

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:**

KYLE HAVELOCK

**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, Presiding Member

For the Appellant:

Erin Dance, Counsel

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

March 3 and 6, 2015

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 January 23, 2015 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society). Ms. Moriarty's decision rejected the Appellant's request that the Society return to him the dog Bella which the Society removed on December 30, 2014. This appeal, filed under s. 20.3 of the *PCAA*, was filed on January 27, 2015. The appeal was heard by a one-person panel in a telephone hearing on Tuesday March 3, 2015 to hear one witness (Dr. Caroline Niegos), with the balance of the hearing taking place on March 6, 2015. For tribunal orientation purposes, the hearing was observed by BC Farm Industry Review Board member Brenda Locke, who did not participate in this decision. BCFIRB called veterinarian Dr. Caroline Niegos to testify. Kyle Havelock was represented by counsel and was on the line only during his testimony. His counsel called Patrick Golding as a witness. The Society was represented by counsel and called veterinarian Dr. Adrian Walton, Jesse Ricard and Special Provincial Constable (SPC) Stephanie McKay as its witnesses. The telephone hearing was recorded.

## **II. Brief Summary of Decision**

3. Section 20.6 of the *PCAA* permits 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 animal.
4. For reasons that will be explained in detail later, I have decided to order the return of the dog to the appellant Kyle Havelock, with conditions.
5. I will deal with the issue of costs below.

## **III. The Society's Powers and Duties**

6. 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".
7. 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).
8. 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.

9. 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**

10. 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<sup>1</sup>. 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 accord with the inevitably fluid nature of the situation, and well within the powers granted by section 20.5 of the *PCAA*.

#### **Preliminary Issues**

11. All affidavits and witness statements, emails and materials submitted were entered into evidence. There were no objections made about any material being entered into evidence or any witnesses being called to testify. The telephone hearing process does not require that all material be discussed or read into the record and I wish to expressly note that I have carefully reviewed all of the evidence and submissions referred to above, including a video and photographs only briefly discussed and not viewed during the hearing, whether or not I refer to all of it in the course of this decision.

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<sup>1</sup> *BC Society for Prevention to Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331

12. I note that this appeal is a specialized administrative tribunal process. As such, I am not bound by the same rules of evidence that apply in a court of law, as made clear by s. 40 of the *Administrative Tribunals Act* and which ensures that BCFIRB can make decisions under the *PCAA* efficiently and based on reliable evidence rather than having to engage in legal discussions that may have little to do with the reliability of evidence or the best interests of animals:

**Information admissible in tribunal proceedings**

40 (1) The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

(2) Despite subsection (1), the tribunal may exclude anything unduly repetitious.

(3) Nothing is admissible before the tribunal that is inadmissible in a court because of a privilege under the law of evidence.

(4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence.

(5) Notes or records kept by a person appointed by the tribunal to conduct a dispute resolution process in relation to an application are inadmissible in tribunal proceedings. [emphasis added]

13. The fact that a broad range of evidence is admissible before BCFIRB does not necessarily mean that all that evidence is to be given the same weight. I make that point because a key issue discussed later in this decision concerns the weight that ought to properly be given to certain hearsay evidence in all of the circumstances in determining whether the appeal should succeed.

**Decision Being Appealed**

14. The Society received the dog Bella, a beautiful pit bull-type dog described as nice and sweet by veterinarians, pursuant to s. 10.1(1)(c) of the *PCAA* on the basis that over the course of the month of December 2014, the Society received several complaints that the Appellant severely beat Bella, at one point kicking the dog in the head twenty times. The Society attempted to contact the Appellant several times, leaving five Notices seeking an immediate response as well as one Order demanding veterinary care for Bella within four days. From December 22 to December 29, 2014, the Society received what it described as confirmation from several witnesses that Bella suffered from injuries such as a wound on her head which was not treated by any veterinarian. A number of the witnesses also indicated that the Appellant had received the Society's Notices and that he was taking Bella to the house of a friend so that the Society would be unable to seize Bella. The Appellant failed to contact the Society at all, and on December 30, 2014, Special Provincial Constables employed by the Society seized Bella from the friend's home pursuant to a search warrant. At the time of the SPC's attendance, the friend, Patrick Golding, confirmed that Bella had not received veterinary care.
15. Ms. Moriarty's review decision declining to return the dog to the Appellant cited the Information to Obtain a Search Warrant ("ITO"), attachments and Warrant, the veterinary report, and the appellant's own submissions. The review decision states:

*"After reviewing all of the above information, I note the following:*

- *Stephanie McKay is an authorized agent of the BC SPCA and is duly appointed as a Special Provincial Constable pursuant to Section 9 of the Police Act. Accordingly, I am satisfied that the provisions contained in Section 10 of the Act have been met;*
- *I am satisfied that you (the "Owner") are clearly the "person responsible for the animal" that was removed from your custody on December 30, 2014;*
- *I am satisfied that SPC McKay reasonably formed the opinion that Bella was in distress, as defined by Section 1(2) of the Act.*
- *As a result of all of the above, I am satisfied that SPC McKay reasonably formed the opinion that the appropriate course of action was to take custody of Bella in order to relieve her distress; and*

- A Notice of Disposition with respect to Bella was served in accordance with Sections 18 and 19 of the Act.

Accordingly, I conclude that the seizure of Bella took place in accordance with the Act.

*Having satisfied myself that the seizure was performed in accordance with the Act, I turn now to the question of whether Bella should be returned to your custody. In making this decision I am persuaded by both your history as set out in the ITO with the BC SPCA and your current situation of being banned from having custody or control of an animal pending a hearing in March. The evidence provided by witnesses as outlined in the ITO combined with the veterinary report lead me to believe that at the very least you failed to obtain veterinary treatment for Bella and at the worst, you were the individual who inflicted injuries on Bella that resulted in her being in distress. While you have denied having ever physically abused Bella, I feel that there is sufficient evidence in the fact that you failed to seek any veterinary treatment for Bella's obvious injuries for me to make a determination that it is not in her best interest to be returned to you.*

*I make this decision after also considering the fact that there are significant concerns as to whether you would cooperate with the BC SPCA in the future in the event that the decision was made to return Bella. Your history demonstrates a pattern of failing to respond to BC SPCA notices and a significant concern regarding actions of possibly hiding Bella from the authorities. This combination leads me to believe that should Bella be returned to you, we would have legitimate concerns regarding our ability to follow up on any terms of a care agreement.*

*Last but not least, it is my understanding that you have been arrested in conjunction with concerns regarding the alleged incidents reported by witnesses in the ITO and one of the terms of your bail was that you were not to have care or control of a dog. While SPC McKay reported to me that you had indicated you could find other temporary housing for Bella while you await your court date in March, I am again not convinced that if we did return Bella to a third party, that you would be forthcoming of her whereabouts for any future follow up. In addition, it is my understanding that the police will also be recommending animal cruelty charges, and while I appreciate that you have yet to be charged and convicted, given the above I still feel that it would not be in the best interest of Bella to be returned to you.*

*Having regard to all the above, I am not prepared to return Bella to you as I do not believe it is in his best interest. Section 9.1 of the Act requires that an owner must care for the animal and protect them from circumstances that are likely to cause the animal to be in distress in the future. ... I will be sending you a bill for costs of care shortly."*

16. Material Admitted Into Evidence:

**Appellant:**

- a) Appellant Notice of Appeal (**Exhibit 1**)
- b) Appellant Statement (received February 12, 2015) (**Exhibit 2**)
- c) Kyle Havelock and Patrick Golding, Witness Contact Form (**Exhibit 3**)

**Respondent:**

- a) Affidavit #1 of M. Moriarty, sworn February 4;2015 (**Exhibit 4**)
- b) Bella (one page medical report); (**Exhibit 5**)
- c) Dr. Adrian Walton Expert Witness Contact Form; (**Exhibit 6**)
- d) SPC Stephanie McKay Witness Contact Form; (**Exhibit 7**)
- e) BCSPCA Written Submission, February 19, 2015; (**Exhibit 8**)
- f) Ambleside Animal Hospital full medical reports; including Dewdney Animal Hospital, IDEXX Report; (**Exhibit 9**)
- g) February 27, 2015 email from Chris Rhone outlining total costs; (**Exhibit 10**)

