

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:

J. K.

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:

Danny Markovitz, Counsel

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

April 7, 2016

Location of Hearing:

Teleconference

I. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*). The names of the Appellant and his witness will remain anonymous to protect their identities due to an allegation heard during the appeal.
2. The Appellant appeals from the March 1, 2016 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).

II. Brief Summary of the Current Decision Under Appeal

3. The Society seized the Appellant's dog after the Appellant performed a certain manual procedure on the dog to relieve suffering related to constipation. The Appellant made statements to others, in graphic detail, about what he did. A report was then made to the Society, which seized the dog after determining that it was in distress.
4. Section 20.6 of the *PCAA* permits the BC 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.
5. For reasons that will be explained in detail later, I have decided to order the return of the dog without conditions.
6. For reasons that will also be explained below, I am also ordering that the Appellant pay costs, but less than the amount claimed by the Society.

III. The Society's Powers and Duties

7. The Society under the *PCAA* is mandated to prevent and relieve animals from situations of cruelty, neglect and distress. The Society can seize animals from the care and custody of their owners or take custody of abandoned animals, as authorized by the *PCAA*. The Society's investigation and seizure powers are set out in Part 3 of the *PCAA*, entitled "Relieving Distress in Animals".
8. The March 20, 2013 legislative reforms, set out in Part 3.1 of the *PCAA*, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: *PCAA*, s. 20.2(1), (2). If a review is requested, the Society must review the decision and must not destroy, sell or dispose of the animal during the review period unless it is returning the animal: *PCAA*, ss. 20.2(3).
9. The *PCAA* does not set out any specific process for the review. Administratively, the Society's current process where a review is requested is to prepare a disclosure package and then to invite submissions from the owner concerning the return of the animals and to consider these submissions in light of the investigation results to determine whether it is in the animals' best interests to be returned to their owners.

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

20.2 (4) The society, following a review, must

(a) return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting

(i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and

(ii) any matter that the society considers necessary to maintain the well-being of that animal, or

(b) affirm the notice that the animal will be destroyed, sold or otherwise disposed of.

(5) The society must provide to the person who requested the review

(a) written reasons for an action taken under subsection (4), and

(b) notice that an appeal may be made under section 20.3.

IV. The Appeal Provisions

11. I am guided by the approach to appeals under the *PCAA* which is set out in detail in *A.B. v British Columbia Society for the Prevention of Cruelty to Animals*, (August 9, 2013), which decision was upheld by the Supreme Court on judicial review¹. 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*.

V. Preliminary Issues

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

13. There were some brief delays in this case with a change in the submission schedule due to the hospitalization of the Appellant, followed by a two day extension to the original hearing date due to the hospitalization of the Appellant's counsel.

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

14. The Appellant failed to respond to a BCFIRB request to clarify whether or not any witnesses would be called. Counsel says he did not receive this request. At the start of the hearing, counsel said he would make the Appellant and his girlfriend available for cross-examination but did not plan on asking questions. The Society opposed this as it did not have time to prepare questions. I suggested that we take a thirty minute break at some point before the Appellant's witnesses so that the parties could prepare questions, and this was agreed to. The Appellant expressed dismay at the timing of witnesses and the hearing, advising me that we could start the entire hearing in the afternoon as the two veterinarians' testimony would be fast. I advised counsel that we would proceed with timing as I originally planned.
15. There was also some confusion regarding costs. The Society's decision did not reference costs. The Appellant's appeal did not reference costs. In its material, the Society clearly set out that it was expecting to have its costs for care of the dog reimbursed, including boarding and veterinary costs. The Appellant at the hearing did agree that he was appealing costs, though as you will read, his counsel may have misunderstood costs.
16. Before the hearing and during the review of submitted material, I identified areas where I might need assistance in understanding some of the issues presented, which I am entitled to do pursuant to s. 20.5(4) of the *PCAA*:

The board, at any time before making a determination in an appeal, may (a) inquire into matters relevant to the appeal, and, as part of that inquiry, obtain the advice of persons who are knowledgeable about those matters.
17. To assist me, I prepared a summons for Dr. Jefferson Manens, the specialist veterinarian who saw the dog after a referral from the dog's family veterinarian, but before the Appellant performed the procedure.

Material Admitted Into Evidence

Appellant:

- a) Appellant Notice of Appeal (perfected on March 7th) (**Exhibit 1**)
- b) Appellant Submission (57 pgs) (via email March 23rd) (**Exhibit 2**)

Respondent:

- c) BC SPCA initial document disclosure – Tabs 1-20 (via email March 11th) (**Exhibit 3**)
- d) Dr. Adrian Walton Report – Tab 21 (via email March 16th) (**Exhibit 4**)
- e) BCSPCA Submission (29 pgs) (via email March 30th) (**Exhibit 5**)
- f) M. Moriarty signed Affidavit #1, (via email March 30th) (**Exhibit 6**)
- g) BCSPCA Submission – Revised (29 pgs) (via email March 31st) (**Exhibit 7**)
- h) Expert Witness Contact Form (Dr. Adrian Walton) (via email April 1st) (**Exhibit 8**)
- i) Witness Contact Form (Jacqui Hall) (via email April 1st) (**Exhibit 9**)
- j) BC SPCA submission on costs (April 1st) (**Exhibit 10**)

VI. The Appeal

Brief History

18. The Appellant has an eight-year-old, 44-kilogram American bulldog. The dog has some skin issues, and has regularly seen a veterinarian. In January 2016, the dog became constipated.
19. The Appellant sought assistance from his family veterinarian, whose efforts were unsuccessful. The dog was then referred to a specialist, Dr. Manens, a “board-certified internist,” who tried various treatments which were also unsuccessful. The dog was sent home with additional treatments and a recommendation to consider surgery.
20. At some point, the Appellant manually removed a piece of feces from the dog’s rectum. Afterward, he made some fairly graphic and extreme statements to workers at a pet food shop regarding what he had done. One of them contacted the Society.
21. On February 13, 2016, the Society arrived at the Appellant’s home and seized the dog on the ground of distress.
22. Although the Society’s review decision does not mention this, the Special Provincial Constable seizing the dog was concerned about zoophilia and bestiality and received a warrant based partially on that concern.

Society’s Review Decision

23. In March 1, 2016 written reasons, Ms. Moriarty of the Society found upon review that the dog was in distress when it was seized. In coming to her conclusion that the dog not be returned to the Appellant, Ms. Moriarty wrote, in part:

I turn now to the question as to whether or not it would be in the best interest of [REDACTED] to be returned to you. I must admit this is an extremely unique case. I am presented with a situation where it is clear that you sought veterinary treatment for [REDACTED]. Specifically, Ms. [REDACTED] notes in her email to me dated February 17, 2016, that [REDACTED] was seen by the following veterinarians:

- 1) Canada West Veterinary Specialists, Dr. Manens
- 2) Main Street Animal Hospital, Dr. Toor
- 3) Pacific Coast Veterinary Hospital, Dr. Kennedy, and
- 4) Elk Lake Veterinary Clinic, Victoria, BC

In reviewing Dr. Manens’ notes, it is clear that you brought [REDACTED] to the vet on January 8th as you were concerned that he had been losing weight and was straining to defecate. Radiographs were taken and confirmed severe diffuse constipation. [REDACTED] was then treated with IV fluids, ranitidine, oral lactulose and an enema was performed under anaesthesia. A further two successive enemas were performed under anesthesia. None of this aggressive treatment was successful and so [REDACTED] was referred to Canada West. On January 12, 2016, Dr. Manens performed a rectal examination and using forceps attempted to collect a sample to help with diagnosis. [REDACTED] was then sedated and a further examination and CT scan was performed.

