

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:

G.G.

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Wendy Holm, Presiding Member
Neil Turner, Panel Member

For the Appellant:

G.G.

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

August 24, 2022

Location of Hearing:

Videoconference

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 (“Milo”) from the Appellant, G.G. Milo was third party surrendered by Port Alberni Shelter Society staff.
2. The Appellant is appealing the July 22, 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 Milo.
4. On August 24, 2022, a BCFIRB hearing panel (the Panel) held a hearing via videoconference. The hearing was recorded.
5. The Appellant was not represented by counsel and did not call any witnesses.
6. The Society was represented by counsel and called two witnesses: J.C. of the BCSPCA and V.J., case manager at one of two residences run by the Port Alberni Shelter Society.

II. PRELIMINARY MATTERS

7. On August 18, 2022, the Appellant requested the hearing be moved by a day, from August 23, 2022 to August 24, 2022 to attend his mother’s funeral. The Society took no issue with this. The Panel issued a Decision adjourning the hearing to be heard Wednesday, August 24, 2022. This correspondence was admitted as Exhibit 14.
8. On August 22nd, BCFIRB received a letter on behalf of the Appellant that was outside the submission schedule. Both Parties accepted the late submission, which was admitted as Exhibit 15.

III. MATERIAL ADMITTED IN THIS APPEAL

9. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. With the addition of Exhibit 14 and 15 above, the record comprises Exhibits 1 – 15 and it attached as Appendix A to this decision.

IV. ISSUES ON APPEAL

10. There are two issues to be decided in this Appeal:
 - a) Was Milo abandoned at the time that he was third party surrendered such that that the seizure was justified in all of the circumstances?
 - b) Is it in the best interest of Milo to be returned to the care of the Appellant?

EVIDENCE AND FACTS

V. BACKGROUND

11. On the evening of July 6th, the Appellant and Milo resided at Our Home, the Port Alberni Shelter Society's (PASS) supportive housing residence located at 3939 8th Avenue, Port Alberni (the "New Shelter"). They had both lived in this Shelter for over a week. Milo was a friendly dog and had not been required to wear a muzzle while in the New Shelter.
12. On the morning of July 7th, the Appellant was advised by the manager at the New Shelter that he was to stay that night at the PASS residence located across the street at 3978 8th Avenue (the "Old Shelter"). The Appellant was also told by the manager that he would need to muzzle his dog.
13. When the Appellant and Milo approached the Old Shelter, a woman standing at the entrance with her dog asked the Appellant if his dog was friendly and if he had a muzzle. The Appellant said he did not have a muzzle, asking if she had one. The woman said yes. The Appellant asked if he could borrow it. When the woman said no, the Appellant proceeded to wrap electrical tape around Milo's jaws to serve as a muzzle, telling the woman "that would work" because he needed a place to sleep.
14. The situation was brought to the attention of shelter staff, who came outside and told the Appellant to remove the tape from Milo's muzzle. The Appellant refused. While they were talking, Milo managed to remove the electrical tape with his paws.
15. The Appellant and Milo then left the Old Shelter and walked back across the street to the New Shelter, where he tied Milo up, asking "anyone" to watch him because he was leaving. He then proceeded to walk away.
16. At 8:34 am, PASS staff called the BCSPCA Alberni-Clayoquot Branch to report a dog abandoned, tied to a pole with a long shoelace. In response, two Society officers arrived at the New Shelter at 9:00 am and shelter staff third-party surrendered Milo into their care.
17. That same day, the Society delivered a Notice of Disposition to the Appellant at his New Shelter address, advising that Milo had been removed pursuant to section 10.1 of the *PCAA* because the animal had been found to be abandoned under the

Act, that costs of care would be assessed, and that the Appellant had 4 days to dispute the removal.

18. On July 8th, the Appellant returned to the New Shelter and was shown the Notice of Disposition.
19. On July 13th the Appellant applied to the Society for the return of Milo, noting in his email that his home had burned to the ground on July 11th.
20. On July 14th, Chief Prevention and Enforcement Officer Marcie Moriarity provided the Appellant with the witness statements, the Society's physical examination intake form and the current status list for Milo. Ms. Moriarity gave the Appellant until Monday July 21, 2022, to provide any submissions as to why it would be in the best interest of Milo to be returned to his care.
21. On July 22, 2022, Ms. Moriarty issued her review decision in which she found that the seizure of Milo was in accordance with the *PCAA* and outlined her reasons for not returning Milo to the Appellant (the "Review Decision"). In coming to this decision Ms. Moriarity noted that she had reviewed witness statements, the BCSPCA Physical Examination Intake Form, one email submission from the Appellant and one sent on the Appellant's behalf. In her Review Decision, Ms. Moriarity cited the following reasons why it was not in Milo's best interests to be returned to the Appellant:
 - a) This was not the first time that Milo had come into the care of the Society. When the Appellant was hospitalized in April 2019, Milo was taken into compassionate care by the Society. Milo had also come into the care of the Society twice as a stray.
 - b) PASS staff told the Society that the Appellant said he was "tired of the dog" and wanted to drop him off at "doggy jail" for 2 weeks and then get him back.
 - c) The Appellant was given an opportunity to provide submissions to the Society as to why Milo should be returned but had not done so.
 - d) In his July 13th email to the Society, the Appellant said he had been instructed by the Shelter caretaker to muzzle his dog and "saw no issue" with muzzling his dog using electrical tape because a muzzle is "material to confine [the] jaw bones".
 - e) Since the Appellant did not provide the Society with any reasons for abandoning his dog, Ms. Moriarity was concerned that the Appellant "deliberately left Milo in distress and completely disregarded [his] obligations to Milo in favour of some temporary freedom. Taping a dog's muzzle shut is never a proper way to muzzle a dog, and it is concerning that you do not recognize that."
 - f) Expressing sympathy at the Appellant's loss of his home to fire, Moriarity stated that she "worries that Milo's future will be unstable and uncertain, especially given your willingness to abandon him for other people to look after" and concluded there was nothing before her to convince her that it

would be in Milo's best interest to return him to his owner.