- h) Ambleside Animal Hospital invoices; **(Exhibit 11)**
- i) March 5, 2015 email from Sarah Cleary, setting out final costs; **(Exhibit 12)**
- j) February 23, 2015 Examination Form; **(Exhibit 13)**
- k) Revised Witness Form with SPC McKay, and Jesse Ricard **(Exhibit 14)**
- l) Dr. Niegos Summons; **(Exhibit 15)**

## **The Society's Case**

### ***Marcie Moriarty Affidavit***

- 17. Ms. Moriarty's affidavit makes reference to information the Society obtained prior to the seizure, including the ITO, and information it received after the seizure.
- 18. With regard to the latter, Ms. Moriarty relies on the medical record of the Dewdney Animal Hospital dated December 30, 2014 noting multiple scars and scabs along the upper side of Bella, particularly around the head and neck, and swelling in Bella's left ear "more consistent with head trauma, though head shaking cannot be completely ruled out." The physical examination also mentions a broken tooth.
- 19. Ms. Moriarty mentions a finding, via radiographs, of hip dysplasia with suspected early secondary joint disease. Ms. Moriarty mentions the veterinary physical examination form dated January 7, 2015 with specific attention to ear and fractured tooth.
- 20. Ms. Moriarty refers to the veterinary report of Dr. Walton dated January 30, 2015 naming two medical conditions warranting immediate medical treatment: a tooth fracture likely secondary to trauma and aural hematoma of at least 9 days duration, which may be caused by ear infection or secondary to trauma or bleeding disorders. Dr. Walton found no evidence of ear infections and made no mention of finding bleeding disorders.
- 21. Ms. Moriarty also referred to video and photographic evidence showing the ear swelling was evident on December 24, 2014, and photographs taken at the December 30, 2014 and January 12, 2015 veterinary appointments.
- 22. She also relies on the notes of SPC Gino Paglierrici, SPC Jacqui Hall, and SPC Stephanie McKay.
- 23. Ms. Moriarty notes in her affidavit that the SPC's notes with witness names and contact information have been redacted as the Society is concerned respecting safety of witnesses. She states that she understands the RCMP is pursuing animal cruelty charges against the Appellant and has provided the Society with periodic updates of its investigation including a witness statement the RCMP obtained from Jesse Ricard on January 2, 2015.
- 24. Ms. Moriarty says in her affidavit that an email from SPC McKay dated January 19, 2015 advised that the Appellant was arrested on or about January 18, 2015, and it is her "understanding that the Appellant was later released on bail conditions not to have custody or control of an animal, until the date of his hearing in March 2015."

25. Ms. Moriarty's affidavit states that she believes that it would not be in Bella's best interest to be returned to the Appellant's custody. "As well, in light of above materials received after my Decision, my opinion remains the same."
26. Ms. Moriarty's affidavit says that in her opinion, for Bella to be emotionally and physically content, she must not be in a state of distress. To this end the Society plans on adopting Bella to a compassionate person or family capable of providing Bella with necessary veterinary care so that she does not once again fall into a state of distress. This, in her view, is the best way to ensure Bella is physically and emotionally cared for throughout the duration of her life.
27. Ms. Moriarty says she has "no confidence that Bella will be properly cared for by the Appellant through the provision of necessary veterinary care or freedom from physical abuse. The Appellant has been both evasive and uncooperative with the Society and I am unconvinced that he would be willing to cooperate if any future issues arise. In addition, as indicated in the ITO (Exhibit B), the Appellant previously left Bella at a residence where the property height restrictions did not allow for a dog of that size."

***Dr. Adrian Walton Evidence and Testimony***

28. Dr. Walton testified he is a veterinarian registered and licensed in BC for the past eight or nine years, and in Seattle before that.
29. Dr. Walton saw Bella on December 30, 2014, right after the seizure. His medical record indicates a dog in good body condition with proper musculing, multiple scabs and scars especially around the head and neck, mild left joint carpus swelling, appropriate nail length, heart normal, lungs clear, no pain on palpitation of neck, spine or ribs. He noted a slab fracture of the lower left canine with extraction required. He reported that the left ear shows marked swelling of proximal central aspect of the pinnae with ear swab showing no signs of otis externa but lots of wax buildup. He drained the fluid and injected depomedrol. He performed a vaginal swab finding only normal cells. He said that the location of the ear hematoma was unusual as they occur in normal circumstances around the distal part of the ear. The type of hematoma on Bella is more consistent with head trauma though head shaking cannot be ruled out. Dr. Walton noted a history of owner hitting the dog in the head and chest and reports of dog having significant head swelling two weeks previously.
30. Dr. Walton submitted a more formal report dated January 30, 2015 about his December 30, 2014 examination of Bella. He said it was possible that the broken tooth was from chewing but that it was not likely as dogs chew with their molars, and canine tooth fractures are more common secondary to trauma. He said there was no evidence of excessive bacteria, yeast or mites in the ear and that ear hematomas are painful. He said the most common initiating factor of hematomas is ear infections, but trauma is also a cause. He said: "when the ear canal is inflamed, the dog will violently shake its head, resulting in trauma and broken blood vessel. He also said hematomas are extremely uncomfortable and can cause the dog to continue to traumatize the ear by scratching. He found no evidence of ear infection in Bella or ear tip damage indicative of violent head shaking. He also suggested monitoring the tooth for pain.
31. In his report, Dr. Walton commented on Dr. Niegos' January 7, 2015 examination record of Bella, and said she prescribed otomax for a presumptive otitis externa and did not perform cytology, only noting brown wax. His opinion differed from hers regarding the swelling of the ear canal and its cause. He acknowledged that his findings did not mean that Bella did or did not have an ear

infection on January 7, 2015 as the hematoma would predispose the dog to getting otitis and that could have happened in the time between his December 30 and her January 7 visits.

32. Of note, Dr. Walton reviewed the photos taken from an apartment security camera on December 21 and 24, 2014 and confirmed the presence of the hematoma in both photos. He said that the lack of scarring in the ear is inconsistent with the owner's claim that the ear hematoma occurred on and off since the summer.
33. His report concludes by saying Bella is a very sweet dog and had two conditions warranting veterinary care: the fractured tooth and the hematoma of at least nine days' duration.
34. Attached to the veterinary report is an excerpt from an Internet site apparently called PetPlace(heart)com. Under the title "Aural Hematoma in Dogs" by Dr Nicholas Trout, it is said that the exact cause of hematomas in the ear is poorly understood, though he gives examples of what may cause them. Under the subheading "Home Care and Prevention", the author states that delaying treatment will rarely result in a satisfactory or cosmetic outcome and fails to address the reason why the hematoma occurred in the first place. It goes on to say pet owners should take their dogs to veterinarians to have the hematoma evaluated and to determine whether there is an underlying ear disease.
35. In his oral testimony, Dr. Walton described the pain of a hematoma to be like that of bruising, like a black eye, not severe but uncomfortable. He noted when Bella went to shake her head, she hesitated as it bothered her. He could not determine the cause of the hematoma but did find there was no concurrent ear infection. He noted that the trauma could be self-trauma or blunt force trauma. He was advised of Dr. Niegos' view that the location of the hematoma was not unusual and he said most that he sees are lower but it is true they can occur anywhere. He said he could not rule out an inner ear infection but saw no evidence of that.
36. He said the tooth fracture was not yet healed over and so likely happened in last few months prior to his exam. He said it was possible but not likely from chewing an antler and he did ask a dental specialist, Dr. Legendre, who confirmed that view. Dr. Walton could not comment on the pain of the tooth but opined that if the pulp was still open, there would be pain.
37. Dr. Walton said the scratches and scabs were fairly shallow and were scrapes more than anything and although he could not comment on how they occurred, when you see a lot of them, it is usually from other dogs biting.
38. Under direct examination, Dr. Walton said that a dog who was both played with and hit by its owner would continue to be bonded with its owner.
39. Under cross-examination, Dr. Walton said that Bella was very nice, showed no resistance to examination and showed no fear. He could not comment on the scars except to say sometimes dogs interact with each other and sometimes they interact rougher and there were a lot of scars. He said if a dog bit down aggressively on a bone, it could cause tooth breakage. When asked about home care of ear hematomas, Dr. Walton said a lot of people leave them alone and the most common result is disfigurement of the ear due to scarring. Veterinarians, he said, do not like to leave hematomas alone as they are easy to fix. There is no long-term pain but the ear canal can narrow and the dog can be predisposed to ear infections.