The prognosis was not good. Dr. Manens explained to you that medical management of [REDACTED] constipation was unlikely to be successful in this case. The option of surgery was discussed and it was noted that this surgery was technically challenging as the colonic wall was very thin and fragile and could rupture during an enema, during surgery or in post-operative phase. You were sent home with this information to consider

a course of action. It is clear from above that you had expert opinion on what would be reasonable courses of action to take in attempting to treat [REDACTED]

You have admitted that you took [REDACTED] home and “for several days administered the prescribed medications and performed enemas and manual extractions of feces.” An employee at [REDACTED] pet store reported that you described this “manual extraction” as sticking your “arm up [REDACTED] anus, literally elbow deep and pull[ing] out feces and blood.” In submissions made on your behalf, it is submitted that your “treatment” of [REDACTED] after the Canada West visit was to choose the “non-invasive option” and “follow the course of treatment as per the veterinarian’s instructions; administered the prescribed medication, gave enemas and manually assisted [REDACTED] to pass the mineralized stool.” None of your submissions deny that you used your hand and a portion of your arm to reach up the anus of [REDACTED] and remove feces. In fact, you have admitted that you did this a number of times.

In considering all of the medical evidence, I cannot find any reference or instructions from a veterinarian that instruct you or even suggest to you that one course of treatment would be to manually remove feces from [REDACTED] using your arm at home. It is true that [REDACTED] did undergo a number of enemas, but all of these procedures were done under anaesthetic. Dr. Manens was careful to explain the dire nature of [REDACTED] condition and the fact that the colon area is extremely thin and fragile and perforation, even from an enema performed under anaesthetic, could be a possibility. As such, I find it absolutely mind blowing that you would think that a reasonable course of action would be to put a grown man’s hand and forearm up the anus of your dog, not just once but multiple times. While I do not think I need veterinary opinion to come to this conclusion, I do have such an opinion that this “procedure” would cause extreme pain and result in blood loss at minimum and possible perforation of the bowl (sic – bowel). I most certainly would not agree with the suggestion that this was a “non-invasive” option of treatment and I think [REDACTED] would agree if he could vocalize an opinion.

[REDACTED] is extremely fortunate that your reckless and completely unreasonable actions did not kill him. Yes, you managed to remove the fecal blockage but at the cost of causing your animal extreme and repeated pain contrary to the Act. Instead of taking the expert advice of veterinarians, you carelessly put your dog’s life in jeopardy and did something no reasonable person would do. The fact that you had multiple veterinary visits and advice on [REDACTED] condition and avenues of treatment makes your actions even more egregious as you clearly cannot make an argument that “you did not know any better” (although I still would not consider that submission as grounds for a return.) This exceptionally poor judgement (sic) leads me to believe that it is not in best interest of [REDACTED] to be returned to you as I do not have faith that if he was to become sick again, you would make rational decisions regarding his care. [underlining in original]

The Panel’s Witness

Dr. Jefferson Manens

24. The report of Dr. Jefferson Manens, veterinarian specialist at Canada West Veterinary Specialists, was received as part of both the Appellant’s and the Society’s submissions. The dog was referred to Dr. Manens by the Appellant’s regular veterinarian, Dr. Dalwinder Toor, who made the referral, after Dr. Toor was unable to help the dog with his medical issue.

25. Dr. Manens’ written report dated January 12, 2016 reads in part:

[REDACTED] has never been neutered. He has been a rather healthy dog until recently.

[REDACTED] has been losing a significant amount of weight in the last few weeks (very rapid according to owners). Rather suddenly (but more chronic subtle signs could have been missed), approximately one week ago, [REDACTED] started to show some straining to defecate. Some urgency to go to the bathroom was obvious and no feces seemed to pass despite frequent squatting. [REDACTED] also started to look more and more depressed and some vomiting (or regurgitations) have been noticed. Some pumpkin was tried for a few days without any success. The owners also said that [REDACTED] has been fed regularly with chicken bones.

■■■■ presented to his family veterinarian on January 8th. His abdomen seemed to be very hard on the right side. Radiographs were taken and showed severe diffuse constipation. Blood work showed some non-specific changes consistent with significant active inflammation. Urinalysis was also performed and urinary tract infection was strongly suspected.

Some treatment was tried including IV fluids, ranitidine, orallactulose and an enema was also performed under anaesthesia. Antibiotics were also prescribed to treat the suspected urinary tract infection. Despite an aggressive medical approach (two successive enemas under general anesthesia), only a small amount of feces (including very hard fragments) came out.

■■■■ was sent home with oral antibiotics (Ciavamox®). He seemed to improve mildly as he was able to pass by himself a small amount of feces. However, straining persisted and he remained lethargic. At this stage, he was referred to Canada West Veterinary specialists for further investigation and management of his severe constipation.

Quiet, alert and responsive. Thin body condition and moderate generalized muscle mass atrophy. Pink and moist MM. Adequate hydration status. Normal respiratory pattern. Normal cardiopulmonary auscultation. Tachycardia. The right side of the abdomen felt very hard (probably related to colonic content). Normal peripheral lymph nodes. Strong regular pulses.

Rectal examination was performed. A large irregular prostate was felt. There was no evidence of pain when the prostate was palpated. Subjective impression that the prostate is causing some degree of extra-luminal compression (partial obstruction) of the rectum. At approximately 5 cm from the anal margin (tip of finger), a very hard intra-luminal content was felt. Forceps were used to try to collect a sample from this material. This very hard content seemed to be composed of very hard fecal material.

■■■■ has been suffering from very severe constipation of uncertain etiology. In ■■■■ case, several factors may be involved in the development of constipation.

Acute prostatitis (prostatic cancer less likely in an intact male but not completely excluded) is suspected (bacteria detected in recent urinalysis, enlarged irregular prostate) and could explain the recent sudden deterioration. Benign prostatic hyperplasia would be another possibility to explain the prostatic changes detected on CT scan images. A definitive diagnosis has not been reached at this stage. Prostatic lavage was not performed today as ■■■■ has been receiving antibiotics and a false negative result was likely.

Abdominal ultrasound was tried but not successful because ■■■■ large size and because of the presence of mineralized material in the descending colon and rectum. Therefore, CT scan of the abdomen was performed instead and confirmed an enlarged prostate and colonic sub-obstruction (mechanical ileus and severe accumulation of compacted partially mineralized fecal balls). The CT scan did not show any evidence of intestinal neoplasia, stricture or diverticulum often associated with constipation.

Even without a definitive diagnosis, medical management of prostatitis should be tried as successful treatment can be associated with significant shrinking of the prostate and might help with the evacuation of the impacted fecal material. Enrofloxacin is strongly recommended to treat prostatitis because of its good penetration in the prostatic tissue. A minimal of 4 weeks (up to 6 weeks) is usually recommended and should be associated with chemical castration. The only available option available in Canada is Finasteride. The ideal treatment should be 5mg once a day for 8 weeks. Surgical castration is another efficient and definitive option to help shrink the prostate. However, it is preferred to wait for good control of acute prostatitis before surgical castration (less complications).

Another factor is ■■■■ recent ingestion of chicken bones. This could explain the very dense mineralized aspect of the colonic content described on the CT scan.

■■■■ colon seems severely and diffusely distended. The colonic content seems very large and very dense. Therefore, medical management of constipation is unlikely to be successful in this case. Another option discussed with the owner was surgery (colotomy and removal of content). However, surgery in this region is very challenging technically especially in dogs. Besides, the colonic wall may be very thin and very fragile

because of the chronic dilation, which may make the surgery very risky. In case of colonic rupture which could happen during an enema, during surgery or in the post-operative phase, life threatening peritonitis would occur.