22. On July 26th, 2022, the Appellant filed an appeal of the Review Decision with BCFIRB.

VI. APPELLANT'S EVIDENCE

23. The Appellant was sworn in by the Panel and provided the following evidence:
- a) The incident happened in front of a Shelter in Port Alberni where the Appellant and Milo had been living for about a week.
 - b) "I went into the office and the caretaker said, 'You've got to get a muzzle on that dog!' and I said 'Why? He loves everybody and has never exhibited any aggressive behaviour.'"
 - c) "I went out and the only thing I had on hand was black tape, which I didn't think he would even keep on, but I proceeded to give him a couple of wraps, keeping my thumb in so he could breathe. He kept it on for about 2.5 seconds and then pawed off with his dew claw. That was the start of it."
 - d) "I know it was a mistake, but I did it. After I put the muzzle on the dog, all heck broke loose, and people started calling me a bad pet owner. It was on the steps."
 - e) The Appellant did not recall how Milo came into the care of the Society. He remembers Milo sitting outside for a while, perhaps he was tied up. When asked by the Presiding Member where the Appellant went – did he perhaps go back into the shelter? - the Appellant said he could have.
 - f) The Appellant insisted that he never abandoned Milo and didn't believe that he went anywhere after the incident in front of the shelter. When asked if his reason for bringing Milo back to the New Shelter was because he did not require a muzzle to enter, the Appellant said that was correct.
 - g) The Appellant asserted once more that he would never abandon Milo, adding 'I'm living in a fifth-wheel in front of my house because my house burned down.'
24. In response to cross examination by Mr. Rhone, counsel for the Society, the Appellant further testified:
- a) The Appellant had been living in the New Shelter for one week before the incident with Milo.
 - b) Prior to the incident, no muzzle was worn by Milo when he was in the New Shelter. Nobody had asked him to muzzle Milo before the morning of the incident.
 - c) When asked if the Appellant carried the electrical tape explicitly for muzzling Milo, the Appellant said no, he had it for electrical work on cars etc. and also thought it would be useful to muzzle Milo.

- d) The Appellant said Milo was not acting up at the time of the incident, suggesting that it was the lady who was caretaking at the shelter who was acting up. The Appellant was unsure of the caretaker's name.
- e) The Appellant did not recall a woman coming outside and speaking to him about the tape on Milo's mouth. Nor did he recall anyone telling him to remove the tape from the Milo's muzzle.
- f) The Appellant noticed Milo struggling briefly to get the tape off but said that after pawing and rubbing his face in the dirt the dog managed to get it off.
- g) When he was asked why he did not help Milo remove the tape, the Appellant replied that Milo was too fast and that he had it off himself in 2.5 seconds.
- h) The Appellant did not recall a staff person telling him it was not okay to use tape to muzzle Milo. He further did not recall refusing to take the tape off Milo's muzzle.
- i) The Appellant did not recall saying that he was tired of Milo and that he needed a break. When he was questioned whether he said he was going to drop Milo off at "doggy jail" for two weeks and then get him back, the Appellant replied that he did not remember making that statement. When asked if that was something that he may have said and since forgotten, the Appellant repeated that he did not remember making that statement. When Mr. Rhone further asked if the Appellant "needed a break from Milo for a little bit of time", the Appellant said "no".
- j) When he was asked why he attempted to muzzle Milo with the electrical tape, the Appellant said that it was because the caretaker had said that Milo needed a muzzle. When Mr. Rhone asked if he questioned that at all, if he asked, "why does my dog need a muzzle?", the Appellant replied "nope".
- k) When he was asked where he was going that morning, the Appellant said that he was walking from the New Shelter to the Old Shelter and that he was taking Milo for a walk. When he was asked by Mr. Rhone why he would need a muzzle if he was just out for a walk the Appellant replied that, "The muzzle [issue] came up when the other dog was at the Old Shelter. That's when I put the muzzle on him." When asked by Mr. Rhone if the other dog was muzzled, the Appellant replied he believed that it was. This transpired outside the foyer at the Old Shelter.
- l) When Mr. Rhone asked if it wasn't true that the Appellant had just left his dog at the Shelter, the Appellant replied, "no". Asking if the Appellant was there when the Society took Milo, the Appellant replied, "I don't think I was, no." Suggesting that at some time the Appellant must have left Milo at the Shelter, the Appellant replied, "I guess so". "Did you ask Shelter staff to watch Milo and tell them that you were leaving?" asked Mr. Rhone. "I might have" replied the Appellant. "Where were you going?" Mr. Rhone asked. "I don't recall" replied the Appellant. "Did the staff there say 'No, no, we can't watch your dog?'" asked Mr. Rhone. "I don't remember" replied the Appellant.
- m) Reading from a statement provided by Old Shelter staff who had witnessed the muzzling incident, Mr. Rhone asked the Appellant if he recalled saying that he

was tired of Milo and needed a break and was going to drop him off at doggy jail for 2 weeks and then get him back. The Appellant said that he did not recall making that statement.

- n) Referring again to the witness statement, Mr. Rhone asked the Appellant if he had walked Milo back to the New Shelter after the incident, using a shoelace for a leash. The Appellant replied, "I guess I did, I don't know". Mr. Rhone asked the Appellant if he remembered asking people to watch Milo as he was leaving, and the Appellant said he may have said that.
- o) The Appellant asserted that he may have left the shelter, but that he did not abandon Milo. The Appellant did not recall where he was going. Mr. Rhone asked if he went back to the Old Shelter to sleep that night, or if he slept in his 5th wheel on his property. The Appellant replied that he did not have the 5th wheel at that time. "You never did go back to the shelter that night, did you?" asked Mr. Rhone. The Appellant replied that he did not recall where he slept that night.
- p) Reading from a second statement from the Old Shelter staff, Mr. Rhone asked the Appellant if he wrapped the tape completely around the circumference of Milo's muzzle. The Appellant replied that he did. Noting that the witness said that the tape prevented Milo from opening his mouth "even in the slightest", the Appellant stated that was incorrect, that Milo could open his mouth and that Milo was able to remove the tape quite quickly in any event.
- q) Mr. Rhone suggested that Milo was noticeably distressed, pawing at his muzzle and rubbing his face on the ground trying to remove the tape. The Appellant replied that this was not true; that Milo had been able to pull the muzzle off quickly - "in 2.5 seconds".
- r) Mr. Rhone told the Appellant that V.J., who worked at the Old Shelter, said she'd told him to remove the tape, but he'd refused, and while they were arguing back and forth the dog removed the tape on his own by pawing at it repeatedly, then immediately began to pant and cough. The Appellant does not agree that a woman told him to remove the tape. "Was he immediately panting and coughing when he got the tape off?" asked Mr. Rhone? "No", replied the Appellant, "when it was off, he bounced around."
- s) The Appellant was asked if he was aware of the tumour that the Society's staff had noted on Milo's belly and whether he had been told it should be removed. The Appellant said that he was aware of the tumour but had not been told it should be removed. The Appellant was asked if he had taken Milo to the veterinarian recently. He stated that the last time that he had taken Milo to the veterinarian was six years ago but then corrected himself and stated that Milo had been to a veterinarian more recently for fleas.
- t) In response to questions concerning how Milo would be cared for if he was returned, the Appellant said Milo would live with him in the fifth-wheel on the Appellant's property.
- u) Noting that this was the second time Milo has been taken into care by the Society, Mr. Rhone asked the Appellant about the previous time, in April 2019,

when the Appellant was admitted to the psychiatric ward of the North Island hospital and, on day three, told a nurse that his dog was locked in the house with food – he was unsure about water – and needed rescue. Compassionate board was provided by the SPCA until the Appellant recovered and was released. “Isn’t that what happened” asked Mr. Rhone? “I told them to crash the door down” replied the Appellant, “so he could get water”. “Apart from that, there was no other time that Milo was in SPCA custody?” asked Mr. Rhone. “No” replied the Appellant.