40. Dr. Walton said the scabs were small abrasions he could feel when he ran his hand across Bella. They could be self-trauma or possible scrapes but were not from being kicked. He said the scabs and scars were not associated with physical abuse because of their size and they were not particularly large. They were 3-4 mm, like from scratching.
41. In response to panel questions, Dr. Walton said he took a vaginal swab as he saw irritation at the vagina.
42. He said he was told the dog had a hematoma for several days and it might have been caused by being hit on the head. He said the Society alerts veterinarians to possible abuse as the dog's hair could obstruct a bruise and would therefore alert the veterinarian to shave the dog to check for bruises. If a dog was hit in the chest, an x-ray would allow him to see a fracture. He did not arrive at a conclusion about physical abuse one way or another but there was no cause for the issues with the dog that he could find. There was no evidence of bruising other than the ear hematoma.
43. The panel asked Dr. Walton whether he would have seen evidence on the dog a week later if, as the anonymous complaint indicated, Bella had a gash on her head leaking pus. Dr. Walton stated that he would he have seen evidence of that a week later, such as fresh granulation tissue, and he did not see this. He also did not see evidence of allergies and no indication anything he did see was as a result of diet. When asked if he knew anything about the special ZD diet noted in the Ambleside medical records, he said he was not the one who recommended the ZD specialty food.
44. Dr. Walton said he sees dogs with hematomas, and that if an owner decided to do nothing about the hematoma, he would report that to the Society on the ground that the owner is causing distress. However most clients he sees in his clinic do something. He has examined dogs brought in by the SPCA with scars from hematomas so he can tell that some people do nothing.

### ***Jesse Ricard Evidence and Testimony***

45. Jesse Ricard lives near to the Appellant. Both residences face the entrance to a park (on different sides of the entrance). Mr. Ricard's unit faces the park and alley where the Appellant walks Bella.
46. In a transcribed conversation between the RCMP and Mr. Ricard made on January 2, 2015 regarding an incident on November 23, 2014 (the record apparently produced on February 2, 2015), Mr. Ricard told the police he heard a dog yelping, went to his window and saw the Appellant being abusive to his dog which was a pit bull and that this concerned him as those dogs had a bad reputation usually because of abusive behavior. He went out and confronted the Appellant, words were exchanged, he did not know who swung first but there was a scuffle and Mr. Ricard had "some black eyes" and a cut on the eye. He said there was no serious injury, he went to work as expected and did not see a doctor.
47. Mr. Ricard said after that initial altercation the two had talked again and the Appellant was apologetic and said he was now using positive reinforcement Mr. Ricard said it was a "whole stupid situation" and it shouldn't have turned into a fight and Mr. Ricard really put the responsibility of the altercation on both of them at the same time.
48. Mr. Ricard told police in January 2015 that he had previously observed the Appellant a few times actually strike the dog and he heard the dog yelp from across Lion's Park, right outside his window. On November 23, 2014, he heard the dog yelp and saw the Appellant walk past and "just grab it by like the ears and rip it one way ... and then he got to just up ah, a few windows up from

mine and he went boom, kicked it from behind for no reason like a Charlie horse kind of kick, you know?” Mr. Ricard stated he got fed up and went outside and exchanged words. Mr. Ricard said to the police “that’s why I went there and my blood sugar was a little low and ah I get a little irate when my blood sugar drops. And that’s probably the only reason I went out there.” He continued to say he was fed up with it and pit bulls already had a bad rap and he didn’t want the dog snapping and going after a kid in the park or turn on the Appellant and bite him, which probably would have made him laugh and then feel terrible as the dog probably would have been euthanized.

49. Mr. Ricard when asked by police said he did not see any injuries on the dog from the Appellant hitting him. He said he had seen the Appellant be abusive with the dog quite a bit previously which he then defined as a couple of times a week, but not again since the altercation.
50. Mr. Ricard testified at the hearing that he had seen the Appellant with the dog a couple of times a month and was not impressed. He had heard the dog yelping and seen him hit it a couple times the morning of the November 23, 2014 altercation. He also said he heard a yelp, woke up, abandoned making coffee to walk over to the window and saw the Appellant kick the dog from behind, with his right leg kicking back to the dog which was behind him. He said he had low blood sugar and was irate. He went outside to confront the Appellant and said that the Appellant told him he was just trying to correct his dog. When Mr. Ricard tried to touch the dog on the head, the Appellant flipped Mr. Ricard’s hat off so Mr. Ricard hit the Appellant.
51. Mr. Ricard testified the Appellant treated the dog in an unacceptable manner for a year and previously he did not want to get involved and did not know how to get involved and had talked “to other activists.”
52. During cross-examination, Mr. Ricard, in describing the Appellant’s actions with the dog, said he woke up to a yelp and went to the window to investigate and could hear them talking and did not mistake the actions he saw. He described the Appellant’s actions as “almost sadistic” and said he had told police he had seen an improvement in the Appellant’s relations with his dog with the hope that the Appellant was trying to turn over a new leaf. But after finding out there were other complaints and learning that there was a new injury to the dog now, he no longer thought the Appellant had changed his ways. Mr. Ricard said he was using harsher language now to express how bad it was in an attempt to now better describe what he had seen. He said on that day it was the sounds he heard that made him go to the window and continue to observe the Appellant assault the dog. He had decided over the year that he was fed up with what he had been seeing and that if the dog was a child, he would have gone to the RCMP. He noted the RCMP made an error in the transcript as he had never seen the Appellant with the dog after November 23.
53. In response to Panel questions, Mr. Ricard testified that on November 23, he had been sleeping and woke to hearing the yelp, went to his bedroom window, saw the Appellant, went to the kitchen to make coffee, scooped coffee, then went to the living room window and saw the Appellant in the alley. He did not call police but had his cell phone. He said the “activists” were people who volunteered with Pets Matter and the SPCA and law enforcement and they told him he should video the abuse and call police, but he had not done that. He had made the decision to start videotaping but on that day his blood sugar got the best of him. After observing the Appellant and with his blood sugar, he was at his breaking point but not overly angry.
54. I asked if Mr. Ricard had ever seen Cesar Millan use the technique the Appellant described in his testimony, and he said he had, but that was not the technique the Appellant was actually using.

What Mr. Ricard saw looked like a guy who was hard on the dog. More and more it looked like abuse.

55. Mr. Ricard testified that the day prior to his testimony to BCFIRB, he found out from SPC McKay that several other people had complained about the dog and about severe bruising and other signs of physical abuse and she asked him to assist with this tribunal. Partially why he came forward is that no one else would. Other witnesses and complainants were afraid of the Appellant.

### ***SPC Stephanie McKay Evidence and Testimony***

56. SPC Stephanie McKay has been an SPC since 2011. She investigated allegations regarding Bella. SPC McKay confirmed she swore the information in the ITO.
57. On December 30, 2014, SPC McKay went to the Golding home to see the dog which had a swollen left ear. She confirmed it had not been seen by a veterinarian and seized the dog as being in distress and took it to a veterinarian. She confirmed her understanding that the ear caused discomfort which equaled distress. When she seized the dog, she described Bella as head and hand shy and fearful and acknowledged she was a stranger and the seizure was stressful. She said the dog became comfortable with her quite quickly. While in the shelter, she described the dog as very sweet showing some timidness and shyness and fearfulness around male volunteers.
58. On cross-examination, SPC McKay confirmed the first time she saw the dog was on December 30, 2014 when the warrant was executed. She swore the ITO. The ITO includes the following:

*December 22, 2014 BCSPCA Call Centre received a call of concern regarding a Pitbull type dog named 'Bella' that had been physically and sexually abused by its owner [the Appellant]. He Caller **stated they heard there was an incident** at a recent party where multiple people observed [the Appellant] kick his dog in the head 20 times. The Caller heard the dog had suffered injuries such as a swollen head with a gash on it which leaked pus and had not received any veterinary care. The Caller stated [the Appellant] had moved the dog to a friends' residence.... [emphasis added]*

*[Later that day the Call Centre] received an additional complaint regarding [the Appellant "beating" his dog "Bella".... The Caller stated [the Appellant] moved his dog to a different location due to believing the BCSPCA was going to remove it....*

