

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

RICHARD THEEDE

APPELLANT

AND

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES

For the BC Farm Industry Review Board	Tamara Leigh, Presiding Member
For the Appellant	Richard Theede
For the Respondent	Siobhan McConnell, Counsel
Date of Hearing	February 24, 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 (the Animal) from the Appellant, Richard Theede, at his property located in Quesnel, BC (the Property).
2. The Appellant is appealing the January 21, 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).
3. 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. The Appellant in this case is seeking the return of the Animal.
4. On February 24, 2022, a BCFIRB hearing panel (the Panel) held a hearing via teleconference. The hearing was recorded.
5. The Appellant was not represented by counsel. The Appellant called two witnesses: Kyla Brenton and James Desjorais.
6. The Society was represented by counsel and called four witnesses: Dr. Rebecca Ledger, Special Provincial Constable (SPC) Sarah Steeves, Kerri Austin and Brogan Cassidy.

II. DECISION SUMMARY

7. In brief, this appeal involves the seizure of one dog (“King”) from the Appellant’s apartment in Quesnel, British Columbia. For reasons explained in detail later, the Panel has decided to return King to the Appellant with the following conditions:
 - a. The Appellant will cooperate with the Society in a respectful and non-threatening manner.
 - b. The Appellant must book a neuter appointment for King within 30 days and ensure that he sees a veterinarian at least once a year.
 - c. The Appellant is to provide proof of registration for positive reinforcement dog training to the Society and BCFIRB within 30 days.
8. The Society sought to cover costs in the amount of **\$1,578.62**. The matter of costs is dealt with below.

III. MATERIAL ADMITTED ON THIS APPEAL

9. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1 – 25 and is attached as Appendix A to this decision.

IV. HISTORY LEADING TO SEIZURE OF ANIMALS AND THE DAY OF SEIZURE

10. King was seized following a complaint by a witness who reported that they had video evidence of the Appellant physically abusing King on January 10, 2022.
11. On January 11, 2022, SPC Sarah Steeves responded to the complaint. She was shown the video and collected statements from the complainant.
12. This was not the first time King has been seized. In September 2020, King was seized based on complaints by members of the community who had witnessed the Appellant physically abusing the dog. King was returned to the Appellant under a Return Agreement with the Society in October 2020. The conditions of the Agreement were as follows:
 - a. Cooperate with the Society in a respectful a non-threatening manner.
 - b. Book a neuter appointment for King within 60 days.
 - c. Ensure King receives veterinary care
 - d. Provide proof of contact with an anger management counsellor within 60 days.
 - e. Provide proof of booking of positive reinforcement training methods within 60 days.
 - f. To use only positive reinforcement training methods.
 - g. To not cause physical harm to King.
13. The Appellant did not comply with any of the conditions of the Return Agreement.
14. On January 12, 2022, SPC Steeves requested and executed a warrant based on the January 10 complaint and the Appellant's history. The Appellant was served with the warrant and a Notice of Disposition in accordance with Section 11 of the *PCAA*, stating that the animal was found to be distress.
15. Each appeal must be heard and decided based on its own facts and merits. However, if the Panel finds that the animal in question was in "distress" as defined under s.1(2) of the *PCAA*, and was legitimately removed, then the Appellant's history will play a factor in assessing whether the animal will be returned.

V. REVIEW DECISION

16. On January 21, 2022, Ms. Moriarty issued her review decision in which she outlined her reasons for not returning the Animal to the Appellant (the “Review Decision”). She reviewed the signed Telewarrant & Information to Obtain, Notice of Disposition, Inspection Follow-up Notes, historical documents for three previous files (314621, 314496, 334897), previous Return Agreement, veterinary record and physical intake form, various video footage and one email submission from the Appellant.
17. Ms. Moriarty was satisfied, based on the evidence, that the SPC reasonably formed the opinion that the Animal was in distress, as defined in section 1(2) of the *PCAA*, and her action to take custody of the Animal to relieve them of distress was appropriate.
18. In her decision not to return King to the Appellant, Ms. Moriarty states:

I believe in second chances and even third chances where possible, and in your case, you were provided with these chances in an attempt at all costs to avoid the situation you are in now with King. It is my great fear that King would be subjected to this treatment again and would feel distress at being in your presence. Experts in animal behaviour have indicated that animals that have been the subject of abuse can feel subsequent fear and distress if exposed to the presence of the individual that abused them. Physical abuse to an animal is particularly concerning, and as such, I take these decisions very seriously. Unfortunately, there is simply nothing before me that would make me feel that it would be in the best interest of King to be returned to you.