- v) Mr. Rhone concluded his cross examination by asking the Appellant why he was walking around with black electrical tape on his person. “It’s for engines on cars and stuff” the Appellate responded. “You put it on cars?” asked Mr. Rhone. “It’s for engines on cars; to have it handy, to do car work, you know?” the Appellant replied. Mr. Rhone asked again if the Appellant had the tape on him specifically to use as a muzzle. The Appellant replied “no”. Mr. Rhone asked again “so you feel it’s okay to put electrical tape on a dogs muzzle?” The Appellant replied that in the dictionary it says something about “to confine the jaws” - that’s what a muzzle is. Mr. Rhone noted the Appellant could have bought a purpose-built muzzle for dogs at the pet store but instead the Appellant chose to use electrical tape, asking “is that something you think is okay?” The Appellant replied “in hindsight, no.” “Why not?” asked Mr. Rhone? “Cause its mean to the dog, I guess” the Appellant replied.

25. In response to questions from the Panel, the Appellant provided the following evidence:

- a) Referring to a witness statement at Tab 6 of the SPCA list of Documents, the Presiding Member asked the Appellant if he recalled saying he was muzzling Milo because he “needed a place to sleep”? The Appellant did not recall saying this.
- b) The Appellant said the rules of the Shelters were such that he was allowed to bring Milo into both shelters to sleep with him.
- c) The Appellant did not recall tying Milo up at the New Shelter before leaving. When asked when he noticed that Milo was gone, the Appellant said, “probably pretty much right away”.
- d) The Presiding Member asked the Appellant to describe his current living conditions. The Appellant said that he is living in a fifth-wheel that he owns on same property as his former house. He described it as a “fairly nice fifth wheel, with a bed, an upper bed, a kitchen with a stove and a double sink; pretty nice.”
- e) The Presiding Member asked the Appellant about his income. The Appellant replied that he receives a handicap pension and a WCB pension. The WCB pension is \$600+ a month for a shoulder injury.
- f) The Presiding Member asked the Appellant “Would you do anything differently in hindsight?” The Appellant replied, “I wouldn’t have put the black tape around the dog’s muzzle, that’s for sure.”

- g) The Appellant didn't recall saying that he needed a break from Milo. When he was asked if the dog ever "drives you crazy" the Appellant replied "nope, he's a good dog."
 - h) The Presiding Member asked what the Appellant would do to ensure Milo's care in the future if the Appellant needed to go into the hospital or go someplace the dog couldn't accompany him. The Appellant said he would get his son to take the dog, if need be, adding that his son lived only an hour away.
 - i) The Appellant denied that Milo had previously come into the Society's custody twice as a stray. The Appellant stated that Milo had only come into the Society's care once in 2019 and again now.
26. In his follow up, Mr. Rhone asked the Appellant if he recalled sending an email on July 13th requesting Milo's return after he had received the Notice of Disposition from the Society. The Appellant agreed that he had sent the noted email.
27. Mr. Rhone further asked if the Appellant had found out that Milo was no longer at the shelter because he had received notice from the Society, and the Appellant agreed that could have been the case.
28. Mr. Rhone further suggested that Milo could have come into the Society's care previously as a stray without the Appellant's knowledge. The Appellant stated that he did not think that had happened.

VII. RESPONDENT'S EVIDENCE

29. The Society, represented by Mr. Rhone, called their first witness, J.C., who was sworn in and provided the following evidence:
- a) J.C. has been employed with the Port Alberni Shelter of the Society for 11 years. Her present role is as an ACA (Animal Care Aid) Level 2 and Animal Control Officer. J.C. received the phone call concerning Milo.
 - b) J.C. testified that on the morning of July 7, a call came into the Society from the Port Alberni Shelter Society with regards to the Appellant abandoning Milo and taping Milo's mouth shut with electrical tape. J.C. and a co-worker subsequently attended at the Port Alberni Shelter.
 - c) J.C. testified that when she arrived at the shelter at approximately 9:00 am, Milo had been brought inside the front part of the shelter building and was being held by a security guard or resident. She spoke with a worker named W. who reiterated what she had said on the phone – that Milo had been muzzled with black electrical tape and subsequently tied to a pole with shoelaces. This was around 9:00 am in the morning. Milo was "heavily panting, obviously more than how he is here now, I think a little bit in distress". She didn't know how long his muzzle had been taped up.
 - d) The Shelter staff told J.C. that they had no one to care for Milo and that they did not know when the Appellant was coming back. Since W. had control of

Milo at the time, a third-party surrender was agreed to, and Milo was taken into the custody of the Society.

- e) J.C. testified that the Society's Notice of Disposition was posted by W. in the Alberni Shelter Society's office. W. said she knew the Appellant had seen it because when he came to the shelter on July 8th she showed it to him, but that he did not receive a physical copy. That afternoon the Appellant went to the Port Alberni SPCA office and J.C. explained to the Appellant how to contact Ms., Moriarty's office to dispute the Notice of Disposition. The Appellant stated he would drive to Ms. Moriarty's office.

30. The Appellant did not cross-examine the Witness.

31. In response to questions from the Panel, J.C. provided the following additional evidence:

- a) Noting that the Appellant went to the Port Alberni SPCA office the following day, on July 8th, the Presiding Member asked J.C. if she knew when the Appellant had returned to the shelter. She replied that she did not and that as far as she knew Milo had been tied up in front of the shelter and subsequently brought into the shelter by a security guard. She does not know if the Appellant returned to the shelter that day
- b) Noting that Ms. Moriarty's office is East Vancouver, the Presiding Member asked if J.C. knew whether the Appellant had in fact driven there. J.C. stated that she believed that the Appellant had not driven to Ms. Moriarty's office and noted that a few days after the seizure the Appellant had shown up at the Port Alberni SPCA office saying that he was "running out of time". He requested more time to respond because he couldn't reach Ms. Moriarty by phone and needed help compiling an email.
- c) J.C. emailed K.P. at the Society on the Appellant's behalf. K.P. stated that given what he was going through, she would give the Appellant a little bit more time. J.C. asked the Appellant if there was anyone who could help him compile an email. The Appellant said he was not sure if anyone could help him. The Appellant returned to the Port Alberni SPCA a few more times, whereupon the SPCA manager felt it would be better if he interacted with the Appellant. The Appellant had been very compliant in all his visits to the SPCA, but the manager felt it was better, that he should communicate with the Appellant in regard to this situation. The SPCA manager subsequently told the Appellant there was nothing they could do, they were basically only holding Milo at the branch, and any questions that the Appellant had with respect to the appeal should be directed to Ms. Moriarty's office.
- d) With respect to Milo's care while in the Society's custody, J.C. said Milo has not been fostered out, and that he is still in the Society's kennel. Milo has been seen by a veterinarian for severe anxiety and doesn't do well in a kennel situation. He is quite vocal, does not like to be left alone and is now on anti-anxiety medications. After a bout of bloody diarrhea, he was rushed to a Nanaimo emergency veterinarian, but the veterinarian advised that he

