

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

BETWEEN:

C. S.

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Peter Donkers, Presiding Member
Daphne Stancil, Member

For the Appellant:

Self-represented

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

August 16, 2018

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*) related to the seizure of one dog.
2. The Appellant appeals the July 13, 2018 review decision (Decision) issued under s. 20.2 (4)(b) 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).
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. Under the *PCAA*, appeals to BCFIRB are broad in nature, as set out in detail in *BC Society for the Prevention of Cruelty to Animals v. British Columbia Farm Industry Review Board*, 2013 BCSC 2331.
4. The Appellant represented himself and gave evidence and called two additional witnesses, G.O. and J.J.S. The Society was represented by counsel and called the treating veterinarian and the attending Special Provincial Constables (SPC). The hearing was recorded.
5. For reasons explained in detail later, the Panel has decided that the animal in question (one hound mix female spade dog) will not be returned to the Appellant and pursuant to s. 20.6(b) of the *PCAA*, the Society is permitted, in its discretion, to destroy, sell or otherwise dispose of the dog. We have also decided that the Appellant is liable to the Society for the amount of as the reasonable costs (**\$2,366.83**) incurred by the Society with respect to the animal.

II. Preliminary matter

6. On July 24, 2018, the Society applied pursuant to section 42 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (*ATA*) to provide a redacted record of the documents related to the Information to Obtain a Search Warrant (ITO) filed by the Society. The Society obtained a Sealing Order related to the ITO based on a finding by the Judicial Justice of the Provincial Court that there were reasonable grounds to believe that there were serious safety concerns for the third parties that made the initial complaint to the Society.
7. On July 25, 2018, in written reasons, the presiding member granted the Society's application to provide the disclosure package to the appellant with the redactions proposed.

III. Material admitted on this appeal

8. The following materials were admitted into evidence:
 - a. BCSPCA July 13, 2018 Decision (Exhibit 1)
 - b. Appellant July 17, 2018 Notice of Appeal filed (Exhibit 2)
 - c. Appellant July 18, 2018 Notice of Appeal & filing fee Front Counter BC (Exhibit 3)
 - d. BCFIRB July 18, 2018 NOA letter (Exhibit 4)
 - e. BCSPCA request to change hearing date (Exhibit 5)
 - f. BCFIRB response granting extension date by one day (Exhibit 6)
 - g. BCSPCA July 19, 2018 Sealing Order request (Exhibit 7)
 - h. Letter from BCFIRB legal counsel to BCSPCA re: Sealing Order (Exhibit 8)
 - i. BCSPCA July 24, 2018 s. 42 application (Exhibit 9)
 - j. BCFIRB Disclosure Decision July 25, 2018 (Exhibit 10)
 - k. BCSPCA initial disclosure (Tabs 1-20) (July 26, 2018 by email and by courier) (Exhibit 11)
 - l. Appellant initial disclosure email submission (4 photographs/witness name) (Exhibit 12)
 - m. Appellant initial disclosure email submission (14 photographs) (Exhibit 13)
 - n. Appellant initial disclosure email submission (2nd witness name) (Exhibit 14)
 - o. BCSPCA submissions (August 7, 2018 by email and courier) (Exhibit 15)
 - p. Affidavit #1 of Marcie Moriarty (August 7, 2018 by email and courier) (Exhibit 16)
 - q. BCSPCA Witness contact form - SPCs Affleck and Morrison (Exhibit 17)
 - r. BCSPCA Expert witness contact form - Dr. Langelier (Exhibit 18)
 - s. BCSPCA updated document disclosure index (Exhibit 19)
 - t. BCSPCA Tab 21 (Exhibit 20)

9. The teleconference began at 8:30 a.m. and concluded at approximately 3:30 p.m. after the panel heard closing submissions.

IV. Procedural history

10. The Society's Shelter Buddy records indicate that on June 29, 2018, SPCs Affleck and Morrison responded to a telephone complaint about a dog being physically abused. On arriving at the Appellant's residence, both SPC Affleck and Morrison heard a dog yelping and a male voice yelling and swearing. The SPCs left the premises and contacted the RCMP to attend for peace keeping assistance.

