

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
1 DOG, KOBA

BETWEEN:

CHAD RUSSELL HUBICK

APPELLANT

AND

BRITISH COLUMBIA SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia

Corey Van't Haaff, Vice Chair
and Presiding Member

Farm Industry Review Board:

For the Appellant:

Self-represented

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

July 26, 2017

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 June 28, 2017 review decision issued under s. 20.2 of the *PCAA* by Marcie Moriarty, Chief Prevention and Enforcement Officer for the British Columbia Society for the Prevention of Cruelty to Animals (“the Society”). The review decision arose from the Society’s seizure of one dog, Koba, from the Appellant on June 9, 2017.
3. 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.
4. For reasons that will be explained in detail later in this decision, I have decided that I will not require the Society to return Koba.
5. The Society did request costs which were appealed by the Appellant, and the issue of costs is adjudicated later in this decision.

II. Brief history prior to the seizure of Koba

6. The Society does not have a history with this Appellant and his current dog Koba (the dog under appeal). However there is a brief history with his previous dog King, which formed part of the Intent to Obtain a Search Warrant (ITO) resulting in the seizure of Koba. I summarize that history here as there are some similarities in the pattern of behaviour of the Appellant, namely the care of his dog during incarceration and his apparent angry outburst regarding his dog at the time.
7. On August 20, 2015, the Society received a call regarding a dog heard "screaming" and allegedly being beaten by the Appellant. The Society attended and met with the Appellant who stated he came home to find his dog King had chewed his bed. The Appellant admitted losing his temper and yelling at King but denied hitting him. The Society Officer found King possibly had ear infections and issued a Notice to have a veterinarian examine and treat if necessary as well as to cease harsh disciplinary techniques. The Appellant had King examined by a veterinarian and treated him for ear infections.
8. On October 20, 2015, the Society received a call regarding a possibly abandoned dog owned by the Appellant, who had been incarcerated. The Society investigated and found a neighbour had taken King and would care for him until the Appellant’s release.
9. On December 1, 2015, the Society received a call from Vancouver Police advising that the Appellant was incarcerated and his dog was left in his residence. The Society investigated and offered ‘compassionate boarding’ of King to the Appellant, who accepted this service.

10. On June 14, 2016, the Society received a call advising that the Appellant had been incarcerated and King was left behind, this time at a Vancouver location. The Society investigated and determined a friend of the Appellant's had taken custody of King and would care for him until the Appellant's release.

III. The review decision

11. 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).
12. 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.
13. 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.
14. Ms. Moriarty issued written reasons dated June 28, 2017 after her review of this matter. After concluding that the dog Koba had validly been taken into custody to relieve his distress, the written reasons stated, in part:

Having satisfied myself that the seizure was performed in accordance with the Act, I turn now to the question of whether Koba should be returned to your custody. To assist me in making this decision, I found it helpful to review the following timeline of events:

May 20th, 2017-Koba is impounded at Vancouver Animal Services as you were incarcerated. Staff note that Koba does not have any noticeable signs of injury.

May 25th, 2017-You attended a court mandated group counselling session where you were overheard to make comments about how you had thrown Koba across the room as he had made a mess on your carpet. This incident happened after May 20th.

May 29, 2017-BC SPCA receives a call from a staff member of Vancouver Coastal Health who relays concerns about comments you made during a group meeting. We were directed to your probation officer to receive a statement.

June 2, 2017-You take Koba to Hastings Veterinary Hospital and inquire as to "bowing out" of Koba's back legs. Vet recommends radiographs of both hind legs to rule out various causes, but these are declined by you.

June 8, 2017 -The BC SPCA receives a signed statement from your probation officer confirming that during a group session on May 25, 2017 you made comments that you had thrown your puppy across the room. The BC SPCA later received a statement from the addictions counsellor who was in the session on May 25th. In her statement she notes that you said "that [you were] mad at [your] dog as he was shitting all over the place the night before. When [you] woke up the next day, [you were] so fucking mad at [your] dog, as [your] dog shit on [your] \$800 carpet. [You were] so mad that [you] threw the dog across the room."

June 9, 2017 - The BC SPCA obtains a warrant and Koba is seized. Koba is examined at Central Animal Emergency Clinic and radiographs are taken. After viewing the radiographs, the vet notes "Right femoral head is luxated and is out of socket. There are mild joint changes indicating chronic process mostly related to some trauma."

June 21, 2017 - Koba was seen by a specialist to assist with determining prognosis and treatment options for Koba going forward. The recommendations are that Koba needs a femoral head osteotomy to alleviate his pain and give him greater freedom of movement and when he is older he will likely need total hip replacement.

June 26, 2017 Due to limitations in the original radiograph images that were taken and given the significance of any treatment for this dog going forward, Koba had additional radiographs taken at Dewdney Animal Hospital. Dr. Walton concluded that "this animal has the rarer ventral luxation (22%) Causes of these types of injuries are often associated with limbs that are caudally ventrally pulled, ie. the leg becomes entrapped and the animal pulls the limb out of the socket, or when the animal is picked up by the hind leg and the animal thrashes or the animal is thrown. (emphasis added)

To summarize the above, it is clear that Koba was not displaying any signs of problems with his gait or right hip prior to when he was impounded on May 20th and it was only sometime after you claimed Koba that you noticed a problem (technically you note that another individual pointed this out to you.) You have provided two statements from individuals who acknowledge that you/they noticed Koba "limping" or having gait problems, but there is no specific date noted on when these individuals spoke to you about these issues. However, it is fair to say from the timeline that it would have been after May 20th but before June 2nd which is when you took Koba to the vet. It was during that time period that you voluntarily provided information in a public group where you stated you became mad at Koba and threw him across the room. The injury sustained by Koba is an injury that is consistent with being thrown.

The evidence provided by a witness as outlined in the ITO combined with the veterinary reports supports a finding that you were the individual who inflicted injuries on Koba that resulted in him being in distress. While you have denied physically abusing Koba, I feel that there is sufficient evidence in the veterinary reports for a reasonable person to conclude that Koba's injuries were caused by your actions and thus, it would not be in his best interest to be returned to you. You have been warned in the past not to use harsh training or physically abuse dogs in your care and I feel that you have demonstrated that you have a temper that this time you took out on your dog, who now has a severe injury that will likely require extensive surgery and lifelong care.

15. Ms. Moriarty thus determined that Koba would not be returned, leading to the appeal before me.

IV. The appeal provisions

16. I am guided by the approach to appeals under the *PCAA* which is set out in detail in BCFIRB's decision *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*.

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

V. Pre-hearing matters

17. The Society requested and received a summons for one of its witnesses, B.S., who is an Addiction Counsellor at the Drug Treatment Court. Vancouver Coastal Health, B.S.'s employer, required a summons to compel her attendance at the hearing.
18. The Appellant's witness list named 11 individuals he wished to call, so I called a prehearing conference call to determine the relevance of both the Society's and the Appellant's lengthy witness lists (the Society listed 6 witnesses).
19. At the prehearing conference call, I went through all 17 witnesses to determine which witnesses would provide relevant testimony regarding the issues under appeal, specifically was Koba in distress when he was seized and should Koba be returned, with or without conditions, to the Appellant.
20. I was satisfied that I wished to hear from the six Society witnesses as each had information relevant to the issues under appeal.
21. I was not satisfied that I needed to hear from all the Appellant's 11 witnesses as the Appellant described the nature of their testimony thusly: S.D. – she's seen Koba since the very beginning and is a character reference; M.F.-was in the program and will deny hearing the disclosure from the Appellant; D.L.-was in the program and will deny hearing the disclosure from the Appellant; S.R.-has known her for life, is a character reference; V.- is the concierge he sees every day; J.B.-was there 3-4 days after he got the dog and is a witness to the dog's hip condition; C.J.-a character reference; T.M.-a character reference and saw the Appellant and Koba at the park; F.O.-works where he gets protein powder and is a character reference; L.-his girlfriend who sees the dog often; and the Appellant's veterinary hospital. The Appellant had mentioned a summons for his veterinarian and was advised of the process he needed to follow, which he did not do, and he did not formally request a summons.
22. I determined multiple character references do not assist me in deciding this appeal, and I must add that these *PCAA* appeals have tight deadlines and timelines, with a written decision being delivered 29 working days after the appeal is perfected, all in the best interests of the animal as well as to limit costs for caring for the animal. Hearings are scheduled, with rare exceptions, for one day. In the event this hearing went long, a second day was reserved, however I did limit the witnesses to those who had seen the dog: S.D., J.B., C.J., T.M., L.; and those who were present during the group counselling session: M.F., D.L.; and the Appellant's veterinarian or veterinary clinic staff.
23. During the pre-hearing conference call, the Society indicated it had been unable to deliver its submission to the Appellant due to his refusal to accept delivery of the material and the refusal of the courier to try to deliver a second time. When I asked the Appellant if he refused delivery, he initially said if he wasn't home he couldn't refuse delivery, could he? When I pressed him about a refusal, he said "Sure, I refused them. Whatever. Let the

SPCA win.” And then he hung up. I continued with the prehearing conference call in the Appellant’s absence to confirm the remaining details.

24. At the hearing, I went over all the exhibits to ensure receipt and the Appellant confirmed he had all materials marked as exhibits, as did the Society.
25. I should also note that the following witnesses, for whatever reasons, did not attend the telephone hearing: M.F., J.B., C.J., L, or the veterinarian.
26. The Appellant initially said he would not testify, as he didn’t “see a point” but changed his mind and provided testimony.
27. Finally, the dates for the hearing were changed twice; once at the request of the Appellant and once at the request of the Society, and both parties agreed to the final dates. The hearing completed in one day.

VI. Material admitted on this appeal

28. All affidavits and witness statements, emails, photographs, and materials submitted were entered into evidence. Parties were sworn before giving oral testimony. The Society originally provided redacted documents, but I directed the Society to provide un-redacted documents to me, as well as to the Appellant, unless the Society wished to make an application under s. 42 of the *Administrative Tribunals Act (ATA)* and explain why the Appellant should not see the redacted information. The Society provided unredacted documents to the Appellant and to me.