Even in case of a successful surgery (removal of impacted fecal material, good healing of gastro-intestinal tract), there is also the possibility of recurrence of the constipation in the future as there is no definitive diagnosis at this stage (degenerative neurologic disease?) and as some irreversible structural changes may already have occurred in the colonic wall.

All options have been discussed with the owners. [REDACTED] was sent home with a combination of enrofloxacin, lactulose and metoclopramide for now. In case surgery is not performed (owner still to decide), a more optimal medical management would be recommended and other drugs should be added to improve chances of success (Finasteride for chemical castration, Erythromycin-1 mg/kg three times a day, Pumpkin supplements- 4 tablespoon /meal, repeated enemas- Dioctyl sodium sulfosuccinate). Unfortunately, [REDACTED] prognosis is poor whatever option is chosen. The owners will tell us what they decide in the next few days.

26. In the report, Dr. Manens concluded:

Findings are compatible with a mechanical ileus caused by compacted partially mineralized fecal balls, foreign material and prostatomegaly.

The prostatic changes may suggest underlying mild prostatitis. Benign prostatic hyperplasia may also be considered.

A prostatic neoplasm is considered relatively unlikely. The medial iliac lymph node changes are compatible with mild reactive lymphadenopathy.

27. His recommendations were as follows:

If enemas do not allow a complete emptying of the colon, exploratory laparotomy with colectomy would be recommended. Fine needle aspirations with culture of the prostatic parenchyma may yield additional information. Castration is also recommended.

28. In response to my questions, Dr. Manens testified that he was a small animal internal medicine specialist. He said the dog was “pretty thin” with a body condition score of 3/9 with general muscle atrophy and was “pretty sick” when Dr. Manens saw him: vomiting and not eating, both of which can cause rapid muscle wasting. Dr. Manens suspected a prostate infection but the dog was already on antibiotics and it was not the right time to investigate. In any event, the dog was started on treatment for his prostate.
29. Dr. Manens did not recall the condition of the dog’s skin. He does recall the dog and the Appellant. He read the family veterinarian’s history and the dog did have a skin issue. Dr. Manens testified that skin issues would look raw or inflamed and there could be secondary infections and it was hard to say if the dog would be able to scratch the back of his shoulder.
30. Dr. Manens testified that the dog’s rectum looked slightly open and there was a good reflex as he could see the sphincter contract. He did a rectal exam and when he inserted his finger into the dog’s rectum, he could touch impacted fecal matter with the tip of his finger a few centimeters in.
31. When I asked if a person the size of the Appellant could stick his arm into the dog’s rectum, Dr. Manens said it would very challenging, and he doubted it was physically possible due to size limitations. He said the rectum could distend but the anus and sphincter would be damaged. A damaged sphincter would be distended. One would see tears around the sphincter. The skin would

be damaged and the sphincter would lose its ability to contract. As there would be a permanent loss of contraction, the rectum would be open. Dr. Manens testified that what he saw when examining the dog was consistent with severe constipation and he does not believe it was due to sexual abuse.

32. When I asked about the Appellant performing a manual extraction, Dr. Manens testified that the mineralized material inside the dog, if pulled out, could damage the surface of the rectum. It was pretty hard material, he said; chicken bones, likely. If passed, it could damage the rectum mucosa. Impacted feces most likely would cause some degree of damage.
33. Dr. Manens testified that he has seen this type of constipation before and that based on his experience, he would try aggressive medical management to increase the dose of laxatives to really try and make the feces “liquidey” in order to pass, and to stimulate contractions of the bowel with specific medications. The dog’s prostate was also a factor, so he advised treatment to shrink the prostate as the swollen prostate can get in the way of the bowel and cause a mechanical obstruction. Dr. Manens testified that a swollen prostate alone would not cause the impacted fecal matter but it was a factor. Dr. Manens suspected that the dog’s diet, chicken bones, the size of the dog’s prostate and perhaps underlying colonic wall disease might have contributed, but he could not prove that.
34. Dr. Manens did not recommend that the Appellant or any owner should manually evacuate a dog themselves as it should be done by a veterinarian. He said “when you don’t know the anatomy you can cause additional damage”. He stated that in the case of the dog, the wall of the colon was so distended it could rupture so one would have to be pretty gentle.
35. Dr. Manens was not aware of anyone doing this procedure themselves but he did say that he could imagine people trying this in some specific situations when there is a potential for the feces to come out and the dog is trying to go to the bathroom but he still doesn’t recommend it.
36. Dr. Manens did not see any matter on the dog’s rectum that indicated sexual abuse. He did not use a UV light and did not know if a UV light could be used to look for semen, although it can be used to indicate the presence of a fungal infection.
37. Dr. Manens reiterated that if a person put his arm up a dog’s rectum, it would leave a significant change in the dog’s anatomy.
38. In response to the Appellant’s questions, Dr. Manens said there was no evidence of sexual abuse that he could see, and that it would be challenging and unlikely that a person could insert their arm inside the dog up to their elbow. Dr. Manens agreed that if the fecal matter were removed, it would bring relief to the dog. That is why he recommends surgical removal as removal is extremely invasive and dangerous for the dog, but the whole exercise is ultimately to remove the fecal matter.
39. In response to the Society’s questions, Dr. Manens confirmed that he did not see any rectal tearing in the dog and saw nothing suspicious. He could feel fecal matter about five centimeters inside of the dog’s rectum. He tried to use forceps to remove it as a whole piece, as initially he was not sure what it was. He did get a piece broken by forceps and it had a high mineralized content. It was too far for him to get it with his fingers. He could feel the tip of the fecal matter.

40. Dr. Manens stated that he performed the rectal exam without anesthesia. He would never recommend an owner do manual evacuation. He said it would be challenging but possible for a grown man to get his arm in up to the elbow. The rectal tearing and distended rectum from doing so would likely be permanent he said and it would be unlikely to return to its normal state without surgical intervention.
41. On January 14, 2016 when his staff member called the Appellant to follow-up, Dr. Manens thought it sounded like his treatment plan worked.
42. In response to my final question, Dr. Manens thought it would be unlikely but possible for the fecal matter to move after his treatment and that the laxatives had apparently worked well. He could imagine it would pass, but thought it was unlikely. Dr. Manens said the fecal mass would stop a person's arm and but he was sure there was a way to push the mass of feces out of the way if someone wanted to do so. He also said fecal matter in the rectum and colon could move in any direction even without being pushed, solely by the contractions of the bowel.

The Society's Case

43. The Society relied on all its submitted material and submissions, and I reviewed and considered all material, submissions and testimony, whether or not I refer to it here.
44. The Society is concerned that should the dog be returned to the Appellant, he will likely be returned to a situation of distress (as defined in the Act). The Society is concerned that the Appellant will contravene the s. 9.1 of *the PCAA* which provides as follows:

Duties of persons responsible for animals

9.1 (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.

(2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.

45. As acknowledged by Ms. Moriarty in her written reasons, this case is unique in that the Appellant was clearly seeking veterinarian care for the dog. However, the Appellant's decision to reach into the dog's rectum, causing tears and rectal trauma, and the Appellant's subsequent inability to acknowledge the severity of his actions, caused the Society to determine that it was in the best interests of the dog not to be returned to the Appellant.

Society's Witnesses

Dr. Adrian Walton

46. Dr. Walton is a BC veterinarian and is not a specialist. He first saw the dog on February 14, 2016, after the seizure. His evidence was that the dog was a very nice looking 44 kilogram bulldog with a history of constipation. He was underweight with a body condition score of 2/9. He had skin lesions and a lame back leg with joint laxity which would cause a mobility issue. The dog had an enlarged heart seen on x-ray. When Dr. Walton lifted the dog's tail, he could see rectal tears and

they glowed white when lit with a black light, the colour white indicating bodily fluid. There was frank blood four-to-six centimeters inside the rectum.