11. These same records show that later on June 29, 2018, SPC Affleck and Morrison returned to the Appellant's home with an RCMP member and spoke with the Appellant and the

Appellant's mother who was visiting. SPC Affleck explained to the Appellant the nature of the complaint received (he was heard yelling and seen throwing his dog) and his own observations of screaming and the dog yelping upon the SPCs earlier attendance. The Appellant was described as agitated, hostile and aggressive towards the SPCs and his mother. The Appellant's mother quietly told the SPCs to "get that dog out of there and away from him". The SPCs observed the dog shaking, cowering and tucking in its tail when the Appellant tried to reach for it. SPC Affleck gave the Appellant a Distress Notice requiring him to immediately cease harsh and inhumane training, disciplinary or handling techniques or physical abuse which was refused. The Appellant hoisted the dog over his shoulder and the dog tucked in her tail and shook.

12. On June 30, 2018, the Society obtained a warrant to enter the Appellant's property. At the same time, the Society applied for and received a Sealing Order for records pertaining to the Search Warrant.
13. Later on June 30, 2018, SPCs Affleck and Morrison arrived at the Appellant's home with the RCMP. The Appellant was not at home so SPC Affleck contacted him at work and advised that he had a search warrant to seize the dog and would leave a copy of the warrant, Notice of Disposition (advising that the dog had been removed pursuant to section 11 of the *PCAA* as it was found to be in distress) and instructions taped to the Appellant's door. The Appellant indicated he would come home and asked SPC Affleck to wait half an hour. SPC Affleck indicated he would not wait and hung up. He crated the dog, taped the documents to the door and took photographs. The Appellant's boss arrived at the property and indicated the Appellant was on his way; he then called the Appellant and put him on speaker phone. The Appellant was extremely agitated during this call.

V. The Review Decision

14. As noted above, the dog was removed on June 30, 2018. The Appellant sought a review of Chief Prevention and Enforcement Officer Moriarty's Decision of July 13, 2018 pursuant to s. 20.2 of the *PCAA*.
15. Ms. Moriarty concluded firstly that having met the definition of distress, the animal was removed in accordance with the *PCAA* and the Appellant was either unwilling or unable to relieve that distress. Ms. Moriarty summarized the veterinary evidence as follows:

Photographs were taken of [REDACTED] neck and throat where there were several red inflamed lesions. Upon receiving the photographs and in further submissions, you stated that [REDACTED] was in a dog fight in November, 2017 and that was the cause of these marks on her neck.

I refer you to Dr. Langelier's report in which he states the following:

All three (*collar, bandana, tubular neckpiece around [REDACTED] neck*) if tightened matched up to the red inflamed areas of skin below them...the lesions on [REDACTED] represent a constriction event within 48 hours of presentation.

As Dr. Lengelier points out in his report that the marks and injuries were sustained no more than 2 days prior, and there is no indication of any type of puncture wound that may come from another dog's teeth as suggested in your submissions, I do not accept your evidence that these injuries were caused by a dog fight, specifically not one as far back as November.

To expand on your submissions around this issue, I note that at no time did you offer a vet report to the Society relating to injuries sustained by [REDACTED] during this dog fight, nor did you offer an animal control report or file number. I would assume if [REDACTED] sustained injuries as you have described, she would have needed medical treatment at the very least. The only confirmation you present of this dog fight, where [REDACTED] was allegedly attacked in the neck, is of a hand written note by someone named Tory.

16. Ms. Moriarty discounted the 53 signatures of the Appellant's neighbours attesting to him being a responsible pet owner as she found no evidence of how they would know he was in fact a responsible pet owner.
17. Ms. Moriarty was perplexed why the Appellant did not offer any alternative explanation to the allegation that he was physically abusing his dog. While the Appellant stated he offered "a safe, loving and familiar home", Ms. Moriarty concluded that while the home may be familiar and the Appellant may feel that it is a loving home, she could not conclude that it was a safe home. She concluded it was in the best interest and safety of the dog to not be returned.

VI. Grounds of Appeal

18. In his Notice of Appeal, the Appellant denies that his dog has ever been in distress. He alleges the dog is well fed. He describes his dog as a service dog to help him with his high anxiety disorder and alleges his neighbour who does not like him "started this mess".

VII. Appellant's Evidence

19. At the outset of the appeal, the Appellant advised that he did not have the documents previously submitted for the appeal or the documents to be submitted as exhibits with him. He indicated that he was "barely literate", and said he does not really know what the documents say and mean. He relied on his boss, G.O. to explain the content of the appeal documents to him and to assist him with composing emails as necessary to proceed with this appeal. He did recall the photographs that he submitted as evidence in

this hearing and understood that he was appealing the seizure of his dog by the SPCA (Society) and he wanted her returned to him.