Exhibits :

Appellant

- a) Appellant’s July 4, 2017 Notice of Appeal (totalling 2 pages) **(Exhibit 1)**
- b) Appellant’s July 19 documents email 1 (Pet Insurance) **(Exhibit 2)**
- c) Appellant’s July 19 documents email 2 Video **(Exhibit 3)**
- d) Appellant’s July 19 email 3 with 10 Photos **(Exhibit 4)**
- e) Appellant’s July 19 witness list **(Exhibit 5)**
- f) Appellant’s July 19 request for calls after 1 pm on July 26 **(Exhibit 6)**
- g) Appellant’s July 12 email request to change hearing date **(Exhibit 7)**

Society

- h) June 28, 2017 – decision of the Society **(Exhibit 8)**

- i) BCSPCA July 12 Binder initial disclosure (Tabs 1-27) (July 12 by email, July 13, 2017 by courier) (**Exhibit 9**)
- j) BCSPCA July 18 request to summons B.S. (**Exhibit 10**)
- k) BCSPCA July 20, 2017 unredacted documents (redaction remains on page 100) (**Exhibit 11**)
- l) Affidavit of Marcie Moriarty (July 20, 2017 by email) (**Exhibit 12**)
- m) BCSPCA written submission (July 21, 2017 by email) (**Exhibit 13**)
- n) July 21 Expert witness contact form for Dr. Adrian Walton (**Exhibit 14**)
- o) Witness contact form (**Exhibit 15**)
- p) July 21 New index and Tabs 28, 29 and 30 (**Exhibit 16**)
- q) BCFIRB summons decision re B.S. (**Exhibit 21**)

BCFIRB:

- r) July 7, 2017 Hubick v BC SPCA - Notice of Appeal letter (**Exhibit 17**)
- s) 2017 July 07 Rescheduled Notice of Appeal submission and hearing dates and BCSPCA request to change hearing date (**Exhibit 18**)
- t) 2017 July 13 – email Rescheduled submission and hearing date (**Exhibit 19**)
- u) July 20 email from FIRB setting up conference call regarding witnesses (**Exhibit 20**)

XI. The Society's material and witnesses

29. The Society submitted, as part of its initial disclosure, a report dated June 9, 2017 from Central Animal Emergency Clinic, Dr. Pavittar Bassi, who was not called as a witness, that said, in part:

Friday, June 09, 2017

History (8:45 PM Pavittar Bassi DVM/Pavittar Bassi DVM)

Shifting leg lameness , not normal gait. Dog is walking but not comfortable.
Dog has ear cropped so possibly out of province. age around 5 months.

This is suspected cruelty case being investigated by SPCA.

Physical Examination (8:45 PM Pavittar Bassi DVM/Pavittar Bassi DVM)

Temp: 101.5 F, Pulse: 116 bpm, Pulse Quality: Good, Respiration: 28 pm
MM: pink, CRT: < 2 sec Good tissue perfusion

Weight: 31.500 kg, 69.45 lb

Appearance: QAR-H

Eyes: PLR + symmetrical No nystagmus or anisocoria

Ears: ears cropped, right ear wax > needs cleaning

Nose: normal, no discharge.

Oral Cavity: over bite, deciduous canine .

Heart / Lungs: normal, no murmurs not wheezing.

Abdomen: normal, non sensitive, .

Musculoskeletal: on and off shifting leg lameness. Right hind leg some muscle atrophy seen. Valgus seen

Neurological: normal. No wobbliness

Skin: normal, well kept hair coat. there is a old scar at the metatarsal area , medial side

Lymph Nodes: normal, no peripheral lymphadenopathy.

Urogenital: cryptorchid.

Other Comments: Dog is showing shifting leg lameness.

Problem List (8:45 PM Pavittar Bassi DVM/Pavittar Bassi DVM)

Lameness

Abnormal gait

ear infection Right

Differential Diagnosis (8:45 PM Pavittar Bassi DVM/Pavittar Bassi DVM)

Trauma

Congenital abnormality

Growing dog pain??

Recommendations (8:45 PM Pavittar Bassi DVM/Pavittar Bassi DVM)

x-ray

The client accepted all recommendations as described above.

Radiology Findings (8:59 PM Pavittar Bassi DVM/Pavittar Bassi DVM)

The abd and chest rads done.

Pelvis and limbs

Right femoral head is luxated and is out of socket. There are mild joint changes indicating chronic process mostly related to some trauma.

Abd and chest look normal. There is an old injury possible when it was puppy at the left metatarsal area.

Patient name: "253376" Cruelty

Medications (9:04 PM Pavittar Bassi DVM/Hayley Boivin)

qty. 1 Metacam 10 ml

Rx: Give 31.500 kg dose once a day by mouth with food for 5-6 days .

Exp. 6/9/2018

Comments (9:16 PM Pavittar Bassi DVM/Pavittar Bassi DVM)

In my opinion, the dog is result of inbreeding and the growth and over all joint structures are very abnormal looking. The right coxofemoral joint needed FHO surgery at present and when dog grow up to 2 years of age, a total hip replacement would be needed as weight of the dog will be not ideal for FHO. *(all errors as they appeared in report)*

30. The Society submitted a veterinary report dated June 22, 2017 from Elizabeth Sang, DVM at Ambleside Animal Hospital, who was not called as a witness, that said:

The dog Koba (SPCA log #434867) was examined here at Ambleside Animal Hospital yesterday morning, the 21st of June 2017. He was found of have femoral head luxation by the previous veterinarian, who took radiographs of his limb and pelvis. Through my examination, I have found the dog to exhibit signs of pain, despite already being given anti-inflammatory medication. He persists in walking with a limp, and I have prescribed for him ongoing pain medication as well.

I have examined the provided radiographs, and have sent them as well to be examined by an orthopedic surgeon. It is my, and the surgeon's, recommendation that the dog needs a femoral head osteotomy – a surgery to remove the femoral head – as soon as possible. This will help alleviate his pain and give him greater freedom of movement for the interim. When he is fully grown, he will require a total hip replacement surgery to correct the issue and allow him a normal, pain-free gait.

Witnesses

B.S.

31. B.S. had provided a written submission that said:

Attached is the event that took place with Chad.

On May 25, 2017 during the check in of the Stabilization group, Chad disclosed the following events.

Chad stated “that he was mad at his dog as he was shitting all over his place the night before. When he woke up the next day, he was so fucking mad at his dog, as his dog shit on his \$800 dollar carpet. He was so mad that he threw the dog across the room”.

When I asked if he seriously threw the dog across the room, he stated “that his dog was ok as he took him for a walk afterwards”.

32. B.S. testified she is an addictions counsellor at Drug Court which is a treatment court and has worked there off and on for four years, coming back a year ago part-time. She has previous experience in the social work field, and with mental health and addictions.
33. The Appellant is a client at Drug Court and she has known him since he entered the program. The Appellant is in his third phase – stabilization, so she has known him about six-to-eight months.

34. She confirmed she wrote the report found in the Society's Exhibit 9 Tab 13, and that it is accurate.
35. B.S. testified that on May 25, 2017 in stabilization group, as part of check-in, each member talks about how they are doing and what is going on in their lives and with their treatment plans. Each individual speaks uninterrupted. The Appellant told the group he had got his dog back the previous evening and was mad as the dog had "shit" all over the night before; that he was "so fucking mad it shit on an \$800 carpet so he threw the dog across the room." B.S. testified there were a variety of reactions in the room. When she asked him at a break if he really did that, he said that the dog was okay as he took it for a walk afterward.
36. B.S. testified that when the Appellant said this, no one was talking over top of him; she was in the same room at a table about ten feet away. She heard him very clearly, that's why she asked him for clarification. She did not otherwise confront the Appellant as there were other people around and she then consulted with her team afterward.
37. B.S. testified that she was in shock and was taken aback and concerned about safety and spoke to the counsellor, probation officer, and clinical supervisor regarding the next step. The team, she said, decided to follow through and she ceased to be involved with the next steps. She understands the clinical supervisor contacted the Society and that the dog was apprehended. It wasn't until June 22, 2017 that B.S. spoke to the Society when she was asked about her conversation with the Appellant and then provided a written report.
38. B.S. testified that program participants sign confidentiality agreements keeping discussions in the program confidential unless there is a safety risk. The Appellant had signed this and also was subject to a participation agreement which is thoroughly explained to participants and not necessarily signed. B.S. does not know if a safety risk to an animal is explicitly stated in the handbook but her own interpretation as well as the team's interpretation was that it did include an animal.
39. B.S. testified that witness D.L. was not in group on May 25, 2017. She has a database where people are logged in when they come into the centre and she logged in that he was absent from the group and the counsellor also logged in that he was going to be absent that day. She confirmed that the other witness M.F. was in attendance.
40. The Appellant did not cross examine B.S.
41. In response to my questions B.S. confirmed that she recorded her observations of the May 25, 2017 meeting, where the Appellant made his disclosure, in her database that same date and then wrote the report to the SPC Ott a month later, on June 22, 2017. She confirmed that when she asked the Appellant if he seriously threw the dog across the room, he did not actually say yes, just that the dog was okay and he had taken it for a walk afterwards. She was absolutely concerned and that is why she went to her colleagues to speak to them.

T.K.

42. T.K. is a probation officer and case manager at the Drug Court in Vancouver and has been in this position for one and a half years. She was a probation officer for 18 years and worked with a variety of offender populations including violent offenders, sexual offenders and drug addicted offenders. In the program she works at now, she works in a team setting between the Health Authority and the Corrections Branch.

43. She met the Appellant when he applied to be part of the program several months ago. She worked with the Appellant when he came to the group and she talked directly to him and received information from other staff. She met with him weekly at the start of the program about 9 months ago, then less often as he progressed through the program. She confirmed she provided a statement to the Society. That statement dated June 8, 2017, read:

I am the Probation Officer for Chad Hubick (DOB: June 30, 1980). Chad attends programming at the Drug Treatment Court of Vancouver. On May 31, 2017 I spoke with Chad about his disclosure in his group on May 25, 2017 that he "...had thrown his puppy across the room." Chad stated "what's wrong with that?" I explained the limits of confidentiality, and our policy of reporting incidents of abuse to the authorities. Chad admitted that this was not the first time he had been reported to authorities about his pet. He said that while he lived in Burnaby previously, someone had reported him to SPCA because Chad's dog was "whining". He stated that he had "beat up" the person who reported him. Chad appeared to minimize his behaviour related to his dog and was resentful that his disclosure on May 25 was even being discussed.

44. T.K. testified that she took the Appellant into a private area located in a sitting area and said that she had heard he threw his dog across the room and he said that he had, what's wrong with that. T.K. told him information like that was reportable and the Appellant got upset that the information had come out of a group environment and said that the last time he was reported in Burnaby, he beat up that person reporting him. T.K testified that the Appellant was getting angry as indicated by his body language and it concerned her that the Appellant didn't find anything wrong with what he had done. It concerned her that the animal was in the home with him and he came across, to her, as minimizing his actions.

45. T.K. testified that the Appellant had said the dog defecated in his dwelling unit although she did not say that in her statement; she did recall him saying that. T.K. said the Appellant looked upset with her when he left the area where they were speaking. She said he was "hot under the collar" and his tone and body language signaled to her that he was taking a threatening stance and that worried her. She did not know if he would do something to her but his impression to her was that he was indicating that she better not report him. At that point, she ended the interview as she felt the situation had escalated.

46. T.K. testified that she specifically mentioned to the Appellant that she heard he had thrown his dog across the room and his immediate response was that he said yes, I did throw the dog as it crapped all over the floor, what's wrong with that.

