

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:

KAZUMI TANAKA

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

David Zirnhelt, Presiding Member

For the Appellant:

Kazumi Tanaka

For the Respondent:

Siobhan McConnell, Counsel

Date of Hearing:

August 30, 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, Kazumi Tanaka at his property located in Princeton, BC (the Property).
2. The Appellant is appealing the July 28, 2022, review decision issued under s. 20.2(4)(b) of the *PCAA* by Shawn Eccles, Senior Manager, Cruelty Investigations 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 August 30, 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 gave oral evidence and called one witness: G.R.
6. The Society was represented by counsel and called two witnesses: Special Provincial Constable (SPC) Daniel Chapman, and Dr. Michael Tigchelaar (DVM).

II. Decision Summary

7. Upon reviewing all of the evidence and submissions presented at the hearing of the appeal, the Panel finds that the Animal was in distress at the time of removal and would likely return to a state of distress if returned to the Appellant. The Panel therefore orders that the Animal remain in the care of the Society to destroy, sell or otherwise dispose of pursuant to Section 20.6 of the *PCCA*. The Panel further orders that the Society is to receive its costs as presented at the hearing.

III. Material Admitted on this Appeal

8. The Panel identified all the documents received by BCFIRB in advance of the hearing as Exhibits. The record comprises Exhibits 1 – 21 and is attached as Appendix 'A' to this decision.

IV. History Leading to Seizure of Animal and the Day of Seizure

9. The history leading up to the seizure of the Animal is detailed in the decision letter dated July 28, 2022, which is Tab 1 of the Society's document disclosure. The decision letter is written by Shawn Eccles, Senior Manager, Cruelty Investigations. Many of the details were reiterated in the testimony of Special Provincial

Constable (SPC) Chapman in his oral evidence at the hearing of this appeal. SPC Chapman's evidence is detailed in Section VII below.

V. Background

10. A call of concern regarding the Animal was received by the Society on Feb 18, 2020. The caller noted that the Animal was not receiving adequate care.
11. On March 8, 2020, SPC Chapman met with the dog's owner, the Appellant. At that time the Animal appeared to be fine and SPC Chapman provided recommendations to the Appellant for the Animal's care and concluded the file.
12. On May 31, 2022, another call of concern was received by the Society regarding inadequate care as well as an incident where the Appellant had allegedly kicked the Animal.
13. On June 5, 2022, a further call of concern was received from a RCMP constable with respect to a complaint that had been made to that constable regarding the physical abuse of the Animal by the Appellant.
14. SPC Chapman interviewed the witness identified in the June 5, 2022 complaint made to the RCMP, and subsequently met with the Appellant at his Property the following day. SPC Chapman issued a notice after viewing the premises and the Animal and explained several actions that needed to be taken to relieve the Animal's distress.
15. The Appellant took the Animal to the veterinary clinic on June 7, 2022. The veterinarian told the Appellant that the Animal needed to gain weight on a gastrointestinal friendly diet and that the Animal needed to be dewormed.
16. On June 14, 2022, SPC Chapman visited the Appellant and found that the Appellant had made modest improvements in the Animal's shelter, but the Animal still appeared to be under weight. SPC Chapman insisted that the Animal be seen by a veterinarian again.
17. On June 24, 2022, after the Appellant had attended at the Cascade Veterinary Clinic with the Animal, the clinic informed SPC Chapman that the Animal weighed less than on the previous visit.
18. On June 30, 2022, SPC Chapman visited the Appellant and informed him that the veterinarian had advised that the Appellant needed to put the Animal on a specialized gastrointestinal diet and also needed to undertake a program of deworming due to the ongoing diarrhea from which the Animal was suffering.
19. The Appellant told SPC Chapman that he did not believe in doctors. SPC Chapman issued a formal notice to the Appellant to have the Animal re-examined by a veterinarian within 7 days (July 7, 2022).