20. The Appellant says that he is a good dog owner and everyone who knows him, knows him as a good dog owner. His dog serves as a therapy dog for him, helping relieve his anxiety. Feeding her, walking her and generally looking after her gives him a sense of accomplishment. The Appellant provided the Society with the signatures of 53 individuals attesting to his being a responsible pet owner.
21. The Appellant testified that he has owned his dog for approximately four years, since she was a puppy. He was “there when she was born”. He has been the sole owner and guardian. He had the dog spayed at five or six months of age; she has never been mated and has no medical issues. He keeps her shots up-to-date. She has no allergies, has her teeth cleaned by an animal dental hygienist and that she is almost always with him.
22. The Appellant described a typical day of waking and walking the dog in the morning. On days when he is not working, he walks the dog in the city all day or he takes her on a hike. On a short workday, he will take her to work with him. On other days, she stays home where she always has access to a fully fenced patio, water and food. His father and upstairs neighbour check in on the dog from time-to-time.
23. The Appellant testified that he has occasionally left his dog with his father who has an intact Samoyed dog. The Appellant was asked if he had read the report from forensic veterinarian Dr. Melinda Merck and her observations that there was localized trauma to vaginal tissues that were healing and resolving; his explanation was that the intact Samoyed was left with his dog on occasion and it may have caused the trauma. The Appellant testified that he was told that “nothing would happen because his dog was fixed” and that leaving her with an unfixed dog “would be okay”.
24. As for the marks on his dog’s neck, the Appellant testified that his dog was attacked by a pit bull in October 2017 at his cousin’s home. He says it was a serious attack and the pit bull was “put down” after the incident. He says he cleaned the cuts after the attack and took the dog to a veterinarian two days later to have them checked. The dog suffered bruising and had two cuts on the right side of her neck. This was the only reason he could think of as to why she had the marks on her neck seen in the photographs. He denied choking his dog.
25. When asked to recall the events of June 29, 2018 and the visit of SPC Morrison and Affleck and the RCMP officer, the Appellant said he had no recollection of yelling at his dog and disputes she was yelping before or during their visit. He has no recollection of SPC Affleck advising him that the Society had received a complaint that he had thrown his dog or telling him it was not okay to throw her. He said he would not be able to throw his dog in any event due to arthritis in both hands.

26. When asked if he recalled threatening SPC Affleck saying that he would “kill anyone who took his dog”, the Appellant said he made the threat but only after asking the RCMP officer first if he could “speak his mind”.
27. The Appellant testified that he has never hit his dog; that it is okay to hit people but not dogs because “animals don’t know any better”. He also testified that it is “okay that I yell at (her) in frustration” because she “pees” in the house. He says he yells to correct the dog’s behavior. She may “pee” seven to twelve times a month in the house and she sometimes yelps when he yells at her. As his therapy dog, his evidence is that she “feeds off” his emotions.
28. The Appellant conceded that he called his mother on June 29, 2018 asking her to come to his house, but he disputes saying that he was going to kill his dog. He did acknowledge having a poor relationship with his mother.
29. The Appellant testified that on the day of the seizure, June 30, 2018, he was working in Chemainus. SPC Affleck telephoned him advising him of the warrant and the Society’s intent to remove his dog. He says he did not ask SPC Affleck the reason for seizing his dog but says he immediately went into a severe panic attack. He telephoned his boss (G.O.) and asked him to go to his house. He says he was so distraught he wanted to throw himself out of the moving vehicle returning to Nanaimo.
30. The Appellant called two witnesses. The first witness, G.O. testified that he is branch manager for a moving company in Nanaimo and the Appellant’s boss. He knows the Appellant well as an employee and as a dog owner. He describes the dog as extremely playful and loving when in the Appellant’s care. He has never seen the dog cower or show fear when she was with the Appellant. He says the Appellant loves the dog a lot and would do anything for her, often putting her needs before his own. G.O. describes the Appellant as a reliable employee and responsible pet owner.
31. G.O. acknowledged that the Appellant is “complicated” and that he will lose his temper when faced with issues, although he appears to be getting better. G.O. says that he sometimes has to reframe or re-articulate instructions in a different way so that the Appellant understands. G.O. confirmed that he assisted the Appellant with this appeal by reading documents to him, ensuring he understood them and assisting him with preparing responses. When asked under cross-examination if he believes that the Appellant is doing a good job as a pet owner, G.O. responded that the Appellant was doing an “okay” job.
32. G.O. testified that he was present at the property when the dog was seized by the Society. He says it took approximately ten minutes for SPC Affleck to exit the house with the dog. The dog immediately recognized him and it took a further ten minutes to reassure and calm her.

