

IN THE MATTER OF THE *PREVENTION OF CRUELTY TO ANIMALS ACT*,
R.S.B.C. 1996, c. 372
ON APPEAL FROM A REVIEW DECISION OF THE BC SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS CONCERNING THE SEIZURE OF ONE DOG

BETWEEN:

TARMO VIITRE

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Christopher K. Wendell, Presiding Member
Brenda Locke, Member

For the Appellant:

Cody Reedman., Counsel

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

May 4, 2016

Location of Hearing:

Teleconference

I. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*).
2. The appellant appeals the April 4, 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. One German Shepherd dog, Kello was seized from a property in Vancouver, British Columbia on March 9, 2016 when it was determined to be 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, the Appellant, with or without conditions or to permit the Society in its discretion to destroy, sell or otherwise dispose of the animal.
5. For reasons that will be explained in detail later, the panel has decided to order that Kello will not be returned to the Appellant and to permit the Society in its discretion to destroy, sell or otherwise dispose of Kello. It should be noted that every indication from the Society has been that all efforts will be made to provide a new home for Kello which can provide him with the type of care that he requires.
6. The panel will deal with the issue of costs below.

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 except to return the animal to its owner or to the person from whom custody was taken: *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. The panel is 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, investigative, 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*.

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

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. At the commencement of the hearing, the Appellant advised that his mother (Ms Laine Viitre) would be appearing as a witness and that due to her difficulties expressing herself in English he may have to provide some translation of her evidence from Estonian to English. During the course of Ms Viitre's evidence, the panel observed that she was able to express herself clearly and did not require any significant assistance from the Appellant. There was no cross examination or questions from the Panel for Ms Viitre and her evidence did not suffer for any problems with translation.

Material Admitted Into Evidence

14. The following documents were provided by the parties and entered into evidence:

Appellant:

- a) Appellant Notice of Appeal (perfected on April 7th) (**Exhibit 1**)
- b) Appellant Written Statement (6 pages) (via email April 25th) (**Exhibit 2**)
- c) Appellant's signed Viitre Affidavit (via email April 25th) (**Exhibit 3**)
- d) Expert Witness Contact Form & Report of Alice Fisher (via email April 25th) (**Exhibit 4**)
- e) Alice Fisher CV (via email April 25th) (**Exhibit 5**)
- f) Witness Contact Form, Mrs. Laine Viitre and Tarmo Viitre (via email April 25th) (**Exhibit 6**)
- g) Appellant Final Reply Submission (2 pages) (via email May 2nd) (**Exhibit 7**)

Respondent:

- h) BC SPCA initial document disclosure – Tabs 1-14 (via email April 13th) (**Exhibit 8**)
- i) BC SPCA document disclosure – Tab 15 (pages 69-81) (via email April 26th) (**Exhibit 9**)
- j) BC SPCA document disclosure – Tab 16 (pages 82-99) (via email April 28th) (**Exhibit 10**)
- k) BCSPCA written submission (21 pages) (via email April 29th) (**Exhibit 11**)
- l) Signed Affidavit of M. Moriarty dated April 13th (via email April 29th) (**Exhibit 12**)
- m) Expert Witness Contact Form for Dr. Rebecca Ledger (via email April 29th) (**Exhibit 13**)
- n) Witness Contact Form for SPC Brandon Isenor Jessica McDonald (via email April 29th) (**Exhibit 14**)

BCFIRB:

- o) BCFIRB April 22, 2016 correspondence to parties on preliminary issue (**Exhibit 15**)