was “just overheating himself” – the hot weather had made him more anxious and stressed. J.C. said Milo is now socializing with other dogs –hers and the managers - and this seems to help. When asked if Milo was a candidate for rehoming, J.C. said he was a great candidate for rehoming.

- e) The Presiding Member noted Milo’s medical records showed that he had received a number of vaccinations in 2018, 2019 and 2022, and asked if he had received most of them while in the Society’s care. J.C. stated that she assumed that was the case, but also said that she was not the one who brought him for his last two visits in July (for anxiety and diarrhea).
 - f) Noting both the SPCA intake examinations and the July 22 veterinary record show Milo had an abdominal tumour but was otherwise in good health, the Presiding Member asked J.C. if she agreed that Milo was in good health. She agreed that he is in good shape other than his anxiety.
 - g) Panel Member Turner asked J.C. if she was aware of the expectations when someone is brought into a shelter. For example, if a client needs to leave, what do the shelters typically expect with respect to any animals in the client’s care. J.C. replied that she was not aware of the shelter rules regarding leaving animals at shelters, but that she understood that large breed dogs must wear a muzzle inside the shelter. At this point, the Appellant interjected “that is neither here nor there, most dogs don’t wear muzzles around there.” J.C. said, “There may be a lot of exceptions”.
 - h) The Presiding Member asked J.C. if she was aware of any place in Port Alberni where pet owners could go to pick up items that they needed for their pets if they lacked the resources to purchase them or if the Society provided muzzles to give to those who could not afford them. J.C. replied that the Society will sometimes, if requested, offer collars, leashes, and blankets and that they have handed out muzzles in the past but found they have often been lost, misplaced or given away.
32. The Society asked J.C. one follow-up question as to whether she was aware of the golf ball sized mass that the Bute Street Veterinary Clinic had found in Milo’s abdomen. J.C. stated that she had no knowledge of that medical issue.
33. The Society called their second witness, V.J., who was sworn in and provided the following evidence:
- a) V.J. works at the Port Alberni Shelter Society as the case manager of the older shelter program (Old Shelter) and has known the Appellant as a client for 2 to 3 months. She explained that clients sign in at the New Shelter and based on space availability are placed in either the New Shelter or the Old Shelter. Clients are allowed to have pets in both shelters, and she has seen Milo living there with the Appellant for some time.
 - b) V.J. testified that the first time the Appellant was assigned to her program in the Old Shelter was on July 7, for one night.
 - c) V.J. testified that dogs need to wear muzzles when inside the shelters only if they are aggressive to other animals or people. When asked if she had ever

told the Appellant to muzzle his dog, V.J. said that she had not personally told him to do so, but that it was possible her co-worker working at the other program [New Shelter] may have told the Appellant that the dog had to wear a muzzle. If so, this was not relayed to her directly.

- d) V.J. testified that she was sitting in her office on July 7, and that it was a particularly hot day – 35 to 40 degrees. A client waved her out to the front yard where she found the Appellant and his dog. Milo had black electrical tape around his muzzle, looked distressed and was struggling to remove it by pawing and rubbing his muzzle on the ground. V.J. asked the Appellant “Is that black tape around your dog’s muzzle?” The Appellant said “yes”. “What is the reasoning for that?” asked V.J. “Well, I am not allowed to come into the shelter unless my dog has a muzzle” the Appellant replied. V.J. told the Appellant that “tape is not a muzzle” and he could not leave the tape on “because it is so hot, and he is clearly struggling to breathe. This is animal abuse, and you can’t come into the shelter if you have that around your dog’s muzzle. That is unacceptable behaviour, and you need to take it off. “The Appellant refused to take it off. According to V.J., another two minutes went by before the dog eventually got the tape off his muzzle and immediately began to gasp for breath and wheeze. The Appellant and his dog then walked off the property. V.J. did not see them after that, but assumed he took the dog to the New Shelter, adding that it was not her who placed the call to the BCSPCA.

34. The Appellant did not cross-examine the Witness.

35. In response to questions from the Presiding Member, the following additional evidence was provided by V.J.

- a) The Appellant stayed principally in the New Shelter, he was at V.J.’s Old Shelter for only one night, the 7th of July.
- b) V.J. confirmed that the Appellant believed he couldn’t enter the Old Shelter with Milo without a muzzle and was also told he could not come in with the tape. The Appellant and Milo then left. The Presiding Member asked if he returned to the New Shelter, where he tied Milo up with the leash and left. V.J. was not aware of what happened at the New Shelter.
- c) V.J. testified that she was not sure when or if the Appellant came back to the [Old] shelter; she did not see him after that. The Appellant was assigned a bed there by the system for the night of July 7, but V.J. was not certain if he stayed there or not.
- d) Panel Member Turner asked if V.J. informed the Appellant that electrical tape was an inappropriate form of muzzling. V.J., “That is correct”.

CLOSING SUBMISSIONS OF THE PARTIES

IX. THE APPELLANT

36. The Appellant made the following closing submission:

- a) When he tethered the dog, he does not remember where he went, or how long he was gone, but said he did not abandon his dog. He doesn't remember when he came back and noticed him gone.
- b) He doesn't believe he stayed at the Old shelter on the evening of July 7th, adding that he has never stayed at the Old Shelter, only the New Shelter. He does not recall where he stayed that night.
- c) When he went to the New Shelter the next day (July 8th), he was shown the notice of disposition on the bulletin board.
- d) Asserting that he would never hurt his dog and describing him as his "buddy", the Appellant would like his dog returned to him.

