriate course of action was to take custody of the dog in order to relieve his distress, and that the seizure of the dog took place in accordance with the *PCAA*. Although R.H. claimed ownership, she was satisfied that L.H. was “the person responsible for the animal.”

20. In considering whether to return the dog to L.H., Ms Moriarty reviewed the incident of April 17, 2019 where R.H. was seen physically abusing the dog both by the complainant (who saw R.H. punch the dog with a closed fist) and then shortly afterwards by Cst. Guest (who saw R.H. hit the dog with an open hand). She concluded that R.H. was not of sound mind at the time but also noted that L.H. did not provide evidence to suggest there is a plan to ensure this abuse does not happen again. Because L.H. lives with his father, she concluded there is no way to ensure that the dog will not potentially be exposed to further incidents at R.H.’s hands. As such, she concluded it was not in the best interests of the dog to be returned to L.H..

## **VII. Grounds of Appeal**

21. In his Notice of Appeal, R.H. describes his six year relationship with the dog and says that because he has received medical assistance since the Society seized the dog and “was better now”, the dog should be returned to him. L.H. also requests the return of the dog.

## **VIII. Veterinary and Shelter Evidence**

22. The panel did not hear any oral evidence from the veterinarian that examined the dog while at the shelter. The documentary evidence however included:
- (a) Shelter intake form from April 17 and April 24, 2019;
  - (b) DogSense Behavioural Assessment form dated May 2, and
  - (c) General Examination report from the Allouette Animal Hospital dated May 5, 2019.

23. The shelter physical assessment of April 17, 2019 noted the dog was generally in normal condition but fat with ears waxy with debris, mouth clean but bad breath, nails needed a trim, and there was some dandruff and the coat was thin and clean. The clinical notes from the April 24, 2019 veterinary examination at the shelter performed under sedation noted the dog had a Body Condition Score of 4/9 (slim) and had some health issues including mild dental disease and the need for two extractions, an ear infection and a small hernia, but exhibited no apparent limb or gait pain. The behavioural assessment indicated hand-shyness and the need for the previously mentioned medical care but otherwise found that the dog exhibited a generally calm demeanor, though it disliked being handled, disliked big dogs and liked small dogs. The behavioural assessment describes the dog as fearful with anxiety and recommends brushing and DS (desensitization)/CC (counter-conditioning) to work on hand shyness. The Alouette Animal Hospital General Examination of May 5, 2019 noted medical and grooming needs; the dog was treated for ear infection and an abscess between two toes. Its nails were trimmed and it was recommended that the dog be neutered and the hernia repaired. Again, the record notes the dog disliked being handled.

## **IX. Appellants' Evidence**

### **R.H.**

24. R.H. testified that the incident leading to the seizure of the dog had been blown way out of proportion. He says he is now living under new circumstances meaning living with L.H. in a new residence, a basement suite, in a house with a backyard. He stated he was having "an episode" on the day of the incident. He says the events escalated and led to him being hospitalized for two weeks and the dog being seized by the SPCA.

25. His evidence is that the doctors felt he was well enough to be released and he is "now OK." He is on no medications but did receive some counselling for his temper while in the hospital. He reluctantly admitted being hospitalized once before, about two years ago. He advised that, although he had worked many years doing commercial painting, he is currently unemployed.



26. When asked about the Notice issued by SPC Collins in February 2019, directing him to take the dog for a vet check-up, he first stated he did not know if he received the Notice. He later indicated that he paid no attention to it because he was searching for a place to live. He did not think the dog needed care – it had a cough, but nothing “perilous.” He also said he couldn’t afford a veterinarian. He admitted to being belligerent with SPC Collins when she issued the Notice.
27. R.H. advised that the dog “feeds on demand” and has access to food and water when at home. R.H. often combs the dog’s hair.
28. In reference to the April 17, 2019 incident, he said someone stole a bag of sugar he had recently purchased and he had wanted to go after them but couldn’t. He became frustrated as he was trying to control the dog while attempting to chase after the people who took the sugar. He said he was frustrated because he could not pursue them and tried to “correct” the dog by “swatting at its rear quarters”. He described himself as being extremely angry at the neighborhood regarding his predicament. He says he yelled but at the neighbourhood, not the dog. He indicated that the dog does not normally require correction.
29. R.H. was not entirely clear why he struggled with the officers who attended the incident but commented that having four officers take control and arrest him was excessive. In later testimony, L.H. reported that R.H. “has a problem” with “figures of authority.” R.H. apologized to the panel and the Society for his behaviour on the day of the incident.
30. When questioned about the veterinarian’s report evaluating the dog after the seizure, R.H. remarked that the veterinarian found no injury to the dog. R.H. indicated he was familiar with the report although the Society did not direct him to the specifics of the report which formed part of its disclosure. R.H. went on to say he could not have known about the ear infection that the veterinarian discovered and the Society treated. He said that the condition of the dog’s teeth that the veterinarian reported was due to the dog’s