VI. KEY FACTS AND EVIDENCE

19. 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. What follows 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.

Appellant Testimony

20. The Appellant began his evidence by reading a four-page statement from his submissions. In the statement, he referred to King as his support system, helping him break through some of the barriers that he has in life and noted that King has helped him get clean and overcome his addictions.
21. The Appellant stated that he recently moved to the apartment where the seizure took place from “Seasons House,” a shelter in the community of Quesnel where he lived with King for three months in 2021.

22. The Appellant stated that he has emotional and psychological conditions that make it challenging for him to manage his emotions in public settings, particularly controlling his temper and expressing frustration. "I suffer from a lot of anxiety that allows me to get frustrated and it would come out in the same terms as anger." He has ADHD, depression, "a spectrum of autism" and gets very uncomfortable in small settings with people. During his testimony he mentioned several times that he thinks he would benefit from an anger management course if there was one available to him.
23. While the Appellant admitted that he initially intended to ignore the conditions of the Return Agreement that he had with the Society and that he had told the Society as much, he explained that his thinking has changed over the past year. "At the beginning I told myself that I shouldn't have to enter into an agreement when the statements against me were false. Why should I have to do something that wasn't court ordered? I over-dwell and think and say things that I'm not meaning to say. I searched out for the stuff because I knew that it was a necessary thing to achieve."
24. The Appellant has had trouble accessing anger management courses in his community – partly because of COVID, and partly because he was told that he does not qualify to be referred to a program because he did not have a spouse, and he was told that would need to be directed by court order. For the past eight months, the Appellant has been accessing mental health support working with a counsellor and a mental health nurse. The Appellant's submissions include a letter from a Substance Use Specialist from Quesnel Mental Health and Addiction Services to support his evidence.
25. The Appellant stated that he tried to find dog training classes, but that they were not available because of COVID restrictions. With COVID restrictions lifting, he has contacted a trainer in the community and intends to take King to classes if he is returned. He has not made any concrete arrangements with the trainer yet because he didn't know if King would be returned. He says that getting dog training is a major thing for him because "with training and ability to learn some of these skills could also help with coping with the frustrations with things like King scratching on the window."
26. On the day of the video recording, the Appellant stated that he was frustrated because King had gotten into someone's yard and was scratching at their window. They were unhappy and had confronted the Appellant about it. He said that he was in a hurry to get King back to the apartment so he could finish what he needed to do and go for a hike with the dog and a friend.
27. Looking at the video, he acknowledged that he used too much force in shoving King, and that it was unnecessary. He said that he had a hold of King's harness and was not dragging him by the collar. When he got to the top of the stairs his girlfriend was there and opened the door. Another friend was inside the small

apartment when they got inside, crowding the space. The Appellant says the dog yelped because he accidentally stepped on its tail as they came through the door. He said that he never kicked King.