X. THE RESPONDENT

37. Mr. Rhone, on behalf of the Society, made the following closing submission:

- a) With respect to the abandonment issue, the Society took Milo into care because no one wanted to care for the dog. The Port Alberni Shelter Society had been left with Milo and stated that they were not able to look after him and so he was placed in the custody of the Society.
- b) In considering what is the best interest of the dog in this circumstance, the Society submitted that weight needs to be given Ms. Moriarty's findings in her Review Decision, and in particular:
 - i) The Society has a relevant history with Milo.
 - ii) The Appellant doesn't recall any time when the dog strayed and came into the Society's care but did agree that in 2019, he left Milo unattended at his property for several days and then told the Society that they could bust down the door to get him out.
 - iii) In the most recent incident, the Appellant left Milo alone at the shelter and he doesn't recall why. Witnesses report him saying that he was tired of the dog and needed a break.
- c) The Appellant has downplayed the muzzling incident, saying the electrical tape was on for only 2.5 seconds. V.J. testified that it was on in excess of 2 minutes and that Milo was gasping for air afterwards. Witnesses stated that the dog was in obvious distress. The Appellant couldn't see this or didn't want to see this.
- d) The Society's concern is what will happen to Milo in future? The dog struggles with anxiety and is now on anti-anxiety medication. It raises serious concerns for the Society that the Appellant's conduct could be repeated in

future. Mr. Rhone pointed out that under the *PCAA* the animal does not have to be in distress or have an ongoing medical issue; the Act is protective in nature. The Society is concerned that if Milo goes back into the Appellant's care, the worst will happen, and further noted that J.C. described Milo as a very good candidate for adoption.

- e) In his final reply, the Appellant noted that Milo is an anxious dog: "He whines when I'm not there and will bring my clothes into the living room from the bedroom, he was a very anxious dog." Milo was not put on any drugs prior to being in SPCA care. When asked by the Presiding Member what the Appellant does when Milo is anxious, if he has a way to calm him down, the Appellant replied "I pet him. I just pet him."

COSTS

38. The Society made the following submission with respect to costs:

- a) The Society appreciates the situation the Appellant is facing with his house burning down, they routinely request costs but will consider the circumstances of a person when enforcing cost orders.
- b) The Society incurred and continues to incur expenses with respect to Milo, including costs associated with providing Milo with food, shelter, and other care.
- c) The Society is seeking costs in the total amount of \$1,658.01. pursuant to s. 20 of the Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372 as follows:

i) Veterinary Costs:	\$308.41
ii) Society time attending to seizure:	\$273.90
iii) Housing, feeding, caring for Milo:	\$1,075.70
iv) TOTAL:	\$1,658.01

39. The Appellant made no submission with respect to costs, stating only that "that is a lot of money".

LEGISLATIVE FRAMEWORK

40. 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.

41. Section 10.1 of the *PCAA* sets out the role for the Society in the event that an animal is determined to be abandoned:
- 10.1 (1) In this section, "abandoned animal" includes an animal that
- (a) is apparently ownerless,
 - (b) is found straying,
 - (c) is found in a rental unit after expiry of the tenancy agreement in respect of the rental unit, or
 - (d) if a person agreed to care for the animal, is not retrieved from that person within 4 days following the end of that agreement.
- 10.1 (2) If an authorized agent is of the opinion that an animal is an abandoned animal, the authorized agent may take custody of the animal and arrange for food, water, shelter, care and veterinary treatment for it.
42. The Appellant has an onus to show that the remedy he seeks is justified. As noted by Justice Groberman (as he was then) in *Eliason v BCSPCA*, 2004 BCSC 1773:
- 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.
43. With respect to the issue of costs, Part 3, Section 20 of the *PCAA* states:
- (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.
44. 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)".

XI. ANALYSIS AND DECISION

45. The first issue to be decided by the Panel is whether Milo was abandoned at the time that he was third-party surrendered such that the surrender was justified in all of the circumstances.
46. Section 10.1(1)(a) of the Act states that an "abandoned animal" includes an animal that that is apparently ownerless. If an authorized agent is of the opinion that an animal is an abandoned animal, Section 10.1(2) provides that the authorized agent may take custody of the animal and arrange for food, water, shelter, care and veterinary treatment for it.
47. In coming to its decision, the Panel is also guided by the following passage from HL v BCSPCA, June 1, 2015 where at paragraphs 105 and 106 that Panel held:
105. ...The definition of "abandoned" is inclusive and this differs from the exhaustive way in which the term "distress" is defined...
106. The use of the word "includes" shows that the legislature wisely recognized that other situations might well arise where an animal has been abandoned for the purposes of the PCAA. The examples given in the definition are of course of great assistance as they both define particular situations and also inform the larger meaning of the word. In the latter regard, they reflect the purposes of the PCAA and the interests of animal welfare by making clear that an intention to abandon an animal is not necessary for an animal to be abandoned in fact. In other words, it is not necessary for me to find that the Appellant intended to abandon the animals. If they are "abandoned" on an objective basis, the statutory definition is met.
48. Based on the evidence presented, the Panel is satisfied that the conditions of abandonment outlined in Section 10(1)(a) of the PCAA were met. The fact that the Appellant tied his dog outside the New Shelter, asked others to watch him, then left, saying he "needed a break" (although the Appellant does not recall saying this) support that finding. Because the shelter staff told the Society that they were not equipped to look after the dog, Milo was found to be abandoned under Section 10(1) of the Act and third-party surrendered to the SPCA under Section 10(2) of the Act.
49. However, the Panel is finds that the events of that morning which led up to this incident add important context relevant to this decision:
- a) In the eight years that he has owned Milo, this was apparently the first time the Appellant had tied up his dog and walked away.
 - b) At the time of the incident, the Appellant was living at the Port Alberni Shelter Society. He and Milo had lived in the "New Shelter" for approximately one week. The Appellant was described as "very compliant" with the rules of the Shelters and in his subsequent interactions with Society staff. Milo was not muzzled during the time he lived at the New Shelter, nor – according to the Appellant - was a muzzle ever suggested to him.
 - c) Based on the evidence presented, the Panel finds that the Appellant has a good relationship with Milo and has adequately provided for his care in the

past. Referring to him as “my buddy” that he raised from a pup, the eight-year-old Labrador Retriever cross appears to be in good health. During a July 19, 2022 visit to the Bute Street Veterinary Clinic for anxiety medication, the veterinarian found Milo to be in good health (all 12 boxes on the physical exam check list were ticked “normal”) aside from a small golf-ball sized abdominal tumour that the veterinarian recommended be removed. The Society intake report of July 7th was much the same, noting that Milo was panting, hot, and a bit wheezy but well hydrated and of a friendly disposition. While anxious, all his vital signs were normal, and the Society witness testified that Milo was “in good shape”.