*The INFORMANT received a telephone call from COMPLAINANT #2 who had recently witnessed the dog at Golding's residence and confirmed the dog had been staying there for 1 week. COMPLAINANT #2 stated [the Appellant] would visit the dog multiple times per day. COMPLAINANT #2 **had heard from multiple people** that [the Appellant] would physically abuse his dog on a regular basis due to the dog defecating or urinating inside his residence. COMPLAINT [sic] #2 had observed the dog 'Bella' which had a swollen ear the side of a baseball with a wound on its head. COMPLAINANT #2 had been advised the dog had not received any veterinary care. COMPLAINANT #2 advised [the Appellant] had openly admitted to them that he physically abused his dog.....*

59. SPC McKay stated that all complaints were taken by phone, and that all complainants were hesitant and fearful of retaliation and that one complaint was anonymous owing to fear. She said one mistake was about the location of the party where Bella was abused; it was not at Mr. Golding's home but somewhere else.
60. SPC McKay was not involved with the first anonymous complaint received on December 1, 2014 and believed another SPC attempted to make contact with the Appellant on December 5, 2014. There was no photo of the Notice that was left, but that SPC's notes indicated there was a dog, underweight being subjected to harsh treatment, and the witness observed hitting or punching the rib area but unclear if open or closed hand. The SPC spoke to a neighbour who said he was unsure

but the Appellant might be abusing the dog and he has heard the dog whine. The SPC posted a “call back.” SPC McKay did not know whether or not a reason for the Society’s visit was circled.

61. On December 10, 2014 SPC Hall’s notebook describes a pit bull dog at the address having been hit or punched in the rib area and that the dog was underweight and the ribs were visible. SPC Hall saw the previous Notice on the door and placed a fresh posting on the door with her contact details. It is unknown if any reason was circled as there was no photo. On December 13, 2014 SPC Hall’s notes indicate a beige pit mix dog abandoned and the word “abandoned” was crossed out with a note that on November 20, 2014 a blond male was observed to be hitting or punching a thin underweight dog in the rib area. Her previous posting was still on the door.
62. SPC McKay’s notebook noted that on December 22, 2014 she called the RCMP to enquire about the Appellant’s history and she was advised of a history and told to attend with the RCMP. A search of *Facebook* turned up photos of the Appellant with Bella. She called his friends and learned he had taken the dog to Mr. Golding’s home and would visit multiple times a day. She was told the Appellant was hiding the dog due to Society notices at his own door. She heard from a witness that heard from multiple people that the appellant abused the dog physically as it went to the bathroom in his apartment. The witness reported a swollen ear the size of a baseball and a wound on Bella’s head. The witness said the dog did not receive veterinary care. The witness said the Appellant openly admitted to them and to others that the Appellant physically abuses the dog. The witness said there was a party at Golding’s the week before Christmas and multiple people had heard that someone had witnessed the appellant kicking and punching the dog 20 times in the head and the body.
63. It appeared from SPC McKay’s notes that on December 23, 2014 she called the RCMP to attend to both the Appellant’s and Mr. Golding’s homes at the same time, but only one officer was available. In speaking to what appeared to be the concierge at the friend’s apartment, (the notes were difficult to read) SPC McKay learned the dog was in fact staying there at Mr. Golding’s and was too large for the building’s rules but was okay temporarily.
64. SPC McKay reviewed security footage and observed that on December 21, 2014 Mr. Golding was in the lobby and elevator with Bella, and the dog’s ear was sticking out. SPC McKay and RCMP officer attended Mr. Golding’s and heard voices but no one answered the door. Her notes said she spoke through the door, that she needed to talk and didn’t want to seize the dog but needed to view the dog to confirm its welfare and, if vet care was needed, she could possibly assist with vet care. Her notes read “Be reasonable” and there was no reply. She posted a Notice, then posted another Notice on December 24, 2014 with an Order to cease harsh treatment immediately and provide vet care within 4 days and follow veterinary advice. The Notice said if she did not receive confirmation of veterinary treatment the Society could take legal action and failure to comply could result in obstruction charges and she must receive confirmation. She photographed the Notice on the door. Her notes also indicate something about the RCMP advising about the November 23 altercation between a witness [whom we know is Mr. Ricard], who saw the appellant physically abusing his dog, that the Appellant assaulted the witness causing injury, and that the police were pursuing assault and animal cruelty charges.
65. On December 28, 2014 SPC McKay attended the Appellant’s home with RCMP, removed the existing Notice and posted a new one advising the Appellant he needed to contact the Society by December 29, 2014 at 10 a.m. to confirm veterinary care and failure to do so may result in legal action.

66. On December 29, 2014 SPC McKay received calls from both of the original complainants that the dog was at Mr. Golding's and might be moved to another location. The notes indicate that there was still a wound on the dog's head and a swollen ear.
67. On December 30, 2014 at 8:30 a.m., SPC McKay was advised the warrant was approved and she called RCMP to attend with her. At Mr. Golding's door, they heard noise inside and heard a dog bark, but there was no answer. She announced her identity and advised that the door be opened or a locksmith would attend and the resident would have to pay for that. The door opened and Mr. Golding answered that he had Bella and she had not received veterinary care. The dog was leashed and brought to the door and seized and taken to Dr Walton's clinic.
68. SPC McKay received a voice mail that was left at 10:34 am on December 30, 2104 from the distraught Appellant about taking his dog away. He explained the chipped tooth was from the dog chewing on an antler. On December 31, 2014 she spoke to the Appellant on the phone and advised him of all the complaints, which he denied. He explained that he used Cesar Milan training methods. SPC McKay's notes said she advised the Appellant that Cesar Millan's methods can be harsh and are frowned upon as they are based on fear, and ideally he should use positive reinforcement. He also denied sexual abuse and said his dog sleeps in bed with him and has mounted other people's legs and they might have misunderstood that. People had given him a hard time about the dog's ear and he should have taken it to the vet. He said he thought it was possibly from infection so he cleaned and wiped her ears. He was unsure why Bella's ear swelled up in the past few weeks.
69. SPC McKay testified that her job was to gather evidence so she had not formed an opinion. She understood the concerns about physical abuse but only saw an ear hematoma. On December 30, 2014, she formed an opinion there had been no veterinary care. Her intent was that Bella had either received veterinary care already, or she would seize the dog to provide veterinary care for swelling of the left ear.
70. Under cross-examination, SPC McKay was asked why the ITO said on December 22, 2014 she got a call where the caller said the Appellant had been physically and sexually abusing his dog, and that the caller had heard there was an incident at a party where multiple people observed the Appellant kick the dog in the head 20 times whereas the SPC's notes actually indicate that a complainant said that many people had heard that just one person reported seeing the dog be kicked in the head 20 times. SPC McKay responded that she has spoken to witnesses since the seizure who witnessed the beatings firsthand but none provided witness statements as they were afraid. She was not willing to put their safety at risk.

## **The Appellant's Case**

### ***Kyle Havelock Evidence and Testimony***

71. The Appellant is 23 and got his dog 10 – 11 months ago when Bella was 3 – 4 months old. His written material including emails to the Society and his written submission, address his deep love for his dog, how well he cares for his dog, the excellent nutrition he provides for his dog and the walks and play time he has with his dog. He apologized for not responding to Society notices. He denied physically or sexually abusing his dog. He denied ever striking his dog. He submitted photos of him and Bella cuddling and face to face. He referred to Bella as the most important relationship in his life. The Appellant acknowledged he is not perfect but that all his love and efforts are focused on helping Bella grow into a loving, kind and safe animal.