regular play with a ball - running after the ball when thrown and stopping it with its mouth and teeth. R.H. summarized “the vet checked for abuse and found an ear infection”. R.H. denies striking the dog with a closed fist as alleged, despite the evidence of Ms Marshall and the written statement of Cst. Ker, who attended the April 17, 2019 incident before Cst. Guest.

31. In his closing statements, R.H. testified that he now has the facilities and proper living environment for the dog and the dog is healthy. He says he made a mistake and lost his temper and apologizes, “you have my word – swear to God on my life – [this] would never happen again.”

**L.H.**

32. L.H. is 22 years of age. He has had the dog for 6 years, since it was a pup. His evidence is that it has never been abused or neglected. He describes a good relationship with his father. He looks after the dog when his dad can't and his dad looks after the dog when he (L.H.) is working. The dog is always taken care of. L.H. is currently living with his dad and they have just moved in to their new address. L.H. works at Home Depot, more in the summer, less in the winter. He describes living in the van with his dad for 3 or 4 days, at most (until they found their new home).
33. When asked if the dog has been to a veterinarian, he said the dog was taken as a pup to receive shots and one other time because the dog was lethargic and received a charcoal treatment to induce vomiting which cost \$750.00.
34. L.H. admits that after receiving the Notice on February 13, 2019, they didn't take the dog to a veterinarian because they couldn't afford it. He says the Notice was simply for a check-up and not a serious reason. He had other “home issues” that were more important. He explained that his dad has problems with people in authority, but he says this has no bearing on how the dog is treated. “Just because my dad is rude does not mean he is a bad dog owner.” When asked if he thought an incident of the type that led to this hearing could reoccur, he responded that if he thought it would, he would “not be

here.” He reaffirmed, that in his opinion, the incident of April 17, 2019 was a single time event.

35. When asked about how the dog behaves around his dad, his evidence is that the dog likes his dad. His dad is its favourite person; the dog sleeps with his dad. It is an energetic, semi-obedient dog and that his dad is “the parent that spoils the dog”, grooms it, and clips the hair away from its eyes. When questioned, L.H. understood that dogs of the Shih Tzu-type required some grooming and indicated that his dad attended to it. It was “on their agenda.” L.H. noted that the dog always accompanies them when both he and his dad are together, and that if his dad has to leave the dog, the dog experiences some anxiety.
36. L.H. acknowledged writing two e-mails to Ms Moriarty. In the May 14, 2019 email, he outlined his basis for ownership, care and custody, care plans, and what he sought from the review. In brief, on ownership, L.H. stated he was given the dog as a puppy when he was 16 and has taken care of the dog since. He describes his relationship with the dog as “immeasurable.” The dog is his responsibility and he treats him like a brother. As to care and custody, L.H. describes the incident that involved his father as simply out of his control. He was at work and his dad was walking the dog. L.H. states he was not contacted or made aware of what had happened until four days after the event. He did not think to contact the shelter and thought someone would have told him what had happened to his father and his dog. In describing his care plans, L.H. stated the dog has always been treated well and his dad normally does the grooming around this time of year due to the weather. The dog had never shown signs of injury or illness. He agrees to 6-month follow-ups with a registered veterinarian considering the dog's age and is receptive to hearing from the Society's vet to better understand what was lacking in the dog's care. In summary, L.H. says this dog means the world to him and is like “a brother.” To have the dog taken away over something he could not control would be devastating. He reiterates he would be OK with check-ups from the Society regarding the dog's welfare until they are satisfied.