20. On July 13, 2022, SPC Chapman determined that the Appellant had not taken the Animal to the clinic, and he revisited the Appellant at his Property. The Appellant advised SPC Chapman that he did not believe Gus needed to go to the vet, that he didn't know if Gus had gained weight, and that Gus was not in the same pen as the previous visit because it was too hot. Gus was tethered with a short black ratchet leash and there was some water in a red bucket and no shelter. SPC Chapman examined Gus physically and could feel his spine and hip bones. SPC Chapman stated that Mr. Tanaka needed to have Gus reweighed by 4:00 pm that day and then call him.
21. On July 14, 2022, SPC Chapman applied for, and was granted a warrant to investigate and if necessary to seize the Animal. Later that day, SPC Chapman attended at the Appellant's Property and seized the Animal due to the Appellant's failure to comply with the previous notices and the resulting, ongoing distress of the Animal.

VI. Review Decision

22. On July 28, 2022, Mr. Eccles issued his review decision in which he outlined his reasons for not returning the Animal to the Appellant (the "Review Decision"). He reviewed the following:
 - BC SPCA Notes to the Appellants file,
 - Notice of Disposition (NOD),
 - BCSPCA Physical Examination Intake Form,
 - Information to Obtain (ITO) and Signed Warrant,
 - various photographs; and
 - various email submissions from the Appellant and sent on the Appellant's behalf.
23. Mr. Eccles was satisfied, based on the evidence, that SPC Chapman had reasonably formed the opinion that the Animal was in distress, as defined in section 1(2) of the PCAA, and that his action to take custody of the Animal to relieve him of distress was appropriate. Mr. Eccles further concluded that the Appellant likely would not attend to the issues that resulted in the seizure if the Animal was returned to the Appellant, and therefore ordered that the Animal would remain in the care of the Society.

VII. Key Facts and Evidence

24. In an appeal under the PCAA, the Panel must determine whether the Animal was in distress when seized and whether the Animal should be returned to the Appellant's care either with or without conditions. 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.

VIII. Appellant's Evidence

25. The Appellant was sworn in by the Panel and provided the following evidence:
- a) The Appellant began his testimony by reviewing Exhibit 20 which is the report of Shawn Eccles, Senior Manager, Cruelty Investigation, SPCA. Mr. Eccles' report contained the information used by the Society to obtain the search warrant to investigate the Appellant's premises on July 14, 2022.
 - b) The Appellant denied that the Animal, was in distress at the time of his seizure. He stated that the veterinarian that saw the Animal after it was seized advised that the Animal was "skinny, but healthy". The Appellant said he was a sculptor of some considerable reputation and was capable of learning how to take care of a dog. The Animal had shelter and the Appellant said that he had fixed everything SPC Chapman had asked for such that the shelter was not unsafe. He claimed that the veterinarian to whom he took the Animal at the Society's urging did not say the Animal was in distress, just underweight.
 - c) The Appellant said that the two RCMP officer's that approached him in the park regarding reports that he had abused the Animal left after hearing the Appellant's explanation that he had not kicked the Animal but had just tapped him.
 - d) The Appellant claimed that his dog leash was adequate, although it was not the pet store product. He claimed that he had 2 to 3 meters of rope, which he used to tie the Animal since he had escaped 9 times from his pen. The Appellant's testimony was that he has now acquired a new, larger pen nearby (p. 4, EXH 18, Appellant documents and p. 32, Tab 12, SPCA Document Disclosure). The Appellant acknowledges that the Society (SPC Chapman) still thinks this new pen is inadequate shelter.
 - e) The Appellant stated that he walks the Animal regularly, 15-30 minutes in the neighbourhood in the morning and at the dog park from 5-6 pm daily.
 - f) The Appellant claimed that SPC Chapman said that the Animal looked skinny, although he did not examine him by probing the Animal at the backbone and the hips.
 - g) The Appellant admitted that he made a mistake by not taking the Animal to the Cascade Veterinarian Clinic which is a 2-minute walk from his residence. The Appellant said that the veterinarian also told him that the Animal was skinny but healthy looking and that the Animal needed a better diet to gain weight and raise his body condition score from 2 out of 5, to something higher. The Appellant claimed that the veterinarian did not specify 10-15 pounds of weight gain was necessary for the Animal. So, the Appellant increased the Animal's food rations including some vegetables and rice. The Appellant stated that the Animal had diarrhea before the second weighing and lost weight as a result.
 - h) The Appellant insisted that the broken plexiglass was out of reach of the Animal, although people passing by might think otherwise. He also claimed that he put the Animal in the shade when the weather is hot.