VI. The Appeal

Brief History

15. The Appellant resides with his mother in Vancouver, BC (the “Property”). The Appellant is 72 years old and his mother (Ms Viitre) is 97 years old. The Appellant had previously owned two other German Shepherds prior to Kello. The dog that he owned immediately prior to Kello, a dog named Kali, died at an early age due to a gastro-intestinal problem and the Appellant noted in his evidence that he had gone back to the same breeder upon Kali’s death to obtain a new dog.
16. In response to complaints about Kello being kept in the Appellant’s vehicle, the Society (SPC Brandon Isenor) attended the Property on March 8, 2016 to discuss that issue with the Appellant. The Appellant’s physical behavior towards Kello during the course of that meeting caused SPC Isenor enough concern that he subsequently attended the Property on March 9, 2016 with another constable and two members of the Vancouver Police Department to remove Kello from the Appellant’s custody. During that removal the Appellant was highly agitated and unfortunately, continued to act out physically against Kello.
17. As a result of the Appellant’s conduct towards Kello on March 8th and March 9th and taking into account the opinion provided by Dr. Rebecca Ledger, who is an expert in animal behavior, the Society determined that returning Kello to the Appellant would put Kello back into a situation in which he would suffer harm and distress. The Society declined the return of Kello and it is that decision that is the subject of this appeal.

Society’s Decision Under Appeal

18. In her April 4, 2016 written reasons, Ms Moriarty of the Society found upon review that Kello was in distress when he was seized, and she declined to return Kello to the Appellant. The decision is excerpted here as follows:

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

- SPC Isenor 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 March 9, 2016;
- I am satisfied that SPC Isenor reasonably formed the opinion that Kello 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 Isenor reasonably formed the opinion that the appropriate course of action was to take custody of Kello in order to relieve his distress; and
- A Notice of Disposition with respect to Kello was served in accordance with Sections 18 and 19 of the Act.

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

I turn now to the question as to whether or not it would be in the best interest of Kello to be returned to you. In making any determination regarding the best interest of Kello, I consider whether you would be able to ensure Kello remained distress-free if he was returned. This is a duty owed by an owner pursuant to section 9.1(1) of the Act. You have provided me with submissions on both the issue of leaving Kello unattended in your vehicle without food and water and the issue regarding harsh punishment and hitting of Kello, and I will deal with them separately.

Unattended in Vehicle

Given the time of year in which this complaint was received, the temporary nature of the act, and your plan to prevent this from happening in the future, I am satisfied that if this was the only item in issue, it would be in the best interest of Kello to be returned to you. Unfortunately, while this issue is easily resolved, the second matter is not.

Harsh Treatment/Hitting

Again, you have made submissions on this matter. I note that you remain firm that your treatment of Kello while in the presence of SPC Isenor was not harsh in any way, however, I would disagree with this characterization both based on the account of SPC Isenor and also the veterinary report of Dr. Ledger. I also find it troubling that you displayed this level of harsh treatment towards Kello right in front of a BC SPCA special provincial constable, when arguably, this was the time to be on your “best behaviour” so to speak. It leaves me with great concern as to how you would behave when Kello reacts similarly when you do not have a constable as an eye witness.

In any event, you have indicated that you are prepared to obtain training and instruction from a dog trainer that focuses on positive reinforcement training strategies. In fact, you have already attended one session with such a trainer and you have set out a plan for continuing with this training. Your plan as presented is commendable and in the absence of Dr. Ledger’s report, I would have been more inclined to determine that it was in the best interest of Kello to be returned to you. However, in making my decision, I must consider all of the evidence before me and weigh this evidence in making a decision in this matter.

Dr. Rebecca Ledger is not only a veterinarian, but one of only a handful of board certified animal welfare behaviorists in Canada. Her expert opinion has been considered in numerous court cases and she was the creator of the behavioural assessment that was conducted on Kello. As such, I place significant weight on Dr. Ledger’s opinion in this particular matter. After assessing Kello, Dr. Ledger concluded that:

Kello is a very fearful dog that requires extensive rehabilitation. In addition to Mr. Viitre’s abuse of Kello, the lack of trust that will have resulted from Mr. Viitre’s previous harsh treatment of Kello will seriously impede any progress that Kello needs to make. If returned to his owner, Kello is likely to experience high levels of stress in Mr. Viitre’s charge, as a result of his previous poor treatment.

In reading this report, it is clear that in Dr. Ledger’s expert opinion, even if Mr. Viitre agrees to attend positive reinforcement training and commit to a rehabilitation program with Kello, Kello will still experience “significant distress as a result of his previous treatment and fear of [you] for years to come.” Therefore, returning Kello would be in complete violation of s.9.1(1) of the Act as the very act of returning Kello to you would result in him being in distress according to Dr. Ledger.