47. T.K. testified that she felt obligated to report this as he had done harm. She felt that when the Appellant “kind of” threatened that this is what he does if someone reports him, T.K. felt he was putting her on notice with that kind of statement.
48. T.K. said that a Health Authority manager was then in touch with the Society and after that she submitted a statement to SPC Ott which she wrote on June 8, 2017. She said she keeps notes on meetings with people and did have notes which said exactly what she had already testified about and what she wrote in her statement. She wrote these notes right after she spoke to the Appellant. She did refer to her notes for writing the statement but also recalled the conversation. As a result of this, the Appellant was suspended from Drug Court due to the threat and safety concerns for the team. There was a June 20, 2017 court order preventing the Appellant from attending at the drug program’s address or having any contact with staff, as an additional bail condition, as a result of his threat about harming an individual who reported him.
49. In response to questions from the Appellant, T.K. testified that violent Drug Court participants are evaluated on a case by case basis and ‘no violence’ is not a hard and fast rule. She testified that she is sure the Appellant said the dog basically defecated in his home and that he said that precipitated him throwing his dog across the room.
50. In response to my questions, I asked T.K. to clarify the difference between her testimony when she said the Appellant said ‘yes’ he threw his dog across the room, and her written statement which did not specifically state that he confirmed that he had thrown his dog across the room. T.K. said at the time when she wrote her statement, the part about when she asked him and he confirmed it, she did not put that part in but she is certain that he said the dog did defecate in the room, and that the Appellant confirmed that to her that he did throw the dog across the room. She said, “I do remember he mentioned and said what’s wrong with that, basically confirming it” to her. When I asked her to clarify “*basically* confirming it” T.K. said “he actually confirmed it” and actually confirmed the dog defecated, saying “his words were shit on the floor.”
51. T.K. confirmed for me that she went to her manager within a short period of time – a few hours of speaking to the Appellant. She confirmed she made her notes right after she spoke to the Appellant on May 31, 2017. She went back to her desk and entered her notes on her database, which she referred to when preparing her June 8, 2017 statement.

Dr. Adrian Walton

52. Dr. Walton is a veterinarian with 17 years of experience, and is the owner of Dewdney Animal Hospital. He practises small animal medicine and has 3 years of emergency medicine experience.

53. Dr. Walton testified that his report was accurate. His report, dated June 26, 2017, reads, in part:

Case 253376 – Kobe

History- Brought in for physical examination and documentation. Previously diagnosed with a dislocated right hip and ear infection.

Physical examination: Dog is bright alert and responsive. Animal has had two cosmetic surgeries, the first a bilateral ear cropping (Fig. 9-11). This procedure was banned by the College of Veterinarians of British Columbia (CVBC), therefore was either done outside of the province, or by a non-veterinarian. The second procedure was a bilateral rear dew claw removal (Fig. 5-6). Both surgical sites, ears and dewclaws show signs of thickening, and alopecia consistent with poor surgical sterility (surgeon), or poor surgical aftercare (owner). This has resulted in thickens tissue in both locations. Dog has mucoid bilateral otitis external, previously diagnosed and on therapy.

There is a 4cm x 4cm patch of dermatitis on the sternum (Fig. 4). Differentials include pressure sores, most commonly seen in crated animals, or abrasion secondary to climbing over a rough surface.

Dog has a significant overbite (Fig. 8). Since lower canines are not aligned with the space behind the upper canines, these teeth could eventually impact the upper palate and require surgical removal (Malocclusion). Ref - http://www.petmd.com/dog/conditions/mouth/c_dg_Malocclusion_of_Teeth

Finally there is the severe right rear leg lameness. Palpation of the limb under sedation showed the luxation was ventral to the pelvis. Radiographs confirmed the luxation. Under sedation we were able to realign the pelvis and the femur, only to have it luxate immediately after anaesthetic recovery. The area was shaved but no bruising was noted. Either the time between injury and exam was long enough to recover, or the injury was a avulsion type injury that wouldn't show external bruising.

Possible causes of this injury.

Coxofemoral luxation is the most commonly luxated joint in dogs, accounting for 90% of all luxations. It is usually the result of trauma or severe hip dysplasia with 78% being craniodorsally luxated. The primary stabilizers of the hip joint are the joint capsule and the ligament of the head of the femur also known as the round ligament or the teres ligament. The secondary stabilizers are the periarticular muscles, such as the gluteals and the hydrostatic pressure. In immature dogs, capital physeal fracture may result from hip trauma and dogs less than 11 months are twice as likely to fracture as they are to luxate their hips.

<http://veterinarycalendar.dvm360.com/hip-luxation-proceedings>

This animal has no evidence of fractures associated with trauma either at the pelvis or elsewhere, nor is there evidence of severe hip dysplasia. This animal has the rarer ventral luxation (22%). Causes of these types of injuries are often associated with limbs that are caudally ventrally pulled, ie the leg becomes entrapped and the animal pulls the limb out

of the socket, or when the animal is picked up by the hind leg and the animal thrashes or the animal is thrown. The round ligament is a very strong ligament and tears with difficulty. Given the laxity in the joint and the ease in which it luxates, I concur that the joint capsule is also significantly damaged. These injuries in my experience do not have the same amount of bruising as the damage occurs under the muscle of the gluteals and therefore has no surface bruising, however given the time frame external bruising may have also resolved.

Problem list and treatment plan:

- Luxated right hip - Recommend a pin and toggle surgery to confine the hip to the socket, followed by femoral head osteotomy/hip replacement surgery in the future when the animal becomes arthritic in that joint.
- Malocclusion - Recommend an assessment with a veterinary dentist, to assess if the two lower canines need to be monitored, excised or external fixators applied.
- Sternum pressure sore - increase bedding available to the dog.
- Otitis externa, continue ear medications.
- Cryptorchid - surgical removal of external testicle and locating and removing unseen testicle (either through inguinal canal or general exploratory. (All errors in original.)

54. Dr. Walton testified that he found no cause for the pressure sore. Regarding the overbite, this may impact the upper hard palate so to prevent injury it needs to be monitored and possibly remove some teeth.
55. On physical exam, Dr. Walton found Koba quite lame on the right rear with the dog's knee pointing out and the dog taking short steps on that leg. He said this was very obvious and recognizable by anyone untrained. The gait was abnormal and he said the reason for the short step was that the dog lifts the leg up as it is painful.
56. Once Koba was sedated, Dr. Walton was able to do a physical exam which he said would have otherwise been painful. The spot where the femur fits into the pelvis, like a ball and socket where the muscle attaches, was not aligned. The femoral head would pop in and out upon moving the leg. The femur would pop out under the pelvis which Dr. Walton testified was an unusual place for the femoral head to land. The vast majority of dislocations would see the femoral head move up and over the socket.
57. If the femoral head is below the pelvis, it is because the leg was pulled backward or down and away from the pelvis thus separating the muscle from the tissue. It's what happens, Dr. Walton said, with a leg hold trap or a dog with its leg caught in a door or when a dog is lifted by its back legs.
58. Dr. Walton said the tear is on the inside so he wouldn't see internal bruising but he is certain the muscle is torn because that is the only way you could move the femur - by tearing multiple ligaments. The amount of force needed to separate the leg this way is considerable, he said.

59. Dr. Walton said that if this injury had occurred because of a birth defect or growth, he would find a loose ball and socket joint and there would be a rubbing effect which would erode the hip like in hip dysplasia but he did not find significant evidence of hip dysplasia. Dr. Walton testified he was certain this injury was caused by trauma. All the tissue was damaged to allow the dislocation and in his view, it could not be anything but trauma. Dr. Walton testified that this was not from falling down stairs or being hit by a car as that kind of trauma would cause the leg or femoral head to be above the pelvis. In Koba's case, the femoral head was moved by ventral force with the leg being separated backward and down, under the pelvis.
60. Dr. Walton said the leg injury was only seen in one area of the hip so in his opinion, this was caused by trauma. He said the lower jaw deformity suggests inbreeding but could be developmental or fetal injury, and the cryptorchid (the dog's testicle was still inside its body) was genetic and was thus an indicator the dog could not be bred but none of those causes could cause the condition he saw in the hip; only trauma could. There was no evidence that a similar condition existed in the other hip.
61. Dr. Walton explained the different methods of treating this dislocation surgically. He said that Koba would have surgery and get quality of life for a few years and would then become arthritic. If the dog did not get surgery there would be pain every time he bore weight on his leg and it would then become a medical management issue.
62. Every time Koba took a step, he limped, said Dr. Walton and that was because the dog was in pain. He did not see any curvature of the spine in his radiographs.
63. Dr. Walton said the absence of a bruise was not indicative of anything and that the injury definitely happened after birth as nothing in the birth canal could pull a leg in that direction. If it was an old injury, he would expect to see signs of arthritis but he did not see any signs of arthritis. He would expect to see signs of arthritis within 6 to 8 weeks after the injury. He also did not see any calcification which did not tell him anything although he said the presence of calcification would have been instructive to him.
64. In response to questions from the Appellant, Dr. Walton said his job was to deal with gross or obvious findings and that what he found was more subtle so he defers to the findings of the board-certified radiologist. Dr. Walton was not comfortable saying the dog's jaw was as a result of inbreeding as it is possible things could occur during the development of the jaw that was not genetic. The single descended testicle is connected with DNA and is therefore a genetic flaw.
65. When asked if it was possible the dog could have this injury from birth when it might be less noticeable, Dr. Walton said no, if the leg is ventrally dislocated, it cannot bend the way it should and it would be obvious.
66. In response to my questions, Dr. Walton said his staff made an error on the report to the radiologist that it was Koba's left rear leg; it was his right. He confirmed the rest of the report was accurate. He said taking 14 radiographs was not normal, but is what he was

taught to do when there is a potential legal case. The Society said it was not asking for costs for Dr. Walton. Dr. Walton said he tried to pop the femur into the socket but it just popped right back out again. Dr. Walton was not familiar with another veterinarian's use of the acronym HOD, which appeared but was unexplained in a submitted veterinary report, and Dr. Walton explained that panosteitis was significant growing pain which could be normal.

67. When I asked his certainty that the cause of the injury was trauma, Dr. Walton said he was 99 % certain and there was nothing congenital accounting for the injury and disease was ruled out as he would have expected to see weakness in both hips which he did not, nor did he see excessive skin elasticity nor any deficiencies in the knees or elbows and no malformations were noted on the radiology reports.
68. I asked Dr. Walton if it was possible an owner could cause trauma to a dog and still see a loving obedient dog, and Dr. Walton said that with a pack mentality, there is often a lot of trauma that occurs between dogs and as a consequence it would be normal for a dog to be fine with the leader of the pack even after experiencing trauma by the leader. Dr. Walton said it was possible to have a well-trained dog even after abusing it.
69. In response to the Society's final question, Dr. Walton confirmed that you would not notice the injury in a photo of a dog on its back with its legs spread; you needed to see the dog standing on its legs.