28. The Appellant confirmed that he spoke with the mental health nurse after the incident but does not recall telling her that he accidentally kicked King as was indicated by the Society's submissions.
29. On cross-examination, the Appellant denied ever punching, kicking or hitting King. He said that the witness reports of earlier incidents were wrong.
30. When asked about a video submission that showed the Appellant firing a BB gun at King, he said the gun was not loaded and that King was accustomed to loud noises and playing with pellet guns. He described shooting a pellet gun into a tree in the woods so the dog would run after the sound for exercise, saying "it helped him get more physical exercise without me having to throw the toy."
31. The Appellant described King as a fairly calm and relaxed dog that can be reactive to some people. He said the time living at Seasons House was difficult for King because it was a rough environment with people and drug use. King has been hit by a person on a bike and was kicked by a person on the street. He noted that King does not like the vet and has required sedation to be examined in the past. He is aware that King can be fearful of people putting their arms over his body or head.
32. The Appellant stated that King can get nippy when he is excited. He said that when that happens, he tells King to sit and takes a time out to focus and relax. He said that sometimes he has had to hold the dog down or pin him to calm him down.
33. Regarding the complaint filed in August 2020 which stated that the Appellant had pinned King down with his leg and had repeatedly punched the Animal, the Appellant denied that he had ever punched King.
34. Regarding the complaint made about an incident at Tim Hortons which alleged that the Appellant had thrown King against a wall and repeatedly kicked the dog, the Appellant denied the allegation. He said that the conflict with the woman at the Tim Hortons started when she told him that she had fed King part of her sandwich. "At that point in my life I was more willing to get into somebody's face. I didn't have a filter with people, so I didn't say kindly, "Don't feed my dog" I threw some F-words in there and maybe something else. As she walked by, she tried to pet him. I pulled King's leash back so she couldn't pet him and to show him it wasn't appropriate for her to touch him." The Appellant admitted that he lost his temper and said things in anger that he claimed he didn't mean.

35. The Appellant said that the person who made the complaint from Tim Hortons in 2020 lived in his apartment complex and had issues with him and his roommate because his roommate was stealing from neighbours in the area.

Appellant Witnesses:

Kyla Brenton

36. Kyla Brenton is the Appellant's girlfriend. She has been with the Appellant for three years and met the Appellant shortly after he got King. She lives with the Appellant in the apartment and was present on January 10, 2022.
37. In addition to providing evidence at the hearing, Ms. Brenton provided a statement in the submissions.
38. Ms. Brenton said that she has never seen the Appellant be abusive toward King. She said that the Appellant will discipline King with a stern tone of voice or correction, but that she has never seen him hit, kick or abuse King in any way.
39. Ms. Brenton stated that King gets breakfast and dinner at the same time every day and has fresh drinking water available.
40. On the day of the video recording, Ms. Brenton was in the Appellant's apartment. She stated that the Appellant walked through the door with King and accidentally stepped on the dog's tail.

James Desjorais

41. James Desjorais has been friends with the Appellant for three years and was present in the apartment on January 10, 2022, at the time of the video recording.
42. He stated that he was playing the harmonica in the apartment when the Appellant walked through the door, and that it was an accident that the Appellant stepped on King's tail.
43. He gave evidence that he has never seen the Appellant be abusive to King. Specifically, he said that he has never seen the Appellant punch, hit or kick King.

Respondent Witnesses:

Dr. Rebecca Ledger

44. Dr. Rebecca Ledger is an animal behaviour and animal welfare scientist. She has extensive education and professional credentials in the field of animal behaviour and animal welfare and has been working in the field since the early 1990s. She has assessed thousands of animals, mainly dogs, for behavioural problems and

treatment. She has also assessed dogs for distress and suffering. The Panel accepted her qualification as an expert witness in animal welfare analysis.

45. Dr. Ledger noted that it is important to understand what suffering means – adding that a scientific definition for suffering is a generally unpleasant state of mind. When an animal experiences negative thoughts, feelings or emotions, those are considered to be forms of suffering.
46. She stated that thirty-two different forms of suffering have been identified in dogs and scales have been developed to assess the ways and severity of suffering. She specified that there are two different types of suffering: emotions like anxiety, fear, frustration and loneliness, and physiological sensations like pain, thirst and hunger.
47. Assessing suffering in an animal is an inference based on observable evidence. The practitioner considers the conditions that the animal is experiencing and then identifies the possible conditions that would cause an animal to suffer. The practitioner then further triangulates to determine the degree of suffering by looking at how the animal responds physiologically or behaviorally.
48. Dr. Ledger stated that any sort of blunt force trauma has the potential to cause pain. The behavioral evidence of such trauma would be the animal withdrawing from the source of pain and possibly displaying aggression towards the source of pain or making distress calls like yelping. She noted that distress calls in animals are very specific, high-pitched calls.
49. Dr. Ledger stated that signs like a tail between the dogs' legs are postural signs that communicate how the dog feels. A dog communicates its feeling to others through distress calls and postural signals in the hope that the receiver will change their behaviour. Tucked tail, ears back and direct eye contact are postures typically associated with dogs that feel threatened.
50. Dr. Ledger stated that dogs can be very forgiving and continue to show affection or loyalty to an owner who strikes them. In some situations where dogs have a mix of good and bad experience, they show resilience.
51. Dr. Ledger prepared an assessment report regarding King. The assessment was based on reviewing the video footage and the witness statements about the current and previous complaints.
52. In the first video, Dr. Ledger described the Appellant holding King by the collar and walking briskly across the screen through the parking lot. At one point he firmly pushes King to the ground and yells at him. She observed the following behaviours: low, cowered posture, tail between the legs and ears back.