In light of all of the above, I am not able to find that it would be in the best interest of Kello to be returned to you. I am encouraged that you have taken a lesson in positive reinforcement dog training and hope that you continue to obtaining training in this area in the event that you decide to acquire another dog so as to

not repeat your mistakes with Kello. As was explained to you previously, you are responsible for the costs of care for Kello pursuant to s.20 of the Act, and these include a \$15 per day boarding fee from the time of seizure. The boarding costs total \$390 and are payable to the BC SPCA by no later than April 15th, 2016.

The Society's Case

19. The Society relied on all its submitted material and submissions, as set out above. The panel has reviewed and considered all of the materials, submissions and testimony, whether or not we refer to it here.

Witnesses

Ms Jessica MacDonald

20. Ms Jessica MacDonald was called as a lay witness by the Society with respect to an incident involving the Appellant and his previous dog, Kali.
21. Ms MacDonald recounted that on November 17, 2013 she had been in the neighborhood of the Property walking her dog when she at first heard and then saw a man loudly berating and then whipping a dog with the leather end of the leash.
22. Ms MacDonald was concerned enough with the man's conduct that she followed him back to his residence at which time she used her smart phone to find the phone number to report the Appellant to the Society.
23. Ms MacDonald further stated that upon arriving at the Property, the Appellant dragged the dog up the stairs into the residence, while still screaming at the dog. She noted that the dog was yelping and whining and that its legs were slipping as it tried to get up the stairs. Ms MacDonald stated that from her perspective the man had completely lost his temper, was in a violent rage and that his conduct could not reasonably be considered to have been part of any training for the dog.
24. Ms MacDonald was concerned enough with the Appellant's conduct and with the safety of the dog that she sent a follow up email to the Society to enquire as to the status of dog. That email was entered into evidence in this proceeding by the Society.
25. The Society followed up on Ms. MacDonald's report and a special constable (Gina Pagliericci) attended at the Appellant's residence to address the issue with the Appellant. The Society's records of that meeting were entered into evidence in this proceeding by the Society and indicate that the Appellant responded aggressively and rudely to SPC Pagliericci. The Appellant did not accept any direction from the constable with respect to his training of Kali. At a follow up meeting SPC Pagliericci inspected Kali and provided some information and materials for the Appellant regarding proper training methods.

Special Provincial Constable Brandon Isenor

26. SPC Isenor is an employee of the Society, empowered under the Police Act to investigate concerns related to animal cruelty and to remove animals from their owners care when necessary to alleviate harm.

27. SPC Isenor testified that a report was made to the Society's animal cruelty hotline on March 6, 2016 regarding the Appellant having left Kello in his car for extended periods of time on multiple occasions.
28. SPC Isenor testified that he attended at the Property on March 8, 2016 to investigate the report. At that time he noted that Kello was not in the Appellant's car, but that there were toys, leashes, dog hair and other indications that a dog was being kept in the car.
29. When SPC Isenor knocked at the front door he heard a dog barking from inside. The Appellant met SPC Isenor at the front door and SPC Isenor stated that he identified himself as a special constable working for the Society. He then initiated a discussion with the Appellant regarding the Appellant's practice of leaving his dog in his car for extended periods of time. The Appellant responded that he only ever left his dog in his car for four or five minutes, at times when he and his mother were trying to get ready to leave the house.
30. SPC Isenor testified that he requested to inspect Kello, and that at around that time Kello was behind the Appellant and was trying to get between the Appellant and the front door. SPC Isenor stated that the Appellant smacked Kello, dragged him by his choke collar, and grabbed him harshly by his snout in his efforts to restrain the dog. SPC Isenor testified that he advised the Appellant that he was acting in an abusive manner towards Kello and that the Appellant responded to the effect that he did not care what SPC Isenor thought about the way that he treated his dog, that he had owned three German Shepherds, and that this was the way that he trained them.
31. SPC Isenor testified that the Appellant was highly agitated during the course of the meeting and that when he requested to view the Appellant's identification the Appellant refused to remove it from his wallet where it was unreadable behind plastic and pushed the ID in SPC Isenor's face.
32. SPC Isenor testified that he then wrote up a notice of distress and left it in the door jamb of the front door as at that time the Appellant had gone back inside the home.
33. As a result of what he had witnessed on March 8, 2016 and in particular due to the fact that the Appellant seemingly felt no compunction regarding striking his dog even in the presence of an officer of the Society, SPC Isenor obtained a warrant for the purposes of removing Kello from the Appellant's care.
34. On March 9, 2016, SPC Isenor attended at the property with another special provincial constable and two officers from the Vancouver Police Department. SPC Isenor testified that he had not requested that two VPD officers attend, he had only requested that one officer attend, but that he did feel that he might need the additional assistance to remove Kello due to the Appellant's demeanor and physical stature.
35. During the course of the removal, SPC Isenor testified that the Appellant first refused to bring Kello out of the house, but that on doing so he repeatedly struck Kello on the head yelling "Do you think that this is abuse?!" SPC Isenor stated that the blows to Kello's head were loud enough that he could clearly hear the impact and that the dog yelped and cowered as a result of the blows.