SPC John Meneray

70. SPC Meneray was appointed under the *Police Act* and was sworn in as a constable in 2014. He was previously a constable for CN Police. SPC Meneray swore the ITO and attended the execution of the warrant.
71. SPC Meneray testified that at approximately 1530 hours on June 9, 2017 he attended with the Society's SPC Ott, another Society employee, and two Vancouver Police Department members. The Society could not access the unit so called Society management for permission to authorize a locksmith which was granted. As that process was starting the Appellant exited the elevator and said stop. The Appellant said he had the dog and SPC Meneray said they needed to see the dog so the Appellant came back 8 to 10 minutes later with the dog. SPC Meneray's focus was on the Appellant, and SPC Ott's focus was on the dog.
72. SPC Meneray testified the dog's right rear paw was turned out. When SPC Meneray entered the unit, the Appellant advised him the dog had free run of the place. SPC Meneray could see a dog cage that would be unsuitable for housing a dog of this size and also saw evidence the dog had been on the bed.
73. SPC Ott was checking the dog with one VPD officer and SPC Meneray was explaining the warrant and that they were seizing the dog and the Appellant looked pretty upset. The

Appellant denied the allegation of abuse and said he believed his comment had been misinterpreted.

74. As SPC Meneray moved into the kitchen he saw a vial and needles and a syringe on the kitchen counter along with white powder and small bags. The VPD officer asked if it was cocaine and the Appellant responded that yes, it is a possibility. The Appellant agreed to a consent to seizure meaning the material which could lead to a charge would be seized but no charge would be forthcoming; it is seized for destruction purposes only.
75. SPC Meneray explained the seizure and notice of disposition to the Appellant who was “understandably” upset and once the dog was removed, the Appellant seemed more relaxed so the SPC explained the appeal process. The Appellant asked him what was the likelihood of getting his dog back and SPC Meneray just said his job was to relieve the animal’s distress and the warrant was for refusing vet care for the injury. The physical abuse was the main reason but the Appellant denied physical abuse.
76. On the basis of SPC Ott’s observation of the dog’s right rear leg, which SPC Meneray said was also obvious to him, Koba was taken for immediate veterinary care.
77. SPC Meneray said that if they find distress during any seizure they need to relieve the distress and seize the animal but if they do not find distress they do not always seize but instead deal with the complaints. If there are serious allegations of abuse, they seize the animal for a forensic investigation by a veterinarian.
78. At 2000 hours that same night, SPC Meneray called the Appellant to offer the opportunity to surrender Koba as the Appellant had said he cannot afford x-rays and the dog needed surgery, and SPC Meneray had told him that he likely won’t get his dog back. He said the Appellant’s response was that he would “sue you fucking bastard” with the “most expensive lawyer” and “sue every one of you.”
79. SPC Meneray testified that at the verbal abuse, he ended the conversation having already received the veterinary report noting injury by trauma, which went along with what the Appellant said in group.
80. SPC Meneray also observed the dog could have easily licked the counter (where the white powder was) but the suite otherwise appeared clean and well kept.
81. The Appellant did not cross examine SPC Meneray.
82. In response to my question, SPC Meneray confirmed that the dog was seized as there was an allegation the dog had been thrown against the wall and the dog appeared injured upon his arrival and it was paramount that the dog be examined by a forensic veterinarian so the dog was seized.

APO Rhonda Ott

[note APO Ott became a SPC two weeks prior to the hearing so I refer to her as SPC Ott]

83. SPC Ott was first hired as emergency staff at the Society, a stepping stone to becoming a cruelty officer and she entered the cruelty stream in 2014/15 becoming an Animal Protection Officer in 2015 where she was required to uphold and enforce the “animal cruelty act.” She was previously an animal health technician (AHT) without formal education but she was grandfathered in when the AHT rules came in.
84. She attended the execution of the warrant at the Appellant’s premises on June 9, 2017.
85. On May 29, 2017, the cruelty hotline received a call from the Health Authority general manager regarding an allegation of physical abuse against a dog disclosed during a group session. The disclosure was that a dog had made a mess and was picked up and thrown by its owner and this disclosure was made on May 25, 2017.
86. On June 2, 2017 SPC Ott picked up the complaint and noticed that the Society had attended the Appellant’s premises before in Burnaby when a notice to cease harsh training had been issued.
87. SPC Ott spoke to Drug Court employee, T.K. and discussed what T.K. had heard and then asked for a statement. T.K. said the Appellant showed no remorse for what he did.
88. SPC Ott attended the Appellant’s home but was denied permission by the concierge to go unattended to the door so SPC Ott left a “notice with contact information.” with the concierge who agreed to deliver it to the Appellant. SPC Ott got a voice mail from the Appellant on June 2, 2017 at 2:50 pm and returned his call at 3:58 pm, but did not leave a message after getting voice mail. SPC Ott got a call from the Health Authority stating emails to and from B.S. had to go through the manager. SPC Ott spoke to T.K. taking her statement, and then received the emailed statements from both T.K. and B.S. a few days later. That was her last contact with those two witnesses.
89. After getting T.K.’s statement SPC Ott went through senior staff to get SPC Meneray’s assistance with the ITO as she was not yet a SPC. She believed the statements she received were solid and the witnesses were fearful so the Society applied for a warrant.
90. On June 9, 2017 SPC Ott executed the warrant with SPC Meneray and a Society ride-along person, and when she saw Koba she noticed the muscle atrophy on the hind flank and the bowed-out foot. When she took the dog from the VPD officer who was holding it, the Appellant moved toward her but was called back. She then took Koba to the veterinarian (Dr. Bassi). The dog was put on medication as it was in quite a bit of pain and then taken to the shelter after x-rays.
91. SPC Ott testified the dog was definitely in pain and not weight bearing and that Dr. Bassi told her verbally there was lateral trauma and it was not a birth defect. He suggested she

follow-up with an orthopedic surgeon which was done at Ambleside, who said the same thing as the first vet. Koba was transferred to Dr. Walton on June 22, 2017. SPC Ott testified that the naked eye could see this dog was not weight bearing.

92. The Appellant asked why the Society went from a letter to an ITO, and SPC Ott said it was due to T.K.'s statement on June 2 as well as the phone call received from the Health Authority manager, and the previous history. One call to the call centre was received May 29, 2017 and the second call was received May 31, 2017, both from the Health Authority. Between dropping off the notice and then receiving the written statement of T.K., SPC Ott felt that the allegations in the written statement were substantial and she needed to move forward with the ITO.
93. In response to my questions, SPC Ott said when she took Koba it was clear he was limping and in pain. When she got Koba into the elevator and tried to pick him up, the dog stiffened and started shaking and went stiff as a board. She described him as catatonic with no expression or growling, which is something she sees when dogs are scared or in pain.

B.C.

94. B.C. is an animal control officer with the City of Vancouver and has worked for the City since 2000. B.C. impounded Koba on May 20, 2017 at 10:35 am when the VPD called animal control to attend to a dog in a vehicle as the owner was being arrested. Koba was in the back seat and when B.C. went to get the dog, he described it as scared and timid. He leashed the dog's neck but it wouldn't come out so the police allowed the Appellant to assist by coaxing the dog out. B.C. walked the dog to his own vehicle and he described the dog as walking nice on the leash. He did not notice any ailment and at no point did he notice any reason for the dog to see a veterinarian. He did not notice the dog's toe pointing out, limping or shifting of weight and if he had seen such a thing he would have logged it in.
95. When he got to the impound, B.C. scanned the dog for a chip, did a tattoo check and looked to see if the dog needed any care or grooming. He checked the dog's nails and noted its overall demeanour. B.C. said Koba was fine and when he took him to his kennel, the dog was a little growly. The dog had no dog license.
96. B.C. testified that on the intake form there is a section for medical issues and none were noted. After check-in Koba was permitted to go out into a play yard with an attendant.
97. After B.C. gathers information and books the dog in, he said he lets staff know if he has any concerns and if there was a limp he would have noted it. The kennel staff would also note any possible injury including a funny gait, it would be written in and a supervisor notified to determine if the dog needed to see a veterinarian. B.C. made no such note and the dog was not needing to see a veterinarian.
98. Koba was picked up by its owner, on May 24, 2017 after paying a \$175 impound fee and \$42 license fee, and paid the \$217 in cash.

99. B.C. testified that when Koba was brought up to be given back to its owner, a limp would have been noticed and documented and there was nothing to that effect noted.
100. In response to the Appellant's questions, B.C. agreed that Koba could have been scared as he was being removed from his owner and in his experience, fear is typical behaviour as the dog does not know what is going on.
101. In response to my questions, B.C. said he did not recall if the dog's foot turned out but if it did he would have noticed and documented it. He walked the dog from the Appellant's vehicle to his on a leash for about 50 feet and he was looking at the dog as it walked, on a short leash about three feet long with a slip collar, and the dog was walking at his side. He does not recall the dog pulling on the leash but testified he watches every dog walk. B.C. said he recalled getting Koba into and out of his vehicle and there was no limp. He walked Koba another 75 feet into the impound kennel from his car and then scanned the dog after putting it into the dog run. The dog was friendly enough.

XII. The Appellant's material and witnesses

102. The Appellant provided his submission to BCFIRB which was, in its entirety, a lengthy copy of a confirmation of pet insurance for Koba, dated with an effective date of June 27, 2017, which includes the following:

an exclusion for cryptorchidism, an exclusion for hip joint problems and associated conditions, an exclusion for malocclusion of teeth and associated conditions, and the following paragraph under the heading Exclusions – What We Don't Cover: Pre-existing Conditions A pre-existing condition refers to any condition for which a veterinarian provided medical advice, the pet received treatment for, a veterinarian determines began prior to, or the pet displayed signs or symptoms consistent with, or associated with, the stated condition prior to the effective date of the policy or during any waiting period.
103. The Appellant provided to the Society during its review process a copy of his own veterinary report dated June 2, 2017 for his male 5-month-old Presa Canario brindle dog named Koba which notes that the Appellant did not wish to update out of date vaccines, and does not wish to update out of date flea and tick prevention and deworming. The Appellant declined lab work on the ear cytology which the veterinarian recommended, and the Appellant declined recommended radiographs of both hind legs to r/o (rule out) HOD, panosteitis. The veterinarian's notation is: Owner declined due to insufficient funds at this point.
104. The veterinary report noted the following excerpts: Reason for visit: both hind legs are staring (sic) to twist and bow out when he walks. O notes he has no problem running and doesn't appear to be in any pain O isn't sure how long its (sic) been like that since only recently someone pointed it out to him. Doesn't cry when hips are touched. e/d normal, bm/u, threw up a few days ago and has had diarrhea on and off but o thinks it could be from stress.