- i) The Appellant claimed that he did not abuse the Animal and that SPC Chapman has not demonstrated the Animal was injured by kicking or hitting.
- j) The Appellant did not deny being “argumentative” with SPC Chapman and some of the neighbours who had complained about his treatment of the Animal. He said that he felt discriminated against in the small town and that English as his second language could have been a barrier to better communication.
- k) Under cross examination by counsel for the Society, the Appellant was unsure exactly when he took possession of the Animal but stated that it was probably a cold day in January 2022. He admitted that he has not been a dog owner since his parents had a dog when he was a child. He is now in his seventies and wants to own a dog. The Appellant lives in various apartments and is currently in his “studio” in the 6 apartment-3 storefront building that he is generally renovating because of tenants damaging the premises. The Animal was sheltered in the laneway and the new pen is at a different address in Princeton where the Appellant typically spends his evenings.
- l) Upon further questioning, the Appellant stated that “one laneway separates Gus from my apartment.”
- m) The Appellant stated that there have been instances when he has had to move the Animal because of complaints from tenants. The Appellant stated that he would probably ask a tenant to move out if the dog barking was bothersome. Mr. Tanaka said that the Animal is now more socialized and is left out, tied up, day and night. He stated that he would typically clean up after the Animal at the end of the day.
- n) The Appellant said that he works from 8:30 am to 5:30 pm, and sometimes from 6:00 am to 7:00 pm. While he is working the Animal is left on his own however, he can see the Animal from one address to the other due to their close proximity. With respect to the length of the leash that he uses for the Animal, the Appellant said that he never asked SPC Chapman how long it should be. The picture taken on July 14, 2022, the day of the seizure, shows a short ratchet strap as a tether (Tab 38 SPCA document disclosure). Both food and water are within reach of the Animal where he is tied to a staircase.
- o) When questioned about whether he had the financial means to take care of the Animal, the Appellant replied “yes” and expected to spend \$100-150 for food depending on the Animal’s special needs. He also said that if he had to take Gus to the veterinarian 3-5 times a year, he could afford that expense. However, he qualified that he was willing, but that it would depend on the care that the Animal required. He said that in Canada pet animals have rights and human rights are diminishing.
- p) The Appellant said that he can easily walk to the veterinary clinic for the free weighing service. However, he further stated that SPC Chapman never said what the Animal needed and the veterinarian did not specifically prescribe a special diet. He admitted that the Animal’s food was not always eaten. So, he changed the food, adding some cooked vegetables. However, when the dog

got diarrhea, he switched back to dog food and eggs. Frequently the dog does not eat all that is given to him. Kibbles were given to the dog as well.

- q) The Appellant stated that he had not felt the Animal's ribs or spine to see if he was gaining weight, even though the Appellant had added up to 2 cups a day of additional food.
- r) The Appellant admitted that SPC Chapman gave him a document (notice) that required the Appellant to take the Animal to a veterinarian within 7 days of the notice, but he had made a mistake and had not taken the Animal.
- s) When asked about whether he thought the veterinarian should know what the Animal needs, the Appellant said that he was skeptical about the opinions of the veterinarian and that "... he is young but has papers."
- t) The Appellant was questioned about the new dog pen and said that he shouldn't have to tether the Animal in the pen, but that if the Animal escaped, he would tie him. Regarding the new doghouse, the Appellant stated that it measured 1m long by 70-80 cm wide by 80-90 cm high. The Appellant could not say whether the Animal could stand and turn around inside.
- u) When questioned as to whether he understood that the Animal is underweight and that he will need to monitor him, the Appellant stated that he didn't "...believe in vets." He reiterated that the Animal is healthy, but thin, and that three people had told the Appellant that the Animal looks healthy. The Appellant further stated that he didn't know whether he would monitor the Animal's weight if he was returned.