36. Under cross examination, SPC Isenor conceded that it was possible that the Appellant may not have seen his identification at the initial meeting on March 8, 2016 but that he was also confident that he had introduced himself as a special constable from the outset.
37. In response to Panel questions, SPC Isenor stated that the Appellant's conduct in striking Kello was not precipitated in any way by the behavior of the dog and that there was no reasonable way that the Appellant's conduct in that regard could be considered to be part of a training program. SPC Isenor stated that the Appellant seemed only to be trying to make a point in striking Kello to the effect that he should be able to physically discipline Kello as he pleased.
38. SPC Isenor stated that in his experience in working for the Society he had never encountered an owner deliberately abusing an animal in front of a special constable at the time of removal.

Dr. Rebecca Ledger

39. Dr. Rebecca Ledger has a PhD in animal behavior and has appeared as an expert before the courts in British Columbia on a number of occasions to give evidence regarding animal welfare particularly with respect to the psychological effects of abuse on animals. Her CV was included in evidence at the hearing and sets out her extensive experience and expertise in the area of animal behavior and welfare and she was accepted as an expert by the panel with respect to those issues. Dr. Ledger is not a veterinarian, and was misidentified as such by Ms. Moriarty in her written reasons. However the panel does not consider this misidentification in Ms. Moriarty's written reasons to have had any effect on Ms. Moriarty's decision, and in any event Dr. Ledger was properly qualified as an expert in this proceeding.
40. Dr. Ledger reviewed the materials that the Society had on file for Kello and performed her own, in person assessment of Kello on March 12, 2016. That assessment was included in evidence at the hearing and represents a particular process/analysis technique that has been developed by Dr. Ledger and used on thousands of dogs in determining the psychological wellbeing of the animal. The process involves Dr. Ledger interacting with the dog in a number of different ways and paying particular attention to the animal's physical responses in order to determine its level of fear, anxiety, comfort, etc. This assessment is the same type of evidence that Dr. Ledger has provided in other court cases.
41. Dr. Ledger's written assessment includes a 'Recommendations' section as follows:

Recommendations

The witness statements provided to me, and summarized above (Incidents 1-4) indicate that Mr. VIITRE has handled KELLO in ways that cause him physical and emotional suffering and pain since he was a puppy.

KELLO's behaviour during the assessment at the Burnaby BCSPCA supports this interpretation, in that KELLO's extremely fearful and suspicious behaviour is learned and consistent with a dog who has been physically and verbally abused over a prolonged period.

While it is possible for dogs to be highly fearful of unfamiliar people as a result of a lack of socialization, it is significant that KELLO was especially fearful of men and when hands were gestured towards him, despite his owner also being male.

KELLO was not innately fearful of novel or sudden stimuli, just those associated with people, suggesting that previous negative experiences with people are significant in the development of his extreme fearfulness and current poor mental state.

It is my opinion that KELLO **should not** be returned to Mr. VIITRE.