105. The report noted abnormal ears with ears cropped and erythema, dark moist wax, stenosis in AD and mild erythema and mild amount of wax in AS. The report noted abnormal oral and dental findings specifying brachygnathia teething, 504 retained (monitor). It also notes a L unilateral cryptorchid under Urogenital and under Musculoskeletal, it notes lordosis due to excessive growth of hind legs no pain elicited on palpation on long bones, joints, on the hind limbs. The report ends with a notation that the veterinarian found erythema avoid breeding due to unilateral cryptorchid (owner disappointed).
106. The Appellant also submitted to the Society in its review process, a series of emails with "E.R." whom the Appellant consulted about Koba's leg. These emails which mention Koba's gait start on June 1, 2017, when the Appellant emailed that he needed advice about Koba's right foot going out as Koba limps when he walks but the Appellant doesn't think it is hip dysplasia. E.R. asked him if he had consulted a vet. The Appellant responded that he had not as his friend trains large breed dogs and recommends swimming to make the leg stronger. ER confirms he has seen this before and it will resolve itself. The Appellant continued that it is funny how Koba walks, like a wobble and E.R. asks for a video. On June 4, 2017, the Appellant said he would make a video and said that after playing in the park yesterday it hurt Koba to be touched in the hip area. On June 5, 2017 E.R. responded that it sounded like Koba should be seen by a vet. On June 10, 2017, the Appellant emailed E.R. to say Koba had been seized by the SPCA and he was now under investigation and wondered if E.R. had seen anything like this before with his breeds. E.R. responded on June 12, 2017 that he has never seen anything like this and he recommends relying on veterinary direction.

T.M.

107. T.M. met the Appellant at the hospital about a year ago when he let the Appellant cut in front of him in line. T.M. is on disability and volunteers at an animal shelter and has a Rottweiler himself which he takes for walks several times a day and meets the Appellant at the animal park near what he referred to as the Gathering Place.
108. T.M. testified that the Appellant is great with his dog and the two are amazing together. The dog has very good eye focus on the Appellant who in turn is very attentive to his dog.
109. Around the end of April, T.M. noticed that the dog's paw turned out and when he told the Appellant, the Appellant was very concerned. T.M. noticed it when the dog walked. The dog was a happy "floppy" dog and the dog and Appellant were a good team and it was wrong of the Society to take the dog.
110. In response to questions from the Society, T.M. said he has no training as a veterinarian ("Oh God no") but reads a lot and is a pet lover. He has no experience diagnosing or caring for sick dogs. But it piqued his interest when he saw Koba's paw turn out and walking "floppy" and favouring that back leg, not yelping or excruciating pain but following the Appellant with a bit of a floppy look. T.M. said he himself had been hit by a bus and has an extreme limp and the dog was not that bad, but was a fellow limper. He testified that the Appellant told him he had noticed the limp and had asked the veterinarian about it.

111. T.M. said he isn't exact on his dates; it could be April or it could be May but it was not June as he was only in Vancouver in June for a day or two. T.M. said the dogs limp was not immediately apparent and took him about ten minutes to notice, once the dog was playing. He thinks it was the dog's back left leg but cannot remember except that he is sure it was a back leg.
112. In response to my questions, T.M. is sure it was a back leg that caused the dog to limp. T.M. testified that he is particularly alert to symptoms of hip dysplasia and when Koba was running, he wasn't that coordinated and then he noticed the limp and the dog's paw pointing outward – the opposite of pigeon toed – and when he mentioned it to the Appellant, the Appellant said he noticed and would check it out.
113. T.M. said he has seen Koba maybe six times for 30 minutes each time, and had never been to the Appellant's house, and had never heard the Appellant complain about Koba going to the bathroom in the house. T.M. believes that the Appellant had had Koba for about one month by the time he saw them in the park, but don't quote him.

S.D.

114. S.D. said she is a mom on maternity leave from her work as a vet assistant and she cannot recall how long she has known the Appellant whom she met through friends a couple of years ago, and whom she has dated off and on for quite a while.
115. S.D. testified that one could not ask for a better bond between a dog and the Appellant who is extremely gentle and very loving and when she saw the Appellant with the dog, there was nothing of question that came to her about the pair. She had never seen the Appellant be aggressive.
116. S.D. testified that between May 20 and 25, 2017, the Appellant was arrested "that weekend" and on May 20, 2017, Koba was impounded and released to the Appellant on either May 23 or 24. She said the Appellant picked up Koba on May 24 as she saw the Appellant when he had just picked up the dog.
117. She never noticed anything out of the ordinary with Koba; he seemed the same happy dog. He seemed normal. As far as she is concerned the abuse the Appellant is accused of is absurd and Koba should be back home with the Appellant. It is sad that the dog was seized and now the Appellant has to fight to get his best friend back. This separation is not good for Koba.
118. In response to questions from the Society, S.D. said she saw the Appellant either May 24 or 25 after he got Koba; she cannot recall the date; it could be either. But she thinks it was the 25th. She was with the Appellant that whole day and he left the following morning. She slept over.

119. S.D. said Koba had accidents like any puppy does and did defecate inside but not too bad, just normal little accidents. The Appellant did not throw Koba and she was with him all day. She is positive it was on May 25, 2017. She slept over on May 25 and left on May 26.
120. S.D. testified that Koba has a weird limp and walk and that Koba came to the Appellant that way. Sometimes puppies come that way and the Appellant told her the vet had checked him out. She is positive that she had a conversation with the Appellant at the beginning of May that the dog might grow out of the funny limp and walk as he got older.
121. S.D. testified that she is very angry that Koba was seized as she knows the Appellant and it is completely outrageous the allegations against him. She testified that the allegations are false, and that there was no warrant and it was wrong to take the dog, which she misses.
122. In response to my questions, S.D. wanted to know what her training had to do with anything, and then she said her job as a vet assistant was to care for animals, clean them, help with x-rays, help with taking blood and with surgery and dentals and spays and neuters. She testified she did not attend vet assistant school.
123. She was unaware, when I advised of the warrant, that a warrant even existed regarding Koba (she had earlier testified that there was no warrant).
124. S.D. said she was with the Appellant the same day he got the dog back and left the next day, mid-morning. She arrived around 6 pm after dinner the day Koba was retrieved (from Impound) and she does not believe that the Appellant had Drug Court that day. He did go the next day. She is sure the Appellant picked up Koba on May 24 and she stayed the night on May 24, 2017. She recalled that the Appellant called her and said he had just picked up Koba. Koba had always walked weird, she wasn't sure which side it was but it was definitely the back. When she first noticed, she had touched Koba's leg and hip and it did not bother Koba. There was no sign of discomfort and if she was concerned she would 'take him in.'" She says some puppies are just like this, they hurt themselves all the time. He was not in pain in her opinion and if she had a dog with no signs of discomfort, she would not rush the dog to the veterinarian either.
125. S.D. clarified that she "honestly" did not know if the Appellant took his dog to the veterinarian but he had said he "got some advice" and she doesn't recall if that advice was from a veterinarian.
126. When I asked S.D. about the Appellant's rug she said she did not know what my question had to do with anything but she confirmed there is a rug in the Appellant's living room and it is not an \$800 rug.

D.L.

127. D.L. testified that he has known the Appellant since October through his own involvement as a participant in the drug treatment program.

128. His recollection is that during check-in, the Appellant said that his dog had pooped on his bed or his floor and the Appellant said he didn't know what to do with his dog and said sarcastically "do I throw it across the room or rub its nose in it?" His view was that this was an exaggeration.
129. In response to questions from the Society, D.L. said he couldn't recall the date of the check-in when this was said but the Appellant said it in frustration. D.L. said he had been sick before and missed check-ins. The date could have been May 25 he does not recall but at check-in the Appellant sits next to him and D.L. does recall the Appellant saying this.
130. When asked by the Society about B.S. testifying that D.L. was absent that day, D.L. said as far as he knows he was there when the Appellant said that statement in check-in. D.L. said he does not keep notes on when he calls in sick. He was possibly sick at some point in May but he was present the day the Appellant said that statement. He does acknowledge that B.S. keeps track of who attends and there was no reason why he wouldn't have signed in if he was there.
131. D.L. said he has seen Koba about three times and the dog was loving and trying to jump in his lap and lick his face.
132. In response to my questions, D.L. said after the Appellant made the statement at check in people were pretty understanding. He recalled the Appellant saying the dog pooped in his bed but it could have been the rug or his floor. He has a cloudy memory.
133. D.L. said perhaps the Appellant made the same statement at more than one meeting because he doesn't recall the date he heard the Appellant say that statement but he definitely was there when the Appellant made the statement.

The Appellant

134. The Appellant first confirmed for me that the dog King mentioned in some material was in fact a different dog from Koba.
135. The Appellant testified that some parts of B.S.'s statement are true but she did not say it right. At group, they talk about what they have been doing but also what they are feeling. He finds check-ins irritating because people talk about family. The Appellant testified that he is a big guy so when he talks, they assume he is aggressive; he's not, he is just emotional.
136. The Appellant said he did not know what he had said but he was in jail when he heard the allegations against him (regarding throwing Koba across the room). What he had actually said in group was just a feeling he had "like when people say they feel like smacking a kid"; he said it isn't what he did.
137. When the probation officer (T.K.) approached him in the hallway, he said it was already after he was banned from Drug Court. He said to her that she cannot do that. He was

“irritated that day” but he is not violent and his “record will show that.” He testified that he has been an addict for “so so long” he gets irritated when he is clean and so he was irritated and spoke sarcastically about his dog to get the probation officer away from him.

138. The Appellant said he has never seen a dog like Koba who can walk without a leash, always looking at him. Koba was “one of those dogs you didn’t need to yell at.” Koba was very well behaved and the Appellant even had a video of him talking to his dog saying, ‘do you know what you did’ when the puppy made a mistake and the puppy knew he wasn’t mad.
139. Koba was 12 or 13 weeks old when the Appellant got him and the dog was 30 pounds and would run and play but he says the dog’s hip would go in when he walked. The Appellant said he didn’t know what to do so he left it alone. When Koba grew to be 70 pounds he saw a veterinarian in June as the dog’s spine was going in as it was growing so fast. That problem may have happened at birth. He said Koba “runs weird.”
140. At the time of seizure, the Appellant was getting off the elevator just as the Society was about to enter his unit with a locksmith so he spoke to the Society and went back to his car to retrieve Koba but the Society still entered his unit and took the dog. The Society had put something on his door the week before saying please give us a call, we’d like to talk. A week later, the Society had a warrant and was drilling his lock and it made no sense the Society could get a warrant that fast. He said he did call them back and leave a message but did not get any call back.
141. When he took Koba to the veterinarian, the vet manipulated the bone and there was no pain and although x-rays were recommended, he could not afford it so he was going to get insurance and was waiting for the insurance to come through before treating the dog. His insurance covers him for \$15,000 per year.
142. The Appellant testified that he had wanted his witness from where he gets his protein shakes to testify as that person would have testified that Koba would get tied up while the Appellant got his shake and would growl a funny growl/bark like he was saying ‘come on hurry up’ as he was so attached to the Appellant. This “whole thing is blown right out of proportion.”
143. The Appellant said he wants his dog back as it was like family to him and Koba is with him every second of the day and the first thing he would do is have his own vet look at Koba to see if surgery would be needed or not.
144. In response to questions from the Society, the Appellant said Koba came to him around April, around that time frame, and he got Koba from Ohio, his paper work is at home. He has never found anything bad about Presa Canarios and he has insurance now so he is covered. The breeder would take him back because of the leg issue but the Appellant would rather use insurance. He said he did not tell the insurer of the pre-existing condition and the insurer was taking a bit of time to approve insurance for the dog and the Society just took the dog too fast. The Appellant said that his veterinarian did not say the dog

required surgery and it doesn't matter after the fact as he believes he is fully insured even though he has no confirmation that the surgery is approved. The Appellant said he will be covered as he bought the most expensive insurance and surgery is covered in his plan.