26. The Appellant called one witness, G.R., who was sworn in and provided the following evidence:

- a) Mr. Ross reiterated the evidence which he submitted by email on August 19, 2022 and was included in the record of this hearing (Exhibit 8).
- b) Mr. Ross accompanied the Appellant on his visit with the Animal to the veterinarian to comply with the Society's order to have the Animal assessed by a veterinarian to determine if there was a significant issue with the Animal's weight or some other condition.
- c) During the assessment it was discovered that the Animal, who was nearing two years old was unneutered, something that the Appellant was unaware of and had not been disclosed to him when he got the Animal.
- d) Mr. Ross stated that the veterinarian had advised the Appellant that the Animal was underweight and that more or different food should be tried. Deworming was also discussed, and the Appellant had told Mr. Ross that the veterinarian had given him an over-the-counter deworming medicine for the Animal.
- e) Mr. Ross noted that the veterinarian had said nothing imperative about treatment for the Animal. The Veterinarian stated that in the long-term the Animal needed to gain of weight but nothing immediate was prescribed in that regard.

27. Counsel for the Society had no questions for Mr. Ross.

IX. Respondent Evidence

28. The Society called Special Provincial Constable Daniel Chapman as the first witness for the Society, who was sworn in and provided the following evidence:

- a) Mr. Chapman was appointed Special Constable for the Society in 2022 (SPC Chapman).
- b) SPC Chapman stated there had been three complaints to the Society regarding the Appellant's care of the Animal. He stated that the Appellant had recently acquired the dog in February 2022 at the time of the first of the three complaints and that there were two subsequent complaints on May 2022 and June 2022.
- c) SPC Chapman said the first complaint on February 18, 2022, was that the Animal had inadequate food, was underweight, lacked exercise and was neglected. The complainant thought that the Appellant has acquired the Animal in late January 2022 and noted that the Animal was scared of men.
- d) SPC Chapman attended at the Appellant's Property on March 8, 2022 and informed the Appellant that tethering makes dogs nervous and that they must be able to get to water. At this time the Animal was not tethered and had adequate food and water but also behaved fearfully. SPC Chapman did not do a "hands- on" inspection of the Animal. He spoke further with the Appellant about not tethering the Animal, providing adequate exercise for a guardian dog, and whether the Animal was the right breed for the Appellant. He advised the Appellant that guardian dogs need work to do and that they can get anxious if they are not properly engaged.
- e) The second complaint to the Society regarding the Appellant's care for the Animal came on May 31, 2022. The complainant cited the unsafe surroundings and shelter in the pen and inadequate food and water for the Animal.
- f) There was a third complaint made to the Society on June 5, 2022, by a constable with the Princeton RCMP who cited physical abuse (kicking) of the Animal by the Appellant. Apparently, this was not the first time that this type of complaint had been made against the Appellant. The RCMP officer claimed to have spoken to the Appellant but remained concerned regarding the Appellant's conduct towards the Animal.
- g) SPC Chapman testified that he visited the Appellant's Property on June 6, 2022. At that time, the Appellant denied physically abusing the Animal. SPC Chapman found the Animal tethered with a ratchet strap to some pallets with insufficient bedding and water. Further, there was still the broken plastic in the yard, which was an issue identified with the Appellant during the previous visit and which could injure the Animal.
- h) SPC Chapman noted that the Animal had a greenish discharge from his penis and was concerned that the Animal was receiving insufficient veterinarian care. SPC Chapman ordered the Appellant to take the Animal to

the veterinarian within 24 hours. SPC Chapman explained to the Appellant that there may be parasites causing the lack of weight gain and that all the veterinarian recommendations should be followed.