- a) KELLO is a very fearful dog that requires extensive rehabilitation.
- b) The lack of trust that will have resulted from Mr VIITRE 's harsh treatment of KELLO will seriously impede KELLO's rehabilitation.
- c) Given Mr. VIITRE 's statements to APO ISENIOR, it also seems unlikely that Mr. VIITRE will comply with the necessary changes to how he handles and trains KELLO, and that KELLO will experience continued abuse and suffering at the hand of Mr. VIITRE.
- d) Of great concern is that, should KELLO be returned to Mr. VIITRE even with an approved rehabilitation program, that KELLO will experience significant distress as a result of his previous poor treatment and fear of Mr. VIITRE for many years to come.

Thus, it is my opinion that KELLO not be returned to Mr. VIITRE.

42. On direct examination, Dr. Ledger confirmed opinions set out in her report and explained her process in some detail. Counsel for the Society noted an error in Dr. Ledger's report insofar as she had misidentified the original reported incident of abuse in November of 2013 as involving Kello, when it had in fact involved Kali. Dr. Ledger acknowledged that error in her report, however she stated that the abuse of a previous dog would only confirm, if not strengthen her opinion that it would be unlikely that the Appellant's behavior will sufficiently change to allow Kello to return to his care without suffering further distress.
43. Dr. Ledger testified that Kello's behavior was consistent with that of an abused animal and that Kello will require extensive rehabilitation, which will require significant resources and time. Dr. Ledger stated that Kello may never recover from the psychological harm that he has endured to date.
44. In response to Panel questions, Dr. Ledger acknowledged that there may be specific instances in which a person needs to physically react to an animal's behavior, however that as a means of training a dog over time the use of behavioral reinforcement through pain and fear will only cause psychological harm.
45. Dr. Ledger also acknowledged that certain breeds are more likely to be anxious or fearful and that in this case Kello's physical problems will likely make his training and rehabilitation even more difficult, time consuming and expensive.

The Appellant's Case

46. The Appellant relied on all his submitted material and submissions, and the Panel reviewed and considered all material, submissions and testimony, whether or not referred to here.

Witnesses for the Appellant

Ms Alice Fisher

47. Ms Alice Fisher is a professional dog trainer. Her CV was entered into evidence and sets out the history of her work as a professional dog trainer and the certifications that she has received in that field. Ms Fisher is not a veterinarian and does not have any degree or diploma designations however she has been accepted in the past as an expert before the court with respect to dog training issues. The panel accepted her as a qualified expert in the area of dog training.
48. Ms Fisher provided a report dated April 24, 2016 which was included as evidence at the hearing. In preparing the report Ms Fisher attended at the Society's boarding facility in Burnaby to observe Kello first hand. After making an number of observations regarding Kello's reactions to her, his interactions with Mr. Viitre and Ms Viitre, and Kello's physical limitations, Ms Fisher provided her conclusions with respect to Kello as follows:

Kello is a young dog with an old dogs body. Kello has more energy than Kello can expend walking. Mr. Viitre told me he got this dog to "replace" another dog from the same breeder than died from intestinal complications. I have no way of knowing what the behaviour of that dog was like. I do know from years of training people compare the current dog to the previous dog. Often, the owners are frustrated with the current dog and are disappointed by the behaviour of the current dog, because the previous dog was so "good". Mr. Viitre demonstrated that frustration in his inability to control the dog without a choke chain and short leash. Frustration at both ends of the leash does not bode well for a partnership or relationship.

While I do see the Mr and Mrs Viitre both care for Kello, neither one of them is educated in the current human practices of taking care of the dog. This dog shows medical issues that need to be addressed. This dog needs habitat enrichment. Kello doesn't show or cannot show play behaviours. Giving the dog a Tums, or candy shows a lack of judgement or awareness on the part of Mr. Viitre. Tums or candy can contain Xylitol which is toxic to dogs. If that is all they came with as a reward or treat for the dog it shows a lack of planning and forethought.

Kello needs to receive positive reward fear free training. Kello needs training based around his physical capabilities. Training would require a great change in Mr. Viitres understanding and behaviour. When I am teaching, I always tell my clients it is the human end of the leash we teach.