145. The Appellant said Koba has a strange walk, kind of weird, where one hip goes out when he walks and his foot turns out a bit. The Appellant said he never took Koba to the vet about this prior to June but instead simply asked people like breeders or veterinarians, all of whom said the dog would grow out of it. It was not concerning as Koba was running playing and jumping.
146. The Appellant says that on June 2, 2017, he took Koba to the veterinarian as Koba's shots were due even though he couldn't really afford it. It was Koba's first vet check in Canada. The veterinarian noted x-rays were suggested to see what the problem was with Koba's hind legs but the vet also told the Appellant that he saw no distress from pain and the Appellant would think the vet would have noticed if there was pain. He said he told the veterinarian he had just recently noticed the limp which was originally pointed out to him in April at the dog park. The Appellant said it had grown more noticeable and he didn't tell the veterinarian it existed before as he didn't think it was a "big deal." The Appellant said it was the weekend Koba was at the pound that Koba got sick and Koba wasn't sick before.
147. The Appellant said he was originally worried about hip dysplasia but that worry was eliminated when the veterinarian said the dog looked fine. The veterinarian didn't think it was a big deal and just wanted the Appellant to change dog food as the puppy was growing too much.
148. The Appellant confirmed he received three vet reports prior to the hearing from the Society each recommending surgery but he told the Society do not do surgery until he gets insurance. He said he had not specifically asked the insurer if they will cover Koba's surgery as he was in the middle of the process and Koba is not now in his possession. He testified that the Society was hard to deal with and had been rude to him.
149. The Appellant confirmed he was arrested on May 20 and Vancouver Animal Services took Koba, and he was out of jail May 23 and picked up Koba on May 24, 2017. He said that at the time of pick-up, he did not note any injury, only Koba's normal limp.
150. The Appellant said the only reason he went to the veterinarian on June 2, 2017 is he had happened to drive by the clinic and just walked in to ask them to check his dog's limp and foot and if he hadn't just happened to drive by, he wouldn't have taken Koba to a veterinarian.
151. On May 25, 2017 at his stabilization group which started at 10 am or noon as times change, he had been home before with S.D. who was "kinda my girl."
152. The Appellant said he had never been charged with assault or threats and the check-in process of the group made it mandatory to speak and he has no memory of it as he was just out of jail and was so irritated as he should not have been in jail so he can't say what he

said as he doesn't recall. People in group get into depth and he doesn't like to talk about his personal life as he said he is a closed off person.

153. Other people told him what he has said but he doesn't recall so he said he "won't speak on other's behalf". B.S. misinterpreted things and he was shocked when he first heard what he was accused of saying. He may have mentioned a feeling he had because that's what is said in check-in but he doesn't recall, "anything is possible in this world." He testified he could not have thrown a 70-pound dog as he is not superman and it's ridiculous to even say that as it is not possible. When asked if he might have said that he wanted to throw the dog, the Appellant said it was possible if it was a feeling that he might have said that he felt like he could throw the dog, but he has no memory of saying it.
154. The Appellant denies the conversation with T.K. (after the group session) and he remembers exactly what he said to her. He said he was irritated that they were kicking him out and he said, in response to what she said, 'oh yeah I threw my dog, really?' in a sarcastic and irritable way. T.K. did not say she was reporting him until a few weeks later. He does not recall saying he beat up someone for reporting him previously but he may have said it, he doesn't know, but it sounds ridiculous and not like something he would say. "That's not like me." He may have said it in a lighter tone but not like how it was taken. He said he is not an aggressive guy, just irritable.
155. The Appellant said he has issues with Drug Court as he is opinionated and has talked to B.S. and T. K about issues before and "who knows what people do these days" but they want him out of Drug Court and this allegation got him kicked out. "I'm very influencing" and irritated and very opinionated and they don't like this at Drug Court. The Appellant said all the staff stick together.
156. About King his previous dog, the Society did speak to him and only advised him not to yell at his dog and they gave him tips and he got his dog's ears cleaned by the veterinarian. Someone ultimately stole King, he said, and the Society was involved after judging him for being in jail. His sister had come to pick up King but the Society said it couldn't get a hold of her. He has a bad history with the Society. He said he can't be judged because of his criminal record.
157. When asked why he didn't provide the Society with information supporting the return of Koba during the review period, the Appellant said, "why should I provide information to someone targeting me to take my family away." He said he would rather take it to Court and give up information then. The Society had already made up its mind about taking Koba when he got off the elevator; they looked at him at 260 pounds and said oh yeah, this guy did it for sure.
158. The Appellant said the Society's veterinarian Dr. Walton did not say the dog had been thrown and if he had picked up a 70-pound dog he'd have torn every muscle and he hoped the Society had prepared the doctor to testify. It was, he said, common sense that it would rip every muscle and if the doctor lies, we'll deal with that after. You can't take a skinny leg and not cause other injuries. There was no blood or bruising.

159. On June 9, 2017 at the time of the seizure the Appellant doesn't recall the conversation. He said he stayed calm and kept everything light and might have said he knew why they were there because of B.S.'s allegation. He knew somehow that they (the Drug Court employees) had called the Society on him but could not recall specifics.
160. The VPD was there too and SPC Meneray did not point out any powder just bottles of testosterone which were seized by the VPD. When asked about SPC Meneray's notation of a white powder that could be cocaine according to the Appellant, the Appellant said he does not recall what he said about it, but he is a clean addict so it couldn't be cocaine.
161. In response to my questions about the conflicting information about why he went to the veterinarian on June 2, 2017, testifying he said he was driving by and also that Koba's shots were due, but he declined any vaccinations, the Appellant said he couldn't afford shots or ear cleaning and the dog's hip was more important and needed checking and that was "the honest reason." The shots were due but were very expensive.
162. I asked the Appellant about his back-up plan should his insurance not cover Koba's treatment and he testified that there are places to go and get coverage to pay for surgeries and he needs to find and go look for those organizations, which other people have mentioned to him. If he can't afford treatment, these other places will cover it, he just needs to do his research and it shouldn't be a problem.
163. If Koba needs a full hip replacement in two years, by then he will be able to save the money. He can get the surgery cheaper in Alberta. He says he is not allowed to work while attending Drug Court so now that he is out of Drug Court he can work.
164. The Appellant testified that he doesn't talk to B.S. at all as she is not supposed to be in the group and she was leading the group and the two of them have serious issues.
165. He said Koba sleeps on his bed so if the dog had pooped it would have been in his bed and Koba didn't do that. When he and S.D. woke up, Koba had diarrhea right in front of them so he cleaned it up and took Koba out again before Drug Court.
166. He said Koba runs and jumps against his own chest and how could a dog do that if it is in pain. His own veterinarian said the dog is not in pain and that eased his mind. It was hard to say when he noticed Koba's limp. It might have been in April or in May and he might have noticed and thought nothing of it and then someone else said something and his opinion changed. When I asked him if he had ever consulted a veterinarian prior to June 2, 2017, as his witnesses have testified he told them he had, the Appellant said he had never received advice from a veterinarian.

XIII. Submissions

The Appellant's Position

167. The Appellant's position is that he wants his dog back as the dog was not in distress and the Society did not tell him what was wrong so he could correct it. The warrant did not say the Society could seize his dog. Dr. Walton's statement was that the injury could be caused by trauma but in his testimony, he said it was not consistent with a thrown dog (although I find that is not what Dr. Walton said). He said it is wrong for the Society to suggest that his witnesses may bend the truth and since the veterinarian cannot say what happened to Koba, it is not consistent with what was reportedly said on May 25, 2017. The statement about the Appellant being violent was not consistent with his history. In closing, the Appellant said he is trying to put together a picture and while he had been listening and taking notes of the proceeding, his blood sugar was low and he was hungry and struggling trying to think of everything that is going on. He said his witness S.D. had stayed the night on May 24, 2017, and did see the dog poop, and did not see any violent repercussion, and that should say enough given her work in a veterinary hospital. If she saw abuse she would call it in and there isn't anything more for him to say.

The Society's Position

168. The Society submits that the Appellant attended a group session and admitted to throwing the dog and then twice afterward confirmed that he threw the dog. The Appellant said he picked up the dog from impound and after it defecated on his rug, he threw it across the room, and that the dog was not injured because it was able to walk afterward. When B.S. spoke to her colleagues, they all agreed to breach confidentiality to report it to the Society.² T.K. said the Appellant minimized what he did and she felt threatened by his words and demeanour when she spoke to him about his disclosure. The Appellant's witness D.L. was apparently not in the group despite providing testimony about being in group and witnessing what was disclosed. Dr. Walton was unequivocal about Koba's injury resulting from trauma. It was confirmed with radiographs and the other veterinarians agreed there was trauma. Dr. Walton said the amount of and direction of force needed to cause the trauma was significant. Both SPC Meneray and Ott were concerned enough for Koba's safety they sought an ITO and at the execution of the search warrant, they found the dog injured and the injury was immediately apparent. The animal control officer who impounded Koba just a few days before the Appellant's disclosure described the dog as walking without signs of injury or a limp.

169. The Society argues, as elaborated upon below, Koba's best interests are of paramount concern. Koba's best interests militate against a return to the Appellant. In particular, the Society is concerned that should Koba be returned to the Appellant, he will likely be

² I note here that although the Appellant appeared to be displeased with the course of events that lead to the Drug Court employees breaching confidentiality, he did not challenge the admissibility of their testimony in the hearing before BCFIRB. In any event, section 40 of the ATA allows BCFIRB to receive evidence not otherwise admissible in a court of law.

returned to a situation of distress (as defined in the *PCAA*). Specifically, the Society is concerned that the Appellant will contravene the *PCAA*, s. 9.1, 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.