47. On March 6, 2016, the skin was doing better. The dog had no issue defecating and had chronic diarrhea. The dog did have an old injury to his knee joints which would cause some difficulty defecating as it put more pressure on the dog's knees. Dr. Walton would recommend medical management for knee pain.
48. The blood he saw when he lifted the dog's tail was not subtle. It was "big globs of blood" – fresh blood not yet clotted. Looking at dog's rectum, he saw a little bit of puffy tissue with bleeding on both sides and the bottom, but not on top. When he inserted his finger in dog's rectum, there was fresh blood and older clotted blood.
49. Dr. Walton's opinion is that these rectal tears were secondary to trauma. While he was unable to say what happened, the injuries were consistent with a foreign body being inserted. Two fingers being inserted, unless there were tumours present, shouldn't cause bleeding. Another cause might be severe constipation and bones, but he did not find any coarse material in dog's fecal matter. There was nothing consistent with constipation. Dr. Walton said if the dog was constipated one month earlier he would not still see the condition that the dog's rectum was in.
50. Dr. Walton explained that his job, when he is given a set of information, is to consider all the possibilities and rule things out as potential causes. Dr. Walton testified he found nothing supporting this animal having any difficulty defecating. The skin condition the dog had was easily treatable with steroids and antibiotics. Most of the skin lesions were associated with joint problems, and were treated as dermatitis. Most of the lesions were resolved by his last visit so he never got the chance to work up the cause of the skin condition. Unfortunately with skin, he said, 20 different diseases that start on the skin progress and look like all the other skin diseases. The dog's skin disease was chronic. Dr. Walton would have referred the dog to a dermatologist but the dog was responding to the treatment he prescribed.
51. Dr. Walton did read the Canada West report. He explained that chicken bones and bony material act like cement and stick together making it hard to defecate. He is concerned that the dog's diet contributed to his constipation.
52. Dr. Walton's opinion was that the dog's condition was consistent with a person inserting a forearm into the rectum. A veterinarian would treat constipation with a catheter and 60 ml of water, some mineral oil and detergent to break up the fecal matter and if it was still a problem, depending on the size of the animal, the veterinarian might try digitally to break it with their finger. If that failed, they would refer the animal to Canada West or another specialty clinic. Dogs would not be sedated along with an enema as you want the dog to walk and defecate, unless the animal was fractious. He would never recommend an owner perform an enema or extraction due to risk of perforation. The animal's life would be at risk.
53. Dr. Walton stated that rectal tearing would cause pain which would last until the lesion heals. It would feel like a hemorrhoid, a "most unpleasant experience." Inserting a forearm or finger would cause pain depending on the size of the animal. Inserting a forearm is normal with cattle. The dog was not big enough for Dr. Walton to insert his hand up the dog's backside without causing pain.

54. In response to questions from the Appellant, Dr. Walton agreed he did not see the dog until after the seizure and did not read Dr. Manens report until a few weeks ago. He now understood the constipation was due to mineralized feces and the evacuation of mineralized feces might have caused tearing, depending on its size.
55. Dr. Walton testified the bodily fluids which shone white in the black light could have been blood, sperm, saliva or urine. There was bleeding in the area and his assumption was the colour came from blood. When he wiped away the blood, the colour disappeared. Dr. Walton testified that given the fact that there was blood there (which shone white) and it was gone when he wiped off the blood, the white colour was most likely from blood.
56. Regarding the DNA sample he took, Dr. Walton testified that any time there is a concern about bodily fluid on the rectum, in the back of his mind is the question of sexual assault. Based on training he took in a course on forensic veterinary medicine, he took a DNA sample. He gave the DNA sample to the Society and that was the extent of his responsibility.
57. Dr. Walton testified he only reported what he saw, and could not report what actually happened. He has no way of knowing what caused the shoulder lesion but it has healed beautifully.
58. Regarding the rectal bleeding, he found no evidence of a clotting disorder. The likelihood of oozing three weeks after constipation was extremely low. He would have expected any tears to have healed if the bowel movements were normal. The feces he saw were loose and wouldn't open up any tears. Outside the rectum, bleeding could be explained by dermatitis, but that doesn't explain the bleeding inside the rectum. A foreign body, severe constipation or a tumour could cause the bleeding.
59. In response to my questions, Dr. Walton testified that a person could put their arm into the dog's rectum, and if so that would cause mucosa tearing, rectal tearing and possibly a perforated colon. Dr. Walton testified he expected the dog would have gained more weight by his last visit and when asked if that slow weight gain could translate into a slower healing of rectal tears, he said that if that slowness was the result of another health condition, the dog would have been sicker and he saw no evidence of liver problems.

Special Provincial Constable Jacqui Hall

60. SPC Hall has worked for the Society for 17 years – three as an SPC appointed under the *Police Act*.
61. SPC Hall testified that on February 11, 2016, the Society received a call of concern from a pet store employee who had reported witnessing abuse at the store in the form of the Appellant kicking and hitting his dog, which had a sore shoulder and tail and an extremely swollen anus. When she asked the Appellant about this, the Appellant told her he stuck his arm “elbow deep up the dog's ass” and blood and poo came out. He told her he guessed that was what happened when you “stick an arm up a dog's ass.”
62. SPC Hall then posted a notice on the Appellant's door for him to provide veterinary care before 9 am. on February 12, 2016. When SPC Hall spoke to the building caretaker, she learned the Appellant had moved out February 10, 2016. She testified she received two voice mail messages from the Appellant in response to the notice. He said the last veterinarian he had seen said that

there was a blockage and that the dog would starve to death, so he reached up himself and it was horrible, he was covered in blood.

63. SPC Hall testified that when she entered the Appellant's former apartment, she saw hooks bolted to the wall waist high. There were no stains on the floor. She locked the unit upon leaving. She spoke to the movers who told her the Appellant's new address. She obtained a warrant to enter that new apartment.
64. When she arrived at the new apartment on February 13, 2016, she realized she had the wrong apartment number. However, while in the building she did see a man come out of a different apartment and he confirmed he was the Appellant.
65. SPC Hall advised the Appellant that she was a veterinary nurse. The Appellant told SPC Hall that his dog had an intestinal blockage and that he had to go in there and pull it out. SPC Hall saw the dog, its bloody shoulder, a hairless patch on its tail and his anus with liquid discharge above the anus. The Appellant advised her he did not want Society's assistance.
66. That same day (February 13, 2016), SPC Hall applied for and received a further warrant. She executed that warrant at 5:07 p.m. along with SPC Carey of the Society and the RCMP.
67. SPC Hall testified she advised the Appellant and his girlfriend (Ms. K) that the dog was in distress as an arm had been put up the dog's back end so she was removing the dog. SPC Hall told the Appellant that the warrant also gave her permission to search for evidence of zoophilia, and that both the Appellant and his girlfriend then laughed and made jokes about the dog working the street corner. SPC Hall began searching and found dog had food and water but no evidence of zoophilia. She testified the Appellant had only moved in three days earlier and she did not go through boxes.
68. SPC Hall testified that Ms. K. told her that she witnessed the Appellant put his arm up the dog's behind, and that she, Ms. K., held her hands one foot apart indicating the distance the arm was up the dog's rear end.
69. SPC Hall testified that when she wrote the second ITO, she had asked a Society veterinarian what the dog would have experienced if the Appellant put his arm up the dog's rear end. The veterinarian told her the dog would have experienced extreme pain, and possibly a bowel perforation.
70. SPC Hall said the Appellant did not deny he did this.
71. SPC Hall testified she takes notes at the time she is speaking to people or if it in the middle of a seizure, she jots down information like dates and times and then when she drives away from a property, she then pulls off the road to write down full notes.
72. SPC Hall testified that the bolts she saw in the new apartment were just lying on the window ledge and there were no eye hooks. The bolts at the old apartment were in the wall. These, she said were heavy duty bolts.