53. In the second video, she described the Appellant with King transiting through the parking lot and going up a flight of stairs toward what appears to be a unit. The Appellant appears to be dragging King across the ground and yelling at the dog. She observed the following behaviours: hunched, cowered posture, tucked tail, collar held tight so the dog couldn't put its front feet on the ground.
54. She continued to describe the second video, saying the Appellant forcefully dragged King up the exterior stairs to the front door of the unit. From there she could not make out exactly what was going on, but on the video she heard a dog yelp and a witness yell, "did you just kick your dog?" In her opinion, King's yelping was a distress call.
55. Based on her observation of the video and what she heard, Dr. Ledger said that King's reluctance to walk with the Appellant and King's posture indicated anxiety and fear. Being kicked, pushed to the ground or dragged would likely cause physical discomfort – not quite as intense as pain, but still uncomfortable.
56. Dr. Ledger interpreted the moment that King yelped as a moment of pain.
57. Based on the witness description of the incident at Tim Hortons in September 2020, where King was allegedly picked up by the scruff, thrown against a wall and kicked in the stomach area, Dr. Ledger inferred that the dog was suffering from pain and fear.
58. She further inferred that King was suffering from pain and fear based on the witness statement for the August 2020 complaint.
59. Dr. Ledger added that, in this case she was not provided with evidence of King's behaviour. Her assessment was based on the video and witness statements provided to her. She concluded: "Assuming that it's all true, it seems that for most of King's life he has been subjected to handling techniques by Mr. Theede that would cause him distress or cause him to suffer."

SPC Sarah Steeves

60. SPC Steeves is appointed under the Police Act as a Special Provincial Constable (SPC) with the Society. She has worked for the Society since 2010, and was appointed a Special Provincial Constable on August 4, 2021.
61. SPC Steeves reported that the Society received a call regarding animal abuse on January 10, 2022. The complainant said they witnessed a dog being dragged across the parking lot and that they saw the Appellant kick the dog into the door.
62. On January 11, 2022, she visited the complainant and watched the video footage of the incident. The video was filmed by two security cameras, one that looked

over the front parking lot, and another that looked over the back parking lot and stairwell where the Appellant lives.

63. When SPC Steeves picked up the security footage she spoke with the complainant's girlfriend and got a statement that she had seen the Appellant kick the dog with one swift kick and she had heard the dog yelp.
64. SPC Steeves stated that, "From my review of the video footage I believe the incident showed physical abuse. Witness statements aligned with what was seen."
65. When SPC Steeves contacted the RCMP, she was told that the person living at that Appellant's address in October 2021 was "Brian Waters." The initial warrant was signed and issued in that name.
66. SPC Steeves attended the property on January 12, 2022 at 10:15am. At that time, she opted not to enter the property because she did not observe a dog at the address. The landlord was working on the unit below and identified the resident of the apartment in question as "Richard Theede." As a result, SPC Steeves applied for a new warrant in the Appellant's name.
67. While she was waiting for the warrant, SPC Steeves was approached by a mental health nurse at the RCMP detachment who asked what was going on. The nurse told SPC Steeves that the Appellant had contacted her and told her that he had "accidentally kicked King." The nurse explained to SPC Steeves that the Appellant really loved his dog and that she didn't want to see him taken away.
68. SPC Steeves attended the Appellant's residence a second time on January 12, 2022, with four RCMP members. The Appellant came downstairs to speak with SPC Steeves at which time he was advised that there was a search warrant about physical abuse to King.
69. The Appellant asked what evidence she had, and the SPC explained that they had two witnesses and video showing the incident. He asked to see the footage. "I described what was seen in the video, in particular the moment when he was holding the dog off the ground by its collar and slammed it into the ground. He denied and said he just adjusted his grip. It didn't align with what I saw in the video."
70. The Appellant told the SPC that he had sold King for \$500, so he wasn't the owner of King anymore. She advised that the Appellant was in care and control of King, so he was the person responsible for the dog at that time.
71. The RCMP detained the Appellant and SPC Steeves entered the apartment with one RCMP officer. She found the dog on the bed. King approached her but flinched away when she lifted her arms up.