170. In the Society's submission, if Koba is returned to the Appellant, he will be (a) abused or neglected, (b) left to endure pain and suffering, and (c) be deprived of adequate veterinary treatment. These conditions constitute "distress" as defined in s. 1 of the Act.

XIV. Analysis and decision

Assessment of witness evidence

171. I will at the outset outline my assessment of the evidence of witnesses.
172. I accept the evidence of both SPC Ott and Meneray. Their evidence was straightforward, consistent with other documented evidence, and not shaken under cross examination or under my own questioning. On the same basis, I accept the veterinary reports of all three veterinarians as well as the testimony of Dr. Walton.
173. I also accept and place particular emphasis on the testimony of Vancouver Animal Control Officer B.C. who was one of the last people to see Koba before the alleged incident causing the traumatic injury to Koba. His testimony, in my view, was provided openly, even supporting the Appellant's view that Koba may have acted timid because he was afraid of being separated from the Appellant. B.C. testified he watched the dog walk without visible signs of injury and examined the dog's feet and scanned the dog, all without seeing signs of injury. B.C.'s testimony was supported by the Impound Report stating that the dog was impounded on May 20, 2017 and was in good body condition with no signs of injury. This is the best evidence I have from an independent party with no relationship to those involved with this seizure, about the state of Koba and the extent of any pre-existing limp.
174. I found the testimony and report of Drug Court employee B.S. to be credible and I accept her evidence in its entirety.
175. I found the testimony and report of Drug Court employee T.K. to be a bit more problematic initially as she neglected to document two very important details, namely the Appellant's confirmation of the reason he threw the dog (defecating inside) and his confirmation that yes, he had thrown the dog. However, upon considering why T.K. would have any reason to have embellished her recollection, I find the Appellant's allegation that both B.S. and T.K. wanted him out of the program and that the reporting of this incident achieved that

goal to be simply not persuasive. It made no sense to me at all that these two employees would concoct such a story, especially when the dog's injury was consistent with the type of abuse allegedly disclosed by the Appellant. In all the circumstances of this appeal, I accept T.K.'s explanation that she was certain of her memory even though her written report may have been lacking as I accept that she was frightened and may not have adequately documented her experience but likely recalled it vividly. I accept and put considerable weight on her testimony and report.

176. I accept the testimony of the Appellant's witness T.M. who appeared in his testimony to be genuinely concerned for Koba's well-being and who testified that the dog did have an abnormal gait. I address this point below.
177. I do not find the testimony of the Appellant's witness D.L. to be helpful. B.S. testified that participants in group sessions must sign in and that the record shows that D.L. was not in attendance on May 25, 2017 when the Appellant made his disclosure in group. D.L. himself said he signs in to group and he could not come up with a reason why his name was listed as absent other than the possibility that the Appellant may have made the disclosure twice. Given the reaction of the staff to the May 25, 2017 disclosure I find it not credible that staff would ignore one disclosure and react as they did to an identical second disclosure. I find that the testimony of D.L. was not credible and was unreliable especially given his own admission of having a poor memory of dates.
178. I find the Appellant's witness S.D.'s testimony also unhelpful on the issues before me. She is dating the Appellant. She was equally certain of two different dates for one event at two different points during her testimony. I found her at times to be argumentative and defensive. She too testified about Koba's pre-existing "weird limp and walk" stating that Koba came to the Appellant that way. I address the significance of this below.
179. I do find the Appellant's own testimony to be helpful including the many times he contradicted himself or found himself to be suddenly without an accurate memory, or came to "possible" conclusions based on things that could have happened. As such, I accept much of the Appellant's testimony although, as set out below, I come to a different conclusion about his involvement with his dog's traumatic injury.
180. Some witnesses did not attend the hearing and I denied the Appellant the opportunity to bring additional character witnesses, having determined at the prehearing conference call, that character references are not overly helpful to me given the issues I must decide, namely whether or not the dog was in distress at the time of seizure, and whether or not the dog should be returned.
181. Finally, I'd like to address the Appellant's closing concerns about his ability during the telephone hearing to follow matters and ask the correct questions. As I am required to act in the best interest of the animals seized, I may question witnesses and require document production or summons witnesses. As such, in the circumstances of this case, despite whether or not the Appellant personally asked the questions he may have wanted to ask, I

am satisfied that with all questions asked, including my own, I have an adequate record upon which to support my conclusions.

The pre-existing injury

182. The Appellant, T.M. and S.D. all testified to the effect that from the time Koba was a puppy, they observed an unusual gait. The Appellant says the dog's hip would go in when he walked; he didn't know what to do so he left it alone, saying it was no big deal. T.M. said sometime in April or May, he saw Koba's paw turn out and Koba was walking "floppy" and favouring his back left leg and limping which he says took him about 10 minutes to notice. S.D. says Koba always walked weird, she wasn't sure which side it was but it was definitely the back leg and when she first noticed, she had touched the dog's leg and hip and there was no sign of discomfort.
183. It is difficult for me to know what to make of this evidence. At the very least, the Appellant did not think the early situation with Koba's leg was significant enough to warrant seeking advice either from the breeder prior to June 1, 2017 or from the veterinarian prior to June 2, 2017. When asked why he downplayed the start date of Koba's funny walk when he saw his veterinarian on June 2, 2017, the Appellant said it was because Koba's walk was no big deal prior to his vet visit. He confirmed he had not sought veterinary advice prior to June 2, 2017. Apart from oral testimony, there is no evidence of this unusual gait recorded in any document tendered by the Appellant prior to June 1, 2017. Further, the evidence of animal control officer B.C. was that on May 20, 2017, Koba's toe was not pointing out, and Koba was not limping or shifting weight. Had any such difficulties been observed, the officer said, and I accept, that those observations would have been noted and the dog would have been assessed by a veterinarian.
184. I am not prepared to accept that Koba may have had an unusual gait prior to the incident of May 25, 2017, despite the evidence of the Appellant and the Appellant's witnesses including a written reference submitted by the Appellant to the Society during the review that said its author, K.J., remembered when the Appellant noticed the problem with Koba's back leg, but it did not state when that date was. However, whether or not such a limp or unusual gait existed prior to May 24, 2017, the date of the alleged abuse, what is clear to me is that the Appellant did not seek veterinary advice or breeder advice regarding Koba's leg until June 1, 2017. And when the Appellant finally did seek veterinary advice on June 2, 2017, he reported to the veterinarian that he had not known when the dog's legs started to bow out and twist "since only recently someone pointed it out to him." In any event, the finding of a pre-existing unusual gait would not and does not displace the preponderance of evidence before me from the Society that Koba suffered a traumatic injury sometime after the dog was returned from impound to the Appellant on May 24, 2017. It is that traumatic event and injury on or after May 24, 2017, and the circumstances of that incident, which I must consider in determining the issue of distress.

The seizure

185. My first task is to determine whether the Society justifiably formed the opinion that the dog Koba was in distress when it was removed.

“Distress” in s. 1(2) of the PCAA, a protective statute, is a specialized term. The PCAA defines “distress” as follows:

- 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.

186. The criteria listed in s. 1(2) – any one of which is sufficient to satisfy the definition – constitute “distress.”

187. In my view, the removal of Koba was correct and reasonable as I too come to the conclusion that Koba was in distress at the time of seizure.

188. I find that Koba was denied veterinary treatment, contrary to s. 1(2)(a). This dog had, according to the Appellant, some pre-existing leg and gait issues that he may or may not have noticed, and that were brought to his attention by T.M. and possibly S.D. sometime in April or May. I note here though that both T.M. and S.D. said the Appellant commented that he had consulted a veterinarian, but the Appellant himself testified that the first time Koba saw a veterinarian in Canada was June 2, 2017, and that prior to that date, he had not consulted a veterinarian.

189. From this I conclude that either the Appellant did not seek timely veterinary care for his dog regarding his unusual gait or, more likely, the unusual gait resulted from trauma inflicted on May 24, 2017. From the evidence submitted and according to the Appellant’s testimony, the first time he sought veterinary care for his dog was June 2, 2017. This was after he had been made aware that the employees of the Drug Court had disclosed his comments about throwing his dog to the Society and the same day he received a notice from the Society and left a voice mail message for SPC Ott.

190. The Appellant said he went to the vet on June 2, 2017 as he was either aware his dog’s vaccines were due (yet declined to have his dog vaccinated) or he happened to be driving by, so he took a chance that the vet could see him about the dog’s gait. Yet the veterinary records indicated that x-rays were recommended for both hind legs but declined by the Appellant, and the “owner was to monitor and decide” about a recheck.

191. Even more troubling to me was the veterinarian’s notation that the Appellant said that he wasn’t sure when the leg problem started as it was only recently pointed out to him. If it

was only recently pointed out, this would tend to contradict T.M.'s testimony that he pointed out the limping in April or May and had the Appellant been aware of the limping in April or May, he ought to have pursued veterinary care in a timely fashion, and in either case, he ought to have been forthright with the veterinarian about when he first noticed the gait problem.

192. A further week passed between the Appellant's visit to the veterinarian and the seizure during which time Koba apparently received no treatment. I find that Koba was injured, in pain, and suffering. The dog, according to the Society's veterinarians' diagnoses, and immediately evident upon reviewing the radiographs, had a dislocated leg. The ball joint of the femur was not located in its socket but instead was in an odd place under the hip, rather than above the hip as per a typical dislocation due to accident, defect or trauma, according to Dr. Walton. On June 9, 2017, Dr. Bassi provided anti-inflammatory medicine as the dog was not comfortable and he also recommended surgery for a femoral head removal followed in two years by a hip replacement. On June 21, 2017, Dr. Sang found Koba to be exhibiting signs of pain despite being given anti-inflammatory medicine and prescribed pain killers as well. On June 26, 2017, Dr. Walton describes the dog's dislocated hip as painful.
193. I pause here to note the striking difference between the veterinarians' descriptions of Koba's pain and suffering, and the descriptions given by the Appellant, T.M., and S.D with respect to Koba's unusual gait and their conclusions that the dog was not in pain during the pre-seizure period.
194. Given the foregoing, I have no difficulty in concluding that Koba was in pain at the time of seizure and I find that Koba would have had to be in pain from the time of the traumatic incident, which I find occurred on May 24, 2017, the night before the May 25, 2017 disclosure in group counselling. Koba had an injury and was in pain and was suffering, contrary to section s. 9.1 of the *PCAA*.
195. And I very sadly find that Koba was abused by the Appellant. I find that B.S. accurately relayed what she heard the Appellant disclose, namely that Koba had defecated on his rug and he was so mad, he threw his dog across the room. I find B.S. accurately relayed her conversation with the Appellant when she asked him if he seriously threw the dog across the room and he said that the dog was okay as he took it for a walk afterward. I also find T.K. accurately relayed her conversation with the Appellant when she asked if he had thrown his puppy across the room after it defecated and he confirmed that yes, he had and what was wrong with that? I find that these disclosures are both compelling and consistent, and I find that they are credible. These two witnesses' testimony is supported by two very compelling incidents that happened afterward.
196. The first incident is that Dr. Walton described the obvious injury to Koba as having been the result of tremendous force in a downward and backward motion, such as the motion required to grab a dog by the hind legs and the dog either thrashing about or being thrown. I accept Dr. Walton's opinion that the injuries, which are not in dispute in my view, are likely the result of some large force trauma, and not any other reason. When questioned on

causation, Dr. Walton said he was 99 % sure it was trauma – the type which resulted from a downward and backward yanking of the dog’s back leg, and if the injury was instead due to some deficiency in the dog, there would be other signs of disease and specifically signs of the disease in other joints, which were all absent. He testified there was no other explanation for Koba’s injury other than trauma.