73. SPC Hall said she seized the dog as the Appellant had his hand or arm up the dog's anus and she was concerned about the damage and about what she saw when she looked at the dog's back-end and he was in pain and it was incumbent on her to relieve the dog's distress.
74. When I asked SPC Hall why her notes indicated that Ms. K's hands were about one and a half to two feet apart, but her testimony was that Ms. K's hands were one foot apart, SPC Hall stated that she had to "go with [her] notes". While SPC Hall's notes wrote that the girlfriend witnessed the "abuse" and then made the above-noted hand gesture, SPC Hall testified that the girlfriend did not use the word "abuse" and that that was SPC Hall's own word. She testified that, in fact, the girlfriend said the Appellant put his hand up there "this far" to save the dog's life.
75. SPC Hall did not question the Appellant further after seizing the dog.
76. SPC Hall explained that when she went into the Appellant's old apartment and saw the bolts, she did not think about bestiality or zoophilia. But when she thought back on it, she recalled training she received from an instructor named Dr. Merck who had told SPC Hall that when an animal is suffering from bestiality, you often see injuries in the harnessing area and you see bolts in the wall which are used to cross-tie the dog so it cannot move. SPC Hall noted the back-end of the dog and the location of the injury on the dog's shoulder and then recalled the bolts in the wall on the first apartment with the first warrant.
77. SPC Hall clarified that the first warrant was for the old apartment. The second warrant was for the wrong unit number in the new building, in the context of executing which she spoke to the Appellant who came outside and she saw the dog and his back-end and shoulder injury. She put all that information into the ITO in support of the third warrant.
78. When I asked SPC Hall if she found any evidence of bestiality, she replied she had found no evidence as of yet. When I asked her to clarify what "yet" meant, she said there was still the DNA samples are being kept in a secure place. She stated that the results take months but nothing had been done yet with the samples and she could not answer whether or not the Society is planning to do anything with the DNA.
79. SPC Hall testified she did not find a harness but she did not look inside boxes. She was surprised at the dog's anus as it was swollen with wet discharge. She was in touch with Canada West and knew the Appellant was there on January 12, 2016 and that the veterinarian diagnosed mineralized feces. She testified she had become concerned about bestiality during the period between the second and third warrant. During the execution of the third warrant when she entered the Appellant's property she did not find evidence of zoophilia. Her concern was the dog and the Appellant manually penetrating the dog's anus and the condition of the skin and anus led her to assess the dog as being in distress.

The Appellant's Case

80. The Appellant relied on all his submitted material and submissions, and I reviewed and considered all material, submissions and testimony, whether or not I refer to it here.

Appellant's Witnesses

J. K. (the Appellant)

81. The Appellant submitted material including his own affidavit and his girlfriend's affidavit.
82. The Appellant testified that in the period of time before the alleged abuse, the dog was "puking" and no matter what he ate or drank, he just laid there. The Appellant gave him enemas and he saw that his dog was dying. His dog tried to poop outside and the Appellant had spent all his money on the veterinarian – more than \$3,000. He had no money to go back to a veterinarian so he reached up with a finger while the dog was pushing at the same time. He testified that he knows his dog very well and that the dog did not feel any pain from the Appellant's actions. The Appellant said he pulled on the poop with his fingers and pulled it out. After that, the dog was not 100% by all means as he had lost a lot of weight, but he regained his appetite and was good. He used to be lethargic but the dog was happy again and followed him around the house as always. The Appellant testified that he did not stick his arm up the dog's bum – that he was just being "a smartass" and using that as a figure of speech. It was just him exaggerating.
83. In response to the Society's questions, the Appellant said he put a glove on and inserted his index and middle fingers as gently as he could while the dog was pooping. He said he felt the fecal matter and it had moved closer to the rectum so he grabbed it and pulled back on it.
84. The Appellant did not see Dr. Manens use forceps on the dog and agreed that Dr. Manens never told him to remove the fecal mass. The Appellant was not aware the dog had been sedated at Dr. Manens. The Appellant said the dog was squatting and pushing and no fecal matter was coming out while he pushed so the Appellant went in and manually grabbed the feces. After the first initial chunks came out, the dog was able to get the rest out himself. There was a little bit of blood when he pulled out the fecal matter but he thought it was from the first veterinarian. The Appellant is certain that removing the fecal matter did not cause the dog to bleed. The blood on the poop was like gel, and it was not on the dog's bum. No one was holding the dog still because the dog wanted to get that poop out.
85. The Appellant testified while the dog was having difficulties with constipation, the Appellant lived in the penthouse and had access to the rooftop deck which is where the dog was trying to go to the bathroom. He stated that his girlfriend was watching him through the window as he was trying to help the dog go to the bathroom. The Appellant reiterated that he only inserted two fingers.
86. The Appellant confirmed received the Notice of Disposition but did not see page five. Once he made his submissions, he did nothing further and he did not advise Ms. Moriarty that he only inserted two fingers. He said he did not refute the allegation of inserting his arm as he did not think that was the main allegation or he would have denied it. He is aware of the allegation now but was not at seizure.
87. Regarding the exchange of correspondence between his counsel and the Society, the Appellant said he was advised by counsel not to refute the allegations as the complaint ranged from the dog bleeding to sexual abuse.

88. In response to my questions, the Appellant said he slid one finger in, felt poop and then put two fingers in just to assist the dog. He saw that the dog was pushing as hard as he could and when he saw the dog was trying so hard to poop, he went inside and grabbed some gloves and tried to help as much as he could.
89. The Appellant said he did not sexually abuse his dog and never has. He has never put his dog in a harness as that would encourage pulling. He stated that he has fasteners in his wall as he does not have any bed posts and he uses handkerchiefs for sex with his girlfriend "as we like it." The dog has never been tied up on the fasteners or in kerchiefs or in any way in his life. The dog has never even been in a cage and is not allowed in the bedroom. The dog regularly sees a veterinarian.
90. The Appellant now thinks that the dog's diet led to his constipation and there was too much bone in his raw food diet. The Appellant regularly buys raw food and will now buy raw food already prepared where the bone content is controlled rather than the cheaper route he took by making it himself. He made a mistake doing so.
91. The Appellant said he would never try to remove feces from his dog again. He did it out of desperation. He stated that if it happened again, he would take the dog to the veterinarian again. The Appellant stated that he has "spent every dime" on his dog and tried several different treatments from his veterinarian for the dog's skin. He stated that the dog's shoulder abrasion was from his food allergy and that the dog always gets it on that same spot. The veterinarian told him it was an allergy. The Appellant now understands the correlation between his dog's diet and constipation.
92. The Appellant said after he took out the fecal matter, the dog started to get better right away and was eating a diet of raw carrot, raw food, chicken without bones and pumpkin. He stated that the dog's rectum was "a little bit swollen and red" and that the dog did have a sore like a rash below his rectum. Dr. Manens told him that it would take a long time for the dog to heal and for the redness to go away.
93. The Appellant said the woman at the pet shop told him his dog did not look well and had lost weight and he had wanted to explain what happened to her. He exaggerated when he said he stuck his arm right up there. It was a figure of speech and he never thought anyone would take it literally.
94. In response to the Society's final questions, the Appellant said he was not sure what date he helped the dog to go poop but it was just a few days after seeing Dr. Manens as Dr. Manens office called a few days later and by then, the dog had pooped. He was impressed that Dr. Manens' office followed up. He testified that he did tell the Society he went into the dog's rectum to remove the fecal matter before the dog was seized.
95. The Appellant stated that he feels tricked by the pet shop employee as he gave her his address as he thought the Society would help them with his dog. When the dog was seized as being abused, he agreed that the dog did look horrible but not because of anything he did. He was trying to save his dog's life and would never hurt his dog.

