

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

JAGDEEP GREWAL

APPELLANT

AND

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the BC Farm Industry Review Board: Pawan Joshi, Presiding Member

For the Appellant: Jagdeep Grewal
TG (Interpreting)

For the Respondent: Rylee Hunter, Counsel

Date of Hearing: March 28, 2022

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, Jagdeep Grewal resides at [REDACTED], New Westminster British Columbia (the “Property”). The dog that is the subject of this appeal is Rocky, a 10-month old male black and white Greyhound (“Rocky”).
3. The Appellant resides at the Property with his wife, his two children and his mother.
4. The Appellant is appealing the February 25, 2022, review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the “Society”).
5. Section 20.6 of the *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal with respect to animals, to require the Society to return the animal to its owner with or without conditions or to permit the Society, in its discretion to destroy, sell or otherwise dispose of the animal. 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 at paragraph (24):

“Courts of law are focused on the law and legal principles. BCFIRB appeals are broader than that. There are no limits on the grounds of appeal. BCFIRB has been given broad evidentiary and remedial powers on appeal. While the legislature could have created an appeal or review “on the record”, it has not done so here. Instead, the legislature has gone the other way in these reforms. It has given BCFIRB extensive evidence-gathering powers, some of them to be used proactively. It has made the Society “party” to appeals, and it requires the Society to provide BCFIRB “every bylaw and document in relation to the matter under-appeal” (s. 20.3(4)), which will in many cases be much broader than the record relied on by the reviewing officer. Included in BCFIRB’s powers is s. 40 of the Administrative Tribunals Act: “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.”
6. The Appellant in this case is seeking the return of Rocky.
7. On March 28, 2022, a BCFIRB hearing panel (the Panel) held a hearing via teleconference. The hearing was recorded.
8. The Appellant represented himself, he participated in the hearing with the help of an interpreter TG, who is the Appellant’s niece. The Appellant called three witnesses: BSD, TG and SG.

9. The Society was represented by counsel and called four witnesses: the veterinarian Dr. Mathilde Silvert, Special Provincial Constable (SPC) Felix Cheung, Animal Protection Officer (APO) Sandra Windover, and Bylaw Officer Phil Greene. The Panel accepted Dr. Silvert as an expert witness in veterinarian medicine.

II. Decision Summary

10. For reasons outlined below, the Panel orders that pursuant to section 20.6 of the PCAA that the Society is permitted in its discretion to destroy, sell or otherwise dispose of Rocky, with the obvious hope and expectation that Rocky will be adopted.
11. The Panel finds the Appellant liable to the Society for costs of care of Rocky, in the amount **\$2,114.81**, this being part of the veterinary costs incurred by the Society as well as part of the costs associated with the seizure, housing, care and feeding of Rocky.

III. Material Admitted on this Appeal

12. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1-20 and attached as **Appendix "A"** to this decision.

IV. Events Leading Up to the Seizure

13. On April 6, 2021, the Animal Services Department of New Westminster received a complaint regarding the way the Appellant and his children were providing care to Rocky including the feeding of cow's milk to Rocky. Bylaw Officer Fox and Bylaw Officer Greene attended at the Property and provided some directions to the Appellant with respect to the proper care of the animal.
14. On May 31, 2021, Bylaw Officer Greene returned to the Property to follow up on the advice given to the Appellant in April 2021. Upon arriving the Bylaw Officer found Rocky tied to an igloo dog house at the side of the residence attached to a two-meter leash. Potable Water was present but was not in reach of Rocky. The Bylaw Officer spoke to the Appellant again that day and warned him that he was a breach of the municipal bylaw concerning the proper treatment of animals and verbally warned the Appellant that the issues with Rocky's care needed to be addressed at once. The Appellant agreed to address the concerns.
15. In June 2021, the Bylaw Officer Greene attended at the Property several times. The Bylaw Officer noticed that the concerns brought to the Appellant's attention had not been addressed. The Bylaw Officer advised the Appellant that he continued to be in breach of the bylaw and further mentioned that if he didn't

comply then offence notices would be issued and the Society would be contacted, which could result in Rocky's seizure.