197. The second incident comes from the Appellant himself. He did not take Koba to the veterinarian after his disclosure at the group counselling session. He also did not take Koba to the veterinarian after T.M. had brought the unusual gait to the Appellant’s attention at some earlier time in April or May. The Appellant said both that he took the dog to the vet on that particular day (June 2, 2017) as the dog’s vaccinations were due, and he said that he happened to be driving by the vet clinic, neither of which I find to be credible. What is much more credible to me is that the Appellant took the dog to the veterinarian on June 2, 2017 after the Society caused a notice to be delivered to his door earlier that same day and after the Appellant had left a voice mail message for SPC Ott. I find that this is the only reason for his visit to the veterinarian which is supported by the fact he did not get vaccinations and did not otherwise follow veterinary advice, and why he told the veterinarian the unusual gait was fairly recent, contrary to his testimony before me that the unusual gait was from birth.
198. I also conclude that the first time the Appellant asked the breeder (E.R) for information about Koba’s gait was in a June 1, 2017 email, one day after T.K.’s conversation with the Appellant on May 31, 2017 when she told him she would be reporting him to the Society. I find this timeline compelling and I conclude that the Appellant only sought veterinary care and breeder advice (based on his statement that the gait issues were recent) when he realized he was being reported. From this I also conclude that the Appellant did not seek veterinary care or relief from the dog’s pain and suffering (he did not follow any course of treatment) for the dog’s own best interests or well-being but only to serve the Appellant’s own needs.
199. This conclusion is further supported, although it does not need support in my view, by the testimony of the City of Vancouver Impound Animal Control Officer B.C. that Koba did not walk with a limp on May 20, 2017 and walked normally for 50- and then for 75 feet. This is also supported by the records from the Impound that stated Koba was in good body condition with no signs of injury. As I have accepted Dr. Walton’s and SPC’s Ott’s testimony that the injuries they saw were obvious to an untrained eye, had Koba been injured on May 20, 2017, I am satisfied that B.C. would have observed limping and would have recorded that observation.
200. As a result, I conclude that Koba was in distress at the time of his seizure as a result of a traumatic injury inflicted by the Appellant several days before. The uncontroverted evidence of the Society’s veterinarians is that Koba was in pain and suffering, having had his right rear leg ripped out of its hip socket.

Return of the dog Koba

201. Having determined that the seizure of the dog was justified, I now consider the return of this animal.

202. The *PCAA* describes the 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.

203. 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.

204. 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.

205. As made clear in *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at paras. 37-38, section 11 of the *PCAA* allows the Society to consider the circumstances as a whole. It does not require the Society always to give a person a "second chance" or numerous "second chances".

206. In this case, for all the reasons set out above I find that the Society was right to remove Koba when it did. The Appellant had been cautioned in 2015 about harsh training methods for his previous dog King when someone complained that he was yelling at his dog which was "screaming." I conclude that at least once in the past, the Appellant had expressed some degree of anger or rage toward his dog and had caused a negative reaction in the dog, and I find that the Appellant has repeated this behaviour with Koba.

207. The Appellant provided no information on how he is controlling his anger or even his irritation, as he describes it. I find that his not-so-veiled threat to T.K. was an overt sign that he is willing to act on his anger. In my view it does not support his assertion that he has never and would never hurt his dog.

208. With Koba, I find that the Appellant brutally and purposefully abused his dog. This was not an accidental bump or fall that caused traumatic injury to Koba. This was not a person using harsh training methods and inadvertently injuring their own animal (which I am not saying is an acceptable thing to do). I accept the version of events recounted in the Appellant's group counselling session, as detailed by B.S. and T.K. that his dog Koba did some act which provoked the Appellant to corporally punish his animal. I find that the Appellant threw his dog across the room. Afterward, as the Appellant disclosed, he likely did walk his dog thereby proving, at least to his own satisfaction, that the dog was not injured.
209. Not only do I find the Appellant did abuse his dog, I find his callous attitude toward his dog showed a lack of remorse, compassion or even humanity and, in my view, provides me with ample reason to determine that a second chance is not warranted with this Appellant and this dog Koba. Koba has suffered enough at the hands of the Appellant. For clarity, I also find that if the dog were to be returned to the Appellant, Koba would most certainly again experience abuse at the hands of the Appellant.
210. I find that the Appellant would not seek appropriate and timely veterinary care for his dog if it were returned. When the Appellant had an opportunity to provide his submission, he only provided a copy of recently acquired pet insurance as his sole submission. Although I am in no position to interpret the insurance, it seems clear from the wording of the exclusion that a pre-existing condition such as the leg and gait problems shown by Koba prior to the effective date of the insurance policy would not be covered. The insurance seemed to be the key point in the Appellant's plan to care for his dog moving forward. Failing having insurance that would cover Koba's necessary veterinary care, the Appellant said his back up plan was to find some organization to step in and pay for Koba's expensive surgery. The Appellant said he had heard such groups existed, and would need to investigate to find them. He was confident it would not be a problem.
211. I disagree with the Appellant and I find that he has done nothing to create a back-up plan, should there be no insurance coverage. He has not identified any organization that would pay for an animal's surgeries and veterinary care. I am also mindful that when the Appellant did take Koba to the veterinarian once, on June 2, 2017, he declined all veterinary recommendations. I therefore am not confident that the Appellant would seek necessary veterinary care for his dog.
212. I find, as I have already detailed, that the Appellant would not seek care for his dog in the dog's own best interests but instead only sought care to suit his own purposes when it became clear to him that he was being reported.
213. The Appellant, in his defence, said his dog is obedient and walks beside him without a leash and looks at him and makes eye contact, and the Appellant denies throwing his dog, but I am mindful that the Appellant also tempered his denials with modifiers like he can't recall, or it doesn't sound like him, or his criminal record doesn't show violence, or that he may have said it sarcastically, or that he experiences irritation at the program and has issues with B.S. and T.K. so he talks to them in a certain way.

214. The Appellant said his witnesses see him with his dog being calm and loving and the dog reacts with the same love. The Appellant submits photographs of a gorgeous and playful looking dog but none of these things, according to Dr. Walton, run contrary to the behaviour of a dog that has been abused. This case presents the possibility that a person can profess love for an animal and can garner that animal's affection in return, yet concurrently cause that animal distress. That is what I find here. Dr. Walton said a dog could be abused by its owner and still show loyal obedience. I find in the totality of all the evidence, that this lovely obedient dog Koba behaved thus even though it had been abused by the Appellant. It gives me no pleasure to arrive at this finding.
215. Given the above and all the written material and testimony, I find that I cannot order the return with or without conditions. Given the Appellant's threats to counsellors and given the nature of his abuse of his dog, I cannot contemplate any condition that would give me comfort that Koba would be protected. For Koba's own best interests, I cannot order him returned to the Appellant.

XI. ORDER

216. 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).

217. It is my order, pursuant to section 20.6(b) of the *PCAA*, that the Society be permitted in the Society's discretion, to destroy, sell or otherwise dispose of the dog Koba. It is my sincere wish that the Society find a new owner for Koba who can provide the necessary veterinary care to return Koba to good health as Koba is a dog that, in my view, deserves a chance to be happy and healthy and pain-free.

XI. COSTS

218. 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:

(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).

219. Regarding costs of care for Koba, the Appellant said the Society took his dog and he has the right to fight back and he does not understand why he should pay their bills and he would have had (and now has) insurance in a few weeks so that would have paid for the x-rays and possible surgery. Now the dog is locked in a cage which doesn't suit Koba and the Society wants the Appellant to pay and that doesn't make sense. The Society should cover their own expenses and he should cover his own. The Appellant said he specifically told the Society not to do surgery and to only give medication for pain and "they went ahead without permission and did surgery at their own discretion so the costs are on them not me."
220. The Society submitted that it incurred and continues to incur expenses with respect to Koba, including costs associated with providing Koba with food, shelter and other care. The Society's position on costs is that Marcie Moriarty's affidavit addresses the issue of costs and all costs listed in the affidavit are based on an August 10, 2017 decision date and the Society claims a per diem if the decision is later than August 10, 2017.
221. Subject to the release of the Decision in this proceeding on August 10, 2017, the Society is seeking costs in the total amount of \$1,937.25, pursuant to s. 20 of the Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372 as follows:

- A. Veterinary Costs: \$725.34
- B. SPCA time attending to seizure: \$136.50
- C. Housing, feeding and caring for Koba: \$1,075.41
- D. TOTAL: \$1,937.25

The veterinary costs are found at Tab 27 in the Binder totalling \$725.34.

The Society also incurred labour costs respecting its special provincial constables' investigation and seizure of Koba. I estimate costs associated with investigating, seizing and transporting Koba on the seizure date at approximately \$136.50 (\$22.75 per hour x 3 hours (approx.) x 2 Society staff).

The Society's costs to house, feed and care for Koba at the Society's premises is at the sum of \$17.07 per day (63 days — June 9, 2017 to August 10, 2017 (being the anticipated date of the BCFIRB Decision)) x 1 dog = \$1,075.41. The sum of \$17.07 per day 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

222. There were costs incurred by the Society to care for Koba. I do not accept the Appellant's submission that each party should foot their own bill during the dispute, given that the Appellant has been found to have injured Koba and thereby caused distress. I have found that Koba was in distress and validly seized; that the Appellant did cause the distress in Koba and would not protect Koba from future distress; and that the Society in fact was caring for his dog when it was his responsibility to do so. The Appellant should have sought and followed veterinary advice and should have sought it immediately upon Koba's injury; never mind that he shouldn't have caused the injury in the first place.
223. The Appellant has provided no compelling information on why the costs of the Society are not reasonable and why he should not be liable for them. Therefore, I find that the Appellant is liable for the entire costs claimed, namely \$1,937.25.

XII. ORDER

224. It is my order that the Appellant pay to the Society the amount of its care costs of \$1,937.25, the full amount he is liable for.

Dated at Victoria, British Columbia this 10 of August 2017.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Vice Chair
Presiding Member