72. After the seizure, SPC Steeves transported King to the vet and stayed with him during the exam. She observed King trembling during the exam, noting “he was very nervous any time she reached over him.”
73. SPC Steeves gave evidence that prior to King’s seizure in 2020 there were two complaints within a few days of each other about a man with a blond dog.
74. On August 29, 2020, a complainant reported they had witnessed a tall male matching the Appellant’s description kneeling on a tannish blond dog’s body. The complainant said that the man pinned the dog to the ground with his knee and punched him repeatedly in the face with a closed fist. The witnesses drove by and circled back around the block two to three minutes later and said the Appellant was still punching the dog. The complainant sent photos of the man and dog walking down the street after the incident.
75. The second complaint was made on September 1, 2020. The complainant in that instance stated that a man at a Tim Hortons had picked up a dog by the harness and threw the dog against the wall twice and then kicked the dog in the abdomen two to three times. The complainant also provided photos of the man walking the dog afterwards.
76. The Society determined that it was the same man and dog in both incidents. The complainants in the second incident filed a complaint with the RCMP and bylaw office. The Society received the name and address of the Appellant from the bylaw office.
77. Based on the two complaints and matching descriptions, the Society obtained a search warrant to detain King because they believed he was being physically abused. SPC Steeves attended that seizure as an assistant.
78. The Appellant was not compliant at the seizure and required several RCMP officers to detain him as he was very upset when he learned they were taking the dog.
79. At the time of the January 2022 seizure, SPC Steeves was aware from the Society’s files that King had been returned to the Appellant on a care agreement after the first seizure, and that the terms of the care agreement had not been completed.

Kerri Austin

80. Kerri Austin was witness to the September 2020 incident at Tim Hortons.
81. Ms. Austin was parked in her car and saw a lady walk by the dog and stop to pet him. A man (the Appellant) told the lady to “F-off”, then grabbed his dog and

swung him against the wall and started choking him. The lady intervened, but the man went back to beating the dog.

82. Ms. Austin did not go into Tim Hortons to tell the manager or take pictures of the man. Her friend told the man to stop beating the dog.
83. Ms. Austin got out of her car when the man came towards her. He started taking pictures of her car then took his dog, pulled it roughly and left.
84. Ms. Austin stated that during the incident outside the Tim Hortons the dog was terrified, bowing down and crying. She reported the incident to the Society and was upset when she heard that the dog had been returned.
85. On cross-examination, Ms. Austin said that she had reported the incident to the police while sitting outside the Tim Hortons, but that by the time she was making the report the man was gone.
86. At the time of the incident at the Tim Hortons, Ms. Austin lived in the same apartment building as the Appellant. She also told the panel of another incident that she observed from her balcony overlooking a park, where she saw him beating and dragging King.
87. At the conclusion of her evidence, Ms. Austin said, "He beats that dog constantly. Please do not give the dog back to him."

Brogan Cassidy

88. Brogan Cassidy lives in the same apartment complex as the Appellant. She provided the security camera footage and a statement to the Society.
89. Ms. Cassidy stated that on January 10, 2022, she was in her apartment and saw a man (the Appellant) with a dog on the front security camera. She saw the man dragging the dog. When he got to the stairs nearest her apartment, he kicked the dog and then dragged it to the next stair, where he kicked him two times in the ribcage before dragging the dog up the stairs by collar.
90. At the top of the stairs, the man pinned the dog with his leg and opened the door. He then kicked the dog in the rib cage so hard she was concerned that he may have broken the ribs on the dog.
91. Ms. Cassidy stated that she heard the dog whimpering the entire time the man dragged it across the parking lot and up the stairs. When he went through the door, the dog yelped so hard "I wanted to go get that dog." The man then threw the dog into the house and left.