- d) On the morning of July 7th, the Appellant was advised that he and his dog had been reassigned to the Old Shelter across the street, effective that day. According to the Appellant, he had never stayed at that shelter before. The Appellant was told by the caretaker at the New Shelter that he would need a muzzle for his dog in the Old Shelter. This would have come as a surprise and was the trigger for a cascade of events that led to the Society taking Milo into care later that morning.
- e) Both shelters allow pets and have rules that require large dogs be muzzled when indoors, but the Panel heard evidence from Shelter staff that these regulations were not enforced if the dog was friendly to humans and other animals. Described by the Appellant as a friendly dog that loved everyone, the fact that Milo was allowed to live in the New Shelter for the week preceding this incident without a muzzle supports that claim. The fact that the Appellant was able to walk him using a shoestring for a leash also suggests he was not a dog that was unpredictable or lunged after other animals, people or vehicles. According to the Appellant, Milo had been through obedience classes as a pup and the Panel finds from the evidence presented that Milo was compliant with and under the control of his owner at all relevant times.
- f) When the Appellant and Milo arrived at the Old Shelter, the Appellant tried to borrow a muzzle from another client, explaining he needed a place to sleep. She had a dog of her own and said no. Believing that he needed a muzzle for his dog to enter the Shelter, he tried to fashion one from black electrical tape. The Shelter caretaker observed this, told the Appellant he should immediately remove the tape, and that he could not enter the Shelter with his dog’s muzzle taped up in that manner. By the end of the conversation, the dog had succeeded in removing the muzzle.
- g) Had the caretaker added “but you can bring your dog inside without a muzzle” the situation would likely have unfolded very differently, but she did not. This was unfortunate. The Panel finds that this was the second triggering event that led to Milo coming into the care of the Society. If the Appellant had been told Milo did not need a muzzle to enter the Old Shelter, the morning would have played out very differently.
- h) Thinking that he could not enter the Old Shelter without a muzzle for Milo, and needing to find a place to sleep, the Appellant and his dog walked back

to the New Shelter, whereupon he tied him up outside and asked “anyone” to look after him. He then left. It wasn’t clear in the evidence why the Appellant went back to the New Shelter, but the Panel feels it is plausible that since Milo had been living with him in the New Shelter for the past week without a muzzle, the Appellant felt his dog could have entered the Shelter and been looked after by another Shelter client or staff more easily in his “unmuzzled” state.

- i) Witnesses testified that although early in the morning, it was a very hot day, with temperatures in the range of 35 to 40 degrees Celsius. If the Appellant’s intent was to abandon the dog, the Appellant could have simply tied him up outside the Old Shelter and left. Yet he returned to the New Shelter with Milo, perhaps thinking since this was where his dog had been allowed to stay for the past week without a muzzle and that other shelter clients or staff at the New Shelter would have allowed Milo to enter the Shelter and would have looked after him for a while. We don’t have evidence on that point, because the Appellant does not remember much of what happened after he left the Old Shelter.
- j) When he discovered Milo was no longer at the New Shelter, the Appellant went the next day to the Port Alberni SPCA offices to find out what he needed to do to get his dog back. Told he had 4 days within which to contact Ms. Moriarity to request Milo’s return, he returned to the Society’s offices several more times over the next few days expressing concern that he was running out of time and seeking help to file his notice.
- k) Based on the evidence presented in this Appeal, the Panel finds that the events of that morning presented new and unanticipated challenges for the Appellant that simply became unmanageable. Counsel for the Society suggested the Appellant could have simply purchased a “purpose-built dog muzzle” in a pet store. This strikes the Panel as unrealistic. Believing he and Milo could not spend the night together in the Shelter to which they had been transferred, the Appellant walked the dog back to the New Shelter where Milo had been allowed to stay without a muzzle, asking others to look after him. The Appellant does not recall where he went next; his remark to a witness that he needed to find a place to sleep suggests he may have left to look for alternate accommodation for that evening.
- l) Although homeless, likely facing some life challenges and lacking the resources many of us take for granted, the Appellant attended at the Society’s offices to learn what to do next and managed to file a request with the Society for the return of his dog. In that request, he described Milo as his family, that he would do nothing to hurt him and asked them to take special care of Milo’s belly which was tender from surgery a few years ago. When Ms. Moriarity’s Decision denied that request, the Appellant managed, despite the challenges he faced, to file an Appeal with BCFIRB, perfect that Appeal by attending at a Service BC office to pay the \$100 filing fee and attend the Hearing by telephone.

- m) The Appellant obviously cares for his dog. Considering the events leading up to the incident and his actions over the following days and weeks to regain custody of Milo, the Panel does not believe the Appellant's purpose that morning in tying up his dog, asking others to watch him, and leaving was *intentional* abandonment. The Panel feels this interpretation of intent is of relevance when considering the disposition of the dog – whether or not it should be returned to its owner.
50. Having found that the events of July 7th constituted abandonment under the Act, the second issue to be decided by the Panel is whether it is in Milo's best interest to be returned to the care of the Appellant.
51. Governing the Panel's thinking in this regard must be whether return of the animal would likely lead to a further situation of abandonment. In *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.) the court explained the intent of the Act with respect to seizures under Part 1(2) of the Act (distress). This interpretation applies equally to an animal that has, as in this case, been taken into care as a result of abandonment under Section 10.1(1)(a) of the Act:
- 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.*
52. It is also important to differentiate "abandonment" from "distress". While the Appellant's attempt to fashion a muzzle for his dog out of black electrical tape to meet what he understood to be the requirements of the Old Shelter would have caused distress for the dog, it was fleeting (reported as 2.5 seconds by the Appellant and 2 minutes by a witness) and not grounds for seizure by the Society. The Panel is further guided in its thinking in this regard by the following passages from *HL v BCSPCA*, June 1, 2015 where that Panel held:
108. It is important to address the distress issue because, if distress also existed, the circumstances that gave rise to the distress – which may differ from what led to "abandonment" – are relevant to the question whether the animals should be returned.
109. In approaching this issue, I note firstly that it is important to apply the definition of distress in light of the circumstances that existed at the time of the seizure. For "distress" to exist, it is not enough that the Society believes that distress is likely to arise at some future date. Rather, distress must exist at the time of the seizure. If they don't, the balance struck in the PCAA is that rights of the owner prevail and the Society cannot remove an animal unless the animals have been abandoned. It is only if distress exists at the time of the seizure that it is relevant to consider, in deciding whether to return the animals, the likelihood that the animals would again become distressed if they were returned to the owner...
121. Finally, SPC Morrison advanced the view that abandonment of the animals necessarily also meant that they were neglected for the purposes of the definition of "distress". On this issue, I appreciate that in common usage, the terms

“abandonment” and “distress” might be seen to overlap, but it seems to me that in choosing separate terms, the legislature intended that they be given separate meanings. In this regard, abandonment would appear to focus on situations where the connection between an animal and its owner has apparent been broken – where, for whatever reason, the owner is no longer there to care for the animal. Neglect, it seems to me, would involve situations where the owner could still be in the picture, but caring for the animals falls below the standard that a reasonable owner would exercise in caring for the animal. While abandonment can of course give rise to other deprivations (such as lack of adequate food and water), I do not think it can be said that abandonment is identical to neglect.