16. In July and August 2021, the Bylaw Officer Greene attended at the Property numerous times. The Bylaw Officer provided an information package to the Appellant as to how to provide care to Rocky. The Appellant did not take any satisfactory steps to address the concerns raised by the Bylaw Officer pertaining to Rocky's shelter, appropriate shade and water. On August 22, 2021, the Bylaw Officer issued an Order of Compliance, asking the Appellant to comply with the following bylaws:
 - All outdoor kennel flooring be sanitized, in Rocky's situation the dirt floor of the kennel was muddy, replace the dirt floor with non-porous material;
 - water containers were muddy, water container must be emptied and cleaned.
 - piles of stool were evident in the kennel and attracting flies, stool must be removed each day;
 - the stuffed toy that was in the kennel was matted with dirt and filthy, dog safe toys are acceptable;
 - piece of wood in the kennel that had a nail protruding from it, remove the objects that could cause any injury;
 - the plastic covering on the kennel was not enough to shield Rocky from sun, all day and rain, roof must provide shade on sunny days and provide protection from the wind and rain;
 - the cushion in the dog house was a porous material and will absorb dampness and will become a source of bacteria. The cushion will also become wet in rain. The inside of Rocky's dog house either could be filled with appropriate fresh straw weekly or indoor/outdoor carpeting, it must be replaced weekly;
 - the dog house will not be legal in winter months as it will not keep the dog warm in colder temperatures. The dog house will be too small when Rocky will be of full size. The dog house must meet City of New Westminster standards;
 - the dirt may be causing a discharge from Rocky's eyes.
17. The Appellant did not comply with the Order of Compliance issued on August 22, 2021. The Bylaw officer issued two Bylaw Offence Notices, the first on September 27, 2021 for a fine of \$150 and the second on October 10, 201 for a fine of \$250. On November 14, 2021, the Bylaw Officer called the Society's hotline to report the concerns regarding Rocky's care.
18. On November 23, 2021, SPC Brittney Collins (SPC Collins) responded to an animal cruelty complaint related to Rocky.

19. SPC Collins attended at the Property and noticed that Rocky had an injured left leg and was living in conditions which were unsanitary and lacked adequate ventilation. SPC Collins issued a BCSPCA Notice to the Appellant. Over the next month, SPC Collins made numerous phone calls to animal hospitals and to the Appellant. SPC Collins determined that the Appellant had not taken Rocky for any follow up treatment and that Rocky had been moved off the Property. SPC Collins concluded her investigation.
20. On January 29, 2022, the Society's call center received a call that Rocky was "screaming" in an outdoor pen. On January 30, 2022, Bylaw Officer Phil Greene attended at the Property and observed that Rocky was housed in a small pen, and that the shelter was not adequate.
21. On February 1, 2022, Animal Protection Officer Sandra Windover (APO Windover) along with Bylaw Officer Greene attended at the Property. Rocky was located inside a fenced pen in the backyard. The pen was muddy, wet and had multiple piles of feces in it. The pen enclosure was approximately 30-40 square feet and had access to a doghouse located under a set of stairs. The doghouse was not properly insulated and there was a dirty, wet and muddy plush dog bed inside the dog house. The Appellant advised APO Windover that Rocky was seen by a veterinary surgeon Dr. Om Parkash at Cloverdale Animal Hospital, but could not provide any receipts for exams or medications.
22. On February 1, 2022, APO Windover issued a BCSPCA Notice which outlined that the Appellant must:
 - a. Provide access to clean potable drinking water at all times.
 - b. Provide necessary veterinary care when the animal exhibits signs of injury, pain, illness or suffering that requires medical attention.
 - c. Provide shelter that ensures protection from heat, cold and dampness appropriate to the protective outer coat and condition of the animal.
 - d. Have a veterinary exam booked for Rocky within 24 hours, and then examined by the veterinarian within five days.

(the "Distress Notice")
23. On February 6, 2022, APO Windover learned that a new report was made to the New Westminster Animal Services, advising that Rocky was housed outside overnight without access to adequate shelter. APO Windover made phone calls to local animal hospitals inquiring as to whether any appointments had been made for Rocky. APO Windover found out that the Appellant had not booked any appointments for Rocky. APO Windover and Bylaw Officer Greene attended at the Property and noticed that Rocky was inside the enclosure, the ground was muddy

and wet, the dog house did not have any bedding and there was a grey sweatshirt pinned to cover half of entry of the dog house.