92. On cross-examination, Ms. Cassidy confirmed her evidence that the Appellant kicked King in the first video of the front parking lot. She also said that, even though the camera's line of sight was blocked by icicles, she was outside her back sliding door and could see the activity at the top of the stairs in the second video.
93. She said that as soon as the Appellant kicked the dog, she swung the door open and started yelling at the Appellant.

Veterinary Evidence:

94. The Society included a physical examination intake form for King following the seizure. The form notes that King flinches and pulls away when his mouth, teeth and gums are examined. His behaviour on admittance was categorized as fearful, but he was assessed as "treatable-rehabilitable."
95. The Society also provided King's veterinary examination from Williams Lake Veterinary Hospital on January 12, 2022. The notes on the chart indicate that "SPCA would like chest rads and shaving" to look for evidence of bruising from the hard kick to the side reported in the witness statement. The physical exam showed King to be in good health.
96. King required sedation in order to get the chest images. The chest x-rays showed "no evidence of new or healed rib fractures." No evidence of bruising or wounds were found on the skin. The report noted King's behaviour as nervous but friendly, that he started shaking and cowering when restrained for blood draw, and that he started cowering when people reached over him.

THE HEARING OF THIS APPEAL

VII. ANALYSIS AND DECISION

97. 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.

98. 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.
99. We have also proceeded on the basis that the Appellant has an onus to show, that the remedy they seek (return of King) is justified. The first issue to consider is whether King was in distress at the time of seizure. Depending on the answer to that question, the next issue is to decide whether to return him or whether doing so would return him to a situation of distress.
100. The Appellant’s position is that he did not hit King or show him any unnecessary physical or emotional abuse. He acknowledged that the video shows him handling King roughly and admitted that on reflection that it was inappropriate for him to shove the dog to the ground, but he denies that this conduct is a pattern of behavior, and denies hitting, kicking or punching the dog.
101. The Society’s position is that the behaviour caught on video is a continuation of a pattern of physically and emotionally abusive behaviour towards King that the Appellant is unwilling or unable to correct. They take the position that the finding of injury or pain is not required to find that the dog was in distress and give significant weight to the evidence and analysis of Dr. Ledger that determined, based on the video, that King was suffering from pain, anxiety, and fear.
102. I have approached the matter of the video evidence in four parts: the handling of the dog across the parking lot and up the stairs, the distress call, the statement and evidence of Ms. Cassidy, and the analysis and assessment of Dr. Ledger.
103. With the regards to the handling of the dog in the parking lot, the Appellant does not dispute that he was frustrated and handling the dog impatiently to get him back to the apartment. The Appellant admits that shoving King was the wrong thing to do.
104. The audio in the video of the back parking lot clearly captures the Appellant yelling and swearing at King to walk and to get up the stairs.
105. The video evidence fails when it comes to providing any insight into what happened at the top of the stairs to make King yelp. The audio of the vocalization (yelping) is clear, but there is no visual evidence to support the claim that the Appellant kicked King, nor that he did not. In the absence of visual evidence, I

must rely on the evidence provided by the Appellant and witnesses, as well as the physical evidence of the veterinary report.