53. Ms. Moriarity notes the following reasons in her Review Decision to not return Milo:
- a) This is not the first time the BCSPCA has had Milo in their care. Compassionate board was arranged for Milo in April 2019 and on two occasions (April 2018 and February 2019) the dog came into the SPCA as a stray.
 - b) Beyond his initial email requesting return of his dog, the Appellant failed to provide the SPCA with a written dispute submission as required by the July 7th Notice of Disposition.
 - c) The Appellant disregarded his obligations to Milo in favour of some temporary freedom.
 - d) The SPCA is concerned that Milo's future will be unstable and uncertain, especially given your apparent willingness to abandon him for other people to look after.
54. In his cross examination of the Appellant and in his summation, Mr. Rhone placed weight on Ms. Moriarity’s observation that this was not the first time Milo came into the care of the Society; noting that in April 2019 the dog was left locked in the house for 3 days with food but not necessarily water. Again, context is important. Documents provided by the Society note the Appellant had been brought by the RCMP into North Island Hospital’s psychiatric unit for treatment. On the third day of his hospitalization, the Appellant told his nurse that his dog was locked in the house with food – he was unsure how much water was left – and authorized the RCMP to enter his home “by whatever means necessary”, including breaking down his door, to provide care to his dog. When the RCMP breached the door and entered the home, they offered the dog water, but he refused. When the dog was then taken into compassionate care by the Society, his intake report notes he was in good condition and well hydrated. Placed in context, the Panel is of the opinion that this incident in April 2019 does not suggest a lack of care by the Appellant.
55. Milo also came to the attention of the Society as a stray on two other occasions (April 2018 and Feb 2019). In both cases the intake reports note that Milo was in good condition, friendly, overweight, and anxious.
56. With respect to the Appellant’s failure to file submissions on his behalf, the Panel puts little weight on this argument. The Panel recognizes that this is an unsophisticated Appellant who at the time was homeless and lacking both skills

and communication infrastructure to file appeal submissions. As noted above, he did manage to file a request with the Society for the return of his dog, and when Ms. Moriarity's Decision denied that request, managed to file an Appeal with BCFIRB, perfect that Appeal by attending at a Service BC office to pay the \$100 filing fee, and attend the Hearing by telephone.

57. The Society asserts that the Appellant disregarded his obligations to Milo in favour of some temporary freedom. The Panel finds that when the events of that day are placed in context, the Appellant did not so much intentionally disregard his obligations to Milo but instead became overwhelmed by the unexpected circumstances he found himself in.
58. In denying the return of Milo to the Appellant's care, the Society notes that the Appellant's house has burned down while Milo has been in care, expressing concern that Milo's future will be unstable and uncertain which could potentially lead to another incident of abandonment. However, the Appellant's circumstances have changed since the Review Decision letter was issued. The Appellant is no longer homeless, he now resides in a fifth-wheel on his property and he is the owner of the property. The Panel finds that the return of Milo to the Appellant will have the effect of adding some stability and certainty to the Appellant's life that was not present when Milo was taken into care by the Society. BCFIRB Decision *AB v BCSPCA*, Aug 9, 2013 speaks to such changing circumstances:

113. ...In fact, the dogs were not taken into custody in this case because they were in distress. Both notices of disposition instead relied on the ground that the dogs had been "abandoned". While abandonment is obviously a cause for concern, the "abandonment" in this case arose in very unusual circumstances, which have now either resolved, or which can be dealt with by way of conditions.
59. Although Milo was taken into the care of the Society under Section 10(1)(a) (abandonment) not distress Section 1(2), the muzzling incident is, of course, of concern to the Panel. Whether the black electrical tape "muzzle" was in place for 2.5 seconds (Appellant) or two minutes (Society's witnesses) is immaterial - it was distressing to the dog and is unacceptable. Whether the dog could open its mouth (Appellant testified he stuck his thumb under Milo's muzzle while wrapping to allow for this; witnesses say the dog could not open his mouth) is immaterial - it was distressing to the dog and is unacceptable.
60. However, based on the evidence presented in the hearing, the Panel accepts the testimony of the Appellant that he realizes this was a mistake and is not likely to be repeated. Firstly, because the Appellant is no longer homeless and does not need a muzzle to bring Milo into a shelter, but moreover because the Appellant several times in this Appeal has acknowledged the seriousness of his act and the Panel believes him when he says that he understands that it was wrong.
61. The Society put considerable weight on comments attributed to the Appellant on July 7th to the effect that he needed a place to sleep, was tired of Milo and needed to put him in "doggy jail" for two weeks. The Appellant does not recall making these statements, but the Panel finds the witnesses who reported them credible.

While of concern, the Panel is drawn to interpret them - in the context of the events that day - as expressions of frustration that warrant less weight than was given them by the Society.

62. As a result of this hearing, additional context has been added and new facts presented that guide the Panel's decision with respect to the return of Milo. Helpful to the Panel in this regard are the following passages from *RH and LH v BCSPCA*, July 5, 2019:

69. In this case, the Society was justifiably concerned enough to seize the dog and determine it should not be returned on the basis of the information it had at hand. However, with the benefit of an oral hearing, the panel concludes that there is little evidence to suggest this was anything more than a one-off event and an unfortunate product of an outburst of a mentally ill person who otherwise is very caring towards the dog.

70. On balance, the panel is satisfied that the likelihood of any repeat mistreatment of the dog is low and that the dog can be returned to its owner L.H. based on conditions set out below

63. The Panel was provided with two written statements of support for the Appellant as a caring pet owner:

a) The first, from his son, G.G., describes his dad as a "good caretaker". *"My dad loves Milo and Milo loves my dad. My dad has been struggling with a few things lately. Even though he has been struggling, he is more than capable of caring for Milo. He brought Milo home for me one Christmas and unfortunately I was unable to take Milo with me when I left home. Milo has been living with my dad for about 5 to 6 years and they have become best friends. My dad truly cares and loves him. I am typing to try and get my dad's friend back in his presence and giving my approval that G.G. is a good fit for Milo."*

b) The second, from D.C., describes the Appellant as a "decent dog owner", noting that he *"always kept his best buddy (Milo) well fed and plenty of exercise as well. Milo the dog was never aggressive to visitors on the property and come to think of it, never witnessed [him] ever having to raise his voice to Milo. In closing, I sincerely hope Milo is returned home to [the Appellant] who truly requires Milo's "companionship". "Please"*.