Ms. K (the Appellant's Girlfriend)

96. Ms. K. is the Appellant's girlfriend. She testified that the dog was not eating. He was vomiting and after two veterinarian visits the dog was still unable to pass his poop. He was getting very weak. On the day the Appellant helped the dog, she was watching to see if his help would be successful. As soon as a big chunk came out, the dog seemed relieved and the next day, the laxatives had full effect and there was no blockage, only diarrhea. The dog's appetite came back.
97. Ms. K. said she could see the Appellant insert just his fingers. She stated that the Appellant has never sexually abused his dog – "never." There is so much love and trust between the Appellant and his dog. Their bond is "precious and rare."
98. In response to the Society's questions, Ms. K said that after the manual extraction, the dog was getting better but they had to clean the house every fifteen minutes due to diarrhea. They had sleepless nights, but so had the dog. The Appellant had gone outside with the dog to observe every time the dog went out, to see if it was normal. She expected to see blood and inflammation as the feces was so big it stretched the intestinal wall. The wall was thin which is why surgery was too risky for them. Even with all the laxatives, no poop came out until the Appellant helped. She stated that the dog was getting so weak and was trying, but looked like he didn't have much strength left so the Appellant tried to assist. Ms. K said she could see this all perfectly as the window was only a few feet away from where the dog was. She could see the Appellant's whole hand was outside the dog and only his fingers were inside the rectum and after the Appellant pulled it out, a big chunk came out. And that was the end of the dog's suffering.
99. Ms. K. stated that she recalls the seizure and SPC Hall vividly. Ms. K. said she used the term "fingers" to describe what the Appellant used on the dog and she agrees she made a hand gesture indicating two fingers. She agreed they never addressed the allegation of inserting an arm as she thought they needed to address the dog's medical history. She did not think the allegation was important as it was clearly an exaggeration. She said she and the Appellant were devastated and in shock when the Society mentioned bestiality and she laughed hysterically as she could not believe what she was hearing. She absolutely denies the allegation.
100. With regard to the letter she wrote to the Society, Ms. K. said it was the first time she has written such a letter and she overlooked how to address the issue and she did not know how.

VII. Submissions, Analysis and Decision

101. The Appellant's position is that the Society's attempt to "vocalize" the dog's opinion about what was done to him was absurd, and that the treatment the Appellant gave the dog worked. The dog was on its way to recovery prior to being seized. The Appellant says it would have been impossible for him to insert his arm into the dog's rectum. The Appellant says he chose the non-invasive route to address his dog's medical situation. The Appellant and his witness testify there was no pain expressed by the dog upon performing the procedure. The abrasions on the dog were as a result of the chronic skin condition. The Appellant says the allegations by SPC Hall are totally absurd. The Appellant denies using a shoulder harness and denies abusing his dog and states that the shoulder abrasions as part of the dog's skin disease.

102. The Society's position is that the Appellant has failed to meet the onus resting upon him 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. The Appellant does not deny that he manually removed feces from the dog's rectum. Instead of acknowledging the serious risk of harm and death he caused to the dog, the Appellant remains persistent in his belief that he saved the dog's life. The Society is not convinced that should the dog become ill again the Appellant would not resort to such appalling behaviour once more.
103. The Society says that Ms. Moriarty reasonably and correctly concluded that the dog should not be returned to the Appellant. The Appellant has demonstrated an inability to provide proper veterinary treatment when needed and he put the dog's life a risk when he manually removed fecal matter from the dog's rectum. In addition, the Appellant has shown no remorse for his actions and appears to be indifferent and unconvinced regarding the significant pain and suffering he caused the dog. The Appellant appears to believe that his behaviour was acceptable and continues to minimize the severity of his actions. There is a substantial future risk that the Appellant will continue to fail to provide proper veterinary care and follow recommended courses of treatment. There is also a substantial future risk that the Appellant will resort to absurd behaviour in "caring" for his dog. As such, it is in the dog's best interests that the Society adopt the dog to responsible new owners who will provide him with appropriate veterinary and other care.
104. Before turning to my analysis, I will state generally that I found the evidence of the veterinarians to be persuasive. I accept the testimony and reports of Dr. Manens and Dr. Walton. Where the veterinary opinions diverged or were contradictory, I preferred the evidence of Dr. Manens not only because Dr. Manens is a specialist with advanced training, but because Dr. Manens saw the dog prior to the Appellant's intervention and was most aware of the health profile of the dog at the relevant time. Dr. Walton saw the dog only after the seizure and after the constipation had resolved.
105. I found the evidence of both the Appellant and his girlfriend to be credible and believable. I found both their testimony to be factual and in accordance with the preponderance of the other evidence in this case, discussed further below. I note as well that the Society did not call anyone from the pet store who made the initial complaints regarding the dog's condition.
106. With regard to SPC Hall's evidence, it is apparent that her consideration of potential bestiality and zoophilia was speculative at best, and I note that it was not relied upon or even referenced by Ms. Moriarty in her review decision.

Seizure of the Dog

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

- 1 (2) For the purposes of this Act, an animal is in distress if it is
- (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
 - (a.1) kept in conditions that are unsanitary,
 - (a.2) not protected from excessive heat or cold,
 - (b) injured, sick, in pain or suffering, or
 - (c) abused or neglected.

108. I agree with Ms. Moriarty's conclusion that this is a very unique case. Insofar as the issue is whether the definition of "distress" was met at the time of seizure, the circumstances here straddle a fine line.
109. There is no doubt that the dog was in pain and in a distressing state given his constipation, which had caused weight loss and dehydration and which was very upsetting to both the dog and his owner. But the question for me is whether or not the dog met the definition of distress as defined in the *PCAA*. That definition requires a consideration not of distress in the abstract, but also of what actions or inactions, connected to that distress, were taken by the person responsible for caring for the animal.
110. The Appellant testified that he did not cause any distress – that his intervention did not cause the dog any pain and he knew this as he knows his dog so well. He relies on the (thankfully) successful intervention as being the conclusion of this matter – which is far from the case, as I suspect he now realizes.
111. The Society says the dog was in distress as he was deprived of adequate veterinary care and was in pain and was suffering. This was not due to the Appellant never taking the dog to veterinarians, as the facts here were that the dog had seen a veterinarian (for skin issues and for this current issue of constipation) followed by a specialist veterinarian to try to relieve the condition of severe constipation. The Society submits that the dog reached the definition of distress when the Appellant reached into the dog's rectum to pull out whatever fecal matter he could reach. This act was not taken on the advice of the specialist veterinarian Dr. Manens who was the last veterinarian to treat the dog prior to the Appellant's ill-advised intervention. According to the Society's own veterinarian, as well as Dr. Walton, this would have caused pain and according to Dr. Manens, it could have also caused a bowel perforation and led to death.
112. I am of the opinion that the dog did meet the definition of being in "distress" on the basis that he was "deprived of adequate veterinary treatment" within the meaning of s. 1(2)(a) of the *PCAA*. Put plainly, the Appellant had no business assisting his dog by sticking any part of his body inside the dog's rectum, and the Appellant did not take his dog to the veterinarian after the Appellant performed the procedure. The damage he could have caused may have had a fatal consequence and may have caused damage that would have certainly been painful and harmful. The fact that the Appellant was, in retrospect, fortunately successful in evacuating the stuck fecal matter and relieving the dog's constipation does not excuse him from taking responsibility for the fact that he was not qualified to perform that task and he should not have attempted it. But I also want to be clear that my finding of a lack of veterinary care is limited to the condition of constipation and the resulting health concerns. Prior to the Appellant's intervention, there was no evidence that his provision of veterinary care was lacking in any way.