72. The Appellant described a typical day of waking, feeding his dog, walking her outside and said he recently injured his own knee so the walks are shorter and no currently doesn't hike with her. He said he only used positive reinforcement, and that Bella was timid when he got her and that she shows more confidence now and is respectful, obedient and good with other dogs.
73. The Appellant explained the November 23, 2014 incident with Mr. Ricard by saying he was keeping Bella close and her chest was behind his legs so if she pulled he would put his back leg behind her legs to prevent her from succeeding. He had a Bosley's harness along with a bungee harness he made himself to ensure she stayed back. She was raring to go into the park when he encountered Mr. Ricard. He did not kick his dog but acknowledged it might have looked like that.
74. The Appellant thought the reason the Society contacted him was because someone complained that Bella was not getting as much exercise due to his own knee injury. He got nervous as he thought the Society would take his dog as another pit bull was removed from the high-rise where he lived and that pit bull's owner told him it was unjust and he had to pay \$1600 to get his dog back. The Appellant thought that that owner didn't do anything to his dog and that now the Society was just going to take his own pit bull Bella. He thought his friend Patrick Golding was the best person to leave his dog with to avoid the Society. He also thought about moving.
75. The Appellant said he was doing some work on Bella's diet as he thought she might be allergic to something in the particular food (Origin Red Meat) and was trying a home diet. He said the broken tooth had been there a while from biting into an antler he purchased at Bosley's and then took back as it was not a good dog chew. He had called a dental specialist in Yaletown and the over the phone price for the tooth was \$1800. He had been looking for a cheaper but still good veterinarian at the time of seizure and had been doing so for some weeks.
76. The Appellant noticed nothing regarding Bella's ear when he took her to Mr. Golding's home, but while she was staying there and he was visiting he noticed some swelling. He thought it might be an ear infection from moisture from a bath or a food allergy. He recalled Bella having a hematoma early in the summer in Kelowna and took her to a veterinarian there and he understood from that veterinarian that the ear swelling would go away on its own. He did not recall that veterinarian's name. That veterinarian may have drained it and said let time heal it. The Appellant thought that during the time at the friend's house when he was visiting Bella the swelling was going down.
77. The Appellant said he did not recall reading the notices, that he tore them up or placed them in a shoebox or that he may have possibly read some of the notices. He thought the Society was concerned about the reduction in Bella's walks. He denied he ever hit or kicked Bella and not at a party as he was accused.
78. He said he was open to a Society care agreement, that the dog is currently not permitted to be in his care and that he has three alternate places for Bella to stay temporarily. He said he would respond to Society notices now with kindness and respect. He would also get veterinary care for his dog. He said he does care for Bella and every decision he makes he puts her first and that she is good for him and makes him feel responsible and proud.
79. Under cross-examination, the Appellant was not certain about the notices, whether he read them or destroyed them or put them away. He recalled seeing a smiley face and a handwritten note saying they would not take the dog away. He did not read them, he said, as he already saw what they did to the other pit bull in his building. He confirmed he was able to read, when asked, and denied

needing psychiatric advice for anger management as he had not been harsher and did not think anger management was necessary. He said he wished in retrospect he had responded to the notices. He noted that since the seizure he had responded to the Society's communications in a timely fashion.

80. He responded to questions about the ear by explaining he was concerned when he saw swelling but recalled another veterinarian telling him to leave it alone. He was looking into getting a veterinarian through his friend's sister but was very slow in doing so and making no progress as he did not like to push other people. He viewed internet information and YouTube videos confirming the ear could be left alone. He said he was keeping Bella's ear still to prevent pain from scratching or shaking. He said Bella's ear smelled different and looked wet so he wasn't sure it was an infection and it would have been a good idea to go to the veterinarian but it did not look that serious to him and he thought he could wait it out.
81. The Appellant explained more about Bella biting the antler which was the size of the length of his hand. He bought it from Bosley's as a dog chew. He did not seek veterinary care for the dog but would have at some point for the tooth.
82. He denied yelling at Bella on November 23, 2014 and said he blocked the dog from pulling by putting his foot on the dog to restrict movement forward, and never pulled on her ears. He used body language techniques on the dog. He said Mr. Ricard seemed agitated when he approached, and when Mr. Ricard petted Bella's head. The Appellant said he had shouted at his dog to get back to the tree line of the park as it was not an off leash park and his dog was off leash.
83. In response to Panel questions, the Appellant said he learned the move of using his foot on the dog's side or in front of her back legs from watching Cesar Millan on YouTube, along with other dog training videos. When asked to specify what he did that he thought was not perfect, as he had mentioned in an email, the Appellant said he did not take Bella to a veterinarian's and did not walk her as much as he should have since his injury but it was hard to get out. He was trying to save money for the dental care while looking for an alternate cheaper veterinarian. He thought things were progressing and he was doing his best. He is only aware of three clinics in Port Coquitlam and he now thinks having a regular veterinarian is a good idea.

### ***Patrick Golding Testimony***

84. Mr. Golding has been friends with the Appellant since high school and says his friend has nothing but love for Bella and feeds her better than he feeds himself and treats the dog good. He said you can see the love the dog has for the Appellant in the dog's eyes. He saw the Appellant once a week or more when the Appellant visited Bella while the dog was temporarily staying with him, and never saw any mistreatment, just average discipline like a tug of the leash. It was not abusive at all. He said the Appellant was really scared to lose the dog. Mr. Golding does not know how the ear hematoma happened, and confirmed his understanding that [the Appellant] was in the midst of thinking about how to deal with it, and that the dog was not in too much pain and was kept from scratching. His sister was in vet tech school but did not finish and she looked at the ear and said the dog probably needed to see a veterinarian. They were going to take it to the veterinarian but it was seized within that week, though no appointment was made. He said the allegations of abuse while at a party at his house were not true and ridiculous.
85. Under cross-examination, Mr. Golding said the dog's ear was not getting worse while at his home but starting to get better, and that they had been calling around to find a veterinarian. He said he

did not say the collar caused the ear hematoma as mentioned earlier, but may have contributed to it when he pulled the collar over the dog's head (the collar was a martingale). He said the Appellant had a key and would let Bella out and spend time with Bella and sometimes there would be a few days where he did not come by or times when the Appellant could have been there for hours. He said he thought the Appellant would cooperate with the Society in the future as he has fought so hard to get Bella back, why would he go through this again?

## **BCFIRB's Witness**

### ***Dr. Caroline Niegos***

86. BCFIRB issued a summons for veterinarian Dr. Niegos to attend the hearing and testify as to her clinical findings in examining Bella. Dr. Niegos is a veterinarian registered with the College of Veterinarians of British Columbia, practicing in BC for three years.
87. Dr. Niegos examined Bella on January 7, 2015 at Ambleside Animal Hospital when the dog was brought in by the Society for a re-check of the ear and teeth. The dog attended twice more, seen by another veterinarian.
88. Dr. Niegos testified that the most concerning problem was the ear, seen a week earlier for a hematoma at Dewdney Animal Hospital. The fluid was now gone and the ear pinnae was scarred in both ears, but worse on the left, and she has seen complicated ear hematomas where the ear deformed. Most hematomas are the result of excessive shaking or trauma causing the blood vessel to burst.
89. Dr. Niegos noted scars all over Bella on her face and back from scratches or previous injury as they seemed like light lines in the hair or skin. They were not deformed scars but were the type seen when roughhousing with other dogs from nail scratches. She said there was nothing in terms of looking at the dog that made those marks stand out as someone bashing her on her body.
90. Dr. Niegos noted an error in her file on which tooth was broken and corrects it to tooth 303, the left lower canine. It could have happened from trauma or biting into something hard like a piece of wood or bone. Although dogs chew with their molars, she noted they bite with their canine teeth.
91. When asked why the dog was put on ZD, a special diet (its cost is noted in the costs section of the decision), Dr. Niegos said the Society told her to make sure the dog was on the diet in case it was causing the ear problem. She said when she thinks about a chronic ear infection, she thinks about allergies, either food or environmental, and as a precaution the Society put Bella on that food. She was told the dog was already on ZD at the Society and if the allergy could be other than food as the ear problem has not gone away.
92. Dr. Niegos noted the location of the previous hematoma (she could tell where it was on the lower part of the ear, not the tip) was not really an unusual spot and she had seen dogs with it in the tip and the lower location, adding that a hematoma could happen anywhere.
93. Dr. Niegos confirmed that she knew that Dewdney Animal Hospital did the ear cytology and found no significant problem. Now with Bella's ear flap deformity the natural ear cleaning process is compromised. She would expect to see a lot of buildup of ear debris and that Bella would be predisposed to chronic ear problems. Infections now would be secondary to the deformity. She referred to the last clinical note from the February 23, 2015 visit where that veterinarian noted

yeast and bacteria in an ear that was still inflamed and mildly red. She said the ear would be a problem going forward. Surgery was an option.