64. The Panel finds that Milo's emotional health must also be taken into consideration in deciding his disposition. The Panel understands that Milo has an anxious disposition, and according to the Society's staff, this anxiety has been heightened by being in the Society's kennel. It is also likely heightened by being away from the only owner he has known. We heard testimony that when Milo is alone, he becomes anxious – dragging the Appellants clothes into the living room for comfort – so he is obviously strongly bonded to the Appellant. When asked what he does to relieve Milo's anxiety, the Appellant said he pets him to calm him down. It is not clear to the Panel that this dog would "do better" in an entirely new home setting

with strangers. BCFIRB Decision *AB v BCSPCA*, Aug 9, 2013, speaks specifically to this concern:

110. The Society's decision did acknowledge how much the Appellant cares for his dogs, but did not specifically address the potential adverse emotional impact on the dogs of not returning them to the Appellant. The emotional health of the dogs is a factor the Society itself emphasizes in its publications, as reflected on its website: "An animal's welfare is synonymous with its quality of life, and that animal's health and emotions both contribute to their welfare." This is in my view a relevant factor in this case which was not expressly referenced in the decision under appeal. It is readily apparent that the dogs would have bonded with the Appellant over the time he has owned them, especially at 4 years, and at 13 years, who the Appellant describes as his "best friend". This emotional impact should have been weighed in all the circumstances. I am satisfied that the dogs would be emotionally better off with the Appellant.

65. In considering whether Milo should be returned to the Appellant, the Panel has two remaining concerns:
- a) It would be in Milo's best interest to remain on anxiety medication until such time as a veterinarian says it is no longer needed. The Panel is concerned that the Appellant will not have the resources and commitment to provide this ongoing medication. Further, given the recommendation of the veterinarian that the small abdominal tumour should be removed, the Panel is also concerned that the Appellant does not have the resources and commitment to seek out veterinary support to address this issue should the dog be returned.
 - b) The Panel is further concerned that the Appellant does not have a support system in place to look after Milo should he need to go somewhere without the dog or if he is again hospitalized. When asked what assurances he could give the Panel in this regard, the Appellant said that should the need arise, he would ask his son, who lives an hour away, to care for Milo.
66. Based on the evidence presented in this Hearing and in consideration of paragraphs 64 and 65 above, the Panel finds that Milo should be returned to the Appellant with the conditions as set forth in the Order below.
67. With respect to costs, the Society seeks to recover \$1,658.01 in care costs incurred prior to the return of the dog. The Appellant did not dispute the Society's claim for costs but remarked that it was "a lot of money". The Panel has reviewed the Affidavit of Ms. Moriarty and the claim for costs and finds the Society's costs reasonable. As such, we confirm, pursuant to s. 20.6(c) of the PCAA, that the Appellant is liable to the Society for the amount of \$1,658.01.
68. However, the Order for return of the dog is not conditional on the Appellant's payment of outstanding costs. The Panel is concerned that the Appellant may face challenges remitting the full costs in a timely manner, and that requiring costs be remitted before Milo's return would not be in the dog's best interests and only serve to increase the costs of care.

69. If the financial situation of the Appellant is such that the cost of veterinary care is burdensome, the Panel recommends he inquire about and take advantage of programs the Society and other institutions may offer to low-income pet owners to access discount veterinary services to meet the conditions imposed below.

XI. ORDER

70. Based on the evidence before us, it is the Decision of this Panel that the dog Milo be returned to the Appellant forthwith on the following conditions:
- a) That the Appellant, on the day Milo is returned to him, pick up and reimburse the Port Alberni SPCA for anti-anxiety medication sufficient to tide Milo over until the Appellant can visit a veterinarian to arrange for a new prescription, and to also request instruction from the Society as to how to effectively administer the medication.
 - b) That the Appellant, on the day Milo is returned to him, provide assurances to the Port Alberni SPCA of his commitment to undertake the following steps to care for Milo:
 - i. Within two weeks of when Milo is returned to him, bring him to the Bute Street Veterinary Clinic (or a veterinarian of his choice) to obtain a prescription for his anti-anxiety medication and seek veterinary advice as to what if any treatment is recommended.
 - ii. Comply with the veterinary recommendations obtained pursuant to condition (a) above, including recommendations for periodic follow up.
 - iii. Within three weeks of when the dog is returned to him, provide the Port Alberni SPCA with written confirmation
 1. that condition (a) has been satisfied; and
 2. his plan to ensure that Milo is cared for during any planned or unexpected absence, including the name, address and contact information of the person or persons who will be responsible for the dog's care during such an absence.
 - c) Pursuant to s. 20.6(c) of the PCAA, the Appellant is liable to the Society for costs in the amount of \$1,658.01, but this Order for return of the dog is not conditional on the Appellant's payment of outstanding costs. The Panel expects the Appellant to come to an agreement with the Society concerning his obligation to cover the costs of his dog while in care.

Dated at Victoria, British Columbia this 7th day of September 2022.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read "Wendy Holm". The signature is fluid and cursive, with a prominent vertical stroke at the beginning.

Wendy Holm, Presiding Member

A handwritten signature in black ink, appearing to read "Neil Turner". The signature is cursive and somewhat stylized, with a long horizontal stroke at the end.

Neil Turner, Member

Appendix “A”

Exhibit #	Date (Received)	Received from	Document
Exhibit #1	July 22, 2022	BCSPCA	G.G. v BCSPCA No Return Decision Letter – July 22, 2022
Exhibit #2	July 26, 2022	Appellant	G.G. NOA
Exhibit #3	July 27	BCFIRB	G.G. v BCSPCA P2208 – NOA Process Letter
Exhibit #4	August 4, 2022	BCSPCA	BCSPCA LT all encl. Document Disclosure
Exhibit #5	August 4	BCSPCA	BCSPCA Document Disclosure Tabs 1-23
Exhibit #6	August 4	BCSPCA	Tab 10 - Voicemail
Exhibit #7	August 12, 2022	BCFIRB	BCFIRB Email – Appellant Initial Submission Not Received
Exhibit #8	August 16, 2022	BCSPCA	BCSPCA LT all encl submissions
Exhibit #9	August 16, 2022	BCSPCA	BCSPCA Submissions
Exhibit #10	August 16, 2022	BCSPCA	Affidavit of Marcie Moriarty
Exhibit #11	August 16, 2022	BCSPCA	BCSPCA Witness Contact Form
Exhibit #12	August 16, 2022	BCSPCA	Tab 23 – Invoice
Exhibit #13	August 18, 2022	Appellant	Appellant Letter of Support – G.G.
Exhibit #14	August 19, 2022	BCFIRB	G.G. v BCSPCA – Hearing Moved to August 24
Exhibit #15	August 22, 2022	BCSPCA	Statement of David Campbell