Return of the Dog

113. Having determined that the seizure of the dog was justified, I turn now to the best interests of the dog and whether his best interests are served by returning him to the Appellant or having him remain with the Society to dispose of at its discretion.
114. I note that 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.

115. 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.

116. The review decision clearly proceeded on the factual premise that the Appellant put his arm into the dog's rectum. Ms. Moriarty stated:

“that it is absolutely mind blowing that you would think that a reasonable course of action would be to put a grown man's hand and forearm up the anus of your dog, not just once but multiple times. While I do not think I need veterinary opinion to come to this conclusion, I do have such an opinion that this ‘procedure’ would cause extreme pain and result in blood loss at minimum and possible perforation of the bowl. I most certainly would not agree with the suggestion that this was a ‘non-invasive’ option of treatment and I think [REDACTED] would agree if he could vocalize an opinion.”

117. Based the evidence tendered at this hearing, the Appellant has satisfied me that the factual premise upon which Ms. Moriarty based her decision is incorrect. I find on the balance of probabilities that the Appellant did not put his forearm inside the dog's rectum. I believe the Appellant when he said he was exaggerating at the pet store.

118. The Appellant's version of events is supported by the veterinary evidence. Dr. Manens, whose evidence I prefer on this issue, stated that while it would be possible to insert a human arm into the dog's rectum, it would be very challenging to do so, and it would leave permanent damage such as a damaged sphincter which would lose its ability to contract – giving rise to a permanent loss of contraction, leaving the rectum open. There was no evidence that the dog had this type of damage to his rectum. This is not to say that the Appellant did not place his fingers where they should not have been but it is worth noting that the Appellant always maintained that he did put his fingers inside the dog's rectum, as did his witness Ms. K. I am also inclined to avoid the exercise of guessing what an animal might say if it could vocalize.

119. I have considered the conflict in the statements and gestures that SPC Hall attributes to Ms. K regarding what she saw the Appellant do, and Ms. K's version of what she said and gestured to SPC Hall. In light of the conflict between SPC Hall's own testimony and her own notes on this point, I am inclined to prefer the evidence of Ms. K. However, even if Ms. K did make the statements attributed to her by SPC Hall, that does not by itself determine what actually happened. In particular, it does not overcome the evidence of the Appellant or the veterinary evidence, which I accept. In my view, on the preponderance of the evidence, the Appellant only placed his two fingers inside the dog's rectum to remove the fecal matter.

120. I am of course not saying it was appropriate for the Appellant to place his fingers inside the dog's rectum (I have found above that it was not), but with regard to the issue of return, I am moved by the Appellant's testimony that he felt a sense of desperation, and I accept his evidence that when he saw his beloved dog straining yet again to have a bowel movement, he grabbed gloves and inserted

a finger and felt the fecal matter and inserted a second finger to assist the dog in expelling the fecal matter. Again I am not condoning it at all, but I also understand what Dr. Manens said when he testified that he could imagine people in some specific situations when there's a potential for the feces to come out and the dog is trying to go to the bathroom, trying to pull the feces out, even though he doesn't recommend it.

121. I also believe the Appellant when he said he would never attempt such an intervention again and certainly there was no evidence introduced that the Appellant had ever acted so foolishly in the past when it came to the dog's health care. I also believe the Appellant when he said he sees the correlation between the dog's diet and his constipation and that he will purchase a more balanced raw diet that avoids the level of bones the dog's previous diet contained.
122. As noted above, the Society did not bring witnesses from the pet shop who complained about the Appellant's treatment of the dog when at the store. The written complaint notes refer to a February 11, 2016 phone call from the pet store expressing concern that the Appellant was bathing the dog roughly and the dog had open abrasions, and his "anus was swollen at least ten times its regular size." In the absence of a live witness, I do not put much weight on these written notes. First, the term "rough bathing" is ambiguous at best. Second while there is no dispute about the open abrasions on the dog's skin, there is also no evidence convincing me the skin condition was because of something the Appellant did or did not do. As for the statement "ten times its size", I cannot take this untested statement literally. I do agree that it was reasonable for the Society to follow up on this complaint, but the written notes certainly do not overcome the balance of the other evidence which satisfy me that it is appropriate to order the dog returned to the Appellant.
123. The Appellant should have, upon receiving the first Notice advising him to seek veterinary care for his dog, sought such additional veterinary care by visiting, presumably, the dog's regular family veterinarian for some type of assessment or report to potentially satisfy the Society that the dog was not in distress. By failing to do so, the Appellant brought some of this situation upon himself.
124. Although I have found that the Society was correct and reasonable to have seized the dog given the condition of the dog's body, I also find that it would not be reasonable for me to allow the Society to keep the dog given my finding, based on the evidence before me, that the Society incorrectly determined that Appellant did insert his forearm into the dog's rectum. Given my finding regarding what happened, together with the clear historical information that the Appellant has sought veterinary advice and applied medications (as he did with the dog's skin), and given the Appellant's representations about his future conduct, which I accept, I find that the appropriate remedy is to order the dog returned to him.
125. I have come to this conclusion very much alive to the fact that SPC Hall came, over time, to have concerns about bestiality or zoophilia based in part on the location of the injury, the report of Dr. Walton and the bolts in the Appellant's first apartment. While Ms. Moriarty made no reference to those concerns, they do appear to be ongoing concern for SPC Hall who answered "not yet" when I asked her whether she had found any evidence of sexual abuse.
126. Given the broad nature of this appeal, if the evidence showed that this was a real concern, I would be entitled to base my decision on it even if it was not mentioned in the review decision. However, based on the evidence tendered before me, findings of bestiality or zoophilia would be entirely speculative.

127. Dr. Manens testified that what he saw when examining the dog was consistent with severe constipation. He does not believe it was due to sexual abuse. Dr. Walton did conclude (and I prefer Dr. Manens' testimony for reasons I already expressed) that the rectal tears were consistent with placing a foreign object in the dog's rectum such as a forearm to the elbow, but Dr. Walton also opined that the bodily fluids which shone white in the black light could have been blood, sperm, saliva or urine and there was bleeding in the area and his assumption was the colour came from blood. When he wiped away the blood, the colour disappeared. Dr. Walton testified that given the fact that there was blood there (which shone white) and it was gone when he wiped off the blood, the white colour was most likely from blood. Nevertheless he collected and provided a DNA sample to the Society.
128. I do note that Dr. Walton's report entitled General Workup on page 55 of Exhibit 3 includes this notation: "The presence of fluorescent material around rectum increases the concern for sexual activity. Samples taken for DNA testing". That written statement of course has a different connotation than does his testimony that the fluorescent material, he assumed, was blood. There was no corroborative evidence that would make that "concern" a real one.
129. The only potential corroborative evidence might possibly be the DNA sample, which the Society has chosen not to have analyzed. I can only assume that, despite SPC Hall's concerns early on, the Society has (consistent with the focus of Ms. Moriarty's decision) made a decision not to process the DNA evidence because based on its reflections on this matter prior to and leading up to the appeal, it has not considered this to be an investigative path it should follow, and it does not believe that a successful appeal would be returning the animal to a place where it would be sexually abused. I will state clearly that, given the reality that I would never ever consider returning an animal to an unsafe place, including a place where the animal would be subject to bestiality, if the Society did have a genuine concern about sexual abuse, I would consider the Society to be morally and ethically obliged to raise the issue and have it properly addressed at the hearing. It would in my view be highly problematic and even an abuse of process for the Society to "sit on" evidence, proceed through an appeal whose purpose is to determine an animal's best interests with finality, only to reopen the investigation depending on the outcome. I note that in this case, the Society has made no request even to make any return subject to an analysis and review of the DNA evidence. As I have to make my decisions on the evidence, the existence of an untested DNA sample does not and cannot change the utterly speculative nature of the sexual abuse concerns that arose early on this case.
130. Accordingly, for all of the reasons outlined above, I am of the view, based on the evidence in this case, that if returned, the dog would not be returned to a condition of distress. I do not find, based on the evidence in this case, that any conditions are required for return of the dog. The Appellant has taken care of his dog adequately before, he understands he cannot perform any veterinary intervention himself unless directed to do so by a veterinarian, and he understands that what he feeds his dog correlates to what comes out of his dog and he testified he will manage that balance better. The evidence satisfies me that there is not a substantial future risk that the Appellant will continue to fail to provide proper veterinary care or recommended treatment, or resort to absurd behaviour in "caring" for his dog. Rather, I conclude that the Appellant will care for his dog adequately and that it is in the dog's best interests to be returned to the Appellant.