94. Dr. Niegos said that the hematoma would have been very painful and sometimes people who cannot afford surgery simply drain the hematoma or use steroids and pain medications.
95. Dr. Niegos said the broken tooth would be more of a nagging pain similar to a headache but the dog would still get on with life.
96. Under cross-examination, Dr. Niegos indicated the scars were old marks, and faint, reminding her of dog scratches from fighting (roughhousing) with other dogs. Nothing popped up, she said, to cause her concern about abuse or trauma. She also said that she did not conclude the ear hematoma was as a result of trauma, and the same with the broken tooth. She said the tooth wouldn't fracture without trauma and that could be from biting down on wood or bone.
97. Dr. Niegos said the ear hematoma could have been caused by grabbing the ear. She said the tooth did not look like an old injury and had not yet been extracted but either an extraction or root canal was required, depending on owner preference, and that many veterinarians could perform these procedures without having a specialty.
98. When asked to comment on Dr. Walton's opinion on the unusual location of the hematoma, she disagreed and said her experience and opinion was different. She said there was still some ongoing infection and she could not determine when it occurred as it had already begun scarring.

### **Analysis and Decision**

99. As I understand this case, and this is a fairly simple summary, there were a few calls from anonymous people that the Appellant had been physically abusing his dog, which calls describe despicable abuse that included the dog receiving 20 kicks in the head, an open head wound leaking pus, and a mention of sexual abuse. The allegations of abuse led the Society to attempt contact with the Appellant and view the dog. The Appellant evaded the Society out of fear of having the dog seized. The Society, in its investigation, viewed video footage that indicated the dog's ear was swollen and the Society continued to attempt to contact the Appellant and his friend, at whose home the dog was being hidden. During that investigation, the Society learned of the November 23 incident, I believe from the RCMP, about which Mr. Ricard testified that he observed the Appellant kick his dog by using his leg thrust out behind him, connecting with the dog which was behind the Appellant, and that Mr. Ricard's low blood sugar made him irate and he confronted the Appellant, the two exchanged words, Mr. Ricard touched the dog, the Appellant touched Mr. Ricard's hat, Mr. Ricard struck the Appellant and a fight ensued not requiring medical intervention. Ultimately, the Society got a warrant and on December 30, 2014, after viewing the dog's swollen ear at Mr. Golding's home, and learning there had been no veterinary care, seized the dog.
100. The dog Bella, by all accounts, is a sweet, female, young pit bull. There was no dispute that she had a hematoma in her ear, and there was no dispute she had a broken tooth, and there was no dispute she had not received veterinary care for either of those two things.
101. Counsel for the Society submits I should find that this dog was taken from a situation where she was not properly cared for and that the Appellant only learned his lesson after the dog was seized. He submits that there is nothing concrete to show that the Appellant will change his behavior if he gets the dog back. Counsel could not conceive how a return of the dog could happen given height

restrictions at Mr. Golding's place (though Mr. Golding said he was moving in April) and the condition that the Appellant cannot have the dog by Court Order.

102. Counsel for the Society said the Appellant could have had a plan in place and could have had the Society visit the caretaker's residence before this hearing. The Appellant ought to have known from what his friends told him that the dog needed to see a veterinarian and that I should treat testimony about the Kelowna veterinarian suspiciously. Counsel said this type of evidence is indicative of the Appellant's lack of forthrightness. Counsel questioned how the Appellant could not afford to get the dog's tooth fixed but can now afford to pay the bill for seizure. If the Appellant was getting money from his father, why couldn't the father help earlier to treat their dog? The tooth was painful and there is no reason to believe the Appellant will seek veterinary care in the future. Whatever the cause of the conditions, there was sufficient evidence to conclude, with the Appellant's evasiveness, that there was no reason to believe there will be an increase in trust. Instead there is very strong evidence of abuse of the dog and Dr. Walton's evidence leaves a wide door open for the possibility that abuse may have happened. Counsel saw no inconsistency in Mr. Ricard's report to police and testimony at this hearing. Counsel said I do not need to determine a finding of guilt but instead decide if this dog will be better served by being placed in a loving home or be returned to the Appellant where there is a great risk of being hurt by the Appellant and if not hurt, at least not receive veterinary care. The dog's best interests mitigate against its return even with conditions.
103. Counsel for the Appellant wanted me to find that Ms. Moriarty's decision is unreasonable. The Appellant thought he was doing what was best for his dog, and he had a change in circumstances in that he now understands how to care for the animal. He did not think his actions had caused Bella any additional trauma and he genuinely appreciated that he was not perfect and his biggest mistake was a lack of veterinary care. He loves his dog and is prepared to work with the Society. There is no reason, after this process, why he wouldn't abide by the Society's instructions. Neither Drs. Walton nor Niegos concluded there was physical abuse; nor did the SPC reach that conclusion, and there was nothing physically to draw that conclusion from. Counsel suggested I not put any weight on Mr. Ricard's evidence as his current testimony was not matching previous RCMP information and changed after he spoke to SPC McKay. Counsel said the Appellant would accept a comprehensive care plan through a guardian; that he would pay the costs in full prior to Bella being released; and would abide by whatever conditions necessary and do whatever he needed to do to take care of his dog.
104. I will first consider whether the dog was in distress at the time of seizure.
105. I want to make it clear that in making this determination, I am not assessing whether the ITO contained sufficient information to justify a search warrant. Further, I will resist the temptation to get into questions about whether certain information should or should not have been included in the ITO. Assessing all that is a court's job. My more specific function at this stage of the decision is focused on determining whether, based on the objective information before the Society, Ms. Moriarty was correct or reasonable in concluding that there was, in all the circumstances, sufficient information before the Society to justify removing the animal on the basis that it was in "distress", a definition that includes an animal being "deprived of adequate care or veterinary treatment".
106. In my view, that test was met in this case. Clearly, the dog had a swollen ear which required treatment, even if one attributes no fault to the Appellant in the causation of the hematoma. Further, it is uncontested that the dog required veterinary treatment, the Appellant knew or ought to

have known that it required treatment, and the Appellant did not obtain such treatment, leaving the dog in distress. Finally, the Appellant's evasive behavior (despite his subjective explanation for why he did so) inflamed the situation and understandably elevated the Society's concern and justified the action it took in removing Bella. These points alone were sufficient to justify the seizure, separate and apart from the physical and sexual assault allegations.

107. I am therefore left to conclude that Bella was in distress at the time of seizure as she had a swollen ear that was or appeared to be painful; it was confirmed she did not receive veterinary care; and the Appellant was nowhere in sight to discuss future veterinary care. In fact, the Notice ordered him to seek veterinary care and he did not.
108. Before concluding on this issue, I will say a word about the allegations of physical and sexual abuse, which also formed part of the context for the dog's removal. On the one hand, the Society is quite right to investigate allegations of abuse, even where those allegations are anonymous, and even where the evidence is hearsay evidence. An investigation is not a criminal trial, and a proper animal protection perspective requires caution to ensure the best interests of animals. But that having been said, I must also add that had the particular abuse allegations in this case been the only basis for the seizure, I would have been reluctant to find that they constituted adequate grounds for removing the animal given the evidence (which at our hearing differed from how it was framed in the ITO) that a caller said that several people heard about one person seeing the dog being kicked. One would not expect that a seizure would occur based solely on this kind of inflammatory hearsay without further investigative steps taken to verify the reliability of the story. Where, as here, the surveillance video showed a dog with a swollen ear but not a head wound, it would likely speak against putting a great deal of stock in anonymous hearsay evidence.
109. I am unconvinced that the allegations of abuse had merit at the time of seizure. The dog was not underweight with ribs visible as evident in the video prior to seizure, and certainly as evident at the time of seizure (photos and veterinary report). The one allegation of sexual abuse was unsupported by any evidence and had no contextual information about why the complainant had that opinion. The allegation of horrific physical abuse was double hearsay. One person reporting that "many people had heard that one other person had watched a dog being kicked in the head 20 times" is very difficult to accept as being reliable without further investigation.
110. Having concluded that there were sufficient grounds to take Bella into the Society's care, I now turn my mind to assessing whether Ms. Moriarty correctly or reasonably determined that the dog Bella should not be returned to her owner.
111. This question turns in part on whether the other information, apart from the "double hearsay" information already discussed, raises sufficient concerns as to preclude the animal being returned to the Appellant. The first important evidence in this regard is the evidence of Mr. Ricard.
112. I reviewed the transcript of the conversation between Mr. Ricard and the RCMP regarding the abuse Mr. Ricard alleges he witnessed. Both the Appellant (who said he used Cesar Millan's backward kick technique) and Mr. Ricard were familiar with Cesar Millan's training method of kicking behind your own leg to connect with the dog's ribs or back legs. Indeed, anyone watching a Cesar Millan program on TV would have seen this move. Mr. Ricard believes the Appellant was not doing that move, and that he witnessed a "Charlie horse kick" from his bedroom window. In his testimony, Mr. Ricard describes the abuse he witnessed as "sadistic" yet in his January 2015 interview with police, he said he heard a dog yelp and saw the dog and the Appellant walking and upon getting closer to Mr. Ricard's window, the Appellant kicked the dog from behind; and in his