49. Ms Fisher testified under direct examination that she was very concerned regarding Kello's gait as he clearly walked on his hocks and carpals and could not walk properly on a leash. Kello would jump and collapse when showing his excitement and was not interested in toys. Ms Fisher noted her concerns with respect to Kello's breeding and her observations that he was a 'young dog in an old dog's body'. She stated that Kello would need to get to a point of physical health before it could be determined how much could be achieved by way of retraining.
50. Ms Fisher testified that Kello was excited to see the Viitres' but that his excitement quickly waned and that she did not consider the interaction to have been more that the initial excitement of seeing familiar people.
51. On cross examination Ms Fisher agreed that it was never acceptable to yell at a dog, to yank on a dog's choke chain, to drag a dog upstairs, to whip a dog with a dog leash, or to strike a dog on the head. Ms Fisher stated that such techniques are simply hurting the dog and not training the dog.

She stated that force techniques on animals result in the animal simply attempting to avoid pain and that the dog does not in fact, learn anything positive.

52. In response to Panel questions, Ms Fisher stated that Kello would require extensive rehabilitation work to be properly trained and that from her perspective at this point he had not in fact been trained at all. She expressed her concerns that Kello would likely take years to be rehabilitated and that he would need to have his physical disabilities dealt with before any successful training could occur.
53. Despite being a witness provided by the Appellant, Ms Fisher was quite critical of the Appellant in term of his ability to properly interact with Kello and she expressed significant doubts as to whether the Appellant could achieve the change required on the human side of the leash in order to properly rehabilitate Kello.

Mr. Tarmo Viitre

54. Mr. Tarmo Viitre is the Appellant in this matter and gave evidence on his own behalf as to his experience with Kello and the other German Shepherds that he had in his care prior to Kello. Mr. Viitre also gave evidence as to his recollection of the events of March 8th and 9th that ultimately resulted in Kello's removal.
55. The Appellant stated that he had originally purchased Kello in the spring of 2014 after his previous German Shepherd, Kali had died of a bowel obstruction at an early age. The Appellant stated that he had initially been concerned with respect to Kello's eating habits and had at one point returned the dog to the breeder to resolve the issue. Eventually the Appellant was able to modify Kello's diet so that his eating habits improved.
56. The Appellant was somewhat surprised by the physical disabilities that were noted by Ms. Fisher and stated that he had requested a 'healthy puppy' from the breeder. He had previously taken Kello in for his vaccinations and a check-up and had not been told of any physical problems with Kello.
57. With respect to the concerns that had been raised regarding the Appellant's training methods, the Appellant stated that he would conform to any recommendations made by the Society for Kello's training if the dog was returned to him. He further stated that he had previously attended training sessions that had included the use of a choke chain and some use of force, and that he did not understand his conduct towards Kello to have been abusive. The Appellant repeatedly reiterated that he had never abused Kello, that he considered Kello to be a member of the family, and that his actions had simply been a method of training the dog.
58. The Appellant apologized for his conduct towards the Society and the special constables that attended at his residence both with respect to the incident involving Kali in 2013 and with respect to the removal of Kello.
59. With respect to Kali, the Appellant acknowledged that he had once struck Kali and that this singular incident must have been the occasion witnessed by Ms MacDonald. The Appellant stated that he had been trying to walk Kali and that the dog had made the decision not to listen and as a result he had physically struck the dog.

60. With respect to the incidents of striking Kello on the head at the time of removal, the Appellant stated that he had been attempting to prevent the dog from attacking the constables and that he had not been trying to make a point by striking the dog.
61. Under cross examination, the Appellant acknowledged that he had used force to train his dogs in the past and that he had in fact confirmed that conduct in an email that had been sent to the Society after the removal of Kello which was entered into evidence. The Appellant explained that email and his training methods generally by describing an incident with his first German Shepherd, Karu, involving a small child wherein Karu had not attacked the child despite being hugged by the child repeatedly and without warning. It was unclear as to the connection that the Appellant was making with respect to this incident with Karu and his use of force to train Kello.

Ms Laine Viitre

62. Ms Viitre is the Appellants mother. She is 97 years old and resides with her son.
63. Ms Viitre testified as to her loving relationship with Kello and that he was like a child to her. She stated that Kello was never mistreated in their home and that she cried from morning to night since he had been removed from their home. She confirmed that she would do whatever is necessary to have Kello returned.
64. Ms Viitre was not cross examined and no questions regarding her evidence arose for the panel. To be clear, the panel heard no evidence regarding any abuse or use of physical force against Kello by Ms Viitre and by all accounts she is very emotionally connected to Kello.