33. G.O. testified that he was concerned for the Appellant's well-being. When the Appellant arrived home, there was an agitated conversation between the Appellant and the RCMP officer that lasted approximately thirty minutes about the Society's right to enter his house. G.O. and the Appellant then turned their conversation to the return of the dog.
34. The Appellant also called J.J.S. as a character witness. J.J.S. has known the Appellant for four years. For six months, the Appellant rented a room in J.J.S.'s house. J.J.S. testified that he never witnessed the dog demonstrate any fear with the Appellant and that the dog would "freak" without the Appellant. J.J.S. stated that the dog would "pee" when excited. He says that his family owns a number of Chihuahua dogs that get along well with the Appellant's dog. J.J.S. described the Appellant as "hot headed" and says he "was stupid" with the SPCA officer.

IX Respondent's Evidence

35. SPC Morrison has been an SPC with the Society since 2013 prior to which she worked as an Animal Care Attendant between 2007 and 2013. She testified that she was on desk duty on June 29, 2018 when she received a phone call regarding an "abuse in progress". The caller indicated that there was screaming from a man, that a dog was yelping and screaming and that she, the caller, was afraid of the man.
36. SPC Morrison advised that when she and SPC Affleck arrived at the Appellant's property (later that same day) they could hear yelling and screaming, including a man yelling "fucking whore". She could hear a dog yelping. Deciding that it was not safe to attend the property without RCMP support, SPC's Morrison and Affleck drove down the road and waited for the arrival of RCMP. SPC Morrison testified that it took about 15 minutes for the RCMP to arrive.
37. With the RCMP Officer in support, SPC Morrison testified that she and SPC Affleck entered the property and she was surprised to still hear a man yelling. She says SPC Affleck introduced the attending officers and explained the reason for their attendance indicating that a complainant had heard him yelling at his dog and observed him grabbing and throwing her. SPC Affleck also indicated that the SPCs had heard the dog yelping and a man screaming and swearing. She described the Appellant as very agitated and pacing around. He denied throwing his dog but did acknowledge yelling at his dog which he did to correct behavior. The Appellant brought the dog outside where SPC Morrison observed the dog to be cowering, cringing with her tail tucked so far between her legs that it was touching her underbelly.
38. SPC Morrison testified that the Appellant's mother was present along with an upstairs neighbour. SPC Morrison says the Appellant's mother pleaded with the Society's officers to "take the dog away from him".

39. SPC Morrison testified that she and SPC Affleck had a phone conversation with the Appellant's mother on July 11, 2018 where she indicated her concern that the dog was being sexually abused.
40. SPC Morrison also testified that on July 12, 2018, she telephoned the Appellant's mother and her husband R.L. who both indicated concerns for the Appellant and his dog. R.L. stated the dog was afraid of the Appellant and would be better off away from him. He also said the Appellant told him that he has hit the dog.
41. SPC Morrison spoke with the Appellant's mother by telephone again on July 17, 2018 asking her to provide a statement but that she declined to do so citing personal safety concerns.
42. SPC Affleck also testified. He has been employed by the Society for about three years and has participated in about 2000 animal cruelty investigations. SPC Affleck testified that on June 29, 2018 he and SPC Morrison arrived at the property and parked at the edge of the driveway, approximately 20-30' from the house. He heard a dog screaming and yelping and a man yelling "fucking whore". SPC Affleck testified that given that the complainant had indicated that the Appellant was very volatile and had concerns about her safety, they decided to call for RCMP support and wait for the RCMP officer to arrive. When they returned to the Appellant's property with the RCMP, he again heard a man screaming and a dog yelping.
43. After introducing the officers and explaining the reason for attendance, SPC Affleck issued a Notice of Distress to the Appellant requiring him to immediately cease harsh and inhumane handling techniques. The Appellant refused to accept the Notice so SPC Affleck explained the Notice and placed it on a table close to the Appellant. The SPCs then left. SPC Affleck acknowledged that the Appellant's mother was present and in his view, she was making the situation worse.
44. Later that day, SPC Affleck met with the Appellant's mother at her home. She informed SPC Affleck that the Appellant had called her earlier that day and requested that she take his dog as he was "going to kill her". The Appellant's mother indicated that during the call, the Appellant told her that he had choked the dog until she almost stopped breathing and that the dog had urinated on the floor. She told SPC Affleck that she has received multiple calls from the Appellant where she can hear him yelling at the dog.
45. SPC Affleck said that while the Appellant's mother allowed her name to be made public, she refused to testify as she and her husband (R.L.) were concerned for their safety and the safety of their other children. The Appellant's mother indicated to SPC Affleck that the Appellant has not only threatened to kill his dog but other people as well.