37. In the second email, L.H. confirmed living with his father. With respect to the incident involving his father, he says his father has never shown such aggression towards the dog, nor has he blatantly hurt the dog. He thought the incident was exaggerated, and his father's version was that he was correcting the dog's behaviour as he was not listening and running towards the road. On the ownership issue, L.H. states his father tried to claim ownership because he was the one the dog was with when the dog was seized and he also bought the dog six years ago. L.H. says this is his dog and his father has helped take care of it. With respect to his father, L.H. states at the time of the incident his "father was under the influence. He's since been released from the hospital and is considered stable."

## **X. Respondent's Evidence**

### **Ms Marshall**

38. Ms Marshall is 63 years of age. Consistent with her written statement of April 24, 2019, she stated she was on her way home around 3:45 pm and had pulled into a parking lot to go to the bakery. There she saw a man with a white beard sitting on the grass in front of the liquor store. The man seemed very agitated and was pounding on his dog's back. She went over to say "please stop hitting your dog" to which he yelled back "mind your own fucking business" and "go back to school." In her statement, she states she observed the man hit the dog 10 or 12 times and after a few hits, the dog let out a yelp. She went into the bakery and called 911 and after the police came, she hid behind a corner to watch. She did not witness any struggle. In her written statement, she offered the opinion that this was clearly a mental health issue.

39. R.H. used his cross examination opportunity to apologize to Ms Marshall.

### **SPC Collins**

40. SPC Collins testified about responding to the February 12, 2019 complaint about a dog in a van that was coughing up blood. She described seeing a Shih Tzu-type dog in the van with blankets, a jacket, water and food. The temperature was likely in the single digits. She reported speaking to a person she understood to be R.H.'s stepson and

learned that R.H. had been evicted and was living in the van as there was no room in the house for him. The stepson commented that R.H. could not afford veterinary care.

41. In her written report, SPC Collins noted the stepson's comment that R.H. would have a place to live by February 20<sup>th</sup> and that R.H. usually took the dog with him places. The stepson offered to bring the dog into the house until R.H. returned and stated that the dog had a cold and only coughed up blood once. There was medication but it couldn't be found since the eviction.
42. SPC Collins returned again February 13, 2019 and found R.H., the dog, and L.H. together in the van. She found R.H. difficult to talk with and so she spoke to L.H., who was able to de-escalate his father's agitated responses. She learned then that they were financially unable to take the dog to a vet. She then issued a Notice, giving R.H. two weeks to get an overall wellness check done on the dog, suggesting there are resources available if they couldn't afford it. She attempted a follow up to this Notice on March 10<sup>th</sup> and learned R.H. had vacated the location and she did not see him or the dog again until April 18, 2019. She received a call from the shelter about a dog that was impounded the day previously. On April 24, 2019, she talked to Cst. Guest of the DPD; the shelter received no instructions from the police about holding the dog in custody and were concerned it would be retrieved and suffer if returned.
43. On April 30, 2019, SPC Collins obtained and executed the Warrant and seized the dog from the shelter.
44. On cross examination, SPC Collins advised that the dog's minor hernia observed by the veterinarian was likely present since birth and was something that could be treated relatively efficiently with minor surgery when the dog was neutered.

#### **Cst. Guest, Delta Police Department**

45. Cst. Guest responded to the April 17, 2019 complaint of Ms Marshall about someone beating a dog. He observed R.H. sitting on a grassy area with a dog beside him. He

recognized him from an incident he attended a week previously. He asked Ms Marshall to demonstrate how hard the man was beating his dog and she indicated he was punching it with a closed fist. Cst. Guest joined another police officer who was speaking with R.H. and after hearing what sounded like delusional comments, Cst. Guest determined he was dealing with an emotionally disturbed person. While huddling with his fellow officers to determine how to handle the matter, he saw R.H. hit the dog with an open hand “with a thud.” He warned R.H. to stop and he complied. Cst. Guest decided to seize the dog. While putting on gloves to effect the seizure, R.H. began walking away, saying he can do what he wants and refusing to give up the dog. After wrestling R.H. to the ground, the dog was separated from R.H. by cutting its leash. R.H. was then handcuffed and arrested under s. 28 of the *Mental Health Act*.