VII. Submissions, Analysis and Decision

65. The Appellant's position is that Ms Moriarty's decision was incorrectly decided insofar as both he and his mother have a deep emotional connection with Kello and that his training methods should not be characterized as abusive. The Appellant has also provided a list of conditions, as set out in his Affidavit dated April 25, 2016 at paragraph 16, which he is willing to accept an order to have Kello returned to his care as follows:
 - a) To abstain from using a choke collar on Kello;
 - b) To obtain ongoing expert dog training for both myself and Kello;
 - c) To hire a qualified dog walker to ensure Kello is walked at least once a day, seven days a week;
 - d) To abstain from using any physical force or using a harsh voice towards Kello at any time, including as a training method or for any interactions with Kello;
 - e) To ensure Kello is examined by a veterinarian every six months for the next two years, and more if necessary;
 - f) To immediately have Kello examined at a veterinary clinic that specializes in eating disorders and digestive problems and comply with their recommendations and instructions; and
 - g) To consent to any search or inspection on a regular basis to ascertain Kello's wellbeing.
66. The Appellant has also suggested that he will provide a bond of up to \$10,000.00 in order to ensure his compliance with the above noted conditions.

67. The Society's position is that Ms. Moriarty's decision was correctly and reasonably decided, and that no new circumstances have arisen since Kello's removal which would justify his return to the Appellant, even with conditions in place. Based on the evidence of abuse, the expert evidence of that abuse's effects on Kello to date, and the likely effects to Kello if he was returned to the Appellant's care the Society submits that a return of Kello to the Appellant would cause immediate distress in the dog and that the panel should not have any confidence that the Appellant has the capacity or the long term commitment to overcome that distress.
68. 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.

Seizure of Kello

69. SPC Isenor's evidence of the Appellant striking Kello at the time of removal was essentially uncontested. The Appellant's suggestion that he was simply trying to restrain Kello from attacking SPC Isenor and the other officers attending his residence does not make sense in the circumstances and is not accepted by the panel. If the Appellant's motivation was the protection of the officers in attendance he could have simply cooperated with the removal and walked Kello to the officer's vehicle without unnecessarily lashing out at the dog.
70. The Appellant's conduct in the midst of Kello's removal is particularly concerning due to the fact that he seems to have been reacting on a matter of principle to his ability to physically discipline his dog. While this panel makes no findings as to the appropriateness of such techniques generally, we do find that in this case a line was crossed once the Appellant began striking his dog for no apparent reason other than to establish his 'right' to do so.
71. Kello's reaction (yelping, cowering) to the Appellant's aggressive behavior is to be expected, but also compounds the obvious result that Kello was being abused at the time of removal and was therefore in distress as defined in section 1(2)(c) of the legislation as noted above.

Return of Kello

72. Having determined that Kello's seizure was justified, the panel turns now to Kello's best interests 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.
73. The panel notes 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.

74. We 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.

75. The Appellant has an acknowledged history of using force to discipline the animals in his care. This panel finds as fact that the incident observed by Ms MacDonald in November of 2013 involving the Appellant's previous dog Kali occurred as described by Ms MacDonald and that the incident is demonstrative of the Appellant's inability to control his emotions when attempting to train his dogs. The Appellant explained this incident as being the result of a decision that was made by the dog Kali not to conform to the Appellant's expectations and that the Appellant's conduct was justified on that basis.

76. The Appellant's explanation of the incident with Kali is telling in that despite his repeated statements to the effect that he would not continue to use such training methods in the future, he still does not view his conduct as having been inappropriate and instead seemingly blames the dog for precipitating the abusive conduct.

77. Ms MacDonald's account of the Appellant's behavior during the incident with Kali is very closely matched with his conduct as described by SPC Isenor with respect to Kello at the time of removal. Again, the Appellant seemingly lays the responsibility for his conduct on the dog insofar as he has justified the blows that he inflicted on Kello's head as being for the purpose of restraining the dog from acting out against the officers in attendance at the time. In both incidents, Ms MacDonald and SPC Isenor related that the Appellant was acting out in a fit of rage and that the dog was the focal point, and the recipient of that rage. The fact that the Appellant felt no compunction to restrain his aggressive behavior in public or in front of the Society's special constable, speaks volumes about his sense of entitlement to discipline his dog in the manner he sees fit. These incidents are pure instances of abuse and cannot be justified in any way as based on differing opinions in terms of training methods.