46. SPC Affleck testified that he filed the ITO which resulted in a warrant being issued by a Judicial Justice of the Provincial Court on June 30, 2018. He says he sought the warrant because of the information relayed by the Appellant's mother, that the Appellant told her that he almost choked his dog to death. SPC Affleck then attended at the property with an RCMP officer to seize the dog.
47. SPC Affleck testified as to the events on the day of the seizure. He says that when he found no one home when he arrived at the property, he called the Appellant to advise that he had obtained a warrant and was going to seize the dog as he believed her to be in distress. SPC Affleck entered the home through a front window where he found the dog in a corner of the kitchen. He called to her and she immediately urinated and defecated on the floor. The upstairs tenant leashed the dog and then SPC Affleck walked the dog out of the house. He loaded her into a crate and secured the crate in his vehicle for transport. SPC Affleck noted the dog was wearing three collars, a bandana, over which there was a smaller cloth collar and above which there was a typical woven collar.
48. SPC Affleck testified that the Appellant's boss G.O. and the RCMP officer were talking to the Appellant on the phone as he seized the dog and that the Appellant stated he was on his way home. SPC Affleck posted a copy of the warrant, the Notice of Disposition and instructions on the front door of the house then left the property and took the dog to the veterinary clinic.
49. Dr. Langelier testified at the hearing. He is a veterinarian who graduated in 1981 and practiced veterinary medicine in Nanaimo since 1982. He has 10 years' experience working on animal care matters and has worked on over 50 animal cruelty investigations. He was awarded the Order of British Columbia for his work as a veterinarian including work toward the elimination of lead shot used in hunting and for his work in animal cruelty matters. His practice includes small animals, wildlife and exotic animals.
50. Dr. Langelier provided an undated report (forwarded to the Appellant on July 11, 2018) that sets out his findings with respect to the first examination of the dog.
51. Dr. Langelier testified the dog was initially examined by attending veterinarian Dr. Large, who noted the dog was nervous leaving the kennel but friendly once out. The dog was relatively healthy although slightly thin. Her nails were overgrown but not piercing the pad. Dr. Langelier arrived later at the clinic and did his own examination. He testified that he had no concern about the dog's body condition.
52. The attending veterinarian and technician shaved the dog's neck which revealed three ligation marks or red lines, which Dr. Langelier testified were evidence of a traumatic event. He described the lines as linear circumferential red inflamed areas with superficial edema or swelling and noted that when the dog was assessed, she was wearing three collars including a firm 1 1/2" nylon collar with a plastic clip, a cotton and plastic tubular

neck piece (a buff) and a cloth bandana. Examination of the collars did not reveal any imbedded blood or hair.

53. Dr. Langelier testified that blood was collected to see if the bruising could have been caused by an underlying bleeding disorder but the results indicated that blood values were within or close to normal, ruling out an underlying medical cause.

54. Biopsies of skin were also taken and examined by a veterinarian histopathologist. Dr. Langelier's report states:

Biopsies of the skin in the affected areas revealed acute inflammation (within 24 to 48 hours). The pathologist commented that he could ascertain whether it was an acute allergic or traumatic event such as constriction as the two can look very similar but that if the distribution and clinical appearance was not typical of an allergy he would believe it to be a constricting event. He said that the trauma was severe enough to cause edema (fluid within the top layers of the skin) but not severe enough to break blood vessels.

55. Dr. Langelier's opinion is that the marks on the dog's neck could only be caused by a constriction event within 24 to 48 hours of presentation. The histopathology report ruled out other underlying disease and the superficial trauma was not typical of an allergy. The location and distribution of the marks match the location of the three collars worn by the dog and suggest a significant trauma requiring significant force (pulling harshly or tight pinching) not merely the pulling of the collars. The eroding of the epidermis suggested something had been rubbed on the top layer of the skin resulting in the abrasion of the skin. He concluded that the marks were due to the rubbing of the three collars as they were too far apart to be due to fingers of a person's hand. When asked if the marks might have been caused through an attack by another dog, Dr. Langelier indicated that he was 100% certain that they were not.