- i) SPC Chapman stated that he explained to the Appellant that he had a legal responsibility to ensure that a proper gastrointestinal diet was followed for the Animal. SPC Chapman explained that if the Animal did not gain weight, then the Appellant would have to revisit the veterinary clinic for further advice. SPC Chapman said that the Appellant was “argumentative”.

On July 12, 2022, the Appellant had not set up a follow up appointment with the Cascade veterinarian clinic and didn't answer SPC Chapman's phone call. SPC Chapman visited the Appellant at his Property and told him to have the Animal reweighed (a free service of the clinic) by the end of the day.

- j) SPC Chapman did not hear back from the Appellant, and as a result he applied for the search warrant. The warrant alleged inadequate care leading to distress for the Animal and was granted by the court and on July 14, 2022. SPC Chapman executed the warrant later that same day.
- k) At the time of seizure, the Animal was in the same location as during the previous visit, had not be reweighed even though it was a 2-minute walk to the clinic, had not been dewormed, was tethered to the staircase with a short leash (3-4 feet), and had no adequate shelter. There was a bag of Western Family dog food that had been torn open in the vicinity.
- l) SPC Chapman advised the Appellant that the Animal was in distress due to “inadequate veterinary treatment”. SPC Chapman further stated that he had no confidence that the Appellant could recognize the health issues that the Animal might be experiencing.
- m) The Appellant cross examined SPC Chapman and queried why a second veterinarian opinion (after the seizure) was not provided to him. SPC Chapman responded that the result of the second vet opinion was that the lack of gaining weight was still of concern and that constant monitoring was necessary. SPC Chapman pointed out that further, Mr. Tanaka expressed his disagreements with Chapman and he said the questioning was “too much for me”. The Appellant seemed frustrated with the witness.

29. The Society called a second witness, Dr. Michael Tigchelaar from the Penticton Veterinary Hospital.

- a) Dr. Tigchelaar examined the Animal, on August 16, 2022, at the request of the Society while the Animal was in the Society's care to determine why the Animal was not gaining weight. A complete examination was undertaken by Dr. Tigchelaar including blood and urine analysis. The Animal's weight had increased slightly during the month after the seizure. On July 15, 2022, the Animal's weight was 38.7kg, and on July 26, 2022, the Animal's weight was 39.7 kg. However, on August 14, 2022, the Animal's weight was 38.5 kg and was to essentially back to the weight of the Animal when it was seized.

- b) Dr. Tigchelaar explained that he would be more concerned if the weight was 37 kg instead of 38.5 kg. The Animal was thin but happy but might have underlying medical conditions that could explain the lack of weight gain. Because of this, Dr. Tigchelaar stated that the Animal would not do well under hot or cold conditions such as might be experienced if he was kept outside year-round.
- c) Dr. Tigchelaar stated that the Animal had a body condition score of 3 out of 9, whereas 4-5 out of 9 would be better.
- d) The Panel Chair asked if more could be done to diagnose a reason for the Animal's lack of weight gain. Dr. Tigchelaar replied that imaging, ultrasound, and exploratory surgery were among the steps that could be taken.

X. CLOSING SUBMISSIONS OF THE PARTIES

The Appellant

- 30. The Appellant submitted that Gus should never have been "confiscated". The Appellant said "two SPCA supervisors who never saw the dog provided evidence. Their evidence was taken over that of other witnesses who thought Gus looked healthy." No witness was questioned on this matter.