VIII. DISPOSITION ORDER

131. 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;
- (c) 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).

132. It is my order that pursuant to section 20.6(b) of the *PCAA*, the Society is required to return the dog to the Appellant without conditions.

IX. COSTS OF CARE

133. Section 20 of the *PCAA* provides:

- (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.

134. 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)”.

135. The Society asserts that it incurred costs pursuant to s.20 of *the PCAA* in relation to the dog. The Society says that pursuant to s. 20(2) of the Act it is entitled to its costs (whether an order is made for return of the dog or otherwise). If the Society is ordered to return the dog, it seeks as a condition thereto that the Society recover its costs pursuant to the Act before the dog is returned (as contemplated by s. 20(2) of the Act, which states “[t]he 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.”).

136. The Society claims costs in the **total amount of \$2,087.20**, broken down as follows:

Veterinary: (inclusive of Society discount of \$954.64)	\$780.95
SPCA time attending to seizure	\$161.30
Locksmith	\$120.75
Housing, feeding and caring for the dog	\$1,024.20
TOTAL:	\$2,087.20

137. The veterinary costs are found in Tab 20 totaling **\$780.95**, as follows:

Tab 20 p. 168	\$121.28
Tab 20 p. 169	\$272.75
Tab 20 p. 170	\$386.92
TOTAL:	\$780.95

138. Further veterinary treatments were not claimed at the hearing and do not form part of this hearing and cannot be claimed after the hearing. This hearing provides finality to the issue of costs.

139. The Society also incurred labour costs respecting its special provincial constables' investigations and seizure of the Animals. These costs were incurred in the investigation, seizure, and transportation of the Animals, and are very conservatively estimated at \$161.30 (\$16.13 *per* hour x 5 hours (approx.) x 2 SPCs). The locksmith was needed to enter the locked apartment on the execution of the first warrant, at a cost of \$120.75.

140. In relation to dog, the Society's costs to house, feed and care for the dog at the Society is at the sum of \$17.07 per day per dog (60 days (February 13, 2016 to April 15, 2016 (being 10 days after the anticipated date of the Tribunal hearing)) x 1 dog = \$1,024.20.

141. The sum of \$17.07 per day per dog is broken down as follows:

- a. Food cost feeding Hills Science Diet: \$2.00/day
- b. Staff time at a rate of \$16.13 per hour: \$8.07/day
 - i. 10 minutes kennel and dog cleaning: \$2.69
 - ii. 10 minutes morning feeding: \$2.69
 - iii. 10 minutes evening feeding: \$2.69
- c. Overhead Costs: \$7.00/day (see below)

142. Regarding overhead costs (item (c) above), the Society's Shelter incurs costs to maintain the facility, a portion of which costs directly benefited the dog. This includes expenses associated with utilities (heating/electricity); general facility upkeep and maintenance; administration costs including ordering supplies and managing staff (cleaning and food supplies for animals); taxes on land use; maintaining the Society's computer office and other management systems; interacting with the dog throughout the day beyond the mere feeding and cleaning of kennels including ensuring their emotional contentment; interacting with, directing, training and coordinating volunteers and other staff members, all for the benefit of the dog (note: staff costs noted in this

paragraph are over and above staff costs associated with any one particular animal, which are discussed under “staff time” above).

143. The Society estimates the overhead costs allocated to the dog at about \$7/day. The Society acknowledges these costs are estimates only. Actual total costs per animal are very difficult to calculate absent advice from an accountant. The costs to retain an accountant to determine the actual costs will outweigh the benefits of potentially recovering such costs from the Appellant.
144. The Appellant’s position on costs is that counsel spent 19 hours at \$350 per hour. When I advised counsel that it was the cost of caring for the dog that form part of this appeal, the Appellant said the dog seizure was illegal; improperly based on evidence and that costs rest at 19 hours at \$350 per hour and he has no comment whatsoever on costs. The dog should not have been taken and there is no legal basis for costs whatsoever.
145. I have already found that the dog was seized as it was found to be in distress and I have already noted the *PCAA* does set out a legal basis for the Society to recover costs. I find that there was no dispute on the reasonableness of the veterinary costs, other than they should not be charged as the seizure, in the Appellant’s view, was illegal (which, of course, was that the conclusion I reached). I find that the dog did need veterinary care and the Appellant should pay for that.
146. I also find it reasonable that the Appellant should be responsible for the costs related to seizing the dog. Again, as I noted, the Appellant did not respond adequately to the first notice. He did not take the dog to see a veterinarian as ordered. I find it reasonable that the Appellant pay the cost of the locksmith and the Society staff time.
147. However I do not find it reasonable that the Appellant pay for the cost of boarding the dog. He had a home which I have found is and was suitable for the dog’s return, and the Appellant had food. I have already concluded that the dog should have been returned after seizure (and after a veterinary check), as I concluded that it would be in the dog’s best interests to be returned and to *have been* returned. Therefore I find it is not reasonable for the Appellant to pay for the boarding fee of \$17.07 per day.
148. The total amount due to the Society by the Appellant is \$1,063.00. This amount is due to the Society but this debt will not prevent the Appellant from picking up or keeping his dog and I do not require the Appellant to pay this debt prior to picking up his dog. For certainly, if the Appellant fails to pay this debt, he will not lose custody of his dog solely for that reason.
149. While I am sympathetic to the Society’s concerns about recovery of its costs in this case, the paramount consideration must be the best interests of the dog that I have ordered to be returned.
150. As I stated in a recent decision in another case, a decision to order that costs must be paid by an otherwise successful Appellant as a precondition of the Society returning an animal is a great step beyond ordering, as I have done, that the Society is entitled to its reasonable costs and may take all steps legally available to it to collect those costs. Where, as here, I have determined that it is in the animal’s best interests to be returned to its owner, considerable caution is, in my view, in order before deciding that the animal could shortly thereafter be deprived of that best interests placement, and placed in the Society’s custody to dispose of as it wishes, based solely on non-payment of a financial debt by a particular deadline or schedule. In my view, despite the Society’s concerns

about any potential difficulties it may face in enforcing its legal rights, I am not prepared to issue an order in this case that would make the dog's best interests secondary to the Appellant's timely payment of his debt. In my view, this is a case where the appropriate order is one requiring immediate return of the dog, and as confirming the Society's entitlement to its reasonable costs, which entitlement it may enforce with all the legal tools at its disposal.

X. CARE COSTS ORDER

151. I order that the Appellant pay the amount of **\$1063.00** to the Society as the reasonable costs incurred by the Society with respect to his dog.

Dated at Victoria, British Columbia this 21st day of April, 2016

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Presiding Member