56. Dr. Langelier testified that on July 12, 2018 he conducted a second examination of the dog at the request of the Society following allegations that dog may have been sexually abused. Dr. Langelier conducted an internal examination and using a vaginal scope. He collected swab samples for DNA analysis and tissue samples for biopsy. Biopsy findings included a hemorrhage with accompanying mild necrosis and reactive fibroplasia indicating that there had been a recent trauma in the dog's vagina. The DNA was not sent for testing as the results would not have been ready for this hearing.

57. Dr. Langelier's report and the biopsy results were sent to forensic veterinary specialist Dr. Merck for review. Dr. Merck confirmed that the lesions on the dog's neck were consistent with either finger marks or marks from the dog's collars. She also found that "the fact that [the lesions were] present, with swelling/edema. 24 hours later is significant as an indication of the level of trauma. Regarding the vaginal findings, Dr. Merck confirms localized trauma and that the healing is consistent with trauma prior to the 12 days in custody.

58. In response to questions by the Panel, Dr. Langelier testified that the vaginal trauma would only be possible through penetration. When asked whether penetration might have occurred as a result of a sexual interaction with a male dog, Dr. Langelier indicated that, while possible, a spayed female is usually not receptive to sexual advances by a male dog. Dr. Langelier concluded that the dog suffered a significant vaginal trauma due to an unknown cause.
59. When asked if he would have any concerns about returning the dog to the Appellant, Dr. Langelier testified that he had extreme concerns. He is confident that the marks on her neck were not from a dog fight for several reasons: there were no teeth marks on the skin, scars from teeth marks would not turn red when shaved, the investigation of the cells through histology would show damage and did not, and the hair on the neck had grown properly. Although he cannot give 100% assurance of the cause of trauma to the neck, Dr. Langelier stated he is confident that the marks are due to a trauma to the neck from the three collars.

IX. Decision

Distress

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

1 (2) For the purposes of this Act, an animal is in distress if it is

(a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,

(a.1) kept in conditions that are unsanitary,

(a.2) not protected from excessive heat or cold,

(b) injured, sick, in pain or suffering, or

(c) abused or neglected.

11 If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal

(a) does not promptly take steps that will relieve its distress, or

(b) cannot be found immediately and informed of the animal's distress,

the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

61. The Appellant maintains that his dog was not in distress. He says that Ms. Moriarty's Decision was wrong as he is a responsible pet owner with a deep emotional connection with his dog. He acknowledges yelling at his dog but says he does this to correct poor behavior. He disputes ever choking his dog. He says his dog serves as a therapy dog and he is concerned for the dog and himself if they are not allowed to reunite.
62. The Society's position is that Ms. Moriarty's Decision was correctly and reasonably decided. Based on the expert evidence of Dr. Langelier and the consulting veterinarians, it argues the dog was in distress at the time of seizure as the result of an attempted asphyxiation by strangulation. While the Society focuses on strangulation, it also submits that the sexual abuse allegations against the Appellant are of great concern. While the medical evidence is inconclusive and it was not possible to confirm exactly how the dog's vagina was injured, the test results and veterinary findings are clear that the dog sustained a trauma to her vagina while in the Appellant's care.
63. The Panel has considered the evidence around the state of the dog at the time of the seizure. Both SPCs testified to hearing verbal abuse and a dog yelping when they first attended at the Appellant's home on June 29, 2018. When the SPCs returned to the Appellant's home with the RCMP some fifteen or so minutes later, they heard the verbal abuse continuing. They observed the dog cowering in the presence of the Appellant. While the Appellant did not agree with the SPCs characterization of these events and attempted to minimize any verbal abuse or its impact, we prefer the evidence of the SPCs.
64. In the Panel's view, the SPCs evidence of prolonged verbal abuse (for at least 15 minutes) being directed at the dog on June 29, 2018, one day prior to the seizure, coupled with their observations of the dog's demeanor (cowering and cringing with her tail tucked between her legs) would in our view demonstrate emotional abuse sufficient to meet the test that the dog was in distress sufficient to warrant the seizure of the dog.
65. However, we note the definition of what constitutes distress in s. 1(2) of the *PCAA* is broad and the Panel heard a great deal more about the dog's distress relating to factors other than verbal abuse and relating to physical injury and deprivation of veterinary care. We turn now to consider those allegations of distress.
66. The SPCs notes and testimony in the hearing referred to conversations they had with several third parties where allegations of physical and verbal abuse and threats were recounted. The substance of these allegations included threats by the Appellant to kill his dog, his mother, anyone who tried to take his dog, SPC Affleck and himself. The Appellant's mother and R.L. expressed concern about the dog's safety. More troubling, the Appellant's mother recounted a phone conversation earlier on June 29, 2018 with the Appellant who asked her to come get the dog as he was threatening to kill her; he admitted choking the dog until she almost stopped breathing. The Appellant's mother in

a later conversation advised the SPCs that she was also concerned that the dog was being sexually abused.