The Respondent

- 31. Counsel for the Society made the following submissions in closing:
 - a) The Appellant has not demonstrated that he has made or would make the changes needed in the care and housing of the Animal, therefore the Appeal should be dismissed. The Animal should be adopted out to someone who can ensure that his well-being is paramount.
 - b) Despite SPC Chapman's attempts, the Appellant refused to comply with the guidance given by SPC Chapman and adhere to the Code of Practice for dogs. The Appellant does not respect the SPCA officers or the veterinarians.
 - c) When the Appellant was questioned about conflicts with his tenants over the Animals' care, he indicated that they should be evicted, which is not a reasonable or legal resolution to the issue.
 - d) The Appellant denied that he had used a 3-meter tether and stated that there was no proof that he used a 3-metre tether, despite the evidence of SPC Chapman to the contrary.
 - e) Furthermore, the Appellant refused to monitor the Animals' condition, because he claimed that the weight of the Animal was not an issue. The Appellant could not appreciate the signs of stress and thus respond to the underlying medical conditions afflicting the Animal.
 - f) The Animal is outside day and night and that is a concern for a dog in his condition. Even with some improvements in care on the Appellant's part, the

Society is not confident that he will be able to notice the signs of stress which might be hidden from view.

- g) The Appellant prefers the opinion of a few untrained associates over the experience and expertise of SPC Chapman and veterinarians. The undiagnosed condition should be a “red flag” for the Appellant, yet he remains in denial regarding the Animal’s health.
- h) The Appellant twice failed to reweigh the Animal upon specific direction from the Society. He still won’t take direction regarding the pen, the doghouse and the bedding for the Animal. Some changes were made to the conditions of care, but they were insufficient. The Appellant stated that he does not believe in veterinarians. He took some actions to get the Animal back into his care but did not demonstrate any recognition of the fact that the Animal was in distress. For example, SPC Chapman had to tell him to put out a bucket of water and not just a bowl.
- i) The Appellant’s failures of insight and his unwillingness to work with the veterinarians and the Society will lead to further situations of distress for the Animal and as a result the Animal should not be returned to the Appellant.
- j) On the matter of costs, the Society submitted that it should be entitled to its costs for housing, feeding and caring for the animal in accordance with the *PCAA*. If the Animal is to be returned to the Appellant, he should be required to pay the costs before the Animal is released to him, and if he fails to keep the Animal from the conditions of distress that the Animal should be returned to the Society.

Legislative Framework

32. 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.

33. 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.

34. 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 the animal to a situation of distress.

XI. Distress at The Time of Seizure

35. Careful consideration of the evidence presented by the Society and the Appellant’s responses has led the Panel to the finding that at the time of seizure the Animal, a Pyrenees-cross Black and White guardian dog, was underweight and living outdoors with inadequate shelter. The Animal lacked proper veterinarian care which the Appellant refused to provide despite repeated direction to do so. At the time of the seizure the Animal clearly fell within the definition of distress under the *PCAA*, as set out above.

XII. Return of the Animal

36. According to a second opinion by a veterinarian, being underweight the dog would be vulnerable to distress if returned to the Appellant.

37. The evidence before the Panel was clear that the Animal was deprived of veterinary treatment particularly for the underweight condition. Given that the attending veterinarian Dr. Michael Tigchelaar stated that further diagnostics are necessary to determine the underlying medical condition, it is not in the best interest of the Animal to be released back into the Appellant’s care.

38. While he may have learned something about care of a dog, he does not respect expert veterinary advice and has on several occasions refused direction even when legally ordered by the Society’s officers to take the Animal to a clinic. Given that the Animal hardly gained weight in a month of expert care and that an examination by Dr. Tigchelaar concluded that more tests will be necessary, it would be irresponsible for the Society or this Panel to release the Animal except into a home with the capacity to recognize symptoms and the ability to provide the veterinarian care required.

39. The evidence demonstrated that the Animal is not in a condition to ward off the effects of excessive heat or cold. While the Appellant states that he could afford to take the Animal to several visits to the veterinarian over a year, no proof was given

by him that the extraordinary costs that might be required as predicted by Dr. Tigchelaar could or would be financed.