24. On February 8, 2022, a search warrant was obtained by SPC Cheung and Rocky was seized from the Property.

V. Review Decision

25. On February 25, 2022, Ms. Moriarty issued her review decision in which she outlined her reasons for not returning Rocky to the Appellant (the “Review Decision”). Ms. Moriarty reviewed the Report to Justice, the Information to Obtain & Search Warrant, a physical intake exam form, the Veterinary records, various photographs and one email submission. Ms. Moriarty was satisfied, based on the evidence, that SPC Cheung had reasonably formed the opinion that Rocky was in distress, as defined in section 1(2) of the PCAA, and that the action to take custody of Rocky to relieve him of distress was appropriate.
26. Ms. Moriarty raised concerns about lack of appropriate shelter and lack of required veterinary care. She was of the view that the Appellant had months to address both of these concerns and that he had been given plenty of explanations as to why both were required, yet the Appellant had taken no meaningful action to address either concern.
27. Ms. Moriarty concluded as follows:

Ultimately, I need to be confident that if Rocky were to be returned that he would remain free from distress. I am not confident that should he be returned to you, that you would be able to give him timely and consistent veterinary care. While you state that you love Rocky, for one reason or another, you have not been able to mobilize on the concerns related to you and so have not taken Rocky to receive the veterinary care he desperately needed nor provided him with appropriate shelter for his breed. Unfortunately, there is simply nothing before me that would make me feel that it would be in the best interest of Rocky to be returned to you.
28. The Appellant filed his appeal with BCFIRB on March 1, 2022.

VI. Key Findings of Fact and Evidence

29. In an appeal under the PCAA, the Panel must determine whether the animal was in distress when seized and whether it should be returned to the Appellant. Below is a summary of the relevant and material facts and evidence based on the parties’ written submissions and evidence presented during the hearing. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

The Appellant – Jagdeep Grewal

30. The Appellant testified that Rocky was his first dog, and that there were a lot of things that he did not know about pet care but that he had tried to learn and he had made the changes as suggested by the bylaw officers and the Society. He installed fence, built a dog house, and followed the dietary instructions. He suggests that if he had failed to follow some then that was because of language issues. The Appellant believed that he was taking appropriate steps as recommended by the Society and the bylaw officers.
31. With respect to Rocky's leg injury, the Appellant stated that Rocky got hurt when he was playing at the dog park and that the Appellant took him to animal hospital for treatment. Dr. Mangat treated Rocky and advised the Appellant that Rocky would be fine in two weeks. The Appellant gave the prescribed medication to Rocky. After two weeks he took Rocky back to the animal hospital, but Dr. Mangat was on holidays so he took Rocky to a different veterinary doctor, Dr. Om Parkash, who was known to the Appellant through a friend.
32. The Appellant got Rocky from a friend when Rocky was 28 days old. The Appellant took Rocky to an animal hospital for vaccination. The Appellant took Rocky out for walks and the Appellant noted that he and his family members were spending almost 3 hours every day playing with or paying attention to Rocky. Rocky was an energetic dog, and he always wanted to be outdoors. The Appellant and his family tried to keep Rocky inside but he did not like it. The Appellant used to take Rocky to the park. There was a time in December 2021 when the Appellant was sick and was hospitalised for a few days, and during that time he made arrangements with a friend to come to the Property to look after Rocky.
33. The Appellant insisted that he did everything that he was asked to do for Rocky. He reiterated that any issues related to Rocky's care were due to language barriers and that he was prepared to follow any further recommendations. He stated that his entire family loves Rocky and that they very much want him back in their care.
34. The Appellant acknowledged that he had received letters from the City of New Westminster and the Society. He said that he had discussed these letters with his friends and that his friends had told him not to worry about the letters and to do what you need to do for Rocky.
35. The Appellant was the main care provider for Rocky. The Appellant's mother, his wife and his children took some responsibilities for Rocky but they could not do much to manage Rocky because Rocky was very energetic and active.
36. The Appellant testified that during winter he kept Rocky inside during night and mostly outside during the daytime. The Appellant would clean (vacuum) Rocky's

bed every day and he would regularly make fresh water available. The Appellant further testified that until November 2021, Rocky was kept inside the house (the Property) and during that time period Rocky was not potty trained and he was wearing diapers. The Appellant noted that he was thinking of enrolling Rocky in dog training classes, but further noted that Rocky was a good dog that he did not need these classes. The Appellant stated that he would spend almost 2 hours with Rocky in the morning every day before going to work.