106. The Appellant says that King yelped because he accidentally stepped on King's tail when he came through the door. He said it was a small apartment crowded with two people – the witnesses Ms. Brenton and Mr. Desjorais. His story is supported by the two witnesses who were in the apartment at the time.
107. The Society's witness, Ms. Cassidy, gave evidence that she had an unobscured view of the Appellant and the dog at the top of the stairs. She says that the Appellant pinned the dog against the door with his leg while he opened it and then kicked the dog in the ribs as he entered the apartment resulting in King's yelp. Evidence of her reaction on the video was immediate, yelling at the Appellant "Did you just kick your fucking dog?"
108. While I find the evidence of Ms. Cassidy's reaction on the video compelling, her evidence at the hearing undermines her credibility as a witness. In her evidence she stated that she had witnessed the Appellant kick the dog three times: once on the way across the front parking lot, and twice on the way up the stairs, before kicking him in the rib cage and throwing him in the apartment. This description of the events is not supported by the video evidence. The inconsistencies lead me to question the reliability of her evidence and to prefer the evidence of the witnesses who were in the room at the time that that dog yelped.
109. I also note that the veterinary assessment following the seizure failed to find any evidence of physical trauma, bruising or injury which would have been expected if the Appellant had repeatedly kicked King in the manner described by Ms. Cassidy.
110. While Dr. Ledger's experience and credentials are exemplary, I am challenged to give significant weight to her evidence that King was suffering when she did not have an opportunity to examine or assess the dog directly. Her analysis was based on two brief, partially obscured videos, and witness statements. Even the conclusion that she offered during the hearing speaks as to the tenuous nature of her evidence, "Assuming that it's all true, it seems that for most of King's life he has been subjected to handling techniques that would cause him distress or cause him to suffer." In these circumstances, I cannot give significant weight to Dr. Ledger's conclusions which were not based on any direct assessment by her of King nor any direct involvement with the parties who made the statements on which she relied.
111. There is little doubt that the Appellant yelled and swore at King. While this behaviour reflects poor and uninformed animal handling, it is not sufficient in this case to constitute abuse. Photos and video submissions from the Appellant show a dog that is playful, healthy and engaged, and are supported by witness statements and submissions that speak to the Appellant's loving bond, commitment and connection with the dog.

112. Based on the history of the Appellant and the nature of the complaint, it is reasonable that SPC Steeves would have decided to take immediate and decisive action to determine if the dog was injured, but that is not the question before the Panel. Within the context of a *de novo* hearing, my decision is made with the benefit of a broader scope of information and facts to answer a narrower question.
113. Based on the totality of evidence presented, I find that the Animal was not in a condition of distress at the time of the seizure.

VIII. RETURN OF THE ANIMAL

114. The decision that King's seizure on January 12, 2022 was not justified by a finding of distress does not limit my consideration on the conditions of his return.
115. The courts have considered the legislative framework in 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.
116. 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.
117. Furthermore, I note the following passage from *Unger v BCSPCA*, [2016, paragraph 175]:
- In my opinion, s. 20.6 of the *PCAA* gives the panel the power to refuse to return an animal, or place conditions on the return of an animal, in the interests of an animal's welfare, even where the Panel has found that the initial seizure was not justified. To conclude otherwise would ignore the broad scope of the appeal which is not an appeal on the record, the evidence before me which may not have been before the Society reviewer (as was the case here with the Appellant's evidence), any changes in circumstances since the date of seizure, and other animal welfare considerations. While this would likely be the exception rather than the rule where the seizure has been found to be unjustified, the discretion must exist to achieve the purposes of the *PCAA*.
118. The Appellant acknowledges that he has issues managing himself in public and controlling his anger and frustration. He has demonstrated that he is actively engaged in counselling and has sought out support in managing his mental health. The Panel encourages him to continue this work.

119. The Appellant further acknowledges that he struggles with the suspicion that people are watching him, which feeds his social anxiety and discomfort. The fact of the matter is that people are watching him and his interactions with King, and his behaviour will face a higher level of scrutiny from his community in light of his history. The challenge and responsibility for the Appellant is to continue his mental health work and learn to better manage his impulses and outbursts.
120. With regards to training, the Appellant gave evidence that he has contacted a trainer and understands that he needs to learn new skills to manage King.
121. I am inclined to accept the evidence and intent of the Appellant that he will continue to pursue the goals of the Society's initial care agreement and is willing to accept conditions and guidance provided by the Panel. I conclude that it is in the best interest of the Animal to be returned to the Appellant subject to the conditions listed in the Order below.

IX. COSTS

122. 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.

123. 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)".