46. In responding to a question about the event the week prior, Cst. Guest recalled seeing the dog with R.H. but he noted no dog concerns.

## **XII. Analysis and Decision**

### **Distress**

47. The first issue for the panel to consider is whether the dog was in distress at the time of the seizure. The definition of “distress” is set out in s. 1(2) of the *PCAA* which must be read together with s. 11:

**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.

**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.

48. The Society's seizure in this case did not occur at the time R.H. was taken into custody under the *Mental Health Act*. Rather, the dog was turned over to a Delta Animal Control Officer by Cst. Guest, who then delivered it to the shelter. SPC Collins obtained a warrant on April 30, 2019, seized the dog and issued the Notice of Disposition pursuant to s. 11 of the *PCAA* due to her concern that the abuse may recur if the dog was returned to R.H..
49. The panel finds no dispute on the evidence that R.H. struck his dog repeatedly on April 17, 2019. In all likelihood, the dog would have experienced some pain as a result of the physical abuse. By his own admission, R.H. was angry that someone stole his sugar then took his anger out on the dog. He says he was angry at the neighbourhood, not his dog. Ms Marshall observed R.H. hit the dog with a closed fist and heard the dog yelp. Cst. Guest saw R.H. hit the dog on the back with an open hand and heard a "thud."
50. As a result, the panel accepts that the dog was in distress at the time of seizure by Cst. Guest. This incident of physical abuse was relied on by the Society to obtain a warrant and seize the dog to place it in protective custody. While the dog may not have been in distress at the time of the Society's seizure on April 30, 2019, as the dog was in a shelter, the uncontroverted evidence of physical abuse is sufficient to support a finding of distress within the meaning of s. 1(2)(c) of the *PCAA*. The panel agrees that it was appropriate for the Society to seize the dog on April 30, 2019.

51. The panel now turns to the question of whether the dog should be returned to its owner with or without conditions or to permit the Society, in its discretion to destroy, sell or otherwise dispose of the animals. The panel has taken two primary factors into account on this question namely, previous BCFIRB decisions where mental health was an important consideration and new circumstances, if any, that support a return of the animal to its owners.

## **Return of the dog**

### **Analysis of Previous Appeal Decisions**

52. BCFIRB has previously considered appeals where the behavioural, emotional, or mental health of an appellant weighed on the decision to return an animal. While this panel is not bound to by precedent, we have reviewed these earlier decisions to determine some guiding principles. In *C.S. v. BCSPCA* (August 30, 2018), the dog was not returned to the appellant. The appellant was described by a witness as being “complicated,” losing his temper when faced with difficult issues. There was evidence that the appellant lost his temper and was seen yelling at the dog and throwing it. An examination by a veterinarian revealed the dog suffered cut and bruise injuries, likely from abusive handling and showed extensive signs of fearful behaviour consistent with rough handling;. The appellant’s abusive behaviour (which appears to be considerably more than a one-time incident) was directed at the dog.

53. In *Hubick v. BCSPCA* (August 10, 2017), the dog was not returned to the appellant. The evidence was that the appellant lost his temper over the chewing, urinating and defecating behaviours of the dog, at various times, resulting in the dog being thrown and receiving a significant injury to its hind quarters. The appellant had a history of previous violence, addictions and mental health issues.

54. In *Viitre v. BCSPCA* (January 10, 2017) the dog was returned to the appellant on conditions. The dog was dirty, thin and housed in dirty conditions and subjected to harsh training techniques. The appellant exhibited a pattern of losing his temper and taking it out physically on the dog in times of stress and, in one instance, throwing the dog across



the floor. In considering its return, however, the panel determined that the dog was not in distress except at the moment of seizure. Otherwise it was in normal body condition, it had no injuries when examined and the yelling did not appear to result in any demonstrable harm or negative behaviours. At the time the dog was thrown, it was to get it out of the way to avoid it being apprehended. The conditions imposed upon return were for the dog to receive training from a professional trainer and veterinary check-ups every 6 months with the vet being provided with a copy of the appeal decision to examine the dog for signs of distress.