37. The Appellant stated that if Rocky is returned to his care, then he would be fine to keep Rocky inside or outside, and that he would keep Rocky indoors all of the time if that is what was required. However, he also noted that Rocky would not want to stay indoors and that there is a risk that he would fall down the stairs if kept indoors.

BSD

38. BSD is the Appellant's neighbour. BSD noted that the Appellant had installed a new fence and also built a doghouse for Rocky. BSD saw the Appellant quite a few times taking Rocky for walks but stated that he did not see the Appellant walking Rocky on a day-to-day basis.
39. BSD noted that he could not see the Appellant's backyard from his house and could not comment on the type of food that the Appellant was providing Rocky. He also stated that he had observed the Appellant's family playing with Rocky in their yard, and that Rocky would bark periodically when left outside.

TG

40. TG is the Appellant's daughter; she is 11 years old. She testified that the Appellant took very good care of Rocky and that he provided whatever Rocky needed. She noted that the family members were spending 2-3 hours everyday with Rocky playing, and that they also took him for walks 3 times a day.
41. TG stated that Rocky was like a child to the Appellant, and that the Appellant misses Rocky a lot, to the point that he cries over being separated. She stated that the entire family misses Rocky a lot.
42. TG noted that the Appellant would ask her to translate documents from English to Punjabi as the Appellant was not fully literate in English.
43. TG acknowledged noticing that Rocky was injured and that he spent almost a week in garage. However, she stated that after the first week in the garage, he started going for walks and after two weeks he started running as well.

SG

44. SG is the Appellant's sister-in-law. SG testified that the Appellant spent all of his time with Rocky, and that whenever she called the Appellant, he was busy with Rocky. She noted that the day that Rocky was injured the Appellant called SG and that she had sent him YouTube videos on animal care. The Appellant took Rocky to a Veterinarian on the same day. She stated that the Appellant was very sad and that he cried when Rocky was injured.
45. SG testified that if Rocky needed surgery costing \$10,000.00, then she was confident that the Appellant would be willing to pay that amount.
46. SG saw Rocky almost once a week, however she did not live with the Appellant and did not observe the Appellant's interactions with Rocky on a daily basis.

The Society's Evidence

Dr. Mathilde Silvert

47. Dr. Silvert was qualified by the Panel as an expert witness in veterinary medicine.
48. Dr. Silvert examined Rocky in February 2022, after he was seized by the Society. Rocky had suffered a fracture on his left leg. Rocky's fracture had recovered but was not in the proper position. Dr. Silvert stated that the current treatment plan for Rocky was to wait and observe the injured leg until Rocky becomes adult, and then to reassess and most likely to perform another surgery to reset the position of the leg.
49. Dr. Silvert recommended that Rocky be kept in crate for 23.5 hours a day. She noted that such care would be complicated for Rocky but that it was necessary to reduce the chance of a re-occurrence of the fracture because his bones were still developing and weak. Given that the surgery had been performed in November of 2021, she stated that Rocky needed rest in order to recover.
50. Dr. Silvert stated that greyhound dogs have single layer coat and that it is inappropriate for the dogs with single layer coat, like Rocky, to be kept outside during winter. She noted that greyhounds cannot tolerate cold weather and that they should be inside in all cold weather conditions.
51. Dr. Silvert stated that Rocky will require an insulated dog house with a dry area, if he is going to stay outside during the non-winter months. She noted that muddy areas and unclean water can lead to dogs getting infections and that any outdoor shelter providing for Rocky will need to be properly ventilated.
52. The Appellant did not ask any questions to Dr. Silvert during cross examination.

SPC Felix Cheung

53. SPC Cheung attended at the Property on February 8, 2022 to execute the warrant to seize Rocky. The decision was made by SPC Cheung to apply for warrant after reviewing the file and noting the efforts that had been made to date by both the Society and the bylaw officers. SPC Cheung stated that he decided to apply for the warrant because Rocky did not receive follow up veterinary treatment for his fractured leg and because Rocky did not have appropriate shelter. SPC Cheung noted that these were ongoing issues and that the Appellant had been given every opportunity to address the Society's concerns.
54. SPC Cheung noted that at the time of the seizure Rocky was being kept in a muddy fenced area outside in the cold and that the temperature was forecast to get much colder in the coming days. Rocky was not adequately protected and the shelter was not appropriate. SPC Cheung did not see any heat source inside the dog house and the temperature inside the dog house was the same as the temperature outside. SPC Cheung made the determination that Rocky was in distress based on the inadequate living conditions and the unaddressed injury to Rocky's leg.
55. SPC Cheung and APO Windover removed Rocky from the Property. Rocky was loaded to APO Windover's truck and she took him to the veterinary clinic.
56. The Appellant did not ask any questions to SPC Cheung during cross examination.