124. The Society is seeking costs as follows:

a. Veterinary costs:	\$435.37
b. SPCA time to attend seizure:	\$136.95
c. Housing, feeding and caring for the Animals:	\$1,006.30
d. Total:	\$1,578.62

125. 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 the care of King. The calculation of these estimates has been reviewed and supported in previous appeals.
126. However, based on the finding as set out above, that King should not have been seized from the Appellant, I am exercising my discretion under section 20.6(c) of the *PCAA* not to award any of the costs claimed by the Society.

X. ORDER

127. It is my order that pursuant to section 20.6(a) of the *PCAA*, the Society be required to return the dog, King, to the Appellant on these conditions
- a. The Appellant will cooperate with the Society in a respectful and non-threatening manner.
 - b. The Appellant must book a neuter appointment for King within 30 days of the date of return and ensure that the dog sees a veterinarian at least once a year. The Appellant is to provide proof that King has been neutered to the Society and BCFIRB following the procedure.
 - c. The Appellant is to provide proof of registration for positive reinforcement dog training to the Society and BCFIRB within 30 days of the date of return.
128. If the Appellant fails to comply with any of these conditions, the Society is entitled to proceed on the basis that the conditions of this return have been breached and that King is in distress, and thus the dog, King, returns to the Society's legal custody to destroy, sell or otherwise dispose of in its discretion.

Dated at Victoria, British Columbia this 10th day of March 2022.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Tamara Leigh, Presiding Member

Appendix “A”

Exhibit #	Date (Received)	Received from	Document
Exhibit 01	Jan 21, 2022	BCSPCA	Theede Decision Letter – January 21 2022
Exhibit 02	Jan 25, 2022	Appellant	NOA Theede
Exhibit 03	Jan 27, 2022	BCFIRB	Theede v BCSPCA P2203 – NOA Process letter
Exhibit 04	Feb 4, 2022	BCSPCA	LT Appellant & BC FIRB encl doc disclosure
Exhibit 05	Feb 4, 2022	BCSPCA	BC SPCA Document Disclosure – Tab 1-39
Exhibit 06	Feb 4, 2022	BCSPCA	Tab 21 – Security Footage
Exhibit 07	Feb 11, 2022	Appellant	Appellant email 1 – Evidence for the return of King
Exhibit 08	Feb 11, 2022	Appellant	Appellant Witness Contact Form
Exhibit 09	Feb 14, 2022	BCSPCA	LT Appellant BC FIRB encl additional doc disclosure
Exhibit 10	Feb 14, 2022	BCSPCA	Document Disclosure of the BCSPCA – Tab 41 – Updated Index
Exhibit 11	Feb 14, 2022	BCSPCA	Tab 40
Exhibit 12	Feb 14, 2022	BCSPCA	Tab 41
Exhibit 13	Feb 16, 2022	BCSPCA	LT Appellant & BCFIRB encl Submissions, Affidavit, witness forms & additional doc disclosure
Exhibit 14	Feb 16, 2022	BCSPCA	Written Submissions of the BCSPCA
Exhibit 15	Feb 16, 2022	BCSPCA	Sworn Affidavit 1 of Marcie Moriarty

Exhibit #	Date (Received)	Received from	Document
Exhibit 16	Feb 16, 2022	BCSPCA	Updated Index – SPCA Document Disclosure
Exhibit 17	Feb 16, 2022	BCSPCA	Tab 42
Exhibit 18	Feb 16, 2022	BCSPCA	SPCA's PCCA Expert Witness Contact Form
Exhibit 19	Feb 16, 2022	BCSPCA	SPCA's PCCA Witness Contact Form
Exhibit 20	Feb 22, 2022	BCSPCA	LT all
Exhibit 21	Feb 22, 2022	BCSPCA	Document Disclosure of the BCPSCA - Tab 1-43 - Updated Index
Exhibit 22	Feb 22, 2022	BCSPCA	Tab 43
Exhibit 23	Feb 22, 2022	Appellant	Appellant email 2 – Evidence to get King back
Exhibit 24	Feb 22, 2022	Appellant	Appellant Video playing harmonica with dog in background
Exhibit 25	Feb 23, 2022	Appellant	Appellant Feb 23 submissions 5 emails (4 videos, 1 photo)