40. For these above reasons in the preceding paragraphs, the Panel finds that the Animal should not be returned to the Appellant and should remain in the care of the Society as per the Order set out below.

XIII. Costs

41. 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.

42. 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)”.

43. There was not submission on costs by the Appellant.

44. The Society is seeking costs as follows:

| | |
|---|------------|
| (a) Veterinary, hauling, boarding and feed costs: | \$3,313.74 |
| (b) SPCA time to attend seizure: | \$136.95 |
| (c) Housing, feeding and caring for the Animal: | \$1,075.70 |
| (d) Total: | \$4,526.39 |

45. 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 the Animal. The calculation of these estimates has been reviewed and supported in previous appeals.

46. The costs of \$4,526.39 are awarded to the Society, under the *PCCA*, Section 20(1).

XIV. Order

47. That the Animal, Gus, remain in the custody of the Society to destroy, sell or otherwise dispose of pursuant to Section 20.6 (b) of the *PCCA*. The Panel expresses the sincere hope that the Animal can be rehomed by the Society to a person or persons that have the financial means to provide veterinary and dietary costs for care of the Animal.

Dated at Victoria, British Columbia this 14th day of September 2022.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



David Zirnhelt, Presiding Member

Appendix “A”

| | | | |
|-------------|---------------|-----------|--|
| Exhibit #1 | July 29, 2022 | BCSPCA | Tanaka v BCSPCA No Return Decision Letter – July 28, 2022 |
| Exhibit #2 | July 31, 2022 | Appellant | Tanaka - NOA |
| Exhibit #3 | Aug 3, 2022 | BCFIRB | Tanaka v BCSPCA P2209 – NOA Process Letter |
| Exhibit #4 | Aug 12, 2022 | BCSPCA | LT Appellant and BCFIRB encl SPCA Doc Disclosure |
| Exhibit #5 | Aug 12, 2022 | BCSPCA | BCSPCA Document Disclosure Tabs 1-43 |
| Exhibit #6 | Aug 19, 2022 | Appellant | Appellant Submissions 1 of 2 |
| Exhibit #7 | Aug 19, 2022 | Appellant | Appellant Submissions 2 of 2 |
| Exhibit #8 | Aug 19, 2022 | Appellant | Appellant Email from Gary Ross |
| Exhibit #9 | Aug 19, 2022 | Appellant | Appellant Photos |
| Exhibit #10 | Aug 23, 2022 | BCSPCA | LT Appellant & BC FIRB encl Submissions, Affidavit, witness |
| Exhibit #11 | Aug 23, 2022 | BCSPCA | BCSPCA Submissions |
| Exhibit #12 | Aug 23, 2022 | BCSPCA | Sworn Affidavit 1 of Marcie Moriarty |
| Exhibit #13 | Aug 23, 2022 | BCSPCA | SPCA's PCAA Expert Witness Form |
| Exhibit #14 | Aug 23, 2022 | BCSPCA | SPCA's PCAA Witness Contact Form |
| Exhibit #15 | Aug 23, 2022 | BCSPCA | Index to BCSPCA Document Disclosure |
| Exhibit #16 | Aug 23, 2022 | BCSPCA | BCSPCA Tabs 44-52 |
| Exhibit #17 | Aug 26, 2022 | Appellant | BCSPCA No Return Decision with Underlined Points |
| Exhibit #18 | Aug 26, 2022 | Appellant | BCSPCA Submissions with Underlined Points |
| Exhibit #19 | Aug 26, 2022 | Appellant | BCSPCA Submissions and Search Warrant with Underlined Points |
| Exhibit #20 | Aug 26, 2022 | Appellant | Appellant's Response to BCSPCA Submissions |
| Exhibit #21 | Aug 26, 2022 | Appellant | Appellant Photos Gus' New Pen |