oral testimony, he described hearing a dog yelp and this waking him up, looking out his window to see the Appellant abuse his dog, then starting to make coffee, then going to another window before deciding to confront the Appellant. Mr. Ricard said that the main reason he confronted the Appellant was that he was irate due to his low blood sugar. He said to the police that if not for his low blood sugar, he would not have confronted the Appellant.

113. In my view, the tone of Mr. Ricard's initial observations about the Appellant differed dramatically from his use of the term "sadistic" at the hearing (and in part of his testimony, he mentions making coffee mid-way through the alleged kicking incident). Mr. Ricard went on to say that he felt compelled to testify as the Society had told him there were other complaints and other injuries to the dog (the other injury is presumably the swollen ear, which was not confirmed as physical abuse by either veterinarian) and no one else was testifying.
114. While I do not doubt his sincerity, I do not believe that Mr. Ricard's testimony accurately reflects the actual November 23 event and I prefer the Appellant's testimony that he did nothing other than a Cesar Millan maneuver on the dog. Mr. Ricard offered no explanation on how he could tell the difference between the Appellant's move and Cesar Millan's move other than they were different. I am also persuaded that the fact that Mr. Ricard was asleep and awakened by the yelp he heard, followed by seeing "abuse", then followed by making coffee does not support his current view of sadistic treatment. He said he heard the yelp prior to seeing any abuse, so could not have known for sure the source or cause of the yelp, and for Mr. Ricard's explanation to make sense, I would have to accept that during the period of time described by Mr. Ricard, the Appellant basically remained below Mr. Ricard's window while abusing his dog. This conflicts with the fact that Mr. Ricard said he saw the Appellant from the back and saw the Appellant's leg move behind him and connect with the dog which was behind him, all which suggests the Appellant was moving away from Mr. Ricard's windows (his two windows looking out onto the alley and park). All this leads me to believe that Mr. Ricard did not present a reliable account of what happened. I prefer the evidence of the Appellant with regard to the November 23, 2014 incident.
115. My conclusion that Bella was not physically or sexually abused is supported by both veterinarians. There were no bruises or broken bones on Bella, such as one would expect being abused as often and as horrifically as the complaints suggested. When asked if a head wound leaking pus just before Christmas would have been completely healed by December 30, Dr. Walton said no, and he found no evidence of such a wound. In fact, both veterinarians remarked on the shallow and small scars and said they were indicative of dog roughhousing or biting or scratching. The word "trauma", when describing the ear, could include self trauma or blunt force trauma, neither of which had to be as the result of physical abuse. Dr. Niegos said nothing caused her to believe the dog had been physically abused and the scars certainly were not indicative of physical abuse. Dr. Walton said he was told the dog had a history of abuse, which typically would assist him in searching for bruises, and he found none, and found no broken bones on x-ray. He said he drew no conclusion one way or another about possible abuse, and there was no cause he could find for the hematoma.
116. The legislative framework was 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. [emphasis added]

117. I also note the following 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.

118. In considering whether Bella, if returned, would receive veterinary care, I make reference to comments made by the British Columbia Court of Appeal in *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at paras. 37-38, in responding to the argument that the Society must always give an owner "another chance" before it seizes animals:

In my view, s. 11(a) must be given a broad purposive interpretation. The words "does not promptly take steps that will relieve ... distress" sometimes will lead to the authorized agent making orders and giving directions, in other circumstances he or she may conclude that the person responsible for the animals is unable to take the necessary steps or it may be apparent that the person is unwilling to take steps to relieve the distress. The cases referred to by the chambers judge illustrate these varied scenarios.

I do not think the cases support the notion, advanced by the appellant, that, as a matter of law, in every case the agent must give the responsible person time in which to relieve the animals' distress. In some cases, as in the present case, it will be reasonable not to do so. The word "promptly" suggests a consideration whether the person can or will take the necessary action.

119. Based on the evidence and testimony I heard in this matter, I am satisfied that the Appellant can and will take the necessary action, and deserves that opportunity. I believed the Appellant when he said he wished he had sought veterinary care for the ear, and that he had different veterinary advice on the ear's treatment and previous advice to let it heal on its own. In fact the two veterinarians could not agree on the placement of this hematoma being unusual or not. One veterinarian found an infection; one did not, though the timing of both examinations could be the reason for this. Further, Bella has been in care of the Society since December 30, 2014 and I note that as of the March 6, 2015 hearing date, she was still being treated for an ear infection and her tooth had yet to be extracted.

120. Ms. Moriarty's reasons state that one of the factors that influenced her decision against returning the dog to the Appellant was his history with the Society as set out in the ITO and his current situation of being banned from having custody or control of an animal pending a Court hearing in March. The evidence provided by witnesses as outlined in the ITO combined with the veterinary report lead her to believe that at the very least the Appellant failed to obtain veterinary treatment for Bella and at the worst, he was the individual who inflicted injuries on Bella that resulted in her being in distress. While the Appellant denied having ever physically abused Bella, Ms. Moriarty felt there was sufficient evidence in the fact that the Appellant failed to seek any veterinary treatment for Bella's obvious injuries for Ms. Moriarty to make a determination that it is not in the dog's best interest to be returned to the Appellant.

121. I do not agree that the "history as set out in the ITO" is a sufficient basis to refuse to return the animal in this case. The allegations of abuse as set out in the ITO may have supported a search warrant, but they were not sufficiently reliable by themselves to refuse to return the animal. Ms. Moriarty relied also on a statement in the ITO stating that multiple people watched the Appellant kick the dog in the head 20 times, which was more inflammatory than the actual evidence. I have also determined that the allegation of abuse reported by Mr. Ricard cannot be accepted for reasons already given.

122. Without any of these allegations, the relevant history is that his dog had an untreated ear hematoma causing discomfort like a bruise or a black eye, according to Dr. Walton, and a broken tooth that was more of a nagging pain similar to a headache but the dog would still get on with life, according to Dr. Niegos; coupled with a history since December 1, 2014 of avoiding the Society when it requested then ordered action. I do not find that those circumstances warranted a refusal to return the dog. While avoidance of the Society is a legitimate concern, I do not find that the 30-day history of avoidance in all the circumstances of this case is sufficient to prevent an order for return on conditions.
123. I note that Ms. Moriarty also cited the veterinary report, but the report combined with the testimony of two veterinarians leads me to believe that neither veterinarian concluded abuse, though both said the ear and tooth need to be treated.
124. In coming to my decision about the return of Bella to the Appellant, I first consider that neither the tooth nor the ear condition can on the evidence be attributed to any improper action of the Appellant. The tooth could have broken on the antler, as the Appellant testified, and this was confirmed as being a possibility by Dr. Niegos, and unlikely but possible by Dr. Walton. The ear could have been as a result of head shaking (for a number of reasons including infection or allergies) or self trauma or blunt force trauma. There was a dearth of evidence about abuse causing the hematoma; only unsupported allegations. I already said I was unconvinced the dog experienced physical abuse; I am not convinced either that there was sufficient evidence that the ear hematoma was caused by anything done or not done by the Appellant.
125. I also consider that this was not a case of the Appellant doing nothing for his dog. The Appellant had sought out training information from YouTube videos, and by all accounts this was a well-behaved dog. He fed his dog nutritious food and had resorted to cooking for his dog when he thought it had allergies to a particular food. The dog was described as in good body condition with proper musculing. The Appellant said he did receive prior veterinary advice about Bella's ear and contrary to the pressure he was getting from friends to get the ear looked at, he said he and Mr. Golding were cleaning it, and that the swelling was subsiding, and I believe him; though I note that was not adequate and he should have seen a veterinarian. The Appellant also reported that he was seeking out an affordable veterinarian for the dog's tooth as it appeared he consulted over the phone with a dentist veterinarian, perhaps not understanding a regular veterinarian could do this type of extraction, as reported by Dr. Niegos. My point is, it was not that the Appellant was doing nothing; it was more that the Appellant was unfamiliar with what to do and predisposed to researching issues on the Internet, and this is not doing the right thing despite believing his statement that he was doing his best and that he was trying.
126. And I believe he truly loves Bella and that now that he is aware that the dog should see a veterinarian when she has an injury or a condition that causes pain or discomfort, he would make this happen. The dog is still being treated for an ear condition and it will be necessary for the Appellant to complete the treatment regime. The dog will be predisposed to further ear problems and the Appellant will need a veterinarian to guide him as issues arise, and to properly treat the ear. The dog will need to have the tooth addressed, by whatever method is recommended by a veterinarian. He seemed willing, immediately after the dog was seized, to do what the Society wanted him to do but he was not given the chance.
127. Ms. Moriarty also mentioned in her affidavit that the Appellant previously left Bella at a residence where the dog exceeded the height restrictions for pets. The evidence presented acknowledged the