55. In *Viitre v. BCSPCA* (May 18, 2016), the dog was not returned to the appellant. A witness saw the appellant loudly berating and whipping his dog with its leash. The appellant reacted in an agitated way with the attending Society's special constable, hitting the dog on the head while questioning whether that amounted to abuse. Expert evidence supported a finding that the dog was suffering from prolonged physical and verbal abuse that would require extensive rehabilitation. The appellant had exhibited an inability to control his emotions while training his dog.
56. In *A.B v. BCSPCA* (August 9, 2013), three dogs were returned to the appellant on conditions. The issue was the ability of the appellant, who had been hospitalized for mental health reasons, to simply care for his dogs. The dogs were exhibiting signs of neglect and increasingly poor health. In ordering the return of the dogs to the appellant, the conditions included a health assessment by a veterinarian for advice on necessary medical treatment, periodic check-ups and how to administer medications, as well as advice from a mental health worker and proper grooming and care in the appellant's absence.
57. In analysing these reasons, the panel observes that in three of the five decisions cited above, the issue was anger, directed specifically and often repeatedly, at the dogs in question. In two decisions, the dogs suffered physical injuries. In one case, a behavioural expert determined the dog would require extensive behavioural rehabilitation.

58. In comparison with these five decisions, the panel observes some similarities but also significant differences. R.H. appears to have had a mental health episode that required hospitalization. However, unlike four of the five decisions cited above, whatever triggered his striking of the dog was not, apparently, a recurring behaviour, was not specifically directed at the dog, nor did it cause the dog any immediate or lingering injury such as would likely be apparent were this to be ongoing or repeatedly abusive treatment. As suggested by L.H., this appears to be an unfortunate one-off event. R.H. ended up receiving treatment and counselling in a psychiatric facility for two weeks and was released, apparently without need for medications or follow up.
59. In considering the facts of this case, the panel observes that while there was abuse, there is no evidence that the dog suffered any physical injury as a result of being struck. The clinical records only showed evidence of mild tooth disease, smelly eyes and ears, and a slight hernia, and concluded the dog was in need of some medical treatment. The Society had the dog treated for an ear infection while in custody. It was deemed otherwise normal and the dog's body score was not a concern. According to the temperament assessment, it exhibited normal behaviour but disliked big dogs and being handled, and was somewhat hand-shy. In the panel's view, the lack of clinical evidence of injury is significant.
60. The panel also finds it significant that there is no evidence of a prior history of abuse. To the contrary, on the one prior occasion involving police interaction with R.H., Cst. Guest saw no issues with the dog. Similarly, the evidence of L.H. is that his dad has no prior history of abuse of the dog. When asked if he thought an incident of the type that led to this hearing could reoccur, he responded that if he thought it would, he would "not be here." The panel found L.H. to be a sincere and credible witness.
61. The panel also finds it significant that there is no evidence to suggest that this was a case of anger being directed specifically at the dog. To the contrary, the evidence offered by R.H. was that he was angry at the neighbourhood in general. The evidence of the police officer was that R.H. appeared delusional at the time. Ms Marshall also thought there

was a mental health component. It appears that the dog became the recipient of R.H.'s anger but it was neither the focus nor the cause of his anger.

### **New Circumstances**

62. As to new circumstances, if any, that would make a difference, having heard R.H. at the hearing, the panel had little doubt concluding he has significant anger and anxiety problems, and difficulties when dealing with people in authority. This was exhibited in his reaction to SPC Collins on February 13, 2019 when she spoke with him and L.H. in the van. It took L.H. to de-escalate the situation. Similarly, though not connected with this matter, police were called to deal with R.H. and an issue with a bank machine. On April 17, 2017, R.H. was described as exhibiting emotional delusional behaviours resulting in him striking his dog and resisting arrest. In the hearing itself, the panel had difficulty communicating with R.H. and he was easily agitated and verbally very reactive but the panel did not find R.H. abusive and he did have the presence of mind to apologize for his behaviour to Ms Marshall following her testimony.
63. Further, in listening to the testimony of L.H., it was clear that L.H. was able to calm his father; he came across as articulate, thoughtful, and sincere. In the face of the Society's temperament assessment of the dog, L.H. commented that the reports of his father striking the dog were exaggerated. The panel recognizes how he could have come to this conclusion especially in light of the fact that the dog was not injured. As L.H. stated in his testimony, the fact that his dad has problems with people has no bearing on the way he has treated the dog.
64. The panel observes that in the prior BCFIRB decisions noted above, the fearful and behavioural problems exhibited by the dogs were clearly the product of frequent, prolonged, angry abuse directed at the dogs. In this case, we accept L.H.'s evidence that this was a one-off situation. In the panel's view, this is also supported by the veterinary examination which found no injury and confirmed the need for routine medical treatment. This is a significant factor in the Appellants' favour.