78. Given that the decision of whether or not to return Kello involves understanding the long term psychological implications of abuse, the panel has placed a great deal of reliance on the opinion of Dr. Ledger, an expert in psychological effects of abuse on animals. Her qualifications and opinion were not meaningfully challenged on cross-examination and we accept her opinion in its totality. Her conclusion is that Kello is suffering from the effects of prolonged mistreatment and abuse. He is extremely fearful and suspicious and in need of extensive rehabilitation. Perhaps most significantly with the respect to the issue of returning Kello, Dr. Ledger states:

KELLO is a very fearful dog that requires extensive rehabilitations. In addition, Mr. VIITRE's abuse of KELLO, the lack of trust that will have resulted from Mr. VIITRE's previous harsh treatment of KELLO will seriously impede any progress that KELLO needs to make. If returned to his owner, KELLO is likely to experience high levels of stress in Mr. VIITRE's charge, as a result of his previous poor treatment.

79. As a result, despite the conditions that have been suggested by the Appellant as a means to monitor and enforce better behavior on his end of the leash, this panel finds that no such conditions would suffice to ensure that the Appellant's frustration and lack of emotional control, would not be further

physically inflicted on Kello in some form of abuse in the future. Even if Mr. Viitre was absolutely committed to adopting the list of conditions set out in his affidavit (see paragraph 63 above), which we do not find likely, we accept Dr. Ledger's opinion that as a result of Mr. Viitre's previous harsh treatment, Kello will experience high levels of stress if he is returned.

80. The evidence from both Dr. Ledger and the Appellant's own witness, Ms Fisher, further confirms that the resources and commitment required to rehabilitate Kello will be significant. In fact, Kello may never be fully rehabilitated, and Dr. Ledger was quite clear that returning Kello to the care of the Appellant would practically guarantee that such rehabilitation would not be successful, even if the Panel was convinced that the Appellant was absolutely committed to that process. The problem as articulated by Dr. Ledger is that in returning Kello to the situation of abuse the dog will not be able to overcome his conditioned responses in that environment, which will mean that the dog will be experiencing psychological distress almost from the moment of its return.
81. Dr. Ledger was quite clear in her evidence that dogs can experience psychological distress in a manner that is essentially crippling to the dog's development or rehabilitation. In this case, the Panel finds that the return of Kello to the Appellant under any conditions would trigger the psychological distress noted by Dr. Ledger and that as a result, it cannot be in Kello's best interests to be returned to the Appellant.
82. The position of Ms Viitre is particularly troubling for the panel, as the Panel does not have any concerns with respect to her treatment of Kello and her emotional connection to the dog is obvious. However, Ms Viitre does not have the capacity to train or maintain Kello separately from her son and as such the Panel cannot put an animal back into a situation of distress in order to accommodate the emotional distress that a removal has caused an owner, even an owner innocent of any wrongdoing.

VIII. ORDER

83. 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).

84. It is our order that pursuant to section 20.6(b) of the *PCAA*, that the Society in the Society's discretion will be at liberty to destroy, sell or otherwise dispose of the dog, Kello.

Costs

85. 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.

86. 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)”.

87. The Society has asked for its costs of \$1166.30 as outlined in Ms Moriarty’s affidavit. There are additional costs incurred by the Society, but the Society waives the same to allow a final decision at this time. The Appellant has conceded both in his written submissions and his oral testimony that the costs claimed by Society are appropriate in the circumstances, and has taken no position with respect to an order in that regard.

COSTS ORDER

88. The panel orders that the Appellant pay the amount of **\$1166.30** to the Society as the reasonable care costs incurred by the Society with respect to Kello.

Dated at Victoria, British Columbia this 18th day of May, 2016

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Christopher K. Wendell, Presiding Member



Brenda Locke, Board Member