67. While these allegations are troubling, the Panel notes that they originate in the notes of the SPCs and were relayed in their testimony. These allegations were not made by a witness appearing before the Panel in this hearing and as such the allegations were not tested on cross examination. They are hearsay. The Panel is not bound by the same rules of evidence that apply in a court of law, as made clear by s. 40 of the *ATA* which applies to BCFIRB, and which ensures that the Panel can make decisions efficiently and based on reliable evidence rather than having to engage in legal discussions that may have little do so with the reliability of evidence or the best interests of animals:

Information admissible in tribunal proceedings

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

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

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

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

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

68. In this case, the Society is not relying on the hearsay allegations of third parties recounted by the SPCs to build their case that the dog was in distress. Rather, the hearsay evidence was used as the starting point for further investigation. The SPCs used the initial complaint to initiate their investigations and then made their own independent observations and testified to those observations before the Panel.
69. Similarly, the Society's veterinarians were made aware of the serious allegations heard during the investigation and the Appellant's various explanations and then were asked for their conclusions about what if any injury or abuse they found and the likely cause of that injury or abuse. The Panel concludes that the unfortunate reality in this case is that the hearsay allegations referred to by the SPCs in the hearing were largely confirmed by the veterinarians' investigations and Dr. Langelier's testimony and specifically, his rejection of the Appellant's explanations for the physical cause of the dog's injuries.

70. Page 1 of Dr. Langelier Report states:

With the history of possible choking injuries, the area over the neck and the chest was radiographed. No fractures or luxations or pools of hemorrhage was noted.

The area over the neck was shaved and **three linear 3 linear circumferential red inflamed areas with superficial edema** was immediately noted. The lesions were most prominent in the lower right area of the neck. When [REDACTED] was presented she had a firm collar, a black and white cloth bandanas and a black and white tubular neck piece. None

of the collars or cloth were too tight, had blood or embedded hair in them. All three if tightened matched up to the red inflamed areas of skin below them.

In my professional opinion, the lesions on [REDACTED] represent a constriction event within 48 hours of presentation. The trauma was harsh enough to cause edema in the top layers of the skin and evidence of inflammation within the skin. The location and distribution would be consistent with a strangulation event from the three collars and I am confident with these findings and would be prepared to testify and defend these opinions in court. [emphasis in original]

71. In an email dated August 3, 2018, Dr. Merck stated:

Vaginal findings: gross findings are a larger area than the biopsy sample is affected and histopath confirms localized trauma, healing/resolving. This is consistent with significant trauma prior to 12days in custody;
72. In his testimony, Dr. Langelier's opinion was that the marks on the dog's neck could only be caused by a constriction event within the past 24 to 48 hours. The location and distribution of the marks matched the location of the three collars worn by the dog and the marks suggested a significant trauma requiring significant force. Dr. Langelier rejected the Appellant's theory that the marks on the dog's neck were from a pit bull attack. In fact his evidence was that he was 100% certain that they were not. In the Panel's view, the fact that Dr. Langelier observed that the linear marks had disappeared by his next examination 12 days later is sufficient to dispense with the Appellant's pit bull theory.
73. With respect to the allegations of sexual abuse, the Panel finds that the evidence is less clear. While we accept the evidence of Dr. Langelier and Dr. Merck that there was evidence of localized vaginal trauma, the cause was undetermined. We do however accept Dr. Langelier evidence that the Appellant's theory, that an intact Samoyed may have penetrated the dog, is unlikely. The Panel is troubled by the findings of significant vaginal trauma and the Appellant's lack of a plausible explanation for the injury that occurred while in his custody.
74. Based on the evidence reviewed above, the Panel finds the evidence of the veterinarians related to the causation of the dog's injuries both credible and uncontroverted. The Appellant's explanations do not accord with totality of the evidence heard. As stated above, the evidence confirms that the dog was being subjected to verbal abuse and the Appellant did not deny yelling at his dog to correct behaviour. Despite the Appellant's denial of choking his dog, the evidence confirms physical injury and that injury likely occurred at the hands of the Appellant. The cause of the vaginal injuries was not determined but the Appellant's explanation was deemed unlikely. The fact remains that these injuries occurred while in the Appellant's care and no veterinary treatment was sought. We have no difficulty concluding that the dog was in distress at the time of seizure due to both physical injury and deprivation of veterinary care.