APO Sandra Windover

57. APO Windover has been working as an SPCA animal protection officer for the last 4 years. APO Windover initially received a complaint regarding Rocky's care and on Feb 1, 2022, she attended at the Property around 4pm to 5pm. It was a quite cold day and APO Windover noted that the shelter for Rocky was not adequate for the weather conditions, that the area inside the pen was muddy, and that there were numerous piles of feces inside the pen. She described the dog house as being made of plywood with two layers and a cement base with no heat source inside. APO Windover did not observe any water available for Rocky. On February 1, 2022, APO Windover issued the Distress Notice.
58. APO Windover communicated the issues listed on the Distress Notice to the Appellant, and he appeared to understand the concerns and asked follow up questions. The Appellant advised APO Windover that Rocky lived outside twenty-four hours per day and seven days per week. The Appellant's older daughter advised APO Windover that Rocky had defecated on her bed so he was not allowed inside.
59. The Appellant advised APO Windover that Rocky had been treated by Dr. Om Parkash for his injured leg. APO Windover told the Appellant that she had

contacted the local veterinary clinics but that no one could confirm that Rocky had been taken there for surgery or treatment. APO Windover issued a notice to the Appellant to address the distress concerns pertaining to Rocky. The Appellant told APO Windover that he did not have enough time to address the concerns raised by APO Windover and that as a result he may have to get rid of Rocky. The Appellant had previously advised to Bylaw Officer Greene that he would move Rocky to a location in Alberta.

60. APO Windover subsequently learned that the Appellant had not taken Rocky back to Killarney Hospital after the first visit of Nov 10, 2021 and that Dr. Mangat had referred Rocky to a specialist clinic, Canada West Veterinary Hospital. APO Windover followed up with Canada West's surgical department and was informed that the Appellant had not followed up with them or attended the clinic.

Bylaw Officer Phil Greene

61. On April 6, 2021 Bylaw Officer Green attended at the Property with Bylaw Officer Fox and interacted with Rocky. They noted at that time that Rocky was being kept in the Appellant's garage. When they entered the garage, they noted the smell of urine and stool and that there was poor ventilation and no natural light. They noticed objects in the garage that could have been injurious to Rocky if he had been in garage unsupervised. They provided the Appellant with information on proper animal care. The Appellant appeared to understand what they were saying in English because he asked questions and was argumentative.
62. On May 31, 2021 Officer Green again attended at the Property and noticed that Rocky was tied to a leash outside there was water available but that it was not within Rocky's reach and he noted that Rocky did not have any shade. Officer Green advised the Appellant as to the immediate changes required such to remedy Rocky's living conditions including that Rocky should not be tied on the Property unless he was supervised by a responsible person. Officer Green also advised that the 'igloo' dog house provided by the Appellant could not be used as ongoing shelter and advised the Appellant asked to replace it with a wooden dog house. Officer Green explained that clean water should be available to Rocky at all times and recommended that the Appellant install a pen for Rocky.
63. On June 2, 2021, Officer Green again attended at the Property at which time Rocky was still tied to the igloo dog house.
64. On June 9, 2021, Officer Green again attended at the Property. The Appellant was not at the Property, but Officer Green was able to talk to the Appellant's wife. Officer Green provided an animal care information package along with a copy of the relevant bylaws to the Appellant's wife.
65. On June 15, 2021, Officer Green attended at the Property and observed Rocky outside, it was a hot day and there was no shade available.