65. The panel has no doubt the dog is loved and cared for. While we acknowledge the brief period of homelessness when the dog and Appellants resided in the van, the evidence confirms the dog's basic needs of adequate food, water, shelter were being met. L.H. says, and we accept, that the dog is like a brother to him; it is a family dog, and it favours his dad. R.H. grooms the dog and the dog sleeps with him. In his closing statements, R.H. described the dog's new environment, a basement suite with a backyard in a familiar neighbourhood where L.H. went to school. He promised that his behaviour would never happen again.
66. In summary, the panel found the evidence of new circumstances (matters not fully before the Society in its review decision) compelling. The panel has had the benefit of hearing from L.H., the dog's owner, and his view that this was a one off event brought on by a delusional episode. RH has been hospitalized and received treatment and counselling and says "he is better now". He was released without further treatment or medication and while in the hospital expressed deep remorse for his behaviour to Ms Moriarty. He also apologized to Ms Marshall during her testimony. R.H. and L.H. have found a better living situation for themselves in a familiar neighbourhood and made a sincere commitment to the dog to ensure that such an incident will not happen again.
67. For the foregoing reasons, the decision of the panel is that the dog can be returned to the care and custody of L.H. on conditions. In considering what would be appropriate conditions, the panel has considered the statutory standards of care set out in the *PCAA*:

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 continue to be, in distress. [emphasis added]

68. In *Eliason v SPCA*, (2004 BCSC 1773), 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.

69. In this case, the Society was justifiably concerned enough to seize the dog and determine it should not be returned on the basis of the information it had at hand. However, with the benefit of an oral hearing, the panel concludes that there is little evidence to suggest this was anything more than a one-off event and an unfortunate product of an outburst of a mentally ill person who otherwise is very caring towards the dog.

70. On balance, the panel is satisfied that the likelihood of any repeat mistreatment of the dog is low and that the dog can be returned to its owner L.H. based on conditions set out below.

### **XIII. ORDER**

71. 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;

72. The panel recognizes the financial constraints of the Appellants. We recommend that L.H. investigate and take advantage of programs the Society and other institutions offer low income families to access discount veterinary services in order to meet the conditions imposed below.

73. The panel orders that pursuant to section 20.6(a) of the *PCAA*, the Society be required to return the animal to the care and custody of L.H. on the following conditions:

- a) L.H. must, within 45 days of the date of this decision, take the dog to a veterinarian of his choosing, provide a copy of this decision to the veterinarian and obtain written recommendations from the veterinarian outlining his/her ongoing care requirements for the dog.
- b) L.H. is to provide a copy of any written recommendations received from the veterinarian to the Society; and
- c) L.H. is to follow all veterinary recommendations within the time period set by the veterinarian;

#### **XVI. Costs**

74. Section 20 of the *PCAA* states:

- 20 (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.

75. The Society sought to recover \$1653.67 on account of all care costs incurred prior to the return of the dog. The Appellants did not dispute the Society's claim for costs. The panel has reviewed the Affidavit of Ms Moriarty and the claim for costs and finds the Society's costs reasonable. As such, we confirm, pursuant to s. 20.6(c) of the *PCAA*, that the Appellants are liable to the Society for the amount of **\$1653.67**. However, because of the financial straits of the Appellants, the panel directs that the Appellants' liability for costs should not stand in the way of the Society's return of the dog.

Dated at Victoria, British Columbia this 5th day of July, 2019.

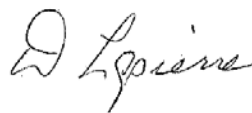
#### **BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**



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Daphne Stancil, Presiding Member



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Dennis LaPierre, Member