75. We further conclude, based on the Appellant's abusive behavior directed at both his dog and third parties, that the removal was necessary as he would not have relieved his dog's distress.

Return of the Dog

76. Having determined that the dog's seizure was justified, the Panel turns now to consider her best interests and whether those interests are served by returning her to the Appellant or having her remain with the Society to dispose of at its discretion.
77. The Panel has applied 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.
78. We also note the following passage from *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.):
- The goal and purpose of the act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as the Plaintiff's counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in the distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain the good condition in which it was released into its owner's care.
79. When the Panel takes into account the particular facts and circumstances here, we find that we must agree with Ms. Moriarty's Decision. The Appellant has done little to rebut the allegations of physical abuse. His explanations, that he has a bad relationship with his mother and his neighbour does not like him, do little to explain the physical findings of abuse found by the veterinarians. While the Appellant argues that it is in the dog's best interest to come home to a safe, loving and familiar home, Ms Moriarty's view was that the Appellant's home was not safe for the dog. We agree.
80. The Appellant's explanation that the marks on the dog's neck were the result of a pit bull attack was not borne out by the evidence. Despite numerous opportunities to provide the Society and this Panel with veterinary records which could support this claim, the Appellant failed to do so. As stated above, we prefer the evidence of the veterinarians over the evidence of the Appellant as to the causation of the dog's neck injuries.
81. While the Appellant did try to show that he was a responsible pet owner, we place little weight on the signatures of 53 individuals attesting to that fact. There is no evidence that any of these people knew of the allegations of abuse or that they had anything but a passing knowledge of the Appellant and his treatment of his dog.

82. The Panel did hear from the Appellant's boss G.O. and when questioned he said the Appellant was doing an okay job as a dog owner. He described the Appellant as "complicated" and acknowledged that he loses his temper when faced with issues but it was getting better. J.J.S described the Appellant as "hot headed" saying the Appellant "was stupid" with the SPCA officer. While we find both G.O. and J.J.S. credible and they appear to want to support their friend through a difficult time, their evidence is far from sufficient to outweigh the considerable evidence of abuse recounted above.
83. Given the totality of the evidence, the Panel agrees with the Society that, if returned, the dog would again be abused or neglected, left to endure pain and suffering, and be deprived of adequate veterinary treatment. As such, the Panel concludes that the dog would likely return to situation of distress if she were returned to the Appellant.
84. Further, given the Appellant's history of verbal and physical abuse and his problems controlling his temper coupled with his complete lack of understanding of the impact of his harsh treatment on his dog, in our view, no set of conditions could apply to the Appellant which would be effective. The only way to ensure the dog would be safe would be to impose 24 hour monitoring and that is simply not possible. In the absence of 24 hour monitoring, any return of the dog would be doomed to fail and the Panel has no doubt that she would inevitably be found in distress again.

X. Order

85. We have concluded that the dog at issue on this appeal was in distress, that her removal was appropriate and that she would likely and foreseeably return to situations of distress if returned to the Appellant. Consequently, and pursuant to s. 20.6(b) of the PCAA, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the animals.

XI. Costs

86. Section 20 of the PCAA states:

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

(2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.

(3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.

(4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.

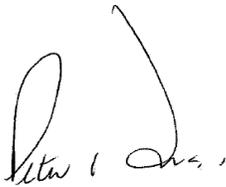
(5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.

87. Section 20.6(c) of the *PCAA* states that on hearing an appeal the board may “confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2)”.
88. The Society has its estimate of costs incurred related to housing, feeding and caring for the dog up to the anticipated BCFIRB decision date of August 30, 2018. In addition, it has outlined costs relating to the seizure of the animal and the cost of subsequent veterinary care. Taken together, the Society asks for the sum of all these costs, \$2,366.83, to be confirmed.
89. The Appellant takes issue with the costs incurred by the Society for vaccines and flea treatment stating that her shots were up-to-date and she did not have fleas. Given that the Appellant has not provided the Society with any veterinary records, we do not accept this argument.
90. The Panel, having reviewed the costs, finds them to be reasonable.
91. The Panel confirms, pursuant to s. 20.6(c) of the *PCAA*, that the Appellant is liable to the Society for the amount of **\$2,366.83** to the Society as the reasonable costs incurred by the Society with respect to the animal.

Dated at Victoria, British Columbia this 30th day of August, 2018.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Peter Donkers, Presiding Member



Daphne Stancil, Member