66. On June 30, 2021, Officer Green again attended at the Property. He noted that the Appellant had not taken steps to address the concerns previously addressed regarding Rocky's care, however a good Samaritan had taken steps to arrange some shade and toys for Rocky.
67. On August 23, 2021, Officer Green issued an Order of Compliance, which was provided to the Appellant personally. Officer Green included in the package containing the order some colour pictures of legal outdoor kennels. Officer Green explained the Order and conditions to the Appellant. The Appellant was argumentative with Officer Green.
68. Between September 8th to 26th, 2021, Officer Green attended at the Property to see if the Appellant had taken any steps to comply with the Order, but none were apparent. As a result of the non-compliance Officer Green issued fine to the Appellant, however the Appellant did not make any efforts to comply with the order and on October 1, 2021, Officer Green issued a second fine for non-compliance.
69. On November 14, 2021, Officer Fox issued a notice to the Appellant to take Rocky to a veterinarian immediately with respect to his injured leg.
70. On November 17, 2021, Officer Green called the Appellant and asked him whether he had complied with the veterinary notice or not. The Appellant advised that he had taken Rocky to a veterinary clinic in Vancouver.
71. Officer Green subsequently visited the Property on few more occasions to check on Rocky's condition and the Appellant's compliance with the Order. On one occasion Officer Green met the Appellant's daughter who told him that Rocky had been moved to Alberta.
72. On January 29, 2022, Bylaw Officer Natasa Muhic attended to a complaint that Rocky was crying in the pen at the Property. In January 2022, Officer Green noticed that the Appellant had installed a wooden fence, however the metal pen and the igloo dog house were still there. A wooden dog house had been built but it was not insulated, there was no heat source in the dog house and there was cement floor. During Officer Green's interactions and involvement with the Appellant none of the concerns with respect to Rocky's care were addressed by the Appellant.
73. During cross examination the Appellant suggested to Officer Green that there had been poor communication between them. Officer Green stated that he did not agree with that assessment and that the Appellant was able to understand what was asked to him by Officer Green and that the Appellant was argumentative. The Appellant suggested that the care that he provided to Rocky would have been

treated as sufficient in India and asked Officer Green why he was being asked to do things differently in Canada.

74. Officer Green stated that the Appellant was not a bad dog owner but he was a very uneducated dog owner. The Appellant had been given many opportunities and all of the necessary information on how to care for Rocky, but the Appellant had failed to take any meaningful steps or follow any of the recommendations.

VII. Analysis and Decision

75. As outlined at the outset of this hearing, the Panel is tasked with addressing two primary issues:

- i. Were the animals seized, in this case one dog, Rocky, in distress, and was the seizure justified?
- ii. Is it in the best interests of Rocky for the Society to return him to the owner's care?

76. Part 2.1 of the PCAA establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:

- 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.

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.

77. The definition of "distress" provides:

- 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.

78. We have also proceeded on the basis that the Appellant has an onus to show, that the remedy they seek (return of the animal) is justified. The first issue to consider is whether the animal was in distress at the time of seizure. Depending on the answer to that question, the next issue is to decide whether to return the animal or whether doing so would return it to a situation of distress.

Distress

79. The Panel has first considered whether Rocky was in distress at the time of seizure.
80. The Appellant argues that he addressed all the concerns raised by the Society with regard to Rocky however this is not supported by the evidence. The Appellant was provided with multiple opportunities to comply with the original Order issued by the Animal Services Branch of New Westminster, but there was very little effort made on the part of the Appellant to address the concerns raised in the Order. The small measures taken by the Appellant took were not satisfactory. The Panel finds that Rocky's living conditions remained insufficient and unsanitary until the time of his seizure and that living in such conditions put Rocky in a situation of distress.
81. Rocky fractured his leg, but the Appellant did not properly address the issue or follow up adequate treatment. When the Appellant was confronted by the bylaw officers and the Society's officers, he provided them with the misleading information and became argumentative. The Appellant did not realise that because of his actions, Rocky was left to experience severe pain and trauma.
82. The Panel is satisfied that Rocky was in distress at the time that he was seized. The Panel is also satisfied that the Appellant had been given every opportunity to relieve Rocky's ongoing distress and that he had failed to do so. As such the Panel is satisfied that Rocky's seizure by the Society was necessary and appropriate in the circumstances.

XI. Return of the Animal

83. The courts have considered the legislative framework provided by the PCAA. In *Eliason v SPCA*, 2004 BCSC 1773 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."
84. In *Brown v BCSPCA*, [1999] B.C.J. No. 1464 (S.C.) the court explained:
"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 [in] the good condition in which it was released into its owner's care."