height restriction but the concierge of that building noted that it was okay on a temporary basis. I am not satisfied that leaving Bella at that residence compromised Bella in any way.

128. This all leads me to conclude and decide that it is in Bella's best interests to be returned to her owner as the evidence convinces me that Bella would be returned to good condition and would remain so, and that the Appellant in this case is a reasonable person who must be given the opportunity to relieve the animal's distress, which had not been provided to him, due at least partially to his evasiveness (which I also note is understandable but wrong). However, it is largely because of that evasiveness, and his history of not obtaining timely treatment which has led to distress, that I believe that Bella should only be returned based on the conditions I have crafted below.

129. BCFIRB's right to order an animal returned subject to conditions is set out in s. 20.6(a) of the *PCAA*:

*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.*

130. The granting of a remedy is in this case complicated by the evidence that there is currently a court order in effect which prohibits the Appellant from possessing animals. The Appellant sought an order requiring that "Bella be lodged with a friend until such time as the criminal allegations have been resolved. It is proposed that the BC SPCA would be advised of the address and invited to check Bella when they see fit". The Society responds that "there is no statutory authority resting with this Tribunal to order the Society to return the Dog to some other person than the owner or the person from whom custody was taken. Thus, the order to return, if made, would be to return the Dog to the Appellant. But, as noted earlier, the Appellant is prohibited from possessing animals."

131. In my view, the existence of a criminal court order prohibiting the Appellant from possessing animals is not a bar to my issuing the Order I consider necessary and appropriate under s. 20.6 of the *PCAA*. While I fully accept that a court order would override any conflicting *PCAA* order, there is in fact no conflict if I order the *Society* to return the dog to the Appellant (as I am authorized to do), but the Appellant (who is bound by the Court order) in turn directs his delegate to receive and care for Bella from the Society so as to ensure that the Court order is complied with. That approach respects the Court's authority, the fact that the Court's order may change depending on the outcome of any trial, and respects the ability of BCFIRB to issue a remedy, including the conditions I am imposing below.

## **ORDER**

132. I am therefore ordering the Society return the animal "Bella" to the Appellant on the following conditions:

(a) That within ten (10) days of this order (or of the date the dog is released to the Appellant's delegate, whichever is later), the Appellant directly or through a third party to whom he has delegated care of the dog, cause Bella be taken to see a veterinarian of the Appellant's choice.

(The Appellant can locate a veterinarian by visiting the College of Veterinarians of British Columbia's web site, which has a directory of all veterinarians in the province, sorted by city).

- (b) That within five (5) days of that appointment, the Appellant forward to the attention of Ms. Moriarty at the Society, a record from the veterinary clinic confirming that the veterinary visit has taken place.
- (c) That the Appellant comply with that veterinary advice in a timely fashion and provide, to the attention of Ms. Moriarty at the Society within five (5) days of such visit:
  - (i) a written statement setting out that advice; and
  - (ii) the steps and timetable for following that advice.
- (d) That at least once every six months for the next two years, the Appellant cause Bella to be taken to see the veterinarian for a check-up, and provide, to the attention of Ms. Moriarty at the Society within five (5) days of the visit, the record from the veterinary clinic confirming that the veterinary visit has taken place.
- (e) That the Appellant follow the veterinary advice arising from the 6 month check-ups referenced in (d) in a timely fashion and provide, to the attention of Ms. Moriarty at the Society within five (5) days of each such visit:
  - (i) a written statement setting out that advice; and
  - (ii) the steps and timetable for following that advice.
- (f) That, as proposed by the Appellant in his written submission, the Society be advised of the identity and address of any third party having custody of Bella while criminal charges are outstanding.

133. This Order recognizes that the Society retains the right to take action under the *PCAA* if it determines that there are grounds for such action as set out in the *Act*.

## Costs

134. Section 20 of the *PCAA* provides:

- 20** (1) *The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.*
- (2) *The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.*
- (3) *Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.*
- (4) *If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.*
- (5) *Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.*

135. Section 20.6(c) provides that on hearing an appeal the board may “confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2)”.

136. The costs submitted in this appeal were confusing. Counsel for the Society submitted invoices from Ambleside that were for other Society animals in care. From the evidence submitted and with costs capped for this appeal for the purpose of boarding as if my decision were issued on March 20, 2015, I have determined that this is what the Society is asking for:

**(a) Boarding Costs:**

- (i) Society's labour costs for SPCs \$120 (10 x \$12/hr)
- (ii) Housing, care and feeding of Bella \$1200 (\$15 day x 80 days from December 30, 2104 to March 20, 2015, anticipated day of Panel decision)

**(b) Veterinary invoices:**

- (iii) Dewdney Animal Hospital \$404.85
- (iv) Ambleside Animal Hospital January 7, 2015 \$395.46 (including \$206.77 for ZD food)
- (v) Ambleside Animal Hospital February 3, 2015 \$71.71
- (vi) Ambleside Animal Hospital February 23, 2015 \$288.30

Total requested (supported by invoices or other material) **\$2480.32**

137. The Society submits that its costs are reasonable, with an amount of \$15 per day being the cost of boarding, broken down as being for food, shelter attendant care, cleaning and overhead. The Society asks for the cost of its SPCs to attend and veterinary invoices as presented to be reimbursed.

138. Counsel for the Appellant is not taking issue with the reasonableness of costs and said the Appellant had reviewed them and thinks they are appropriate and is willing and able to pay them. Counsel agreed that additional boarding costs due to the hearing adjournment was acceptable, agreed at \$15 per day additional from March 10, the estimated day of decision, and March 20, the new estimated day of decision.

139. In view of the Appellant's position regarding the reasonableness of costs, it is unnecessary for me to address the costs portion of the appeal. I will only observe here that had the Appellant taken a different position, issues may have arisen including whether the Society was entitled to costs beyond the date of the review decision. I need not decide that issue in this case as the matter was not argued, given the position taken by the Appellant.

## **ORDER**

140. As a result of the position taken by the Appellant, the total costs payable to the Society are **\$2480.32**.

141. I do not find it necessary for the Appellant to pay these costs prior to the return of the dog (BC Society for Prevention to Cruelty to Animals v. British Columbia (Farm Industry Review Board), 2013 BCSC 2331 at para. 68), and I leave it to the Society and the Appellant to determine a payment schedule.

## **A Final Comment**

142. I do wish to comment briefly on SPC McKay's remarks to the Appellant about Cesar Millan's training methods. While I understand she may disagree with them, it is a reality that he has legions of followers, and it is very much an open question, which we need not finally decide in this case,

whether his philosophy or any particular technique Mr. Millan suggests, would be contrary to the PCAA.

Dated at Victoria, British Columbia this 20<sup>th</sup> day of March, 2015

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**

A handwritten signature in black ink, appearing to read "Corey Van't Haaff". The signature is written in a cursive, flowing style.

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Corey Van't Haaff, Presiding Member