85. The PCAA (part 2.1) also establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:
- 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.
86. The Appellant seeks Rocky's return. He acknowledges making changes to Rocky's shelter and living space. However, the Appellant has consistently failed to properly address Rocky's needs in the past. The Appellant also failed to provide proper care for Rocky that was required to ensure Rocky's full recovery from his leg injury. Despite several months of efforts to better educate the Appellant as to the proper care for Rocky, he was unable to achieve even the base level of care that would ensure that Rocky would not end up in a situation of distress. The evidence suggests that the higher standard of care that Rocky will require until he is fully recovered from his injury will not be met by the Appellant and as such Rocky will inevitably fall back into a state of distress if he is returned to the Appellant.
87. The Panel appreciates that the Appellant has struggled with language barriers but the evidence shows that the Appellant understood the nature of the concerns raised regarding Rocky's care and that he was given all of the information necessary to address those concerns. Similarly, the Panel acknowledges that the Appellant has not cared for a dog before and that he believes that he is meeting a reasonable standard of care. However, the Appellant's subjective assessment of Rocky's well being does not align with the objective evidence of Rocky's distress arising from his leg injury and his insufficient shelter.
88. The Appellant has failed to establish that Rocky can be safely returned to his care without falling back into a situation of distress, and the Panel therefore finds that Rocky should remain in the care of the Society.

XI. Costs

89. 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.

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

91. The Society is seeking costs as follows:

(a) Veterinary costs:	\$765.21
(b) SPCA time to attend seizure:	\$273.90
(c) Housing, feeding and caring for the Animals:	<u>\$1,075.70</u>
(d) Total:	\$2,114.81

92. On the matter of costs, the Society’s submissions provide detailed cost accounting, including invoices for veterinary care and detailed estimates on the daily operating costs associated with Rocky’s care. The calculation of these estimates has been reviewed and supported in previous appeals.

XI. Order

93. The Panel orders that pursuant to section 20.6 of the *PCAA* that the Society is permitted in its discretion to destroy, sell or otherwise dispose of Rocky, with the obvious hope and expectation that Rocky will be adopted.

94. The Panel finds the Appellant is liable to the Society for costs of care of Rocky, in the amount of **\$2,114.81**, this being part of the veterinary costs incurred by the Society as well as part of the costs associated with the seizure, housing, care and feeding of Rocky.

Dated at Victoria, British Columbia this 11th day of April 2022.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Pawan Joshi, Presiding Member

Appendix “A”

Exhibit #	Date (Received)	Received from	Document
Exhibit 01	Feb 25, 2022	BCSPCA	Grewal Decision Letter – February 25, 2022
Exhibit 02	Mar 1, 2022	Appellant	Grewal NOA
Exhibit 03	Mar 2, 2022	BCFIRB	Grewal v BCSPCA P2204 – NOA Process letter
Exhibit 04	Mar 10, 2022	BCSPCA	LT all encl doc disclosure
Exhibit 05	Mar 10, 2022	BCSPCA	BCSPCA Document Disclosure Tabs 1-30
Exhibit 06	Mar 10, 2022	BCSPCA	Tab 18 Voicemail Message
Exhibit 07	Mar 10, 2022	BCSPCA	Tab 19 Video Footage
Exhibit 08	Mar 10, 2022	BCSPCA	Tab 25 Warrant Videos
Exhibit 09	Mar 17, 2022	Appellant	Appellant email with photos 1 of 4
Exhibit 10	Mar 17, 2022	Appellant	Appellant email with photos 2 of 4
Exhibit 11	Mar 17, 2022	Appellant	Appellant email with photos 3 of 4
Exhibit 12	Mar 17, 2022	Appellant	Appellant email with photos 4 of 4
Exhibit 13	Mar 17, 2022	Appellant	Appellant Submissions
Exhibit 14	Mar 21, 2022	BCSPCA	LT all encl BCSPCA submissions
Exhibit 15	Mar 21, 2022	BCSPCA	BCSPCA Affidavit of Marcie Moriarty
Exhibit 16	Mar 21, 2022	BCSPCA	BCSPCA Document Disclosure Tabs 1-35
Exhibit 17	Mar 21, 2022	BCSPCA	BCSPCA Submissions
Exhibit 18	Mar 21, 2022	BCSPCA	BCSPCA Expert witness contact form
Exhibit 19	Mar 21, 2022	BCSPCA	BCSPCA Witness contact form
Exhibit 20	Mar 25, 2022	BCFIRB	Email from BCFIRB – Appellant Final Submission not Received